

REPUBLIC OF KENYA



BOMET COUNTY ASSEMBLY

THIRD ASSEMBLY - THIRD SESSION



REPORT OF THE SELECT COMMITTEE ON INVESTIGATION FOR  
THE REMOVAL FROM OFFICE OF THE COUNTY EXECUTIVE  
COMMITTEE MEMBER FOR ROADS, PUBLIC WORKS AND  
TRANSPORT - HON. ERICK KIPKOECH NGETICH.

*Hon. Speaker  
You may approve  
for tabling  
Minutes  
30-08-2024*

*Approved  
Shukri  
30/08/2024*

AUGUST 2024



## **TABLE OF CONTENTS**

ABBREVIATIONS AND ACRONYMS .....	iv
LIST OF STATUTES .....	v
LIST OF ANNEXURES .....	vi
Preface .....	vi
Establishment of the select Committee.....	vii
Committee’s Terms Of Reference .....	viii
Membership And Ownership Of The Report.....	x
CHAIRPERSON’S FOREWORD .....	xi
ACKNOWLEDGEMENT .....	xiii
EXECUTIVE SUMMARY .....	xv
CHAPTER ONE .....	1
INTRODUCTION.....	1
Establishment of the Committee .....	4
Committee Membership .....	4
Committee Secretariat .....	5
CHAPTER TWO .....	6
BACKGROUND INFORMATION .....	6
LEGAL FRAMEWORK.....	6
Speaker’s Communication and Referral of the Special Motion.....	13
Conduct of Committee Proceedings .....	14
Meetings of the Select Committee.....	14
Invitations to Appear.....	15
Pre-Hearing Conference.....	16
Reading of particulars of the allegations .....	16
Hearing of Evidence.....	17
CHAPTER THREE.....	18
CONDUCT OF PROCEEDINGS .....	18
Pre-Hearing Conference of Parties .....	18
Hearing proceedings .....	19
Testimony of, Hon. Josphat Kipkirui.....	19
CHAPTER FOUR.....	27
COMMITTEE’S OBSERVATION.....	27
CHAPTER FIVE.....	33
ANALYSIS OF THE EVIDENCE.....	33

Background .....	33
CHAPTER SIX.....	39
COMMITTEE RECOMMENDATION .....	39
CHAPTER SEVEN .....	41
COMMITTEE FINDING.....	41

## **ABBREVIATIONS AND ACRONYMS**

ADP- Annual Development Plan

CECM- County Executive Committee Member

CIDP- County Integrated Development Plan

CoB- Controller of Budget

Hon- Honourable

IFMIS- Integrated Financial Information System

Ksh- Kenya Shillings

LPO- Local Purchase Order

MCA- Member of County Assembly

## **LIST OF STATUTES**

1. Constitution of Kenya 2010
2. Standing orders
3. County Government Act
4. The County Assembly Powers and Privileges Act,
5. The Public Finance Management Act,
6. The Public Procurement and Asset Disposal Act

## **LIST OF ANNEXURES**

1. Minutes of select committee proceeding
2. Notice of Motion for the dismissal of Hon. Erick Kipkoech Ngetich County Executive Committee Member for Roads, Transport and Public Works
3. Order Paper under which the Special Motion for the dismissal of Hon. Erick Kipkoech Ngetich as the County Executive Committee Member for Roads, Transport and Public Works is listed. Charge Sheet and List of Documents
4. Invitation to the County Executive Committee Member for Roads, Transport and Public Works to appear before the Committee
5. Letters from the Clerk of the Bomet County Assembly inviting the County Executive Committee Member for Roads, Transport and Public Works for the Conference of Parties.
6. 2022/2023 County Budget Implementation Review Report from the Controller of Budget
7. County Budget Implementation Review Report from the Controller of Budget for the first 9 months of 2023/2024.
8. Notice of invitation to submit written memoranda
9. Auditor General report on the County Government 2022-2023
10. Committee Work Plan
11. Correspondence between County assembly and Department of Roads, Public Works and Transport
12. Pending Bills Report
13. Contract agreement on the supply of Heavy Machines

## **PREFACE**

### **ESTABLISHMENT OF THE SELECT COMMITTEE**

In accordance with the principles of accountability and good governance, the County Governments Act establishes a framework for the oversight of County Executive Committee Members. Specifically, Section 40(2) of the Act provides that a member of the County Assembly, supported by at least one-third of the Assembly members, may propose a motion requiring the governor to dismiss a County Executive Committee Member on any of the following grounds;

- a) Incompetence;
- b) Abuse of office;
- c) Gross misconduct;
- d) Failure, without reasonable excuse, or written authority of the governor, to attend three consecutive meetings of the county executive committee;
- e) Physical or mental incapacity rendering the executive committee member incapable of performing the duties of that office; or
- f) Gross violation of the Constitution or any other law.

### **Mr. Speaker Sir,**

In accordance with the provisions of Section 40 of the County Governments Act, 2012, and Standing Order No. 72, Hon. Josphat Kipkirui, the Member of County Assembly for Singorwet Ward, moved a motion in this Honorable House on 13th August 2024, urging the House to remove Mr. Erick

Kipkoech Ngetich from the position of County Executive Committee Member (CECM) for Roads, Public Works, and Transport

**Mr. Speaker Sir,**

Following the approval of the motion, the County Assembly, on 21st August 2024, constituted a five-member select committee pursuant to Section 40(3)(a) of the County Governments Act, as read in conjunction with Standing Order No. 72(6). The committee was entrusted with the mandate to thoroughly investigate the grounds cited in the motion. It was directed to submit its findings to the Assembly within ten days, determining whether the allegations against the County Executive Committee Member, Mr. Erick Kipkoech Ngetich, were substantiated.

**Mr. Speaker Sir,**

The Select Committee began its proceedings on 22nd August 2023, with a statutory obligation to complete its investigation within a 10-day period. Throughout this timeframe, the committee was responsible for conducting a comprehensive review of the allegations detailed in the motion. At the conclusion of its investigation, the committee was required to present its findings to the Assembly.

#### **COMMITTEE'S TERMS OF REFERENCE**

**Mr. Speaker Sir,**

The terms of reference for the Committee are provided for under section 40(3) of the County Governments Act, 2012 and Standing Order No. 72 (6) which are: -

- i. To investigate the grounds alleged in the motion for removal from office of the County Executive Committee Member (CECM) for Roads, Public






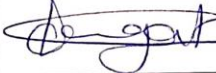
Works and Transport;

- ii. To report to the County Assembly whether it finds the allegations to be substantiated or not.


**MEMBERSHIP AND OWNERSHIP OF THE REPORT**

**Mr. Speaker Sir,**

As currently constituted, Committee comprises of the following honourable members who have appended their signatures to affirm ownership of this report.

S/No.	Name	Position	Signature
1	Hon. Peter Rono	Chair	
2	Hon. Peter Mutai	V. chair	
3	Hon. Dancel Kirui	Member	
4	Hon. Caroline Chelangat	Member	
5	Hon. Emily Cheruiyot		

It is therefore my pleasant duty and privilege to table this report for adoption by the Assembly

Signed..........Date.....20/8/2024.....

**Hon. Peter Rono**

**Chairperson,**

x

x

## **CHAIRPERSON'S FOREWORD**

This report presents the comprehensive proceedings of the Select Committee tasked with investigating the proposed dismissal of Hon. Erick Kipkoech Ngetich from his position as County Executive Committee Member for Roads, Public Works, and Transport. The investigation was initiated following the submission of a Special Motion by the Member for Singorwet Ward, Hon. Josphat Kipkirui, on four critical grounds: gross violation of the Constitution or any other law; abuse of office; gross misconduct; and incompetence.

The Notice of the Special Motion sought a resolution from the House for the removal of Hon. Erick Kipkoech Ngetich from his office as CECM for Roads, Public Works, and Transport. The motion was duly approved by the House on Tuesday, 13th August 2024, leading to the establishment of this Select Committee to carry out an in-depth investigation into the matter. In referring the matter to the Committee, the Honourable Speaker directed that the investigation be conducted and a report be submitted to the House within ten (10) days, as mandated by Section 40 of the County Governments Act and Standing Order No. 72 of the County Assembly Standing Orders.

