

REPUBLIC OF KENYA



COUNTY GOVERNMENT OF KITUI

THE COUNTY ASSEMBLY

SECOND ASSEMBLY- THIRD SESSION (2019)

**REPORT BY THE SPECIAL COMMITTEE
INVESTIGATING THE REMOVAL FROM OFFICE OF
THE COUNTY EXECUTIVE COMMITTEE MEMBER
(CECM), COUNTY MINISTRY OF HEALTH AND
SANITATION- MS. ROSAITA MBUKUA NGINA**

**The Clerk's Chamber,
County Assembly of Kitui,
Assembly Buildings,
Kitui, Kenya**

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ABBREVIATIONS

CECM	County Executive Committee Member
CGA	County Governments Act
EACC	Ethics and Anti Corruption Commission
H.E.	Her Excellency
KCPSB	Kitui County Public Service Board
MCA	Member of County Assembly
PSC	Public Service Commission

ANNEXURES

Annex No.	Title
1	Motion on formation of special committees
2	Governor's response dated 14 th August, 2019 to the Speaker on the Report on Verification of education credentials of Kitui CECMs
3	Ms. Rosaita's written response to the Special Committee
4	Re-designation letter from H.E. The Governor to Ms. Rosaita
5	Letter from KCPSB to Ms. Rosaita regarding her presumed resignation
6	Ms. Rosaita's resignation letter
7	Ms. Rosaita's Admission letter/ letter of offer from Egerton University letter
8	Inter- faculty transfer letter from Egerton University
9	Egerton University letter to Ms. Rosaita regarding 2 failed units
10	Ms. Rosaita's forged degree certificate
11	Letter from Egerton University confirming that Ms. Rosaita is not a bonafide graduate of the University and that the Degree certificate is not authentic
12	Egerton University 8 th graduation booklet for the Bachelor of Science in Natural Resources Management, conspicuously missing Ms. Rosaita's name
13	Egerton University letter on re-registration of Ms. Rosaita

1.0 PREFACE

Mr Speaker,

It is my pleasure to present the Report by the Special Committee Investigating the removal from Office of the County Executive Committee Member (CECM), County Ministry of Health and Sanitation- Ms. Rosaita Mbukua Ngina.

1.0.1 Background information

Mr Speaker,

Section 35(3)(b) of the County Governments Act (CGA) provides that a CECM appointee should be a holder of at least a first degree from a University recognized in Kenya. Section 40 of the same Act as read together with Standing Orders Nos. 62 to 64 further outline the procedure for removal from office of a CECM.

On 10th July, 2019, the House adopted a Motion on inquiry into the Authenticity of Kitui CECMs Academic Qualifications sponsored by Hon James Munuve. This Motion tasked the Committee on Appointments to, *inter alia*, verify the authenticity of CECMs qualifications with the relevant institutions.

On 6th August, 2019, the House adopted a Report by the Committee on Appointment on Verification of Educational Credentials for the Kitui County Executive Committee Members (2019) which report recommended the removal from office of two County Executive Committee Members that is Ms. Rosaita Mbukua Ngina and Mr Philip Mutinda Mumo, the CECMs for Health and Sanitation, and Trade, Industry, ICT and Cooperatives respectively. This recommendation was based on the fact that the two were found to have breached Section 35(3)(b) of the CGA on the qualifications of a CECM as their degree certificates were confirmed to be forged.

Mr Speaker,

H. E. The Governor of Kitui County did not implement the Assembly's resolution. As a result, and pursuant to the provisions of section 40 of the CGA, on 22nd October, 2019, Hon Peter Kilonzo gave Notice of Motion on the removal from office of the

CECM Health and Sanitation- Ms. Rosaita Mbukua Ngina and on Tuesday 29th October, 2019 this Motion was approved by the House.

