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REPUBLIC OF KENYA



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THE NATIONAL ASSEMBLY  
TWELFTH PARLIAMENT (THIRD SESSION)

REPORT OF THE COMMITTEE OF POWERS AND PRIVILEGES  
ON THE INQUIRY OF ALLEGED LEAKAGE AND MISUSE OF OFFICIAL  
INFORMATION CONTRARY TO THE LEADERSHIP AND INTEGRITY ACT,  
2012

	
THE NATIONAL ASSEMBLY PAPERS LAID	
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CLERK-AT THE TABLE:	MEMBER OF THE COMMITTEE
	INZOFU MWANGI

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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, privileges and immunities of the House, committees, 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 made pursuant to the requirements of Chapter Six of the Constitution through the Leadership and Integrity Act, the Public Officer Ethics Act and the Parliamentary Power and Privileges Act, and to recommend necessary sanctions following due process.

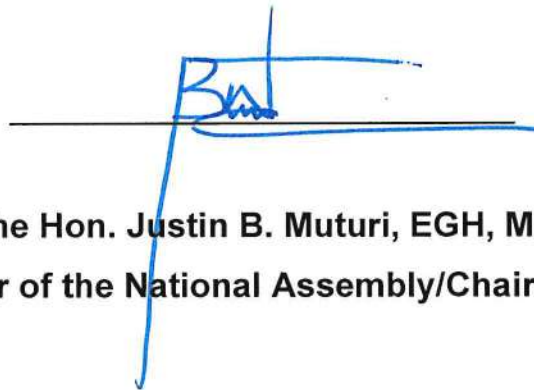
The Constitution of Kenya (2010), which is now in its ninth year of implementation, heralded a paradigm shift in the enforcement of the principles of leadership and integrity for holders of public and state offices. Consequently, this new dispensation necessitated enactment of various legislations on 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**

### **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.

### **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. (**Designated Vice Chairperson**)
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 current staff of the Committee are Ms. Jemimah Waigwa (Legal Counsel I), Ms. Anne Shibuko (Second Clerk Assistant), Mr. Benson Inzofu (Second Clerk Assistant) and Ms. Esther Ngechu (Serjeant at Arms) under the supervision of Mr. Kipkemoi arap Kirui, Deputy Director, Legislative and Procedural Services.

## **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:

### **a. 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 any member proceeding to, being within or leaving the precincts of Parliament, or attempting to compel any member by force, insulting or menacing to declare himself or herself in favour of or against any proposition or matter pending or expected to be brought before Parliament or any committee;
- (c) assaulting, interfering with, molesting, resisting or obstructing any member of staff while in the execution of his or her duty;



- (d) assaulting or threatening a member or unlawfully depriving a member of any benefit on account of the member's conduct in Parliament, or while Parliament or a committee is sitting, creating or taking part in any unlawful disturbance which interrupts or is likely to interrupt the proceedings of Parliament or any committee while Parliament or the committee is sitting;
- (e) improper influence in contravention of sections 25, 26 or 28 of the Act;
- (f) committing offences relating to witnesses<sup>1</sup>, 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;
- (g) other serious offences relating to witnesses<sup>2</sup>, including -
  - (i) threatening, obstructing, assaulting or insulting a member of staff or police officer carrying out service of summons issued under the Act;

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

<sup>2</sup> *Ibid*

- (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;
- (h) willfully failing or refusing to obey any rule, order or resolution of Parliament;
- (i) contravening any provision of the Speaker's orders<sup>3</sup>; or
- (j) 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.

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<sup>3</sup> Section 37, Parliamentary Powers and Privileges Act, 2017

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 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 inquiry. However, section 36 of the Act permits the Committee to seek an extension of time for inquiring into a complaint.

**(b) Attendance of House proceedings and committees including being responsible for the Absences of Members from the House and its committees;**

Article 103(1)(b) of the Constitution 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 office<sup>4</sup>. Standing Order 258 of the National Assembly Standing Orders 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 inquiries 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.

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<sup>4</sup> 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.

#### **(c) Enforcement of ethics and rules governing the conduct of Members of Parliament:**

While there is no universally agreed definition or scope of codes of conduct, other than a recognition that offences already punishable by law - such as corruption and bribery - are not covered, experience suggests that codes of conduct often start out with a narrow scope, which gradually evolves. Our is a fledgling one with the intention of outlining the overall principles of proper conduct in the institution of Parliament, including what is generally agreed to be desirable behaviour, and what is not. Codes of conduct will serve both an internal

and an external purpose: within the institution, codes of conduct guide behaviour on the part of Parliament and those within it; outside the institution they enable society to hold legislators and staff to account on the basis of agreed standards, thereby enhancing *public trust*.

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.



#### **(d) Registration of Members' Interests**

The Committee is responsible for the compilation, maintenance and accessibility of the Register of Members' Interests and any other registers of interest established by the House; to review from time to time the form and content of those registers; to consider any specific complaints made in relation to the registering or declaring of interests referred to it; to consider any matter relating to the conduct of Members, including specific complaints in relation to alleged breaches in the Code of Conduct which have been drawn to the Committee's attention by the Speaker or the Ethics and Anti-corruption Commission; and to recommend any modifications to the Code of Conduct as may from time to time appear to be necessary.

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.



**(e) Ensuring that any contempt of the House and its committees is sanctioned:**

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.

**(f) 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 officers 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: EVENTS PRECEDING THE INQUIRY OF ALLEGED LEAKAGE AND  
MISUSE OF OFFICIAL INFORMATION CONTRARY TO THE  
LEADERSHIP AND INTEGRITY ACT, 2012**

1. On or about 19th December, 2018 a video clip went viral in the internet containing pornographic content of a woman in a compromising situation with an unidentified man that was widely circulated on social media.
2. On 21st February, 2019, one Mr. Wiso J. M wrote to the Clerk of the National Assembly informing him that the DCI was investigating an alleged case of defamation and four Members namely Hon. (Dr.) Adan Keynan, Hon. Purity Wangui Ngirici, Hon. Abdikhaim Osman Mohamed and Hon. Rehema Dida Jaldesa had been mentioned adversely. The said officer requested that the Clerk does therefore inform the said four Members to report to DCI Headquarters Kiambu road at 1000 hours on 25th and 26th February, 2019 to facilitate investigations.
3. On the same day 21st February, 2019, the Directorate of Litigation and Compliance Services wrote a memo to the Clerk advising him on the request made by Mr. Wiso, J.M from the DCI. In the memo, the Directorate advised the Clerk that noting the case under investigations did not arise from performance of duties of a Member, the DCI should inform the Members directly. Further, the Memo indicated that the request by DCI did not fall within the scope of duties of the Clerk and also contravened the principles of parliamentary powers, privileges and immunities.
4. On 23rd February, 2019, the contents of the advisory internal memo and letter appeared as a news item on NTV and in the Daily Nation and Standard on 24th February, 2019.

5. On 25th February, 2019, Hon. Adan Keynan wrote to the Speaker expressing his displeasure with the leakage of letter from DCI and sought to inquire among other things on what action was being taken against the staff or member involved in the matter. To this end, he requested that the matter be investigated and be brought to a logical conclusion.
6. On 25th February, 2019, Hon. Abdikhaim Osman Mohamed wrote to the Clerk expressing his displeasure with the leakage of letter from DCI and sought to know the names of the persons who leaked the letter.
7. On 27th February, 2019, the Office of the Clerk received a letter from Hon. Rehema Dida Jaldesa also expressing her displeasure with the leakage of letter from DCI and sought to know the details of the members of the staff who colluded with the media in circulating the fabricated allegations.
8. On 28th February, 2019, Hon. Purity Ngirici wrote to the Clerk of the National Assembly. In the letter, the Member observed that on 23rd February, 2019 alleged summons from the Directorate of Criminal Investigations were published in main stream media. She expressed her displeasure with the staff working in the office of the Clerk for breach of her privacy and requested to know the details of the staff.

#### **PART V: CONSIDERATION OF THE COMPLAINTS BEFORE THE COMMITTEE**

9. On 20<sup>th</sup> March, 2019, the Committee of Powers and Privileges held its first meeting and was informed by the secretariat that -
  - (1) Complaints had been filed by Hon. (Dr.) Adan Keynan, Hon. Purity Wangui Ngirici, Hon. Abdikhaim Osman Mohamed and Hon. Rehema Dida Jaldesa expressing their displeasure with leakage of purported summons from the DCI.

