

REPUBLIC OF KENYA



06 JUN 2023
[Signature]

COUNTY ASSEMBLY OF MURANG'A

THIRD ASSEMBLY

COMMITTEE OF POWERS AND PRIVILEGES

FIRST REPORT

**ALLEGED BREACH OF PRIVILEGE
BY HON. HON. JOHN MWANGI KAMAU KAMAU-
MCA NGINDA WARD**

*Paper laid on
6/6/2023*

Ann

JUNE, 2023

TABLE OF CONTENTS

PREFACE.....	3
SUMMARY OF FINDINGS	4
COMMITTEE MANDATE AND TERMS OF REFERENCE	4
COMMITTEE MEMBERSHIP.....	4
ACKNOWLEDGEMENT	5
1.0 Background	6
2.0 Meetings of the Committee of Powers and Privileges	7
3.0 Parliamentary Privilege Concept in Kenya	9
3.1 Committee on Powers and Privileges.....	9
3.2 Standing Order 203 Committee of Powers and Privileges.....	10
4.0 Inquiry into breach of privileges- relevant laws	11
4.1 Responsibilities of leadership.....	12
4.2 Conduct of State officers.....	13
5.0 Primary Documents	15
6.0 Submissions presented to the Committee	15
6.1 Comments by Committee Members.....	16
6.2 Submission by Hon. Hon. John Mwangi Kamau.....	17
7.0 Issues for determination	20
8.0 Analysis of evidence, observations and findings	19
9.0 Committee Recommendations	21
10.0 Annexures	
i) Official Hansard for the meetings held on March 16, 2023 and April 18, 2023	
ii) Notice reference MCA/POWERS/C/022/2023/01 dated April 25, 2023 convening the Committee of Powers and Privileges meeting	
iii) Invitation letter ref. MCA/POWERS /C/2022/41 dated April 25, 2023	
iv) Committee minutes of the meeting held April 26,2023	

PREFACE

1. **Mr. Speaker Sir**, on behalf of the Members of the Committee of Powers and Privileges, inquiring into the alleged breach of privilege by Hon. John Mwangi Kamau MCA, it's my humble pleasure to present this report to the House, as considered and adopted by the Committee.
2. **Hon. Speaker**, it came to the attention of the Committee that in Assembly sittings held on March 16, 2023 and April 18, 2023, utterances made by Hon. John Mwangi Kamau on the floor of the Assembly breached privileges against the values stipulated in Chapter six of the Constitution of Kenya 2010 and Section 11(a);(b) and 13(b) of the Leadership and Integrity Act, 2012, Section 16(e) of the County Assemblies Powers and Privileges Act 2017 and Standing Order 203(4).
3. Pursuant to the provisions of Standing Order 203, the Committee of Powers and Privileges held a meeting on April 26, 2023 to discuss and consider the matter at hand.

SUMMARY OF FINDINGS

4. **Hon. Speaker**, in the meeting held on April 26, 2023, the Committee analyzed the printed Hansard of sittings held on March 16, 2023, April 18, 2023 and invited Hon. John Mwangi Kamau to defend himself on his alleged breach of privileges.

From the Hansard and submissions made by Hon. John Mwangi Kamau, the Committee unanimously found that the conduct by Hon. John Mwangi Kamau pursuant to Chapter Six of the Constitution, the County Assemblies Powers and Privileges Act, the Leadership and Integrity Act, the Leadership and Integrity Code of Conduct for State Officers in the County Assembly of Murang'a and Standing 203 of the Murang'a County Assembly Standing Orders, was a breach of privilege accorded to the member.

COMMITTEE MANDATE AND TERMS OF REFERENCE

5. **Mr. Speaker Sir**, Section 15 (1) of the County Assemblies Powers and Privileges Act and Standing Order No. 203 provides for the establishment of the Committee on Powers and Privileges whose functions shall be to inquire into the conduct of a member whose conduct is alleged to constitute a breach of powers and privilege as prescribed in national legislation providing for powers, privileges and immunities of County Assemblies, their committees and members enacted by Parliament pursuant to Article 196(3) of the Constitution of Kenya, the Standing Orders or any written law.