The Motion read as follows:

Aware that, Article 179 (1) establishes the office of the County Executive Committee which consists of the County Governor and members appointed by the County Governor with the approval of the Assembly;

Further aware that, Section 35 (3) of the County Governments Act provides the qualifications for a person to be appointed as a member of the County Executive Committee, key among them being that one should be a holder of at least a first degree from a university recognized in Kenya;

Cognizant that, the County Assembly's Committee on Appointments is mandated under Standing Order 184 to consider for approval by the County Assembly, appointments under Article 179(2) of the Constitution this being the members of the County Executive Committee (CECM). This approval is also required as a mandatory step under the Public Appointments (County Assemblies Approval) Act No 5 of 2017;

Further Cognizant that, some time this year, the County Assembly approved Hon. James Munuve's motion to inquire into the authenticity of academic certificates of all the CECMs. Upon investigation, the Committee on Appointments discovered that the County Executive Committee Member (CECM) for Health and Sanitation, Ms. Rosaita Mbukua Ngina had indeed submitted a forged degree certificate during the vetting exercise;

Alarmed that, based on the findings above, the Assembly resolved that H.E the Governor should dismiss the CECM from office on account of being unqualified. However, despite the resolution passed, the said officer is still in office to date in total disregard of the Assembly's resolution.

Therefore, pursuant to the provisions of section 40 of the County Governments Act, No 17 of 2012 and the Kitui County Assembly Standing Order No. 62 this Assembly hereby seeks to remove from office, the County Executive Committee Member

(CECM) for Health and Sanitation, Ms. Rosaita Mbukua Ngina, on the following grounds:-

i. Gross violation of the Constitution and any other relevant laws;

(a) By grossly violating section 35(3)(b) of the County Governments Act, 2012, which provides that for a person to be qualified to hold the office of the County Executive Committee Member, she must amongst other things be a holder of at least a first degree from a university recognised in Kenya.

The County Executive Committee Member (CECM) for Health and Sanitation, Ms. Rosaita Mbukua Ngina was appointed to the office on reliance of the fact that she is a holder of a degree from Egerton University. The degree certificate was later on confirmed to be forged, not authentic and did not emanate from the institution which purported to have issued it.

(b) By knowingly violating the provisions of note (d) of the First Schedule of the Public Appointments (County Assemblies Approval) Act No 5 of 2017 which expressly prohibits any nominee from tendering false information during vetting as doing so leads to an automatic disqualification of the candidate.

(c) By grossly contravening Chapter Six of the Constitution on Leadership and Integrity by misleading the County Assembly's Committee on Appointments during the vetting process by providing a forged degree certificate purported to have been conferred upon her by Egerton University. This act contravenes the principles of leadership and integrity as outlined under Article 73 (2) (a) which is selection on the basis of personal integrity, competence and suitability.

(d) By refusing to vacate from office even after a resolution was passed by the Assembly requiring her dismissal. This contravenes the spirit of article 73 (1) (a) (iv) which requires a state officer to act in a manner that promotes public confidence in the integrity of the office she holds. Further, the blatant refusal to vacate office amounts to a violation of

Article 73 (2)(d) which provides that one of the principles of leadership and integrity is accountability to the public for decisions and actions.

ii. **Incompetence**

Section 35 (3)(b) of the County Governments Act No 17 of 2012 expressly outlines the minimum education qualification that one must meet to be appointed as a member of the County Executive Committee which is to be a holder of **at least** a first degree from a university recognized in Kenya.

By virtue of the fact that the County Executive Committee Member (CECM) for Health and Sanitation, Ms. Rosaita Mbukua Ngina does not possess this minimum qualification automatically renders her incompetent and unqualified to continue holding office.

Mr Speaker,

Following approval of this Motion, and in compliance with section 40(3) of the CGA, on Thursday 31st October, 2019, the Majority Party Whip, Hon Stephen Musili gave Notice of Motion on formation of County Assembly special Committees to investigate the removal from office of County Executive Committee Members for Trade and Co-operatives and Investment, and special Committee to investigate the removal from office of County Executive Committee Member for Health and Sanitation Ms. Rosaita Mbukua Ngina.

