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PARLIAMENT OF KENYA


THIRTEENTH PARLIAMENT

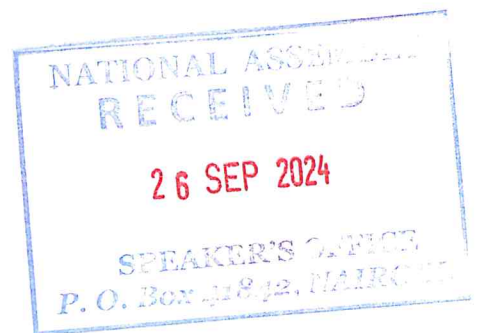
THIRD SESSION - 2024

REPORT OF JOINT SITTING OF THE NATIONAL ASSEMBLY DEPARTMENTAL
COMMITTEE ON FINANCE AND NATIONAL PLANNING AND THE SENATE STANDING
COMMITTEE ON FINANCE AND BUDGET

ON

THE APPROVAL HEARING FOR MR DAVID KIBET KEMEI, NOMINEE FOR
APPOINTMENT TO THE POSITION OF DIRECTOR GENERAL OF THE COMPETITION
AUTHORITY OF KENYA

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 26 SEP 2024	DAY: Thursday
TABLED BY:	Hon Joseph Makip, MP Member
CLERK-AT THE-TABLE:	Ashibuko



CLERKS' CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

SEPTEMBER, 2024

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LIST OF ABBREVIATION AND ACRONYMS

Ag CS.	-	Acting Cabinet Secretary
DCI	-	Directorate of Criminal Investigations
EACC	-	Ethics and Anti-Corruption Commission
H.E.	-	His Excellency
HELB	-	Higher Education Loans Board
KMTC	-	Kenya Medical Training College
KRA	-	Kenya Revenue Authority
ORPP	-	Office of the Registrar of Political Parties

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CHAIRPERSONS' FOREWORD

This report contains the proceedings of the National Assembly Departmental Committee on Finance and National Planning and the Senate Standing Committee on Finance and Budget during the approval hearing of Mr. David Kibet Kemei, nominee for appointment as Director General Competition Authority of Kenya as forwarded by the then Ag. CS H.E Musalia Mudavadi EGH, and communicated to both Houses by the Speakers of the Senate and the National Assembly.

Pursuant to section 12 of the Competition Act, Cap 504, the Ag. Cabinet Secretary, the National Treasury and Economic Planning forwarded to Parliament the nomination of Mr. David Kibet Kemei as Director General Competition Authority of Kenya vide letter Ref. No. *TNT/CONF/268/011"C" (78)* dated 6th August, 2024. The Speaker of the National Assembly conveyed this message to the National Assembly on 13th August, 2024 whereas the Speaker of the Senate conveyed the message to the Senate on 20th August, 2024 and subsequently referred the name of the nominee to the National Assembly Departmental Committee on Finance and National Planning and the Senate Standing Committee on Finance and Budget for approval hearing. While referring the matter to the Committees, the Speakers directed that the Committees undertake the vetting exercise within twenty-eight (28) days pursuant to section 8 of the Public Appointments (Parliamentary Approval) Act, 2011 and table its report before the House on or before Wednesday, 3rd October, 2024. The Speakers further directed the Clerks of the National Assembly and the Senate to notify the nominee and the general public of the time and place of holding the approval hearing, by placing advertisements in two newspapers of nationwide circulation and the Parliamentary Website.

In compliance with Article 118(b) of the Constitution and section 6(4) of the Public Appointments (Parliamentary Approval) Act, 2011, the Clerk of the Senate and National Assembly placed an advertisement in the print media on Friday, 30th August, 2024 informing the public of the nomination, date, time and place of the approval hearing. They also invited the public to submit memoranda by way of written statements on oath (*affidavits*) with supporting evidence on the suitability or otherwise of the nominee in conformity with section 6(9) of the Public Appointments (Parliamentary Approval) Act, 2011. The memoranda were to be received on or before Thursday, 12th September, 2024 at 5.00 p.m. (East African

Time). By the close of the submission deadline, the Committee had not received any memorandum against the nominee's suitability.

The Clerks jointly, wrote to the nominee vide letter Ref. No. *PAR/JOINT SITTINGS/AH/DG-CA/2024/007* dated 2nd September, 2024 inviting Mr. David Kibet Kemei for the approval hearing in accordance with section 6(3) of the Public Appointments (Parliamentary Approval) Act, 2011. They also engaged the Directorate of Criminal Investigations (DCI), Ethics and Anti-Corruption Commission (EACC), Higher Education Loans Board (HELB), Kenya Revenue Authority (KRA) and Office of the Registrar of Political Parties (ORPP) seeking references and background checks relating to the suitability of the nominee.

The nominee appeared before the Committee on Tuesday, 17th September, 2024 for the approval hearing. The Committees examined his suitability based on the criteria set out in section 7 of the Public Appointments (Parliamentary Approval) Act, 2011. In addition, the Committees examined his academic credentials, relevant experience, knowledge of sector issues and on leadership and integrity. The Committee paid due regard to the procedure used to arrive at the nominee, the constitutional or statutory requirements relating to the office in question and the suitability of the nominee for the proposed appointment having regard to whether the nominee's abilities, experience and qualities meet the needs of the Competition Authority.

Committee Recommendation

The Committees, having held the approval hearing of the nominee regarding his suitability, observed that due process was followed in the nomination of the nominee in accordance with section 12 of the Competition Act, Cap 504 as read together with sections 3 and 5 of the Public Appointments (Parliamentary Approval) Act, 2011. The Committees, therefore, recommends that the National Assembly and the Senate **APPROVE** the nomination of Mr. David Kibet Kemei for appointment as Director General Competition Authority of Kenya.

