

**REPUBLIC OF KENYA**

06 JUN 2023

**COUNTY ASSEMBLY OF MURANG'A**

**THIRD ASSEMBLY**

**COMMITTEE ON POWERS AND PRIVILEGES**

**SECOND REPORT**

**ON**

**CONSIDERATION OF ALLEGED BREACH OF PRIVILEGE**

**BY**

**HON. GRACE NDUTA WAIRIMU,  
MEMBER OF COUNTY ASSEMBLY  
KANYENYA-INI WARD**

JUNE, 2023

*Paper laid on  
6/6/2023  
Ann*

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*Annex 1 – Printout on messages sent to the MCP WhatsApp group*

*Annex 2 – Copy of invitation letter sent to Hon. Grace Nduta Wairimu*

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*Annex 4 – Copy of Committee minutes*

### **i) LIST OF ABBREVIATIONS/ACCRONYMS**

***Third Assembly***

***Second Report of the Powers and Privileges Committee***

- MCA Member of County Assembly
- MCP Murang'a County Politics
- CECM County Executive Committee Member
- ECDE Early Childhood Development Education

## ii) PREFACE

## iii) ESTABLISHMENT AND MANDATE OF THE COMMITTEE

Hon. Speaker, the Committee on Powers and Privilege is established and constituted pursuant to the provisions of Section 15 of the County Assemblies Powers and Privileges Act 2017 and Standing Order 203 of the County Assembly of Murang'a Standing Orders.

The functions and mandate of the Committee, 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.

Standing Order No. 203 (4) provides that 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.*

Finally, Hon. Speaker, 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.

#### iv) COMMITTEE MEMBERSHIP

Hon. Speaker, the current committee of Powers and Privileges as constituted comprises of the Speaker as the Chairperson, and twelve other members of the Assembly nominated to the Committee as listed below

1. Hon. Johnson Walter Mukuha Mwangi – 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

**v) ACKNOWLEDGEMENT**

Hon. Speaker, the Chairperson of the Committee on Powers and Privileges takes this opportunity to thank all Members of the Committee for their diligent contribution and participation in the inquiry that culminated into preparation of this report.

Further Hon. Speaker, the Committee wishes to thank the Clerk to the County Assembly and members of the secretariat attached to this Committee, for the support extended to the Committee during the execution of its mandate

Consequently Hon. Speaker, the Committee wishes to register its appreciation to Hon. Grace Nduta Wairimu MCA Kanyenya-ini Ward, for honouring the invitation to appear before the Committee during the inquiry, to respond to the alleged breach of privilege.

Finally, Hon. Speaker, on behalf of the Chairperson and Members of the Committee on Powers and Privileges inquiring into the alleged breach of privilege by Hon. Grace Nduta Wairimu, MCA Kanyenya-ini Ward, it is my humble pleasure and duty to present this report of the Committee as considered and adopted by the Committee

 Signed .....

**HON. JOHNSON MUKUHA**  
**SPEAKER OF THE COUNTY ASSEMBLY/**  
**CHAIRPERSON COMMITTEE ON POWERS AND PRIVILEGES**

Dated this  day of June, 2023

## 1.0 BACKGROUND

### 1.1 EVENTS PRECEDING THE INQUIRY OF ALLEGED BREACH OF PRIVILEGE BY HON. GRACE NDUTA WAIRIMU MCA KANYENYA-INI WARD

1. **THAT**, on Thursday May 18, 2023 between 10.24 a.m. and 12.55 p.m. Hon. Grace Nduta Wairimu, sent messages to the Murang'a County Politics ( MCP) WhatsApp forum that in the opinion of the Committee was intended or was likely to reflect adversely on the dignity or integrity of the House, and is contrary to the best interests of the Members of the Assembly **(Annex I)**.
2. **THAT**, following complaints raised by several members of the Assembly on the messages posted on social media by Hon. Grace Nduta Wairimu, a meeting of the Committee on Powers and Privilege was convened to be held on Wednesday May 24, 2023 at 9.00 a.m. to consider the alleged breach of privilege by Hon. Grace Nduta Wairimu, MCA Kanyenya-ini Ward, pursuant to Standing Order 203 (5) that states that