6. The Committee derives its mandate from the Constitution, The County Assemblies Powers and Privileges Act No.6 of 2017, The Leadership and Integrity Act No. 19 of 2012, the Leadership and Integrity Code for State Officers in the County Assembly of Murang'a and the Murang'a County Assembly Standing Orders.
7. Pursuant to Section 15 (5) of the County Assemblies Powers and Privileges Act, the Committee shall, either **on its own motion** or as a result of a complaint made by, any person; inquire into the conduct of a Member whose conduct is alleged to constitute a breach of privilege, within fourteen days of receipt of a complaint.

COMMITTEE MEMBERSHIP

8. The Committee of Powers and Privileges as currently constituted comprises of the following Honourable Members:

1. Hon. Johnson Mukuha	-Chairperson
2. Hon. Margaret Wanjiku Gichia	- Member
3. Hon. Alex Wainaina	- Member
4. Hon. Thomas Muteti Mwaura	- Member
5. Hon. Jane Mukami Kigotho	- Member
6. Hon. Gladys Wambui Waikau	- Member
7. Hon. Moses Gachui Mungai	- Member
8. Hon. Hilary Muigai Muchoki	- Member
9. Hon. Jeremiah Clement Gichobe	- Member
10. Hon. Samson Mukora Ngigi	- Member
11. Hon. Peter Munga Njuguna	- Member
12. Hon. Kenneth Kamau Mwangi	- Member
13. Hon. Boniface Ng'ang'a	- Member

COMMITTEE SECRETARIAT

1. Francis M. Kimemia	-Senior Clerk Assistant
2. Yvonne Njoki	- Deputy Director, Legal Services
3. Jackson Kinyua	- Clerk Assistant
4. Major (Rtd) Esau Shilako	- Chief Sergeant at Arms
5. Grace Kabutha	- Hansard Reporter
6. Eunice Wanjiru	- Sergeant -At-Arms

ACKNOWLEDGEMENTS

- 9. **Mr. Speaker Sir**, the Committee wishes to record its gratitude to the Offices of the Speaker and the Clerk of the County Assembly for the necessary support accorded to it, in Execution of its mandate. Further I wish to thank all Members of the Committee for their diligence and commitment in making the business of the Committee a success.

- 10. The Committee also wishes to register its appreciation for services and unwavering support rendered by the staff of the County Assembly attached to the Committee as it discharged its mandate.

- 11. Finally, it is now my pleasant duty on behalf of the Committee of Powers and Privileges to present and commend this report for consideration and adoption by this Assembly.

Signed:

**CHAIRPERSON
COMMITTEE OF POWERS AND PRIVILEGES**

Date

1.0 Background

Mr. Speaker Sir, the genesis of this report is attributed to the following occurrences;

12. THAT, in the Assembly sitting held on March 16th 2023, Hon. John Mwangi Kamau, MCA while supporting a Motion by Water and Irrigation committee said and I quote.... ***“70 percent of Water Committee through record, I can say they are criminals. One...”*** (Hansard extract, March 16,2023).
13. THAT, on further prodding by the Presiding Speaker to substantiate, the Hon. Member withdrew the remark.
14. THAT, Hon. John Mwangi Kamau later in the said sitting of March 16,2023 revisited the remark and said ***“They cannot pass any Motion if they have not been given a slight token.”*** (Hansard extract, March 16,2023).
15. THAT, in the Assembly sitting held on April 18th 2023 and while supporting a Motion on approval of the nominee for appointment as the Chief Officer Water, Irrigation, Environment and Climate Change, Hon. John Mwangi Kamau remarked that ***“Thank You Madam Speaker, I rise to support the Motion despite few members of this Committee who do not work under the desire which they were elected for by their Members, then others work under the clave of their stomachs.”*** (Hansard extract, March 18,2023).
16. THAT, on being prompted to withdraw the remarks by the Presiding Speaker, Hon. John Mwangi Kamau withdrew the statement and apologized to the House.
17. THAT, members felt aggrieved and petitioned the Speaker to take action on Hon. John Mwangi Kamau.

After initial analysis of the Hansard in the two sittings and complaints from members, the committee was satisfied that;

18. The remarks by Hon. John Mwangi Kamau cast aspersions on the dignity of members of the Water Committee and that his utterances had persisted and grave.
19. THAT, it was necessary for Hon. John Mwangi Kamau to be put to task regarding his utterances in plenary.
20. THAT, Hon. John Mwangi Kamau committed to uphold the provisions of the Constitution and the Leadership and integrity Code of conduct upon swearing into this Honourable house.

