

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT (*SECOND SESSION*)

REPORT OF
THE COMMITTEE OF POWERS AND PRIVILEGES ON THE INQUIRY
INTO ALLEGED UNETHICAL CONDUCT OF HON. PAUL ONGILI, MP
(MEMBER FOR EMBAKASI EAST CONSTITUENCY) AND THE HON.
CHARLES NJAGUA KANYI, MP (MEMBER FOR STAREHE
CONSTITUENCY)

National Assembly,
Parliament Buildings,
NAIROBI

November 2018

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Preface

The Committee of Powers and Privileges is established pursuant to Section 15 of the Parliamentary Powers and Privileges Act 2017. The Committee comprises of the Speaker as Chairperson and fourteen other Members. The Committee is broadly responsible for handling matters concerning powers, privilege and immunities of the House, members and staff. In particular, the Committee is mandated to, either of its own motion or as a result of a complaint made by any person, inquire into the conduct of a member alleged to constitute breach of privilege, and report to the House its findings together with such recommendations as it considers appropriate.

Further, the National Assembly Standing Orders assigns to the Committee the duty to inquire into allegations of absence by Members from parliamentary proceedings exceeding eight sittings within a session; enforce the Codes of Conduct under Chapter Six of the Constitution, the Leadership and Integrity Act, the Public Officer Ethics Act and the Fourth Schedule of the Parliamentary Power and Privileges Act, and to recommend necessary sanctions following a disciplinary hearing.

The Constitution of Kenya (2010), which is now in its eighth year of implementation, heralded a paradigm shift in the enforcement of the principles of leadership and integrity for holders of public and state offices. Consequently, this new dispensation necessitated enactment of various legislations on leadership and integrity, together with Codes of Conduct. The law relating to the powers, privileges and immunities of Members was also reviewed to accord with the new Constitution. Effectively, the Eleventh Parliament passed into law the Parliamentary Powers and Privileges Act in June 2017 thus repealing the National Assembly (Powers and Privileges) Act, Chapter 6 of the Laws of Kenya.

The current Committee of Powers and Privileges, which was re-constituted in February 2018, is the first to operate and decide on matters of powers, privileges, immunities and ethics under the new law. Apart from being responsible for powers, privileges, immunities and ethics of Members, the House and staff, the committee is also responsible for matters relating to the absence of members from proceedings of the House, the registration of members' interests and the enforcement of the Codes of Conduct that apply to members under the various statutes.

Acknowledgement

The Chairperson of the Committee takes this opportunity to thank all the Members of the Committee for their immense contribution to the inquiry that culminated in this Report. The Committee wishes to also thank the Offices of the Speaker and the Clerk of the National Assembly for the necessary support extended to it in the execution of its mandate. The Committee further wishes to record its appreciation for the services rendered by the staff of the National Assembly that enabled the production of this Report.

On behalf of the Committee of Powers and Privileges, I have the honour and pleasure to present the Report to the House.

The Hon. Justin B. Muturi, EGH, MP
Speaker of the National Assembly/Chairperson

Part I: Establishment and Membership of the Committee

1. Establishment of the Committee of Powers and Privileges

The Committee of Powers and Privileges of the National Assembly is established under Section 15(1)(a) of the Parliamentary Powers and Privileges Act, 2017. The Committee consists of fifteen Members, being the Speaker as the Chairperson and fourteen other Members of the House appointed in accordance with the Standing Orders.

2. Membership of the Committee of Powers and Privileges

The membership of the current Committee comprises of the following Members –

Speaker/Chairperson

The Hon. Justin B. N. Muturi, EGH, MP

Members

1. The Hon. Peter Mungai Mwathi, M.P.
2. The Hon. Andrew Mwadime, MP
3. The Hon. Jude L. Kangethe Njomo, M.P.
4. The Hon. Francis Chachu Ganya, M.P.
5. The Hon. Shimbwa Omar Mwinyi, MP
6. The Hon. James Mathew Onyango K' Oyoo, MP
7. The Hon. Beatrice Pauline Cherono Kones, M.P.
8. The Hon. Anthony Githiaka Kiai, M.P.
9. The Hon. Vincent Kipkurui Tuwei, M.P.
10. The Hon. Gladwell Jesire Cheruiyot, M.P.
11. The Hon. Marselino Malimo Arbelle, M.P.
12. The Hon. Capt. (Rtd) Didmus Wekesa Barasa Mutua, M.P.
13. The Hon. Danson Mwakuwona Mwashako, MP
14. The Hon. Vincent Kemose Mogaka, MP

Committee Secretariat

The Committee's operations are facilitated by a Secretariat comprising of the following officers -

- | | |
|-----------------------------|---------------------------|
| 3. Mr. Kipkemoi arap Kirui- | Principal Clerk Assistant |
| 4. Ms Jemimah Waigwa - | Legal Counsel |
| 5. Mr. Benson Inzofu - | Third Clerk Assistant |
| 6. Ms. Anne Shibuko - | Third Clerk Assistant |
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Part II: Mandate of the Committee