On Tuesday 5th November, 2019 the House approved the said Motion which outlined membership to this Committee (Annex 1).

1.0.2 Membership to the Committee on removal from office of the CECM- Health and Sanitation

Mr Speaker,

The Committee was comprised of the following members:

- | | |
|-------------------------------|------------------|
| 1. Hon Philip Nguli | Chairperson |
| 2. Hon Grace Sammy | Vice Chairperson |
| 3. Hon Elizabeth Ndunge Peter | Member |

- | | |
|----------------------|--------|
| 4. Hon Waziri Bakari | Member |
| 5. Hon Antony Ndooh | Member |

1.0.3 Committee's Terms of Reference

Mr Speaker,

Based on the Motion for removal from office of the CECM- Health and Sanitation and section 40 of the CGA as read together with Standing Order No. 62(6), the special Committee was mandated to:

1. Investigate the allegations in the Motion for removal from office of the County Executive Committee Member (CECM) for Health and Sanitation- Ms. Rosaita Mbukua Ngina;
2. Report to the County Assembly on whether the Committee finds the allegations substantiated or not.

1.0.4 Methodology

Mr Speaker,

In executing her mandate, the Committee adopted the following methodology:

1. Invitations and interviews;
2. Request for information;
3. Site visits to interrogate witnesses.

1.0.5 Committee proceedings

Mr Speaker,

The Committee held several meetings in November 2019 within the County Assembly precincts and at Pride Inn Hotel Westlands to deliberate on the matter at hand, plan its activities and interrogate various witnesses.

The Committee also visited Egerton University in Nakuru County on 11th October, 2019 to interrogate authorized representatives of the University on the matter.

The Committee compiled her report in Pride Hotel Westlands as from 12th- 13th November, 2019. The outcome of the Committee proceedings is as outlined in this Report.

1.0.6 Acknowledgement

Mr Speaker,

On behalf of the Special Committee investigating the removal from office of the County Executive Committee Member for Health and Sanitation Ms. Rosaita Mbukua Ngina, I extend my gratitude to the Speaker of Kitui County Assembly, Members of the Special Committee, Office of the Clerk and the staff attached to the Committee for their continuous support, assistance, and commitment in executing their duties.

It is therefore my pleasant duty, on behalf of the Special Committee investigating the removal from office of the County Executive Committee Member (CECM), County Ministry of Health and Sanitation- Ms. Rosaita Mbukua Ngina to present this Report and recommend it for consideration and adoption by the House.

SIGN:

HON. PHILIP M. NGULI- M.C.A.,

CHAIRPERSON, SPECIAL COMMITTEE ON THE REMOVAL FROM OFFICE OF THE COUNTY EXECUTIVE COMMITTEE MEMBER- COUNTY MINISTRY OF HEALTH AND SANITATION MS. ROSAITA MBUKUA NGINA.

DATE:

2.0 LEGAL FRAMEWORK GOVERNING THE COMMITTEE PROCEEDINGS

Mr Speaker,

Section 35(3) of the County Governments Act provides that a person may be appointed as a member of the county executive committee if that person—

- (a) is a Kenyan citizen;
- (b) is a holder of at least a first degree from a university recognised in Kenya;
- (c) satisfies the requirements of Chapter Six of the Constitution;
- (d) has knowledge, experience and a distinguished career of not less than five years in the field relevant to the portfolio of the department to which the person is being appointed.

Section 40 of the same Act further states as follows:

(1) Subject to subsection (2), the Governor may remove a member of the county executive committee from office on any of the following grounds—

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

(2) A member of the county assembly, supported by at least one-third of all the members of the county assembly, may propose a motion requiring the governor to dismiss a county executive committee member on any of the grounds set out in subsection (1).

