

PARLIAMENT OF KENYA



12TH PARLIAMENT

THE SENATE – SECOND SESSION

**REPORT OF THE COMMITTEE OF POWERS AND
PRIVILEGES
ON
ALLEGATIONS OF IMPROPRIETY IN RELATION TO
THE SENATE COUNTY PUBLIC ACCOUNTS AND
INVESTMENTS COMMITTEE INQUIRY INTO
POSSIBLE LOSS OF FUNDS THROUGH THE
ACQUISITION OF LAND LR. NO. 7879/4 (PART) BY
THE NATIONAL LAND COMMISSION**

Clerk's Chamber
The Senate
Parliament Buildings
NAIROBI.

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PREFACE

Establishment of the Committee of Powers and Privileges

The Committee of Powers and Privileges is established under Section 15 of the Parliamentary Powers and Privileges Act, 2017.

Membership

The Senate Committee of Powers and Privileges was constituted by a resolution of the Senate on 14th February, 2018 and comprise the following Senators-

1. Sen. Kenneth M. Lusaka, EGH, MP - Speaker of the Senate **(Chairperson)**
2. Sen. Falhada Iman, MP
3. Sen. Kimani Wamatangi, MP
4. Sen. Millicent Omanga, MP
5. Sen. Kang'ata Irungu, MP
6. Sen. Rose Nyamunga, MP
7. Sen. (Arch.) Sylvia Kasanga, MP

Mandate of the Committee

The Committee of Powers and Privileges is mandated to-

1. inquire into the conduct of a member whose conduct is alleged to constitute breach of privilege in terms of Section 16 of the Powers and Privileges Act; and
2. perform such other functions as may be specified in the Act.

Alleged impropriety of some Members of the County Public Accounts and Investments Committee

In the period between 20th August, 2018 to 27th August 2018, various newspapers published articles alleging impropriety of some members of the Senate County Public Accounts and Investments Committee, during the Committee's inquiry into the possible loss of funds through the acquisition of Land LR. No. 7879/4 (part) by the National Land Commission for use by two

public schools (Ruaraka High School and Drive-In Primary School), in Nairobi City County.

Section 15 (5) of the Parliamentary Powers and Privileges Act, provides that-

“The Committee of Powers and Privileges shall, either of its 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 breach of privilege in terms of section 16, within fourteen days of receipt of complaint.”

Considering the serious nature of the allegations and the mandate of the Committee, the Speaker of the Senate and the Chairperson of the Committee of Powers and Privileges convened a meeting of the committee on 28th August, 2018 to deliberate on the matter.

Summary of Meetings

Following the 1st meeting of the Committee on the subject, three (3) other meetings were held on: 27th September, 2018; 8th November, 2018 and a final meeting on 14th November, 2018 which considered and adopted this Report. During the meetings, various documents including two letters from Mr. Mburu, one letter from the Chairperson of the County Public Accounts and Investments Committee and two affidavits, one from Mr. Francis Mburu and the second from Mr. Harrison Omari were received and considered by the Committee.

Committee Observations

Following the response from Mr. Mburu, the Committee made the following observations-

- i) The affidavits by Mr. Mburu, were submitted outside the period prescribed by the Committee; and
- ii) The affidavits did not contain details that would form adequate grounds for investigation by the Committee.

Conclusion

Arising from the foregoing, the Committee is unable to undertake an inquiry on its own motion envisaged under the provisions of Section 15 (5) of the

Parliamentary Powers and Privileges Act as the affidavits, which were filed outside the timelines given by the Committee did not contain details that would form sufficient grounds to warrant such an inquiry as the allegations were unsubstantiated.

The Chairperson wishes to thank the Members and Secretariat of the Committee for the commitment that they exhibited in delivery of the Committee mandate.

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SEN. KENNETH M. LUSAKA, EGH, MP

SPEAKER OF THE SENATE AND CHAIRPERSON OF THE COMMITTEE.

Date.....

DELIBERATIONS, OBSERVATIONS AND CONCLUSION OF THE COMMITTEE OF POWERS AND PRIVILEGES ON THE ALLEGATIONS OF IMPROPRIETY IN RELATION TO THE SENATE COUNTY PUBLIC ACCOUNTS AND INVESTMENT COMMITTEE INQUIRY INTO POSSIBLE LOSS OF FUNDS THROUGH THE ACQUISITION OF LAND LR. NO. 7879/4 (PART) BY THE NATIONAL LAND COMMISSION

INTRODUCTION

1. On 20th March, 2018, attention was drawn to the Sessional Committee on County Public Accounts and Investments (CPAIC), to the possibility of loss of public funds through acquisition of Land LR. NO. 7879/4 (part) by the National Land Commission for use by two public schools (Ruaraka High School and Drive-In Primary School, Nairobi City County) owned and managed by the Ministry of Education and the defunct Nairobi City Council respectively.
2. As part of its role in oversight of public funds, the Committee resolved to proactively undertake an inquiry and establish material facts on the matter. The Committee concluded the inquiry and tabled its Report in the Senate on 8th August, 2018.
3. Following the tabling of the Report and before a Motion for adoption of the Report was moved, in the period between 20th August, 2018 to 27th August 2018, allegations were published by various media houses alleging impropriety by some members of the CPAIC during the Committee's inquiry on the matter.
4. Subsequently, the Speaker of the Senate and Chairperson of Committee of Powers and Privileges convened a meeting of the Committee to consider the allegations made against CPAIC. The Committee met pursuant to section 15 (5) of the Parliamentary Powers and Privileges Act which provides that the Committee, "*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 a privilege in terms of section 16, within fourteen days of receipt of a complaint.”