- (2) The Directorate of Criminal Investigations (hereinafter referred to as the DCI) had written a letter to the Clerk dated 21/2/2019 requesting the Clerk to inform the four members of the summons by DCI, two of whom were to appear on 25/2/2019 and two others on 26/2/2019.
- (3) The said letter from DCI was committed to the Directorate of Litigation and Compliance.
- (4) On 21/2/2019 the Directorate advised the Clerk that since the case did not arise from performance of his duties the DCI should write directly to the members.
- (5) The Clerk signed the memo and letter communicating the same to DCI. The letter was received by the Directorate of Litigation on Friday 22/2/2019 at around 5.00pm, and the same was transmitted to the relevant authorities on Monday 25th February, 2019.
- (6) On 23rd February, 2019 the detailed contents of the letter and memo appeared as a news item in NTV and in both Daily Nation and Standard on 24th February, 2019.
- (7) On 26th February, 2019, the Clerk wrote to the officer who had been assigned to transmit the letter and internal memo from the Clerk's Office to the Directorate of Litigation and Compliance requiring him to clarify the circumstances under which the contents of the documents were leaked.
- (8) On 27th February, 2019, the officer responded to the letter and tendered his apology and cited having been under duress from Hon. Fatuma Gedi. He also averred that the member approached him in confidence and asked if he could locate the documents from DCI. The officer initially declined as he found it "absurd, difficult and irregular" but he eventually handed the documents to the Member

reluctantly after she persistently and repeatedly indicated that she intended to use them for Parliamentary business.

(9) Section 22 of the Leadership and Integrity Act, 2012 provides that -

*(1) A State officer shall not directly or indirectly use or allow any person under the officer's authority to use any information obtained through or in connection with the office, which is not available in the public domain, for the furthering of any private interest, whether financial or otherwise.*

*(2) The provisions of subsection (1), shall not apply where the information is to be used for the purposes of—*

*(a) furthering the interests of this Act; or*

*(b) educational, research, literary, scientific or other purposes not prohibited by law.*

10. In light of the foregoing, the Committee resolved-

(a) To invite Mr. Noor Mohamed Adan, the parliamentary Officer who admitted to sharing the documents with Hon. Fatuma Gedi to further explain the circumstances of the situation;

(b) The Hon. Fatuma Gedi Ali to give comprehensive details of the allegations against her.

11. Consequently, on 21<sup>st</sup> March, 2019, the Clerk of the National Assembly wrote to Mr. Noor Mohammed inviting him to appear before the Committee on 27<sup>th</sup> March, 2019 with a view of providing information to the Committee in relation to complaints filed by four Members of Parliament regarding alleged unauthorised release and misuse of information



through leakage of summons from the Directorate of Criminal Investigations.

12. On 21<sup>st</sup> March, 2019, the Clerk of the National Assembly wrote to Hon. Fatuma Gedi inviting her to appear before the Committee on 27<sup>th</sup> March, 2019 with a view of providing information to the Committee in relation to complaints filed by four Members of Parliament regarding alleged unauthorised release and misuse of information through leakage of summons from the Directorate of Criminal Investigations.

#### **PART VI: THE ORAL SUBMISSIONS OF MR. NOOR MOHAMMED ADAN.**

13. On 27<sup>th</sup> March, 2019, the Committee proceeded to hear Mr. Noor Mohammed Adan who informed the Committee as follows-
  - (1) That, he is a Parliamentary Officer attached to the Office of the Director, Legislative and Procedural Services (National Assembly) as an Office Attendant, and that his duties include circulation of correspondences and documents to relevant Offices.
  - (2) That on Friday, 22<sup>nd</sup> February 2019, he was tasked to extend the service to the Office of the Clerk, since the designated Officer had been excused to attend to personal matters.
  - (3) That, while dispatching letters from the Office of the Clerk, he coincidentally met the Member for Wajir County, Hon, Fatuma Gedi, MP, at around 4.00 p.m., along the way to Protection House.
  - (4) That the Member stopped him and inquired about documents relating to a request by the Directorate of Criminal Investigations to question certain Members of Parliament. He checked and indeed confirmed that, the internal memo on the matter Hon. Gedi had inquired about was indeed among those documents that he had.



- (5) That he was reluctant to give the Member a copy of the letter as it was not addressed to her, but the Member impressed upon him that she (Hon. Gedi) was a Vice-Chairperson of a Committee and she needed a copy of the document for parliamentary business.
- (6) That, he firstly declined the request and proceeded to circulate the documents to relevant offices. Thereafter, the Member called him three times asking to be given a copy of the said document for parliamentary business.
- (7) That, succumbing to pressure from the Member, he obtained a copy of the said letter from the file and gave it to the Member, in good faith and without influence of any form of inducement from the Member.
- (8) That, considering it was late in the evening on that Friday, and there was no senior officer in the Office to authorise the release of the documents.
- (9) That, the Member did not sign a delivery book to signify receipt of the document, since the letter was not meant for her. He understood it was against work ethics to give the Member the copy of that letter but proceeded to do so in good faith on the understanding that his role is to facilitate Members of Parliament in their parliamentary business.
- (10) That, soon thereafter, he learnt that the copy of the letter he had given to Hon. Fatuma Gedi was being circulated in social media. He reported the fact to the Personal Assistant to the Clerk, Mr. John Mutega and acknowledged that he had given the letter to the Member who had maintained that she needed it for parliamentary business.

- (11) That, he later received a letter from the Clerk of the National Assembly requesting him to offer an explanation on how and why the letter he handled during dispatch found itself in wrong hands. He sought audience with the Clerk and explained the circumstances and also did a letter, regretting the action and seeking to be forgiven for the mistake.
- (12) That, even though the Hon. Fatuma Gedi, MP, is indeed his County Member of Parliament to the National Assembly, they are not related. Further that, his decision to give her a copy of the letter in question was not informed by the fact that they come from the same County; it was purely out of the duress that the Member exerted to him.
- (13) That, he has been a diligent officer and that he regretted the mistake he committed under duress. He pleaded for leniency from the Committee and undertook that he would not repeat such a mistake.
14. It is noteworthy that on the same day the Committee had invited Hon. Fatuma Gedi to also appear and give her testimony but she did not appear. Consequently, the Committee resolved that the witness be invited for a second time to appear on Wednesday, 3rd April 2019 at 10.00am, failure to which the Committee shall invoke the sanctions of section 19 of the Parliamentary Powers and Privileged Act.
15. On 27th March, 2019, Hon. Adan Keynan wrote to Clerk of the National Assembly raising issues with the fact that the proceedings of the Committee held on 27th March, 2019 had been held in camera.
16. On 28th March, 2019, the Clerk of the National Assembly wrote again to Hon. Fatuma Gedi inviting her to appear before the Committee on 3rd April, 2019 with a view of providing information to the Committee in relation to allegations of misuse of official information. In the letter, the

Clerk noted that the Member had failed to honour the previous invitation to appear before the Committee and advised the Member that failure to honour the Committee's invitation would compel the Committee to issue summons.

17. On 28th March, 2019 the Parliamentary Service Commission in its 260th meeting considered the discipline case against Mr. Noor and resolved to reprimand him as evidenced by a letter dated 15th April, 2019 to the said officer.
18. On 1st April, 2019, the Office of the Clerk wrote to each of the four complainants namely Hon. (Dr.) Adan Keynan, Hon. Purity Wangui Ngirici, Hon. Abdikhaim Osman Mohamed and Hon. Rehema Dida Jaldesa to attend the Committee meeting scheduled to be held on 3rd April, 2019 for taking of evidence of Hon. Fatuma Gedi.

#### **PART VII: THE ORAL SUBMISSIONS OF HON. FATUMA GEDI.**

19. On 3<sup>rd</sup> April, 2019, the Committee proceeded to hear Hon. Fatuma Gedi who informed the Committee as follows-
  - (1) That, sometime in December 2018, an alleged fake video containing pornographic content involving her in a compromising situation with an unidentified man was widely circulated on social media, including among Members of the National Assembly.
  - (2) That, as the aggrieved party, she reported the matter to the Police and the investigations that were launched by the Directorate of Criminal Investigations (DCI) revealed that four Members of Parliament were among the persons behind the said video. The four Members were summoned by the DCI to record statements.

- (3) That, having been informed that the suspected Members had been summoned to DCI, she inquired from the Serjeant-At-Arms whether any summonses in respect of the four Members had been received and passed to the Members or not. After being informed that none had been received, she proceeded to the Clerk's Office to enquire on the same.
- (4) That, she did not find the Clerk in his office but as she was leaving, she met Mr. Noor Mohamed, a staffer, who was well known to her as he comes from her County of representation;
- (5) That, she informed the officer she had wished to meet the Clerk to establish if he had received a letter from the DCI summoning four Members to write statements regarding circulation of the alleged fake video involving her in a compromising situation with an identified man. She asked him whether he had seen the letter and if he so, whether he could give her a copy of that letter, to which the officer responded that he had not seen that letter.
- (6) That, two days later, the officer called her, informing her that he had seen the letter summoning the four Members of Parliament by the DCI in the Office of the Clerk. The officer inquired where the Member was so that he could show her the letter. The officer met the Member and showed her the letter but declined to hand a copy to her at first instance. A day later, she instructed the officer to give a copy of the letter to her driver and also take a copy to her.
- (7) That, when she got the letter, she read it and upon completion, she left it on the table where she was seated and went on with her other business.
- (8) That, she was not responsible for the leakage and circulation of the contents of the letter to the media.