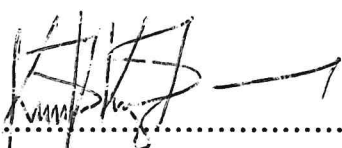
Acknowledgments


The Committee registers its appreciation to the Office of the Speakers National Assembly and the Senate, Office of the Clerks of the National Assembly and the Senate and the Committee Secretariat for the logistical support extended during the approval hearing process.

In addition, the Committee thanks the nominee for his cooperation during the Parliamentary approval hearing. Finally, the Committee appreciates the DCI, EACC, HELB, KRA and ORPP for providing references and background checks relating to the suitability of the nominee.

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

On behalf of the National Assembly Departmental Committee on Finance and National Planning and the Senate Standing Committee on Finance and Budget, and pursuant to sections 3 and 5 of the Public Appointments (Parliamentary Approval) Act, 2011 and provisions of Standing Order 45(4) of the National Assembly standing Orders and standing orders 77(3) of the Senate Standing Orders, it is our pleasure to present the joint Report on the Approval Hearing of Mr. David Kibet Kemei, Nominee for Appointment as Director General, Competition Authority of Kenya for debate and adoption.


Signed.....
Hon. CPA. Kuria Kimani, MP
Chairperson
Date..... 25th Sept. 2024


Signed.....
Sen. (Capt.) Ali Ibrahim Roba, EGH, MP
Chairperson
Date..... 26th / 09 / 2024

CHAPTER ONE

1.0 PREFACE

1.1 ESTABLISHMENT AND MANDATE OF THE COMMITTEES

1. Article 124 (1) of the Constitution provides that each House of Parliament may establish Committees and shall make Standing Orders for the orderly conduct of its proceedings, including the proceedings of its committees.
2. The National Assembly Departmental Committee on Finance and National Planning is established under Standing Order 216 whose mandates pursuant to the Standing Order 216 (5) are as follows-
 - (a) 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;
 - (b) To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;
 - (c) on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;
 - (d) To study and review all legislation referred to it;
 - (e) o study, assess and analyze the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
 - (f) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);**To examine treaties, agreements and conventions;
 - (g) To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
 - (h)To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
 - (i) To examine any questions raised by Members on a matter within its mandate.
3. The Senate Standing Committee on Finance and Budget is established pursuant section 8 (1) of the Public Finance Management Act, 2012 and standing order 228 of the Senate Standing Orders, and is mandated to-

- a) Investigate, inquire into and report on all matters relating to coordination, control, and monitoring of the county budgets and examine -
- i. the Budget Policy Statement presented to the Senate;
 - ii. the report on the budget allocated to constitutional Commissions and independent offices;
 - iii. the Division of Revenue Bill, the County Allocation of Revenue Bill, the County Governments Additional Allocations Bill, and the cash disbursement schedule for county governments;
 - iv. all matters related to resolutions and Bills for appropriations, the share of national revenue amongst the counties, matters concerning the national budget, including public finance and monetary policies and public debt, planning, and development policy; and
- b) Pursuant to Article 228 (6) of the Constitution, to examine the report of the Controller of Budget on the implementation of the budgets of county governments.

