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Dr. H. Speaker,
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REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – FIRST SESSION – 2022

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

REPORT ON THE PETITIONS FOR THE REMOVAL FROM OFFICE OF JULIANA
CHERERA; IRENE MASIT; JUSTUS NYANG'AYA; AND FRANCIS WANDERI AS
COMMISSIONERS OF THE INDEPENDENT ELECTORAL AND BOUNDARIES

COMMISSION (IEBC)

 THE NATIONAL ASSEMBLY PARLIAMENT BUILDINGS NAIROBI	
DATE: 01 DEC 2022	
DAY: THURSDAY	
FILED BY:	CHAIR, DC-JUSTICE & LEGAL SERVICE
	HON. GEORGE MURUGARA MP
	Benson Inzofu

CLERK'S CHAMBERS

DIRECTORATE OF DEPARTMENTAL COMMITTEES

PARLIAMENT BUILDINGS

NAIROBI

DECEMBER 2022



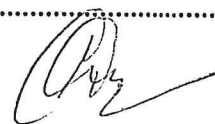
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LIST OF ABBREVIATIONS AND ACRONYMS

IEBC	-	Independent Electoral and Boundaries Commission
NTC	-	National Tallying Centre
UDA	-	United Democratic Alliance
ODM	-	Orange Democratic Movement
WDM-K	-	Wiper Democratic Movement Party – Kenya
MCCP	-	Maendeleo Chap Chap Party
Ford-Kenya	-	Forum for the Restoration of Democracy – Kenya



ANNEXURES

- Annexure 1: Adoption List
- Annexure 2: Minutes
- Annexure 3: Conveyance
- Annexure 4: Petitions
- Annexure 5: Advertisement
- Annexure 6: Letters from the Clerk of the National Assembly inviting the Petitioners and the Respondents for the hearings
- Annexure 7: Correspondence
- Annexure 8: Rules
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- Annexure 10: Gazette Notice No. 182 of 2021

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CHAIRPERSON'S FOREWORD

This report contains proceedings of the Departmental Committee on Justice and Legal Affairs during the conduct of hearings of the four Petitions for the removal from office of Commissioners of the Independent Electoral and Boundaries Commission on various grounds, including serious violation of the Constitution and other laws; gross misconduct; and incompetence. The four Petitions, the first dated 13th October, 2022 by the **Republican Liberty Party**; the second dated 2nd November, 2022 by **Rev. Dennis Nthumbi**; the third dated 9th September 2022 by **Geoffrey Langat**; and the fourth dated 19th September, 2022 by **Owuor Steve Gerry** were presented to the National Assembly on 15th November, 2022 and subsequently committed to the **Departmental Committee on Justice and Legal Affairs** for consideration pursuant to paragraph 3 of the Standing Order 230.

The Committee was required to consider the Petitions and prepare a comprehensive Report to be laid on the Table of the National Assembly not more than fourteen (14) calendar days pursuant to Standing Order 230(4) of the National Assembly and the Speaker's directions.

In processing the Petition, the Committee invited the affected Commissioners and the Petitioners for a hearing vide letters dated 16th November, 2022 and 17th November, 2022, respectively.

While referring the matter to the Committee, the Speaker directed that the Committee undertakes the hearing of the Petitions pursuant to Standing Order 230(4) of the National Assembly Standing Orders which mandates the Committee to investigate the matter and report to the House, within 14 days, on whether the petition discloses a ground for removal under Article 251(1)(a) of the Constitution. The Speaker further directed the Clerk of the National Assembly to notify the Petitioners, the Respondents and the general public by placing adverts in two newspapers of nationwide circulation and the Parliamentary Website of the time and place of holding the hearings of the Petitions. The Committee resolved to commence hearings of the four (4) Petitions as from **Thursday, 24th November, 2022** at the Mini Chamber, 1st Floor, County Hall, Parliament Buildings, Nairobi, in accordance with the Schedule annexed herein.

In compliance with Article 118 of the Constitution, the Clerk of the National Assembly placed an advertisement in the print media on Monday 21st November 2022 notifying the public of the conveyance of the Petition, date, time and place of the conduct of the hearings. The Clerk of the National Assembly also wrote to the four Commissioners of the IEBC **Ms. Juliana Cherera; Ms. Irene Masit; Mr. Justus**

Nyang'aya; and Mr. Francis Wanderi as well as the four Petitioners, the **Republican Liberty Party**, Reverend Dennis Ndwiga Nthumbi, Mr. Geoffrey Langat and Mr. Owuor Steve Gerry notifying them of the referral of the aforesaid Petitions and invited them to attend before the Departmental Committee on Justice and Legal Affairs during the presentation of the Petitions and responses in person or by legal representative, or both on the dates indicated in the schedule where they would be at liberty to cross-examine the Petitioners and the Respondents respectively.

The Committee further informed the Petitioners and the Respondents that should they choose not to attend before the Committee on the dates and time specified for the hearings, the Committee, and thereafter Parliament, would proceed with the matter in accordance with the Constitution and the law, without further reference to them.

The Petitioners and the Respondents appeared before the Committee during the hearings on **Thursday, 24th, Friday 25th, Monday 28th and Tuesday 29th November, 2022**. The Committee considered the representations from the Petitioners and the Respondents in accordance with the Constitution and relevant laws. In addition, the Committee noted the objections of the Petitioners to the Respondents' applications for adjournment. It also noted that no cross-examination of the Petitioners was conducted as the Respondents withdrew from the proceedings of the Hearing of the Petitioners' case. The Committee paid due regard to the various grounds seeking the removal from office including allegations of serious violation of the Constitution and other laws; gross misconduct; and incompetence of **Ms. Juliana Cherera; Ms. Irene Masit; Mr. Justus Nyang'aya; and Mr. Francis Wanderi** as Commissioners of the Independent Electoral and Boundaries Commission (IEBC) as presented by the four Petitioners.

Committee Recommendation

The Committee having conducted the Public hearings of the Petition seeking the removal from office of **Ms. Juliana Cherera; Ms. Irene Masit; Mr. Justus Nyang'aya; and Mr. Francis Wanderi** as Commissioners of the Independent Electoral and Boundaries Commission (IEBC) on various grounds, including serious violation of the Constitution and other laws; gross misconduct; and incompetence, observed that the Petitions disclosed sufficient grounds for the removal from office of **Ms. Juliana Cherera; Ms. Irene Masit; Mr. Justus Nyang'aya; and Mr. Francis Wanderi** as Commissioners of the Independent Electoral and Boundaries Commission (IEBC) as set out in **Article 251 (1)(a)(b) and (d)**; The Committee therefore recommends to the National Assembly that **H.E. President William**

Ruto appoints a tribunal in accordance with Article 251 (4) (b) as read together with Article 251 (g) of the Constitution to investigate the matter expeditiously, report on the findings and make a binding recommendation to H.E. the President.

Acknowledgements

The Committee registers its appreciation to the Offices of the Speaker, Office of the Clerk of the National Assembly, Office of the Director, Departmental Committees and the Committee Secretariat for the logistical support extended during the vetting process.

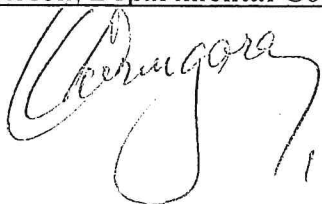
In addition, the Committee thanks the Petitioners, the Respondents and their Advocates for their cooperation during the public hearing process. Finally, the Committee appreciates the Secretariat for providing additional information to the Committee.

I acknowledge and appreciate Members of the Committee for their patience, sacrifice and commitment which enabled the Committee to complete the task within the required timelines.

On behalf of the Departmental Committee on Justice and Legal Affairs, and pursuant to Article 251(2) of the Constitution and provisions of Standing Orders 230, it is my pleasant duty to table the Report of the Committee on the Petitions for the removal from office of Juliana Cherera; Irene Masit; Justus Nyang'aya; and Francis Wanderi as Commissioners of the Independent Electoral and Boundaries Commission (IEBC) for debate and adoption by the House.

Hon. Murugara George Gitonga, MP

Chairperson, Departmental Committee on Justice and Legal Affairs


1.12.022



CHAPTER ONE

1 PREFACE

1.1 Establishment of the Committee

1. The Departmental Committee on Justice and Legal Affairs is one of the twenty Departmental Committees of the National Assembly established under **Standing Order 216** whose mandates pursuant to the **Standing Order 216 (5)** are as follows:

- i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
- ii. *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
- iii. *On a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
- iv. *To study and review all legislation referred to it;*
- v. *To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
- vi. *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
- vii. *To examine treaties, agreements and conventions;*
- viii. *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
- ix. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
- x. *To examine any questions raised by Members on a matter within its mandate.*

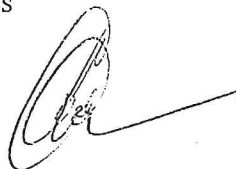


1.2 Mandate of the Committee

2. In accordance with Second Schedule of the Standing Orders, the Committee is mandated to consider¹:-
- a) The Judiciary;
 - b) Tribunals;
 - c) Access to Justice;
 - d) Public prosecutions;
 - e) Ethics, Integrity and anti-corruption;
 - f) Correctional services;
 - g) Community service orders and witness protection;
 - h) Constitutional Affairs;
 - i) Sovereign immunity;
 - j) Elections including referenda;
 - k) Human rights;
 - l) Political parties;
 - m) The State Law Office' including insolvency, law reform, public trusteeship, marriages and legal education; and
 - n) The administration of law and justice
3. In executing its mandate, the Committee oversees the following Ministries/Departments²:
- a) State Department of Correctional Services
 - b) State Law Office and Department of Justice
 - c) The Judiciary
 - d) Judicial Service Commission
 - e) Office of the Director of Public Prosecutions
 - f) Ethics and Anti-Corruption Commission
 - g) Independent Electoral and Boundaries Commission
 - h) Commission on Administrative Justice
 - i) Office of the Registrar of Political Parties

¹ National Assembly Standing Orders

² Ibid



- j) Witness Protection Agency
- k) Kenya National Commission on Human Rights
- l) Kenya Law Reform Commission
- m) Council of Legal Education

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1.3 Committee Membership

4. The Departmental Committee on Justice and Legal affairs was constituted by the House on 27th October 2022 and comprises of the following Members:

Chairperson

Hon. Murugara George Gitonga, MP
Tharaka Constituency

UDA Party

Vice-Chairperson

Hon. Mutuse Eckomas Mwengi
Kibwezi West Constituency

MCCP Party

Members

Hon. Maalim Farah, MP
Dadaab Constituency

WDM-K

Hon Onyiego Silvanus Osoro, MP
South Mugirango

UDA Party

Hon. Francis Kajwang' Tom Joseph, MP
Ruaraka Constituency

ODM Party

Hon. Muchira Michael Mwangi, MP
Ol Jorok

UDA Party

Hon. Junet Mohamed, MP
Suna East

ODM Party

Hon. Makali John Okwisia, MP
Kanduyi Constituency

FORD-Kenya

Hon. (Dr.) Otiende Amollo, SC, MP
Rarieda Constituency

ODM Party

Hon. Muriu Wakili Edward, MP
Gatanga Constituency

UDA Party

Hon. Maina Jane Njeri, MP

Kirinyaga (CWR)

UDA Party

Hon. Gichohi Kaguchia John Philip, MP

Murukweini Constituency

UDA Party

Hon. Mogaka Stephen M, MP

West Mugirango Constituency

Jubilee Party

Hon. Mohamed Aden Daudi, MP

Wajir East Constituency

Jubilee Party

Hon. Siyad Amina Udgoon, MP

Garissa Township

Jubilee Party

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1.4 Committee Secretariat

5. The Committee is well-resourced and facilitated by the following staff:

Mr. Douglas Katho

Clerk Assistant II/Head of Secretariat

Mr. Ronald Walala
Senior Legal Counsel

Ms. Jael Ayiego Kilaka
Clerk Assistant III

Mr. Stanley Lagat
Serjeant-At-Arms

Ms. Vivienne Ogega
Research Officer III

Mr. Omar Abdirahim
Fiscal Analyst II

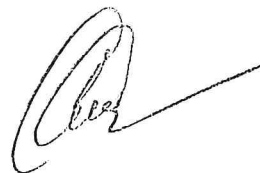
Mr. Alvin Ochieng'
Research Officer III

Ms. Winnie Kiziah
Media Relations Officer II

Mr. Anthony Kariuki
Serjeant-At-Arms

Mr. Clive Onyancha
Hansard Reporter III

Mr. Peter Mutethia
Audio Recording Officer III



CHAPTER TWO

2 BACKGROUND

2.1 Legal Framework

6. Article 251 of the Constitution provides that:

251(1) A member of a commission (other than an ex officio member), or the holder of an independent office, may be removed from office only for--

(a) serious violation of this Constitution or any other law, including a contravention of Chapter *Six;*

(b) gross misconduct, whether in the performance of the member's or office holder's functions *or* *otherwise;*

(c) physical or mental incapacity to perform the functions of office;

(d) incompetence; *or*

(e) bankruptcy.

(2) A person desiring the removal of a member of a commission or of a holder of an independent office on any ground specified in clause (1) may present a petition to the National Assembly setting out the alleged facts constituting that ground.

(3) The National Assembly shall consider the petition and, if it is satisfied that it discloses a ground under clause (1), shall send the petition to the President.

7. In light of this, on 15th November, 2022, the Hon. Speaker of the National Assembly conveyed Petitions presented by the **Republican Liberty Party**, **Reverend Dennis Ndwiga Nthumbi**, **Mr. Geoffrey Langat** and **Mr. Owuor Steve Gerry** seeking the removal from office of **Ms. Juliana Cherera**; **Ms. Irene Masit**; **Mr. Justus Nyang'aya**; and **Mr. Francis Wanderi** as Commissioners of the Independent Electoral and Boundaries Commission (IEBC) on various grounds, including serious violation of the Constitution and other laws; gross misconduct; and incompetence and referred the Petitions to the **Departmental Committee on Justice and Legal Affairs**.

8. The following provisions of the law are paramount to the Committee as it executes this mandate:

- i. Chapter 6 of the Constitution on leadership and integrity;



- ii. Article 251 of the Constitution on the removal of a member of a commission (other than an ex officio member), or the holder of an independent office;
- iii. Article 10 of the Constitution on the national values and principles of governance;
- iv. The Leadership and Integrity Act (Cap. 182);
- v. The Public Service (Values and Principles) Act (No. 1A of 2015);
- vi. The Public Officer Ethics Act (Cap. 183); and
- vii. Standing Order No. 230 of the National Assembly.

2.2 Petitions seeking the Removal of Juliana Cherera, Irene Masit, Francis Wanderi and Justus Nyang'aya

2.2.1 Petition by the Republican Liberty Party

9. The Petitioner premised his Petition on the grounds of serious violation of the Constitution or other law, gross misconduct and incompetence.

Serious violation of the Constitution or any other law

10. The Petitioner alleged that the act of the four (4) Commissioners issuing press statements on 16th August, 2022 dissociating themselves from the presidential results in which they had participated in the tallying and verification of and making statements that potentially put in question the integrity of the tallying process amounted to a violation of the following provisions of the Constitution:

- i. Articles 1(1) and (2) on the sovereignty of the people and the supremacy of the Constitution;
- ii. Article 3(1) which obligates every person to respect, uphold and defend the Constitution;
- iii. Article 10 on the national values and principles of governance;
- iv. Article 21(1) on the fundamental duty of every State organ to comply with the Bill of Rights;
- v. Article 27 on the right to equality and freedom from discrimination;
- vi. Article 38 on every citizen's political rights;
- vii. Article 73 on the responsibilities of State officers and the guiding principles of leadership and integrity;
- viii. Article 75 on the conduct of State officers;
- ix. Article 81 on the general principles for the electoral system;



- x. Article 138(3)(c) on the procedure of the tallying and verification of the presidential election results;
- xi. Article 232 on the values and principles of public service; and
- xii. Article 249 of the Constitution on the objects and authority of commissions and independent offices.

11. The Petitioner averred that the Respondents were mandated to ensure that the peace and stability of the country were upheld as provided for in the guiding principles and values required of State officers pursuant to Articles 73, 75, 232 and 249 of the Constitution as read with Sections 3, 7, 8, 9, 10, 11, 13, 23 and 29 of the Leadership and Integrity Act, 2012 which reiterate the values required of State officers.

12. It was the Petitioner's contention that contrary to the above, the Respondents' press statements had the capability of thrusting the country into a scenario similar to the post-election violence of 2007 and thus violated the above-mentioned provisions of the law.

13. Furthermore, the Petition highlighted that the conduct of the Respondents was an infringement of Sections 1 of the Fourth Schedule and 2(2)(a) of the IEBC Act which provide as follows:

"1. Impartiality and independence of members

(1) Every member and employee of the Commission shall impartially and independently perform the functions of the Commission in good faith and without fear, favour or prejudice, and without influence from—

(a) any arm of the Government;

(b) any State officer;

(c) any public officer;

(d) any political party;

(e) candidate participating in an election; or (f) any other person, authority or organization"

Section 2(2)(a)

"(2) A member of the Commission may not—



(a) whether directly or indirectly, in any manner support or oppose any party or candidate participating in an election or any side participating in a referendum, or any of the issues in contention between parties, candidates or sides;"

14. The Petitioner also made reference to the Public Officer Ethics Act, 2003 under Sections 3, 8, 10 and 16 which enlist efficiency, honesty, public confidence and the general manner in which public officers ought to conduct themselves and stated that the Respondents' conduct did not conform to the said provisions.

2.2.2 Petition by Rev. Dennis Ndwiga Nthumbi

15. The Petitioner premised his Petition on the following grounds pursuant to Article 251(1) of the Constitution:

a) Serious violation of the Constitution or any other law

16. Article 10 which provides for the national values and principles of governance; Article 73(2)(b) and (c) on the guiding principles of leadership and integrity; Article 75 on the conduct of State officers; Article 232 on the values and principles of public service; and Article 249 which enumerates the objects and authority of Constitutional commissions and independent offices all of which enlist impartiality as a vital principle required of the Commissioners.

17. The Petitioner stated that the Respondents in totality violated all the aforementioned provisions of the law in that they demonstrated partiality and biased conduct by agreeing to the incentives and giving in to the proposal by the NSAC to alter the presidential elections result and subvert the will of the people in favour of one candidate or in the alternative to force a run-off.

18. The Petitioner further stated that the Respondents breached Article 138 of the Constitution which outlines the procedure to be followed in the conduct of a presidential election.

19. With regard to other laws, it was contended by the Petitioner that the Respondents violated the provisions of Sections 9, 26 and 30 of the Independent Electoral and Boundaries Commission Act, 2011; Sections 7, 8, 9, 10, 11, 16, 24, of the Leadership and Integrity Act, 2012; and Sections 8, 9, 10, 12, 16 and 17 of the Public Officer Ethics Act, 2003.

20. Section 9 of the IEBC Act requires the chairperson and members to take and subscribe to the oath or affirmation office before assuming office. According to the Petitioner, the wording of the

oath/affirmation expressly includes the term 'impartiality' as a binding principle that all IEBC Commissioners ought to abide by. In his view, by disowning the results of the 2022 presidential elections in which the Respondents had participated in the verification and tallying and issuing similar press statements with that of the Azimio La Umoja One Kenya presidential candidate, the Respondents contravened the above-cited provisions of law and violated the oaths they took upon appointment.

21. Section 26 of the IEBC Act speaks to the independence of the Commissions and insulates the Commission from the direction or control of any person or authority. On its part, Section 30 of the Independent Electoral and Boundaries Commission Act, 2011 prohibits any member of employee of the Commission from knowingly subverting the process of free and fair elections or knowingly obstructing the Commission in the discharge of its functions or otherwise interfering with the functions of the Commission.
22. Sections 7, 8, 11, 16 and 24 of the Leadership and Integrity Act, 2012 provide for the general leadership and integrity code and prescribe the values and principles to which State officers are bound as the rule of law; public trust; professionalism; avoiding conflict of interest and impartiality. Section 9 and 10 of the Act require a State Officer to take personal responsibility for the reasonably foreseeable consequences of any actions or omissions arising from the discharge of the duties of the office; and to, among others, carry out his or her duties efficiently and honestly.
23. Similar to the obligations under the Leadership and Integrity Act, 2011, Section 8 of the Public Officer Ethics Act, 2003 requires public officers to provide services efficiently and honestly." Furthermore, sections 9, 10, 12, 16 and 17 of the Public Officer Ethics Act, 2003 also require adherence to professionalism, rule of law, avoidance of conflict of interest, political neutrality and favouritism as the general guiding values applicable to public officers in the performance of their functions.
24. The Petitioner submitted that to the extent that the Respondents demonstrated partiality and bias by agreeing to a proposal by the National Security Advisory Council to alter the results of the presidential election results and subvert the will of the people, they violated all the foregoing provisions of law.

b) Gross Misconduct

25. In alleging gross misconduct on the part of the Respondents, the Petitioner referred to provisions of law cited with regard to the ground of serious violation of the Constitution or other law and stated that by concurring to support the unlawful attempt to alter the results of the presidential election results in favour of one candidate or in the alternative to force a run-off, the Respondents grossly misconducted themselves.
26. The Petitioner further stated that the Respondents grossly misconducted themselves by acting in liaison with one faction in the presidential elections and refusing to follow the well-set guidelines for the verification and tallying announcement of the presidential elections as stipulated in Article 138 of the Constitution.
27. It was the Petitioner's submission that the swearing of affidavits by the Respondents in support of the Presidential Election Petition No. E005 of 2022 also amounted to an act of gross misconduct.

c) Incompetence

28. On the ground of incompetence, the Petitioner alleged that the swearing of affidavits by the Respondents in support of the Presidential Election Petition No. E005 of 2022 when they ought to have been impartial, as required by law amounted to incompetence.
29. Additionally, the Petitioner averred that in convening and attending meetings to purportedly discuss appointment of advocates and attempting to appoint advocates to represent the Commission in Election Petition No. E005 of 2022 constituted incompetence on the part of the Respondents.
30. The Petitioner further alleged that the Respondents were incompetent to the extent that they disowned the results of the 2022 presidential elections and agreed to the proposal to alter them contrary to the set guidelines for the verification and tallying of the presidential results as provided in Article 138 of the Constitution, 2010.