In adherence to the Speaker's directive, the Committee convened its inaugural meeting on Thursday, 22nd August 2024, at 9:00 AM, in the Mini Chamber, County Assembly Buildings, Bomet. Over the course of its work, the Committee held four substantive sittings dedicated to the thorough investigation of the proposed dismissal of the CECM for Roads,

Public Works, and Transport.

The Clerk of the Assembly formally communicated to the CECM for Roads, Public Works, and Transport, notifying him of a pre-hearing conference scheduled for Friday, 23rd August 2024. This communication was accompanied by three key documents: the order paper containing the approved motion for his proposed removal from office, a draft of the committee rules of procedure, and an approved committee work plan and calendar. Furthermore, the CECM was duly notified and invited to attend the hearings scheduled for Monday, 25th August 2024, either in person or through legal representation, or both. The CECM, represented by his legal counsel, appeared before the Committee on the appointed date.

Following this, the Committee meticulously considered the submissions from both parties in strict accordance with the Constitution, the relevant laws, the County Assembly Standing Orders, and its own Rules governing the Conduct of the Investigation. It is my hope that this report provides clarity and transparency on the proceedings and that the findings herein serve to uphold the principles of accountability and good governance.

## **ACKNOWLEDGEMENT**

The Select Committee extends its profound gratitude to the Offices of the Speaker and the Clerk of the County Assembly for their unwavering support throughout the execution of our mandate. Their steadfast assistance was instrumental in enabling the Committee to fulfill its duties with both efficiency and precision, ensuring the integrity of the investigative process.

The Committee further wishes to express its deep appreciation to the Sponsor of the Special Motion, Hon. Josphat Kipkirui, whose cooperation and active engagement during the hearings were vital to the Committee's proceedings. His contributions played a critical role in facilitating a comprehensive examination of the issues at hand.

We also extend our acknowledgment to Hon. Erick Kipkoech Ngetich, County Executive Committee Member for Roads, Public Works, and Transport, for his participation in the proceedings through his legal representative. Although his participation was very limited, it nonetheless provided a necessary perspective for the Committee's deliberations.

The Select Committee also acknowledges the Hansard team for their meticulous documentation and coverage of our proceedings. Their diligent efforts ensured that the investigation was recorded with the utmost transparency, preserving an accurate and detailed account for posterity.

Finally, I would like to personally extend my sincerest appreciation to the Honourable Members of the Committee and the Committee Secretariat. Their unwavering dedication, reflected in the long hours of deliberation

and their invaluable contributions, was pivotal in the preparation and production of this report.

On behalf of the Select Committee, it is my distinct privilege to present to this Honorable House the Report of the Select Committee on the Investigation into the Proposed Dismissal of Hon. Erick Kipkoech Ngetich as County Executive Committee Member for Roads, Public Works, and Transport.

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**HON. PETER RONO,**  
**CHAIRPERSON,**  
**SELECT COMMITTEE INVESTIGATING THE PROPOSED DISMISSAL OF HON.**  
**ERICK KIPKOECH NGETICH, AS COUNTY EXECUTIVE MEMBER FOR ROADS,**  
**PUBLIC WORKS AND TRANSPORT**

## **EXECUTIVE SUMMARY**

This report comprehensively documents the proceedings of the Select Committee tasked with investigating the proposed dismissal of Hon. Erick Kipkoech Ngetich from his position as County Executive Committee Member for Roads, Public Works, and Transport. This investigation was initiated following the tabling of a Special Motion by the Member for Singorwet Ward, Hon. Josphat Kipkurui.

Chapter One of the report provides an overview of the establishment of the Select Committee, along with its membership, as mandated by Section 40 of the County Governments Act and Standing Order No. 72 of the County Assembly Standing Orders. The Select Committee, composed of five members, was charged with the responsibility of investigating the allegations leveled against the CECM and reporting its findings to the House within ten days of its formation.

Chapter Two offers background information, including the legal framework governing the investigation, the Rules of Conduct for the Select Committee's investigation, the meetings held, invitations extended to the parties involved, the proceedings of the preliminary conference, particulars of the allegations, and the hearing of evidence.

Chapter Three delves into the detailed proceedings of the hearings, including the evidence presented by the parties and their witnesses, cross-examination, re-examination, clarifications sought by the Committee members, and closing statements. This chapter also includes a thorough analysis of the evidence concerning each of the grounds alleged by the

Sponsor of the Special Motion.

Chapter Four summarizes the Committee's observations, while Chapter Five presents its findings. Chapter Six outlines the Committee's recommendations. Chapter Seven provide for committee findings.

The report is supplemented by annexures that support the evidence presented during the investigation. These annexures include the minutes of the Select Committee meetings, communications from the Chair, the Notice of Motion for the dismissal of the CECM, the Order Paper listing the Special Motion, invitations to the parties to appear before the Committee, the Rules on Conduct of Investigation, and a compendium of Hansard records from the hearings.



## **CHAPTER ONE**

### **INTRODUCTION**

On Tuesday, 6th August 2024, the Hon. Josphat Kipkirui, Member of County Assembly for Singorwet Ward, acting under his legally conferred mandate, issued a notice of motion in accordance with Section 40 of the County Governments Act and Standing Orders 71 and 72 of the County Assembly. This notice, formally tabled before the House on the same day, sought a resolution for the dismissal of Hon. Erick Kipkoech Ngetich from his position as County Executive Committee Member for Roads, Public Works, and Transport. The motion was based on the following grounds:

- a. Gross violation of the Constitution or any other law;
- b. Abuse of office;
- c. Gross misconduct; and
- d. Incompetence.

In discharging his constitutional and procedural responsibilities, the Honourable Speaker was guided by the provisions of Section 40(2) of the County Governments Act and the relevant Standing Orders. Section 40(2) empowers a member of the County Assembly, with the support of at least one-third of the Assembly, to propose a motion calling for the dismissal of a County Executive Committee Member on specified grounds.

Standing Order 72(1) outlines the procedural requirements for such a motion.

Before giving notice under Section 40, the Member must submit the proposed motion in writing to the Clerk, detailing the grounds and particulars justifying the proposed dismissal. This submission is particularly crucial when the grounds involve gross violations of the Constitution, serious allegations of criminal conduct under national or international law, or gross misconduct. The notice of motion, duly signed by the Member, is then transmitted to the Speaker for consideration and approval. The Standing Orders place a duty on the Speaker to rigorously assess whether the motion conforms to constitutional requirements and whether the allegations can be substantiated.

In this instance, the Honourable Speaker conducted a comprehensive review of the proposed Special Motion to determine its adherence to the constitutional and procedural criteria. The Speaker focused on whether the motion met the required standards of form and whether the grounds cited were legally admissible.

Upon thorough examination, the Honourable Speaker concluded that the motion submitted by Hon. Kipkirui met the necessary legal and procedural thresholds. Specifically, the proposed Special Motion was found to be in proper form and satisfied the criteria required for further consideration by the House, as it:

- a. Garnered the requisite support of 27 Members of the County Assembly; b) Was submitted in the prescribed written format;

- b. Clearly articulated the grounds and particulars for the proposed dismissal of the County Executive Committee Member; and
- c. Was duly signed by the Sponsor.

Having established that the motion met the required standards of form and admissibility, the Honourable Speaker formally notified the House of its admissibility and authorized the Sponsor to give formal notice during the afternoon sitting of the House on 6th August 2024.

Section 40(2) further provides that if a motion under subsection (2) is supported by at least one-third of the members of the County Assembly:

- a. The County Assembly shall appoint a select committee comprising five of its members to investigate the matter; and
- b. The select committee shall report, within ten days, to the County Assembly whether it finds the allegations against the County Executive Committee Member to be substantiated.