1.2 MEMBERSHIP OF THE COMMITTEES

1.2.1 National Assembly Committee Membership

4. The National Assembly Departmental Committee on Finance and National Planning comprises the following Members

Chairperson

Hon. CPA Kimani Kuria, MP
Molo Constituency

UDA Party

Vice-Chairperson

Hon. Amb. Benjamin Langat, CBS, MP
Ainamoi Constituency

UDA Party

Hon. Dr. Adan Keynan, CBS, MP
Eldas Constituency

Jubilee Party

Hon. David Mboni, MP
Kitui Rural Constituency

Wiper Party

Hon. Joseph K. Makilap, MP
Baringo North Constituency

UDA Party

Hon. CPA Julius Rutto, MP
Kesses Constituency

UDA Party

Hon. Paul Biego, MP
Chesumei Constituency

UDA Party

Hon. Dr. John Ariko, MP
Turkana South Constituency

ODM Party

Hon. George Sunkuya, MP
Kajiado West Constituency

UDA Party

Hon Andrew Okuome, MP
Karachuonyo Constituency

ODM Party

Hon. Joseph Oyula, MP
Butula Constituency

ODM Party

Hon. Umul Ker Kassim, MP
Mandera County

UDM Party

Hon. Shadrack Ithinji, MP
South Imenti Constituency

Jubilee Party

Hon. Joseph Munyoro, MP
Kigumo Constituency

UDA Party

Hon. Mohamed Machel, MP
Mvita Constituency

ODM Party

1.2.2 Committee Secretariat

5. The Committee is facilitated by the following staff.

Mr. Benjamin Magut

Principal Clerk Assistant /Head of Secretariat

Ms. Jeniffer Ndeto

Deputy Director Legal Services

Mr. Benson Kamande

Clerk Assistant III

Mr. Salem Lorot

Legal Counsel

Mr. Winfred Kambua

Clerk Assistant III

Mr. George Ndenjeshe

Fiscal Analyst II

Ms. Joyce Wachera

Hansard Officer

Mr. Andrew Jumanne Shangarai

Principal Serjeant-At-Arms

Mr. Benson Muthuri

Assistant Serjeant-At-Arms

Mr. James Macharia

Media Relations Officer

Ms. Nelly W.N Ondieki

Research Officer

1.2.3 Senate Standing Committee on Finance and Budget

6. The Senate Standing Committee on Finance and Budget comprises the following Members

- | | | |
|---|---|-------------------------|
| 1) Sen. (Capt.) Ali Ibrahim Roba, EGH, MP | - | Chairperson |
| 2) Sen. Maureen Tabitha Mutinda, MP | - | Vice-Chairperson |
| 3) Sen. (Dr.) Boni Khalwale, CBS, MP | - | Member |
| 4) Sen. Tabitha Karanja Keroche, MP | - | Member |
| 5) Sen. Joyce Chepkoech Korir, MP | - | Member |
| 6) Sen. Mohamed Faki Mwinyihaji, MP | - | Member |
| 7) Sen. Richard Momoima Onyonka, MP | - | Member |
| 8) Sen. Shakila Abdalla Mohamed, MP | - | Member |
| 9) Sen. Eddy Gicheru Oketch, MP | - | Member |

CHAPTER TWO

2.0 BACKGROUND

2.1 Competition Authority of Kenya

7. The Competition Authority of Kenya is established under the Competition Act, Cap 504. The Authority's mandate is to enforce the Act with the objective of enhancing the welfare of the people of Kenya by promoting and protecting effective competition in markets and preventing misleading market conduct throughout Kenya.

2.2 Office of the Director General of Competition Authority

8. The Office of the Director-General of the Competition Authority is established under section 12(1) of the Competition Act, Cap 504, in the following terms—

12. Director-General

(1) There shall be a Director-General of the Authority who shall be appointed by the Authority with the approval of Parliament from persons having knowledge and experience in competition matters.

9. Section 12(1) of the Competition Act also provides for the qualification for a person to be appointed as a Director-General of the Competition Authority as "having knowledge and experience in competition matters".

2.3 Communication of the Nomination by the Acting Cabinet Secretary, Ministry of National Treasury and Economic Planning

10. By a letter dated 6th August, 2024, the then Acting Cabinet Secretary for the National Treasury and Economic Planning conveyed a message to the Speaker of the National Assembly and the Speaker of the Senate of the nomination of Mr. David Kibet Kemei for appointment as the Director-General of the Competition Authority by the then Ag. Cabinet Secretary in exercise of powers conferred by section 12 of the Competition Act, Cap. 504.

11. In accordance with section 5 of the Public Appointments (Parliamentary Approval) Act, the Speaker of the National Assembly and the Speaker of the Senate received a message dated 6th August, 2024 from the then Acting Cabinet Secretary for the National Treasury and Economic Planning on the nomination of Mr. David Kibet Kemei for appointment as the Director-General of the Competition Authority, in exercise of powers conferred by section 12 of

the Competition Act, Cap. 504. The letter was accompanied by the nominee's curriculum vitae and testimonials.

12. The Speaker of the National Assembly duly conveyed this message to the Assembly, whereas the Speaker of the Senate did so to the Senate on Tuesday, 13th August, 2024 and 20th August, 2024 respectively.

2.4 Referral of Nomination to Committees

13. In accordance with the provision of standing order 42(3)(c) of the National Assembly Standing Orders and standing order 47 of the Senate Standing Orders, the respective Speakers referred the Message to the National Assembly Departmental Committee on Finance and National Planning and the Senate Standing Committee on Finance and Budget for consideration.

2.5 Notification to the Public and to the Nominee

14. The Clerks of both Houses notified both Committees to hold approval hearings as required by section 6(1) of the Act. The Clerks of both Houses are also required to notify the nominee and the public of the time, date(s) and venue(s) for holding the approval hearings.
15. Consequently, in accordance with section 6(3) of the Act, the **Clerks of both Houses placed advertisements in the local dailies on Friday, 30th August, 2024** notifying and inviting the nominee to attend the approval hearing on **Tuesday, 17th September, 2024** in the **Mini-Chamber at County Hall**.
16. Further, pursuant to the provisions of Article 118 of the Constitution, section 6(3) of the Act and standing orders 45(3) and 77(2) of the National Assembly Standing Orders and the Senate Standing Orders respectively, both Clerks notified the general public of the intention of both Committees to conduct approval hearings on **Tuesday, 17th September, 2024** in the **Mini-Chamber at County Hall**.

CHAPTER THREE

3.0 LEGAL FRAMEWORK

3.1 The Office of the Director-General of the Competition Authority

17. The office of the Director-General of the Competition Authority is established under section 12(1) of the Competition Act, Cap 504, in the following terms—

12. Director-General

(1) There shall be a Director-General of the Authority who shall be appointed by the Authority with the approval of Parliament from persons having knowledge and experience in competition matters.

18. Section 12(1) of the Competition Act also provides for the qualification for a person to be appointed as a Director-General of the Competition Authority as "having knowledge and experience in competition matters".

19. Pursuant to Standing Order 42(1) of the National Assembly Standing Orders and Standing Order 47 of the Senate Standing Orders, the Speaker of the Senate and the Speaker of the National Assembly on Tuesday, 20th August, 2024 and Tuesday, 13th August, 2024 respectively, conveyed a message to respective Houses from the then Acting Cabinet Secretary for the National Treasury and Economic Planning on the nomination of Mr. David Kibet Kemei for appointment as the Director-General of the Competition Authority, in the exercise of powers conferred by section 12 of the Competition Act, Cap. 504.