*The Committee on 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.*

3. **THAT**, on Monday May 22, 2023 pursuant to the provisions of Article 195 of the Constitution of Kenya 2010, Section 17 of the County Assemblies Powers and Privileges Act, 2017 and Standing Order 203, vide an invitation letter Ref. MCA/POWERS/C/2022/46 dated May 22, 2023, Hon. Grace Nduta Wairimu MCA Kanyenya-ini Ward was invited to appear before the Committee on Wednesday May 24, 2023 at 9.00 a.m. to respond to the alleged breach of privilege. **(Annex 2)**

4. **THAT**, in the invitation letter, it was indicated that Hon. Grace Nduta Wairimu was required to submit to the office of the Clerk by Tuesday May 23, 2023 at 4.00 p.m. a response to the allegations setting out;
  - a. Her response to the allegations;
  - b. The names and telephone numbers of her witnesses; and
  - c. A witness statement signed by each of the witnesses if any.
5. **THAT**, by close of business on Tuesday May 23, 2023, the office of the Clerk to the County Assembly had not received any response on the allegations from Hon. Grace Nduta Wairimu MCA Kanyenya-ini Ward.
6. **THAT**, on Wednesday May 24, 2023 at around 8.30 a.m. the office of the Clerk to the County Assembly received a witness statement on the allegations submitted by Hon. Grace Nduta Wairimu and signed by Twenty Two witnesses.
7. **THAT**, during the Committee hearing on the alleged breach of privilege, the witness statement submitted by Hon. Grace Nduta Wairimu was declared inadmissible hence could not be considered by the Committee on Powers and Privilege.

## **1.2 SOURCE OF PARLIAMENTARY POWERS, PRIVILEGES AND IMMUNITIES**

8. Article 196 of the Constitution of Kenya 2010 provides for the privileges and immunities in County Assemblies, its committees and the members. The County Assembly derives its powers, privileges and immunities from
  - a. The Constitution of Kenya, 2010.
  - b. The County Assemblies Powers and Privileges Act, 2017.
  - c. The Murang'a County Assembly Standing Orders.

### 1.3 METHODOLOGY

### 1.4 PROCEDURE FOR CONSIDERING THE REPORT OF THE COMMITTEE

9. The procedure and manner of considering a report of the Committee is as provided in Standing Order 203 (5) and (6) that stipulates that

*(5) 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.*

*(6) The House shall consider the report and the recommendations thereon and take such actions against the Member concerned as may be appropriate.*

10. 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

11. 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-

- i. a formal warning;
- ii. a reprimand;
- iii. an order to apologize to the County Assembly or a person in a manner to be recommended by the Committee of Powers and Privileges;
- iv. 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;
- v. the removal or suspension for a specified period of time of the Member from any Assembly position occupied by the Member;

- vi. 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;
- vii. 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
- viii. Vacation of seat pursuant to Article 75 (2) (b) and Article 194 (1)(c) of the Constitution.

### **1.5 PROVISIONS OF STATUTES BREACHED BY HON. GRACE NDUTA WAIRIMU IN THE ALLEGED BREACH OF PRIVILEGE**

12. Article 10 of the Constitution states the national values and principles that bind all state officers to state inter alia-

*(2) (c) good governance, integrity, transparency and accountability; and ...*

13. Chapter Six of the Constitution on Leadership and Integrity, and in particular, Article 73 of the Constitution of Kenya 2010 has been breached since it provides that

*(1) Authority assigned to a State Officer-*

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

*(i)...*

*(ii)...*

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

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

14. Chapter Six of the Constitution of Kenya prescribes standards of leadership and integrity for holders of public offices. Article 75 of the Constitution *assigns* the Committee the role to exercise penal authority over contravention of the Leadership and Integrity Code.