Following the review of the Hansard during the two Assembly sittings by the Speaker, a meeting of the Committee of Powers and Privileges was convened on Wednesday, April 26, 2023 at 8,00am, to discuss and consider the matter. ***(Annexure ii)***.

21. Vide a letter ref. MCA/POWERS /C/2022/41 dated April 25, 2023, (Annexure iii), Hon. John Mwangi Kamau was invited to appear before the Committee of Powers and Privileges to give his evidence on the matter.

2.0 Parliamentary Privilege Concept in Kenya

22. Parliamentary privilege is a concept borrowed from the Commonwealth parliamentary system and specifically in Kenya, is a creature of the Constitution both at the parliamentary and county assembly level. Article 196 of the Constitution provides for the privileges and immunities of county assemblies, its committees and the members.

23. In summary, privilege is the sum of peculiar rights enjoyed by members, without which they cannot discharge their functions. Privilege allows the protection of the dignity of the Assembly and allows the members to freely debate and engage in their duties.

24. However, the privileges of members is not a blanket authority to allow the members free and unfettered behavior. Members of a County Assembly as state officers pursuant to Article 260 of the Constitution must uphold the dignity, decorum and decency of their positions and the assembly in generally.

3.0 Committee on Powers and Privileges

25. The Committee on powers and privileges is a creature of statute pursuant to Section 15 (1) of the County Assemblies Powers and Privileges Act that states;

There is established, for each county assembly, a committee known as the Committee of Powers and Privileges consisting of –

(a) the Speaker, who shall be the chairperson of the Committee; and

(b) such other members of the county assembly as may be provided in the Standing Orders of the county Assembly.

26. The position is reflected in Standing Order 203 of the County Assembly Standing Orders.

3.1 Standing Order 203 on Mandate of Committee of Powers and Privileges

(1) There is established the Committee of Powers and Privileges consisting of the Speaker, who shall be the Chairperson of the Committee; and such other members who shall be not less than eight and not more than twelve.

- (2) *The quorum of the Committee shall be a third of the members of the Committee including the Speaker.*
- (3) *The functions of the Committee of Powers and Privileges, shall, be to inquire into the conduct of a member whose conduct is alleged to constitute a breach of powers and privilege as prescribed in national legislation providing for powers, privileges and immunities of County Assemblies, their committees and members enacted by Parliament pursuant to Article 196(3) of the Constitution of Kenya by the Standing Orders or any written law.*
- (4) *A member shall be considered to have breached the powers and the privileges of the House if:*
 - (a) *He or she conducts himself or herself in a manner which, in the opinion of the Committee on Powers and Privileges, is intended, or is likely to reflect adversely on the dignity or integrity of the House, or of the Member or to be contrary to the best interests of the House or its Members or*
 - (b) *The Member contravenes a provision of the national legislation providing for powers, privileges and immunities of County Assemblies, their committees and members enacted by Parliament pursuant to Article 196(3) of the Constitution of Kenya.*
- (5) *The Committee of Powers and Privileges shall, either on its own motion or as a result of a complaint made by, any person; inquire into the conduct of a Member whose conduct is alleged to constitute a breach of privilege, within fourteen days of receipt of a complaint.*
- (6) *The Committee of Powers and Privileges shall, within fourteen days of the conclusion of an inquiry, table its findings in the House together with such recommendations as it considers appropriate.*
- (7) *The House shall consider the report and the recommendations thereon and take such actions against the member concerned as may be appropriate.*
- (8) *The Speaker shall, with the help of the Committee of Powers and Privileges, enforce the Leadership and Integrity Code under Section 37 of the Leadership and Integrity Act.*
- (9) *Pursuant to the Constitution, any other written laws and the Standing Orders, the Committee on Powers and Privileges may, in addition to any other penalty to which the member is liable under this Act or any other law, impose any or more of the following penalties-*
 - (a) *a formal warning;*

- (b) a reprimand;
- (c) an order to apologize to the county Assembly or a person in a manner to be recommended by the Committee of Powers and Privileges;
- (d) the withholding, for a specific period of time, of the members rights to the use or enjoyment of any specific facility provided to Members by the County Assembly;
- (e) the removal or suspension for a specified period of time of the Member from any Assembly position occupied by the Member;
- (f) such fines in terms of the member's monthly salary or allowances as the Committee may determine, that shall be paid into the bank account of the Assembly or be deducted from the members salary and allowances;
- (g) the suspension of the member for such period as the Committee on Powers and Privileges may decide, whether or not the Assembly or any of its Committees is scheduled to meet during that period; and
- (h) vacation of seat pursuant to Article 75 (2) (b) and Article 194 (1)(c) of the Constitution.