The Committee of Powers and Privileges draws its mandate from the Constitution, the Public Officers Ethics Act, 2003, the Leadership and Integrity Act, 2012, the Parliamentary Powers and Privileges Act, 2017 and the National Assembly Standing Orders which assigns to the Committee various functions, which include the following:

1. Inquiring into the conduct of a member whose conduct is alleged to constitute breach of privilege

Section 15(4)(a) of the Parliamentary Powers and Privileges Act, 2017 mandates the Committee to inquire into the conduct of a Member whose conduct is alleged to constitute breach of privilege in terms of section 16 of the Act. The breaches contemplated under section 16 are –

- (a) unauthorized publication of any journal, if the publication of the journal is prohibited by or in terms of the Standing Orders or an order or resolution of Parliament, any journal purporting that it has been published under the authority of Parliament or a committee or the Speaker while it has not been published under such authority, or any journal purporting that it is a verbatim account of the proceedings of Parliament or a committee while it is not such account;
- (b) assaulting, obstructing, molesting or insulting etc.; improper influence in contravention of sections 25, 26 or 28 of the Act;
- (c) committing offences relating to witnesses¹, including -
 - (i) failing to attend at the time and place specified in a summons, without sufficient cause, having been duly summoned;
 - (ii) failing to remain in attendance until excused from further attendance by the person presiding at the inquiry;
 - (iii) refusing to be sworn in or to make an affirmation as a witness;
 - (iv) failing or disobeying, without sufficient cause, to answer fully and satisfactorily all questions lawfully put to the person;
 - (v) failing or disobeying to produce any document, paper, book or record in the person's possession, custody or control which the person has been required to produce; and on conviction such offences attract a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding six months or to both;
- (d) other serious offences relating to witnesses², including -

¹ Section 27(1)(a), (b) or (2) and (3)(d), (e), (f) or (g) Parliamentary Powers and Privileges Act, 2017

² *Ibid*

- (i) threatening, obstructing, assaulting or insulting a member of staff or police officer carrying out service of summons issued under the Act;
 - (ii) using abusive language directed at a member, a committee or a House of Parliament;
 - (iii) threatening or obstructing another person in respect of evidence to be given before Parliament or a committee;
 - (iv) inducing another person to refrain from giving evidence to or to produce a document before Parliament or a committee; or
 - (v) inducing another person to give false evidence before Parliament or a committee;
 - (vi) assaulting or penalising or threatening another person or deprives the person of any benefit on account of the giving or proposed giving of evidence before Parliament or a committee;
 - (vii) with intent to deceive or mislead Parliament or a committee, producing a false, untrue, fabricated or falsified document; or
 - (viii) wilfully furnishing Parliament or a committee with information which is false or misleading or makes a statement before Parliament or committee that is false or misleading; and on conviction such offences attract a fine not exceeding five hundred thousand or a term of imprisonment not exceeding one year or to both such fine and imprisonment;
- (e) willfully failing or refusing to obey any rule, order or resolution of Parliament;
 - (f) contravening any provision of the Speaker's orders³; or
 - (g) conducting himself or herself in a manner which, in the opinion of the Committee, is intended, or is likely to reflect adversely on the dignity or integrity of Parliament, or of the Members or to be contrary to the best interests of Parliament or its Members.

The Committee may inquire into the conduct of a Member whose conduct is alleged to constitute breach of privilege either of its own motion (*suo moto*) or as a result of a complaint made by any person.

Upon conclusion of the inquiry, the Committee may recommend any or all the sanctions under Section 17 of the Act. Where the relevant House finds that a Member has committed a breach of privilege, the relevant House may, in addition to any other penalty to which the Member may be liable under a specific law, issue a formal warning, a reprimand, an order to apologize to the House or a person in a manner to be recommended by the Committee of

³ Section 37, Parliamentary Powers and Privileges Act, 2017

Powers and Privileges, the withholding, for a specific period of time, of the member's right to the use or enjoyment of any specified facility provided to Members by Parliament, the removal or suspension for a specified period of time of the Member from any parliamentary position occupied by the Member, such fine in terms of the Member's monthly salary and allowances as the House may determine, the suspension of the Member for such period as the House may decide, whether or not Parliament or any of its committees is scheduled to meet during that period or vacation of seat pursuant to Articles 75(2)(b) and 103(1)(c) of the Constitution.

In the case of an inquiry arising from a complaint, the Parliamentary Powers and Privileges Act envisages such inquiry to be concluded within fourteen days of receipt of such complaint. Moreover, the Committee is expected to table its findings in the House, together with such recommendations, as it considers appropriate for consideration, within fourteen days of the conclusion of such an enquiry. However, section 36 of the Act permits the Committee to seek an extension of time for inquiring into a complaint.