Upon receiving the requisite support of 27 Members of the County Assembly, the Special Motion was formally adopted, and the House assumed jurisdiction over the matter.

In accordance with Section 40 of the County Governments Act, the House subsequently resolved to appoint a Select Committee to investigate the allegations detailed in the Special Motion. The Committee was mandated to conduct a thorough inquiry and report back to the County Assembly within ten (10) days of its appointment, providing a determination on whether the allegations were

substantiated or otherwise.

### **ESTABLISHMENT OF THE COMMITTEE**

Section 40 of the County Governments Act establishes the legal framework for the appointment of a select committee tasked with investigating allegations presented in a Special Motion. This provision mandates that the County Assembly shall constitute a select committee composed of five of its members, specifically appointed to conduct a thorough investigation into the matters raised in the motion.

Furthermore, Section 40 stipulates that, following its investigation, the select committee is required to submit a report to the House. This report must clearly indicate whether the committee finds the allegations against the County Executive Committee Member to be substantiated or not. The findings of the committee, as reflected in this report, are critical in guiding the House's subsequent deliberations and decisions regarding the fate of the County Executive Committee Member in question.

### **COMMITTEE MEMBERSHIP**

Following the Speaker's communication requesting the Selection Committee to propose members for appointment to the Select Committee, the Selection Committee duly submitted the names, which were subsequently approved by the House on 21st August 2024.

Accordingly, on the same day, the House formally established the Select Committee pursuant to Section 40 of the County Governments Act, comprising

the following members:

1. Hon. Peter Rono
2. Hon. Peter Mutai
3. Hon. Dancel Kirui
4. Hon. Caroline Chelangat
5. Hon. Emily Cheruiyot

### **COMMITTEE SECRETARIAT**

The Select Committee was ably supported in the execution of its mandate by a Secretariat comprised of the following members:

1. Mr. Weldon Ngetich – Principal Committee Clerk
2. Mr. Haron Ngeno – Deputy General Counsel
3. Mr. Dickson Cheruiyot – Principal Committee Clerk
4. Mr. Koech Josphat – Hansard Reporter

## CHAPTER TWO

### BACKGROUND INFORMATION

#### LEGAL FRAMEWORK

#### **Mr. Speaker Sir,**

The procedure for the removal of a County Executive Committee Member from office is explicitly outlined under Section 40 of the County Governments Act, 2012, as read in conjunction with Standing Order No. 72, which provides as follows:

- 1) A member of the County Assembly, supported by at least one third of all the members of the county assembly, may propose a motion requiring the Governor to dismiss a County Executive Committee member on any of the grounds set out in subsection (1).
- 2) If a motion under subsection (2) is supported by at least one third of the members of the County Assembly—
  - a. the County Assembly shall appoint a select committee comprising five of its members to investigate the matter; and
  - b. the select committee shall report, within ten days, to the County Assembly whether it finds the allegations against the County Executive Committee member to be substantiated.
- 3) The County Executive Committee member has the right to appear and be represented before the select committee during its investigations.
- 4) If the select committee reports that it finds the allegations—
  - a) unsubstantiated, no further proceedings shall be taken; or
  - b) Substantiated, the County Assembly shall vote whether to approve the resolution requiring the County Executive Committee member to be dismissed.
- 5) If a resolution under subsection (5)(b) is supported by a majority of the members of the County Assembly—

- a. the Speaker of the County Assembly shall promptly deliver the resolution to the Governor; and
- b. the Governor shall dismiss the County Executive Committee member.

**Mr. Speaker Sir,**

The notice of motion for the removal from office of the County Executive Committee Member for Roads, Public Works, and Transport, Mr. Erick Kipkoech Ngetich, was duly given on 6th August 2024, and the motion was subsequently moved on 13th August 2024.

The contents of the special motion were as follows;

**SPECIAL MOTION - DISMISSAL OF HON.ERICK KIPKOECH NGETICH AS THE COUNTY EXECUTIVE COMMITTEE MEMBER FOR ROADS, PUBLIC WORKS AND TRANSPORT (HON. JOSPHAT KIPKIRUI, MCA)**

**IN VIEW** of Section 40 of the County Governments Act, 2012, which allows for the removal of a County Executive Committee Member on grounds of gross violation of the Constitution or any other law, abuse of office, gross misconduct, physical or mental incapacity, or incompetence;

**WHEREAS** Hon. Erick Kipkoech Ngetich, the County Executive Committee Member for Roads, Public Works, and Transport, has engaged in actions that are contrary to the conduct expected of a public officer as per our Constitution and other relevant laws;

**ACKNOWLEDGING** THAT a State Officer, having taken the oath of office as mandated by the Constitution, is required to uphold the dignity and respect of the office;

**RECOGNIZING** the County Assembly's oversight role as specified under the Constitution of Kenya and the County Governments Act, 2012;

**CONCERNED** about the allegations of gross misconduct, abuse of office, and legal violations that undermine the integrity and principles of public service required from such a high office;

**FURTHER AWARE** that the County Governor in his Communication dated 4<sup>th</sup> August,

2024 suspended the said County Executive Committee Member for an indefinite period; **THIS COUNTY ASSEMBLY**, pursuant to Section 40(2) of the County Governments Act, 2012, and Standing Order 72 of the County Assembly Standing Orders, **RESOLVES** that the Governor dismisses Hon. Erick Kipkoech Ngetich from the office of the County Executive Committee Member for Roads, Public Works, and Transport on the following grounds:

**Gross Violation of the Constitution and Other Laws:**

1. Failure to Implement Budgeted Projects and Adhere to the Public Finance Management Act:

Hon. Erick Kipkoech Ngetich has grossly violated the Constitution and other laws by:

- a) Misappropriation of Funds: Failing to implement projects approved in the county budget, contrary to financial management principles in the Public Finance Management Act, 2012. Hon. Ngetich has not accounted for Ksh. 195 million for county roads and Ksh. 78 million for cross-cutting roads in the financial year 2023/24, suggesting misappropriation of funds, which violates Article 201(d) of the Constitution.
- b) Exceeding Budgetary Allocations: Spending beyond the allocated budget for roads, indicating unauthorized commitment of funds, in violation of the Public Finance Management Act, 2012, Section 196(1)(d).
- c) Irregular Procurement Practices: Purchasing heavy machinery without budgetary approval or ownership documentation, contravening Section 197(1) of the Public Finance Management Act, 2012.

**Abuse of Office:**

1. Un-procedural Disposal of County Motor Vehicles: Hon. Erick Kipkoech Ngetich has abused his office by:

- a) Violating Procurement Laws: Disposing of county motor vehicles without following the Public Procurement and Asset Disposal Act, 2015, Section 53(1), thereby disregarding legal procedures and governance standards.



**Gross Misconduct:**

1. Issuing Fraudulent LPOs: Hon. Erick Kipkoech Ngetich has engaged in gross misconduct by:

a) Financial Impropriety: Overseeing the issuance of fraudulent Local Purchase Orders (LPOs) for non-existent projects, in violation of the Anti-Corruption and Economic Crimes Act, 2003, Section 45(2)(b). For instance, LPOs for routine maintenance and construction of Kakimulday-Karab Barsukata and Saoset and Chepkirib roads were found to be fraudulent.

2. Failure to Maintain County Vehicles: Hon. Erick Kipkoech Ngetich has shown gross misconduct by:

a) Negligence in Asset Management: Neglecting the maintenance of county vehicles, leading to their deterioration and inefficiency, contrary to the Leadership and Integrity Act, 2012, Section 11(a).

3. Failure to Provide Detailed Expenditure Reports: Hon. Erick Kipkoech Ngetich has demonstrated gross misconduct by:

a) Lack of Transparency: Failing to provide detailed expenditure reports as requested by the County Assembly Committee on Roads, Transport, and Public Works, violating principles of good governance and oversight as per Article 10 of the Constitution and the Public Finance Management Act, 2012.