It states that-

- (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.

**15. The County Assemblies Powers and Privileges Act No. 6 of 2017, Section 16 provides that-**

*The Committee of Powers and Privileges may find a Member to be in breach of privilege if the Member-*

- (a) *contravenes Sections 25, 26(1), 27 or 29;*  
(b) *commits an act mentioned in Section 28 (10 (a), (b) or (2) and (3)(d), (e), (f) or (g));*  
(c) *wilfully fails or refuses to obey any rule, order or resolution of a county assembly;*  
(d) *contravenes any provision of the Speaker's Orders issued under Section 40 of this Act;*  
*or*  
(e) *conducts himself or herself in a manner which, in the opinion of the Committee on Powers and Privileges, is intended, or is likely to reflect adversely on the dignity or integrity of a county assembly, or of the Members or to be contrary to the best interests of a county assembly or its members.*

**16. The Leadership and Integrity Act, 2012**

This law was enacted pursuant to Article 80 of the Constitution to give effect to the provisions of Chapter Six of the Constitution on Leadership and Integrity. Section 11(b) of the Act requires a State Officer to “*treat members of the public and other public officers with courtesy and respect.*” Section 41(1) provides that,

*“subject to subsection (2), a breach of the Code amounts to misconduct for which the State officer may be subjected to disciplinary proceedings. ... Where an allegation of breach of the Code has been made against a State officer in*

*respect of whom the Constitution or any other law provides the procedure for removal or dismissal, the question of removal or dismissal shall be determined in accordance with the Constitution or that other law’.*

- 17. Part III 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 on abuse;**

*37 1) Each public entity shall prescribe a specific leadership and integrity code for*

*(l) A State Officer shall observe and maintain the following ethical and moral requirements*

*(k) maintain high standards of etiquette at all times.*

- 18. Finally Standing Order 203 (4) has been breached since it provides that 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.*

## 1.6 PRIMARY DOCUMENTS CONSIDERED

19. The primary documents relied on during the hearing on alleged breach of privilege by Hon. Grace Nduta Wairimu were;
- a. The Constitution of Kenya, 2010
  - b. The Leadership and Integrity Act, 2012.
  - c. The County Assemblies Powers and Privileges Act, 2017.
  - d. The Leadership Code for state Officers in the County Assembly of Murang'a, 2016.
  - e. County Assembly of Murang'a Standing Orders
  - f. Print out of extracts on the messages posted by Hon. Grace Nduta Wairimu MCA Kanyenya-ini Ward, on MCP WhatsApp group on Thursday May 18, 2023 between 10.24 a.m. and 12.55 p.m.

## 1.7 CONSIDERATION OF THE ALLEGED BREACH OF PRIVILEGE BY HON. GRACE NDUTA WAIRIMU MCA KANYENYA-INI WARD

20. Hon. Grace Nduta Wairimu appeared before the Committee on Wednesday May 24, 2023 and upon administration of affirmation of Oath , the following charges framed against her read by the Chairperson. **(Annex 3).**
21. **THAT,** Pursuant to Section 15(4) and (5), of the County Assemblies Powers and Privileges Act 2017 and Standing Order 203, the Powers and Privileges Committee is mandated to inquire into the conduct of a member whose conduct is alleged to constitute a breach of powers and privilege as prescribed by 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, the Standing Orders or any written law.
22. **THAT,** Pursuant to Standing Order 203 (4), a member shall be considered to have breached the powers and privileges of the House if;

1. *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;*
2. *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.*

**23. THAT,** on Thursday May 18, 2023 between 10.24 am and 12.55 pm, she posted messages on the MCP WhatsApp group, that adversely reflected on the dignity or integrity of the House, and was against the values stipulated in Chapter Six of the Constitution and Section 11(a); (b) and 13 (b) of the Leadership and Integrity Act, 2012, Section 16 (3) of the County Assemblies Powers and Privileges Act 2017 and Standing Order 203 (4)

**24. THAT,** on the above-mentioned WhatsApp threads, she posted comments like-

- i. *"Your local MCAs have failed"*
- ii. *"They are not squeezed; they have squeezed themselves"*
- iii. *"They are all over abusing me and sending goons to attack me.....Before they finish me as they are threatening....."*

**25. THAT,** she was aware that it is her constitutional right to engage as a member of MCP, however, as an MCA she should carry herself in a manner that does not disrepute, put as aspersions, is meant to disrespect or lower the dignity of her fellow MCAs.