2.2.3 Petition by Geoffrey Langat

a) Serious violation of the Constitution or any other law

31. The Petitioner claimed that the Respondents' press statement issued on 15th August, 2022 at Serena Hotel in respect of the illegality of the yet-to-be-announced presidential elections as well as the press

statement of 16th August, 2022 disowning the results on the basis that the computation of the 50% plus 1 threshold was incongruent and erroneous. To this end, he averred that the Respondents contravened Sections 26 and 30 of the Independent Electoral and Boundaries Commission Act, 2011 which provide for the independence of the Commissions and insulate the Commission from the direction or control of any person or authority; and prohibit any member of employee of the Commission from knowingly subverting the process of free and fair elections or knowingly obstructing the Commission in the discharge of its functions or otherwise interfering with the functions of the Commission, respectively.

32. Additionally, the Petitioner alleged that the Respondents breached Articles 3(2) and 81(e)(v) of the Constitution to the extent that they were openly working with one party in the 2022 general election. Article 3 precludes any person from attempting to establish a government otherwise than in compliance with this Constitution, while Article 81 (e) (v) requires the electoral system to be impartial.

b) *Gross Misconduct*

33. On the ground of gross misconduct, the Petitioner alleged that the Respondents' grossly misconducted themselves by—

- a) manifesting partiality and attempting to subvert the will of the people;
- b) entering appearance and responding to the Presidential election petition in support of the petitioners;
- c) violating their oath office;
- d) filing replying affidavits in support of the petition and argued fully against the Chairperson and the Commission;
- e) colluding with the Azimio La Umoja-One Kenya Coalition Party, Party leaders and or its agents contrary to the code of conduct of the members of the Commission.

34. The Petitioner also alleges that, individually, Commissioner Justus Nyangaya, in his capacity as chair of ICT committee, accessed and supplied RTS logs in support of the petition contrary to his oath of office and the law

c) *Incompetence*

35. The Petitioner states that the four (4) Commissioners appointed a law firm to act for the Commission against known procurement laws and regulations.

2.2.4 Petition by Owuor Steve Gerry

a) *Serious violation of the Constitution or any other law*

36. The Petitioner notes that Commissioners staged a revolt at the last hour in the presidential elections they participated in managing, supervising and overseeing giving reasons in their briefing on the 15th and 16th August 2022 which amounts to a violation of Article 10 (2) on the Constitution on the National values and principles of governance.
37. Additionally, the Petitioner stated that the conduct of the four commissioners amounted to a constitutional coup in violation of Article 3 (2) of the Constitution that precludes any person from attempting to establish a government otherwise than in compliance with the Constitution is unlawful.
38. On an individual level, the Petitioner notes that Commissioner Irene Masit was appointed as a commissioner to the commission having stood for election in 2017 being within five years preceding her appointment as Commissioner. This in his view and as confirmed by the Courts in *G'Oganyo v Independent Electoral Commission Selection Panel & 2 others; Independent Electoral and Boundaries Commission & 6 others (Interested Parties)* (Constitutional Petition E345 of 2022) [2022] KEHC 10184 (KLR) violates Article 88 (2) of the Constitution of Kenya.

b) *Gross Misconduct*

39. The Petitioner further stated that the Respondents grossly misconducted themselves by—
- a) staging a dramatic revolt at the eleventh and a half hour on the presidential election results of an election they participated in, supervised and oversaw on reasons advanced by them in a press statement; and
 - b) filing pleadings and submission, at the hearing of the Presidential Election Petitions before the Supreme Court for the nullification of the results of an election that they actively participated in, supervised and conducted which amounted to concerted external efforts, partisan in nature, to ensure that no declaration of results could be made.

c) *incompetence*

40. The Petitioner stated that the Respondents issued a statement to the effect that the results that were announced were opaque due the Chairperson's failure to include rejected votes in the computation of the constitutional threshold for election as President despite the Supreme Courts pronouncement that

a rejected vote/ballot is not a valid vote/ballot. This, in his view, demonstrated incompetence on the part of the Respondents.

2.3 Speaker's Communication and Conveyance of the Petitions

41. Pursuant to the provisions of Standing Order No. 230, the Speaker of the National Assembly on **Tuesday, 15 November 2022** conveyed to the House four petitions by the Republican Liberty Party, Rev. Dennis Ndwiga Nthumbi, Geoffrey Langat and Owuor Steve Gerry regarding removal from office of members of the IEBC. In accordance with Standing Order 45(1), the Speaker read the Petitions and referred them to the Departmental Committee on Justice and Legal Affairs for consideration.

42. While referring the matter to the Committee, the Speaker directed the Committee to note that proceedings relating to the removal of persons from office are quasi-judicial in nature and require judicious attention, sobriety and strict compliance with the right to fair administrative action under Article 47 of the Constitution and Section 4 of the Fair Administrative Act, 2015.

43. Furthermore, the Speaker of the National Assembly instructed that the Committee was only mandated to 'consider' the petitions and satisfy itself whether they disclose ground(s) for removal pursuant to Article 251(3) of the Constitution. The Speaker expressly stated that:

"Interrogation and confirmation of the allegations contained in the Petition shall be the work of a tribunal appointed by the President for that purpose, if a ground for removal is disclosed."

44. Further, the Speaker gave directions to guide the Committee in conducting its hearings as follows:

- i. Upon receipt of the Petitions, the Committee shall adopt a timetable for its consideration of the Petitions;
- ii. The Committee shall transmit copies of the Petitions to the affected Commissioners and inform them of the time(s), date(s) and venue(s) that it intends to conduct its hearings over the Petitions. In transmitting the Petitions, the Committee shall allow the affected Petitioners at least seven (7) days to prepare for any hearing over the Petition(s);

- iii. The Committee shall afford the affected Commissioners the right to appear in person or through legal representative and the right to cross-examine the Petitioners under oath over all matters relating to the Petitions;
- iv. The Committee shall afford the affected Commissioners an opportunity to respond to the Petitions either orally or in writing;
- v. The Committee shall transmit copies of any additional documentation presented by the Petitioners to the affected Commissioners as soon as is practicably possible and allow the Commissioners an opportunity to respond to such additional documentation; and
- vi. The Committee **MUST** refrain from prosecuting the Petitions on behalf of the Petitioners. Instead, it shall allow each Petitioner to present their case, and permit the affected Commissioners to present their responses and thereafter consider whether a ground for removal has been disclosed.”

45. In addition, the Speaker directed that the Committee submit the Report within 14 days as required under Paragraph 4 of Standing Order 230 of the National Assembly. In accordance with this and the directions of the Speaker of the National Assembly, the Committee prepared and adopted a timetable and the public hearings commenced on Thursday 24th November, 2022.

2.4 Notification to the Public

46. Article 118(1)(b) of the Constitution provides that, *“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.*

47. The Clerk of the National Assembly on **Monday, 21st November 2022** placed a notification in the print media informing the general public of the intention of the Committee to conduct public hearings, as provided for by Article 118 (1) (a) (b) and (2) of the Constitution. The notification specified the place, time and date for the public hearings.

2.5 Notification to the Petitioners and the Respondents

48. The Clerk of the National Assembly vide the letters dated 16th November 2018 of Ref. NA/CNA/CORR./2022(254), Ref. NA/CAN/CORR/2022(251), NA/CAN/CORR/2022(253) and NA/CAN/CORR/2022(252) **notified** the Respondents; Ms. Juliana Cherera, Mr. Justus Nyang'aya, Ms. Irene Masit and Mr. Francis Wanderi respectively of the date of the hearing of the Petitions; and

the date of presenting their Response before the Departmental Committee on Justice and Legal Affairs.

49. The Clerk of the National Assembly also notified the Petitioners; Geoffrey Langat; Rev. Dennis Ndwiga Nthumbi; the Republican Liberty Party and Owuor Steve Gerry of the date of hearing of the Respondent's case as well as the date of presenting their case before the Committee vide letters dated 17th November, 2022 of Ref. No. NA/CNA/CORR/2022(261), NA/CNA/CORR/2022(262), NA/CNA/CORR/2022(263) and NA/CNA/CORR/2022(264) respectively.

50. The Clerk of the National Assembly further informed the Respondents of their right to cross-examine the Petitioners on the said dates and invited them to attend before the Committee on Monday 28th November, 2022 and Tuesday 29th November, 2022 to present their responses.

2.6 Representation by Advocates

51. In response to the letters of the Clerk dated 16th November, 2022, various Advocates wrote to the Clerk of the National Assembly to enter appearance for the four Commissioners as follows:

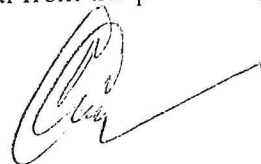
- i. Vide letter dated 18th November, 2022 of Ref. ACA/NA/1/2022, Apollo & Company Advocates entered appearance on behalf of Ms. Juliana Cherera;
- ii. Vide letter dated 18th November, 2022, Rachier & Amollo LLP entered appearance on behalf of Mr. Justus Nyang'aya;
- iii. Vide letter dated 17th November, 2022 of Ref. M/0253/001, KTK Advocates LLP entered appearance on behalf of Ms. Irene Masit; and
- iv. Vide letter dated 22nd November, 2022 of Ref. CO/13/18/NG, Gichamba & Company Advocates entered appearance on behalf of Mr. Francis Wanderi.

2.7 Committee Proceedings

52. The Committee, having received the Petitions, was obligated to investigate the matter and within Fourteen days (14) make a determination and report to the House its finding as provided for in Standing Order 230(4) of the National Assembly.

53. The Committee was to be guided by its internal rules of procedure as adopted in its 7th sitting on 23rd November, 2022 at 8.00a.m.

54. The Committee held Four (4) sittings during which it examined and reviewed the Petitions and a subsequent Four (4) sittings during which it invited responses from the four Commissioners.
55. The Petitioners, the Republican Liberty Party and Rev. Dennis Ndwiga Nthumbi appeared on Thursday 24th November, 2022; while Geoffrey Langat and Owuor Steve Gerry appeared on Friday 25th November, 2022.
56. The Respondents, through their Advocates, appeared on Thursday 24th November, 2022 during the morning sitting and raised Preliminary Objections before withdrawing from the proceedings. They did not appear for the hearing and the cross-examinations of the Petitioners. They, however, appeared on their scheduled days for hearing; Juliana Cherera on Monday 28th November, 2022; Justus Nyang'aya and Fredrick Wanderi on Tuesday 29th November 2022. Irene Masit did not make any appearance as advised by her Advocate who wrote to the Committee through the Clerk of the National Assembly vide letter dated 28th November, 2022 of Reference Number M/0253/001 informing the Committee of the Commissioner's of withdrawal from the proceedings.



CHAPTER THREE

3 PUBLIC HEARINGS

57. The Committee conducted public hearings on the four Petitions on Thursday 24th November, 2022; Friday 25th November, 2022; Monday 28th November, 2022; and Tuesday 29th November, 2022. In conducting the Public Hearings, the Committee was guided by, among other documents, the Constitution, and the Standing Orders.

3.1 Preliminaries

3.1.1 Speaker's Ruling on rules

58. Hon. Junet Mohammed, MP tabled a letter dated 23rd November, 2022 *Ref: KNA-MW/2022-13/022* addressed to the Honourable Speaker of the National Assembly before the Committee in which he sought the Speaker's determination and direction on the rules of procedure adopted by the Committee with respect to the Petitions for the removal of Commissioners of the IEBC.
59. Upon tabling the same, the Chairperson of the Committee informed the Committee of the Speaker's Ruling vide letter dated 24th November, 2022 *Ref: KNA-MW/2022-13/022* confirming that the rules of procedure were only in respect of the proceedings at hand and not any other proceedings.

3.1.2 Preliminary Objection

60. On Thursday 24th November, 2022, before commencement of the hearing of the Petitioners, Advocates for Commissioner Justus Nyang'aya raised a preliminary objection on the following grounds:
- i. That the Departmental Committee on Justice and Legal Affairs lacked the jurisdiction to hear and determine the four petitions pursuant to Standing Order 223(f) of the National Assembly as read together with sections 3(2), 35 and 36 of the Public Officer Ethics Act;
 - ii. That all the four petitions were incompetent because they violated the provision of Standing Order 223 (f) of the National Assembly as read together with Standing Order 230(1) of the National Assembly which provide that a person cannot be admitted to hearing unless it indicates whether any efforts had been made to have the matter addressed by a relevant body and whether there had been a response from that body or an unsatisfactory one;
 - iii. That the proceedings contravened Standing Order 230(4) of the National Assembly which require that each petition be heard and determined within fourteen (14) days.

- iv. That the Petitions were incompetent as they did not have any accompanying affidavits and/or evidence.

61. The other Respondents, through their Advocates, made submissions in support of the Objection raised by the Advocates for Commissioner Nyangaya.

3.1.3 Committee Ruling on the Preliminary Objections

62. The Committee deliberated on the issues and made a determination that:

- i. The Committee had the jurisdiction to hear and determine the four petitions pursuant to Article 251 (3) of the Constitution and Standing Order 230(4) of the National Assembly Standing Orders
- ii. Standing Order 230 of the National Assembly Standing Orders takes precedence over Standing Order 223(f) when dealing with a petition for the removal of a member of a commission or holder of an independent office.
- iii. Furthermore, Standing Order 230(1)(b) of the National Assembly Standing Orders provides that such a petition may contain affidavits or other documents annexed to it. The use of the term 'may' is permissive and does not impose a mandatory obligation as the word 'shall'.

63. Upon reaching the above decision, the Committee commenced hearing of the Petitions as follows:

3.2 Petition by the Republican Liberty Party (Hearing of the Petitioner)

64. The Republican Liberty Party, through its Advocate, Hon. Sen. Kennedy Mong'are, adopted the Petition as presented and made oral submissions before the Committee reiterating the provisions of law that the Commissioners were alleged to have violated.

3.2.1 Submissions by the Petitioner

65. The Petitioner's Advocates adopted the Petition as it were and made oral submissions before the Committee restating the grounds for removal cited therein.

3.2.2 Clarifications

66. The Committee sought clarification on the following matters to which the Petitioner's Advocates responded as follows:

On Serious Violation of the Constitution and other laws

67. The Advocates stated that the four commissioners violated articles 73(1), 73(2), 232 of the Constitution by leaving the gazetted National Tallying Centre premises at Bomas of Kenya to issue separate pressers and as a result, caused tension across the country. He emphasized that the four Commissioners jointly and severally acted contrary to the provisions of law on the responsibilities of public officers.

On Incompetence

68. Advocates for the Petitioner stated that the Commissioners participated in the process of tallying and declaration of results and only dissociated themselves mid-way. He further stated that the mathematical calculations the Commissioners gave were erroneous, which signified their incompetence and was in violation of Article 232 of the Constitution on transparency and provision of timely and accurate information as a principle of public service.

Clarity on the Party's Name

69. The Advocates clarified to the Committee that the party's name was the Republican Liberty Party and not the Republican Liberal Party as indicated on the Respondent's (Julius Nyang'aya's) preliminary objection. The Advocates for the Petitioner confirmed that the signatory of the Petition was Zachariah Momanyi, the national chairperson of the party.

On Gross Misconduct

70. Advocates for the Petitioner stated that the conduct of the four Commissioners of leaving the NTC and issuing press statements caused the chaos at the Bomas of Kenya and thus amounted to gross misconduct contrary to Articles 73, 75, and 232 of the Constitution and provisions of the Leadership and Integrity Act, 2012; the Independent Electoral and Boundaries Commission Act, 2011 and the Public Officer Ethics Act, 2003.

On the allegation of being a proxy of the Chair of the IEBC

71. The Advocates informed the Committee that the Petitioner presented his Petition on behalf of the Republican Liberty Party which has been actively participating in legal activism for 30 years. He added that he neither he or his client knew the Chairperson of the IEBC at a personal level.

On goodwill/malice to deny the Vice Chairperson from assuming the role of Chairperson upon the retirement of the current Chairperson

72. The Advocate confirmed that there was no malice to deny the Vice Chairperson, Juliana Cherera, the chance of assuming the role of the Chairperson upon the Chairperson's retirement. Instead, he emphasized that it was the conduct of the Commissioners that resulted in the Party's desire to Petition for her removal.

On seeking redress from any other body

73. The Advocate notified the Committee that the Petitioner had not sought redress from any other body except the National Assembly as provided for under Article 251(2) of Constitution.

3.2.3 Cross-examination of the Republican Liberty Party

74. Having withdrawn from the proceedings, the Respondents were not present to cross-examine the Petitioner.

3.3 Petition by the Rev. Dennis Ndwiga Nthumbi (Hearing of the Petitioner)

75. The Petitioner appeared in person and took oath pursuant to Section 17(a) of the Oaths and Statutory Declarations Act, Cap 15 Laws of Kenya. The Committee noted that the Petitioner was a Kenyan citizen and thus competent to present his Petition before the Committee.

3.3.1 Submissions by the Petitioner

76. The Petitioner made oral submissions and stated as follows:

77. He averred that his Petition was aimed at ridding office bearers of abuse of their powers. The Petitioner urged that the Committee find that the Petition discloses a ground for the removal of the four Commissioners.

78. He cited Articles 1, 10(2), 73(2)(b), 73(2)(c), 75, 232, 249 of the Constitution and other provisions of the Independent Electoral and Boundaries Commission Act, 2011; the Leadership and Integrity Act, 2012; the Public Officer Ethics Act, 2003 and the national values and principles of governance that bind public officers in carrying out their mandate. He emphasized that the Commissioners, as State Officers, hold the offices in positions of trust and in performing their duties ought to do so in the best interests of the Kenyan people.

79. The Petitioner also responded to the preliminary objections raised by the Respondents by citing that Standing Order 230 (1)(b) of the National Assembly provides that it is the discretion of a Petitioner to annex affidavits or other documents to their Petition. He further stated that the Committee's mandate was only to consider whether the Petition discloses a ground for removal and if found so, evidence would be adduced before a tribunal.
80. He restated that the four Commissioners were present at the NTC and took part in the verification and tallying of the Presidential votes cast. He confirmed that he witnessed that as he was in Bomas of Kenya and that the Commissioners' statement that they were excluded from the process was false as was confirmed in the Supreme Court Petition No. E005 of 2022 in which, the four Commissioners did not controvert the evidence that they had been involved in the processing of the results.
81. The Petitioner informed the Committee that the Election Petitions filed in the Supreme Court were anchored on the press statements of the four Commissioners which was a twin statement to that of the Presidential Candidate of the Azimio La Umoja One Kenya Coalition. This thus formed the basis for his inference that the Commissioners breached the principle of impartiality and professionalism as expected of them under Articles 10, 73(2)(b), 232 and 249 of the Constitution as well as Sections 7, 8, 9, 10 and 11 of the Leadership and Integrity Act, 2012 among others as stated in the Petition.
82. He restated the grounds for removal averred in his Petition and prayed that the Committee finds that the Petition discloses sufficient ground for removal from office of the four Commissioners pursuant to Article 251(1).

3.3.2 Clarifications from the Committee

83. The Committee sought clarification on the following issues to which the Petitioner responded to as follows:

On what motivated the Petition

84. The Petitioner stated that his motivation to Petition was to protect the Constitution and the rule of law and that he believed that it was his duty as a Kenyan, who ardently practices constitutionalism, to seek redress to address matters which he found to be in violation of the law.

On relying on the Affidavit of Wafula Chebukati in Petition E005 of 2022 at the Supreme Court

85. The Petitioner stated that the affidavit having been adduced under oath and being part of a successful litigation should be considered as it gives a chronological order of the events that occurred at the NTC. He added that if the Petition was to be found satisfactory, the tribunal could summon the Chairperson himself to substantiate the same.

On his capacity at Bomas

86. He stated that he was invited by the media in his capacity as a political analyst and was present at NTC every night save for one. He also confirmed that he had never been a party official for the United Democratic Alliance (UDA) and had only been an official of the Agano Party in the past.

On incompetence

87. The Petitioner stated that the conduct of the four Commissioners is what led to the chaos in the NTC and if uncontrolled, would have fueled violence across the country. He further averred that it was the duty of the Commissioners to guide and lead the country in maintaining peace contrary to the actions of the four Commissioners.

On Article 33 of the Constitution on the freedom of expression vis-à-vis gross misconduct

88. The Petitioner acknowledged that every person has the right to freedom of expression. He, however, noted that the four Commissioners ought to respect the rights and reputation of others as provided for under Article 33(3). He also stated that Article 73 of the Constitution provides the manner and guiding principles of leadership and integrity such as objectivity and impartiality that the Commissioners ought to abide by.

On whether he exhausted all legal channels of redress prior to the Petition

89. The Petitioner affirmed that the Committee had the requisite jurisdiction to consider the Petition as outlined in Article 251(2) and as such the Committee was his first point and appropriate point of redress.



On the criminal sanctions provided under Section 30 of the IEBC Act and paragraph 51 of his Petition

90. The Petitioner stated that should the Petition be found to be competent; the tribunal would be better placed to consider any criminal culpability.

On witnessing the entry of the NSAC; the time, date and members of NSAC;

91. The Petitioner testified that he entered the NTC premises at around 1200hrs and at around that time he witnessed the entry of the NSAC. He listed the members of the NSAC as: Mr. Kennedy Kihara (Principal Administrative Secretary at the Office of the President), Mr. Kennedy Ogeto (Solicitor General), Mr. Hillary Mutyambai (Inspector General of Police) and Lieutenant General Francis Omondi Ogolla (Vice Chief of Defence Forces) and confirmed that he personally knew them and thus could identify them.