2. Absences

Article 103(1)(b) as read together with Standing Order 258 of the National Assembly Standing Orders (NASO) assign to the Committee of Powers and Privileges the function of determining claims of absence of a Member from the House without the permission of the Speaker or where, upon a complaint, a satisfactory explanation for the absence is tenable to the Committee. A State Officer (including a Member) who does not behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids any conflict between personal interests and public or official duties, or behaves in a manner compromising any public or official interest in favour of a personal interest, or demeans the office the officer holds (*and thus contravening Articles 75(1), 76, 77 or 78 (2)*) shall be subject to the applicable disciplinary procedure for the relevant office; and may, in accordance with the disciplinary procedure, be dismissed or otherwise removed from office⁴. National Assembly Standing Orders Standing Order 258 provides that if, during any Session, a Member is absent from eight sittings of the Assembly without the Speaker's written permission, the Speaker reports the matter to the Assembly and the matter stands referred to the Committee of Powers and Privileges for hearing and determination.

The Committee inquires into the matter within fourteen days from the date the matter is referred to it and thereafter submits a report to the House. If the report of the Committee finds that the Member has offered a satisfactory explanation for the Member's absence, the matter ends.

⁴ Article 75(2)(b) of the Constitution

If the report of the Committee finds that the Member has not offered a satisfactory explanation for the Member's absence, the Chairperson or a Member of the Committee designated by the Committee for that purpose, upon submitting the report, must give a three days' notice of a Motion that, **"This House notes the Report of the Committee of Privileges laid on the Table of the House on ... regarding..."**

The Motion is debated in the usual manner, except that –

- (a) no amendment to the Motion is permitted;
- (b) the debate of the Motion cannot be anticipated by a Motion for the adjournment of the House, and no dilatory Motion is allowed in relation to the business, and the business cannot be interrupted; and
- (c) at the conclusion of the debate, the Speaker does not put a question but declares that, pursuant to Article 103 (1) (b) of the Constitution, the office of the Member concerned has become vacant.

It is however important to note that Article 105 of the Constitution provides that the High Court shall hear and determine any question whether the seat of a member has become vacant. The question must however be heard and determined within six months of the date of lodging the petition.

3. Enforcement of the Rules Governing the conduct of Members of Parliament

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

It states –

(2) A person who contravenes clause (1), or Article 76, 77 or 78 (2) –

- (a) shall be subject to the applicable disciplinary procedure for the relevant office; and*
- (b) may, in accordance with the disciplinary procedure referred to in paragraph (a), be dismissed or otherwise removed from office.*

The Public Officer Ethics Act, 2012 also assigns to the Committee the function of investigating and enforcing compliance with the Code of Conduct and Ethics. Section 35(1) provides that the responsible Commission for a public officer may investigate to determine whether the public officer has contravened the Code of Conduct and Ethics.

The General Leadership and Integrity Code contained in the Leadership and Integrity Act, 2012 is also within the ambit of the Committee of Powers and Privileges with respect to misconduct by Members of Parliament.

Section 37(3) of the Parliamentary Powers and Privileges Act also provides for a Code of Conduct for Members of Parliament, provided in the Fourth Schedule to the Act. Rule 12 of the Code specifically obligates the Committee of Powers and Privileges to enforce the Code and recommend penalties for its breach.

4. Registration of Members' Interests

Registration of Members' Interests is regulated by Section 16 of Leadership and Integrity Act, 2012, and the Second Schedule of the Act, and Rule 6 of the Code of Conduct for Members of Parliament contained in the Fourth Schedule to the Parliamentary Powers and Privileges Act, 2017.

Rule 6 of the Code of Conduct for Members of Parliament provides that Members shall register with the relevant Speaker all financial and non-financial interests that may reasonably influence their parliamentary actions; declare any relevant interest in the context of parliamentary debate or the matter under discussion before contributing to debate in the House or its Committees, or communicating with State Officers or other public servants; and observe any rules agreed of the House in respect of financial support for Members or the facilities of the House.

Whereas Rule 6 envisages Members' registering their personal interests with the relevant Speaker, the Committee of Powers and Privileges handles questions of Members' interests on behalf of the Speaker.

5. Contempt

Contempt are acts or omissions which obstruct or impede either House of Parliament in the performance of its functions, or which obstructs or impedes any Member or officer of such House in the discharge of his/her duty or which has a tendency, directly or indirectly, to produce such results. Any disorderly, contemptuous or disrespectful conduct in the presence of either House or a committee constitutes a contempt, which may be committed by members of the public, parties, witnesses or by Members of either House.

Determination of what constitutes contempt is as the House would determine on occurrence of an incidence and is the power of the House to punish for contempt being discretionary to the House itself. It is notable that although the Act does not define what acts or omissions can be termed as being contemptuous, such matters can arguably be determined following the dictates of usages, forms, customs, precedence, procedures and traditions of Parliament as envisaged in section 14 of the Parliamentary Powers and Privileges Act.

6. Declaration of wealth by state officers

The Committee of Powers and Privileges is also responsible for handling matters relating to the declaration of wealth by State officer and holders of independent Commissions. Custody of the wealth declaration forms by State Officers is vested in the ‘responsible Commission’. Section 3 the Public Officer Ethics Act No. 4 of 2003 defines the responsible Commission for the purposes of members and other designated officers as the Committee of Powers and Privileges of the National Assembly.

Part III: Procedure for considering the Report by the Committee

The manner of considering a Report of the Committee of Powers and Privileges is anchored in the Third Schedule to the Parliamentary Powers and Privileges Act. Section 1 of Schedule provides that –

“every Report by the Committee concerning any inquiry into the conduct of a Member shall, as soon as possible after it has been completed, be laid by a member of that Committee on the Table of the House.”