**26. THAT,** she is aware that she had not been accused of her engagement on the health status of Murang'a in the MCP group, as it is entirely within her mandate to discuss any and all issues of concern including health, lack of ambulances, education and the status of county health facilities, agriculture, trade and markets, social activities etc

27. **THAT**, as an Honourable member of the County Assembly, she has the right to bring to the attention of the Assembly and indeed the public any relevant issues, discuss them on the floor, present them to the responsible County Executive Committee member (CECM) and County Departments, and overall exercise any of the legislative and oversight role over any sector or department in the County. These roles are exercised by Members within the purview of the Constitution, and specifically, the privilege accorded to Hon. Members must not be abused and must be in the confines of the law. The exercise of her constitutional mandate **MUST** not be done at the expense of the dignity and decorum of the rest of the Assembly membership.
28. **THAT**, she is aware that being a state officer, she subscribed to the Murang'a County Assembly Code of conduct that she signed and swore to uphold during her swearing in. The Constitution, the Leadership and Integrity Act and the Standing Orders govern her conduct towards the public and other state officers including fellow members of the County Assembly.
29. **THAT**, the House and its members is a house of decorum, dignity and order. Casting aspersions of the dignity of members is contrary to the best interests of members, and her comments that allude negatively to the dignity and integrity of the Honourable members. These comments were not meant to raise concern on issues affecting the County, but have caused embarrassment and disrepute to the Honourable Members and this Honourable House.
30. **THAT**, in the morning before the Committee sitting, the Chair had received from her a, witness statement that was not admissible in the Committee because, she has an opportunity of giving such a report at plenary where she is a member.

**1.8 CROSS EXAMINATION AND SUBMISSIONS BY HON. GRACE NDUTA WAIRIMU ON THE ALLEGED BREACH OF PRIVILEGE**

**31.** During her appearance before the Committee, Hon. Grace Nduta Wairimu MCA Kanyenya-ini Ward was cross examined by members of the Committee and she made her submissions as follows

**32. Asked whether she was aware of the allegations levelled against her, before the Committee.**

She responded and confirmed that she was aware of the allegations.

**33. Asked whether she was aware that the code, Constitution, the Leadership and Integrity Act and the Standing Orders govern her conduct towards the public and other state officers including fellow Members of the County Assembly.**

She responded that she was aware; that she had read and understood, but thought that she had not contravened any law, through what she had posted and that she was true to the Constitution

**34. Asked the question that the County Assembly is a legal entity created pursuant to Article 177 of the Constitution of Kenya, and further, that the County Governments act under Section 9 of the County Governments Act, provides the tripartite role of the MCA as legislation, representation and oversight, whether she was aware that the role of an MCA is protected by privilege should not be prosecuted in the court of public opinion?**

She responded that she disagreed with that fact, and that as an elected MCA, she should engage her electorate at any time.

**35. Asked whether she was aware that her actions in the social media group MCP were in violation of the Constitution**

She responded that she was not aware.

**36. Asked whether she was aware of the provisions of Article 73 of the Constitution of Kenya 2010, on authority assigned to a state officer and that her actions are in clear violation of the Constitution**

She responded that she was not aware.