On how he knew they were NSAC

92. The Petitioner averred that he could deduce that they were NSAC members due to the manner in which they were treated and the vehicles they came in. He further cited that the affidavit of Wafula Chebukati confirmed this.

3.3.3 Cross-examination of Rev. Dennis Ndwiga Nthumbi

93. The Respondents having withdrawn from the proceedings, there was no cross-examination.

3.4 Petition by Geoffrey Langat (Hearing of the Petitioner)

94. The Petitioner, an Advocate of Kenya, appeared alongside his Advocate, Mr. Nelson Mutai.

3.4.1 Submissions by Petitioner

95. The Petitioner, through his Advocate, adopted the Petition as it were and made oral submissions before the Committee reiterating the grounds for removal from office of the four Commissioners; serious violation of the Constitution and the law, gross misconduct; and incompetence.

96. The Petitioner indicated to the Committee that the matter was not pending before any court of law or other constitutional or legal body.



3.4.2 Clarifications by Committee

97. The Committee sought clarification on the following issues to which the Petitioner responded to as follows:

On the identity of Julius Nyang'aya and Juliana Cherere

98. The Petitioner stated that 'Julius Nyang'aya' and 'Cherere' were typographical errors and clarified that the names should have read 'Juliana Cherera' and 'Justus Nyang'aya'. He further requested the Committee directs itself without undue regard to technicalities.

On what the Petitioner seeks from the Committee

99. He stated that the Constitution under Article 251(3) and (4) informs the procedure of the removal from office of the four Commissioners and that if the grounds averred in his Petition are found to be competent, the Petition be forwarded to the President for the formation of a tribunal to investigate the matter further.

On similarity of the pressers held by the four Commissioners and the leader of the Azimio La Umoja One Kenya Coalition Party

100. The Petitioner averred that the media statements, the timing and the actions of the Commissioners were to a great deal similar to those of the Azimio La Umoja One Kenya Coalition Party. He emphasized on their well-coordinated moves and drew inferences that the actions of the four Commissioners were not a mere coincidence.

On the evidence to demonstrate that the four Commissioners were proxies of external forces

101. The Petitioner reiterated that the actions of the Commissioners were simultaneous with those of the Azimio La Umoja One Kenya Coalition Party to the extent that the figures quoted by both parties were significantly similar and as such established a nexus between the Commissioners and Azimio La Umoja Coalition Party contrary to the guiding principles required of State Officers.

On whether the Petitioner is a member of any political party

102. The Petitioner informed the Committee that he is an ordinary member of the UDA political party. He emphasized that he was not, however, presenting the Petition as the party's agent but as a Kenyan. He further mentioned that he has never been an official or held any such kind duties in the party.

On obstruction as a criminal offence pursuant to Section 30 of the IEBC Act

103. The Petitioner averred that obstruction of the Commission in discharging its functions is a criminal offence and that the conduct of the four Commissioners in supporting attempts to alter the Presidential election results amounted to obstruction.

On the procurement of legal services in the Presidential Election Petition No. E005 of 2022

104. The Petitioner informed the Committee that the function of procurement falls within the IEBC's Secretariat and as such the act by the four Commissioners to hire legal services themselves was illegal and amounted to incompetence contrary to the law.

On the attempt to subvert the will of the people, which is treasonable

105. The Petitioner confirmed that the four Commissioners attempted to subvert the will of the people by supporting attempts to alter the Presidential election results.

On why removal of the four Commissioners and not the entire Commission

106. The Petitioner stated that the conduct of the four Commissioners, in turning away from their cardinal duty and issuing press statement contrary to the law, formed the basis of his Petition for their removal. He further stated that the boldness of the other three Commissioners', Mr. Wafula Chebukati, Prof. Abdi Yakub Guliye and Mr. Boya Molu, is what saved the country from possible chaos and violence.

On the right to the freedom of expression of the four Commissioners

107. The Petitioner informed the Committee that while every person has the right to freedom of expression, the right is limited to the extent that they respect the rights and reputation of others. He also stated that while performing their duties, the Commissioners' right to the freedom of expression is limited and that by holding pressers to express that which could have been discussed and resolved in private/boardrooms, the Commissioners contravened the principles of good governance as provided for in law.

On the alleged partiality of the four Commissioners as alleged in paragraph 32 of his Petition

108. The Petitioner indicated that the four Commissioners had breached the principles of neutrality provided for in Article 81(e)(v) of the Constitution through their conduct post the declaration of the Presidential election results, their activities at the NTC and holding press conferences in Serena where the statements issued were significantly similar to those of the Azimio La Umoja One Kenya Coalition Party.

On whether they had taken advantage of other avenues provided for before Petitioning to the National Assembly

109. The Petitioner confirmed to the Committee that he had not lodged any complaint to the police or any Court of law and that presenting his Petition to the National Assembly was the first point where he sought the redress.

3.4.3 Cross-examination of Geoffrey Langat

110. The Respondents having withdrawn from the proceedings, there was no cross-examination.

3.5 Petition by Owuor Steve Gerry (Hearing of the Petitioner)

111. The Petitioner appeared in person and took oath pursuant to Section 17(a) of the Oaths and Statutory Declarations Act, Cap 15 Laws of Kenya. The Committee noted that the Petitioner was a Kenyan citizen and thus competent to present his Petition before the Committee.

3.5.1 Submissions by the Petitioner

112. The Petitioner, Owuor Steve Gerry, adopted the Petition as presented and made oral submissions before the Committee reiterating that the matter was not pending before any court of law or other constitutional or legal body.

113. He spoke to the preliminary issues raised by the Respondents the previous day and stated that according to Standing Order 230 of the National Assembly Standing Orders, the requirement to annex affidavits to the Petition is optional and not mandatory.

114. He then proceeded to submit on the grounds for removal as follows:

i. Incompetence

115. The Petitioner averred that the argument of the four Commissioners on the computation of the 50% plus 1 threshold to include rejected ballots contrary to an already existing Supreme Court decision that pronounced itself that rejected ballots should not be included in the computation amounted to incompetence. He added that this was a demonstration of their inability to successfully administer an electoral process.

ii. Serious violation of the Constitution

116. The Petitioner submitted that the four Commissioners having taken oath upon assuming office were thus bound by the national values and principles of public service enumerated under Article 232 of the Constitution and that in issuing similar statements to those of a contestant of the Presidential election, they contravened this provision of law and acted in a partial manner. He added that impartiality is all about perception and that from a reasonable man's point of view, the conduct of the four Commissioners cast doubt on their impartiality.

iii. Suitability of Irene Masit to hold office

117. The Petitioner spelt out that Irene Masit had unsuccessfully vied for the Elgeyo Marakwet Women Representative seat and that Article 88(2)(a) expressly prohibits the appointment of a person as a member of the IEBC if they had, at any time within the preceding five years, stood for election as an MP. He brought to the attention of the Committee that her appointment has been a subject of litigation where it was found that it offended the Constitution and thus warranted her removal.

3.5.2 Clarifications by Committee

On the inclusion of the rejected ballots in computation of 50% +1 pursuant to Article 138(4) of the Constitution

118. He made reference to the pleadings of the four Commissioners in the Presidential Election Petition No. E005 of 2022 as well as their detailed press statements released on 16th August, 2022 on their computation of 50% plus 1 and averred that their actions amounted to incompetence as there is already an existing clear computation of 50% plus 1 in the Supreme Court's decision of 2017.

On when Irene Masit contested, her political party at the time of vying and its implication on her conduct

119. He confirmed to the Committee that Commissioner Masit contested in 2016 under the Jubilee Party and that the implication of that was to left to any reasonable man to draw a conclusion.

On the involvement of the four Commissioners in the tallying and verification of the votes cast

120. The Petitioner was of the opinion that the four Commissioners contravened Article 10(2)(c) on transparency as a principle of good governance by rejecting the results which they had been involved in tallying and verification of.

On who Justus Abonyo and Francis Mathenge are as indicated on paragraph 1 of his Petition

121. He confirmed that they are indeed Commissioners and that there is indeed a 'Francis' and 'Justus' in the IEBC and that those are the Commissioners he was referring to.

On the dates cited in paragraph 5 and 6 of his Petition

122. The Petitioner clarified that the dates cited as '15th day of September, 2022' and '16th day of September, 2022 were an inadvertent error and should instead have read as '15th day of August, 2022' and '16th day of August, 2022'.

On incompetence of the other three Commissioners

123. The Petitioner clarified that all the four Commissioners were incompetent to the extent that they openly displayed partiality by virtue of the fact that they issued similar press statements to those of the Azimio La Umoja One Kenya Coalition Party. He further stated that Irene Masit's appointment having been found to have violated the Constitution, she ought to be removed.

On his motivation to for the Petition

124. The Petitioner averred that he lodged his Petition by virtue of the fact that the law allows him to do so pursuant to Article 251(2). He further stated that he lodged his Petition against the four Commissioners and not the entire membership of the IEBC because the Supreme Court in the Presidential Election Petition No. E005 of 2022 vindicated the other three Commissioners, Mr. Wafula Chebukati, Prof. Abdi Yakub Guliye and Mr. Boya Molu.

3.5.3 Cross-examination of Owuor Steve Gerry

125. The Respondents having withdrawn from the proceedings, there was no cross-examination.

3.6 Response by Ms. Juliana Cherera (Hearing of the Respondent)

126. The Respondent, through her Advocate, Apollo Mboya appeared before the Committee on the 28th November, 2022.

3.6.1 Submissions by the Respondent on 28th November 2022

127. The Petitioner sought an adjournment citing that they had raised preliminary objections on Thursday 24th November, 2022 on the issue of jurisdiction and that the same was ruled upon. Pursuant to that ruling issued on even date, the *Hansard* Report of the 24th and 25th November, 2022 and the Minutes of the Meetings of the 8th, 9th and 10th Sitting of the Committee were to be provided. The Advocates made reference to his letter addressed to the Clerk of the National Assembly dated 18th November, 2022 of Ref. ACA/NA/1/2022 and stated his request to be furnished with the following information and documentation had not been complied with:

- i. Hansard Report of the Conveyance of the four Petitions to the Committee from the House;
- ii. Hansard Report of the Committee that drew the schedule for the hearings;
- iii. The total number and copies of Petitions received by the National Assembly Main Records Unit in respect of the removal of the current Commissioners of IEBC; and
- iv. Updated hard copy of Standing Orders of the National Assembly.

128. He further stated that his letters addressed to the Clerk dated 23rd November 2022 and 25th November 2022 of *Reference Number ACA/NA/1/2022* had not been responded to neither had the information sought been provided and as a result he intimated to the Committee that they could not proceed pursuant to Article 35 of the Constitution and the Access to Information Act, 2016 were constrained to seek that upon the said information being provided, they be granted an additional Ten (10) days to allow them to prepare a Response.

129. In seeking the above, the Advocates cited Article 50 of Constitution on the right to fair hearing and paragraph 256 (a) of Standing Orders of the National Assembly which empowers the Committee to return to the House to seek more time.

3.6.2 Responses by the Petitioners

130. The Advocates for the Republican Liberty Party stated that the time, date and venue were advertised and placed in print media and that the Petitions was be sufficient for Commissioner Cherera to proceed as the information sought would be provided at the point of prosecuting the case, if the Petitions are found to disclose a ground for removal.
131. Rev. Dennis Ndwiga Nthumbi stated that Article 159(2)(b) provides that justice should not be delayed and that the Respondent, in seeking information meant to be provided at the tribunal, was merely employing delay tactics to trap the Committee with technicalities.
132. Advocates for the Petitioner, Geoffrey Langat, submitted that he objected to the adjournment and submitted that it was a delay tactic by the Respondent who had been properly served the Petition. He urged the Committee not to entertain the same especially since the Respondent had chosen to withdraw from the proceedings on the 24th November, 2022.

3.6.3 Committee Observations

133. The Committee observed that the Petitioners responded save for Owuor Steve Gerry and the Committee unanimously decided as follows:
- i. That the Committee is only seized of four Petitions and thus restricted itself to the four;
 - ii. That the Minutes of the Sittings of the Committee and the Hansard Reports of 24th and 25th November, 2022 be provided with immediate effect;
 - iii. That the only evidence on record is that which is contained in the *Hansard*;
 - iv. That while the Respondent has to be accorded a fair hearing within a reasonable time, the Petitioners too have a right to have their Petitions expeditiously disposed of. Moreover, due to the fact that the Committee had strict timelines, it granted an adjournment and deferred the hearing of the Respondent's case to Tuesday 29th November, 2022 at 8.00a.m, time being of the essence. The Committee also informed the Respondent that they had the option of submitting written submissions by the close of business at 6.00p.m the same day.

3.6.4 Submissions by the Respondent on 29th November, 2022

134. On the 29th November, 2022 at 8.00a.m, the Committee convened to hear the Respondent's case, however, the Respondent did not appear. Instead, the Respondent, through his Advocates, sent an email to the Clerk of the National Assembly informing him that having received the documentation requested late, on 28th November, 2022 at around 5.00p.m, he could not proceed and requested for an additional Seven (7) days to be able to peruse through the same and prepare a suitable response.

3.6.5 Committee Observations

135. In light of the reasons given by the Respondent and bearing in mind the delay in providing the documents earlier due to procedural formalities, the Committee granted the Respondent additional time and deferred the Respondent's hearing to 29th November, 2022 at 4.00p.m.

3.6.6 Submissions by the Respondent's on 29th November, 2022 at 4.00p.m

136. The Respondent did not appear before the Committee at 4.00p.m as scheduled and, instead, wrote to the Committee, through the Clerk of the National Assembly vide letter dated 29th November, 2022 Ref: ACA/NA/1/2022 seeking an adjournment and praying for Seven (7) days.

3.6.7 Responses by the Petitioners

137. The Advocates for the Republican Liberty Party objected to the adjournment for additional time citing that the Respondent was merely employing delay tactics to postpone the proceedings further.
138. Advocates for Geoffrey Langat also objected to the application for adjournment and attributed it to delay tactics noting that the Respondent had been afforded two adjournments already.
139. Rev. Dennis Ndwiga Nthumbi submitted that there was a trend by the Respondent's across the board to delay the proceedings and that the Respondents had been forum shopping in Court to stop the proceedings. He notified the Committee that the Petitioners have the right not to have their Petitions further delayed due to the laziness of the Respondents and urged the Committee to find his Petition to be competent.

3.6.8 Committee Observations

140. Having already granted the Respondent the necessary documents requested for and two adjournments, the Committee was of the opinion that the application of the Respondent for an additional Seven (7) days seemed to be a delay tactic. Also, having failed to give valid reasons to grant the extension, the Committee was not inclined to allow the adjournment and deemed the Respondent's case to be closed. The Committee, nevertheless, informed the Respondent of her right to submit written responses to the Petitions to be filed by the close of business on Wednesday 30th November, 2022 or to be received on before the final decision is made. The Committee reiterated that pursuant to the Standing Orders of the National Assembly, it did not have the power to grant an extension of time and that it was the Speaker of the National Assembly who could do so.
141. The committee concluded by stating that the Speaker had accepted to grant it an additional three (3) days to consider the Petitions in their entirety and prepare a comprehensive Report to be tabled before the House.

3.7 Response by Ms. Irene Masit (Hearing of the Respondent)

142. Irene Masit was scheduled to appear before the Committee on 28th November, 2022 to respond to the Petitions lodged against her. On the said date, however, the Committee through the Clerk of the National Assembly received a letter dated 28th November 2022 of Ref: M/0253/001 from her Advocates, KTK Advocates LLP, which indicated that the Respondent would not be participating in the proceedings of the Committee as:
- i. She believed the Committee's proceedings were null and void *ab initio*; and
 - ii. She would be proceeding to Constitutional Court for reprieve.

3.7.1 Responses by the Petitioners

143. The Republican Liberty Party, through their Advocates, requested the Committee to consider its Petitions unchallenged and thus find that they disclose valid grounds for removal from office of the four Commissioners.
144. Rev. Ndwiga asked the Committee to consider legal consequences for absconding so as to prevent such conduct in the future. Furthermore, he asked the Committee to find merit in his Petition.

145. Mr. Geoffrey Langat urged the Committee to find his Petition be factual.

3.7.2 Committee Observations

146. The Committee observed that having accorded the Respondent sufficient time to appear and an opportunity to be heard, failure to appear and seek reprieve in Constitutional Courts was well within their right. However, by waiving her right to be heard before the Committee, it was the Committee's position that the allegations in the Petitions would be upheld as they went unopposed and uncontroverted.

3.8 Response by Mr. Francis Wanderi (Hearing of the Respondent)

147. The Respondent, through his Advocates, Nduru Gichamba, appeared before the Committee at 10.00am on 29th November, 2022 and made oral submissions.

3.8.1 Submissions by Respondent

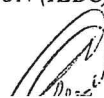
148. The Legal Advocates raised the two issues:

- i. That the Respondent's request to be provided with the documentation and materials sought for by the Committee through the Clerk of the National Assembly through his letter dated 22nd November, 2022 of *Ref:CO/13/18/NG* had not been responded to noting that via the Clerk's email, Minutes of the Committee's sittings and the Hansard Report of the 24th and 25th November 2022 had been received on 28th November, 2022 in the evening.
- ii. That the Respondent's Preliminary Objection dated 23rd November, 2022 seeking more time had also not been responded to.

149. In light of the above, Advocates asked the Committee to shed light on the issues raised before he could proceed to make submissions.

3.8.2 Responses by the Petitioners

150. The Petitioners, save for Owuor Steve Gerry who was not in attendance, were unanimously in agreement that the Respondent having withdrawn from the proceedings on 24th November, 2022 only to appear before the Committee on the scheduled date for hearing making the above requests was a delay tactic which it urged the Committee not to condone.



151. The Petitioners also insisted that the Respondent waived his right to cross-examine them when he failed to appear on 24th and 25th November, 2022 during the hearing of the Petitioners' case. They, thus, urged the Committee to find that their Petitions disclosed valid grounds for removal from office of the four Commissioners being that the same went unopposed.

3.8.3 Clarifications by the Committee

152. The Committee sought the following clarifications to which the Respondent, through his Advocates stated as outlined below:

On what he wanted the Committee to do for his client

153. The Advocates submitted that because their Notice of Preliminary Objection and the issues raised therein had not been responded to his client's satisfaction, it was his assumption that the Committee would not address his client's issues and as such did not put up any response to the Petitions and withdrew from the proceedings.

3.8.4 Committee Observations

154. The Committee observed that the only documentation it had and could provide to the Respondent were the four Petitions which it had already provided and any further evidence of the allegations would be adduced at the tribunal should the Petitions be found satisfactory.
155. Furthermore, the Committee reminded the Respondent that the issues he was raising ought to have been raised earlier and not when he ought to be making his responses. It reminded the Respondent that he waived his right to raises the said issues as the same had already been spent.
156. The Committee notified the Respondent that despite his decision to withdraw from the proceedings, he was at liberty to file written responses on 29th November, 2022 by the close of business at 6.00p.m. or to be received before the Committee made its final decision.

3.9 Response by Mr. Justus Nyang'aya (Hearing of the Respondent)

157. The Respondent, through his Advocates appeared before the Committee on the 29th November, 2022 at 2.30p.m.

3.9.1 Submissions by Respondent

158. The Advocates for the Commissioner submitted that the issues he sought guidance for in his letter dated 18th November, 2022 had not been addressed and as such he was unable to proceed to make a response. He shed light on the issues as:

- i. Failure to be advised on whether to call witnesses;
- ii. Failure to be provided with the requisite information sought to enable him prepare a response to the Petitions; and
- iii. Insufficient time to acquire the evidence he required to put up a defence.

3.9.2 Responses by the Petitioners

159. The Advocate for the Republican Liberty Party reiterated that the Respondent had been properly served with the Petition as filed pursuant to provisions of the Petitions to Parliament (Procedure) Act, 2012 and as such their request to be provided with evidence was misplaced. She also objected to the Respondent's request for extension of time and urged the Committee to find her client's Petition competent.

160. Nelson Mutai, Advocates for Geoffrey Langat, stated that the Respondent should not be afforded an extension of time as it was a delay tactic and that the Committee finds his client's Petition discloses valid grounds for removal of the four Commissioners

161. Rev. Nthumbi also objected to the Respondent's prayers noting that the Petitions to Parliament (Procedure) Act precluded such Petitions from being accompanied by affidavits and that the Respondent was seeking evidence in the wrong forum. He emphasized that he had outlined Sixteen (16) grounds for removal and urged that the Committee to expeditiously deal with the matter and observe the rules of natural justice. He concluded by asking the Committee to find that his Petition discloses valid grounds for the removal of the Commissioners emphasizing that he had laid out a total of sixteen grounds.

3.9.3 Clarifications by Committee

162. The Committee sought the following clarifications to which the Respondent, through his Advocates stated as outlined below:

On whether the Respondent still wished to defend the Petition

163. The Advocates submitted that while his client was interested in defending the Petition, he could not do so without the information he sought being provided.

On whether the Petitions could be responded to as filed

164. Advocates stated that his client could not respond to the Petitions as filed as they required more information and evidence on the allegations raised in the Petitions.

On whether his letter dated 18th November, 2022 could constitute as the Respondent's written Response

165. He informed the Committee that, to the extent that it responded to one or two issues, then it could be deemed to constitute part of his Response but not a full response to the Petitions which their client is entitled to.

On why the Respondent had not disclosed the witnesses he intended to call yet there was provision of time to cross-examine witnesses, if any

166. He informed the Committee that if given clarity on the issue of witnesses then he would disclose them.

3.9.4 Responses by the Petitioners

167. Rev. Nthumbi urged the Committee to consider the Affidavit of Mr. Wafula Chebukati as it was subject of a successful litigation in the Presidential Election Petition No. E005 of 2022 before the Supreme Court.