Section 2 of the Schedule contemplates that *“if the Report does not recommend any disciplinary action, there shall be no further proceedings whatsoever in respect of it, other than (where necessary) further inquiry and Report by the Committee may be needed.”*

Pursuant to section 3(1) of the Schedule, *“if the Report recommends disciplinary action, a member of the Committee must as soon as possible after the report has been laid, but after giving at least one day’s previous notice, move that the House adopts the Report.”*

Motion for adoption of a Report of the Committee of Powers and Privileges is debated in the usual manner and in the open; except that –

- (i) in exceptional circumstances to be determined by the Speaker, strangers may be ordered to withdraw throughout the debate; and
- (ii) no amendment may be moved, other than an amendment of the disciplinary action recommended by the Report or an amendment to the effect that the Report be referred back to the Committee for further inquiry.

Where the House adopts any recommendation of the Report for disciplinary action, with or without amendment, the Speaker is required to forthwith take action accordingly.

Part IV: Referral of the Matter of Hon. Ongili and Hon. Kanyi to the Committee

The Office of the Speaker of the National Assembly received a letter from the Ethics and Anti-Corruption Commission (EACC), dated October 12, 2018. In the letter, the EACC requested the National Assembly to investigate and take necessary action against the Member for Embakasi East Constituency, Hon. Paul Ongili, MP, alias *Babu Owino* and the Member for Starehe Constituency, Hon. Charles Kanyi, MP, alias *Jaguar* for unethical conduct and breach of privilege relating to a scuffle between them within the precincts of

Parliament on 10th October 2018. The Speaker noted the contents of the letter and referred it to the Committee of Powers and Privileges for consideration.

On 9th November 2017, the Office of the Speaker received a Petition signed by one Bernard Abuya Momanyi, a resident of Embakasi East Constituency. The Petitioner claimed that the Member acted in a manner that demeaned his office contrary to the provisions of Chapter Six of the Constitution and in contravention of section 16(e) of the Parliamentary Powers and Privileges Act, 2017. He prayed that the National Assembly investigate the conduct of the Member for Embakasi East Constituency, Hon. Paul Ongili Owino and recommended the vacation of office by the Member pursuant to Article 103(1)(c) of the Constitution.

The Speaker conveyed the Petition to the House on Thursday 14th December 2017 and referred it to the Committee of Powers and Privileges for consideration.

Part V: Events of October 10, 2017

On Tuesday, 10th October 2017 at about 2.50pm during a sitting of the National Assembly, the Member for Embakasi East Constituency the Hon. Paul Ongili Owino (alias *Babu Owino*) proceeded to the Parliament Media Centre to seek the assistance of the Principal Media Relations Officer to hold a Press Conference. Upon entering the Media Centre for the presser, he was confronted by the Member for Starehe Constituency the Hon. Charles Njagua Kanyi (alias *Jaguar*), who was reported to have been trailing him. A scuffle that ensued between the two Members attracted security officers who were on duty at the Main Parliament Buildings.

The security team swiftly rushed to the scene and found Parliamentary Media Relations Staff attempting to separate the two Members who were engaged in a vicious verbal exchange. The Security Officers took immediate control, contained the scuffle and whisked the two Members away and escorted them separately back to the Chamber.

Parliament Security filed a report with the Clerk of the National Assembly, detailing the occurrence and stating that no physical fight occurred between the two Members. Further, no parliament-owned property was damaged and none of the Members involved reported any kind of injury or damage of personal property.

The Report indicated that the incident happened in full glare of the media, who recorded and shared videos of the scuffle on social and public media, thereby drawing varied reactions from the public.

Part VI: The Aftermath of the Events of October 10, 2017

The Speaker of the National Assembly received two complaints relating to the incident.

1. Letter from the Ethics and Anti-Corruption Commission (EACC)

The Ethics and Anti-Corruption Commission (EACC) filed the first complaint by way of a letter dated 12th October 2017. In the letter, the EACC contented that the conduct by the Hon. Ongili and Hon. Kanyi “*constitutes serious ethical breaches and is contrary to the integrity and ethical requirements governing the conduct of State Officers as laid down under Chapter Six of the Constitution, the Leadership and Integrity Act, 2012, the Public Officer Ethics Act, 2003 and the Parliamentary Powers and Privileges Act, 2017.*”

The EACC cited various provisions relating to conduct of State Officers and the standards vested in State Officers. In particular, the EACC quoted Articles 73(1)(a) (i) - (iv) and 75(1)(c) of the Constitution; section 11 of the Leadership and Integrity Act, 2012; section 37(3) of the Parliamentary Powers and Privileges Act, 2017 and Rules 7, 8, 10 and 11 of the Code of Conduct for Members of Parliament.

The EACC requested the National Assembly, through the Committee of Powers and Privileges to “*inquire into the conduct of the two Members of the National Assembly and take appropriate action pursuant to Section 15(5) of the Parliamentary Powers and Privileges Act, 2017, Rule 12 of the Code of Conduct for Members of Parliament and the relevant Standing Orders of the House.*” The Commission also requested that the House shares with it the findings and action taken at the conclusion of the inquiry.