20. The procedure of engagement for the Committees is set out in the Standing Orders of both Houses and the provisions of the Public Appointments (Parliamentary Approval) Act, Cap. 7F. It was resolved that the approval hearing shall proceed as follows-

- a. That, the approval hearing of the nominee proposed for appointment as the Director-General of the Competition Authority would be conducted by the National Assembly Departmental Committee on Finance and National Planning and the Senate Standing Committee on Finance and Budget;

- b. That, the quorum of the joint sittings would be the respective quorum of each of the Committees as stipulated by their respective Standing Orders;
- c. That, as contemplated under Rule 9(6) and (7) of the Houses of Parliament (Joint Sittings) Rules, unless a decision is reached by consensus, any vote to be taken in the joint sitting of the Committees shall be by separate Houses. This would ensure that the numerical difference of the individual members representing the Houses in the joint sittings had no effect on the decisions of the joint sittings of the Committees;
- d. That, the Committees having conducted the approval hearings, would submit a Joint Report to the respective Houses in the manner contemplated by paragraph 7 of Joint Rule No.9(8) of the Houses of Parliament (Joint Sittings) Rules; and
- e. That, the approval hearing process would be conducted in accordance with the provisions of the Public Appointments (Parliamentary Approval) Act, Cap. 7F.

3.2 Constitutional and statutory requirements in parliamentary approval of public appointments

21. The Constitution and various statutes provide a clear framework for the conduct of parliamentary approval of public appointments. They are listed below-
- (a) The Public Appointments (Parliamentary Approval) Act (No. 33 of 2011);
 - (b) Chapter 6 of the Constitution (leadership and integrity); Article 10 of the Constitution (*national values and principles of governance*); Article 124(4) of the Constitution (*parliamentary approval of public appointments*); Article 118 of the Constitution (*public access and participation*); Article 232 of the Constitution (*values and principles of public service*);
 - (c) The Leadership and Integrity Act (Cap. 182);
 - (d) The Central Bank of Kenya Act (Cap 491);
 - (e) The Public Service (Values and Principles) Act (No. 1A of 2015); and

(f) The Public Officer Ethics Act (Cap. 183).

3.3 The Public Appointments (Parliamentary Approval) Act (No. 33 of 2011)

22. Section 7 of the Public Appointments (Parliamentary Approval) Act provides for issues that the Parliament is supposed to consider in relation to any nomination. These are-

- (a) the procedure used to arrive at the nominee;
- (b) any constitutional or statutory requirements relating to the office in question; and
- (c) the suitability of the nominee for the appointment proposed having regard to whether the nominee's abilities, experience and qualities meet the needs of the body to which nomination is being made.

23. Section 6 of the Public Appointments (Parliamentary Approval) Act provides direction on the conduct of approval hearings. These are-

- (a) An approval hearing shall focus on a candidate's academic credentials, professional training and experience, personal integrity and background (section 6(7));
- (b) The criteria specified in the Schedule shall be used by a Committee during an approval hearing for the purposes of vetting a candidate (section 6(8));
- (c) Any person may, prior to the approval hearing, and by written statement on oath, provide the Clerk(s) with evidence contesting the suitability of a candidate to hold the office to which the candidate has been nominated (section 6(9)); and
- (d) A candidate may, at any time, by notice in writing addressed to the Clerk(s), withdraw from the approval process and the candidate's nomination shall end (section 6(10)).

24. The period for consideration of nomination is spelt out in the Act. Section 8(1) of the Public Appointments (Parliamentary Approval) Act provides that both Committees shall consider the nomination and table their report to the House for debate and decision within twenty-eight (28) days from the date on which the notification of nomination was given. Section 9 of the Act stipulates that where the House(s) does not meet the prescribed timelines, the nominee shall be deemed to have been approved.

25. Pursuant to section 6(8) of the Act, the criteria for vetting is comprehensively contained in the Questionnaire in the Schedule to the Act. The Questionnaire allows both Committees to obtain information on, among other things-
- (a) Name of the nominee—to enable both Committees to ascertain the regional background and ethnicity of the nominee;
 - (b) Gender of the nominee —to enable both Committees to ascertain the gender of the nominee. This is to ensure compliance with Article 27(8) that requires the State to take measures to ensure that not more than two-thirds of members of appointive bodies shall be of the same gender;
 - (c) Age of the nominee —to enable both Committees to ascertain compliance with the provisions of Article 55 of the Constitution on inclusion of the youth in public appointments;
 - (d) Nationality of the nominee—to enable both Committees to ascertain the nationality of the nominee. This is to ensure compliance with Article 78 of the Constitution which requires certain State officers to be Kenyan Citizens;
 - (e) Educational background of the nominee;
 - (f) Employment record of the nominee;
 - (g) Honours or awards given to the nominees;
 - (h) Membership of the nominee to professional bodies;
 - (i) Public office and political affiliations held by the nominee —to enable both Committees to ascertain whether the nominee holds office in a political party. This is to ensure compliance with Article 77(2) of the Constitution which precludes appointed State officers from holding office in a political party;
 - (j) Information on whether the nominee has been removed from office under Article 75 of the Constitution which prohibits a State officer who has been removed from office under Article 75 (3) of the Constitution from holding any other State office;
 - (k) Nominee's finances;
 - (l) Outside commitments that the nominee intends to undertake while in office (if appointed). Article 77(1) of the Constitution prohibits a full time State officer from participating in any other gainful employment;
 - (m) Tax compliance status of the nominee;

- (n) Potential conflict of interest—Article 75(1) of the Constitution bars State officers from engagements or association that may give rise to conflict between official or public duties and personal interests;
- (o) Whether a nominee has been charged in a court of law in the past three years; and
- (p) Whether a nominee has been adversely mentioned in a report of Parliament or a Commission of Inquiry in the past three years.

26. The Questionnaire is largely formulated based on Constitutional and statutory requirements for State Officers and other considerations that are of importance in order to make a determination on the suitability of a nominee.