**Incompetence:**

1. Underutilization of Heavy Machinery: Hon. Erick Kipkoech Ngetich has shown incompetence by:

a) Failure in Resource Management: Despite spending over Ksh. 300 million on heavy machinery, only eight out of 25 wards have utilized these resources. This mismanagement has resulted in grounded machinery and inefficient service delivery, violating the principles of public service under the Leadership and Integrity Act, 2012.

2. Unexplained Pending Bills: Hon. Erick Kipkoech Ngetich has demonstrated incompetence by:

- a) Poor Financial Management: Failing to address the increasing number of unexplained pending bills, reflecting gross incompetence and mismanagement of county resources.

**Mr. Speaker Sir,**

Section 40 (2) of the County Governments Act provides that a member of the county assembly, supported by at least one-third of all the members of the County Assembly, may propose a motion requiring the governor to dismiss a county executive committee member on any of the following grounds;

- a. incompetence;
- b. abuse of office;
- c. gross misconduct;
- d. failure, without reasonable excuse, or written authority of the governor, to attend three consecutive meetings of the county executive committee;
- e. physical or mental incapacity rendering the executive committee member incapable of performing the duties of that office; or
- f. gross violation of the Constitution or any other law.

Procedurally, Standing Order 72(1) stipulates that before giving notice of a motion under Section 40 of the County Governments Act, the Member must deliver to the Clerk a written copy of the proposed motion. This document must clearly state the grounds and particulars upon which the proposal is based, specifically when seeking the Governor's dismissal of a County Executive Committee Member.

The grounds for removal may include a gross violation of a provision of the Constitution or any other law, serious reasons to believe that the County Executive Committee Member has committed a crime under national or

international law, or gross misconduct. The notice of motion must be duly signed by the Member, after which the Clerk is required to submit the proposed motion to the Speaker for approval.

Furthermore, Standing Order 72(4) sets forth the criteria for the admissibility of grounds for removal from office. It provides that when the Order for the Motion is read, the Speaker shall refuse to allow the Member to move the motion unless the Speaker is satisfied that the Member is supported by at least one-quarter of all Members of the County Assembly.

The procedure for executing the motion is further outlined under Standing Order 72, as follows;

1. Before giving notice of Motion under section 40 of the County Governments Act, 2012, the member shall deliver to the Clerk a copy of the proposed Motion in writing stating the grounds and particulars upon which the proposal is made, for requiring the Governor to dismiss a Member of County Executive Committee on ground of a gross violation of a provision of the Constitution or of any other law; where there are serious reasons for believing that the Member of county executive has committed a crime under national or international law; or for gross misconduct. The notice of Motion shall be signed by the Member and the Clerk shall submit the proposed Motion to the Speaker for approval.
2. A member who has obtained the approval of the Speaker to move a Motion under paragraph (1) shall give a three (3) days' notice calling for dismissal of a Member of County Executive Committee by the Governor.
3. Upon the expiry of three (3) days, after notice given, the Motion shall be placed on the Order Paper and shall be disposed of within three days;
4. When the Order for the Motion is read, the Speaker shall refuse to allow the member to move the motion, unless the Speaker is satisfied that the member is supported by at least one-quarter of all Members of the County Assembly to move the motion. Provided that within the seven days' notice, the Clerk shall cause to be prepared and deposited in his office a list of all Members of the County Assembly with an

open space against each name for purposes of appending signatures, which list shall be entitled “ SIGNATURES IN SUPPORT OF A MOTION FOR REMOVAL OF /Mrs./Ms-----MEMBER OF COUNTY EXECUTIVE COMMITTEE” Provided further that the Mover shall provide to the Speaker, at least one hour before the sitting of the Assembly, a list signed by members in support of the motion.

5. Any signature appended to the list as provided under paragraph (4) shall not be withdrawn.
6. When the Motion has been passed by at least one-third of all members of the County Assembly, the Assembly shall, within seven (7) days, appoint a special committee comprising of a third of the Members to investigate the matter; and shall, within ten days, report to the Assembly whether it finds the allegations against the Member of county executive to be substantiated.
7. The Member of County Executive has the right to appear and be represented before the select committee during its investigations.
8. No further proceedings shall be taken on the matter if the select committee finds the allegations unsubstantiated.
9. If the select committee reports that it finds the allegations substantiated, the County Assembly shall afford the Member of County Executive an opportunity to be heard and vote whether to approve the resolution requiring the Member of County Executive to be dismissed.
10. If a resolution requiring the Governor to dismiss a Member of County Executive is supported by a majority of the members of the County Assembly the Speaker shall promptly deliver the resolution to the Governor and the Member shall be considered dismissed.

**Mr. Speaker Sir,**

It is imperative to note that the Standing Orders places an obligation on the Honourable Speaker to make a determination on whether any proposed Motion is contrary to the Constitution or contains allegations which the mover

cannot substantiate.

Additionally, the Committee was guided by the Constitution and the following statutes among others as it executed its mandate:

1. The County Assembly Powers and Privileges Act;
2. The Penal Code, Cap 63;
3. The Evidence Act;
4. The Public Officer Ethics Act;
5. The Leadership and Integrity Act;
6. The Public Finance and Management Act; and
7. The Public Procurement and Asset Disposal Act;

The Committee was also guided by the County Assembly Standing Orders and its Rules on Conduct of Investigation.

#### **SPEAKER'S COMMUNICATION AND REFERRAL OF THE SPECIAL MOTION**

Upon the constitution of the select committee, the Speaker communicated and directed that the Special Motion be disposed of expeditiously within the mandatory ten days. Further, the Speaker directed that the Committee be guided by the Constitution, the County Governments Act and Standing to comply with the prescribed thresholds for admissibility in impeachment motions as guided by precedents of the House and the High Court's decision in *Martin Nyaga Wambora and 30 Others v the County Assembly of Embu and 4 Others (Constitutional Petitions Nos. 7 and B of 2014)*.

The Honourable Speaker also directed that the Committee must operate within the requirements of the Constitution, relevant statutes and the provisions of the Standing Orders. The Speaker reiterated that proceedings relating to removing persons from office are quasi-judicial and requires judicious attention and sobriety.

Additionally, the Speaker instructed the Clerk to assist the committee to formulate draft Rules on the conduct of investigation which accord with existing constitutional and statutory provisions on the principles of natural justice, fair hearing and fair administrative action for consideration by the Committee.

Pursuant to Section 40 of the County Governments Act, the Speaker further reiterated that the Committee should conclude its investigations and submit its report to the House within ten (10) days of its appointment.

### Conduct of Committee Proceedings

#### **Rules on Conduct of Investigation**

In compliance with the directions of the Honourable Speaker, the Clerk of the Assembly prepared draft Rules on the Conduct of Investigation which the Committee adopted on Thursday 22nd August 2024 during its sitting.

The Rules are attached to this report

#### **MEETINGS OF THE SELECT COMMITTEE**

Following its establishment on Wednesday, 21st August 2024, the Select Committee convened its first sitting on Thursday, 22nd August 2024, at

9:00 a.m. In accordance with Standing Order 172(1), the Committee proceeded to elect its leadership. The Hon. Peter Rono and the Hon. Peter Mutai were unanimously elected as Chairperson and Vice-Chairperson of the Committee, respectively.

During this inaugural session, the Committee reviewed and adopted the Rules on the Conduct of Investigation as well as its work plan. Additionally, in compliance with Rule 3(1) on the Conduct of Investigation, the Committee designated Monday, 26th August 2024, as the date for the commencement of the hearings to consider evidence pertinent to the investigation.

### **INVITATIONS TO APPEAR**

The Committee noted that Section 40 of the County Governments Act, in conjunction with the Standing Orders, confers upon the County Executive Committee Member the right to appear and be represented before the Select Committee during its investigations. The Committee further observed that Rule 7 of the Rules on the Conduct of Investigation explicitly provides that:

*"The CEC shall be invited... be represented by legal counsel... before the Committee during its investigations."*

In light of these observations, and mindful of the strict constitutional timelines governing the process, the Committee, during its first meeting held on Thursday, 22nd August 2024, resolved to extend formal invitations to both the County Executive Committee Member and the Sponsor of the Special Motion to appear

before the Committee for the hearing of evidence. The Invitations to Appear are annexed to this report.