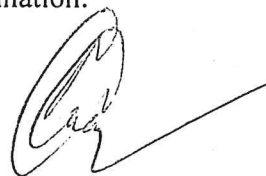
168. Advocates for the Republican Liberty Party intimated to the Committee that the Respondent was raising jurisprudential legal issues outside the scope of the Committee and that they were mere delay tactics aimed at frustrating the proceedings.

3.9.5 Committee Observations

169. It was the Committee's observation that under Article 251(3) of the Constitution, provisions of the Petitions to Parliament (Procedure) Act as read with the Standing Orders that the requirement to

annex an affidavit to the Petitions was optional and not mandatory as implied by the use of the word 'may'.

170. The Committee also noted that it was only mandated to consider whether the Petitions disclose valid grounds for removal and not delve into matters of prosecuting them. Therefore, the requirement by the Respondent to provide evidence was misplaced. The Committee also notified the Respondent that only four Petitions were conveyed to it and that it had shared the same with the Respondent as conveyed.
171. It was the Committee's position that the letters of the Respondent would be taken as part of his response. Due to the time constraints and having afforded the Respondent sufficient time, the Committee declined the Respondent's application for adjournment and advised that the Respondent could prepare and file a written response by 29th November, 2022 by the close of business at 6.00p.m. or to be received before the Committee makes its determination.

A handwritten signature in black ink, consisting of a stylized, cursive 'C' followed by a long horizontal stroke.

CHAPTER FOUR

4 COMMITTEE OBSERVATIONS

4.1 Jurisdiction

172. The Committee observed under Article 251 of the Constitution a person may file a Petition for the removal from office of a member of a Commission or holder of an Independent Office to the National Assembly which is exclusively mandated to consider whether the Petition discloses a ground for removal from office. No other forum exists for the presentation or consideration of such a Petition.

4.2 Competence of the Petitions

173. With regard to a preliminary issue raised on the lack of affidavits in support of the Petitions, the Committee observed that section 3(k) of the Petitions to Parliament Act, 2012 requires precludes a Petitioner from attaching any affidavit to a Petition. Under Standing Order 230, a person who files a petition for the removal of a member of a Commission or holder of an independent office may include an affidavit in support of the petition. Therefore, the lack of an affidavit in support of a Petition is not fatal to its consideration.
174. With regard to a preliminary issue raised whether the Petitions were directed to the correct parties, the Committee noted that in the Petition filed by Mr. Geoffrey Langat refers to a Commissioner Juliana Cherere and a Commissioner Julius Nyangaya. The Committee sought clarification from the Petitioner on whether such persons exist as Commissioners of the IEBC and, under oath, the Petitioner stated that there was a typographical error in the Petition with regard to the names of two Commissioners. He confirmed the names of the Commissioners referred to in the Petition as Juliana Cherera and Justus Nyangaya. The Committee observed that the discrepancies in the Petition were not fatal as it sufficiently identified the persons who are serving Commissioners of the IEBC. The Committee also took notice of the contents of Gazette Notice No. 9082 dated 1st September 2021 which listed Juliana Whonge Cherera (Ms.), Francis Mathenge Wanderi, Irene Cherop Masit (Ms.), and Justus Abonyo Nyang'aya as the persons appointed members of the IEBC.



4.3 Extent of the mandate of the Committee

175. The Committee observed that the exercise of its mandate in the consideration of the Petitions is similar to the exercise of the mandate of the Judicial Service Commission in its consideration of a Petition for the removal of a Judge of a superior court.
176. The Committee noted that the wording of Article 168(4) of the Constitution and the wording of Article 251 (3) of the Constitution is similar. Both the Judicial Service Commission and Parliament are required to consider a Petition and transmit it to the President, if satisfied that the Petition discloses a ground for removal.
177. The Committee further noted that the Court has had occasion to interrogate the extent of the mandate of the Judicial Service Commission in its consideration of a petition for the removal of a superior judge in Nancy Makokha Baraza v Judicial Service Commission & 9 others [2012] eKLR where it stated as follows at Paragraph 75 of the judgment of a three-judge bench—

“The [Judicial Service] Commission’s role is limited to determining whether there is a prima facie case made against a Judge. In our view, therefore, it is not for the Commission to make definitive findings whether the allegations made against the judge have been proved or not. That is a matter for the Tribunal to decide. Unless the role of the Commission at this stage is properly understood, we may have a situation whereby the Commission would conduct a fully-fledged trial and thereby usurp the role of the Tribunal. It is not for this Court or the Commission to find that the allegations made against the Petitioner did not amount to gross misconduct. In fact according to Professor Yash Ghai’s Kenya’s Constitution: An Instrument for Change, cited by the Petitioner “whether a conduct is gross or not will depend on the matter as exposed by the facts” which facts it is the duty of the Tribunal to establish. It is also not for this Court to make definitive findings with respect to the so called confessional statement since to do so is likely to prejudice not only the proceedings before the Tribunal but any criminal proceedings that may be instituted either against the Petitioner or any other person who was involved in the said incident. We cannot also determine whether the statement recorded before the CID has any probative or evidential value. We are not conducting a trial within a trial and we do not have jurisdiction to assess and determine the veracity, probative or evidential value of the said statement. It is also outside our jurisdiction to say that the process leading to obtaining of the statement was gravely flawed or tainted with illegality since this court’s jurisdiction is limited to the process. Without sounding repetitive it is outside the jurisdiction of this court to determine what the Commission relied upon in submitting its Petition to the President. We cannot substitute our discretion with

that of the Tribunal and we are bound to respect the Constitutional boundaries and perimeters of the Commission. In this case we are unable to find any transgression, trespass or any omission committed by the Commission in the exercise of its powers. The petitioner contended that she signed the so called confession under the belief that she would later take refuge in the law. With the greatest respect, by making such a statement to us we think the petitioner misconstrued our mandate and jurisdiction."

178. The Committee therefore observed that it is mandated to establish whether a ground for removal is, *prima facie*, disclosed by a Petition.

4.4 Procedure adopted by the Committee

179. The Committee observed that in conveying the four (4) Petitions, the Speaker of the National Assembly guided the Committee on the quasi-judicial nature of the proceedings.
180. Additionally, the Committee observed that the procedure of consideration of petitions for the removal of constitutional office-holders was significantly impacted by the decision of the High Court in *Republic v Speaker of the National Assembly & 4 others Ex-Parte Edward R. O. Ouko [2017]* eKLR where the Court ruled that the House must conduct such proceedings, which are quasi-judicial proceedings, in strict compliance with Article 47 of the Constitution and section 4 of the Fair Administrative Action Act, 2015.
181. It is in light of the foregoing that the Committee adopted its own internal rules derived from the Constitution, existing statute, the Standing Orders and comparative parliamentary precedents and practice to guide it in its consideration of the Petitions.

4.5 Timelines

182. The Committee observed that Article 251 of the Constitution does not prescribe a timeline for the consideration of a petition for the removal of a member of a Commission or a holder of an Independent Office. However, the Committee noted that Standing Order 230(4) prescribes a timeline of 14 days for the Committee and a further 10 days for the consideration of its Report by the House.
183. The Committee noted that despite Standing Order 230 (4) referring to a petition, the Speaker of the National Assembly conveyed four (4) Petitions based on similar issues for its consideration within fourteen (14). The Committee was allowed to seek an extension, if necessary.
184. The Committee further noted that Standing Order 67(b) (ii) requires the National Assembly to hear a person on grounds of removal from office or similar circumstances for a duration of not more than two hours, or such other time as the Speaker may, in each case, determine.

185. As such, the Committee observed that time was of the essence in the proceedings to allow the expeditious resolution of any doubt as to the suitability of a member of a Commission to continue serving in state office.

4.6 Grounds for removal of a member of a Commission

186. The Committee observed that Article 251 (1) of the Constitution outlines the grounds that may be relied upon for removal of a member of a Commission as—

- a) serious violation of this Constitution or any other law, including a contravention of Chapter Six;
- b) gross misconduct, whether in the performance of the member's or office holder's functions or otherwise;
- c) physical or mental incapacity to perform the functions of office;
- d) incompetence; or
- e) bankruptcy.

187. The Committee noted that the four (4) Petitions cumulatively rely on the grounds of serious violation of the Constitution or any other law; gross misconduct and incompetence as the alleged basis for the removal of the cited Commissioners of the IEBC.

4.6.1 Serious violation of this Constitution or any other law

188. With regard to the meaning of the grounds of serious violation of the Constitution or other law and gross misconduct, the Committee noted that the Court has had occasion to consider and rule on the meaning of the terms "gross violation of the Constitution or any other law and gross misconduct" in the removal of a Governor in Martin Nyaga Wambora and 30 others versus the County Assembly of Embu and four others (Embu Constitutional Petition Nos.7 and 8 of 2014) where it stated as follows at Paragraphs 232, 233, 234 and 235—

232.Gross violation of the Constitution or any other law is a ground for removal from office as provided under Article 181(1)(a). The question that then arises is how you qualify gross violation. Who is the one to assess that the allegations amount to gross violation"

233. In stating what amounts to gross violation, the Supreme Court of Nigeria in *Hon. Muiwa Inakoju (supra)* held that:

"(i) The word "gross" in the subsection does not bear its meaning of aggregate income. It rather means generally in the context atrocious, colossal, deplorable, disgusting, dreadful, enormous, gigantic, grave, heinous, outrageous, odious and shocking. All these words express some extreme negative conduct. Therefore a misconduct which is the opposite of the above cannot constitute gross misconduct.

Whether a conduct is gross or not will depend on the matter as exposed by the facts. It cannot be determined in vacuo or in a vacuum but in relation to the facts of the case and the law policing the facts.

(ii) Gross misconduct is defined as (a) a grave violation or breach of the provisions of the Constitution and (b) a misconduct of such nature as amounts in the opinion of the House of Assembly to gross misconduct.

(iii) By the definition, it is not every violation or breach of the Constitution that can lead to the removal of a Governor or Deputy Governor. Only a grave violation or breach of the Constitution can lead to the removal of a Governor or Deputy Governor. Grave in the context does not mean an excavation in earth in which a dead body is buried, rather it means, in my view, serious, substantial, and weighty.

(iv) The following, in my view, constitute grave violation or breach of the Constitution:
(a) Interference with the constitutional functions of the Legislature and the Judiciary by an exhibition of overt unconstitutional executive power, (b) Abuse of the fiscal provisions of the Constitution, (c) Abuse of the Code of Conduct for Public Officers, (d) Disregard and breach of Chapter IV of the Constitution on fundamental rights, (e) Interference with Local Government funds and stealing from the funds or pilfering of the funds including monthly subventions for personal gains or for the comfort and advantage of the State Government, (f) instigation of military rule and military government, (g) Any other subversive conduct which is directly or indirectly inimical to the implementation of some other 'major sectors of the Constitution.

(v) The following in my view, are some acts which in the opinion of the House of Assembly, could constitute grave misconduct (a) Refusal to perform constitutional functions, (b) Corruption. (c) Abuse of office or power, (d) Sexual harassment. I think I should clarify this because of the parochial societal interpretation of it to refer to, only the male gender. The misconduct can arise from a male or female Governor or Deputy Governor as the case may be. (e) A drunkard whose drinking conduct is exposed to the glare and consumption of the public and to public opprobrium and disgrace unbecoming of the holder of the office of Governor or Deputy Governor, (f) Using, diverting, converting or siphoning State and Local Government funds for electioneering campaigns of the Governor, Deputy Governor or any other person, (g) Certificate forgery and racketeering. Where this is directly connected, related or traceable to the procurement of

the office of the Governor or Deputy Governor, it will not, in my view, matter whether the misconduct was before the person was sworn in. Once the misconduct flows into the office, it qualifies as gross misconduct because he could not have held the office but for the misconduct. Such a person, in my view, is not a fit and proper person to hold the office of Governor or Deputy Governor. It is merely saying the obvious that a Governor or Deputy Governor who involves in certificate forgery and racketeering during his tenure has committed gross misconduct."

234. With regard to what amounts to gross violation the Court in *Wambora I* observed at paragraph 253;

"....whatever is alleged against a Governor must:

(a) Be serious, substantial and weighty.

(b) There must a nexus between the Governor and the alleged gross violations of the Constitution or any other written law.

(c) The charges framed against the Governor and the particulars thereof must disclose a gross violation of the Constitution or any other written law.

(d) The charges as framed must state with degree of precision the Article(s) or even sub-Article(s) of the Constitution or the provisions of any other written law that have been alleged to be grossly violated."

235. On appeal, the Court of Appeal at Nyeri as regards what amounts to gross violation, held at paragraph 46 in *Wambora I Appeal* that:

"We reiterate that what constitutes gross violation of the Constitution is to be determined on a case by case basis. Gross violation of the Constitution includes violation of the values and principles enshrined under Article 10 of the Constitution and violation of Chapter six (Leadership & Integrity) of the Constitution; or intentional and/or persistent violation of any Article of the Constitution; or intentional and blatant or persistent violation of the provisions of any other law.

The rationale for this definition is that the values and principles embodied in the Constitution provide the bedrock and foundation of Kenya's constitutional system and under Article 10(1) these values bind all state organs, state officers, public officers and all persons. We hasten to state that the facts that prove gross violation as defined above must be proved before the relevant constitutional organ. Examples of the constitutional Articles whose violation amounts to gross violation include:

- i. Chapter 1 on the Sovereignty of the People and Supremacy of the Constitution more specifically Articles 1, 2, and 3 (2) of the Constitution.*
- ii. Chapter 2- Article 4 that establishes Kenya as a sovereign multi-party Republic & Article 6 that establishes devolution and access to services.*
- iii. Article 10 on national values and principles of good governance.*
- iv. Chapter 4 on the Bill of Rights.*
- v. Chapter 6- Articles 73 to 78 on Leadership and Integrity.*
- vi. Chapter 12 - Article 201 on principles of public finance.*
- vii. Chapter 13- Article 232 on values and principles of public service.*
- viii. Chapter 14 - Article 238 on principles of national security.*
- ix. Article 259 (11) on advice and recommendation.*
- x. Any conduct that comes within the definition of the offence of treason in the Penal Code (Cap 63 of the Laws of Kenya)."*

189. The Committee therefore observed that the interpretation of the term "gross violation of the Constitution or other law" by the Courts may similarly be applied to the ground of "serious violation of the Constitution or other law". It is the view of the Committee that for a Petition to disclose serious violation of the Constitution or other law as a ground for removal of a member of a Commission, the Petition must *prima facie* indicate the provisions of the Constitution or written law alleged to have been violated by a Commissioner and demonstrate the link between the conduct of the Commissioner and the violations.

4.6.2 Gross misconduct

190. The Committee further observed that for a Petition to disclose gross misconduct as a ground for removal of a member of a Commission, the Petition must *prima facie* demonstrate atrocious, deplorable, dreadful, grave, heinous, outrageous, odious or shocking conduct on the part of a Commissioner.

4.6.3 Incompetence

191. With regard to the meaning of the ground of "incompetence", the Committee noted that the 8th Edition of Black's Law Dictionary defines incompetence as "the state or fact of being unable or unqualified to do something". The Committee therefore observed that for a Petition to disclose incompetence as a ground for removal of a member of a Commission, the Petition must *prima facie* demonstrate the inability or lack of qualifications of the Commissioner to exercise his or her mandate and functions.

4.7 Responses to the Petitions

192. With regard to the responses received to the Petitions, the Committee observed as follows—

- a) Apart from filing a Preliminary Objection, appearing through Apollo & Company Advocates and requesting documents through letters dated 18th and 25th November, 2022, Commissioner Juliana Cherera did not present an oral response or submit a written response to either of the four Petitions as at the time of writing this Report;
- b) Apart from filing a Preliminary Objection appearing through KTK Advocates LLP and requesting for documents through letters dated 18th November and 21st November, 2022, Commissioner Irene Masit did not present a substantive response to either of the four Petitions as at the time of writing this Report;
- c) Apart from filing a Preliminary Objection, appearing through Rachier & Amollo Advocates and requesting for certain evidence, Commissioner Justus Nyangaya did not present a substantive response to either of the four Petitions as at the time of writing this Report. A letter to the Committee dated 21st November, 2022 from the Commissioner's Advocates alluded to the fact that—
 - (i) Commissioner Nyangaya did not attend any meeting in the presence of Raphael Tuju or Amos Wako as alleged in the Petitions;
 - (ii) Commissioner Nyangaya filed pleadings in opposition to the Petitions filed in the Supreme Court in the Presidential Petition dispute contrary to the averments contained in the Petitions; and
 - (iii) Despite being present at a meeting alleged to have been held between the IEBC Commissioners and the National Security Advisory Council (NSAC), Commissioner Nyangaya did not utter a word as alleged in the Petitions. Advocates for Commissioner Nyangaya conceded that the allusions in the letter could be treated as a response on the two issues but they do not constitute a substantive response.
- d) Apart from filing a Preliminary Objection, appearing through Gichamba & Company Advocates and requesting for certain evidence through a letter dated 22nd November, 2022, Commissioner Francis Wanderi did not present a substantive response to either of the four Petitions as at the time of writing this Report.



CHAPTER FIVE

5 COMMITTEE FINDINGS

5.1 Petition by Republican Liberty Party

5.1.1 On the ground of serious violation of the Constitution or any other law

193. The Petition presented by the Republican Liberty Party avers that that the four Commissioners, namely, Juliana Cherera, Irene Masit, Francis Wanderi and Justus Nyangaya, jointly and severally—
- a) failed to promote public confidence in the integrity of the office they hold and brought dishonour to the nation and lack of dignity for the office, contrary to Article 73(1)(a) of the Constitution;
 - b) failed to adhere to the guiding principles of leadership and integrity under Article 73(2) of the Constitution;
 - c) failed to act in a manner that avoids demeaning the office that they hold, contrary to Article 75 of the Constitution;
 - d) failed to adhere to the values and principles of public service, contrary to Article 232 of the Constitution;
 - e) failed to adhere and take into account the provisions of sections 8 and 9 of the Leadership and Integrity Act, No. 19 of 2012 and should therefore take personal responsibility for the reasonably foreseeable consequences of any actions or omissions arising from the discharge of the duties of the office; and
 - f) Purported to hire a lawyer to represent them at the Supreme Court during the consideration of the Presidential election Petition contrary to the provisions of Section 10 (7) of the Independent Electoral and Boundaries Commission Act, 2011 as read together with the Public Finance Management Act and the Public Procurement and Asset Disposal Act, 2015.
194. The alleged violations relate to several provisions of the Constitution, including Chapter Six of the Constitution on principles of leadership and integrity; and written. They cumulatively therefore qualify to be categorized as “serious”. If proven, the allegations shall necessitate the removal from office of the four Commissioners.
195. In the absence of any substantive response, the Committee therefore finds that the Petition as presented *prima facie* discloses the ground of serious violation of the Constitution and other laws against the four (4) Commissioners, namely, Juliana Cherera, Irene Masit, Francis Wanderi and Justus Nyangaya.

5.2 Petition by Rev. Dennis Nthumbi Ndwiga

5.2.1 On the ground of serious violation of the Constitution or any other law

196. In the Petition presented by the Rev. Dennis Ndwiga Nthumbi, he avers that the four (4) Commissioners, namely, Juliana Cherera, Irene Masit, Francis Wanderi and Justus Nyangaya, committed serious violations of the Constitution by—

- a) demonstrating partiality and biased conduct in agreeing to the proposal to alter the results of the presidential elections in favor of one candidate or in the alternative to force a run-off contrary to Articles 10, 73 (2) (b) (c), 75, 138, 232, and 249 of the Constitution; Sections 9, 26 and 30 of the Independent Electoral and Boundaries Commission Act, 2011; Sections 7, 8, 9, 10, 11, 16, 24, of the Leadership and Integrity Act, 2012; and Sections 8, 9, 10, 12, 16 and 17 of the Public Officer Ethics Act, 2003;
- b) agreeing to the incentives and giving in to the proposal by the National Security Advisory Council (NSAC) to alter the results of the presidential election contrary to Articles 10, 73 (2) (b) (c), 75, 138, 232, 249 of the Constitution; Sections 9, 26 and 30 of the Independent Electoral and Boundaries Commission Act, 2011; Sections 7, 8, 9, 10, 11, 16, 24, of the Leadership and Integrity Act, 2012; and Sections 8, 9, 10, 12, 16 and 17 of the Public Officer Ethics Act, 2003;
- c) disowning the results of the 2022 presidential elections in which the commissioners had participated in the verification and tallying, contrary to Articles 10, 73 (2) (b) (c), 75, 232, 249 of the Constitution; Sections 9, 26 and 30 of the Independent Electoral and Boundaries Commission Act, 2011; Sections 7, 8, 9, 10, 11, 16, 24, of the Leadership and Integrity Act, 2012; and Sections 8, 9, 10, 12, 16 and 17 of the Public Officer Ethics Act, 2003;
- d) accepting the proposal to alter the results of the election to subvert the will of the people of Kenya contrary to Articles 10, 73 (2) (b) (c), 75, 232, 249 of the Constitution; Sections 9, 26 and 30 of the Independent Electoral and Boundaries Commission Act, 2011; Sections 7, 8, 9, 10, 11, 16, and 24 of the Leadership and Integrity Act, 2012; and Sections 8, 9, 10, 12, 16 and 17 of the Public Officer Ethics Act, 2003;
- e) issuing press statements, with close semblance with the press statements by Azimio La Umoja One Kenya presidential candidate contrary to Articles 10, 73 (2) (b) (c), 75, 232 and 249 of the Constitution; Sections 9, 26 and 30 of the Independent Electoral and Boundaries Commission Act, 2011; Sections 7, 8, 9, 10, 11, 16 and 24 of the Leadership and Integrity Act, 2012; and Sections 8, 9, 10, 12, 16 and 17 of the Public Officer Ethics Act, 2003; and

- f) failing to follow the well set out guidelines for the verification, tallying and announcement of the presidential elections contrary to Articles 10, 73 (2) (b) (c), 75, 232 and 249 of the Constitution of Kenya 2010; Sections 9, 26 and 30 of the Independent Electoral and Boundaries Commission Act, 2011; Sections 7, 8, 9, 10, 11, 16 and 24 of the Leadership and Integrity Act, 2012; and Sections 8, 9, 10, 12, 16 and 17 of the Public Officer Ethics Act, 2003.