3.4 Constitutional Provisions

27. The Constitution, in addition, sets out specific requirements regarding the appointment of persons to public office which include-

Chapter Six on Leadership and Integrity

28. The Committees, in determining the suitability of the nominees, took into consideration the provisions on leadership and integrity as outlined under Chapter Six of the Constitution. In particular, the Committee took cognizance of the following provisions-

- i. Article 73(2) of the Constitution provides that the guiding principles of leadership and integrity include-
 - (a) selection on the basis of personal integrity, competence and suitability, or election in free and fair elections;
 - (b) objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favoritism, other improper motives or corrupt practices;
 - (c) selfless service based solely on the public interest, demonstrated by —
 - (i) honesty in the execution of public duties; and
 - (ii) the declaration of any personal interest that may conflict with public duties;
 - (d) accountability to the public for decisions and actions; and
 - (e) discipline and commitment in service to the people.
- ii. Article 75(1) of the Constitution that requires a State officer, whether in public or private life, to behave in a manner that avoids conflict between personal interest and public official duties and Article 75(3) of

the Constitution that prohibits a State officer who has been removed from office under that Article from holding any other State office.

- iii. Article 77(1) of the Constitution that prohibits a full time State officer from participating in any other gainful employment.
- iv. Article 77(2) of the Constitution that prohibits an appointed State officer from holding office in a political party.
- v. Article 78 (1) of the Constitution that disqualifies persons who are not Kenyan citizens and persons holding dual citizenship from appointment as State officers.

Article 10(2) of the Constitution on national values and principles of governance

29. Article 10(2) of the Constitution provides for the national values and principles of governance which include patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people; human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalised; good governance, integrity, transparency and accountability; and sustainable development.

Article 118 of the Constitution

30. Article 118 of the Constitution obligates Parliament to conduct its business in an open manner, and that its sittings and those of its committees shall be in public; and that Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its committees. It also provides that Parliament may not exclude the public, or any media, from any sitting unless in exceptional circumstances the relevant Speaker has determined that there are justifiable reasons for the exclusion.

Article 124(4) of the Constitution on parliamentary approval of public appointments

31. Article 124(4) of the Constitution provides that when a House of Parliament considers any appointment for which its approval is required under the Constitution or an Act of Parliament, the appointment shall be considered by

a committee of the relevant House; the committee's recommendation shall be tabled in the House for approval; and the proceedings of the committee and the House shall be in public.

Article 232 of the Constitution on Values and Principles of Public Service

32. Article 232 of the Constitution provides for the values and principles of public service which include high standards of professional ethics; efficient, effective and economic use of resources; responsive, prompt, effective, impartial and equitable provision of services; involvement of the people in the process of policy making; accountability for administrative acts; transparency and provision to the public of timely, accurate information; fair competition and merit as the basis of appointments and promotions; representation of Kenya's diverse communities; and affording adequate and equal opportunities for appointment, training and advancement, at all levels of the public service of men and women; the members of all ethnic groups; and persons with disabilities.

3.5 The Leadership and Integrity Act

33. The Leadership and Integrity Act provides a number of obligations to a State officer. These are, among others: to respect and abide by the Constitution and the law, public trust, performance of duties in an honest and accountable manner, professionalism, financial integrity, not to engage in activities that amount to abuse of office, not to misuse public resources, accepting gifts that may compromise the officer's duties, wrongful or unlawful acquisition of property, and conflict of interest.

34. In addition, section 10 of the Leadership and Integrity Act, 2012 in particular provides that a State officer shall, to the best of their ability—

- (a) carry out the duties of the office efficiently and honestly;
- (b) carry out the duties in a transparent and accountable manner;
- (c) keep accurate records and documents relating to the functions of the office; and
- (d) report truthfully on all matters of the organization which they represent.

3.6 The Public Service (Values and Principles) Act

35. Section 5 of the Public Service (Values and Principles) Act provides that a public officer shall maintain high standards of professional ethics, including being honest; displaying high standards of integrity, transparency, accountability, respect to others, objectivity, patriotism, and observance of the rule of law.

3.7 The Public Officer Ethics Act

36. The Public Officer Ethics Act provides for obligations to be carried out by a public officer. These include professionalism, carrying out duties in accordance with the law, prohibition from unjust enrichment, avoiding conflict of interest, not using office as a venue for soliciting or collecting harambees; not acting for foreigners; care of property; political neutrality, not practicing nepotism or favoritisms, giving impartial advice, conducting private affairs in a way that maintains public confidence, bar from sexual harassment, and submission of declaration of income, assets and liabilities once every two years.

CHAPTER FOUR

4.0 THE APPROVAL HEARING PROCESS

37. Pursuant to Standing Orders 45(1) and 77(1) of the National Assembly Standing Orders and the Senate Standing Orders, respectively, the Speakers of both Houses of Parliament referred the nomination of Mr. David Kibet Kemei to the position of Director General, Competition Authority to the National Assembly Departmental Committee on Finance and National Planning and the Senate Standing Committee on Finance and Budget, to conduct a joint approval hearing and table a joint report to the respective Houses of Parliament within the stipulated period.