20. In reacting to the submissions by the witness, Members sought clarifications from the witness on the following matters:

- (1) Whether the Member influenced the DCI to write to the Clerk issuing summonses to the four suspected Members, the witness informed the Committee that she had been closely following up on the progress on investigations to have culprits of the alleged video brought to book and that she had visited the office of the DCI where she was informed that the letter had been done and dispatched to the Clerk.
- (2) Asked where she was when the officer took the letter to her and whether she was in the company of any other Members at the time the officer went to her with the letter, the witness informed the Committee that she was in the company of Wajir West (Hon. Ahmed Kolosh Mohamed, MP) and the Member for Wajir North (Hon. Ahmed Abdisalan Ibrahim, MP) in the Lounge at about 2.30 pm when the officer showed her the letter.
- (3) Asked whether she obtained from the officer the document alleged to have been leaked with ease on account of them being acquaintances from the same County, the witness acknowledged knowing Mr. Adan Noor Mohamed (staff) since they hail from the same County but denied having approached him for the document on account of him being one of her voters.
- (4) On whether the witness used her position as Vice-Chairperson of the Committee on Delegated Legislation to intimidate the officer to hand over to her the document alleged to have been leaked, the witness denied the claim.
- (5) Asked why she left a letter she had sought so earnestly on the table after reading, when she would ordinarily have been expected to

safeguard it dearly, the witness said that her interest was to confirm receipt of the letter by the Clerk.

- (6) Asked of the reasons why she never reported to the Speaker for action the suspicion she had that four certain Members of the National Assembly had masterminded creation and circulation of the alleged fake video of her in compromising situation with an unidentified man, the witness informed the Committee the Committee that she did not do so since the DCI was already investigating the matter.
- (7) On the claims that she may have initiated the summonses by DCI for the four Members to settle personal differences and vendetta with the four complainants, including her ouster as Chair of Caucus 47 by the Hon. Purity Ndirici, MP, the witness clarified that she had no personal differences but was pursuing justice and the four Members were identified by the DCI through investigation.
- (8) On how she got a copy of the letter containing the leaked information, she stated that the officer gave it to her driver, who then handed over to her.
- (9) Regarding claims that the letter from the DCI summoning the four Members was fake and was authored by a junior officer at the DCI under her instructions, she denied having influenced any officer to write the letter and challenged the Member claiming so or the Committee to authenticate the letter with the DCI.

## **PART VIII: THE WRITTEN SUBMISSIONS OF HON. FATUMA GEDI**

- 21. On 24<sup>th</sup> July, 2019, the witness filed written submissions in which she observed as follows-

- (1) That on 19th December, 2018 while she was out of the country on official duty a fabricated video went viral on the internet.
- (2) That she lodged a formal complaint on the same with the DCI.
- (3) That some suspects were arrested on or about 27th December 2018 and charged before Kiambu Law Court.
- (4) That other persons mentioned adversely in the preliminary investigations included four Members of Parliament.
- (5) That she made up follow ups with DCI on the same and she was made to understand that the Members would be summoned.
- (6) That she went to the Clerk to inquire whether or not his office was in receipt of the letter of summons from DCI requiring the four members to avail themselves at DCI.
- (7) This was about three months down the line after the DCI was seized of the matter.
- (8) That on her way from Clerk's office she met a gentleman by the name Hassan Noor (*Mr. Noor Mohamed Adan*).
- (9) That the parliamentary officer inquired about her visit where she told him that she was looking for the Clerk to know whether some letter in relation to the investigations had been delivered to the office, of which he responded that he was not aware of the same.
- (10) That while seated at the lounge alongside Hon. Kolosh and Hon. Abdisalam, she received a call from Noor who informed her he had seen the letter.
- (11) That Mr. Noor then went to the lounge, showed her the letter but declined to give her a copy.



- (12) That the following day, he again told her that he had seen her driver and wanted to give to the driver but she told him to give her the letter personally at the lounge.
- (13) That she read the letter and inadvertently left it there.

## **PART IX: STATUS UPDATE ON THE INQUIRY OF THE ALLEGED LEAKAGE AND MISUSE OF OFFICIAL INFORMATION**

22. On 9<sup>th</sup> October, 2019 the Committee held a meeting and was briefed as follows on the status of the inquiry of the alleged leakage and misuse of official information by the secretariat-

### **(a) Authenticity of the Letter from the DCI**

- (1) On 16th April 2019, the Clerk wrote to the Director of Criminal Investigations (DCI) requesting him to ascertain the authenticity of the letter from DCI dated 21st February 2019.
- (2) On 23rd July 2019, the Clerk wrote a follow up letter to the Director of Criminal Investigations (DCI) requesting him to urgently ascertain the authenticity of the letter from DCI dated 21st February 2019.
- (3) On 26th July, 2019, Mr. J. N Kariuki on behalf of the Director of Criminal Investigations had written to the Clerk indicating that the four Members were summoned by Mr. Wiso J.M without the authority of the Directorate of Criminal Investigations and disciplinary action was taken against the said officer.

### **(b) Invitation to Hon. Fatuma Gedi's driver**

- (1) The Clerk of the National Assembly, by way of a letter dated 23rd July 2019, conveyed to Hon. Gedi the resolution of the Committee requesting her to avail details of the driver for purposes of being invited to the Committee.

- (2) The Member has never responded to the letter and even in her written submission, which she tendered with the Clerk on 30th July 2019 (later than the required date of 12th April 2019), she mentioned a “driver” but never provided the name of that driver.

23. The Committee noted the report and resolved–

- (1) that the response issued by the Directorate of Criminal Investigations was unsatisfactory;
- (2) that the response of the letter dated 26th July 2019 signed by Mr. John Kariuki was contradictory with the submissions given by some of the Members who appeared before the Committee on 3rd April 2019;
- (3) that the differing communication by two officers communicating on behalf of the same institution raised questions on the manner of handling cases by the DCI;
- (4) that to resolve the matter objectively, there was need to summon the Director of Criminal Investigations himself to clear the contradictory communication;
- (5) that the secretariat prepares a list of the events chronologically so as to assist the Committee in getting a snapshot of the occurrences; and
- (6) that the Hon. Gedi be asked to give the name of her driver to appear before the Committee.

## **PART X: ANALYSIS OF THE TIMELINE OF CHRONOLOGY OF EVENTS AND WITNESS STATEMENTS**

24. On 15<sup>th</sup> October, 2019, the Committee analysed the timeline of chronology of events and witness statements as prepared by the

Secretariat. The chronology noted events preceding the inquiry, the details of the inquiry including a chronology of events, oral and statements written submissions and relevant correspondences.

25. The Committee noted the report and observed as follows:-

- (1) there existed inconsistencies in the oral and written testimony of Hon. Fatuma Gedi in terms of timelines of when she inquired from the Clerk about the letter and when she received the letter;
- (2) there also existed inconsistencies in the oral and written testimony of Hon. Fatuma Gedi in terms of the role of her driver in receiving the letter. It was also notable that the witness has failed to furnish the Committee with details of the driver;
- (3) there also existed inconsistencies in the testimony of Hon. Fatuma Gedi and that of Mr. Noor, the Parliamentary officer as to where they met and the time of meeting;
- (4) that in the testimony of Hon. Fatuma Gedi, Mr. Noor is the one who called her to inform her about the letter. However, Mr. Noor indicates that it is Hon. Fatuma Gedi who called at least three times where he succumbed to pressure and gave a copy of the letter;
- (5) that the Committee needs to confirm what documents were leaked as the witness appear to suggest it is only the letter that Mr. Noor handed over to Hon. Fatuma Gedi, yet an analysis of the Media house footage shows both the letter and Internal Memo;
- (6) there also existed inconsistencies in the oral and written testimony of Hon. Fatuma Gedi in terms of how she first became aware of the alleged summons by DCI to the four Members; and
- (7) that the letter allegedly making a formal complaint to the DCI was not submitted to the Committee by Hon. Fatuma Gedi. It was also

notable that Hon. Mohammed Abdulhakim stated in his testimony that Mr. John Kariuki, the Deputy Director of Criminal Investigations had informed him that he was not aware of the summons as he had heard about it in the television.