**37. Asked the question that the House and its members is a house of decorum, dignity and order and Casting aspersions on the dignity of members is contrary to the best interest of members, to justify the assertions she shared on social media via MCP WhatsApp group that “*your local MCAs have failed*” that have impaired on the dignity of members of this House?**

a. She responded **THAT**, she was not aware, and sought permission to take members through the whole message instead of extracting just a sentence in her message.

**Permission was granted and she stated as follows;**

b. **THAT**, the message was a discussion in the group about running of the County because in as much as they are elected and nominated members, they also belong to the larger community, and it’s their responsibility as leaders to listen and to observe what is ailing the society which they represent.

c. **THAT**, the debate was about the condition and structures of health facilities across the County, adding that she had agreed with members of the group by stating follows;

*“Members am on agreement with you there is a problem, but I promise you things will change, having worked in the health department before and also those who know me, know that am so passionate about the welfare of our people who visit public hospitals coz they can’t afford the ones most of you go or don’t have covers”*

- d. **THAT**, she told members in the group the they need to understand transition process from the previous regime, then she stated as follows;

*“It is costing H.E the Governor a fortune, we inherited loan from KEMSA and dilapidated facilities, health workers all over the County are also demotivated because of the delayed salary and lack of essentials to work effectively, were it not for the delayed disbursements allocations, the County would have improved a bit. Your local MCAs have also failed”* which she thinks is very true because the Governor has given them permission to give priorities to whatever the members think is needed in their Wards,

- e. **THAT**, she said for example, if a member decides to do a Nursery instead of a hospital in her ward, then, it’s her who has failed in her priorities.
- g. **THAT** in medicine, she said that since they assumed office there has been surplus of medicine, but at times go low on supply. She added that she told members that she had noted with concern and would follow up.

**38. Asked whether she had owned up and admitted to making the comment “Your local MCA has failed”**

She responded that she used the word *“failed”* for lack of a better word, but what she meant was that the elected leaders, including the Governor, should put more effort in the health facilities.

39. **Asked how she was able to rank the failure and success of members of the Assembly, and how she had investigated and established that forty seven members of the County Assembly had failed**

She responded that in her text, she had not specified how many had failed, but had said *"your local MCA"* including herself. She added that health facilities were not in good shape and that lives are lost day in day out. She emphasized that just like she had said, they had all failed.

40. **Asked how she was able to rank failure and success of the members noting that the matter at hand was not the status of the hospitals but the content *"your local MCAs have failed"***

She responded that there may not be a score card, adding that the members of the public in the WhatsApp group, were the ones discussing the issue of failure; she gave an example of dilapidated facility at Ichichi dispensary in Kanyenya-ini Ward and Maragua hospital in Nginda ward, having cases of negligence. She added that there was no scorecard to measure failure or success and that she had no mechanism to rate an individual member.

41. **Asked how she would rephrase the statement that *"your local MCAs had failed"* since she had indicated that she used the word for lack of a better word**

She responded by enquiring who had added the Deputy Speaker to the WhatsApp forum, and why he was added at that particular time, when she posted the message and not any other time. She then stated that if given another chance, or if she could rewind and rephrase her words, she would add that the MCA's have failed in their priorities.

42. **Asked to substantiate the allegation that *"MCAs are not squeezed, they have squeezed themselves"***

She responded that it was an earlier statement by a member of the group who had said that the MCA's had been squeezed to a corner and according to her, an MCA especially an elected one, cannot be squeezed, because they have the freedom of speech, so if someone is claiming to be squeezed, according to her opinion, they had squeezed themselves, and she added that she still stands by the same position.

43. **Asked whether she was aware that she had absconded her duties as an MCA pursuant to Section 9 of the County Governments Act, instead of respectfully raising issues of discontentment with the conduct of her colleagues, she chosen to embarrass them and cause disrepute to them, by prosecuting her issues with the Members in the court of public opinion.**

In response, she disagreed with the statement that she had absconded her duty, adding that the term absconding was too weighty, and asked for clarification on qualifications of one absconding her duties, and how she had absconded duties by participating in a public forum

44. **It was clarified that she had absconded since, she has a forum in the Assembly plenary not in the public gallery where she could address the members**

She responded that she can only engage her colleague Members of the County Assembly in plenary, but not members of the public.