4.1 Clearance Requirements

38. Following the referral of the nomination to the Committees, the Clerks of both Houses of Parliament requested information on the nominee from the following statutory agencies-

	Institution	The nature of the information sought.
1.	Ethics & Anti-Corruption Commission	Compliance with Chapter 6 of the Constitution
2.	Kenya Revenue Authority	Tax compliance
3.	Higher Education Loans Board	Loans obligation
4.	Directorate of Criminal Investigations	Any criminal charge or conviction
5.	Office of the Registrar of Political Parties	Membership in any governing body of a Political Party

39. The Clerks of both Houses of Parliament received responses from various State agencies as follows-

- (a) by a letter dated 2nd September, 2024 Ref: KRA/5/1002/5(11243) the Kenya Revenue Authority indicated that the nominee was tax compliant;

- (b) by a letter dated 28th August, 2024 Ref: *HELB/RR/112009/V/323* the Higher Education Loans Board indicated that the nominee was not a beneficiary of a GOK/ HELB loan.
- (c) by letter dated 3rd September, 2024 and 16th September, 2024, Ref: *EACC.7/10/5 VOL XXVII (132) and EACC.7/10/1 VOL XX (105)*, the *Ethics and Anti-Corruption Commission* indicated that the nominee had a matter related to the judgment rendered by a Court in Kenya vide Petition No E018 of 2022 (Dr. Mirriam Ndunge Muthoka Vs KMTC and EACC as interested party). However, the EACC clarified that there was no criminal culpability or otherwise on the Nominee.
- (d) by a letter dated 28th August, 2024 Ref: *RPP/ORG/34 VOL VI(27)* the Office of the Registrar of Political Parties indicated that the nominee is not a member of any registered political party.

40. Additionally, the nominee presented before the Committees clearances from the Directorate of Criminal Investigations, the Higher Education Loans Board, the Ethics and Anti-Corruption Commission, the Kenya Revenue Authority and the Office of the Registrar of Political Parties.

4.2 Notification to the Nominee

41. By a letter dated 2nd September, 2024 Ref. No. *PAR/JOINT SITTINGS/AH/DG-CA/2024/007* the Clerks of both Houses of Parliament and pursuant to section 6(3) of the Public Appointments (Parliamentary Approval), 2011, notified the nominee of the date, time and venue for the approval hearing.
42. The nominee was required to present his original identity card, academic and professional certificates and other relevant testimonials. Additionally, the nominee was requested to bring clearances from the Ethics and Anti-Corruption Commission, Kenya Revenue Authority, Higher Education Loans Board and Directorate of Criminal Investigations and the Office of the Registrar of Political Parties.
43. Further, the nominee was required to fill and present to the Committees the questionnaire in the Schedule to the Public Appointments (Parliamentary Approval) Act, 2011.

4.3 Notification to the Public

44. Pursuant to the provisions of Article 118 of the Constitution, section 6(3) of the Act and Standing Orders 45(3) and 77(2) of the National Assembly Standing Orders and the Senate Standing Orders respectively, both Clerks notified the general public of the intention of both Committees to conduct approval hearings on **Tuesday, 17th September, 2024** in the **Mini-Chamber at County Hall**.
45. Section 6(9) of the **Public Appointments (Parliamentary Approval) Act, 2011**, permits any person to provide both Clerks with evidence contesting a candidate's suitability to hold the office to which the candidate has been nominated. **Notably, such evidence should be provided to both Clerks in the form of a written statement made on oath and must be submitted before the approval hearing.**
46. Consequently, the advertisement made on **Friday 30th August, 2024**, both Clerks invited the public to submit memoranda on the suitability or otherwise of the nominees **on or before Thursday, 12th September, 2024 at 5.00 pm.**
47. By the close of business on **12th September, 2024**, no memoranda had been received either in support or against the nominee. However, on Monday, 16th September 2024 the Committee received a petition by Mr. Francis Awino of the Bunge la Mwananchi contesting the suitability of the nominee on account of age.

4.4 Committees' Meetings

48. Prior to the approval hearing on **Tuesday, 17th September, 2024**, the Committees held a preparatory meeting to agree on the conduct of the approval hearing.

4.5 The Approval Hearing

49. Mr. David Kibet Kemei, the nominee for appointment to the position of Director General Competition Authority of Kenya, appeared before a joint sitting of the National Assembly Departmental Committee on Finance and National Planning and the Senate Standing Committee on Finance and

Budget on Tuesday, 17th September, 2024 at 11.00 am for the approval hearing.

50. In conducting the approval hearing, the Committees were guided by the Constitution, the Competition Authority Act, the Public Appointments (Parliamentary Approval), 2011, the Leadership and Integrity Act and the Standing Orders of the respective House.
51. The Committees considered the nominee's academic qualifications, employment record and work experience, membership to relevant professional associations, public office, political activities and affiliations, the potential conflict of interest, suitability to the position, tax compliance, integrity and other thematic areas relevant to the duties and responsibilities of a Director General Competition Authority of Kenya.

4.6 The Nominee's Background

52. The nominee is a male Kenyan citizen of Identification Card Number 8712962 and does not hold any other citizenship. He was born on 12th December, 1964 in Uasin Gishu County.

4.7 Academic and Professional Qualifications

53. The nominee holds a Masters in Business Administration (Finance option) and a Bachelor's Degree in Commerce (Accounting option) from the University of Nairobi; a Certified Public Accountant certification from KASNEB; Certified Regulation Specialist from the Institute of Private Public Partnership (IP3), Washington, DC, USA & Loughborough University; and a Practitioner Diploma in Executive Coaching from The Academy of Executive Coaching, United Kingdom.