(3) If a motion under subsection (2) is supported by at least one-third of the members of the county assembly—

- (a) the county assembly shall appoint a select committee comprising five of its members to investigate the matter; and
 - (b) the select committee shall report, within ten days, to the county assembly whether it finds the allegations against the county executive committee member to be substantiated.
- (4) The county executive committee member has the right to appear and be represented before the select committee during its investigations.
- (5) If the select committee reports that it finds the allegations—
- (a) unsubstantiated, no further proceedings shall be taken; or
 - (b) substantiated, the county assembly shall vote whether to approve the resolution requiring the county executive committee member to be dismissed.
- (6) If a resolution under subsection (5) (b) is supported by a majority of the members of the county assembly—
- (a) the speaker of the county assembly shall promptly deliver the resolution to the governor; and
 - (b) the governor shall dismiss the county executive committee member.

Section 18 of the County Assemblies Powers and Privileges Act also provides that the County Assembly or its committees may invite or summon any person to appear before it for the purpose of giving evidence or providing any information, paper, book, record or document in the possession or under the control of that person and, in this respect, a County Assembly and its committees shall have the same powers as the High Court as specified under Article 195 of the Constitution.

The Kitui County Assembly Standing Orders Nos. 62 to 64 also provide for the procedure for removal from office of CECMs.

Guided by these legal provisions, the Committee executed her mandate as outlined in the motion on removal from office and as per the terms of reference.

2.1 COMMITTEE’S INQUIRY AND INTERROGATIONS

Mr Speaker,

In execution of her mandate, this Committee was mandated to interrogate various witnesses and the Accused to ensure conclusive consideration of the matter. The Committee interrogated the following people as from 7th to 11th November, 2019:

1. Hon. Charity K. Ngilu – H. E. The Governor of Kitui County (The appointing authority);
2. Hon. George M. Ndotto- The Speaker of Kitui County Assembly/ Chairperson of the Appointments Committee;
3. Hon. James M. Munuve- MCA Kanziko Ward;
4. Hon Peter M. Kilonzo- The Majority Party Leader/ MCA Athi Ward;
5. Ms. Rosaita Mbukua Ngina- The Accused/ CECM Health and Sanitation;
6. Authorized representatives from Egerton University that is Professor Dr. Alexander K. Kahi- Acting Vice Chancellor/ The Deputy Vice Chancellor in Charge of Academic Affairs and Dr. Mwanarusi Saidi- The Acting Academic Registrar.

2.1.1 SUBMISSIONS BY HON. CHARITY KALUKI NGILU- HER EXCELLENCY THE GOVERNOR OF KITUI COUNTY GOVERNMENT

Mr Speaker,

Article 179(2)(b) of the Constitution as read together with Section 30(2)(d) of the County Governments Act mandate the Governor to appoint CECMs. In light of this, the Committee opined that it was important to meet the appointing authority regarding the matter under investigation. The Committee met with H. E. The Governor on 7th November, 2019 at 2:00 PM in the Governor’s Boardroom.

She stated THAT:

1. When she was sworn into office as the Governor of Kitui County, she advertised for the positions of CECMs in execution of her constitutional

mandate to appoint CECMs. Interested candidates applied for the positions, shortlisting was done and interviews subsequently conducted.