(10) Subject to Article 195 (1) of the Constitution of Kenya, 2010, former members of the County Assembly shall, pursuant to Standing Order 1, be indemnified from any liability arising from all acts and omissions done faith while in office. "

27. The Committee possess the same powers and rules of procedure as other select committees, however, it has the unique duty to inquire into, either on its **own motion** or as a result of a complain made by any person pursuant to Section 15 (5) of the County Assemblies Powers and Privileges Act allegations made against members of the County Assembly that they have breached privilege and/or code of conduct or committed a contempt. In such circumstances, the Committee conducts an inquiry and makes findings against the member.

28. In that regard, the Committee acts and conducts its proceedings as a quasi-judicial entity in accordance with normal judicial principles, including ruling on standard on proof, admissibility of evidence, scope of the inquiry/ investigation, witness testimony, documentary evidence and all other rules of procedure as may be necessary and adopted generally in quasi-judicial inquiries and findings. The Committee is also bound by the rules of natural justice and the constitutional principles of a fair hearing enumerated by Article 50 of the Constitution of Kenya.

4.0 Inquiry into breach of privileges: relevant laws

a. Constitution of Kenya, 2010

29. Chapter six of the Constitution of Kenya 2010, makes provisions for conduct of State officers, and more specifically;

4.1 Responsibilities of leadership.

Article 73. (1) *Authority assigned to a State officer—*

- (a) is a public trust to be exercised in a manner that—*
 - (i) is consistent with the purposes and objects of this Constitution;*
 - (ii) demonstrates respect for the people;*
 - (iii) brings honour to the nation and dignity to the office; and*
 - (iv) promotes public confidence in the integrity of the office; and*
- (b) vests in the State officer the responsibility to serve the people, rather than the power to rule them.*

(2) *The guiding principles of leadership and integrity include—*

- (a) selection on the basis of personal integrity, competence and suitability, or election in free and fair elections;*
- (b) objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favoritism, other improper motives or corrupt practices;*
- (c) selfless service based solely on the public interest, demonstrated by—*
 - (i) honesty in the execution of public duties; and*
 - (ii) the declaration of any personal interest that may conflict with public duties;*
- (d) accountability to the public for decisions and actions; and*
- (e) discipline and commitment in service to the people.*

4.2 Conduct of State officers.

Article 75. (1) *A State officer shall behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids—*

- (a) any conflict between personal interests and public or official duties;*
- (b) compromising any public or official interest in favour of a personal interest; or*
- (c) demeaning the office, the officer holds.*

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

- (a) shall be subject to the applicable disciplinary procedure for the relevant office; and*
- (b) may, in accordance with the disciplinary procedure referred to in paragraph (a), be dismissed or otherwise removed from office.*

(3) *A person who has been dismissed or otherwise removed from office for a*

contravention of the provisions specified in clause (2) is disqualified from holding any other State office.

b. Leadership and Integrity Act, No. 19 of 2012

30. Section 3(2)(d) of the Leadership and Integrity Act, provides for the principles governing the conduct of State Officers under Section 75 of the Constitution.

A state officer shall respect the values, principles, and the requirements of the Constitution, including the principles governing the conduct of State officers provided for under Article 75 of the Constitution.

Section 37 of the Act obligates every public entity to prescribe a specific Leadership and Integrity Code for the State Officers in that entity.

c. County Assemblies Powers and Privileges Act, No. 6 of 2017

31. Parliament in March 2017 enacted the County Assemblies Powers and Privileges Act, 2017. Section 16 of the Act provides;

The Committee of Powers and Privileges may find a member to be in breach of privilege if the member;

- (a) contravenes section 25, 26(1), 27 or 29;*
- (b) commits an act mentioned in Section 28 (1)(a), (b), or (2) and (3)(d), (e), (f) or (g);*
- (c) willfully fails or refuses to obey any rule, order or resolution of a county assembly;*
- (d) contravenes any provisions of the Speaker's orders issued under Section 40 of this Act;*
or
- (e) conducts himself or herself in a manner which, in the opinion of the Committee on Powers and Privileges is intended, or is likely to reflect adversely on the dignity or integrity of a county assembly, or of the Members or to be contrary to the best interests of the county assembly or its Members.*