4.8 Employment Record and Work Experience

54. The nominee has worked in the following capacities-
- a) Managing Director at DGMB Training Solutions Ltd from 2011 to date;
 - b) Director at Kenya Re-Insurance Company Ltd between 2014 and October 2020;
 - c) Chairman to the Board, Kenya Re-Insurance Company Ltd between June 2015 and July 2019;

- d) Part-time Lecturer, Egerton, Kabarak, Moi Universities and Jomo Kenyatta University of Agriculture & Technology, and Kenya School of Monetary Studies between May 2011 and December 2015;
- e) Board Member, Africa Merchant Assurance Company between November 2008 and November 2012;
- f) Finance Analyst at the Energy Regulatory Commission between June 2000 and December 2007;
- g) Finance Manager at Windsor Golf Hotels & Country Club Ltd between September 1996 and September 1998;
- h) Lecturer at Oshwal College between January 1996 and November 1996;
- i) Revenue Accountant, Kenya Shell Ltd between May 1995 and September 1995;
- j) Group Credit Controller, Nation Media Group Ltd between May 1995 and September 1995;
- k) Lecturer at Kenya College of Accountancy between January 1994 and June 1994;
- l) Assistant Lecturer at the University of Nairobi from July 1993 to March 1994.

4.9 Relevant experience for the position of Director General of the Competition Authority of Kenya–

55. The nominee has over 33 years of experience across many sectors; academia, regulatory, tourism, health/communication and energy. He stated that working in these sectors has equipped him with the skills and expertise needed as the Director General for the Competition Authority.

4.10 Integrity and Leadership

56. The nominee demonstrated integrity in that he has not been charged in a court of law or mentioned in any investigatory reports of Parliament or any Commission of Inquiry in the last three (3) years. Further, he has never been dismissed or otherwise removed from office for contravention of the provisions of Article 75 of the Constitution.

57. However, he was tasked with his role on the recruitment of the Company Secretary of KMTCC that was ruled unconstitutional and the board Members surcharged. The nominee stated that the board Members did the recruitment by creating diversity in the organization by promoting gender inclusivity and

internal talent. He informed the Committees that he was not aware of the court's decision to surcharge the board Members and was disadvantaged. He emphasized that if approved, he would ensure that there was a proper framework that guided critical decision-making.

58. Mr. Kemei dismissed concerns relating to his age, assuring the Committees that he was capable and ready to serve. However, he noted that the matter was the subject of a Court Petition.

4.11 Financial net worth

59. The nominee estimated his net worth to be KShs.153 million of which KShs. 30 Million is liabilities. His other sources of income include a salary from DGMB firm and farming activities.

4.12 Conflict of Interest

60. The nominee declared that he is currently not associated with any persons or matters that would present a potential conflict of interest should he assume the office of Director General Competition Authority of Kenya. He stated that if such a matter arises, he will recuse himself from the position.

4.13 Public Office, Political Activities and Affiliations

61. The nominee informed the Committees that he is a member of the United Democratic Alliance (UDA) but not a governing council member.

4.14 Key Issues Arising from the Vetting Process

62. The nominee informed the Committees that, if appointed to the position of Director General of the Competition Authority of Kenya, he would endeavor to deal with key issues in the following broad areas.

4.15 Economic and Consumer Protection Strategies

On consumer protection

63. The nominee informed the Committee that if approved, he would deal with the prevalence of unfair trade practices by prioritizing consumers and dealing with corporate malpractices. He stated that he will also create a level of playing field for businesses and address issues such as high production costs and expensive bank loans.

64. He emphasized the need for collaboration with banks and the government to improve competition and lower cost of credit for Kenyans, particularly the agricultural sector. He stated that he will protect the small agricultural farmers through dealing with cartels and advice the government on policies that favors farmer's interests. He emphasized that there's need to relook at the production cost of sugar to ensure competitiveness in order to curb importation.
65. Further, the nominee informed the Committee that to ensure the banking sector remains accessible to common citizens in Kenya, the Competition Authority of Kenya will advocate for regulatory reforms that promote transparency and competition, encourage the development of inclusive financial products for underserved populations, support consumer education initiatives to empower informed decision-making, collaborate with the Central Bank of Kenya for a cohesive approach, and monitor market practices to prevent anti-competitive behaviors that hinder access to banking services.

On challenges in the digital economy

66. The nominee noted the legal gap that has hindered the sector regulation and emphasized that him will champion for policies to protect consumers and ensure fairness in the digital space if approved as the Director General.
67. The nominee emphasized that, if approved he will implement a number of policies that are geared towards job creation and economic growth such as; implementation of competition laws for all businesses to grow, elimination of all barriers to ensure businesses enter market and promotion of innovation among various sectors of the economy to create jobs among others.

On the creative economy

68. The nominee stated that to effectively manage competition in the creative economy space, the Competition Authority of Kenya (CAK) needs to develop a clear regulatory framework that supports fair competition and protects intellectual property rights, while also providing training programs for creatives on business management and market access. Further, the CAK should conduct market surveillance to monitor anti-competitive practices, collaborate with stakeholders to foster innovation, and promote policies that enhance the visibility of local content on digital platforms.

On cartels in the real estate industry

69. The nominee informed the committees that to address cartels inflating prices in Kenya's real estate sector, the Competition Authority of Kenya (CAK) should conduct thorough investigations into suspected collusion among developers and agents, imposing significant penalties to deter anti-competitive practices.
70. He further noted that to address the collapse of local businesses in the face of successful international firms in Kenya, the Competition Authority of Kenya (CAK) should enhance regulatory oversight to ensure fair competition and prevent anti-competitive practices by foreign companies, such as predatory pricing. That the CAK can advocate for supportive policies for local businesses, including tax incentives and access to financing, while also facilitating partnerships between local and international firms to promote knowledge transfer.