2. The Public Service Commission (PSC) and Kitui County Public Service Board (KCPSB) through Mr Titus Ndambuki and Madam Rose Masya respectively, were involved in the interview process and relying on the documents submitted by the candidates, the interviewers found the persons under inquiry duly qualified.
3. Regarding the question as to whether she is aware that CECMs should be holders of a 1st degree recognized in Kenya, she is not an authority in human resource matters and did not interview the CECMs, she only forwarded the names to the County Assembly for appropriate action. In addition, as stated above the relevant human resource institutions, that is PSC and KCPSB were invited and involved in the process.
4. When the Ethics and Anti- Corruption Commission (EACC) called her on the matter, she informed them that she is not the institution that should check who has a degree or not.
5. On 8th August, 2019 the Speaker of the County Assembly wrote to her regarding the County Assembly resolution on verification of education credentials of CECMs which required her to dismiss the affected CECMs. She responded to this matter on 14th August, 2019 outlining her reasons as to why she could not implement the resolution (Annex 2).
6. She finds it absurd that in October 2017, the County Assembly vetted and approved the names she had forwarded and the CECMs were sworn into office, yet despite all that process, two years down the line, the County Assembly is not satisfied.
7. The County Assembly has no authority to “re-vet” as it duly approved the names and can’t now claim that a mistake was made in the vetting process.
8. One officer under inquiry is not working and some MCAs even approached the Governor requesting her to take that officer back.
9. The two Ministries under inquiry, that is the Ministry of Trade and Ministry of Health, are the best performing Ministries in the County.
10. She did not complain about the CECMs and the Assembly is driven by witch hunt and malice.

2.1.2 SUBMISSIONS BY HON. GEORGE M. NDOTTO- THE SPEAKER OF THE COUNTY ASSEMBLY/ CHAIRPERSON COMMITTEE ON APPOINTMENTS

Mr Speaker,

The special committee met the Speaker/ Chairperson of the Appointments Committee) on 8th November, 2019 at 10:00 AM in Pride Inn Hotel Westlands- Nairobi. He appeared before the Committee in his capacity as the Chairperson of the Appointments Committee.

He submitted THAT:

1. During the vetting exercise, the Appointments Committee adhered to the requirement of section 7(8) of the Public Appointments (County Assemblies Approval) Act which requires the approval hearing to focus on the candidate's academic credentials, professional training and experience, personal integrity and background.
2. The Committee received all the documents required under law together with the questionnaire and subjected them to scrutiny.
3. Based on political goodwill, the Committee was convinced that Ms. Rosaita Mbukua Ngina was qualified for the position based on the Governor's nomination of the candidate.
4. He is convinced that at the time of vetting, the Appointments Committee did all what was required of it.

2.1.3 SUBMISSIONS BY HON. JAMES M. MUNUVE- MCA KANZIKO WARD

Mr Speaker,

The Committee met with Hon James Munuve on 8th November, 2019 at 2:30 PM in Pride Inn Hotel Westlands- Nairobi. He appeared before the Committee in his capacity as the sponsor of the Motion on inquiry into the authenticity of Kitui County Executive Committee Members (CECMs) Academic qualification.

He submitted THAT:

1. He is the MCA of Kanziko Ward in Kitui South.

2. There was public outcry regarding the qualifications of some CECMs from qualified professionals who had applied for the positions and were not shortlisted or considered for the positions. In addition, youth who know the background of some CECMs had also been complaining about their qualifications. Further, the EACC had invited the Appointments Committee to record statements regarding the CECMs vetting exercise.
3. Article 1(2) of the Constitution states that citizens can exercise their sovereign power directly or through their democratically elected representatives. In addition, Article 185(3) of the Constitution gives the County Assembly power to oversight the County Executive Committee and other County Executive organs. Section 35 of the County Governments Act requires CECMs to be holders of a first degree from a University recognized in Kenya.
4. Based on these provisions of the law and him being one of the democratically elected representative of the people he decided to sponsor a motion to ascertain whether the allegations and complaints by the public were justified and put the matter to rest.
5. On 10th July, 2019, he moved a Motion on inquiry into the authenticity of Kitui County Executive Committee Members (CECMs) Academic qualification which was adopted by the County Assembly. This motion tasked the Committee on Appointments to verify the academic qualifications of Kitui CECMs.
6. This motion did not mention anyone in particular and was crafted in general terms and therefore does not amount to witch hunt. He was only executing his constitutional oversight role as an elected representative on the people.
7. This motion gave birth to a Report by the Appointments Committee on verification of education credentials for the Kitui County Executive Committee Members (CECMs), 2019 which was adopted by House on 6th August, 2019.
8. The Report revealed that Ms. Rosaita Mbukua Ngina did not hold a 1st degree from a University recognized in Kenya and therefore was unqualified for appointment to the position of a CECM, contrary to section 35 of the County Government Act.
9. His prayers in the Motion were actioned and answered. Regarding prayer number (3) that is “make appropriate recommendations regarding any CECM that may have been appointed based on counterfeit qualifications or