197. The alleged violations relate to several provisions of the Constitution, including Chapter Six of the Constitution on principles of leadership and integrity; and written law. They cumulatively therefore qualify to be categorized as “serious”. If proven, the allegations shall necessitate the removal from office of the four Commissioners.
198. In the absence of any substantive response, the Committee therefore finds that the Petition as presented *prima facie* discloses the ground of serious violation of the Constitution and other laws against the four (4) Commissioners, namely, Juliana Cherera, Irene Masit, Francis Wanderi and Justus Nyangaya.

5.2.2 On the ground of gross misconduct

199. In the Petition, the Rev. Nthumbi further states that the four (4) Commissioners, namely, Juliana Cherera, Irene Masit, Francis Wanderi and Justus Nyangaya grossly misconducted themselves by—
- a) concurring to support the unlawful attempt to alter the results of the presidential elections in favour of one candidate or in the alternative to force a run off;
 - b) acting in liaison with one faction in a presidential election;
 - c) refusing to follow the well set-out guidelines for the verification and tallying announcement of the presidential elections; and
 - d) swearing affidavits in support of petitions challenging the presidential elections.
200. The alleged conduct may be considered to be atrocious, deplorable, dreadful, grave, heinous, outrageous, odious or shocking when viewed against the conduct expected of a State Officer and a member of a Commission by the Constitution and statute. If proven, the allegations shall necessitate the removal from office of the four (4) Commissioners.
201. In the absence of any substantive response, the Committee therefore finds that the Petition as presented *prima facie* discloses the ground of gross misconduct against the four (4) Commissioners, namely, Juliana Cherera, Irene Masit, Francis Wanderi and Justus Nyangaya.

5.2.3 *On the ground of incompetence*

202. In the Petition, the Rev. Nthumbi states that the four (4) Commissioners, namely, Juliana Cherera, Irene Masit, Francis Wanderi and Justus Nyangaya demonstrated incompetence by—
- a) agreeing to the proposal to alter the results of the presidential elections in favor of one candidate or in the alternative to force a run off;
 - b) failing to follow the set-out guidelines for the verification and tallying announcement of the presidential elections;
 - c) swearing affidavits in support of petitions challenging the presidential elections;
 - d) disowning the results of the 2022 presidential elections;
 - e) convening and attending meeting purportedly to discuss and appoint counsels to represent the commission in the presidential election petitions; and
 - f) attempting to appoint counsel to represent the Commission in the presidential election petitions.
203. The alleged conduct may be considered as an indication of the inability of the cited Commissioners to comprehend or exercise their constitutional and statutory mandate and functions. If proven, the allegations shall necessitate the removal from office of the four (4) Commissioners.
204. In the absence of any substantive response, the Committee therefore finds that the Petition as presented *prima facie* discloses the ground of incompetence against the four (4) Commissioners, namely, Juliana Cherera, Irene Masit, Francis Wanderi and Justus Nyangaya.

5.3 *Petition by Geoffrey Langat*

5.3.1 *On the ground of serious violation of the Constitution or other laws*

205. In the Petition, Geoffrey Langat states that the four (4) Commissioners, namely, Irene Masit, Juliana Cherera, Francis Wanderi and Justus Nyangaya—
- a) maintained a cosy and flourishing relationship with the Azimio La Umoja-One Kenya Coalition Party and/or its agents contrary section 26 and 30 of Independent Electoral and Boundaries Commission Act, 2011;
 - b) individually and collectively acted as an agent to the Azimio La Umoja-One Kenya Coalition Party and its associates within the Commission contrary to section 30 of Independent Electoral and Boundaries Commission Act, 2011;
 - c) violated the principles of Chapter Six of the constitution;
 - d) defiled the principles of neutrality contrary to Article 81(e)(v) of the constitution by openly working with one party in the 2022 election and thus being openly biased;

- e) worked in cohort with others to form government contrary to the provisions of Article 3(2) of the Constitution; and
- f) were insubordinate to the Commission contrary to section 30 of Independent Electoral and Boundaries Commission Act, 2011.

206. The alleged violations relate to several provisions of the Constitution, including Chapter Six of the Constitution on principles of leadership and integrity; and written law. They cumulatively therefore qualify to be categorized as “serious”. If proven, the allegations shall necessitate the removal from office of the four Commissioners.
207. In the absence of any substantive response, the Committee therefore finds that the Petition as presented *prima facie* discloses the ground of serious violation of the Constitution and other laws against the four (4) Commissioners, namely, Irene Masit, Juliana Cherera, Francis Wanderi and Justus Nyangaya.

5.3.2 On the ground of gross misconduct

208. In the Petition, Mr. Langat further states that the four (4) Commissioners, namely, Irene Masit, Juliana Cherera, Francis Wanderi and Justus Nyangaya—
- a) entered appearance and responded to the Presidential election petition in support of the petitioners;
 - b) violated their oath office;
 - c) filed replying affidavits in support of the petition and argued fully against the Chairperson and the Commission;
 - d) demonstrated manifest partiality and attempted to subvert the will of the people; and
 - e) colluded with the Azimio La Umoja-One Kenya Coalition Party, Party leaders and or its agents contrary to the code of conduct of the members of the Commission.
209. Mr. Langat additionally states that Commissioner Justus Nyangaya, in his capacity as chair of ICT committee accessed and supplied RTS logs in support of the petition contrary to his oath of office and the law.
210. The alleged conduct of the Commissioners collectively, and of Commissioner Nyangaya, individually, may be considered to be atrocious, deplorable, dreadful, grave, heinous, outrageous, odious or shocking when viewed against the conduct expected of a State Officer and a member of a Commission by the Constitution and statute. If proven, the allegations shall necessitate the removal from office of the four (4) Commissioners.

211. In the absence of any substantive response, the Committee therefore finds that the Petition as presented *prima facie* discloses the ground of gross misconduct against the four (4) Commissioners, namely, Irene Masit, Juliana Cherera, Francis Wanderi and Justus Nyangaya.

5.3.3 *On the ground of incompetence*

212. In the Petition, Mr. Langat additionally states that the four (4) Commissioners, namely, Irene Masit, Juliana Cherera, Francis Wanderi and Justus Nyangaya appointed a law firm to act for the Commission against known procurement laws and regulations.

213. The alleged conduct may be considered as an indication of the inability of the cited Commissioners to comprehend or exercise their constitutional and statutory mandate and functions. If proven, the allegation shall necessitate the removal from office of the four (4) Commissioners.

214. In the absence of any substantive response, the Committee therefore finds that the Petition as presented *prima facie* discloses the ground of incompetence against the four (4) Commissioners, namely, Irene Masit, Juliana Cherera, Francis Wanderi and Justus Nyangaya.

5.4 *Petition by Owuor Steve Gerry*

5.4.1 *On the ground of serious violation of the Constitution or other laws*

215. In the Petition, Mr. Owuor Steve Gerry states that the four (4) Commissioners, namely, Juliana Cherera, Francis Mathenge, Irene Masit and Justus Abonyo—

- a) staged a dramatic revolt at the eleventh and a half hour on the presidential election results of an election they participated in, supervised and oversaw on reasons advanced by them in press statements in total violation of the Constitutional rule of law and good governance principles enunciated under Article 10(2);
- b) staged a dramatic revolt to the election results that they had themselves generated through the rigorous verification, collation, tallying and tabulation in violation of the provisions of Article 3(2) of the Constitution; and
- c) filed pleadings and submissions at the hearing of the Presidential Election Petitions before the Supreme Court for the nullification of the results of an election that they actively participated in managing, supervising and conducting which amounted to concerted external efforts, partisan in nature, to ensure that no declaration of results could be made contrary to Article 81(e)(ii), (iii), (iv) & (v) of the Constitution.

216. Mr. Gerry also states in the Petition that the appointment of Commissioner Irene Masit violated the provisions of Article 88(2) of the Constitution as the Commissioner had vied for election in 2017, being within five years preceding her appointment. This position was confirmed by the Court in

G'Oganyo v Independent Electoral Commission Selection Panel & 2 others; Independent Electoral and Boundaries Commission & 6 others (Interested Parties) (Constitutional Petition E345 of 2022) [2022] KEHC 10184 (KLR).

217. The alleged violations relate to several provisions of the Constitution, including Article 10 of the Constitution on national values and principles of good governance; and written law. They cumulatively therefore qualify to be categorized as “serious”. If proven, the allegations shall necessitate the removal from office of the four Commissioners.
218. In the absence of any substantive response, the Committee therefore finds that the Petition as presented *prima facie* discloses the ground of serious violation of the Constitution and other laws against the four (4) Commissioners, namely, Juliana Cherera, Francis Mathenge, Irene Masit and Justus Abonyo.

5.4.2 On the ground of gross misconduct

219. In the Petition, Mr. Gerry further states that the four Commissioners, namely, Juliana Cherera, Francis Mathenge, Irene Masit and Justus Abonyo—
- a) staged a dramatic revolt at the eleventh and a half hour on the presidential election results of an election they participated in, supervised and oversaw on reasons advanced by them in a press statement; and
 - b) filed pleadings and submissions at the hearing of the Presidential Election Petitions before the Supreme Court for the nullification of the results of an election that they actively participated in, supervised and conducted.
220. The alleged conduct may be considered to be atrocious, deplorable, dreadful, grave, heinous, outrageous, odious or shocking when viewed against the conduct expected of a State Officer and a member of a Commission by the Constitution and statute. If proven, the allegations shall necessitate the removal from office of the four (4) Commissioners.
221. In the absence of any substantive response, the Committee therefore finds that the Petition as presented *prima facie* discloses the ground of gross misconduct against the four (4) Commissioners, namely, Juliana Cherera, Francis Mathenge, Irene Masit and Justus Abonyo.

5.4.3 On the ground of incompetence

222. In the Petition, Mr. Gerry additionally states that the four (4) Commissioners, namely, Juliana Cherera, Francis Mathenge, Irene Masit and Justus Abonyo issued a statement to the effect that the results that were announced were opaque due the Chairperson’s failure to include rejected votes in

the computation of the constitutional threshold for election as President despite the Supreme Courts pronouncement that a rejected vote/ballot is not a valid vote/ballot.

223. The alleged statement may be considered as an indication of the inability of the cited Commissioners to comprehend or exercise their constitutional and statutory mandate and functions. If proven, the allegation shall necessitate the removal from office of the four (4) Commissioners.
224. In the absence of any substantive response, the Committee therefore finds that the Petition as presented *prima facie* discloses the ground of incompetence against the four (4) Commissioners, namely, Juliana Cherera, Francis Mathenge, Irene Masit and Justus Abonyo.

5.5 SUMMARY OF FINDINGS

5.5.1 *Petition by the Republican Liberty Party*

225. In the absence of any substantive response, the Committee finds that the Petition as presented *prima facie* discloses the ground of serious violation of the Constitution and other laws against the four (4) Commissioners, namely, Juliana Cherera, Irene Masit, Francis Wanderi and Justus Nyangaya.

5.5.2 *Petition by Rev. Dennis Ndwiga Nthumbi*

226. In the absence of any substantive response, the Committee finds that the Petition as presented *prima facie* discloses —
- a) the ground of serious violation of the Constitution and other laws against the four (4) Commissioners, namely, Juliana Cherera, Irene Masit, Francis Wanderi and Justus Nyangaya;
 - b) the ground of gross misconduct against the four (4) Commissioners, namely, Juliana Cherera, Irene Masit, Francis Wanderi and Justus Nyangaya; and
 - c) the ground of incompetence against the four (4) Commissioners, namely, Juliana Cherera, Irene Masit, Francis Wanderi and Justus Nyangaya.

5.5.3 *Petition by Geoffrey Langat*

227. In the absence of any substantive response, the Committee therefore finds that the Petition as presented *prima facie* discloses—
- a) the ground of serious violation of the Constitution and other laws against the four (4) Commissioners, namely, Irene Masit, Juliana Cherera, Francis Wanderi and Justus Nyangaya.
 - b) the ground of gross misconduct against the four (4) Commissioners, namely, Irene Masit, Juliana Cherera, Francis Wanderi and Justus Nyangaya.

- c) the ground of incompetence against the four (4) Commissioners, namely, Irene Masit, Juliana Cherera, Francis Wanderi and Justus Nyangaya.

5.5.4 *Petition by Owuor Steve Gerry*

228. In the absence of any substantive response, the Committee therefore finds that the Petition as presented *prima facie* discloses—
- a) the ground of serious violation of the Constitution and other laws against the four (4) Commissioners, namely, Juliana Cherera, Francis Mathenge, Irene Masit and Justus Abonyo;
 - b) the ground of gross misconduct against the four (4) Commissioners, namely, Juliana Cherera, Francis Mathenge, Irene Masit and Justus Abonyo; and
 - c) the ground of incompetence against the four (4) Commissioners, namely, Juliana Cherera, Francis Mathenge, Irene Masit and Justus Abonyo.
229. On account of the Court decision in *G'Oganyo v Independent Electoral Commission Selection Panel & 2 others; Independent Electoral and Boundaries Commission & 6 others (Interested Parties)* (Constitutional Petition E345 of 2022) [2022] KEHC 10184 (KLR), the Petition discloses a ground for the removal from office of Commissioner Irene Masit for serious violation of Article 88(2) of the Constitution.



CHAPTER SIX

6 RECOMMENDATIONS

Having considered the provisions of Article 3, 10, 73, 75, 81, 88, 138, 168, 232, 249 and 251 of the Constitution; and, having considered the provisions of the Public Officer Ethics Act, 2003; the Independent Electoral and Boundaries Commission Act, 2011; the Leadership and Integrity Act, 2012; and Standing Order 230, the Committee, by a majority of its Members —

A. REPORTS to the House—

- (1) **THAT**, the Petition by the Republican Liberty Party discloses serious violations of the Constitution or other laws as a ground for removal of —
 - a) Ms. Juliana Whonge Cherera as a Commissioner of the Independent Electoral and Boundaries Commission;
 - b) Ms. Irene Cherop Masit as a Commissioner of the Independent Electoral and Boundaries Commission;
 - c) Mr. Francis Mathenge Wanderi as a Commissioner of the Independent Electoral and Boundaries Commission;
 - d) Mr. Justus Abonyo Nyang'aya as a Commissioner of the Independent Electoral and Boundaries Commission.
- (2) **THAT** the Petition by Rev. Dennis Ndwiga Nthumbi discloses serious violations of the Constitution or other laws, gross misconduct, and incompetence as grounds for removal of —
 - a) Ms. Juliana Whonge Cherera as a Commissioner of the Independent Electoral and Boundaries Commission;
 - b) Ms. Irene Cherop Masit as a Commissioner of the Independent Electoral and Boundaries Commission;
 - c) Mr. Francis Mathenge Wanderi as a Commissioner of the Independent Electoral and Boundaries Commission;
 - d) Mr. Justus Abonyo Nyang'aya as a Commissioner of the Independent Electoral and Boundaries Commission.

(3) **THAT** the Petition by Geoffrey Langat discloses serious violations of the Constitution or other laws, gross misconduct, and incompetence as grounds for removal of—

- a) Ms. Juliana Whonge Cherera as a Commissioner of the Independent Electoral and Boundaries Commission;
- b) Ms. Irene Cherop Masit as a Commissioner of the Independent Electoral and Boundaries Commission;
- c) Mr. Francis Mathenge Wanderi as a Commissioner of the Independent Electoral and Boundaries Commission;
- d) Mr. Justus Abonyo Nyang'aya as a Commissioner of the Independent Electoral and Boundaries Commission.

(4) That the Petition by Owuor Steve Gerry discloses serious violations of the Constitution or other laws, gross misconduct, and incompetence as grounds for removal of—

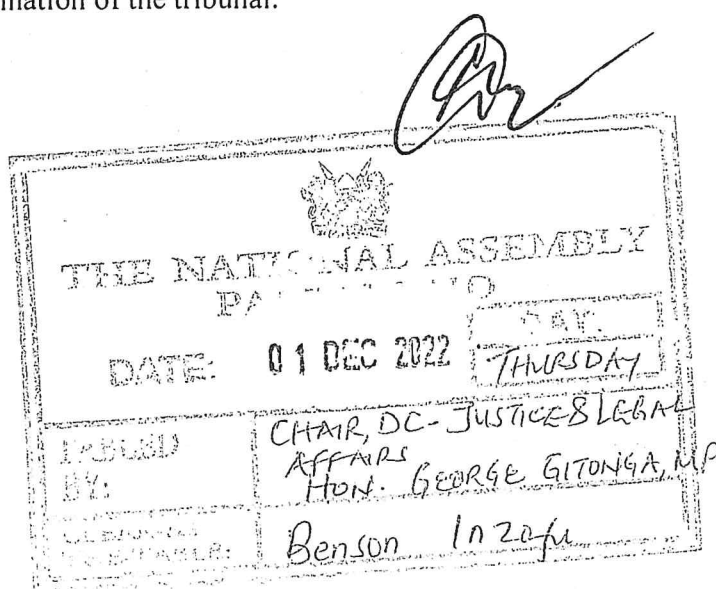
- a) Ms. Juliana Whonge Cherera as a Commissioner of the Independent Electoral and Boundaries Commission;
- b) Ms. Irene Cherop Masit as a Commissioner of the Independent Electoral and Boundaries Commission;
- c) Mr. Francis Mathenge Wanderi as a Commissioner of the Independent Electoral and Boundaries Commission; and
- d) Mr. Justus Abonyo Nyang'aya as a Commissioner of the Independent Electoral and Boundaries Commission.

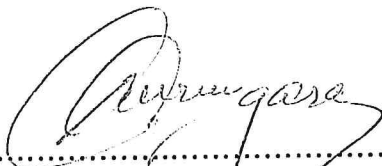
B. RECOMMENDS to the House as follows—

- (1) **THAT** the House finds that the Petitions by the Republican Liberty Party, Rev. Dennis Ndwiga Nthumbi, Geoffrey Langat and Owuor Steve Gerry disclose the grounds particularized under paragraph A above for the removal from office of Ms. Juliana Whonge Cherera, Ms. Irene Cherop Masit, Mr. Francis Mathenge Wanderi and Mr. Justus Abonyo Nyang'aya as Commissioners of the Independent Electoral and Boundaries Commission;



- (2) **THAT** the House resolves that the Petitions herein together with the materials in support thereof be sent to His Excellency the President pursuant to Article 251 (3) of the Constitution;
- (3) **THAT** the House resolves that His Excellency the President appoints a tribunal to deal with the matter in accordance with Article 251 (5) of the Constitution;
- (4) **THAT** considering the matters to which the Petitions herein relate, the House resolves that His Excellency the President suspends the Commissioners herein pending the determination of the tribunal.



SIGNED.......... DATE.....1.12.022.....

HON. MURUGARA GEORGE GITONGA, MP

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS



THE NATIONAL ASSEMBLY

13TH PARLIAMENT – FIRST SESSION (2022)

JUSTICE AND LEGAL AFFAIRS COMMITTEE

ADOPTION SCHEDULE

Adoption of the Report on Petitions for the removal from office of Juliana Cherera, Irene Masit, Justus Nyang'aya and Francis Wanderi as Commissioners of the Independent Electoral and Boundaries Commission (IEBC)

No.	HON MEMBER	SIGNATURE
1.	HON. MURUGARA GEORGE GITONGA, MP – <i>Chairperson</i>	
2.	HON. MUTUSE ECKOMAS MWENGI, OGW, MP – <i>Vice Chairperson</i>	
3.	HON. MAALIM FARAH, MP	
4.	HON. FRANCIS KAJWANG' TOM JOSEPH, MP	
5.	HON. JUNET MOHAMED, CBS, MP	
6.	HON. ONYIEGO SILVANUS OSORO, MP	
7.	HON. (DR.) OTIENDE AMOLLO, SC, MP	
8.	HON. MUCHIRA MICHAEL MWANGI, MP	
9.	HON. MAKALI JOHN OKWISIA, MP	
10.	HON. MURIU WAKILI EDWARD, MP	
11.	HON. MAINA JANE NJERI, MP	
12.	HON. GICHOHI KAGUCHIA JOHN PHILIP, MP	
13.	HON. MOGAKA STEPHEN M, MP	
14.	HON. MOHAMED ADEN DAUDI, MP	
15.	HON. SIYAD AMINA UDGOON, MP	



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT - FIRST SESSION - 2022

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

MINUTES OF THE 17TH SITTING OF THE JUSTICE AND LEGAL AFFAIRS
COMMITTEE HELD ON WEDNESDAY 30TH NOVEMBER, 2022 AT 3.00 P.M. IN TINGA
TINGA ROOM 1, HOTEL FAIRMOUNT THE NORFOLK

PRESENT

Members

- | | | |
|--|---|-------------------|
| 1. Hon. Murugara George Gitonga, M.P. | - | Chairperson |
| 2. Hon. Mutuse Eckomas Mwengi, OGW, M.P. | - | Vice- Chairperson |
| 3. Hon. Maalim Farah, M.P. | | |
| 4. Hon. Onyiego Silvanus Osoro, M.P. | | |
| 5. Hon. Muchira Michael Mwangi, M.P. | | |
| 6. Hon. Gichohi Kaguchia John Philip, M.P. | | |
| 7. Hon. Muriu Wakili Edward, M.P. | | |
| 8. Hon. Mogaka Stephen M, M.P. | | |
| 9. Hon. Makali John Okwisia, M.P. | | |
| 10. Hon. Maina Jane Njeri, M.P. | | |

ABSENT WITH APOLOGY

1. Hon. (Dr.) Otiende Amollo, SC, M.P

ABSENT

1. Hon. Francis Kajwang' Tom Joseph, M.P.
2. Hon. Junet Mohamed, CBS, M.P.
3. Hon. Mohamed Aden Daudi, M.P.
4. Hon. Siyad Amina Udgoon, M.P.