On 17th October 2017 the Speaker committed the request to the Committee of Powers and Privileges for consideration.

2. Petition by Mr. Bernard Abuya Momanyi

The second complaint touching on the scuffle between the Member for Embakasi East and the Member for Starehe Constituency was a Petition by citizen Mr. Bernard Abuya Momanyi of National Identification Card Number 24466892. The Petition was made pursuant to the provisions of Articles 37, 75, 103(1)(c) and 119 of the Constitution, the Petitions to Parliament (Procedure) Act, sections 16, 17 and 37(3) of the Parliamentary Power and Privileges Act, 2017; the Code of Conduct for Members of Parliament and Standing Orders 219, 223 and 227 of the National Assembly Standing Orders.

In the Petition, Mr. Abuya stated that on 10th October 2017, the Hon. Paul Ongili Owino attempted to fight the Hon. Charles Njagua Kanyi over what appeared to be a brawl relating to the former’s description of the President as ‘caretaker President.’ The Petitioner alleged that by engaging the Member for Starehe Constituency in a fight within the precincts of Parliament, the Member for Embakasi East Constituency acted in a manner that demeaned his office contrary to Chapter Six of the Constitution and further that the Member

contravened Section 16(e) of the Parliamentary Power and Privileges Act, 2017 by conducting himself in a manner likely to reflect adversely on the dignity and integrity of Parliament and its Members.

The Petitioner then prayed that the National Assembly investigates the claim and further recommended that the Member for Embakasi East Constituency, pursuant to Article 103(1)(c) of the Constitution, vacates his/her office.

The Speaker conveyed the Petition to the House on Thursday 14th December 2017 and referred it to the Committee of Powers and Privileges for consideration.

Part VII: Applicable Provisions of the Law on the Alleged Unethical Conduct Of Members Of Parliament

1. The Constitution of Kenya

Article 75(1) of the Constitution (1)(iii) bestows upon State Officers the responsibilities of leadership and requires authority assigned to a State officer to bring honour to the nation and dignity to the office. Further, Article 75(1)(c) of the Constitution provides that “A State officer shall behave, whether in public and official life, in private life, or in association with other persons, in a manner that avoids demeaning the office the officer holds.” Further, Articles 75(2) and 103(1) of the Constitution details sanction for contravention of Article 75(1) of the Constitution.

2. The Leadership and Integrity Act, 2012

This law was enacted pursuant to Article 80 of the Constitution to give effect to the provisions of Chapter Six of the Constitution on Leadership and Integrity. Section 11(b) of the Act requires a State Officer to “*treat members of the public and other public officers with courtesy and respect.*” Section 41(1) provides that, “*subject to subsection (2), a breach of the Code amounts to misconduct for which the State officer may be subjected to disciplinary proceedings. ... Where an allegation of breach of the Code has been made against a State officer in respect of whom the Constitution or any other law provides the procedure for removal or dismissal, the question of removal or dismissal shall be determined in accordance with the Constitution or that other law.*”

3. The Public Officer Ethics Act, 2003

Most provisions of this Act replicate those of the Leadership and Integrity Act, 2012. Nonetheless, section 20 (1) provides that ‘*a public officer shall conduct his private affairs in a way that maintains public confidence in the integrity of his office.*’

4. The Parliamentary Powers and Privileges Act, 2017

Section 16(e) of the Parliamentary Powers and Privileges Act provides that ‘*the Committee of Powers and Privileges may find a Member to be in breach of privilege if the Member if a Member conducts himself or herself in a manner which, in the opinion of the Committee of Powers and Privileges, is intended, or is likely to reflect adversely on the dignity or integrity of Parliament, or of the Members or to be contrary to the best interests of Parliament or its Members.*’

The Fourth Schedule to the Parliamentary Powers and Privileges Act made pursuant to section 37(3) of the Act prescribes a Code of Conduct for Members of Parliament. Rule 7(a) of the Code compels a Member to uphold the dignity and integrity of the House by promoting respect for the House and its institutions at all times while Rule 8 requires a Member to treat other Members with respect and strive to have cordial relations with all

other members. Further, Rule 11 of the Code obligates Members to comply with the General Leadership and Integrity Code set out in Part II of the Leadership and Integrity Act, 2012, hence committing them to the sanctions under the said Act for breach of the Code.

Finally, Rule 12 places the jurisdiction over the conduct of Members of Parliament on the Committee of Powers and Privileges of the relevant House. Section 16 and 17 of the Act read together with Rule 12 vests in the Committee of Powers and Privileges the authority to inquire into, report on and to recommend penalties for breach of privilege and the Code.

Part VIII: Committee Sitings

The Committee held five (5) sittings to gather and consider evidence on the matter. At the first sitting held on Wednesday, 27th June 2018 in Committee Room 9, the Committee held preliminary deliberations on the matter and thereafter heard submissions from the Hon. Paul Ongili, Member for Embakasi East Constituency and the Hon. Charles Njagua Kanyi, Member for Starehe Constituency in the same sitting.