testimonials,” this matter is ongoing and will be answered based on the outcome of the impeachment proceedings.

10. The public expects the County Assembly to execute its constitutional oversight role and to respond to their outcry by doing what is right and within the law.

2.1.4 SUBMISSIONS BY HON. PETER M. KILONZO- THE MAJORITY PARTY LEADER/ MCA ATHI WARD

Mr Speaker,

The Committee met with Hon Peter Kilonzo on 8th November, 2019 at 4:00 PM in Pride Inn Hotel Westlands- Nairobi. He appeared before the Committee in his capacity as the Mover of the Motion under consideration which later gave birth to this Committee.

He stated THAT:

1. He is the Majority Party Leader – County Assembly of Kitui and the MCA- Athi Ward. By virtue of being the Majority Party Leader and pursuant to the provisions of Standing Order No. 184, he is a Member of the Appointments Committee.
2. In October 2017, following the Speaker’s committal of the forwarded list of CECM nominees to the relevant Committee, the Appointments Committee received this nomination list with the names of the CECMs nominated including Ms. Rosaita Mbukua Ngina- the nominee for Health and Sanitation.
3. During the vetting exercise, she appeared personally before the Committee with the original documents required including her certificates/ credentials, original ID, questionnaire, Kenya Revenue Authority (KRA) certificate, EACC clearance form, etc.
4. Ms. Rosaita Mbukua presented the original degree certificate during the vetting exercise and he did not have any reason to doubt the authenticity of the degree certificate that she presented as he expected all honesty from the candidate, as per note (ii) of the vetting questionnaire.
5. On 10th July, 2019, the County Assembly approved the Motion on inquiry into the authenticity of Kitui County Executive Committee Members (CECMs) Academic qualification sponsored by Hon James Munuve. This Motion

tasked the Appointments Committee to inquire into the authenticity of CECMs qualifications.

6. In execution of this motion, the Appointments Committee through the County Assembly administration verified the CECMs documents/ credentials with the relevant institutions and received an adverse response regarding Ms. Rosaita Mbukua Ngina. The Committee discovered that this CECM does not hold a first degree from a University recognized in Kenya, contrary to section 35 of the County Governments Act.
7. On 10th August, 2019, the County Assembly adopted the Report by the Appointments Committee on the verification of education credentials for the Kitui County Executive Committee Members (CECMs), 2019.
This Report had several recommendations requiring the appointing authority to remove the unqualified CECM from office within the set timelines (7 days after receipt of the Assembly's resolution on the matter), and if this resolution is not implemented, the County Assembly to commence impeachment process in line with section 40 of the County Governments Act.
8. On 22nd October and following the lapse of the deadline for dismissal of the CECM, he moved the motion on the removal from office of CECM for Health and Sanitation.
9. He is convinced that at the time of conducting the vetting exercise, the Appointments Committee did its best guided by the provisions of the Public Appointments (County Assemblies Approval) Act. Subsequently, the House adopted the Report and therefore approved the nominees for the positions of CECMs.

2.1.5 SUBMISSIONS BY MS. ROSAITA MBUKUA NGINA- THE ACCUSED/ CECM HEALTH AND SANITATION

Mr Speaker,

Ms. Rosaita Mbukua Ngina had initially declined to appear before the Committee and sent a written response to the Committee 8th November, 2019 (Annex 3).