26. In view of the foregoing, the Committee resolved as follows:-

- (1) that the Hon. Fatuma Gedi, MP be asked to furnish the Committee with particulars of the driver she alluded to during her testimony on Wednesday 3rd April, 2019, and have the driver appear before the Committee at its next sitting scheduled to be held on Wednesday, 30th October, 2019;
- (2) that, the Director for Criminal Investigations be summoned to appear before the Committee in person on Monday 4th November, 2019 to give evidence on the matter, particularly the contradictory communication from the Directorate;
- (3) that, the Director for Criminal Investigations be asked to provide a copy of the formal complaint filed by the Hon. Fatuma Gedi, MP;
- (4) that, both Mr. Wiso J.M. and Mr. John Kariuki be summoned to appear before the Committee on Monday 4th November, 2019 to give evidence on the letters they respectively signed on behalf of the Director for Criminal Investigations;
- (5) that, the complainants: Hon. (Dr.) Adan Keynan, CBS, MP, Hon. Purity Wangui Ngirici, MP, Hon. Abdikhaim Osman Mohamed, MP and Hon. Rehema Dida Jaldesa, MP be invited to the proceedings scheduled for Monday 4th November, 2019; and

- (6) that, the Hon. Fatuma Gedi be allowed to attend the proceedings scheduled for Monday 4th November, 2019.

**PART XI: THE ORAL SUBMISSIONS OF MR. JACOB KIPKEMBOI, HON. FATUMA GEDI'S DRIVER.**

27. On 30<sup>th</sup> October, 2019, the Committee proceeded to hear Hon. Fatuma Gedi's driver, Mr. Jacob Kipkemboi who informed the Committee as follows-

- (1) That, he has served under the National Police service for 9 years.
- (2) That, the Hon. Fatuma Gedi is well known to him since 16th January 2019 when he was assigned to her on secondment by the National Police Service as her driver.
- (3) That, as at the time of his appearance before the Committee he was still employed by the Member in the same capacity.
- (4) That, Hon. Ahmed Kolosh was well known to him but he was not sure if he knew Hon. Ahmed Abdisalan unless he physically sees him.
- (5) That, no parliamentary staff has ever been sent to him to deliver any correspondence and that he did not know any parliamentary staff by the name Hassan Noor (*Mr. Noor Mohamed Adan*) neither has he ever met him before.
- (6) That, whenever he is within the precincts of Parliament, he usually sits in the vehicle or around the parking yards with his fellow drivers and he has entered the precincts only in the cases where Hon. Fatuma Gedi has sent him.
- (7) That, all official communication meant for Hon. Fatuma Gedi has always been given to the Honourable Member directly or to her office through the personal assistant or secretary.

- (8) That, he has no personal relations with any officer working under the Directorate of Criminal Investigations.
- (9) That, on 29th October 2019 he received a call from a member of the Committee Secretariat that the Powers and Privileges Committee had resolved to invite him to appear before it for a hearing on issues pertaining his duties.
- (10) That, upon enquiry on the issues he was advised to consult the Member since she was the one who had submitted his name.
- (11) That, he contacted the Member through a phone call to ascertain the reason for the invitation but the Honourable Member told him that she has been having some issues since early this year, issues that she didn't disclose to him.
- (12) That, upon failure to obtain a satisfactory answer from the Hon. Fatuma Gedi, he decided to reach the Secretariat of the Committee again and was told that he would be informed of the details of the meeting on appearing before the Committee.
- (13) That, shortly afterwards, he came across Hon. Fatuma Gedi within the precincts of Parliament and again made an enquiry on the nature of his invitation but the Honourable member who appeared to be hurrying for a meeting told him that she had mentioned his name before the Committee in a previous sitting but the Committee would give him the details once he appeared before it.

28. In reacting to the submissions by the witness, Members sought clarification from the witness on the following-

- (1) On whether he has ever met Hassan Noor (*Mr. Noor Mohamed Adan*), the witness maintained that he had never met him and that

he did not also know anyone in the Parliamentary Service by that name;

- (2) Asked whether Hon. Fatuma Gedi has ever sent him on personal or official errands on her behalf, he clarified that most of his errands involved picking guests for the Member and not any official letters and that the only document he has ever received on behalf of the Member was a wedding invitation for a Member of Parliament;
- (3) Asked whether any of Hon. Fatuma Gedi's friends has ever been given him anything to deliver to the Honourable Member, he maintained that none of the friends of the Honourable Member had given him anything to deliver to the Member;
- (4) Asked whether he has ever visited DCI Headquarters, he admitted that, earlier this year on a day he couldn't recall accurately but he was still new to his assignment as a personal driver to Hon. Fatuma Gedi, he together with the bodyguard, accompanied the Honourable Member to the Directorate of Criminal Investigation Headquarters at around 2:00 pm;

29. In view of the foregoing, the Committee resolved as follows:-

- (1) That, the submissions by Hon. Gedi's driver were satisfactory; and
- (2) That, Hon. Ahmed Kolosh and Hon. Ahmed Abdisalam having been mentioned by Hon. Fatuma Gedi in her submissions, be invited to appear before the Committee on 4th November 2019 since they were mentioned in the submissions that were given by Hon. Fatuma Gedi before the Committee.



**PART XII: MEETING WITH MR. GEORGE KINOTI, THE DIRECTOR OF CRIMINAL INVESTIGATIONS, MR. WISO J.M AND MR. JOHN KARIUKI, OFFICERS OF THE DIRECTORATE OF CRIMINAL INVESTIGATIONS.**

30. On 4<sup>th</sup> November, 2019, the Chairperson informed members that the Director of Criminal Investigations, Mr. George Kinoti, had written to the Clerk requesting the Committee to reschedule the taking of evidence to a later date since the concerned officers Mr. Wiso J. M. and Mr. John Kariuki were unable to attend the meeting owing to official assignments abroad. It was proposed that evidence from the Director Mr. George W. Kinoti, Mr. Wiso J. M. and Mr. John Kariuki of the Directorate of Criminal Investigations be taken on Monday 11th November 2019 at 11.00 am.

**PART XIII: THE ORAL SUBMISSIONS OF HON. AHMED ABDISALAN AND HON. AHMED KOLOSH**

31. On 4<sup>th</sup> November, 2019, the Chairperson informed members that Hon. Ahmed Kolosh had registered his apology as he was indisposed.
32. The Committee therefore proceeded to hear Hon. Ahmed Abdisalan, MP who informed the Committee as follows-
- (1) That, he knew Hon. Fatuma Gedi well as a friend.
  - (2) That the Hon. Fatuma Gedi is the women representative of his county of origin.
  - (3) That, he did not personally know the parliamentary officer, Mr. Hassan Noor (*Mr. Noor Mohamed Adan*) who had been mentioned by Hon. Fatuma Gedi, but had learnt that the officer came from his constituency.

- (4) That, he can remember a day when, while seated in the Members Lounge, he saw Mr. Hassan Noor (*Mr. Noor Mohamed Adan*) pass around the lobby but he does not recall him delivering any letter.
- (5) That, he had been in the lobby area at the same time with Hon. Ahmed Kolosh and Hon. Fatuma Gedi, but does not remember any communication being delivered to Hon. Fatuma Gedi in his presence as they were not seated at the same table.

33. Reacting to the evidence, Members sought further clarifications on the following-

- (1) On whether Hon. Fatuma Gedi was his friend, Hon. Ahmed Abdisalan confirmed that Hon. Fatuma Gedi was his friend, a Woman Representative from his county and that they did not have any personal differences.
- (2) Asked whether he was aware of some Members in the National Assembly who were to be summoned by the Directorate of Criminal Investigations, the witness said he was indeed aware since the matter had been widely reported in the media that Hon. Aden Keynan, Hon. Abdikhaim Osman Mohamed, Hon. Rehema Dida Jaldesa and Hon. Purity Wangui had been summoned by the DCI early in the year to record statements pertaining to some charges.
- (3) Asked whether he thought that Hon. Fatuma Gedi misled the Committee by saying in her submissions that he, Hon. Ahmed Abdisalan, was in her company together with Hon. Ahmed Kolosh when she received the alleged letter from Mr. Hassan Noor (*Mr. Noor Mohamed Adan*), the witness said that he couldn't say that Hon Fatuma Gedi misled the Committee since they had been at the Members Lounge together on many occasions.

- (4) On being made aware of a testimony by Hon. Fatuma Gedi on Hansard claiming "*na tukaisoma*", loosely translated, "and we then read" to mean that he, Hon. Ahmed Abdisalan, in the company of Hon. Fatuma Gedi may have read the documents in question, the member maintained that he does not recall being in the company of Hon. Fatuma Gedi when she received any letter nor has he ever seen nor discussed the contents of any such letter.