During the second sitting held on Wednesday, 4th July 2018 at the same venue, the Committee had anticipated to hear evidence from the Petitioner, Bernard Abuya Momanyi. However, the Petitioner did not appear before the Committee despite being invited vide a letter dated 28th June 2018 and numerous attempts by the Secretariat to reach him. Accordingly the Committee resolved to proceed to consider the Petition without his input.

At the third sitting held on Thursday, 5th July 2018 the Committee reviewed a Report submitted to the Clerk of the National Assembly by the Parliament Security and Safety Department on the scuffle between the Hon. Ongili and Hon. Kanyi and thereafter proceeded to hear submissions from the Deputy Chief Parliament Security and Safety Officer on the matter.

At the fifth and sixth sittings held on November 16, 2018 the Committee considered and adopted its Report on the matter.

The minutes of the relevant sittings form part of the Report and are appended hereto in accordance with the Standing Orders. Hansard record, both audio and written transcripts, are separately preserved by the Clerk of the National Assembly.

Part IX: Evidence

The Committee obtained evidence and reviewed documents, video clips submitted to it and received oral submissions from several witnesses.

1. Review of documents and videos

The Committee considered the contents of the letter from the Ethics and Anti-Corruption Commission and observed that indeed the issue relating to the scuffle between Hon. Babu Owino and Hon. Charles Kanyi raised issues of potential violation of Article 75 of the Constitution, Leadership and Integrity Act, Public Officer Ethics Act and the Parliamentary Powers and Privileges Act and that the conduct of the two Members of Parliament could have reflected adversely on the dignity of the Members and the House.

The Committee also watched a video clip attached to the letter by the EACC which further cast light on the events relating to the scuffle between Hon. Babu Owino and Hon. Charles Kanyi.

The Committee also noted the Petition by Mr. Bernard Abuya Momanyi which averred that the conduct of the Member for Embakasi East Constituency reflected adversely on the dignity of Parliament and of Members of Parliament. The Petitioner then prayed that the National Assembly finds the Member to have acted in contravention of Chapter Six of the Constitution, and further recommended that the Member for Embakasi East Constituency, pursuant to Articles 75, 80, 103(1)(c) of the Constitution and Section 41 of the Leadership and Integrity Act, vacates office.

2. Proceedings

The Committee took evidence from the following witnesses –

- (1) The Hon. Paul Ongili Owino and Hon. Charles Kanyi Njagua appearing jointly;
- (2) The Petitioner, Mr. Bernard Abuya Momanyi; and
- (3) Chief Security Officer, Department of Security and Safety.

(a) Member for Embakasi East Constituency Hon. Paul Ongili Owino, MP

On Wednesday, 27th June 2018, the Hon. Paul Ongili, MP appeared before the Committee submitted to the Committee that –

- (1) indeed on 10th October 2017 he went to the Parliament Media Centre to make a Press Conference on the political situation in the country;
 - (2) the Member for Starehe Constituency had trailed him to the Media Centre without his knowledge and when the two encountered each other at the Media Centre, they had a verbal exchange;
 - (3) what ensued was an altercation and not a physical scuffle as alleged by the EACC and the Petitioner, Mr. Abuya;
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- (4) the alleged altercation was occasioned by the then delicate political environment surrounding the disputed Presidential Elections held in August 2017 and an impending repeat of the election on October 26, 2018 that elicited frosty political relationship and bad blood between supporters of the National Super Alliance (NASA) and the Jubilee Party. He is a Member of the NASA Coalition while the Hon. Njagua belongs to the Jubilee Party;
- (5) after retrospection, he had since realized that the matter was not as small as he initially thought and deeply regretted the incident, and had since reached out to and reconciled with the Member for Starehe Constituency;
- (6) he tenders unreserved apology for the conduct and undertook not to ever act in a manner demeaning his own integrity or that of the House;
- (7) he pleaded for leniency from the Committee in the spirit of national reconciliation.

(b) The Member for Starehe Constituency Hon. Charles Kanyi Njagua, MP

The Member for Starehe Constituency appeared on Wednesday 27th June 2018 and submitted to the Committee as follows –

- (1) that he indeed accosted the Member for Embakasi East Constituency at the Parliament Media Centre on the afternoon of 10th October, 2017;
- (2) that he never intended to cause a scuffle with the Hon. Ongili but had stormed the media House to stop the Member for Embakasi East from holding a press conference;
- (3) that his action was spurred by fears that the Member for Embakasi East Constituency, being from the NASA Coalition, might have intended to use the press conference to make disparaging remarks about President Uhuru Kenyatta, since the NASA Coalition had not yet recognized the Presidency;
- (4) that he highly regretted the scuffle that occurred between him and the Member for Embakasi East Constituency;
- (5) that he had reconciled with the Member for Embakasi East and that the two were even engaged in joint businesses and had instituted plans for joint development initiatives to benefit youths in their respective constituencies as a sign of their reconciliation;
- (6) that the Committee pardons him and the Member for Embakasi East Constituency for the scuffle that arose due to the prevailing political situation in the country;

(c) The Petitioner, Mr. Bernard Abuya Momanyi

Through the Office of the Clerk, the Committee invited Mr. Bernard Abuya Momanyi to appear before the Committee on 4th July 2018 to make submissions on the alleged unethical conduct of the Member for Embakasi Constituency.