### **PRE-HEARING CONFERENCE**

Pursuant to Rule 3 on the Conduct of Investigation, the Committee, vide letters dated 22nd August 2024, invited the County Executive Committee Member (CECM) to attend a preliminary hearing conference scheduled for Friday, 23rd August 2024, at 9:00 AM in the Mini Chamber, County Assembly Buildings.

To this end, the CECM, through his Advocate Mr. Desmond Leteipa Silei, attended the pre-hearing conference on the appointed date. The primary purpose of this conference was to confirm the documentation and evidence that had been served and received, to apprise the CECM of the applicable procedural framework, and to consider any preliminary questions related to the Committee's proceedings.

During the pre-hearing conference, the Advocate for the CECM requested copies of the charge sheet along with any accompanying documents. He further indicated that he could not confirm the CECM's attendance at the substantive hearing at that time and would only be able to do so at a later stage.

### **READING OF PARTICULARS OF THE ALLEGATIONS**

Pursuant to Rule 7(5) on the Conduct of Investigation, at the commencement of the hearing, the Clerk read out verbatim the particulars of the allegations against the County Executive Committee Member (CECM) as detailed in the Special Motion. In response to these allegations, the Advocate representing the CECM stated that he was instructed not to confirm or deny the charges at that time



## **HEARING OF EVIDENCE**

The Committee convened on Monday, 26th August 2024, to hear the evidence and submissions presented by the parties. The verbatim evidence, as recorded in the Hansard, is attached to this report for reference.

The testimonies and proceedings unfolded as follows:

- a. On 26th August 2024, the Sponsor of the Special Motion provided his evidence. He did not call any witnesses.
- b. The County Executive Committee Member was scheduled to appear on 26th August 2024 but opted to send his advocate, Mr. Desmond Leteipa Silei, in his stead.
- c. The Sponsor of the Special Motion delivered his closing statements on 26th August 2024.

## **CHAPTER THREE**

### **CONDUCT OF PROCEEDINGS**

#### **Pre-Hearing Conference of Parties**

On Friday, 23rd August 2024, the Committee convened a pre-hearing conference to apprise all parties of the applicable procedures and to address any preliminary questions relating to the proceedings. The Sponsor of the Special Motion did not attend the conference.

The County Executive Committee Member (CECM) did not attend in person but was represented by his Advocate, Mr. Desmond Leteipa Silei. The Advocate submitted a request for an extension of time, noting that his client had not yet been served with all the relevant documents. He further raised an objection, asserting that the Motion was incompetent as it did not contain a specific charge. In light of these submissions, the Committee proceeded to deliberate on the requests and objections raised by the Advocate.

In assessing the request for an extension of time, the Select Committee carefully considered the following factors:

- i. The limited constitutional timelines prescribed for the Committee to conduct its investigation, as set out in Section 40 of the County Governments Act.
- ii. The Rules on the Conduct of Investigation of the Select

Committee, particularly those relating to the allocation of time for proceedings.

- iii. The right to a fair hearing and the right to be heard, as enshrined in Article 50 of the Constitution.

The Committee noted that the Rules provided it with the discretion to adjust the timelines as prescribed, taking into account the factors outlined above and the specific circumstances of the request. The Committee is obligated to act reasonably, balancing the time needs of all parties and ensuring that any adjustments to time allocations are applied equally and uniformly.

After careful consideration of the request, the Committee directed that the Advocate be served with the outstanding documents by the end of that day, Friday, 23rd August 2024. The Committee also indicated its willingness to accommodate an adjustment of the timeline, including the provision for virtual hearings if necessary. As per the agreed schedule, it was confirmed that the CECM would appear on Monday, 26th August 2024.

### **HEARING PROCEEDINGS**

Testimony of, Hon. Joshat Kipkirui

**Mr. Speaker Sir,**

The hearing proceedings commenced as scheduled on the morning of Monday, 26th August 2024, although there was a delay as the Committee allowed additional time for the County Executive Committee Member (CECM) to attend.

Despite this accommodation, the CECM did not initially appear. It was only later, after the Sponsor of the Motion had begun his testimony, that the CECM's legal representative finally appeared before the Committee.

During the proceedings, Hon. Josphat Kipkirui, the Sponsor of the Special Motion, provided his testimony. The testimony of Hon. Josphat Kipkirui included the following points;

1. The Special Committee had invited him to testify before it by virtue of him being the mover of the motion on dismissal of Hon. Erick Kipkoech Ngetich as the CECM for Roads, Public Works and Transport. The said motion was laid before the Assembly on 6<sup>th</sup> August, 2024 and subsequently approved by the Assembly on 13<sup>th</sup> August, 2024.
2. He brought the motion before the Assembly as a result of a continuous public outcry from the residents of Bomet County who alleged that CECM was mismanaging the department by violating the constitution and the law. This is in total contravention of Section 35 (3) of the County Governments Act.
3. He emphasized that Article 1 (2) of the Constitution provides that "People may exercise their sovereign power either directly or through their democratically elected representatives." Further, Article 185 (3) of the Constitution gives the County Assembly the power to exercise oversight over the County Executive and any other county executive organs.
4. As an M.C.A, he represents the people of Singorwet Ward and one of his principal roles under section 9(1) (b) is to present views, opinions and proposals of the electorate to the County Assembly. It is for that reason therefore that he heeded to the people's cry and brought the motion for the inquiry into the performance of the CECM as juxtaposed with the enormous resources that have been committed

to the department of Roads, Public Works and Transport over the last two financial years.

5. Some of the projects the wider community were complaining about are those that he personally knew their backgrounds since some of the stalled projects were situated within his Ward. He indicated to the committee that he was so far satisfied by the progress of the implementation of his motion and he was happy that the issue was being looked into by the Assembly.

**On the Charge on Gross Violation of the Constitution and Other Laws, the motion mover testified as follows;**

1. The motion mover told the committee that the CECM had Failed to Implement Budgeted Projects and Adhere to the mandatory provisions of the Public Finance Management Act by misappropriating funds allocated to the Roads department.
2. That the CECM failed to implement projects approved in the county budget and that Hon. Ngetich as the CECM for Roads, Public Works and Transport did not account for Ksh. 195 million budgeted for county roads and Ksh. 78 million for cross-cutting roads in the financial year 2023/24. He tabled the Approved Budgets for the two financial years and the Controller of Budget report for FY 22/23 to prove his allegations.
3. That the CECM violated Article 201(d) of the Constitution as read with the provisions of the Public Finance Management Act. The CECM could not provide detailed expenditure report for Financial year 2022/2023 as requested by the committee for Roads, Transport and Public Works. He then tabled a copy of the memo for the request for a detailed expenditure report.
4. That the CECM purported to exceeding the budgetary Allocations and ended up spending beyond the allocated budget for roads, indicating unauthorized commitment of funds, in total violation of section 196 (1)

- (d) of the Public Finance Management Act, 2012. The Mover of the motion demonstrated that in Financial year 2023/2024 there was a pending bill of Ksh 676,344,943 which was way above the approved budget estimates of Ksh 646,917,608 by tabling a copy of the pending bills report.
5. That the CECM orchestrated and or participated in irregular Procurement Practices by purchasing heavy machinery without budgetary approval contrary to section 197(1) of the Public Finance Management Act, 2012. The CECM also failed to safeguard the county machinery by failing to process the logbooks. The mover of the motion tabled a copy of the Auditor General Report for FY 2022/2023 wherein the Auditor General flagged out the issue noting that the ownership of assets amounting to Kshs.61, 300, 000 could not be confirmed.
  6. That the CECM incurred Kshs.61, 300, 000 for the supply of five (5) and one (1) low loader truck on 24 May, 2023 despite the fact that the procurement of the machines was not included in the 2018-2023 County Integrated Development Plan (CIDP) and 2022-2023 Annual Development Plan (ADP). Further, physical verification in August, 2023 revealed that the prime mover, semi-trailer, low bed payload and large tippers, were delivered but the County Executive has to date not obtained log books to confirm ownership.
  7. That the CECM incurred a further amount of Kshs.141, 547, 000 for the supply of five (5) crawler dozer, five (5) graders or land levelers and one (1) motorized roller. However, the procurement of the equipment was outside of the County Integrated Development Plan (CIDP) 2018-2023, Annual Development Plan (ADP) 2022-2023, approved budget and approved consolidated annual procurement plan for the year under review.
  8. That the CECM did not supply copies of the procurement committee's despite several requests by the sectoral committee on Roads, Public