DELIBERATIONS OF THE COMMITTEE

5. During its meeting held on 28th August, 2018, the Committee noted the various allegations that had been made and observed that the same would constitute criminal offences if proved and further that, the allegations were grave and had the prospect of undermining public confidence in the Senate and in the institution of the Senate as a whole.
6. The matter therefore was considered serious and suitable for inquiry by the Committee within the provisions of Section 15 (5) of the Parliamentary Powers and Privileges Act, if the Committee was presented with sufficient information to commence an inquiry.
7. The Committee observed however, that other than the various reports published in print and electronic media, it did not have before it any material to support the commencement of such an inquiry.
8. The Committee resolved to write to the Chairperson of CPAIC requesting him to furnish the Committee of Powers and Privileges with the position of the CPAIC on the allegations made, so as to enable the Committee make a determination on how to proceed with the matter. The said decision was relayed to the Chairperson of CPAIC, vide a letter dated 29th August, 2018. (*Copy of letter is annexed – Annex 1*).
9. The Chairperson of CPAIC wrote back to the Committee on 5th September, 2018 (*Copy of the letter is annexed – Annex 2*). In his letter, the Chairperson stated that-
 - i) There was no formal complaint of corruption and/or impropriety that had been brought to the attention of the Committee on the matter of the inquiry into the possible loss of funds on the Ruaraka land saga;

- ii) The allegations of corruption and/or impropriety against some members of the Committee had only appeared in the media and had remained unsubstantiated;
 - iii) Persons indicted by the Committee had been attempting to control the narrative by distracting and diverting the attention of the public from their alleged criminal acts and had attempted all tricks to suppress the truth and frustrate the work of the Committee; and
 - iv) The Committee of Powers and Privileges ought not to rely on media allegations since the procedure in a select committee ought to be as nearly as possible the same as that of a Committee of the Whole, and rules applied to ensure that such allegations were not admitted unless they were substantiated.
10. Upon receiving the response from the Chairperson of CPAIC, the Chairperson of the Committee of Powers and Privileges convened a meeting to deliberate on the matter. At the meeting, held on 27th September, 2018, the Committee observed that, based on the response from the Chairperson of the CPAIC, there was no formal complaint, or anything substantive for the Committee to rely on in order to inquire into the said allegations.
11. However, the Speaker of the Senate and Chairperson of the Committee informed the meeting that he was in receipt of a letter purportedly written by a Mr. Francis Mburu exonerating one member of the CPAIC, Sen. Millicent Omanga, M.P. (*Copy of the letter is annexed – Annex 3*).
12. The Committee noted the contents of the letter and observed that it was making a statement which could not be considered a complaint within the terms of Section 15 (5) of the Parliamentary Powers and Privileges Act.
13. The Committee observed that there were two options available for further processing of the matter-

- i) That the Committee ceases further consideration of the matter as the letter did not provide adequate basis for investigations by the Committee of Powers and Privileges; or
 - ii) That the Committee writes to Mr. Francis Mburu asking him to lodge a formal complaint in accordance with the Act and thereby furnish the Office of the Clerk within seven (7) days with a sworn affidavit detailing the persons against whom the complaint was made and the particulars of the allegations, including the relevant date, time and place relating to the allegations, the names and addresses of persons against whom the demands were made and the names and addresses of any witnesses and any evidence in his possession which would assist the Committee to determine how to proceed with the matter.
14. The Committee deliberated on the two options, and resolved that a letter be written to Mr. Francis Mburu requesting him to-
- i) lodge a formal complaint in accordance with the Act; and
 - ii) furnish the Office of the Clerk of the Senate within seven (7) days, by 5th October, 2018, with a sworn Affidavit detailing the persons against whom the complaint was made and the particulars of the allegations, including the relevant date, time and place relating to the allegations, the names and addresses of person(s) against whom the demands were made and the names and addresses of any witnesses and any evidence in his possession which would assist the Committee to determine how to proceed with the matter.
15. Mr. Mburu responded by way of-
- i) A letter dated 8th October, 2018 confirming receipt of the letter dated 27th September, 2018 from the Committee (*Copy of the letter is annexed – Annex 4*)
 - ii) An affidavit dated 12th October, 2018 sworn by Mr. Francis Mburu and received in the Office of the Clerk of the Senate on 19th October, 2018 (*Affidavit is annexed – Annex 5*); and

- iii) An affidavit dated 12th October, 2018 sworn by Mr. Harrison Omari Isensi and received in the Office of the Clerk of the Senate on 19th October, 2018 (*Affidavit is annexed – Annex 6*).

COMMITTEE OBSERVATIONS

16. Following the response from Mr. Mburu, the Committee deliberated on the matter and observed that-
- i)The affidavits by Mr. Mburu, were submitted outside the period prescribed by the Committee; and
 - ii)The affidavits did not contain details that would form adequate ground for investigation by the Committee.

CONCLUSION

17. Arising from the foregoing, the Committee is unable to undertake an inquiry on its own motion envisaged under the provisions of Section 15 (5) of the Parliamentary Powers and Privileges Act as the affidavits, which were filed outside the timelines given by the Committee did not contain details that would form sufficient grounds to warrant such an inquiry as the allegations were unsubstantiated.

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ANNEXES

1. Letter from the Clerk of the Senate, to the Chairperson of the County Public Accounts and Investment Committee.
2. Letter from the Chairperson of the County Public Accounts and Investments Committee.
3. Letter from Mr. Francis Mburu, exonerating Sen. Millicent Omanga, M.P.
4. Letter from Mr. Francis Mburu requesting to be accorded more time for submission of the affidavit.
5. Sworn Affidavit from Mr. Francis Mburu.
6. Sworn Affidavit from Mr. Harrison Omari.
7. Minutes of the Sittings of the Committee.