Despite numerous attempts by the secretariat the Petitioner could not be reached. The Committee deemed him to have forfeited the right to be heard on the matter and resolved to proceed to conclude and prepare a report on the Petition.

(d) Chief Security Officer, Parliament's Department of Security Safety

On Thursday 5th July 2018, the Deputy Chief Security Officer, Maj. (Rtd.) Kirungu Majiba appeared before the Committee and submitted that –

- (1) On Tuesday, 10th October 2017 at about 2.50pm during a Sitting of the National Assembly, the Member for Embakasi East Constituency (Hon. Paul Ongili Owino, MP), alias *Babu Owino* proceeded to the Parliament Media Centre with an intent to issue a press statement;
 - (2) Upon entering the Media Centre and as he was being assisted by Principal Media Relations Officer, he was confronted by the Member for Starehe Constituency;
 - (3) A scuffle ensued between the two Members drawing the attention of security officers who were on duty at the Main Parliament Buildings;
 - (4) The security team swiftly rushed to the scene and found Parliamentary Media Relations Staff attempting to separate the two Members who were engaged in a heated argument;
 - (5) The Security Officers took immediate control, contained the scuffle, whisked the two Members away and escorted them separately back to the Chamber;
 - (6) Thereafter both Members remained calm in the House as they participated in the proceedings of the House normally, no further signs of animosity being witnessed between them;
 - (7) No physical fight occurred between the two Members and none of the Members, Security officers, and media staff at the Media Centre reported any physical injury arising from the scuffle;
 - (8) The incident happened in full glare of both internal and external media practitioners;
 - (9) The external media recorded and circulated the video clips of the scuffle on social and public media; and
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Part X: Action Sought from the Committee

(a) Ethics and Anti-Corruption Commission

The Ethics and Anti-Corruption Commission sought that the Committee –

- (1) inquires into the conduct of the two Members of the National Assembly in light of Article 75 of the Constitution, Section 11(b) of the Leadership and Integrity Act and Rules 7 and 8 of the Code of Conduct for Members of Parliament contained in the Parliamentary Powers and Privileges Act, 2017;
- (2) takes appropriate action pursuant to Section 15(5) of the Parliamentary Powers and Privileges Act, 2017, Rule 12 of the Code of Conduct for Members of Parliament; and
- (3) shares with the Commission the findings and action taken against the two Members upon the conclusion of the inquiry.

(b) The Petitioner

The Petitioner, Mr. Bernard Abuya Momanyi, seeks that the Committee finds that the Member for Embakasi East Constituency contravened Chapter Six of the Constitution and recommends the vacates the seat of Member of Parliament pursuant to Article 103(1)(c) of the Constitution.

Part XI: Procedural Fairness

The Committee was guided by principles of procedural fairness in considering the actions sought from it by the Ethics and Anti-Corruption Commission and Mr. Bernard Abuya. In determining whether the Members were guilty or innocent, the Committee applied principles of procedural fairness at all stages.

Accordingly, and in the interest of fairness, the members accused of breach of the code of conduct and breach of privilege were given –

- (a) a prompt and clear statement of the precise allegations against them;
- (b) adequate opportunity to consider taking legal advice and have legal assistance throughout;
- (c) the opportunity to be heard in person;
- (d) the opportunity to call relevant witnesses at the appropriate time;
- (e) the opportunity to examine other witnesses; and
- (f) the opportunity to attend meetings at which evidence is given, and to receive transcripts of evidence.

Part XII: Disciplinary process and sanctions for breach of the Code of Conduct

In considering the actions sought by the EACC and the Petitioner on the alleged unethical conduct by the Hon. Paul Ongili, MP and Hon. Charles Kanyi, MP, the Committee was guided by the provisions of sections 16 and 17 of the Parliamentary Powers and Privileges Act, 2017 relating to conduct that constitute breach of privilege and determination of breach of privilege, respectively.

Section 16(e) of the Act provides that the Committee may find a Member to be in breach of privilege if the Member –

(e) conducts himself or herself in a manner which, in the opinion of the Committee of Powers and Privileges, is intended, or is likely to reflect adversely on the dignity or integrity of Parliament, or of the Members or to be contrary to the best interest of Parliament or its Members.

Section 17(1) of the Act provides that –

(1) The relevant House of Parliament shall have all the powers necessary for enquiring into and pronouncing upon an act or any matter constituting breach of privilege in terms of Section 16.

Section 41(1) of the Leadership and Integrity Act provides that –

“ ... a breach of the Code amounts to misconduct for which the State Officer may be subjected to disciplinary proceedings”

Accordingly, the Committee’s inquiry was focused on making a determination as to whether the claims made by the EACC and Mr. Bernard Abuya Momanyi on alleged unethical conduct by the Member for Embakasi East Constituency and the Member for Starehe Constituency did constitute breach of privilege, hence warranting the sanctions prescribed in section 17(3) of the Parliamentary Powers and Privileges Act.