32. Under Section 15, the Committee of Privileges shall, after such inquiry report its findings to the Assembly together with such recommendations as it thinks appropriate and impose the penalties under Section 17 (3) of the Act.

d. Murang'a County Assembly Standing Orders

33. Further, the Committee also derives powers, mandates and functions from the Murang'a County Assembly Standing Orders 203 as enumerated in paragraph 3.1 above.

e. The Leadership and Integrity Code for State Officers in the County Assembly of Murang'a

34. The Code specific to Murang'a was gazetted on 20th May, 2016 and all the members of the County Assembly signed their commitment to the same when they took oath of office on October 19, 2022. The code is enacted pursuant to Section 37 of the Leadership and Integrity Act and is binding upon all the State Officers serving in the County Assembly. The code is intended to give effect to Chapter Six of the Constitution of Kenya, and establishes the standards of integrity and ethical conduct and seeks to ensure that the members of the county assembly respect and maintain the values, principles, morals and legal expectations expected of holders of public office in the discharge of their duties.

5.0 PRIMARY DOCUMENTS

35. The Committee considered the following documents as the Primary documents in the inquiry-

- i) Hansard of March 16, 2023;
- ii) Hansard of April 18, 2023
- iii) The County Assemblies Powers and Privileges Act 2017;
- iv) Leadership and integrity Act;
- v) Standing Orders;
- vi) The Leadership and Integrity code for State Officers in the County Assembly of Murang'a.
- vii) Comparative analysis of similar matters on privilege in Parliament and Judicial decisions.

6.0 BRIEFING BY COMMITTEE CHAIRPERSON

Mr. Speaker Sir,

36. The Chairperson briefed the Committee as follows in regard to the procedure on breach of privilege by Hon. John Mwangi Kamau, MCA Nginda Ward;

- i) That the mandate of the Committee was to analyze the Hansard of March 16, 2023 and April 18, 2023 and make their judgement on whether Hon. John Mwangi Kamau breached his privileges without any prejudice;
- ii) That the decisions of the Committee in regard to the breach of privileges by Hon. John Mwangi Kamau would be based on law, facts and evidence adduced.

- iii) That it was the right of Hon. John Mwangi Kamau to submit his evidence before the committee;
- iv) That members could seek clarification from Hon. John Mwangi Kamau by asking relevant questions

7.0 ADVISORY BY THE CLERK, COUNTY ASSEMBLY.

37. Further, the Clerk to the County advised the committee as follows;

- a. **THAT**, the proceedings of the committee ought to be quasi-judicial in nature as the Committee had a statutory duty as prescribed in the County Assembly Powers and privileges Act.
- b. **THAT**, drawing from the established precedent in Parliament, there was need to consider pardoning a member who withdraws his remarks and apologizes.

8.0 CONSIDERATION ON PROVISION OF STATUTES BREACHED BY HON. HON. JOHN MWANGI KAMAU.

The Deputy Director, Legal Services informed the Committee that based on the Hansard for sittings held on March 16, 2023 and April 18, 2023, Hon. John Mwangi Kamau breached the following statutes;

38. Chapter 6 of the Constitution of Kenya 2010 on leadership and integrity and in particular Article 73 has been breached since it provides that authority assigned a State officer-

(a) is a public trust to be exercised in a manner that—

(iii) brings honour to the nation and dignity to the office; and

(iv) promotes public confidence in the integrity of the office.

39. **Section 26 (1) of the County Assemblies Powers and Privileges Act 2017**, has been breached since the provision on prohibited acts in respect of a County Assembly and its members states that,

A person shall not

(a) Assault, threaten, use abusive language, obstruct, molest or insult any member proceeding to, being within or leaving the precincts of a county assembly, or endeavor to compel any member by force, insult or menace to declare himself or herself in favour of or against any proposition or matter pending or expected to be brought before a county assembly or any committee.

40. Part III of Section 37 (1) of the Leadership and Integrity Act, 2012 and section 12 (k) of the specific leadership and integrity code for state officers in the County Assembly of Murang'a has been breached in the complaint of abuse. The said section states that;

37 1) each public entity shall prescribe a specific leadership and integrity code

(2) A state officer shall observe and maintain the following ethical and moral requirements

k) Maintain high standards of etiquette at all times.