45. **Asked to substantiate the allegation *"They are all over abusing me and sending goons to attack me.....before they finish me as they are threatening...***

- a. She responded **THAT**, it was a conversation in a WhatsApp group and after she posted the words, one member of the Assembly forwarded the message to her, and used threatening words. She added that she enquired from the member why she had sent the message to her, and when the threatening

words continued, she posted in the group that she was receiving threatening messages from members of the County Assembly

- b. **THAT**, the administrator of the same group also received a call from the same MCA, with the same threatening messages, and a request to be added to the group, to deal with her. She stated that she could later produce the conversation with the Administrator and messages from the member,

46. **When put to task to clarify whether it was one or more members, since her text read *"they are all over abusing me"***

She responded that when she wrote the text, only one member had engaged her, and it was the same member who called the administrator and requested that several members be added to the group, maybe to contribute or *"kuwa wapenzi watazamaji"*

47. **When put to task to clarify inconsistency on whether goons had been sent or whether she was threatened following her text that read, *"They are all over abusing me and sending goons to attack me....."***

She maintained that one of her colleagues called several participants of the group, and added that, probably she was wrong on the threat, where some members of the WhatsApp group were called and told that if they continue praising her, she would tarnish them

48. **Asked to clarify on whether the members were many or whether it was one member**

She stated that she was threatened by two members.

49. **Asked to clarify whether Members had sent goons to attack her**

She responded that they called members of the group, giving them threats to stop here from writing in that group, and demanding to be added in the said group, maybe to participate or just follow.

**50. She was asked whether she was aware that assertions below and comments are contrary to the Murang'a County Code of Conduct for state officers that she signed and swore to uphold, as the said questions cast aspersions on the dignity of her fellow MCAs.**

- i) Your local MCAs have failed"*
- ii) "They are not squeezed, they have squeezed themselves"*
- iii) "They are all over abusing me and sending goons to attack me....."*
- iv) Before they finish me as they are threatening....."*

She responded that she did not take oath not to talk the truth, adding that whatever she commented in the group, was the truth and nothing but the truth of the matter and she chooses to stand by that.

**51. Asked whether she knows that choosing the path of casting aspersions on the dignity and integrity of the house is a breach of privilege pursuant to section 16(e) of the powers and privileges Act and Standing Order 203 (4) (a) of the Murang'a County Assembly Standing Orders.**

She responded that, to her understanding as an elected MCA, she should protect the interests of the electorate and the public, oversee what is happening on the ground because their people voted for them not to enjoy privileges, but to protect them, and if by her utterances or by posting she in any way affected Members of the County Assembly, she is sorry, but that's her position,

52. **Asked whether she was in anyway remorseful that the members of the County assembly feel that the image of the Hon Members is not well represented by her**

She responded that she was sorry that she had offended them, but would urge them to be truthful even to themselves.

53. In her closing remarks, she thanked the Committee for giving her audience, adding that it was a sign that the House was working and playing its oversight role very well and alluded that, she is sorry that by the look of things and allegations being put forth by members, she might appear before the Committee severally.

54. She added **THAT**, she had read the accusations and from a distance, can tell that there are things being put on her, maybe to favour the sitting, because with her knowledge of the Constitution and Standing Orders, she had not absconded her duties and if she had in any way done so, she would wish to be told.

55. **THAT**, she had not gone contrary to what she had taken oath to do, adding that as an elected member of County Assembly, it was her responsibility to engage members of the public who overwhelmingly voted for her and others in the house.

56. **THAT** it's her duty to engage them and to answer them with truthfulness whenever they have issues, however much the House might feel they are not being represented well, or whenever they feel that their privileges are being abused.

57. **THAT**, she was sorry that probably her words were too harsh, but urged members to be up to task, and let the Executive and Members both work according to their mandates, and finally stated that she was not in the Assembly premises when she sent the messages.