#### **Part XIV: THE ORAL SUBMISSIONS OF MR. GEORGE KINOTI, DIRECTOR OF CRIMINAL INVESTIGATIONS**

34. On 11<sup>th</sup> November, 2019, the Committee proceeded to hear the testimony of Mr. George Kinoti, the Director of Criminal Investigations who informed the Committee as follows-

- (1) That, he was the Director of Criminal Investigations.
- (2) That, Hon. Fatuma Gedi filed a complaint of cyber-crime through a fake video to him in person and she demonstrated to him that the video was fake.
- (3) That, even before the complaint was filed, he had seen the viral video that circulated on social media and was disturbed by the acts of injustice and distress that had been subjected to Hon. Fatuma Gedi.
- (4) That upon receiving the complaint, he immediately instructed the investigation bureau to take up the matter.
- (5) That, he instructed Mr. Michael Wiso to be the head of the investigation.
- (6) That, he saw the information from the media that four Members of Parliament were to be summoned to appear before him, and sought to establish the origin of the letter summoning the Members.

- (7) That, shortly thereafter he got information that some Members of Parliament had been harassed by the Directorate of Criminal Investigations.
- (8) That, after inquiry, he confirmed that Mr. Michael Wiso was the author of the letter dated 21<sup>st</sup> February 2019 addressed to the Clerk of the National Assembly seeking that the four Members of Parliament appear before DCI two on 25<sup>th</sup> and two on 26<sup>th</sup> February, 2019.
- (9) That, he instructed Mr. John Kariuki to immediately write to the Clerk of the National Assembly, to disassociate the first letter summoning Members on the grounds that it was done without his authority.
- (10) That, he was therefore aware of the letter written by Mr. John Kariuki on 26<sup>th</sup> July, 2019 as it was done under his authority.
- (11) That, he decided to initiate disciplinary actions on Mr. Michael Wiso by summoning him.
- (12) That, upon summoning Mr. Wiso, he learnt that Mr. Michael Wiso obtained the four names from the preliminary investigations which he had authorized him to undertake and that the four Members were persons of interest in the case.
- (13) That, he concluded the matter had been misconstrued and hence advised Mr. Wiso to continue with the investigations.
- (14) That, Mr. Wiso had authority to write the letter dated 21<sup>st</sup> February, 2019.
- (15) That, the four Members did not honour the invitation to appear before the Directorate of Criminal Investigations hence impeding progress of the case.
- (16) That, consequently, the case file is still open pending the appearance of the four Members.

35. In reacting to the submissions by the witness, Members sought clarification from the witness as follows -

- (1) Asked whether in her complaint, the Hon. Fatuma Gedi had mentioned name(s) of persons she thought might have been behind the fake video, the witness confirmed that there were no names that were mentioned in her complaint.
- (2) Asked who has the power to write letters and summon people, he stated that any investigation officer in the Directorate of Criminal Investigation has powers to write and summon.
- (3) Asked whether Mr. John Kariuki and Mr. Michael Wiso, had authority to write correspondences on his behalf, the witness maintained that both are duly authorized to do so.
- (4) Asked on the criteria for summoning VIPs as opposed to other Members of the public, the witness informed the Committee that if the summons involves State Officers/ VIPs, an official call is usually done to the person and by virtue of the office they hold and their stature in society, they are expected to honour the summons. This procedure for summoning of Members of Parliament is adopted as there is no risk of flight by Members of Parliament. However, when dealing with members of the public, the witness informed the meeting that the DCI usually arrests suspects as there exist a risk of flight.
- (5) Asked why then the four Members of Parliament were summoned through writing to the Clerk of the National Assembly, Mr. Kinoti admitted that there had been difficulties reaching the Members as they had sought protection, hence the decision to write to them through the Clerk of the National Assembly for his intervention;
- (6) Asked why he told Mr. John Kariuki to write to the National Assembly disowning the letter by Mr. Michael Wiso, the witness said that he

saw the need to do so after realizing he had not been apprised of the matter despite the fact that he ordinarily took keen interest and personally guided on the manner of conducting investigations where Members of Parliament are involved due to the sensitivity of the matters.

- (7) On why the case has remained unresolved without any feedback of its progress to the complainant, the witness stated that it was because the four Members were yet to honour invitations and record statements that would help establish the evidence to use in arresting and charging the culprits;
- (8) Asked why his office had not yet recorded statements from the four Members, the witness purported to seek permission to proceed from the Committee, a request that was not honoured on the grounds that his office is an independent institution with powers vested on it by the Constitution to do all that appertains to crime investigations and the matter at hand was criminal in nature and did not concern Parliament as an institution;
- (9) Asked on why he did not take personal initiative to invite the four Members upon the realization that they would not show up following the summons, the witness confirmed that since he had given Mr. Michael Wiso authority to pursue the investigations, he had not received any information from Mr. Wiso indicating whether or not he had met the four Members.
- (10) Asked on where the complainant should seek redress if the Directorate of Criminal Investigations has failed to continue further investigations on the matter, the witness stated that the case had not stalled, the file was open only that the case was pending after failure of the four Members to honour the invitations and promised to

proceed with the investigations to finality and ensure that justice is served.

#### **PART XV: THE ORAL SUBMISSIONS OF HON. AHMED KOLOSH, MP**

36. On 11<sup>th</sup> November, 2019, the Committee proceeded to hear the testimony of Hon. Ahmed Kolosh who informed the Committee as follows-

- (1) That, he knows Hon. Fatuma Gedi well as a friend who they consulted widely with.
- (2) That she is the women representative in his county.
- (3) That, he knows Mr. Noor Hassan (*Mr. Noor Mohamed Adan*) well as a parliamentary staff who gave him his first copy of the Standing Orders even before he was sworn in as a Member of Parliament.
- (4) That, he has on many occasions been in the Members Lounge with Hon. Fatuma Gedi and other Members discussing various issues at different times.
- (5) That, he remembers very well one day early in the year, while seated at the Members Lounge, he saw Mr. Noor Hassan (*Mr. Noor Mohamed Adan*) approach Hon. Fatuma Gedi who stood up to meet Mr. Noor Hassan (*Mr. Noor Mohamed Adan*) and they had a conversation.
- (6) That, he did not see Hon. Fatuma Gedi receive any kind of a letter or document from Mr. Noor Hassan (*Mr. Noor Mohamed Adan*) at that time, as they were not seated at the same table.

37. In reacting to the submissions by the witness, Members sought clarification from the witness the following-

- (1) Asked on what exactly happened on the material day at the members Lounge, he informed the Committee that initially they were just seated at the Members Lounge and they were not in any



meeting when Mr. Noor Hassan (*Mr. Noor Mohamed Adan*) approached and walked towards Hon. Fatuma Gedi.

- (2) Asked on the implication of the statement “na tukaisoma” in the submissions by Hon. Fatuma Gedi, he averred that it was an incorrect statement because he did not see, read or discuss any letter in the company of Hon. Fatuma Gedi on the material day at the Members Lounge and maintained that Noor Hassan (*Mr. Noor Mohamed Adan*) came and met Hon. Fatuma Gedi and had a brief discussion beside him.

**PART XVI: THE ORAL SUBMISSIONS OF MR. MICHAEL WISO, SENIOR SUPERINTENDENT OF POLICE AND THE INVESTIGATORY AND LEGAL ADVISOR TO THE DIRECTOR OF CRIMINAL INVESTIGATIONS**

38. On 11<sup>th</sup> November, 2019, the Committee proceeded to hear the testimony of Mr. Michael Wiso who informed the Committee as follows-

- (1) That, he was the Investigatory and Legal Advisor to the Director for Criminal Investigations.
- (2) That, he was the author of the letter dated 21<sup>st</sup> February 2019 addressed to the Clerk of the National Assembly seeking that the four Members of Parliament appear before DCI two on 25<sup>th</sup> and two on 26<sup>th</sup> February, 2019.
- (3) That, the complaint by Hon. Fatuma Gedi was recorded as a statement in the Occurrence Book but unfortunately, he could not clearly remember the Occurrence Book number.
- (4) That, he received the complaint from the complaints section.

- (5) That, after conducting his preliminary investigations, he wrote to the Clerk of the National Assembly with names of four Members who were required to report to DCI Headquarters.
- (6) That, he received communication from the Clerk of National Assembly that the matter at hand was of criminal nature and did not take place within the Parliament and that he ought to continue pursuing the matter without his involvement.
- (7) That, the Director of Criminal Investigations had not yet communicated on continuing with the investigations and summoning the four Members.
- (8) That, the four Members were yet to appear and record their statements with the DCI.

39. The Committee noted with concern that the witness was rude, uncooperative, contemptuous, unprofessional, appeared unprepared and acted in a manner unbecoming of the office that he held.