41. Standing Order No. 203 (4) has been breached as it provides that a member shall be considered to have breached powers and privileges of the House if ;

(c) *He or she conducts himself or herself in a manner which, in the opinion of the Committee on Powers and Privileges, is intended, or is likely to reflect adversely on the dignity or integrity of the House, or of the Member or to be contrary to the best interests of the House or its Members or*

(d) *The Member contravenes a provision of the national legislation providing for powers, privileges and immunities of County Assemblies, their committees and members enacted by Parliament pursuant to Article 196(3) of the Constitution of Kenya.*

9.0 SUBMISSION BY HON. JOHN MWANGI KAMAU, MCA NGINDA WARD ON HIS ALLEGED BREACH OF PRIVILEGES

42. Hon. John Mwangi Kamau appeared before the Committee on Wednesday, April 26, 2023 at 9.35 a.m. and after taking the oath by a witness, the Chairperson asked him to respond on the following four (4) issues identified by the Committee on his alleged breach of privileges;

a. What informed him to submit in the plenary sittings of March 16, 2023 and April 18, 2023 that 70% of water committee members were criminals;

b. Why he made remarks that members of the committee cannot pass any motion without being given a slight token;

c. Name those members who work under the crave of their stomachs and;

d. Table evidence of the 70% of water committee members who received a token.

In his response Hon. John Mwangi Kamau adduced the following evidence on accusations leveled against him on the above four (4) issues;

43. THAT, he had been suffering from diabetes.

44. THAT, after march 16, 2023 and April 18, 2023, his health started to deteriorate to the extent that he was hospitalized and admitted in the ICU at Avenue Hospital, Thika.
45. THAT, from the hospitalization, doctors diagnosed him with **hyperosmolar diabetic ketoacidosis (HDKA)**. The condition is described as a life-threatening problem that affects people with diabetes and occurs when the body starts breaking down fat at a rate that is much too fast. He presented a discharge sheet and medicines from Avenue Hospital, Thika and medicines to prove his allegations.
46. THAT, he was remorseful for the utterances attributed to his fellow Hon. Members during the two sittings.
47. THAT, it was a slip of the tongue when he said that 70 % of Water Committee Members were criminals
48. THAT, he was not in the right frame of mind as a result of his health condition.
49. THAT, he had no evidence of Members of the Water Committee asking for money to pass the motion on delimitation of boundaries for MUWASCO.
50. THAT, neither did he have evidence on his remark that members work under the crave of their stomach.
51. THAT, he held a presser at Kenol town where he discussed his concerns on insufficient water supply in Nginda Ward in general and not the substance of the Water Motion.
52. THAT, during the presser, he alluded to three water tanks that were installed by former Maragua Member of Parliament, Hon. Elias Mbau, which had remained unutilized to date due to ineptitude by local water service providers.
53. THAT, he was willing to apologize on record to the aggrieved members whether at the committee or on the floor of the House.

10.0 OBSERVATION BY COMMITTEE MEMBERS.

54. Members of the Committee made the following observations on alleged breach of privileges by Hon. John Mwangi Kamau, MCA;
 - a) THAT, Hon. John Mwangi Kamau, MCA appeared subdued, sickly and remorseful.
 - b) THAT, it was only humane to give him the benefit of doubt to assist his recovery.
 - c) THAT, Hon. John Mwangi Kamau didn't table any evidence on the said allegations.
 - d) THAT, the Water Motion had very high stakes between the two water service providers (MUWASCO & MUSWASCO) who are engrossed in turf water wars.

- e) **THAT**, the outcry on the conduct of the member has been overwhelming and most members felt aggrieved.

11.0 ISSUES FOR DETERMINATION

55. Having taken evidence, the Committee established the issues for determination as follows
- a) *Whether the Committee had jurisdiction and the mandate to handle the matter.*
 - b) *Whether the utterances by Hon. Hon. John Mwangi Kamau amounted to breach of privilege and/ or code of conduct by the Honourable member.*
 - c) *What possible sanctions apply to the breach of privilege and/or code of conduct as disclosed by the Hansard.*

12. ANALYSIS OF EVIDENCE, OBSERVATIONS AND FINDINGS

- a) **Whether the Committee had jurisdiction and the mandate to handle the matter.**

56. In considering any matter before any Committee of the Assembly, the first question to be raised is whether or not the Committee has powers or is seized of the mandate to hear and determine the complaints herein. The Committee was guided by Section 15 (5) of the County Assemblies Powers and Privileges Act that provides –

“The committee of Powers and Privileges shall either of its own motion or as a result of a complaint made by any person, inquire into the conduct of a member whose conduct is alleged to constitute a breach of privilege.”