On monopolistic behaviors

71. The nominee stated that he does not advocate for monopolies and would endeavor to ensure competitiveness and an end to factors that highly influence monopolistic behaviors in some sectors. He noted that there is a need to relook at the dominance of these firms in ensuring there are no unfair practices, no barriers to entry and exit and no exploitation of consumers

4.16 Collaboration and Enforcement

On integration with regional and global markets

72. The nominee stated that to promote regional and global integration, the Competition Authority of Kenya needs to strengthen collaboration with regional bodies like the EAC to harmonize competition laws, engage in international partnerships for knowledge-sharing, advocate for policies that support local businesses in competing globally, promote consumer awareness of local products, and streamline processes for mergers and acquisitions involving regional players to foster a competitive environment that benefits both local and international businesses..
73. He informed the Committee that CAK's enforcement powers are essential for maintaining fair competition and that there's need for streamlining of the

legal process, strengthening penalties for non-compliance, and improving stakeholder engagement.

4.17 Legal and Regulatory Framework

On transparency of the mining sector and forex trading

74. The nominee stated that there's a need for CAK to work in collaboration with the Ministry of Mining to ensure enforcement of competition laws.

75. To prevent the exploitation of Kenyans engaged in forex trading, the nominee stated that the Competition Authority of Kenya (CAK) should enhance market surveillance and regulatory oversight of forex brokers, ensuring compliance with consumer protection laws and transparency in risk disclosures.

On Mergers and Acquisitions

76. The nominee noted that to oversee mergers and acquisitions in Kenya, especially in dominant industries, the Competition Authority of Kenya (CAK) will prioritize public interest by assessing the impact on employment and consumer choice, enforce strict regulatory compliance to prevent monopolies, promote transparency in the merger process, implement conditions for approval that safeguard competition, and engage continuously with stakeholders to gather insights and enhance market fairness.

On Competition law and policy

77. The nominee stated that the Competition Authority of Kenya will participate in promoting good competition in law-making by providing expert opinions on proposed legislation, assessing the impact of existing laws on market competition, conducting regulatory impact assessments, recommending amendments to enhance competition, advocating for consumer protection policies, and engaging in public awareness campaigns, all while collaborating with other regulatory bodies to develop a robust legal framework that supports fair market practices in Kenya.

CHAPTER FIVE

5.0 COMMITTEES' OBSERVATIONS AND FINDINGS

5.1 COMMITTEES' OBSERVATIONS

78. The Committees, having considered the nominee's filled questionnaire pursuant to section 6(8) of the Public Appointments (Parliamentary Approval) Act, 2011, curriculum vitae, and oral submissions during the approval hearing, made the following observations regarding the suitability of Mr. David Kibet Kemei for appointment as the Director General of Competition Authority of Kenya–

5.1.1 Constitutional and Statutory Requirements

79. The Committees observed as follows:

- a) That the nominee is a Kenyan citizen and is not a citizen of any other country and therefore meets the requirement of Article 78(1) of the Constitution;
- b) The nominee, having been cleared by KRA, HELB, EACC, DCI, ORPP, with regard to tax compliance, higher education loan repayments, ethics and integrity, criminal records and political party affiliations has met the statutory requirements for appointment to the Office.

5.2 COMMITTEES' FINDINGS

80. The Committees, having considered the nominee's filled questionnaire pursuant to section 6(8) of the Public Appointments (Parliamentary Approval) Act, 2011, curriculum vitae, his background, academic credentials and professional qualifications, work and professional experience, personal integrity as well as his performance during the approval hearing conducted on Tuesday 17th September, 2024 have made the following findings on the suitability of Mr. David Kibet Kemei for appointment as the Director General of Competition Authority of Kenya–


- a. The nominee possesses the relevant experience for the position of Director General the Competition Authority of Kenya. He is a managing director at DGMB Solution Ltd and has vast experience in developing and managing strategies vital to the running of an organization. A

background in management and organizational leadership is a critical tool for any person discharging the role of a Director General.

- b. The nominee clearly understood the current issues affecting the Competition Authority of Kenya. He also shared practical strategies to address the issues. This places him in a suitable position to provide leadership to the Competition Authority.
- c. The nominee demonstrated a satisfactory understanding of the mandate of the Competition Authority of Kenya; the need to ensure fair prices to protect consumers and promote a transparent business environment; and the enforcement strategies he would apply to monitor business.
- d. The nominee demonstrated his ability to effectively manage the funds and resources of an organization. He further demonstrated the ability to discharge the role of accounting officer that is required of a Director General.
- e. The nominee is fifty-nine (59) years old, having been born in 1964. The Committee further finds that the Competition Authority Act Cap 504 does not provide for the age requirement for the office holder of the Director General. In addition, Article 27(4) of the Constitution of Kenya precludes the State from discriminating against any Kenyan on account of age
- f. In relation to the matter raised by the Ethics and Anticorruption Commission (EACC) on the nominee regarding a court judgment to surcharge the KMTCC Board members for the impugned recruitment of the Corporation Secretary. The Committee finds that the nominee was not a party to the suit and therefore could not have had the opportunity to defend himself, therefore it would be gravely prejudicial to judge his suitability to hold office on that account.

6.0 COMMITTEES' RECOMMENDATION

81. Having considered the suitability, capacity and integrity of the nominee, and pursuant to section 12(1) of the Competition Act, Cap 504, sections 3 and 8 of the Public Appointments (Parliamentary Approval) Act (No. 33 of 2011), standing order 216(5)(f) of the National Assembly Standing Orders and standing order 77(3) of the Senate Standing Orders, the National Assembly Departmental Committee of Finance and National Planning and the Senate Standing Committee of Finance and Budget recommend that the National Assembly/the Senate **APPROVE** the nomination of **Mr. David Kibet Kemei** for appointment as the Director General of Competition Authority of Kenya.

 THE NATIONAL ASSEMBLY PAPERS LAID	
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CLERK AT THE TABLE:	