Works and Transport. The motion mover presented the Auditor General report which revealed that the tender opening minutes dated 28<sup>th</sup> March, 2023 submitted for audit were not initialized in all pages by the committee officials and listed seven (7) received bids with one bidder who submitted IFMIS bid being disqualified by the tender opening committee for not submit the manual copy. This was contrary to Section 78(7) of the Public Procurement and Asset Disposal Act, 2015. The report further noted that a physical inspection revealed that five (5) crawler excavators, five (5) motor graders and one (1) drum roller were delivered except for the five (5) breaker sets which were yet to be delivered. Management did not provide supporting documents including the specification of the machines, store ledger record and the inspection and acceptance committee reports. The log books for the crawlers, excavators and drum roller were not provided for audit.

9. The motion mover emphasized and reiterated that as noted in the Auditors Report and given the circumstances surrounding the acquisition of the machines, the regularity of the payments of Kshs.141, 547, 000 for the supply of machinery could not be confirmed.
10. That the CECM letter supplied a copy of the contract executed between the county Government and the supplier (Rhombus Construction Co. Ltd which indicated the contract price (total cost of the machinery) was Ksh 244,425,410. He told the committee that the figure of the acquisition of the heavy machinery kept on mutating and thus it could not be ascertained with clarity exactly how much the county spent. He then tabled a copy of the contract for the supply of heavy road machinery.

**On the charge of Abuse of Office, the motion mover testified thus;**

1. That the CECM disposed of County Motor Vehicles without following the laid down procedures in the Public Procurement and Asset Disposal Act, 2015,

Section 53(1), thereby disregarding legal procedures and governance standards.

2. That the CECM failed to disclose the total revenue raised through the sale of county motor vehicles. Furthermore, the CECM failed to develop an annual asset disposal plan as per Public procure and disposal act 2022. He referred the committee to the requirements set out under section 53(5) of the Public Procurement and Disposal Act which provides that state All asset disposals shall be planned by the accounting officer concerned through annual asset disposal plan in a format set out in the Regulations. A procurement and asset disposal planning shall be based on indicative or approved budgets which shall be integrated with applicable budget processes and in the case of a State Department or County Department, such plans shall be approved by the County Executive Committee member responsible for that entity.

**On the charge on Gross Misconduct, the motion mover testified under oath and stated as follows:**

1. That the CECM has a propensity of issuing Fraudulent LPOs.
2. That the CECM for Roads, Public Works and Transport Hon. Erick Kipkoech Ngetich engaged in serious financial Impropropriety by Overseeing the issuance of fraudulent Local Purchase Orders (LPOs) for non-existent projects, in violation of the Anti-Corruption and Economic Crimes Act, 2003, Section 45(2)(b).
3. That the CECM facilitated the issuance of fake LPOs for routine maintenance and construction of Kakimulday-Karab Barsukata and Saoset and Chepkirib roads which were found to be fraudulent. The mover tabled a copy of LPO as evidence.
4. That the CECM has totally failed to Maintain County Vehicles leading to unnecessary breakages and expenditures. He tabled a report of county



motor vehicles allocated to various departments with most of them having defects and mechanical issues despite allocation of motor vehicle maintenance every financial year.

5. That there are several county vehicles lying in garages spread across the republic, some with very minor mechanical problems and which continues to accumulate storage charges.
6. That the CECM has totally neglected the maintenance of county vehicles, leading to their deterioration and inefficiency, contrary to the section 11 of the Leadership and Integrity Act, 2012. The mover proved that the CECM did not utilize properly the allocation of Ksh 8M for Maintenance for motor vehicle repairs for FY2023/24.
7. That the CECM failed to provide detailed expenditure reports on maintenance of county assets including motor vehicles.
8. That the CECM has frustrated the oversight work of the county assembly by failing to provide detailed expenditure and regular reports as requested by the County Assembly Committee on Roads, Transport, and Public Works. This demonstrates that the CECM is non-transparent and is in continuous violation of principles of good governance and oversight as per Article 10 of the Constitution and the Public Finance Management Act, 2012. The mover was able table correspondence between county assembly and the department of Roads, Public works and Transport.

**On the charge relating to Incompetence, the motion mover testified thus:**

1. That the CECM has presided over serious underutilization of the heavy Machinery.
2. That the CECM has failed properly utilize the heavy machinery. He testified that despite the county spending over Ksh. 300 million on heavy machinery, only eight out of 25 wards have utilized these resources. This mismanagement has resulted in grounded machinery and inefficient service

delivery, violating the principles of public service under the Leadership and Integrity Act, 2012.

3. That the CECM has accumulated huge and unexplained pending bills which further demonstrates serious incompetence on the part of the CECM.
4. He testified that the CECM has presided over poor financial management leading to underperformance and stalled projects.

## CHAPTER FOUR

### COMMITTEE'S OBSERVATION

**Mr. Speaker Sir,**

The Committee unanimously agreed that an inquiry into the alleged violations of the Constitution and the law is warranted as a matter of significant public interest in Bomet County. The Committee further noted that the inquiry was necessary given the intense public outcry, particularly concerning the purchase and utilization of heavy machinery. The Committee commends Hon. Josphat Kipkirui for his prompt response to the concerns of the people, thereby demonstrating true leadership.

The Committee, however, expresses its regret that the CECM, despite receiving several invitations, did not appear during the hearings. This would have provided an opportunity for him to shed light on the issues raised and to defend himself against the various accusations. It is therefore imperative to note that the evidence presented by the mover of the motion went unchallenged. Moreover, the Advocate representing the CECM did not cross-examine the mover of the motion.

Despite the unchallenged nature of the evidence, the Committee took the initiative to thoroughly investigate the allegations to establish their factual basis. Additionally, the Committee regrets the inconsistent participation of the Advocate representing the CECM, who at times indicated that he had been instructed to withdraw or excuse himself from the proceedings. The Committee found this erratic involvement unusual and almost a gamble with the process, seemingly

intended to undermine the proceedings or later claim non-participation. It was unclear how this legal strategy, if it was such, was intended to assist the CECM in making his case, and the Committee deeply regretted this approach.

**Mr. Speaker Sir,**

**On the Charge on Gross Violation of the Constitution and Other Laws,** the motion mover testified under oath and told the committee that the CECM had failed to implement budgeted projects and adhere to the mandatory provisions of the Public Finance Management Act (PFMA) by misappropriating funds allocated to the Roads department. He testified that that the CECM failed to implement projects approved in the county budget and that there was failure to account for Ksh. 195 million budgeted for county roads and Ksh. 78 million for cross-cutting roads in the financial year 2023/24. He tabled the Approved Budgets for the two financial years and the Controller of Budget report for FY 22/23 to prove his allegations. The committee notes that this evidence is uncontroverted.

**Mr. Speaker** the motion mover further testified that he failed to provide detailed expenditure report for Financial year 2022/2023 as requested by the committee for Roads, Transport and Public Works. He then tabled a copy of the memo for the request for a detailed expenditure report. There is no evidence to challenge this allegation and thus remains uncontroverted.