Pursuant to Section 15 of the Act, the matter clearly falls within the scope and mandate of the Committee on Powers and Privileges.

- b) **Whether the actions by Hon. John Mwangi Kamau amounted to breach of privilege and/ or code of conduct by the Honourable member.**

In answering the above issue was guided by the Hansard of March 16, 2023 and April 18, 2023, observation by committee members and evidence adduced before it by the accused.

57. **THAT**, Members of the County Assembly could have disagreements and differences need to be factual and respect each other.
58. **THAT**, Hon. John Mwangi Kamau showed remorse for his actions since he was willing to apologize to all members of the County Assembly.
59. **THAT**, the conduct and actions by Hon. John Mwangi Kamau were in clear violation of;

- i. Chapter Six of the Constitution on Leadership and integrity, and in particular, Article 73 of the Constitution of Kenya 2010;
- ii. Section 26 (1) of the County Assemblies Powers and Privileges Act, 2017;
- iii. Part III Section 37(1) of the Leadership and Integrity Act, 2012;
- iv. Section 12(k) of the Specific Leadership and Integrity Code for State Officers in the County Assembly of Muranga and;
- v. Standing Order 203(4) of Muranga County Assembly.

60. In view of the above, the Committee unanimously found that the conduct by Hon. John Mwangi Kamau as stipulated in the above-mentioned legal provisions, and pursuant to Standing 203 of the Murang'a County Assembly Standing Orders, was a breach of privilege accorded to the member and such breach of privilege and/or Code of conduct, brought contempt and ridicule to the County Assembly as a whole.

c) What sanctions apply to the breach of privilege and/or code of conduct as disclosed by the allegations in the complaint

61. Under Section 17 of the County Assemblies Powers and Privileges Act and Standing Order 203 of the Murang'a County Assembly standing Orders, the Committee has several available sanctions and/or penalties that it may recommend to the County Assembly against a member found in breach of the privileges. Section 15 of the County Assemblies Powers and Privileges Act thereof provides that *'the Committee of Powers and Privileges shall, within fourteen days of the conclusion of an inquiry table its findings in the relevant county assembly together with such recommendations as it considers appropriate'*.
62. This therefore means that in making recommendations on the sanctions to apply, the Committee on powers and privileges has a very wide discretion to make recommendations as it thinks fit.
63. However, the courts of law in Kenya have held that in exercising its wide discretion, the committee on powers and privileges ought to be guided by the Parliamentary practice in comparative jurisdictions in the Commonwealth. In the case of REPUBLIC V NATIONAL ASSEMBLY COMMITTEE OF PRIVILEGES & 2 OTHERS EX-PARTE ABABU NAMWAMBA [2016] eKLR, the High court upheld the sanctions imposed against the Applicants and made an observation that the committee on powers and privileges ought to be guided by the Parliamentary practice in comparative jurisdictions in the Commonwealth such as New Zealand and Canada. The Court further observed that the Applicant cannot be heard to complain for being sanctioned in accordance with Commonwealth parliamentary traditions

as Section 10(6) of the National Assembly (Powers and Privileges) Act, Cap 6 allowed the Assembly to impose disciplinary action in accordance with its rules.

64. Being so guided, the Committee on Powers and Privileges may, pursuant to the aforementioned Standing Order 203 and section 17 of the County Assemblies Powers and Privileges Act impose any or more of the following penalties –

- (a) a formal warning;
- (b) reprimand;
- (c) an order to apologize to the county assembly or a person in a manner to be recommended by the Committee of Powers and Privileges;
- (d) the withholding, for a specific period of time, of the member's right to the use or enjoyment of any specified facility provided to Members by a county assembly;
- (e) the removal or suspension for a specified period of time of the Member from any county assembly position occupied by the Member;
- (f) such fine in terms of the Member's monthly salary and allowances as the House may determine;
- (g) the suspension of the member for such a period of time as the House may decide, whether or not the county assembly or any of its committees is scheduled to meet during that period;
- (h) vacation of the seat pursuant to Articles 75 (2) (b) and 194 (1) (c) of the Constitution.