The Committee considered and unanimously adopted its report on the appointment of Ms. Mary Muthoni Muriuki for the position of Principal Secretary for the State Department of Correctional Services with the recommendation that the House approves the appointment of the nominee.

The adoption of the Report was proposed by Hon. Farah Maalim, MP and seconded by Hon. Silvanus Osoro, MP

b. Report on the Petitions for the Removal from office of Ms. Juliana Cherera, Mr. Francis Wanderi, Ms. Irene Masit and Mr. Justus Nyang'aya as Commissioners from Independent Electoral and Boundaries Commissions (IEBC).

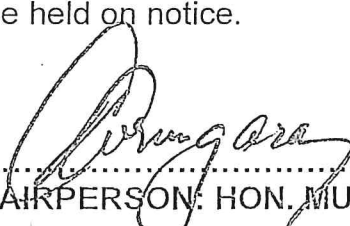
The Committee considered and by majority of the Members present adopted its report on the Petitions for the Removal from office of Ms. Juliana Cherera, Mr. Francis Wanderi, Ms. Irene Masit and Mr. Justus Nyang'aya as Commissioners from Independent Electoral and Boundaries Commissions (IEBC)

The Committee recommended to the National Assembly that; H.E. President William Ruto appoints a tribunal in accordance with Article 251 (4) (b) as read together with Article 251 (g) of the Constitution to investigate the matter expeditiously, report on the findings and make a binding recommendation to H.E. the President.

The adoption of the Report was proposed by Hon. David Makali, MP and seconded by Hon. Edward Muriu, MP

MIN.NO/DC/JLAC/2022/078: ADJOURNMENT

There being no other business, the meeting was adjourned at 5.30pm and the next meeting shall be held on notice.

SIGNED:  DATE: 30.11.022
(CHAIRPERSON: HON. MURUGARA GEORGE GITONGA, MP)





REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT - FIRST SESSION - 2022

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

MINUTES OF THE 15TH SITTING OF THE JUSTICE AND LEGAL AFFAIRS
COMMITTEE HELD ON TUESDAY 29TH NOVEMBER, 2022 AT 2.30 P.M. IN THE MINI
CHAMBER, COUNTY HALL.

PRESENT

Members

1. Hon. Murugara George Gitonga, M.P. - Chairperson
2. Hon. Mutuse Eckomas Mwengi, OGW, M.P. - Vice-Chairperson
3. Hon. Onyiego Silvanus Osoro, M.P.
4. Hon. Muchira Michael Mwangi, M.P.
5. Hon. Gichohi Kaguchia John Philip, M.P.
6. Hon. Muriu Wakili Edward, M.P.
7. Hon. Makali John Okwisia, M.P.
8. Hon. Maina Jane Njeri, M.P.

ABSENT WITH APOLOGY

1. Hon. (Dr.) Otiende Amollo, SC, M.P

ABSENT

1. Hon. Maalim Farah, M.P.
2. Hon. Francis Kajwang' Tom Joseph, M.P.
3. Hon. Junet Mohamed, CBS, M.P.
4. Hon. Mohamed Aden Daudi, M.P.
5. Hon. Mogaka Stephen M, M.P.
6. Hon. Siyad Amina Udgoon, M.P.

ADVOCATES AND WITNESSES

- | | | |
|----------------------------|---|---|
| 1. Rev. Dennis Nthumbi | - | Petitioner |
| 2. Rev. Ben Carson Mosiemo | - | Personal Assistant to Rev. Dennis Nthumbi |
| 3. Hon. Kennedy M. Okongo | - | Advocate for the Republican Liberty Party |
| 4. Ms. Bunzi Jackline | - | Advocate for the Republican Liberty Party |
| 5. Mr. Zachariah Matayo | - | Republican Liberty Party |

- | | | |
|--------------------------|---|---|
| 6. Ms. Kerubo L. Onchiri | - | Republican Liberty Party |
| 7. Mr. Dickson Nyaribo | - | Republican Liberty Party |
| 8. Mr. Geoffrey Langat | - | Petitioner |
| 9. Mr. Nelson Mutai | - | Advocate for Petitioner, Geoffrey Langat |
| 10. Mr. Jotham Arwa | - | Advocate for Respondent, Justus Nyang'aya |
| 11. Mr. Davis Osiemo | - | Advocate for Respondent, Justus Nyang'aya |

JLAC COMMITTEE SECRETARIAT

- | | | |
|--------------------------------|---|-------------------------------|
| 1. Mr. Douglas Katho | - | Clerk Assistant |
| 2. Mr. Ronald Walala | - | Senior Legal Counsel |
| 3. Mr. Abdirahim Omar | - | Fiscal Analyst II |
| 4. Mr. Clive Onyancha | - | Clerk Assistant III |
| 5. Ms. Jael Ayiego Kilaka | - | Clerk Assistant III |
| 6. Mr. Alvin Ochieng' | - | Research Officer III |
| 7. Ms. Vivienne Ogega | - | Research Officer III |
| 8. Mr. Joshua Kiilu | - | Legal Counsel |
| 9. Ms. Mitchell Omuom | - | Legal Counsel |
| 10. Ms. Fridah Ngari | - | Media Relations Officer |
| 11. Mr. Daniel Psirmoi | - | Media Relations Officer |
| 12. Mr. Peter Mutethia | - | Audio Officer |
| 13. Ms. Julie Faithy | - | Public Communications Officer |
| 14. Mr. Stanley Lagat | - | Serjeant-At-Arms |
| 15. Mr. Antony Mugendi Kariuki | - | Serjeant-At-Arms |

AGENDA

1. Prayers
2. Preliminaries
3. Matters arising
4. **Public hearing of the Response by Mr. Justus Nyang'aya (Commissioner IEBC)**
5. **Public hearing of the Response by Ms. Juliana Cherera (vice-chairperson IEBC)**
6. Any Other Business
7. Adjournment/ Date of the Next Meeting

MIN. NO/DC/JLAC/2022/068: PRELIMINARIES

The meeting was called to order at thirty five minutes past two o'clock by the Chairperson followed by a word of prayer from the Chairperson and thereafter Members of the Committee introduced themselves.

MIN.NO/DC/JLAC/2022/069: ADOPTION OF THE AGENDA

The agenda was adopted having been proposed by Hon. Makali John Okwisia, M.P. and seconded by Hon. Muriu Wakili Edward, M.P.

MIN.NO/DC/JLAC/2022/070: CONFIRMATION OF MINUTES



The agenda was deferred.

MIN. NO/DC/JLAC/2022/071: PUBLIC HEARING OF THE RESPONSE BY Mr. JUSTUS NYANG'AYA (COMMISSIONER IEBC)

Mr. Jotham Arwa Advocate for the Respondent, Commissioner Justus Nyang'aya, appeared before the Committee and made submissions on the Petitions filed against the Respondent.

The Advocate made reference to the letters dated 18th November 2022 and 21st November 2022 requesting for information pursuant to Article 50(1) of the Constitution of Kenya that is required for his client's defense. Counsel stated that he needed to understand the charges against his client before responding.

The Committee Members and the Petitioners thereafter posed questions to the Petitioner seeking clarifications on various issues arising from his Presentation.

The Petitioners sought the following from the Committee:

- a) To expedite the process and not to grant the Respondent more time as it is a delaying tactic to slow down the proceedings and delay the petitioners' pursuit of justice.
- b) To make recommendations on the Petitions and consider them on merit.

The Committee resolved that the Respondent was at liberty to file a response and or written submissions within the day but not later than 6:00 PM.

MIN. NO/DC/JLAC/2022/072: PUBLIC HEARING OF THE RESPONSE BY MS. JULIANA CHERERA (VICE-CHAIRPERSON IEBC)

The Committee received a letter dated 29th November 2022, from the Advocates for the Respondent, Commissioner Juliana Cherera. The letter stated that the time that was given to Counsel for the Respondent was in his view not sufficient for him to take instructions and deal with the matter sufficiently. The Advocate therefore applied to the committee to be granted seven days to enable him take instructions and file documents.

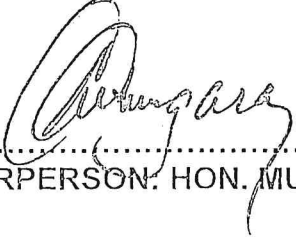
The Petitioners were accorded an opportunity to submit on the prayer sought by the Respondent. Counsel on behalf of Republican Liberty Party submitted that a *prima facie* case be entered against all the respondents. Mr. Mutai Advocate for Petitioner Geoffrey Langat submitted that the letter was merely a delaying tactic and the Committee should not entertain the same. Petitioner Rev. Nthumbi submitted that it was clear that the Four Respondents were simply forum shopping and had no intention to appear before the Committee.



The Committee, whilst taking into account the stringent timelines imposed by the Standing orders as well as the Speaker's directions, pointed out that it would not be possible to grant the Respondent the Seven days sought. The Committee however resolved that the Respondent, Commissioner Juliana Cherera was at liberty to file a written response preferably under oath and written submissions by close of business of the day.

MIN. NO/DC/JLAC/2022/073: ADJOURNMENT

There being no other business, the meeting was adjourned at thirty minutes past four o'clock. The next meeting will be held on notice.

SIGNED:  DATE: 30.11.22
(CHAIRPERSON: HON. MURUGARA GEORGE GITONGA, MP)



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT - FIRST SESSION - 2022

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

MINUTES OF THE 14TH SITTING OF THE JUSTICE AND LEGAL AFFAIRS
COMMITTEE HELD ON TUESDAY 29TH NOVEMBER, 2022 AT 8.00 A.M. IN THE MINI
CHAMBER, COUNTY HALL.

PRESENT

Members

1. Hon. Murugara George Gitonga, M.P. - Chairperson
2. Hon. Mutuse Eckomas Mwengi, OGW, M.P. - Vice- Chairperson
3. Hon. Onyiego Silvanus Osoro, M.P.
4. Hon. Muchira Michael Mwangi, M.P.
5. Hon. Gichohi Kaguchia John Philip, M.P.
6. Hon. Muriu Wakili Edward, M.P.
7. Hon. Makali John Okwisia, M.P.
8. Hon. Maina Jane Njeri, M.P.

ABSENT WITH APOLOGY

1. Hon. (Dr.) Otiende Amollo, SC, M.P

ABSENT

1. Hon. Maalim Farah, M.P.
2. Hon. Francis Kajwang' Tom Joseph, M.P.
3. Hon. Junet Mohamed, CBS, M.P.
4. Hon. Mohamed Aden Daudi, M.P.
5. Hon. Mogaka Stephen M, M.P.
6. Hon. Siyad Amina Udgoon, M.P.

ADVOCATES AND WITNESSES

- | | | |
|----------------------------|---|---|
| 1. Rev. Dennis Nthumbi | - | Petitioner |
| 2. Rev. Ben Carson Mosiemo | - | Personal Assistant to Rev. Dennis Nthumbi |
| 3. Hon. Kennedy M. Okongo | - | Advocate for the Republican Liberty Party |
| 4. Ms. Bunzi Jackline | - | Advocate for the Republican Liberty Party |
| 5. Mr. Zachariah Matayo | - | Republican Liberty Party |

- | | | |
|--------------------------|---|---|
| 6. Ms. Kerubo L. Onchiri | - | Republican Liberty Party |
| 7. Mr. Dickson Nyaribo | - | Republican Liberty Party |
| 8. Mr. Geoffrey Langat | - | Petitioner |
| 9. Mr. Nelson Mutai | - | Advocate for Petitioner Geoffrey Langat |

JLAC COMMITTEE SECRETARIAT

- | | | |
|--------------------------------|---|-------------------------------|
| 1. Mr. Douglas Katho | - | Clerk Assistant |
| 2. Mr. Ronald Walala | - | Senior Legal Counsel |
| 3. Mr. Abdirahim Omar | - | Fiscal Analyst II |
| 4. Mr. Clive Onyancha | - | Clerk Assistant III |
| 5. Ms. Jael Ayiego Kilaka | - | Clerk Assistant III |
| 6. Mr. Alvin Ochieng' | - | Research Officer III |
| 7. Ms. Vivienne Ogega | - | Research Officer III |
| 8. Mr. Shadrack Omondi | - | Legal Counsel |
| 9. Mr. Joshua Kiilu | - | Legal Counsel |
| 10. Ms. Mitchell Omuom | - | Legal Counsel |
| 11. Mr. Fridah Ngari | - | Media Relations Officer |
| 12. Mr. Peter Mutethia | - | Audio Officer |
| 13. Ms. Julie Faith | - | Public Communications Officer |
| 14. Mr. Stanley Lagat | - | Serjeant-At-Arms |
| 15. Mr. Antony Mugendi Kariuki | - | Serjeant-At-Arms |

AGENDA

1. Prayers
2. Preliminaries
3. Matters arising
4. **Public hearing of the Response by Ms. Juliana Cherera (Vice-Chairperson IEBC)**
5. **Public hearing of the Response by Mr. Francis Wanderi (Commissioner IEBC)**
6. Any Other Business
7. Adjournment/ Date of the Next Meeting

MIN. NO/DC/JLAC/2022/062: PRELIMINARIES

The meeting was called to order at fifty minutes past eight o'clock by the Chairperson followed by a word of prayer from the Chairperson and thereafter Members of the Committee introduced themselves.

MIN.NO/DC/JLAC/2022/063: ADOPTION OF THE AGENDA

The agenda was adopted having been proposed by Hon. Maina Jane Njeri, M.P. and seconded by Hon. Gichohi Kaguchia John Philip, M.P.

MIN.NO/DC/JLAC/2022/064: CONFIRMATION OF MINUTES

The minutes of the 11th sitting held on Friday 25th November 2022 were confirmed as a true recording of the deliberations of the sitting, having been proposed by Hon. Muriu Wakili Edward, M.P. and seconded by Hon. Maina Jane Njeri, M.P.



The minutes of the 12th sitting held on Thursday 28th November 2022 were confirmed as a true recording of the deliberations of the sitting, having been proposed by Hon. Muchira Michael Mwangi, M.P. and seconded by Hon. Makali John Okwisia, M.P.

MIN. NO/DC/JLAC/2022/065: PUBLIC HEARING OF THE RESPONSE BY MS. JULIANA CHERERA (VICE-CHAIRPERSON IEBC)

The Committee received a letter dated 29th November 2022, from the Advocates for the Respondent, Commissioner Juliana Cherera. The letter stated that the Respondent having been denied a ten (10) day adjournment of the proceedings to facilitate fair hearing including adequate time and facilities to prepare a response, the Commissioner Juliana Cherera would not participate further in the Proceedings of the Committee.

The Committee resolved that The Respondent and/or her advocate be granted more time to appear before the committee on Tuesday 29th November, 2022 at 4:00p.m.

MIN. NO/DC/JLAC/2022/066: PUBLIC HEARING OF THE RESPONSE BY MR. FRANCIS WANDERI (COMMISSIONER IEBC)

The Advocate appearing for the Respondent, Commissioner Francis Wanderi, appeared before the Committee and made submissions on the Petitions filed against the Respondent.

The Advocate made reference to the letter dated 22nd November 2022, requesting for minutes of meetings between commissioners, National Security Advisory council and footage from Bomas which they had not yet gotten.

In conclusion the Advocate stated that the Respondent will not submit himself to the proceedings as he had not received the documents requested via the said letter.

The Committee Members thereafter posed questions to the Petitioner seeking clarifications on various issues arising from his Presentation.

The Petitioners sought the following from the Committee:

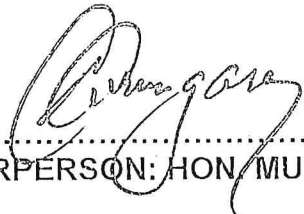
- a) The Committee to expedite the process and not to grant the Respondent more time as it is a delay tactic meant to slow down the proceedings.
- b) The Committee to make recommendations on the Petitions and consider them competent and with merit.
- c) The Committee to consider the Petitions against the Respondent as unchallenged.

The Committee resolved that the Respondent is at liberty to file a response and or written submissions within the day but not later than 6:00 PM.



MIN. NO/DC/JLAC/2022/067: ADJOURNMENT

There being no other business, the meeting was adjourned at eleven o'clock. The next meeting will be held on Tuesday, 29/11/2022 at 2.30 p.m.

SIGNED:  DATE: 30.11.22
(CHAIRPERSON: HON. MURUGARA GEORGE GITONGA, MP)





REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT - FIRST SESSION - 2022

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

MINUTES OF THE 13TH SITTING OF THE JUSTICE AND LEGAL AFFAIRS
COMMITTEE HELD ON MONDAY 28TH NOVEMBER, 2022 AT 2.30 P.M. IN THE MINI
CHAMBER, COUNTY HALL.

PRESENT

Members

1. Hon. Murugara George Gitonga, M.P. - Chairperson
2. Hon. Mutuse Eckomas Mwengi, OGW, M.P. - Vice-Chairperson
3. Hon. Onyiego Silvanus Osoro, M.P.
4. Hon. Muchira Michael Mwangi, M.P.
5. Hon. Gichohi Kaguchia John Philip, M.P.
6. Hon. Muriu Wakili Edward, M.P.
7. Hon. Makali John Okwisia, M.P.
8. Hon. Maina Jane Njeri, M.P.

ABSENT WITH APOLOGY

1. Hon. (Dr.) Otiende Amollo, SC, M.P.

ABSENT

1. Hon. Maalim Farah, M.P.
2. Hon. Francis Kajwang' Tom Joseph, M.P.
3. Hon. Junet Mohamed, CBS, M.P.
4. Hon. Mohamed Aden Daudi, M.P.
5. Hon. Mogaka Stephen M, M.P.
6. Hon. Siyad Amina Udgoon, M.P.

IN ATTENDANCE

PETITIONERS, WITNESSES AND ADVOCATES FOR THE RESPONDENTS

1. Rev. Dennis Nthumbi - Petitioner
2. Rev. Ben Carson Mosiemo - Personal Assistant to Rev. Dennis Nthumbi
3. Hon. Kennedy M. Okongo - Advocate for the Republican Liberty Party

- | | | |
|--------------------------|---|---|
| 4. Ms. Bunzi Jackline | - | Advocate for the Republican Liberty Party |
| 5. Mr. Zachariah Matayo | - | Republican Liberty Party |
| 6. Ms. Kerubo L. Onchiri | - | Republican Liberty Party |
| 7. Mr. Dickson Nyaribo | - | Republican Liberty Party |
| 8. Mr. Apollo Mboya | - | Advocate for Respondent, Juliana Cherera |
| 9. Mr. Geoffrey Langat | - | Petitioner |
| 10. Mr. Nelson Mutai | - | Advocate for Petitioner Geoffrey Langat |

JLAC COMMITTEE SECRETARIAT

- | | | |
|--------------------------------|---|-------------------------------|
| 1. Mr. Douglas Katho | - | Clerk Assistant |
| 2. Ms. Emma Essendi | - | Senior Legal Counsel |
| 3. Mr. Abdirahim Omar | - | Fiscal Analyst II |
| 4. Mr. Clive Onyancha | - | Clerk Assistant III |
| 5. Ms. Jael Ayiego Kilaka | - | Clerk Assistant III |
| 6. Mr. Alvin Ochieng' | - | Research Officer III |
| 7. Ms. Vivienne Ogega | - | Research Officer III |
| 8. Mr. Joshua Kiilu | - | Legal Counsel |
| 9. Ms. Mitchell Omuom | - | Legal Counsel |
| 10. Mr. Daniel Psirmoi | - | Media Relations Officer |
| 11. Mr. Peter Mutethia | - | Audio Officer |
| 12. Ms. Julie Faithy | - | Public Communications Officer |
| 13. Mr. Stanley Lagat | - | Serjeant-At-Arms |
| 14. Mr. Antony Mugendi Kariuki | - | Serjeant-At-Arms |

AGENDA

1. Prayers
2. Preliminaries
3. Matters arising
4. **Public hearing of the Response by Ms. Irene Masit (Commissioner IEBC)**
5. Any Other Business
6. Adjournment/ Date of the Next Meeting

MIN. NO/DC/JLAC/2022/057: PRELIMINARIES

The meeting was called to order at forty minutes past two o'clock by the Chairperson followed by a word of prayer from the Chairperson and thereafter Members of the Committee introduced themselves.

MIN.NO/DC/JLAC/2022/058: ADOPTION OF THE AGENDA

The agenda was adopted having been proposed by Hon. Maina Jane Njeri, M.P. and seconded by Hon. Muriu Wakili Edward, M.P.

MIN.NO/DC/JLAC/2022/059: CONFIRMATION OF MINUTES

The agenda was deferred.



MIN. NO/DC/JLAC/2022/060: PUBLIC HEARING OF THE RESPONSE BY MS. IRENE MASIT (COMMISSIONER IEBC)

The Committee received a letter dated 28th November 2022, from the Advocates for the Respondent, Commissioner Irene Masit. The letter reiterated the Advocates' oral submissions made on 24th November 2022 and stated that Commissioner Irene Masit would not participate further in the Proceedings of the Committee.