58. The Chair thanked Hon. Grace Nduta Wairimu for honouring the Committees invitation and, further thanked members of the Committee, the Secretariat, media and members of the public for availing themselves for the sitting. He informed Hon. Grace Nduta Wairimu that the Committee would within fourteen (14) days, present to the Assembly the Committees deductions on the hearing.

## 1.9 LEGAL ANALYSIS ON BREACH OF PRIVILEGE BY HON. GRACE NDUTA WAIRIMU

### **Application**

59. The first question to be answered was whether or not the Committee has powers to hear and determine the complaints herein.

60. In approaching this issue, the Committee was guided by the provisions of Sections 15(5) of the County Assemblies Powers and Privileges Act, and Standing Order 203 of the Murang'a County Assembly Standing Orders.

## 1.10 PROVISIONS PURSUANT TO THE COUNTY ASSEMBLIES POWERS AND PRIVILEGES ACT.

### 61. **Section 15 (5) provides-**

The Committee on Powers and Privilege 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 in terms of Section 16 , within fourteen days of receipt of the complaint.

### 62. **Section 16 provides that-**

16. The Committee of Powers and Privileges may find a Member to be in breach of privilege if the Member-

*(a) contravenes Sections 25, 26(1), 27 or 29;*

*(b) commits an act mentioned in Section 28 (10 (a), (b) or (2) and (3)(d), (e), (f) or (g);*

*(c) willfully fails or refuses to obey any rule, order or resolution of a county assembly;*

- (d) contravenes any provision of the Speaker's Orders issued under section 40 of this Act; or*
- (e) conducts himself or herself in a manner which, in the opinion of the Committee on Powers and Privileges, is intended, or is likely to reflect adversely on the dignity or integrity of a county assembly, or of the Members or to be contrary to the best interests of a county assembly or its members.*

**63. Article 10(1) (a) – (d) of the Constitution provides:-**

*"10. National values and principles of governance*

*(1) The national values and principles of governance in this Article bind all State organs, State officers, public officers and all persons whenever any of them—*

- a) applies or interprets this Constitution;*
- b) enacts, applies or interprets any law; or*
- c) makes or implements public policy decisions.*

*2) The national values and principles of governance include—*

- a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;*
- b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized;*
- c) good governance, integrity, transparency and accountability; and*
- d) sustainable development."*

## Second Issue

64. The Committee sought an opinion on the available sanctions and/or penalties that it may recommend to the County Assembly against a member found in breach of the privileges in circumstances where it has the mandate to entertain a complaint.
65. In addressing this issue, the committee was guided by judicial precedents, and the provisions of Section 17 (3) of the County Assemblies Powers and Privileges Act that is echoed in Standing Order 203 of the Murang'a County Assembly Standing Orders.
66. 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.
67. Being so guided, the committee on Powers and Privileges may recommend sanctions pursuant to Section 17 (3) of the County Assemblies Powers and Privileges Act –
  - (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 right to the use of 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) suspension of the Member for such a period as the House may decide, whether or not the county assembly or any of its committees is scheduled to meet during that period;