(1) COMMITTEE OBSERVATIONS AND FINDINGS ON BREACH OF PRIVILEGES BY HON. JOHN MWANGI KAMAU.

- a) **THAT**, Hon. John Mwangi Kamau, MCA breached his privilege as a member of the County Assembly as evidenced by the Hansard of March 16, 2023 and April 18, 2023.
- b) **THAT**, Hon John Mwangi Kamau appeared emaciated and psychologically disturbed when he appeared before the committee.
- c) **THAT**, it was true Hon. John Mwangi was admitted at Avenue Hospital as some Members of the County Assembly visited him in the said hospital.
- d) **THAT** the member appeared remorseful for use of unparliamentary language against Members of the Water Committee during assembly sittings held on March 16, 2023 and April 18, 2023
- e) **THAT**, his admission of guilt, presentation of medical records and medication need to be taken into account when proposing penalties on breach of privileges against the member
- f) **THAT**, he was a first-time offender.
- g) **THAT**, whereas Hon. John Mwangi Kamau attributed his remarks to a slip of the tongue, the Committee observed that it was not interesting that the honorable member would allow his tongue to slip in more than one sitting.
- h) **THAT**, upon extensive deliberations and considerations, the Committee observed that breaches to House privilege that take place in plenary, in the glare of everyone in attendance, would rather be dealt with by the presiding Speaker on the spot. This

Committee would better deal with breaches requiring extensive scrutiny, especially breaches containing elements outside the plenary.

13.0 COMMITTEE RECOMMENDATIONS

65. The Committee, having been satisfied that Hon. John Mwangi Kamau breached privileges and/or the Code of Conduct contrary to;
- i. Chapter Six of the Constitution on Leadership and integrity, and in particular, Article 73 of the Constitution of Kenya 2010;
 - ii. Section 26 (1) of the County Assemblies Powers and Privileges Act, 2017;
 - iii. Part III Section 37(1) of the Leadership and Integrity Act, 2012;
 - iv. Section 12(k) of the Specific Leadership and Integrity Code for State Officers in the County Assembly of Muranga and;
 - v. Standing Order 203(4) of Muranga County Assembly.

Recommended as follows;

RECOMMENDED SANCTIONS;

66. That pursuant to the County Assemblies Powers and Privileges Act 2017 and the Murang'a County Assembly Standing Orders, the Committee recommends;
1. **THAT, Pursuant Section 17(3)(c) of the Act and Standing order 203 (9) (iii), Hon. Hon. John Mwangi Kamau, Member of County Assembly writes an apology letter through the office of the Speaker, apologizing to all Members of the County Assembly for his actions, behaviour and words uttered in the Assembly sittings held on March 16, 2023 and April 18, 2023.**
 2. **THAT, upon adoption of the report, Hon. John Mwangi Kamau shall apologize (by reading his letter) to the assembled assembly in the immediate subsequent plenary sitting.**
 3. **That the contents of the apology letter be guided by the Office of the Clerk.**
 4. **THAT, there is need to build adequate capacity through continuous training to all members of the County Assembly, Members of the Speakers Panel and Plenary Legislative Officers on the area of Assembly powers and privileges.**
67. All the recommendations of the Committee were unanimously arrived at by consensus.

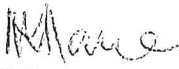








14. ADOPTION OF THE REPORT

We, the Honorable Members of the Committee of Powers and Privileges do hereby affix our signatures to this report to affirm our approval and confirm its accuracy, validity and authenticity.

S/NO	COMMITTEE MEMBER	DESIGNATION	SIGNATURE
1	Hon. Johnson Mukuha	Chairperson	
2	Hon. Moses Gachui Mungai	Member	
3	Hon. Margaret Wanjiku Gichia	Member	
4	Hon. Alex Wainaina	Member	
5	Hon. Thomas Muteti Mwaura	Member	
6	Hon. Jane Mukami Kigotho	Member	
7	Hon. Gladys Wambui Waikau	Member	
8	Hon. Hilary Muigai Muchoki	Member	
9	Hon. Jeremiah Gichobe	Member	
10	Hon. Samson Mukora Ngigi	Member	
11	Hon. Peter Munga Njuguna	Member	
12	Hon. Kenneth Kamau Mwangi	Member	
13	Hon. Boniface Ng'ang'a	Member	

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