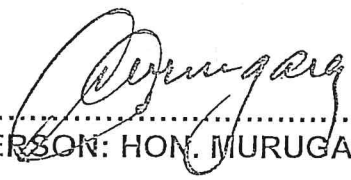
The Petitioners sought the following from the Committee:

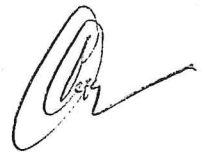
- a) To consider the Petition as unchallenged and
- b) The Commissioner, Ms. Irene Masit to face legal consequences for absconding the hearing.

The Committee resolved that the Respondent was at liberty to file a written response preferably under oath as well as written submissions which the committee would consider in its deliberations.

MIN. NO/DC/JLAC/2022/061: ADJOURNMENT

There being no other business, the meeting was adjourned at twenty minutes past three o'clock. The next meeting will be held on Tuesday, 29/11/2022 at 8.00 a.m.

SIGNED:  DATE: 30.11.22
(CHAIRPERSON: HON. MURUGARA GEORGE GITONGA, MP)





REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT - FIRST SESSION - 2022

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

MINUTES OF THE 10TH SITTING OF THE JUSTICE AND LEGAL AFFAIRS COMMITTEE HELD ON FRIDAY 25TH NOVEMBER, 2022 AT 10.00 A.M. IN THE MINI CHAMBERS, COUNTY HALL.

PRESENT

Members

1. Hon. Murugara George Gitonga, M.P. - Chairperson
2. Hon. Mutuse Eckomas Mwengi, M.P. - Vice- Chairperson
3. Hon. Onyiego Silvanus Osoro, M.P.
4. Hon. Muchira Michael Mwangi, M.P.
5. Hon. Gichohi Kaguchia John Philip, M.P.
6. Hon. Makali John Okwisia, M.P.
7. Hon. Muriu Wakili Edward, M.P.
8. Hon. Maina Jane Njeri, M.P.

ABSENT WITH APOLOGY

1. Hon. (Dr.) Otiende Amollo, SC, M.P.

ABSENT

1. Hon. Maalim Farah, M.P.
2. Hon. Francis Kajwang' Tom Joseph, M.P.
3. Hon. Junet Mohamed, M.P.
4. Hon. Mohamed Aden Daudi, M.P.
5. Hon. Mogaka Stephen M, M.P.
6. Hon. Siyad Amina Udgoon, M.P.

ADVOCATES AND WITNESSES

1. Geoffrey Langat - Petitioner, Fatah and Co. Advocates
2. Nelson Mutai - Kandie Mutai M. Advocates

SECRETARIAT

1. Mr. Douglas Katho - Clerk Assistant II
2. Mr. Ronald Walala - Senior Legal Counsel
3. Mr. Abdirahim Omar - Fiscal Analyst II
4. Mr. Clive Onyancha - Clerk Assistant III

5. Ms. Jael Ayiego Kilaka	-	Clerk Assistant III
6. Mr. Josephat Kuiyoni	-	Legal Counsel I
7. Mr. Alvin Ochieng'	-	Research Officer III
8. Ms. Vivienne Ogega	-	Research Officer III
9. Ms. Fridah Ngari	-	Media Relations Officer
10. Mr. Peter Mutethia	-	Audio Officer
11. Mr. John Ng'ang'a	-	Audio Officer
12. Mr. Eugene Luteshi	-	Audio Officer
13. Ms. Julie Faith Malala	-	Public Communications Officer
14. Mr. Stanley Lagat	-	Serjeant-At-Arms
15. Mr. Antony Mugendi Kariuki	-	Serjeant-At-Arms

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of Minutes
4. **Petition by the Geoffrey Langat (Hearing of the Petitioner)**
5. Matters arising
6. Any Other Business
7. Adjournment/ Date of the Next Meeting

MIN. NO/DC/JLAC/2022/052: PRELIMINARIES

The meeting was called to order at ten o'clock by the Chairperson followed by a word of prayer and thereafter Members of the Committee and the secretariat introduced themselves.

MIN.NO/DC/JLAC/2022/053: ADOPTION OF THE AGENDA

The agenda was adopted having been proposed by Hon. Onyiego Silvanus Osoro, M.P. and seconded by Hon. Gichohi Kaguchia John Philip, M.P.

MIN. NO/DC/JLAC/2022/054: CONFIRMATION OF THE MINUTES OF THE PREVIOUS SITTING

The minutes of the 7th sitting held on Tuesday 22nd November 2022 were confirmed as a true recording of the deliberations of the sitting, having been proposed by Hon. Muchira Michael Mwangi, M.P. and seconded by Hon. Maina Jane Njeri, M.P.

The minutes of the 8th sitting held on Thursday 24th November 2022 were confirmed as a true recording of the deliberations of the sitting, having been proposed by Hon. Makali John Okwisia, M.P. and seconded by Hon. Gichohi Kaguchia John Philip, M.P.

The minutes of the 9th sitting held on Thursday 24th November 2022 were confirmed as a true recording of the deliberations of the sitting, having been proposed by Hon. Maina Jane Njeri, M.P. and seconded by Hon. Gichohi Kaguchia John Philip, M.P.

MIN. NO/DC/JLAC/2022/055: PETITION BY MR GEOFFREY LANGAT (HEARING OF THE PETITIONER)

1. An oath was administered to the petitioner following which he was given an opportunity to introduce himself to the committee members present.

2. The petitioner was allowed one hour to prosecute his petition before the committee whereof he laid down various grounds upon which the four IEBC commissioners, Irene Masit, Juliana Cherera, Francis Wanderi and Justus Nyang'aya, should be investigated by the committee. The various grounds highlighted among others include;

- a) Gross misconduct;
- b) Gross incompetence;
- c) Insubordination of the Commission contrary the IEBC Act 2011;
- d) Gross violation of the Constitution of Kenya 2010 including chapter 6 and
- e) Appointing a law firm contrary to Procurement Laws and Regulations of the Commission.

3. The Petitioner, Mr. Geoffrey Langat, in conclusion made the following prayers;

- a) To find that the Independent Electoral and Boundaries Commission commissioners, Irene Masit, Juliana Cherera, Francis Wanderi and Justus Nyang'aya, have committed serious violations of the Constitution and the law, including contravention of Chapter Six of the Constitution of Kenya.
- b) To find that the Independent Electoral and Boundaries Commission commissioners, Irene Masit, Juliana Cherera, Francis Wanderi and Justus Nyang'aya are guilty of gross misconduct while performing their duties as members of the commission.
- c) To find that Independent Electoral and Boundaries Commission commissioners Irene Masit, Juliana Cherera, Francis Wanderi and Justus Nyang'aya are incompetent to hold the office of commissioners.

4. The Committee Members thereafter posed questions to the Petitioner seeking clarifications on various issues from his Presentation. The Petitioner made clarifications on various issues that the Committee had sought including misspelt names of two Commissioners, Juliana Cherera and Justus Nyang'aya. He urged the Committee to allow the amendments in the interest of substantive justice.

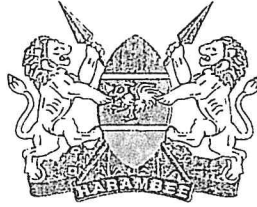
The Advocate appearing for the Petitioner, Mr. Nelson Mutai was also accorded an opportunity to submit on behalf of his client.

MIN. NO/DC/JLAC/2022/056: ADJOURNMENT

There being no other business, the meeting was adjourned at thirty minutes past eleven o'clock. The next meeting will be held on 25/11/2022 at two o'clock.

SIGNED: DATE: 25-11-2022
(CHAIRPERSON: HON. MURUGARA GEORGE GITONGA, MP)





REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT - FIRST SESSION - 2022

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

MINUTES OF THE 9TH SITTING OF THE JUSTICE AND LEGAL AFFAIRS COMMITTEE
HELD ON THURSDAY 24TH NOVEMBER, 2022 AT 3.00 P.M. IN THE MINI CHAMBER,
COUNTY HALL.

PRESENT

Members

- | | |
|--|---------------------|
| 1. Hon. Murugara George Gitonga, M.P. | - Chairperson |
| 2. Hon. Mutuse Eckomas Mwengi, M.P. | - Vice- Chairperson |
| 3. Hon. Onyiego Silvanus Osoro, M.P. | |
| 4. Hon. Gichohi Kaguchia John Philip, M.P. | |
| 5. Hon. Makali John Okwisia, M.P. | |
| 6. Hon. Maina Jane Njeri, M.P. | |

ABSENT WITH APOLOGY

1. Hon. (Dr.) Otiende Amollo, SC, M.P
2. Hon. Muchira Michael Mwangi, M.P.
3. Hon. Muriu Wakili Edward, M.P.

ABSENT

1. Hon. Maalim Farah, M.P.
2. Hon. Francis Kajwang' Tom Joseph, M.P.
3. Hon. Junet Mohamed, CBS, M.P.
4. Hon. Mohamed Aden Daudi, M.P.
5. Hon. Mogaka Stephen M, M.P
6. Hon. Siyad Amina Udgoon M.P.

ADVOCATES AND WITNESSES

- | | | |
|------------------------|---|------------|
| 1. Rev. Dennis Nthumbi | - | Petitioner |
|------------------------|---|------------|

SECRETARIAT

- | | | |
|----------------------|---|----------------------|
| 1. Mr. Douglas Katho | - | Clerk Assistant II |
| 2. Mr. Ronald Walala | - | Senior Legal Counsel |

3. Mr. Abdirahim Omar	-	Fiscal Analyst II
4. Mr. Clive Onyancha	-	Clerk Assistant III
5. Ms. Jael Ayiego Kilaka	-	Clerk Assistant III
6. Mr. Sisto Macharia	-	Clerk Assistant III
7. Mr. Josephat Kuiyoni	-	Legal Counsel I
8. Mr. Denis Abisai	-	Deputy Director-Legal Services
9. Mr. Ahmed Salim Abdalla	-	Clerk Assistant II
10. Mr. Alvin Ochieng'	-	Research Officer III
11. Ms. Vivienne Ogega	-	Research Officer III
12. Ms. Fridah Ndari	-	Media Relations Officer
13. Mr. Peter Mutethia	-	Audio Officer
14. Ms. Julie Faith	-	Public Communications Officer
15. Mr. Stanley Lagat	-	Serjeant-At-Arms
16. Mr. Antony Mugendi Kariuki	-	Serjeant-At-Arms
17. Mr. John Ng'ang'a	-	Audio Officer
18. Mr. Eugene Luteshi	-	Audio Officer

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of minutes
4. **Petition by the Rev. Dennis Ndwiga Nthumbi (Hearing of the Petitioner)**
5. Any Other Business
6. Adjournment/ Date of the Next Meeting

MIN. NO/DC/JLAC/2022/048: PRELIMINARIES

The meeting was called to order at five minutes past three o'clock by the Chairperson and thereafter Members of the Committee and the secretariat introduced themselves.

MIN. NO/DC/JLAC/2022/049: CONFIRMATION OF THE MINUTES OF THE PREVIOUS MEETING

This agenda item was deferred.

MIN. NO/DC/JLAC/2022/050: PETITION BY THE REV. DENNIS NDWIGA NTHUMBI (HEARING OF THE PETITIONER)

An Oath was administered to the petitioner following which he was given an opportunity to introduce himself to the committee members present.

The petitioner was allowed one hour to prosecute his petition before the committee whereof he laid down various grounds upon which the four dissenting IEBC commissioners should be investigated by the committee. The various grounds highlighted among others included:

- a. Failure to promote national unity in execution of their constitutional mandate.
- b. Failure to conduct themselves as per the dictates of the public Officers Ethics Act; including impartiality, nepotism or favoritism.



- c. Gross misconduct
- d. Gross incompetence
- e. Gross violation of the constitution and the IEBC act.

3. The Petitioner, Rev. Dennis Ndwiga Nthumbi, in conclusion made the following prayers:

- a) The National Assembly Committee on Justice and Legal Affairs accepts his Petition.
- b) Removal of the four dissenting commissioners since the petition has sufficient grounds for their removal as provided for under Article 251(1) of the Constitution of Kenya.
- c) That the National Assembly sends this Petition to the president for his further action including formation of a tribunal.

4. The Committee Members thereafter posed questions to the Petitioner seeking clarifications on various issues arising from his Presentation.

MIN. NO/DC/JLAC/2022/051: ADJOURNMENT

There being no other business, the meeting was adjourned at 4.55pm. The next meeting will be held on 25/11/2022 at 10.00 a.m. However, members resolved to come one hour earlier at 9.00 a.m. for housekeeping matters.

SIGNED: DATE: 28-11-2022
(CHAIRPERSON, HON. MURUGARA GEORGE GITONGA, MP)





REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT - FIRST SESSION - 2022

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

MINUTES OF THE 8TH SITTING OF THE JUSTICE AND LEGAL AFFAIRS COMMITTEE HELD ON THURSDAY 24TH NOVEMBER, 2022 AT 10.00 A.M. IN THE MINI CHAMBER, COUNTY HALL.

PRESENT

Members

1. Hon. Murugara George Gitonga, M.P. - Chairperson
2. Hon. Mutuse Eckomas Mwengi, M.P. - Vice- Chairperson
3. Hon. Maalim Farah, M.P.
4. Hon. Francis Kajwang' Tom Joseph, M.P.
5. Hon. Onyiego Silvanus Osoro, M.P.
6. Hon. Junet Mohamed, CBS, M.P.
7. Hon. Gichohi Kaguchia John Philip, M.P.
8. Hon. Mohamed Aden Daudi, M.P.
9. Hon. Makali John Okwisia, M.P.
10. Hon. Mogaka Stephen M, M.P.
11. Hon. Maina Jane Njeri, M.P.

ABSENT WITH APOLOGY

1. Hon. (Dr.) Otiende Amollo, SC, M.P
2. Hon. Muriu Wakili Edward, M.P.
3. Hon. Muchira Michael Mwangi, M.P.
4. Hon. Siyad Amina Udgoon, M.P.

FRIENDS OF THE COMMITTEE

1. Hon. Opiyo Wandayi, CBS, MP
2. Hon. Makali Mulu, MP
3. Hon. Guyo Ali Wario, MP
4. Hon. Gideon Mulyungi, MP
5. Hon. Were Charles Ong'ondo, MP
6. Hon. Okuome Andrew Adipo, MP
7. Hon. Amos Mwago, MP
8. Hon. Dorice Donya Aburi, MP

ADVOCATES AND WITNESSES

1. Mr. Kennedy M. Okong'o - Advocate for the Republican Liberty Party

- | | | |
|---------------------------|---|-----------------------------------|
| 2. Mr. Dickson Nyaribo | - | Republican Liberty Party |
| 3. Ms. Linet Kerubo | - | Republican Liberty Party |
| 4. Dr. Jotham Arwa | - | Rachier and Amollo |
| 5. Mr. Donald B. Kipkorir | - | KTK Advocates |
| 6. Mr. Apollo Mboya | - | Apollo & Co. Advocates |
| 7. Mr. Danstan Omari | - | Musyoki Mogaka Advocates |
| 8. Mr. Nduru Gichamba | - | Gichamba & Company Advocates |
| 9. Mr. Samson Nyaberi | - | O. M. Gichuki & Company Advocates |
| 10. Mr. Collins Malinda | - | KTK Advocates |
| 11. Mr. Brian Korir | - | KTK Advocates |

SECRETARIAT

- | | | |
|--------------------------------|---|---------------------------------|
| 1. Mr. Douglas Katho | - | Clerk Assistant II |
| 2. Mr. Dennis Abisai | - | Deputy Director, Legal Services |
| 3. Mr. Ronald Walala | - | Senior Legal Counsel |
| 4. Mr. Abdirahim Omar | - | Fiscal Analyst II |
| 5. Mr. Clive Onyancha | - | Clerk Assistant III |
| 6. Ms. Jael Ayieyo Kilaka | - | Clerk Assistant III |
| 7. Mr. Alvin Ochieng' | - | Research Officer III |
| 8. Ms. Vivienne Ogega | - | Research Officer III |
| 9. Ms. Fridah Ngari | - | Media Relations Officer |
| 10. Ms. Julie Faith | - | Public Communications Officer |
| 11. Mr. Peter Mutethia | - | Audio Officer |
| 12. Mr. Stanley Lagat | - | Serjeant-At-Arms |
| 13. Mr. Antony Mugendi Kariuki | - | Serjeant-At-Arms |
| 14. Mr. Eugene Luteshi | - | Audio Officer |
| 15. Mr. John Ng'ang'a | - | Audio Officer |

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of Minutes of the Previous Sitting
4. Petition by the Republican Liberty Party (Hearing of the Petitioner)
5. Cross Examination of the Republican Liberty Party
6. Any Other Business
7. Adjournment/ Date of the Next Meeting

MIN. NO/DC/JLAC/2022/042: PRELIMINARIES

The meeting was called to order at twenty five minutes past ten o'clock by the Chairperson followed by a word of prayer.

Members of the Committee introduced themselves and the presence of senior political leaders and other Members of Parliament in attendance was also noted by the Committee.

MIN. NO/DC/JLAC/2022/043: CONFIRMATION OF MINUTES

This agenda item was deferred.

MIN. NO/DC/JLAC/2022/044: PETITION BY THE REPUBLICAN LIBERTY PARTY (HEARING OF THE PETITIONER)



a. Preliminary Objection

The Advocates appearing for the Respondents made submissions on their Preliminary Objections presented during the meeting.

The main legal issues raised by the Advocates representing the Respondents were:

- i) Whether the Committee has Jurisdiction to entertain the four Petitions filed against the Respondents;
- ii) That all the four Petitions facing the Respondents are incompetent because they violate the provisions of Standing Order No. 223(f) read together with Standing Order No. 230(1);
- iii) That the proceedings contravene Standing Order No. 230(4) of the National Assembly which require each petition to be heard and determined within fourteen (14) days;
- iv) That the Respondents were not given sufficient details to understand the charges to prepare a defense thereto.

The Advocate appearing for the Republican Liberty Party made submissions in response to the Preliminary Objections.

The Committee retreated to make a decision on the legal issues raised in the Preliminary Objections.

The Committee resolved as follows:

- i) The Committee by a majority vote of the Members resolved that it has jurisdiction to entertain the four Petitions filed against the Respondents.
- ii) Hon. Junet Mohamed, M.P, on behalf of the Minority Coalition registered his dissent on the Committees resolution regarding its jurisdiction.
- iii) The committee resolved that the rest of the issues raised in the preliminary objections would be considered during its retreat for purposes of report writing.

The Advocates representing the four Commissioners indicated they did not have instructions to proceed with the rest of the hearings and withdrew from the proceedings.

b. Oral presentation on the Petition by the Republican Party

The Advocate appearing on behalf of the Petitioner, the Republican Liberty Party, made oral submissions on the Petition as presented before the Committee.

Learned Counsel for the petitioner urged the Committee to find that;

1. That the Four Commissioners namely, Juliana Cherera, Justus Nyang'aya, Irene Masit and Francis Wanderi seriously violated the Constitution of Kenya, and other relevant laws including contravention of Chapter Six of the Constitution of Kenya.
2. That the Four Commissioners namely, Juliana Cherera, Justus Nyang'aya, Irene Masit and Francis Wanderi were involved in gross misconduct in the performance of their duties as Commissioners.
3. That the Four Commissioners namely, Juliana Cherera, Justus Nyang'aya, Irene Masit and Francis Wanderi are grossly incompetent.
4. That the Four Commissioners namely, Juliana Cherera, Justus Nyang'aya, Irene Masit and Francis Wanderi are unfit to hold public Office.
5. That pursuant to the provisions of article 251(3) of the constitution, the Committee do send the Petition to the president.

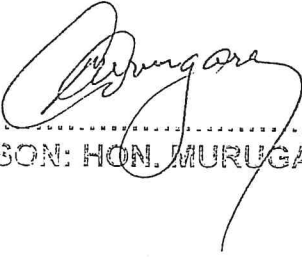


MIN. NO/DC/JLAC/2022/045: CROSS EXAMINATION OF THE REPUBLICAN PARTY

There was no cross-examination of the petitioner as Advocates for the Respondents had withdrawn from the proceedings and several members of the Committee walked out in protest.

MIN. NO/DC/JLAC/2022/046: ADJOURNMENT

Upon conclusion of submissions by the Advocate for the Republican Liberty Party, the session was adjourned at ten minutes to two O'clock. The next session would commence at Three O'clock.

SIGNED:  DATE: 25-11-2022
(CHAIRPERSON: HON. MURUGARA GEORGE GITONGA, MP)





REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT - FIRST SESSION - 2022

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

MINUTES OF THE 7TH SITTING OF THE JUSTICE AND LEGAL AFFAIRS
COMMITTEE HELD ON WEDNESDAY 23RD NOVEMBER, 2022 AT 8.00 A.M. IN THE
CPA ROOM, MAIN PARLIAMENT BUILDINGS.

PRESENT

Members

- | | |
|--|---------------------|
| 1. Hon. Murugara George Gitonga, HSC, M.P. | - Chairperson |
| 2. Hon. Mutuse Eckomas Mwengi, OGW, M.P. | - Vice- Chairperson |
| 3. Hon. Maalim Farah, M.P. | |
| 4. Hon. (Dr.) Otiende Amollo, SC, M.P. | |
| 5. Hon. Onyiego Silvanus Osoro, M.P. | |
| 6. Hon. Mohamed Aden Daudi, M.P. | |
| 7. Hon. Muchira Michael Mwangi, M.P. | |
| 8. Hon. Gichohi Kaguchia John Philip, M.P. | |
| 9. Hon. Makali John Okwisia, M.P. | |
| 10. Hon. Muriu Wakili Edward, M.P. | |
| 11. Hon. Mogaka Stephen M, M.P. | |
| 12. Hon. Maina Jane Njeri, M.P. | |

ABSENT WITH APOLOGY

1. Hon. Francis Kajwang' Tom Joseph, M.P.
2. Hon. Junet Mohamed, M.P.
3. Hon. Mohamed Aden Daudi, M.P.
4. Hon. Siyad Amina Udgoon, M.P.