The motion mover also testified that the CECM exceeded the budgetary Allocations and ended up spending beyond the allocated budget for roads, indicating unauthorized commitment of funds, in total violation of section 196 (1) (d) of the Public Finance Management Act, 2012. The Mover of the motion demonstrated that in Financial year 2023/2024 there was a pending bill of Ksh 676,344,943 which was way above the approved budget estimates of Ksh 646,917,608 by tabling a copy of the pending bills report. The committee notes that the pending bills report was adopted by the county assembly and thus its production as an exhibit meets the standard required under the evidence Act. The committee shall therefore rely on the same.

It was the motion mover evidence in chief that the CECM engineered an irregular Procurement by purchasing heavy machinery without budgetary approval, outside the County Integrated Development Plan (CIDP), Annual Development Plan (ADP) and that he has failed to process the logbooks to date. The committee notes that the Auditor Report highlighted these issues in detail. The report was produced in evidence and the advocate appearing for the CECM did not raise any objections. The committee thus agrees with the contents contained in the said report. It is further emphasized that the both the testimony and evidence adduced remains uncontroverted.

On failure to provide supporting documents including the specification of the machines, store ledger record and the inspection and acceptance committee reports. The committee notes with concern that the CECM abdicated his responsibility of managing and coordinating the functions of the county department as provided for under section 36 of the County Government Act. The act of omission to a large extent also violates the mandatory provision of Article 183(3) of the Constitution which provides that *“The county executive committee shall provide the county assembly with full and regular reports on matters relating to the county”*

The motion mover testified that there were inconsistencies in the amounts spent for the acquisition of the machines and that the regularity of the payments of Kshs.141, 547, 000 for the supply of machinery could not be confirmed. He told the committee that the figure of the acquisition of the heavy machinery kept on mutating and thus it could not be ascertained with clarity exactly how much the county spent. He then tabled a copy of the contract for the supply of heavy road machinery. The committee notes that the contract produced as an exhibit is a public document and its production has not been challenged. This evidence is uncontroverted and the committee shall consider it as proof of the transaction contained therein.

**Mr. Speaker Sir**

**On the charge of abuse of office**, the motion mover testified under oath. He told the committee that the CECM disposed of county motor vehicles without following the laid down procedures in the Public Procurement and Asset Disposal Act, 2015, Section 53(1), thereby disregarding legal procedures and governance standards.

Section 53 of the Public Procurement and Disposal Act provides as follows;

*“53. Procurement and asset disposal planning (1) All procurement by State organs and public entities are subject to the rules and principles of this Act. (2) An accounting officer shall prepare an annual procurement plan which is realistic in a format set out in the Regulations within the approved budget prior to commencement of each financial year as part of the annual budget preparation process. (3) Any public officer who knowingly recommends to the accounting officer excessive procurement of items beyond a reasonable consumption of the procuring entity commits an offence under this Act. (4) All asset disposals shall be planned by the accounting officer concerned through annual asset disposal plan in a format set out in the Regulations. (5) A procurement and asset disposal planning shall be based on indicative or approved budgets which shall be integrated with applicable budget processes and in the case of a State Department or County Department, such plans shall be approved by the Cabinet Secretary or the County Executive Committee member responsible”*

**Mr. Speaker**

It is worth noting that the CECM was served with the charge and the particulars but chose to appear through a counsel. He did not produce any evidence to counter the accusation that he disposed of the county motor vehicles contrary to the law. The CECM as the in-charge of the department ought to have at least ensure that the disposal of the vehicles was captured in the approved annual

procurement plan. In the absence of any contrary information, the committee notes that the charge, the testimony and the evidence was not challenged at all.

**Mr. Speaker,**

**Regarding the charge on gross misconduct,** it is on record that the motion mover testified under oath and stated the CECM has a tendency of issuing Fraudulent LPOs and has continuously engaged in serious financial Impropriety by overseeing the issuance of fraudulent Local Purchase Orders (LPOs) for non-existent projects, in violation of the Anti-Corruption and Economic Crimes Act, 2003, Section 45(2)(b). The counsel representing the CECM for Roads, Public Works and Transport did not examine the witness on these serious allegations. He did not challenge the grave allegations made against his client. The motion mover in his testimony did table copies of fake LPOs for routine maintenance and construction of Kakimulday-Karab Barsukata and Saoset and Chepkirib roads which were found to be fraudulent. This evidence again was not challenged. The committee has since scrutinized the LPOs and ascertained that they are documents emanating from the Roads department. The committee arrives at the conclusion that these documents forms part of the fake LPOs which were issued to facilitate payment for non-existent works. The committee could not confirm the authenticity of the LPO. Neither could the committee confirm the veracity of the content contain therein. Attached herein is a copy of said LPO.

Evidence was also led to prove that the CECM has totally failed to maintain county vehicles leading to unnecessary breakages and expenditures. A report detailing a number of county motor vehicles allocated to various departments was adduced as an exhibit. The exhibit indicates that there are several county vehicles lying in garages spread across the republic, some with very minor mechanical problems and which continues to accumulate storage charges. The report emanated from the CECM himself and the analysis of the report was done by the department of Roads and Transport. The document is a public document and was supplied to the sectoral committee in the course of its routine oversight. The committee deems the document admissible.

The motion mover also testified that the CECM failed to provide detailed expenditure reports on maintenance of county assets including motor vehicles and that this failure has impeded the oversight work of the county assembly by failing to provide detailed expenditure and regular reports as requested by the County Assembly Committee on Roads, Transport, and Public Works. The mover produced some correspondence between county assembly and the department of Roads, Public works and Transport as evidence. The committee notes that the department headed by the CECM for Roads, Public Works and Transport simply ignored requests for information for purposes of oversight which constitutes an affront on Article 185(3). It is also necessary to note that this evidence was uncontroverted.

**Mr. Speaker**

**Finally, on the charge relating to incompetence**, the motion mover testified that the CECM has presided over serious underutilization of the heavy Machinery and failed to properly utilize the heavy machinery. He testified that despite the county spending over Ksh. 300 million on heavy machinery, only eight out of 25 wards have utilized these resources. This mismanagement has resulted in grounded machinery and inefficient service delivery, violating the principles of public service under the Leadership and Integrity Act, 2012. That the CECM has accumulated huge and unexplained pending bills which further demonstrates serious incompetence on the part of the CECM. He further testified that the CECM has presided over poor financial management leading to underperformance and stalled projects.



## CHAPTER FIVE

### ANALYSIS OF THE EVIDENCE

#### Background

The Committee examined the evidence put forth and the arguments presented by the motion mover. The Committee was guided by the constitutional imperatives enshrined in Kenya's legal framework, including principles of fair hearing, fair administrative action, natural justice, good governance, and the overarching consideration of public interest.

In accordance with the provisions of section 40 of the County Governments Act, the Committee is mandated to recommend the dismissal from office of a CECM if the allegations in the Motion are substantiated. As such, the deliberations of the Committee were centered on the crucial question of whether the allegations as levelled by the Mover of the Motion have been sufficiently proven.

The Sponsor of the Motion seeks a resolution to have the Cabinet Secretary dismissed on the following grounds -

- a) Gross violation of the Constitution or any other law;
- b) Abuse of office;
- c) Gross Misconduct; and
- d) Incompetence.

#### **Ground One: Gross Violation of the Constitution or any other law**

Before examining the allegations under the ground of gross violation of the Constitution, the Committee explored what amounts to gross violation of the Constitution.