40. The Committee unanimously directed that Mr. Michael Wiso be given time to prepare himself by going through the relevant documentation regarding the complaint and was thereafter required to appear before the committee on Wednesday 13<sup>th</sup> November 2019 at 10.00 am.

#### **PART XVII: THE ORAL SUBMISSIONS OF MR. JOHN KARIUKI, DIRECTOR OF THE INVESTIGATIONS BUREAU AT THE DIRECTORATE OF CRIMINAL INVESTIGATIONS**

41. On 11<sup>th</sup> November, 2019, the Committee proceeded to hear the testimony of Mr. John Kariuki who informed the Committee as follows-

- (1) That, he is in charge of investigations at the headquarters of the Directorate of Criminal Investigations and his duties include initiating

any case within the Republic or taking over ongoing cases as well as issuance of status updates of ongoing investigations.

- (2) That, he was aware that Hon. Fatuma Gedi came to the Directorate and recorded her statement;
- (3) That, the Director of Criminal Investigations called him on the weekend that the leakage of the information happened and asked him whether he was aware of the summons of the four Members of Parliament but he stated that he was not aware.
- (4) That, he received phone calls from two of the Members who had been summoned in the afore- mentioned letter one of whom he did not know and the other was Hon. Adan Keynan.
- (5) That, he informed the Members that they could not be arrested as they were VIPs and if they were to be summoned, he was the one who would call them in his official capacity.
- (6) That, it was later established that Mr. Wiso was the officer who wrote the letter summoning the four Members upon which the Director of Criminal Investigations summoned him to explain the circumstances under which he had issued the summons.
- (7) That, he was the author of the letter to the Clerk of the National Assembly, dated 26th July, 2019 stating that Mr. Wiso did not have the authority of the Director of Criminal Investigations to write the letter summoning the four Members of Parliament, and that he did the letter under the direction, instructions and authority of the Director of Criminal Investigations.
- (8) That, all the contents of the letter disowning the letter by Mr. Michael Wiso were as instructed, directed and dictated by the Director for Criminal Investigations;
- (9) That, the Director for Criminal Investigations instructed him to stay any further action on the case awaiting his further directions.

(10) That, the case file was still open but pending because the four Members who were deemed to be persons of interest in the case had not yet recorded their statements to help further probe into the matter.

42. In reacting to the submissions by the witness, the Members sought clarification from the witness on the following-

- (1) On the question of who from the Directorate of Criminal Investigations is authorized to write letters on behalf of the DCI, the witness confirmed that any officer in the Directorate has the powers to write and summon on behalf of the Director for Criminal Investigations.
- (2) Asked why the two Members of Parliament called him and not any other officer at the Directorate, the witness informed the Committee that by the virtue of being a public officer, very many members of public consult him without him knowing them personally and he is always happy to assist them. He however admitted having known Hon. Adan Keynan personally over a long period since his rank as an Inspector.
- (3) Asked on when he was planning to invite the four Members afresh, the witness confirmed to the Committee that he was working under instructions of the Director of Criminal Investigations and that he would issue fresh invitation to the four Members if instructed.
- (4) The witness also informed the Committee that some sections of the recently enacted Computer Misuse and Cyber Crime Act of 2018 had been suspended by the courts, making it difficult to investigate cybercrime cases. He was hopeful that once the ruling is made in January 2020 it would assist the Directorate of Criminal Investigations to fast track such cases.

**PART XVIII: THE ORAL SUBMISSIONS OF MR. MICHAEL WISO, SENIOR  
SUPERINTENDENT OF POLICE AND THE INVESTIGATORY AND  
LEGAL ADVISOR TO THE DIRECTOR OF CRIMINAL  
INVESTIGATIONS**

43. On 13<sup>th</sup> November, 2019, the Committee proceeded to hear the testimony of Mr. Michael Wiso who informed the Committee as follows-

- (1) That, he is a Senior Superintendent of Police.
- (2) That he heads the Capital Markets Unit at the Directorate of Criminal Investigations.
- (3) That he received instructions from the Director of Criminal Investigations to write a letter to the Clerk of the National Assembly summoning the four Members of the National Assembly.
- (4) That he is therefore the author of the letter dated 21<sup>st</sup> February, 2019.
- (5) That the case relating to the defaming video that had gone viral relating to Hon. Fatuma Gedi was handed over to him by the Director of Criminal Investigations so that he could carry out the investigations.
- (6) That Hon. Fatuma Gedi in her recorded statement did not mention any Member of Parliament or indeed any suspect.
- (7) That Hon. Fatuma Gedi recorded her statement on 22<sup>nd</sup> December, 2018.
- (8) That he was not at liberty to disclose his sources of information on how he arrived at the four Members of Parliament as the investigations were not complete.
- (9) That the letter by Mr. John Kariuki dated 26<sup>th</sup> July, 2019 baffled him as he was assigned to investigate the matter under instructions and authority of the Director of Criminal Investigations.



- (10) That it is not true that he was not pursuing the matter further as there are prime suspects that he had identified following investigations and the four Members of Parliament were also still under investigation and not off the hook.
- (11) That following investigations on the matter, a young man had been arrested and arraigned in court where he was held for fourteen days pending completion of investigations but was later released as there was no sufficient evidence to sustain the custodial orders.
- (12) That the suspect still reports to the Directorate of Criminal Investigations.
- (13) That the delay in completing the matter had been occasioned by failure to get the IP Address so that the DCI can be in a position to identify the source and origin of the video.
- (14) That the Director of Criminal Investigations, Mr. George Kinoti has never told him to stop the investigations on the matter.
- (15) That the Director of Criminal Investigations is aware of his letter dated 21<sup>st</sup> February, 2019.
- (16) That the Director of Criminal Investigations never requested to see the letter as he was already authorized to write the letter on his behalf.
- (17) That he wishes not to be associated with anything Mr. John Kariuki averred in his letter dated 26<sup>th</sup> July, 2019.
- (18) That he is the lead investigator and he reports directly to the Director of Criminal Investigations.
- (19) That the investigations on the matter were still active.
- (20) That no disciplinary action has ever been taken against him concerning the matter.
- (21) That the Director of Criminal Investigations has full knowledge on the status of the investigations.

- (22) That he was not required to give the Director of Criminal Investigations a copy of his letter dated 21<sup>st</sup> February, 2019 as he had written the letter having been authorized by the Director of Criminal Investigations.
- (23) That the rules and procedures for summoning Members of Parliament are well established and known within the Directorate of Criminal Investigations.
- (24) That, he was aware that Hon. Fatuma Gedi came to the Directorate and recorded her statement.
- (25) That the viral video case was different from the matter relating to alleged murder of a person in Ganda and perhaps this explained the difference in the manner in which the arrest of the Member for Malindi Constituency was done. However, he noted that he was not privy to the facts of the case and wished not to comment further.
- (26) That the delay in concluding on the investigations is not related to the action by Mr. John Kariuki of writing the letter dated 26<sup>th</sup> July, 2019.
- (27) That it is true that additional officers were assigned to him just as is the routine in other investigations.
- (28) The witness also informed the Committee that previously there were relying on the Kenya Information and Communications Act Cap 411A prior to the passage of Computer Misuse and Cyber Crimes Act, 2018 which has also since been suspended by the High Court. The witness stated that he was hopeful that once the ruling on the Computer Misuse and Cyber Crimes Act, 2018 is made in January 2020 it would assist the Directorate of Criminal Investigations fast track such cases.
- (29) That none of the four Members have recorded statements at the DCI.



- (30) Asked on whether he knew Hon. Fatuma Gedi before – The witness stated that he did not know Hon. Fatuma Gedi before the case that he was investigating.
- (31) Asked on whether he had ever received any interferences in the process of executing his mandate pertaining to the case – the witness told the Committee that he had never received any kind of pressure from anyone.
- (32) Asked on whether he had received any form of distraction from Mr. John Kariuki – the witness told the Committee that he was authorized to execute the case by the Director of Criminal Investigations.
- (33) Asked what was the impact of the letter by Mr. John Kariuki disowning his letter summoning the four Members on the grounds that the letter was done without the authority of the Director of Criminal Investigations – the witness informed the Committee that he was not happy on learning about the letter by Mr. John Kariuki and that the letter was done without his knowledge.
- (34) Asked on whether he had a chance to see the letter by Mr. John Kariuki disowning his letter – the witness told the Committee that he learnt of the letter by Mr. John Kariuki later on and walked to the office of Mr. John Kariuki and requested for a copy of it and that is when he saw it.
- (35) That the DCI relies on recorded statements, and that the use of Occurrence Book Number is being phased out and is only used at the police stations.
- (36) That he does not share official correspondence and letters with other persons.
- (37) That he delivered the letter dated 21<sup>st</sup> February, 2019 in person to the office of the Clerk of the National Assembly.