SECRETARIAT

- | | |
|-----------------------|------------------------|
| 1. Mr. Douglas Katho | - Clerk Assistant II |
| 2. Mr. Ronald Walala | - Senior Legal Counsel |
| 3. Mr. Abdirahim Omar | - Fiscal Analyst II |
| 4. Mr. Clive Onyancha | - Clerk Assistant III |

5. Ms. Jael Ayiego Kilaka	- Clerk Assistant III
6. Mr. Alvin Ochieng'	- Research Officer III
7. Ms. Vivienne Ogega	- Research Officer III
8. Ms. Fridah Ngari	- Media Relations Officer
9. Mr. Peter Mutethia	- Audio Officer
10. Ms. Julie Faith	- Public Communications Officer
11. Mr. Stanley Lagat	- Serjeant-At-Arms
12. Mr. Antony Mugendi Kariuki	- Assistant Serjeant-At-Arms

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of Minutes
4. Matters arising
5. **Consideration of preliminary/preparatory matters on the Petitions for Removal of IEBC Commissioners.**
6. Any Other Business
7. Adjournment/ Date of the Next Meeting

MIN. NO/DC/JLAC/2022/036: PRELIMINARIES

The meeting was called to order at five minutes past eight o'clock by the Chairperson followed by a word of prayer from the Chairperson.

MIN.NO/DC/JLAC/2022/037: ADOPTION OF THE AGENDA

The agenda was adopted having been proposed by Hon. (Dr.) Otiende Amollo, SC, M.P. and seconded by Hon. Makali John Okwisia, M.P.

MIN. NO/DC/JLAC/2022/038: CONFIRMATION OF THE MINUTES OF THE PREVIOUS SITTING

The minutes of the 6th sitting held on Tuesday 22nd November 2022 were confirmed as a true recording of the deliberations of the sitting, having been proposed by Hon. (Dr.) Otiende Amollo, SC, M.P. and seconded by Hon. Makali John Okwisia, M.P.

MIN. NO/DC/JLAC/2022/039: MATTERS ARISING

Under minute NO/DC/JLAC/2022/033, the Committee was apprised on the legal opinion regarding precedence on Public Participation in removal from office of a member of a Commission or Independent office pursuant to article 118 of the constitution.

The committee noted that:-

- (a) a lower threshold of public participation applies to the consideration of a petition for the removal of a constitutional office-holder;
- (b) an unfiltered process does not guarantee an office-holder the right to a fair hearing and ultimately leaves the committee with accusations that cannot be



used in determining the viability of the grounds of the Petition or be transmitted together with the Petition, if the Committee resolves that the Petition discloses a ground for removal; and

- (c) Parliament and its committees remain under an obligation to notify the public of the time, date and publicly accessible venue of any hearing it proposes to hold in its consideration of a Petition for the removal from office of a member of a Commission or independent office under Article 251 of the Constitution. Parliament or its committees may elect to deal with any information provided by the public with regard to the consideration of the Petition in the manner it deems fit.

MIN. NO/DC/JLAC/2022/040: CONSIDERATION OF PRELIMINARY / PREPARATORY MATTERS ON THE PETITIONS FOR REMOVAL OF IEBC COMMISSIONERS.

1. The proposed ground rules to guide the Committee were presented during the meeting and thereafter the Committee adopted them as proposed by Hon. Maalim Farah, M.P. and second by Hon. Gichohi Kaguchia John Philip, M.P. subject to a number of proposed corrections.
2. The Hon. (Dr.) Otiende Amollo, SC, MP raised an objection to the proceedings, proposing adjournment since he will be away on other Parliamentary duties during the consideration of the Petitions as indicated in the schedule.

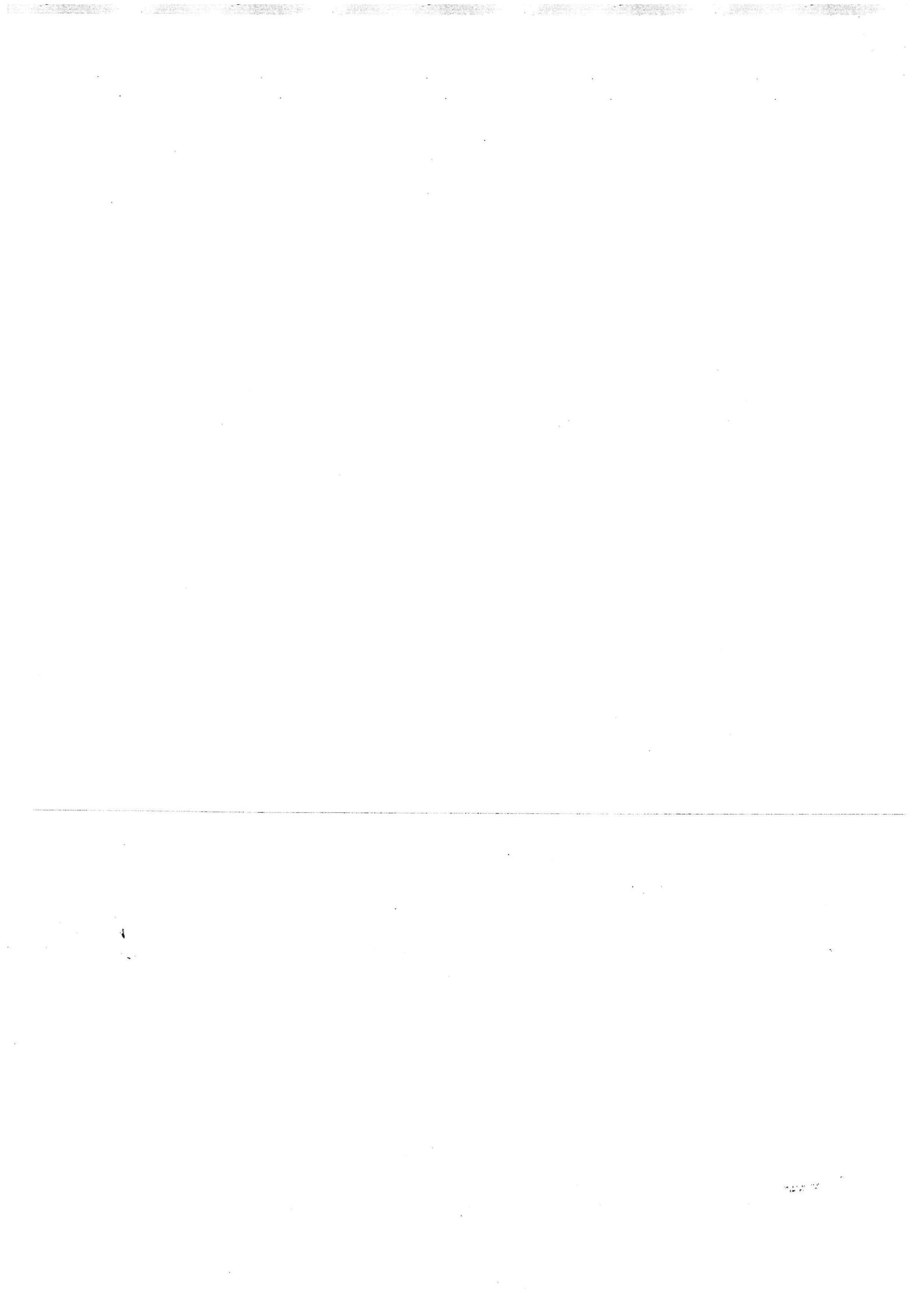
MIN. NO/DC/JLAC/2022/041: ADJOURNMENT

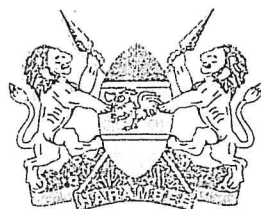
There being no other business, the meeting was adjourned at twenty minutes past nine o'clock. The next meeting will be held on Thursday 24/11/2022 at 9.00 a.m.

SIGNED:

DATE:

(CHAIRPERSON: HON. MURUGARA GEORGE GITONGA, MP)





REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT - FIRST SESSION - 2022

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

MINUTES OF THE 6TH SITTING OF THE JUSTICE AND LEGAL AFFAIRS
COMMITTEE HELD ON TUESDAY 22ND NOVEMBER, 2022 AT 10.00 A.M. IN THE
CPA ROOM, MAIN PARLIAMENT BUILDINGS.

PRESENT

Members

- | | |
|---|---------------------|
| 1. Hon. Murugara George Gitonga, M.P. | - Chairperson |
| 2. Hon. Mutuse Eckomas Mwengi, M.P. | - Vice- Chairperson |
| 3. Hon. Maalim Farah, MP | |
| 4. Hon. Francis Kajwang' Tom Joseph, M.P. | |
| 5. Hon. Junet Mohamed, M.P. | |
| 6. Hon. (Dr.) Otiende Amollo, SC, M.P. | |
| 7. Hon. Onyiego Silvanus Osoro, M.P. | |
| 8. Hon. Mohamed Aden Daudi, M.P. | |
| 9. Hon. Muchira Michael Mwangi, M.P. | |
| 10. Hon. Gichohi Kaguchia John Philip, M.P. | |
| 11. Hon. Makali John Okwisia, M.P. | |
| 12. Hon. Muriu Wakili Edward, M.P. | |
| 13. Hon. Mogaka Stephen M, M.P. | |
| 14. Hon. Maina Jane Njeri, M.P. | |

ABSENT WITH APOLOGY

1. Hon. Siyad Amina Udgoon, M.P.

SECRETARIAT

- | | |
|---------------------------|---------------------------|
| 1. Mr. Douglas Katho | - Senior Clerk Assistant |
| 2. Mr. Ronald Walala | - Senior Legal Counsel |
| 3. Mr. Abdirahim Omar | - Fiscal Analyst II |
| 4. Ms. Winnie Kiziah | - Media Relations Officer |
| 5. Ms. Jael Ayiego Kilaka | - Clerk Assistant III |

6. Mr. Sisto Macharia	-	Clerk Assistant III
7. Mr. Alvin Ochieng'	-	Research Officer III
8. Ms. Vivienne Ogega	-	Research Officer III
9. Mr. Peter Mulethia	-	Audio Officer
10. Mr. Antony Mugendi Kariuki	-	Serjeant-At-Arms

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of Minutes
4. Matters arising
5. Consideration of preliminary/preparatory matters on the Petitions for Removal of IEBC Commissioners.
6. Any Other Business
7. Adjournment/ Date of the Next Meeting

MIN. NO/DC/JLAC/2022/029: PRELIMINARIES

The meeting was called to order at ten minutes past Ten o'clock by the Chairperson followed by a word of prayer from the Vice-Chairperson.

MIN.NO/DC/JLAC/2022/030: ADOPTION OF THE AGENDA

The agenda was adopted having been proposed by Hon. Mohamed Aden Daudi, M.P. and seconded by Hon. Maina Jane Njeri, M.P.

MIN. NO/DC/JLAC/2022/031: CONFIRMATION OF THE MINUTES OF THE PREVIOUS SITTING

The minutes of the 5th sitting held on Wednesday 10th November 2022 were confirmed as a true recording of the deliberations of the sitting, having been proposed by Hon. Makali John Okwisia, M.P. and seconded by Hon. Muriu Wakili Edward, M.P. subject to amendments on Minute 27(2).

MIN. NO/DC/JLAC/2022/032: MATTERS ARISING

1. The Committee agreed to hold its sittings in accordance with the standing orders on quorum; and that the Committee is liberty to request for more time to consider the petitions as per the Communication from the Speaker.
2. Hon. (Dr.) Otiende Amollo, SC, MP registered his dissent on the Committees resolution to unanimously adopt the Public hearings time table regarding the Petitions to remove the Commissioners of IEBC.
3. The Committee further reiterated that the hearing will be a quasi-judicial in nature and as such Members shall only ask for clarifications and shall not prosecute or defend the petitioners and or the respondents.



MIN. NO/DC/JLAC/2022/033: CONSIDERATION OF PRELIMINARY /PREPARATORY MATTERS ON THE PETITIONS FOR REMOVAL OF IEBC COMMISSIONERS.

1. The proposed ground rules to guide the Committee were presented during the meeting and thereafter the Committee resolved to consider them in the next meeting when the Secretariat shall have prepared a submission on a reasoned opinion regarding precedence on Public Participation pursuant to article 118 of the constitution.
2. The Minority coalition restated that if issues of constitutionalism, Parliamentary calendar as well as a fair hearing if not taken into account then their side of coalition will be unwilling to participate in the proceedings of the Public hearings.

MIN. NO/DC/JLAC/2022/034: ANY OTHER BUSINESS

1. The members requested that the submissions of the Public hearings to be filed in a box file for ease of reference.
2. The Committee members requested to be supplied with all relevant submissions and documentations whenever the office of the Clerk receives them.

MIN. NO/DC/JLAC/2022/035: ADJOURNMENT

There being no other business, the meeting was adjourned at ten minutes past twelve o'clock. The next meeting will be held tomorrow 23/11/2022 at 8.00 a.m.

SIGNED:  DATE: 22.11.22
(CHAIRPERSON: HON. MURUGARA GEORGE GITONGA, MP)





REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT - FIRST SESSION - 2022

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON JUSTICE AND LEGAL AFFAIRS

MINUTES OF THE 5TH SITTING OF THE JUSTICE AND LEGAL AFFAIRS
COMMITTEE HELD ON WEDNESDAY, 16TH NOVEMBER, 2022 AT 11.30 A.M. IN
COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDINGS.

PRESENT

Members

- | | |
|--|---------------------|
| 1. Hon. Murugara George Gitonga, M.P. | - Chairperson |
| 2. Hon. Mutuse Eckomas Mwengi, M.P. | - Vice- Chairperson |
| 3. Hon. (Dr.) Otiende Amollo, SC, M.P. | |
| 4. Hon. Onyiego Silvanus Osoro, M.P. | |
| 5. Hon. Mohamed Aden Daudi, M.P. | |
| 6. Hon. Muchira Michael Mwangi, M.P. | |
| 7. Hon. Makali John Okwisia, M.P. | |
| 8. Hon. Muriu Wakili Edward, M.P. | |
| 9. Hon. Mogaka Stephen M, M.P. | |
| 10. Hon. Siyad Amina Udgoon, M.P. | |

ABSENT WITH APOLOGY

1. Hon. Maalim Farah, MP
2. Hon. Francis Kajwang' Tom Joseph, M.P.
3. Hon. Junet Mohamed, M.P.
4. Hon. Gichohi Kaguchia John Philip, M.P.
5. Hon. Maina Jane Njeri, M.P.

SECRETARIAT

- | | |
|---------------------------|--------------------------|
| 1. Mr Adan Gidicha | - Senior Clerk Assistant |
| 2. Mr. Ronald Walala | - Senior Legal Counsel |
| 3. Mr. Abdirahim Omar | - Fiscal Analyst II |
| 4. Mr. Clive Onyancha | - Hansard Reporter III |
| 5. Ms. Jael Ayiego Kilaka | - Clerk Assistant III |
| 6. Mr. Omondi Shadrach | - Legal Counsel |
| 7. Ms. Patricia Gichane | - Legal Counsel |

8. Mr. Alvin Ochieng'	-	Research Officer III
9. Ms. Vivienne Ogega	-	Research Officer III
10. Mr. Peter Mutethia	-	Audio Officer
11. Mr. Antony Mugendi Kariuki	-	Serjeant-At-Arms

AGENDA

1. Prayers
2. Preliminaries
3. Confirmation of Minutes
4. Matters arising
5. Consideration of preliminary/preparatory matters on the Petitions for Removal of IEBC Commissioners.
6. Any Other Business
7. Adjournment/ Date of the Next Meeting

MIN. NO/DC/JLAC/2022/022: PRELIMINARIES

The meeting was called to order at thirty minutes past eleven o'clock by the Chairperson followed by a word of prayer from the Vice-Chairperson.

MIN. NO/DC/JLAC/2022/023: ADOPTION OF THE AGENDA

The agenda was adopted having been proposed by Hon. Mutuse Eckomas Mwengi, M.P. and seconded by Hon. Siyad Amina Udgoon, M.P.

MIN. NO/DC/JLAC/2022/024: CONFIRMATION OF THE MINUTES OF THE PREVIOUS SITTING

The minutes of the 4th sitting held on Thursday 10th November 2022 were confirmed as a true recording of the deliberations of the sitting, having been proposed by Hon. Mohamed Aden Daudi, M.P. and seconded by Hon. Mogaka Stephen M, M.P.

MIN. NO/DC/JLAC/2022/025: MATTERS ARISING

The Committee was informed of the Notification from the Speaker dated Wednesday, 16th November, 2022 suspending the vetting of persons nominated to serve as Principal Secretaries until further notice.

On 15th November, 2022, the Employment and Labour Relations Court in *Constitution Petition No. E186 of 2022, (Dr. Magare Gikenye versus The President of the Republic of Kenya and 55 Others)* and in *Constitution Petition No. E192 of 2022, (Law Society of Kenya versus The National Assembly and 4 Others)*, granted CONSERVATORY ORDERS temporarily staying the vetting process pending inter-partes hearings scheduled for 21st November, 2022.

MIN. NO/DC/JLAC/2022/026: CONSIDERATION OF PRELIMINARY /PREPARATORY MATTERS ON THE PETITIONS FOR REMOVAL OF IEBC COMMISSIONERS.



1. The Committee was informed on the Conveyance from the Speaker on the four Petitions and general rules.

The Committee was apprised on a draft summary of the four Petitions and a proposed timetable for consideration of Petitions for the removal of IEBC Commissioners. The proposed timetable was adopted by the Committee as hereunder-

	DATE/TIME	ACTIVITY
1.	Wednesday, 16 th November, 2022	
	11:00a.m.-12:00 p.m.	(1) Briefing on the Conveyance from the Speaker on the four Petitions and general rules; (2) Consideration and adoption of timetable; (3) Notification of the affected Commissioners of the referral of the Petitions and the time, date and venue for the hearing of the Petitions: and (4) Notification of the Petitioners of the referral of the Petitions and the time, date and venue for the hearing of the Petitions.
2.	Thursday, 17 th November, 2022	
	10:00 a.m. – 12:00p.m.	Briefing on the Petitions/Preparatory Matters
3.	Tuesday, 22 nd November, 2022	
	10:00 a.m. – 12:00p.m.	Briefing on the Petitions/Preparatory Matters
4.	Wednesday, 23 rd November, 2022	
	10:00a.m. – 12.00p.m.	Pre-hearing Briefing
5.	Thursday, 24 th November, 2022	
	9.00a.m.—10.00a.m.	In-House meeting
	10.00a.m.—11.00a.m.	Petition by the Republican Liberty Party (Hearing of the Petitioner)
	11.30a.m.—12.30p.m.	Cross-examination of the Republican Liberty Party
	2.00p.m.—3.00p.m.	Petition by the Rev. Dennis Ndwiga Nthumbi (Hearing of the Petitioner)
	3.30p.m.—4.30p.m.	Cross-examination of Rev. Dennis Ndwiga Nthumbi
6.	Friday, 25 th November, 2022	
	9.00a.m.—10.00a.m.	In-House meeting
	10.00a.m.—11.00a.m.	Petition by Geoffrey Langat (Hearing of the Petitioner)
	11.30a.m.—12.30p.m.	Cross-examination of Geoffrey Langat
	2.00p.m.—3.00p.m.	Petition by Owuor Steve Gerry (Hearing of the Petitioner)
	3.30p.m.—4.30p.m.	Cross-examination of Owuor Steve Gerry
7.	Monday, 28 th November, 2022	
	9.00a.m.—10.00a.m.	In-House meeting
	10.00a.m.—11.00a.m.	Response by Ms. Juliana Cherera
	11.30a.m.—12.30p.m.	Cross-examination of Ms. Juliana Cherera
	2.00p.m.—3.00p.m.	Response by Ms. Irene Masit
	3.30p.m.—4.30p.m.	Cross-examination of Ms. Irene Masit



	DATE/TIME	ACTIVITY
8.	Tuesday, 29 th November, 2022	
	9.00a.m.—10.00a.m.	In-House meeting
	10.00a.m.—11.00a.m.	Response by Mr. Francis Wanderi
	11.30a.m.—12.30p.m.	Cross-examination of Mr. Francis Wanderi
	2.00p.m.—3.00p.m.	Response by Mr. Justus Nyang'aya
	3.30p.m.—4.30p.m.	Cross-examination of Mr. Justus Nyang'aya
9.	Wednesday, 30 th November, 2022	Report-Writing and adoption of Report
10.	Thursday, 1 st December, 2022	Tabling of Report

2. The Committee resolved that the affected Commissioners to be notified of the referral of the Petitions and the time, date and venue for the hearing of the Petitions by close of business of the same day.

3. The Committee further resolved that it was quasi-judicial in nature hence the need to treat the proceedings with fairness and provide recommendations for official actions.

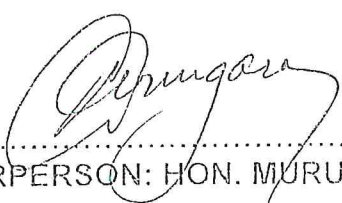
MIN. NO/DC/JLAC/2022/027: ANY OTHER BUSINESS

1. The Committee was notified of some of its members participating in the East Africa Community Inter-Parliamentary Games whose activities fall on the same dates as the proposed timetable for the consideration of the Petitions.

2. The Committee resolved to implore upon its Members who are planned to participation in the games to give significance to the Petitions so as to meet the stipulated timelines.

MIN. NO/DC/JLAC/2022/028: ADJOURNMENT

There being no other business, the meeting was adjourned at ten minutes past twelve o'clock. The next meeting will be held on notice.

SIGNED:  DATE: 22.11.22
(CHAIRPERSON: HON. MURUGARA GEORGE GITONGA, MP)