A plain reading of the phrase '**gross violation**' reveals that the ground **is not merely violation of the Constitution but gross violation**. In other words, not every violation of the Constitution is considered a ground for

removal. It is therefore imperative, at the outset, to determine what amounts to gross violation of the Constitution. The committee made reference to the Court of Appeal in the case of **Marlin Nyaga Wambora & 3 others v Speaker of the Senate & 6 others [2014] eKLR** held as follows with regard to gross violation:

*"We note that the **Constitution** does not define gross-violation. What amounts to gross violation must be considered on a case-by-case basis taking into account the peculiar facts and circumstances of each case. We concur with High Court's statement that whether conduct is gross or not will depend on the facts of each case and not every violation of the **Constitution** or other law is gross violation. The Nigerian Supreme Court in the case of **Hon. Mujiwa Inakoju & Others - vs- Hon. Abraham Adaolu Ade/eke, S.C.272/2006** opined as follows:*

*The following constitute gross violation or breach of the Constitution:*

- a) interference with the constitutional functions of the legislature and the judiciary by on exhibition of over constitutional 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 the provisions on fundamental rights;*
- e) interference with local government funds and stealing from the funds, pilfering of the funds ...for personal gains;*
- f) instigation of military rule and military government; and*
- g) any other subversive conduct which is directly inimical to the implementation of some other major sectors of the Constitution.*

The Committee examined the allegations under the ground of violation of the Constitution using the aforementioned tests.

**On the Charge on Gross Violation of the Constitution and Other Laws**, the motion mover accused the CECM for the following;

1. Deliberate failure to implement budgeted projects and adhere to the mandatory provisions of the Public Finance Management Act (PFMA)
2. Failure to account for Ksh. 195 million budgeted for county roads and Ksh. 78 million for cross-cutting roads in the financial year 2023/24.
3. Failure to provide detailed expenditure report for Financial year 2022/2023 as requested by the committee for Roads, Transport and Public Works.
4. Exceeding the allocated budget and thus accumulating pending bills.
5. Irregularly purchasing heavy machinery without budgetary approval

The CECM did not file any response to the all the issue issues raised. The questions before the Committee on this allegation is whether the CECM was involved and whether the CECM breached public trust bestowed upon him under Section 8 of the Leadership and Integrity Act.

**Section 8 of the Leadership and Integrity Act** provides that,

*"a State office is a position of public trust and the authority and responsibility vested in a State officer shall be exercised by the State officer in the best interest of the people of Kenya."*

The duties and responsibilities of a State officer are encapsulated under the provisions of Article 73 of the Constitution as follows:

### **"Responsibilities of leadership**

**73.** (1) Authority assigned to a State officer - (a) is a public trust to be exercised in a manner that - (i) is consistent with the purposes and objects of this Constitution; (ii) demonstrates respect for the people; (iii) brings honor to the nation and dignity to the office; and (iv) promotes

**On the charge of abuse of office,** the motion mover accused the CECM for disposing of county motor vehicles without following the laid down procedures in the Public Procurement and Asset Disposal Act, 2015, Section 53(1), thereby disregarding legal procedures and governance standards.

Section 53 of the Public Procurement and Disposal Act provides as follows;

*“53. Procurement and asset disposal planning (1) All procurement by State organs and public entities are subject to the rules and principles of this Act. (2) An accounting officer shall prepare an annual procurement plan which is realistic in a format set out in the Regulations within the approved budget prior to commencement of each financial year as part of the annual budget preparation process. (3) Any public officer who knowingly recommends to the accounting officer excessive procurement of items beyond a reasonable consumption of the procuring entity commits an offence under this Act. (4) All asset disposals shall be planned by the accounting officer concerned through annual asset disposal plan in a format set out in the Regulations. (5) A procurement and asset disposal planning shall be based on indicative or approved budgets which shall be integrated with applicable budget processes and in the case of a State Department or County Department, such plans shall be approved by the Cabinet Secretary or the County Executive Committee member responsible”*

It is worth noting that the CECM was served with the charge and the particulars but chose to appear through a counsel. He did not produce any evidence to counter the accusation that he disposed of the county motor vehicles contrary to the law. The CECM as the in-charge of the department ought to have at least ensure that the disposal of the vehicles was captured in the approved annual procurement plan. In the absence of any contrary information, the committee notes that the charge, the testimony and the evidence was not challenged at all.

**Regarding the charge on gross misconduct**, it is on record that the motion mover adduced evidence against the CECM for issuing fake LPOs in violation of the Anti-Corruption and Economic Crimes Act, 2003, Section 45(2)(b). The counsel representing the CECM for Roads, Public Works and Transport did not examine the witness on these serious allegations. This evidence again was not challenged. The Supreme Court in ***Muya v Tribunal Appointed to Investigate the Conduct of Justice Martin Mati Muya, Judge of the High Court of Kenya***, Petition 4 of 2020; [2022] KESC 16 (KLR) (***Muya Case***) defined gross misconduct as:

*"438. The Tribunal adopts a definition of gross misconduct or misbehaviour that infers more seriousness in the case of the former and less serious infractions amounting to the latter. The framing of gross misconduct or misbehaviour under the Kenyan Constitution and the Judicial Code of Conduct (2003) requires the possibility of sanctioning a variety of contravening behaviour."*

The Committee will be guided by the above test in assessing whether the alleged actions or omissions of CECM for Roads, Public Works and Transport, if proved, amount to gross misconduct.

**On the charge relating to incompetence**, the motion mover testified that the CECM has presided over serious underutilization of the heavy Machinery and failed to properly utilize the heavy machinery. He testified that despite the

county spending over Ksh. 300 million on heavy machinery, only eight out of 25 wards have utilized these resources. This mismanagement has resulted in grounded machinery and inefficient service delivery, violating the principles of public service under the Leadership and Integrity Act, 2012. That the CECM has accumulated huge and unexplained pending bills which further demonstrates serious incompetence on the part of the CECM. He further testified that the CECM has presided over poor financial management leading to underperformance and stalled projects.

The committee notes that the CECM as the head of department was required under the law to provide leadership and carry out his duties in a transparent and accountable manner. Any deviation thereof would amount to gross misconduct contrary to **Section 10(a) & (b)** of the **Leadership and Integrity Act, Cap 185C**.

Article 232 of the Constitution provides that:

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

The question therefore before the Committee is what constitutes 'incompetence' under the law.

## CHAPTER SIX

### COMMITTEE RECOMMENDATION

Having considered the allegations in light of the applicable law, the evidence before the Committee and the presentations by the parties, the Committee made the following observations:

#### **Ground One; Gross Violation of the Constitution and Other Laws:**

The Committee observed that the CECM failed to implement the departmental budget as approved. This was corroborated by the documentary evidence contained in the Auditor General report and the Controller of Budget Reports.

The Committee further observed that the CECM failed to supply detailed expenditure reports contrary to the provisions of the Public Finance Management Act.

The Committee observed that the CECM participated in the irregular procurement of the heavy machinery and thus violated the provisions of the Public Procurement and Asset Disposal Act.

The committee observed that the CECM was responsible for the ballooning of pending bills.

#### **Ground Two; Abuse of Office:**

The Committee observed that the CECM did not account for the revenue generated from the disposal of the county motor vehicles. The committee further observed that failure to put in place an annual procurement plan indicating the number of motor vehicles earmarked for disposal contravened the provisions of the Public procurement and Disposal Act.

### **Ground Three; Gross Misconduct**

The Committee observed that there was no evidence to demonstrate that the CECM had a role in the issuance of the fake LPOs. There was no nexus between the CECM and the alleged gross violation.

### **Ground Four; Incompetence**

The Committee observed that there was no evidence linking the CECM with the alleged underutilization of the county roads heavy machinery. There was no evidence adduced to demonstrate the poor financial management on the part of the CECM for Roads, Public Works and Transport.



## CHAPTER SEVEN

### COMMITTEE FINDING

1. The Committee finds that the allegations under Ground One on Gross Violation of the Constitution or any other law and Ground Two on Abuse of Office as outlined in the Special Motion **are substantiated.**
2. The Committee finds that the allegations under Ground Three on Gross Misconduct and Ground Four on Incompetence as outlined in the Special Motion **are unsubstantiated.**

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**HON. PETER RONO,**

**CHAIRPERSON**

**SELECT COMMITTEE INVESTIGATING THE PROPOSED DISMISSAL OF  
HON. ERICK KIPKOECH NGETICH, AS COUNTY EXECUTIVE MEMBER FOR  
ROADS, PUBLIC WORKS AND TRANSPORT**