**1.11 COMMITTEE OBSERVATIONS AND FINDINGS, ON BREACH OF PRIVILEGE BY HON. GRACE NDUTA WAIRIMU, MCA KANYENYA-INI WARD**

70. **THAT**, from submissions made by Hon. Grace Nduta Wairimu and evidence adduced and considered by the Committee; it is evident that there was breach of powers and abuse of privilege.
71. **THAT**, being a member of the Speakers panel and noting that her sentiments on social media reflected adversely on the integrity and dignity of the Members of County Assembly, and the House that she presides over as a Speaker, she should be discharged from the Speakers panel.
72. **THAT**, sentiments made by Hon. Grace Nduta Wairimu that Members of the Assembly had failed in their priorities was a misrepresentation of facts, since in recent times during budget considerations, Members of the Assembly have been keen on prioritization of construction and renovation of hospitals and health centers in various wards, under Ward Development Projects.
73. **THAT**, the allegation that members had failed in their priorities is unfounded, since she was part of a unanimous decision made by Members of the Assembly and the Executive to prioritize on renovation and construction of ECDE centers that were in a dilapidated and neglected state, then embark on renovation and construction of hospitals/health facilities in the County.
74. **THAT**, Hon. Grace Nduta Wairimu was unable to substantiate and/or produce evidence that Members of the Assembly had sent goons to attack her, or that Members of the Assembly had threatened to finish her.
75. **THAT**, during the evidentiary hearing, Hon. Grace Nduta Wairimu was not remorseful and despite appearing before the Committee on the alleged breach of privilege, she indicated that from the look of things she would appear before the Committee "**severally**".

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

68. 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.
69. 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.

76. **THAT**, after the hearing on the alleged breach, while within the precincts of the Assembly accompanied by known goons, she held a press briefing, where she continued making unfounded allegations about Members of the Assembly, thus exuding mockery to the Assembly.
77. **THAT**, following her comments on social media, members of the public, had in some Wards, become hostile to their Ward representatives, and were referring to them as *“our local failure”*
78. **THAT**, despite being given several opportunities to apologize and/or retract her sentiments, she stood her ground, that she had not done anything wrong. In this regard, there was need to give her some time to reflect on her actions and sentiments that had brought disrepute to her fellow members of the County Assembly.

## 1.12 COMMITTEE RECOMMENDATION

79. Pursuant to the provisions of Section 17 of the County Assemblies Powers and Privileges Act and the Committee, having been satisfied that Hon. Grace Nduta Wairimu, MCA Kanyenya-ini Ward 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 16 (3) 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 Murang'a and;
  - v. Standing Order 203(4) of Murang'a County Assembly.

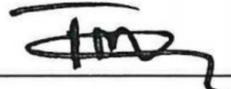
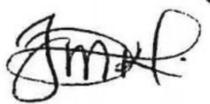
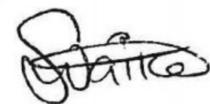
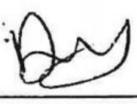
### Hereby **RECOMMENDS** as follows

80. **THAT**, pursuant to Section 17 (3) (e) of the County Assemblies Powers and Privileges Act, 2017 and Standing Order 203 (9) (v), Hon. Grace Nduta Wairimu be **discharged as a Member of the Speakers Panel**,
81. **THAT**, Pursuant to Section 17 (3) (e) of the County Assemblies Powers and Privileges Act, 2017 and Standing Order 203 (9) (v) and further noting that Hon. Grace Nduta Wairimu's membership to the House Business and Rules Committee, was subject to her appointment as a member of the Speakers panel pursuant to the provisions of Standing Order 165 (1) (c), upon adoption of this report of the Committee, Hon. Grace Nduta Wairimu **automatically ceases from being a member of the House Business and Rules Committee**.
82. **THAT** further, Pursuant to Section 17 (3) (e) of the County Assemblies Powers and Privileges Act, 2017, Hon. Grace Nduta Wairimu **be removed from the membership of the Committee on Selection**, that is mandated with nomination of Members of the Assembly to serve in various Committees of the Assembly.

83. **THAT**, pursuant to the provisions of Section 17 (3) (g) and Standing Order 203 (9) (vii) Hon. Grace Nduta Wairimu **be suspended from the County Assembly and its Committees for a period of four months with effect from the date of the adoption of the Committee report**
84. **THAT**, there is need for the Assembly leadership to **ensure adequate capacity building** of members of the Assembly, members of the Speakers panel and legislative officers **on members Powers, Privileges and Immunities through continuous capacity building.**
85. **THAT**, all the recommendations of the Committee were unanimously arrived at by consensus.

## ADOPTION OF THE REPORT

We, the Honorable Members of the Committee on 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	