Section 17(3) of the Parliamentary Privileges Act, 2017 provides that:

(3) Where the relevant House of Parliament finds that a Member has committed a breach of privilege, the relevant House of Parliament may, in addition to any other penalty to which the Member may be liable under this Act or any other law, impose any or more of the following penalties—

(a) a formal warning;

(b) a reprimand;

(c) an order to apologize to the House or a person in a manner to be recommended by the Committee of Powers and Privileges;

(d) the withholding, for a specific period of time, of the member’s right to the use or enjoyment of any specified facility provided to Members by Parliament;

(e) the removal or suspension for a specified period of time of the Member from any parliamentary position occupied by the Member;

(f) such fine in terms of the Member's monthly salary and allowances as the House may determine;

(g) the suspension of the Member for such period as the House may decide, whether or not Parliament or any of its committees is scheduled to meet during that period;

(h) vacation of seat pursuant to Articles 75(2)(b) and 103(1)(c) of the Constitution.

Article 75(2)(b) and 103(1)(c) of the Constitution referred to in paragraph (h) above provides as follows –

75(2) A person who contravenes clause (1), or Article 76, 77 or 78 (2) –

(a) shall be subject to the applicable disciplinary procedure for the relevant office; and

(b) may, in accordance with the disciplinary procedure referred to in paragraph (a), be dismissed or otherwise removed from office.

103(1) The office of a member of Parliament becomes vacant –

(c) if the member is otherwise removed from office under this Constitution or legislation enacted under Article 80;

The aforementioned provisions formed the basis upon which the Committee premised its observations, findings and recommendations.

Part XIII: Observations, Findings and Recommendations

1. Observations and Findings

Having reviewed the video clip submitted by the Ethics and Anti-Corruption Commission, the contents and prayers of the Petition by Mr. Bernard Abuya Momanyi, the evidence in the report by Parliament Security and Safety Department as well as the oral evidence adduced by the Hon. Paul Ongili Owino, the Hon. Charles Kanyi Njagua and, (Deputy Chief of Security and Safety Department) Maj. (Rtd) Kirungu Majiba, the Committee observed –

- (1) that the scuffle between the Hon. Paul Ongili Owino and the Hon. Charles Kanyi Njagua reflected adversely on the dignity and integrity of the National Assembly and its Members in terms of section 16(e) of the Parliamentary Powers and Privileges Act, 2017;
 - (2) that the two Members engaged in a scuffle in public and full glare of the media at the Parliament Media Centre, hence subjecting the dignity and integrity of the House and its Members to public opprobrium;
 - (3) that the scuffle was connected to and fuelled by the then prevailing political situation in the country at the moment arising from the contested August 2017 general elections; and
 - (4) that the two Members apologized to the Committee for the unethical conduct and sought leniency.
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In light of the foregoing, the Committee finds that notwithstanding the then prevailing political environment in the country, the Hon. Paul Ongili Owino and Hon. Charles Kanyi Njagua conducted themselves in a manner that reflected adversely on the dignity and integrity of the National Assembly and its Members, and that their actions were a breach of privilege and punishable in accordance with Section 41 of the Leadership and Integrity Act, 2012 and Section 17(3) of the Parliamentary Powers and Privileges Act, 2017.

2. Recommendations

In consideration of the above observations and findings, the Committee recommends that the House -

- (1) pursuant to section 17(3)(b) of the Parliamentary Powers and Privileges Act, 2017, reprimands the Hon. Paul Ongili Owino and Hon. Charles Kanyi Njagua for conducting themselves in a manner that reflected adversely on the dignity and integrity of the National Assembly and its Members, contrary to section 16(e) of the Parliamentary Powers and Privileges Act, 2017; and**
 - (2) pursuant to section 17(3)(c) of the Parliamentary Powers and Privileges Act, 2017, orders the Hon. Paul Ongili Owino and Hon. Charles Kanyi Njagua to apologize to the House and the Members for conducting themselves in a manner that reflected adversely on the dignity and integrity of the National Assembly and its Members contrary to section 16(e) of the Parliamentary Powers and Privileges Act, 2017.**
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Part XIV: Appendices

- (1) Letter from the Ethics and Anti-Corruption Commission, dated October 12, 2018, requesting the National Assembly to investigate and take necessary action against the Member for Embakasi East Constituency, Hon. Paul Ongili Owino, MP, alias *Babu Owino* and the Member for Starehe Constituency, Hon. Charles Kanyi Njagua, MP, alias *Jaguar* for unethical conduct.
 - (2) Petition by Mr. Bernard Abuya Momanyi, a resident of Embakasi East Constituency regarding alleged breach of privileges and violation of the Code of Conduct for Members of Parliament by the Member for Embakasi East Constituency, Hon. Paul Ongili Owino, MP, alias *Babu Owino*.
 - (3) Petition by Mr. Bernard Abuya conveyed to the House by the Speaker.
 - (4) Report of the Parliament Security and Safety Department on the scuffle between the Hon. Paul Ongili, MP and the Hon. Charles Kanyi, MP.
 - (5) Minutes of Sitzings of the Committee held to consider the matter.
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