- (38) That the video appears to have been made in the United States but they still needed to confirm the IP address.
- (39) That the command structure is well organized and established at the DCI.
- (40) On being asked why upon the summons being issued on Thursday, 21<sup>st</sup> February, 2019, and upon the summons being leaked to the media on 23<sup>rd</sup> February, 2019, and having seen Members of Parliament on various media platforms alleging the summons were fake and had no knowledge of the summons, an officer with the sort of experience such as his had not pursued the investigations to a logical conclusion and why it had taken nearly nine months without much progress - the witness informed the committee that the delay was not occasioned by any ill intention nor was there any interference from any quarter.
- (41) The witness also informed the committee that he would forthwith resume investigations and promised to pursue the matter to finality.

## **PART XIX: QUESTION FOR DETERMINATION BY THE COMMITTEE**

44. Section 22 of the Leadership and Integrity Act, 2012 provides that -

*(1) A State officer shall not directly or indirectly use or allow any person under the officer's authority to use any information obtained through or in connection with the office, which is not available in the public domain, for the furthering of any private interest, whether financial or otherwise.*

*(2) The provisions of subsection (1), shall not apply where the information is to be used for the purposes of—*

*(a) furthering the interests of this Act; or*

*(b) educational, research, literary, scientific or other purposes not prohibited by law.*

45. The question for determination by the Committee is therefore whether the Hon. Fatuma Gedi is in breach of the provisions of section 22 of the Leadership and Integrity Act, 2012.

46. In doing so, the Committee is therefore expected to determine whether Hon. Fatuma Gedi directly or indirectly used or allowed any person under her authority to use any information obtained in connection with her office and which was not available in public domain to further any private interest, whether financial interest or otherwise.

## **PART XX: OBSERVATIONS OF THE COMMITTEE**

47. Having considered and analysed the oral and written submissions of the witnesses and examined various documents including correspondences, the Committee observed that-

(1) In the oral testimony of Hon. Fatuma Gedi, the video clip that went viral on or about 19<sup>th</sup> December, 2018 containing pornographic content humiliated and embarrassed her.

(2) Whereas there existed inconsistencies between the oral and written submissions of the Hon. Fatuma Gedi, the witness did confirm in both her oral and written testimony that she indeed received a letter summoning the four Members of Parliament from Mr. Noor Mohammed, a parliamentary staff.

(3) While there existed inconsistencies between the testimony of Mr. Noor Mohammed and Hon. Fatuma Gedi as to the accounts of how the Member

obtained the letter from the officer, both witnesses did confirm that the letter was received by Hon. Fatuma Gedi.

- (4) The Hon. Ahmed Kolosh Mohamed and Hon. Ahmed Abdisalan Ibrahim who Hon. Fatuma Gedi had alleged to have been with her at the Member's Lounge on the material day, acknowledged to have on many occasions been in the Members Lounge with Hon. Fatuma Gedi and other Members discussing various issues at different times. However, only Hon. Ahmed Kolosh Mohamed did confirm that on the material day, he saw Mr. Noor Mohammed at the Member's Lounge having a conversation with Hon. Fatuma Gedi.
- (5) Whereas Mr. Noor Mohammed hails from Wajir County being the County that Hon. Fatuma Gedi represents as a Woman Representative, Mr. Mohammed Noor is a Parliamentary Staff attached to the Office of the Director, Legislative and Procedural Services (National Assembly) as an Office Attendant and does not work under her authority as a Member of the National Assembly. However, Mr. Noor in his oral testimony did confirm that the Hon. Fatuma Gedi pressured him into giving her a copy of the letter that was subsequently leaked to the media.
- (6) On 28th March, 2019 the Parliamentary Service Commission in its 260th meeting considered the discipline case against Mr. Mohammed Noor and resolved to reprimand him as evidenced by a letter dated 15th April, 2019 to the said officer.
- (7) The letter dated 21<sup>st</sup> February, 2019 by the DCI summoning Hon. (Dr.) Adan Keynan, Hon. Purity Wangui Ngirici, Hon. Abdikhaim Osman Mohamed and Hon. Rehema Dida Jaldesa was addressed to the Clerk of the National Assembly and not to Hon. Fatuma Gedi and hence there must have been a reason the Member decided to follow up on a letter not addressed to her. In her written statement Hon. Fatuma Gedi, had also

averred that she made follow-ups with the DCI on the same and she was made to understand that the Members would be summoned. In view of this, the Committee observed that the Member had fore knowledge that the four Members would be summoned.

(8) Further, the Hon. Fatuma Gedi earnestly sought for the letter as evidenced thus -

- (a) In the testimony of Mr. Noor, the Hon. Fatuma Gedi called him at least three times asking to be given a copy of the letter;
- (b) In the testimony of Mr. Noor, he succumbed to pressure from Hon. Fatuma Gedi and hence gave out a copy of the letter to the Member;
- (c) In seeking to obtain a copy of the letter, the Hon. Fatuma Gedi, in her oral and written statement, averred that she sought for the letter from the office of the Serjeant-At-Arms and the Office of the Clerk;
- (d) The Hon. Fatuma Gedi made follow-ups with the DCI on the same;
- (e) In their submissions to the Committee both Hon. Ahmed Kolosh Mohamed and Hon. Ahmed Abdisalan Ibrahim stated that they did not see Hon. Fatuma Gedi receiving any letter or document from Mr. Noor Mohammed at that time and also disputed having read the letter as alleged by Hon. Fatuma Gedi;
- (f) Although Hon. Fatuma Gedi stated in her oral testimony that she had instructed Mr. Noor to give a copy of the letter to the driver and further that Mr. Noor told her that he had given a copy of the letter to her driver, Mr. Jacob Kipkemboi, the driver of Hon. Fatuma Gedi denied having received any letter for Hon. Fatuma Gedi and further that he did not even know the said Mr. Noor; and
- (g) In the oral testimony of Hon. Fatuma Gedi, on the first day of interacting with Mr. Noor, she only read the contents of the letter as shown by Mr. Noor but the following day she insisted on getting a

copy of the letter. The Committee observed that it was curious that the Member insisted on getting a copy of a letter which she had already read and obtained the information.

**(9) In light of the foregoing, it was therefore untrue and did not make sense from her conduct that she would leave a letter that she earnestly sought for at the Members' Lounge unattended.**

(10) Whereas Hon. Fatuma Gedi only averred that she received a letter from Mr. Noor Mohammed, it is noteworthy that Mr. Noor Mohammed in his oral testimony averred that on the material day, the Member had stopped him and inquired about documents relating to a request by the Directorate of Criminal Investigations to question certain Members of Parliament. Mr. Noor in his testimony stated that he checked and indeed confirmed that the internal memo on the matter Hon. Gedi had inquired about was indeed among those documents that he had. It is however noteworthy that in his testimony he only avers that he gave Hon. Fatuma Gedi a copy of the letter.

(11) However, the documents that were leaked to the media were a letter dated 21<sup>st</sup> February, 2019 from the Directorate of Criminal Investigations summoning the four Members of Parliament and an Internal Advisory Memo dated 21<sup>st</sup> February, 2019 from the Directorate of Litigation and Compliance to the Clerk of the National Assembly advising the Clerk to inform the DCI to directly contact the four Members as the investigations did not arise from performance of the duties of a Member.

(12) The possible chronology of events and timelines based on the evidence presented to the Committee was as follows-

(a) The letter by the DCI to the Clerk of the National Assembly summoning the four Members of Parliament was written and delivered to the Clerk on Thursday 21<sup>st</sup> February, 2019.



- (b) The letter was then forwarded to the Directorate of Litigation and Compliance by the Clerk for advice on the same day.
  - (c) On the same day, the Directorate of Litigation and Compliance advised the Clerk through an internal memo and letter for Clerk's signature on the need for the DCI to contact the Members directly as the request that the Clerk does inform the Members of the summons was outside the scope and duties of the Clerk and further did not relate or arise from performance of the duties of a Member.
  - (d) The Internal Memo and the signed letter were then returned to the Directorate of Litigation and Compliance for dispatch on 22 February, 2019 this being a Friday.
  - (e) Mr. Noor in his testimony stated that he gave a copy of the letter to Hon. Fatuma Gedi late in the evening on Friday at around 4.00 pm but soon thereafter he learnt that a copy of the letter he had given to Hon. Fatuma Gedi was being circulated in the social media.
  - (f) That the letter and internal memo subsequently appeared in the mainstream media on Saturday, 23<sup>rd</sup> February, 2019.
- (13) That in view of the foregoing, the leakage may therefore have happened immediately after the exchange of the letter between Mr. Noor and Hon. Fatuma Gedi which was on Friday, 22<sup>nd</sup> February, 2019.**
- (14) The Hon. Fatuma Gedi in her oral submissions submitted that the reason for following up on the case was to ensure that the culprits of the alleged video were brought to book. Indeed, based on the testimony of the Director of Criminal Investigations and Mr. Wiso J, the investigating officer, they both confirmed that Hon. Fatuma Gedi had recorded a statement on the matter.



- (15) In the testimony of the Director of Criminal Investigations and Mr. Wiso, the investigating officer, the recorded statement of Hon. Fatuma Gedi did not mention any of the four Members or indeed any suspect. However, based on the fact that Hon. Fatuma Gedi in her testimony stated that she was following up with the DCI on the matter and further her conduct of inquiring from the Office of the Clerk for a copy of the letter, it appears Hon. Fatuma Gedi had prior knowledge of the identity of the persons to be summoned.
- (16) While the Director of Criminal Investigations confirmed that he had given authority to Mr. Wiso to write the letter dated 21<sup>st</sup> February, 2019 issuing summons to the four Members, Mr. John Kariuki alleged that he had written the letter dated 26<sup>th</sup> July, 2019 disowning the letter of 21<sup>st</sup> February, 2019 under the instructions of the Director of Criminal Investigations.
- (17) Whereas Mr. John Kariuki alleged the delay in proceeding with the case was due to the instructions that he had been given by the Director of Criminal Investigations that the matter be stayed until authorised by him, the Director of Criminal Investigations during his testimony stated that the case was still ongoing pending investigations a fact that was also confirmed by Mr. Wiso who acknowledged that the Director of Criminal Investigations had not given him any instructions to stay the matter. The Committee however noted with concern that the letter dated 26<sup>th</sup> July, 2019 by Mr. John Kariuki was to the effect there be no further action on the matter.
- (18) Additionally, whereas Mr. Wiso averred that he had not been subjected to any disciplinary action by the Director of Criminal Investigations, a fact that was corroborated by the Director of Criminal Investigations who indicated that he had only summoned Mr. Wiso to explain the

circumstances under which he had summoned the four Members, the Committee noted with concern that the letter dated 26<sup>th</sup> July, 2019 by Mr. John Kariuki stated that disciplinary action had been taken against Mr. Wiso. Furthermore, despite the letter dated 26<sup>th</sup> July, 2019 alleging that disciplinary action had been taken against Mr. Wiso, it was noteworthy that Mr. Wiso was even at a higher responsibility position as the head of investigations at the Capital Markets Authority.

(19) Both the Director of Criminal Investigations and Mr. Wiso confirmed that the letter dated 21<sup>st</sup> February, 2019 summoning the four members, was written under the authority and instructions of the Director of Criminal Investigations.

(20) Further, Mr. John Kariuki in his oral testimony to the Committee had stated that no person had been arrested in connection with the case relating to the video that was being circulated in social media. However, the Committee observed that the lead investigator of the case, Mr. Wiso in his oral testimony confirmed that following investigations on the matter, a young man had been arrested and arraigned in court where he was held for fourteen days pending completion of investigations but was later released as there was no sufficient evidence to sustain the custodial orders.

(21) Consequently, the statement by Mr. John Kariuki disclosed glaring inconsistencies with the submissions of the Director of Criminal Investigations and the lead investigator, Mr. Wiso and hence the statement by Mr. John Kariuki was untrue.

(22) Furthermore, Mr. John Kariuki admitted to have been in contact with two Members who as stated by the lead investigator were persons of interest in the case, these being Hon. Adan Keynan and another Member that Mr. John Kariuki could not recall his name. The Hon. Mohammed Abdikhaim

had however in his submissions to the Committee also acknowledged that he had been in contact with Mr. John Kariuki.

- (23) The National Police Service Act, 2011 establishes the office of the Directorate of Criminal Investigations and that of the Director of Criminal Investigations as independent offices with clearly defined functions and powers. In this regard, the Director of Criminal Investigations did not require the authorization or indeed the assistance of any person in executing his mandate. It was therefore unprocedural for the DCI to write to the Clerk of the National Assembly seeking that the Clerk does inform the four Members about the summons. Moreover, in all matters that are criminal in nature touching on Members, the DCI has always been executing the issuance of summons and arrest of Members without the need for assistance from the National Assembly.
- (24) Even though the DCI explained that the delay in concluding on the matter was due to the complexity of the case as it related to cyber-crime, there was inordinate delay in concluding the case, as nine months had passed and none of the four Members had even recorded a statement in relation to the case.
- (25) The manner in which the DCI conducted itself in issuing the summons and conducting the investigations disclosed inefficiency and lack of coordination in conducting the investigations on the case.
- (26) Whereas the lead investigator of the case Mr. Wiso, denied having experienced any interference concerning the case, it was indeed suspicious that the DCI could issue conflicting information on the investigations.

## **PART XXI: FINDINGS OF THE COMMITTEE**

48. Based on the observations of the Committee and an analysis of section 22 of the Leadership and Integrity Act, 2012, the Committee finds that-

- (a) The evidence submitted to the Committee discloses that the Hon. Fatuma Gedi directly used information obtained through or in connection with her office as a Member of Parliament and which was not available in the public domain, for the furtherance of a private interest contrary to Section 22 of the Leadership and Integrity Act, 2012.
- (b) The conduct of the Hon. Fatuma Gedi of leaking the official letter and Memo dated 21<sup>st</sup> February, 2019 by the DCI to the Office of the Clerk reflected adversely on the dignity and integrity of the National Assembly and its Members and was also contrary to the best interests of the National Assembly and its Members contrary to section 16(e) of the Parliamentary Powers and Privileges Act, 2017.
- (c) Consequently, pursuant to Section 22 of the Leadership and Integrity Act, 2012 as read with section 16(e) of the Parliamentary Powers and Privileges Act, 2017, the conduct of the Hon. Fatuma Gedi constituted a breach of privilege.

## **PART XXII: RECOMMENDATIONS OF THE COMMITTEE**

49. In consideration of the above observations and findings, the Committee recommends that the House pursuant to section 17(3)(b) of the Parliamentary Powers and Privileges Act, 2017, reprimands the Hon. Fatuma Gedi for conducting herself in a manner that reflected adversely on the dignity and integrity of the National Assembly and its Members and contrary to the best interests of the National Assembly and its Members contrary to section 16(e) of the Parliamentary Powers and Privileges Act, 2017.



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19<sup>th</sup> Nov, 2019.



## **PART XXIII: APPENDICES**






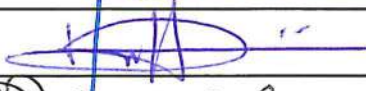
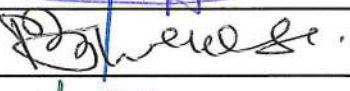

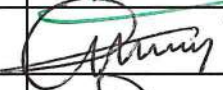
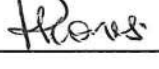


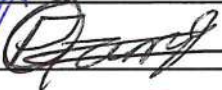
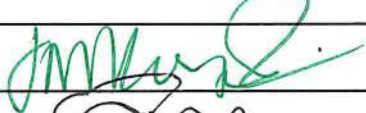


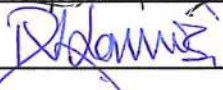
# **APPENDIX I: ADOPTION REGISTER OF THE REPORT**



# COMMITTEE OF POWERS AND PRIVILEGES

## ADOPTION LIST OF REPORT ON THE ALLEGED MISUSE OF OFFICIAL INFORMATION CONTRARY TO THE LEADERSHIP AND INTEGRITY ACT, 2012

DATE.....19<sup>TH</sup> NOVEMBER 2019.....

S/NO.	NAME	SIGNATURE
1	The Hon. Justin B. N. Muturi, EGH, MP - Speaker of the National Assembly	
2	The Hon. Peter Mungai Mwathi, M.P	
3	The Hon. Capt. (Rtd.) Didmus Wekesa Barasa Mutua, M.P.	
4	The Hon. Anthony Githiaka Kiai, M.P.	
5	The Hon. Vincent Kipkurui Tuwei, M.P.	
6	The Hon. Beatrice Pauline Cherono Kones, M.P.	
7	The Hon. Gladwell Jesire Cheruiyot, M.P.	
8	The Hon. Marselino Malimo Arbelle, M.P.	
9	The Hon. Jude L. Kangethe Njomo, M.P.	
10	The Hon. Francis Chachu Ganya, M.P.	
11	The Hon. Shimbwa Omar Mwinyi, MP	
12	The Hon. James Mathew Onyango K' Oyoo, MP	
13	The Hon. Danson Mwakuwona Mwashako, M.P.	
14	The Hon. Andrew Mwadime, MP	
15	The Hon. Mogaka, Vincent Kemose, MP.	

  
Kipkemai arap Kirui

FOR: - CLERK OF THE NATIONAL ASSEMBLY