However, noting the consequences of such failure and the powers of this Committee, she personally appeared before the Committee on 9th November, 2019 in Pride Inn Hotel Westlands- Nairobi at 2:30 PM, and in adherence to her invitation letter dated 7th November, 2019.

She submitted THAT:

1. Her name is Rosaita Ngina Mbukua, the former CECM- County Ministry of Health and Sanitation, Kitui County.
2. She learnt of the vacancy for the position through advertisement in print media and a welcoming call from the County Government of Kitui requesting her to express her interest for the job.
3. At the point of application for the position, she thought she understood the qualifications and was qualified, but at the point of vetting she felt she was not very clear what qualifications were required.
4. When applying for the position, she submitted uncertified copies of her academic credentials and other documents
5. She applied for the position of CECM Environment and Natural Resources but was shortlisted and interviewed for the position of CECM Health and Sanitation. She was comfortable with the nomination and the appointment as the CECM Health and Sanitation.
6. She was interviewed for the position by a Committee constituted by the County Government of Kitui but cannot recall who the panelists were.
7. Upon her nomination as the CECM- Health and Sanitation, she was invited for a vetting exercise by the County Assembly of Kitui and she personally filled the vetting questionnaire collected from the Office of the Clerk. However, despite understanding what the questionnaire required, she did not really understand what vetting entailed.
8. She confirms that note (ii) of the vetting questionnaire prohibits a candidate from submitting false information.
9. She personally attended the vetting exercise and submitted her original documents during the exercise.
10. She joined Egerton University in 1990 and had two registration numbers, with one being 8686/90. Initially, she was admitted to the faculty of Arts whereby she studied Education for one year and upon successful completion of the 1st year, she joined the faculty of Agriculture to study Bachelor of Science in Natural Resources Management.
11. She completed her studies at the University in November 1996. At the time of graduation, the University barred her from graduating on the basis that she

had not completed some units from 1st year, that is Chemistry 101 and Chemistry 102, notwithstanding the fact that she had clearance from the institution to graduate.

In addition, she was a student leader at Egerton University and experienced difficulties with the University administration which is normal for politically inclined students.

12. Currently, she is not the CECM for Health and Sanitation Kitui County and this has been the position since 9th April, 2018, when H.E. The Governor re-designated her to the County Donor Co-ordination and Liaison Office in Nairobi (Annex 4), an offer she declined. She has also not done any work for the County Government of Kitui since then.
13. Upon her re-designation, she held several meetings with Governor and wrote a letter declining the re- designation on the basis that she was appointed as a state officer but was re-designated as a public officer which amounts to demotion.
14. In addition, she visited the Council of Governors headquarters in Delta House on a fact finding mission to establish if the Kitui office existed but not to work. She discovered that the County Government of Kitui had not paid rent, and was therefore in rent arrears and also managed to get the necessary invoices in respect of rent arrears which she sent the documents to the Governor who promised her that she would take up the matter but never got back to her. Therefore, at the time of her re-designation, the physical office did not exist and the position did not exist in the County Public Service establishment. See Annex 5.
15. By a letter dated 6th August, 2018, the KCPSB presumed that she had ceased/ resigned from being the CECM Health and Sanitation and no longer served as one (Annex 5). In December, 2018 the County Government of Kitui terminated her salary and all other benefits.
16. Based on these occurrences, she accepted that the employment contract was breached and she officially tendered her resignation from the position on 1st July, 2019 (Annex 6).
17. She requests the Committee to discontinue the investigation on her removal from office as she is no longer the CECM Health and Sanitation, having been re-designated to a Donor Coordination and Liaison Officer, a position she

declined and noting that she has already resigned from her position as the CECM - Health and Sanitation.

2.1.6 SUBMISSIONS BY EGERTON UNIVERSITY ADMINISTRATION

The Committee visited Egerton University on 11th November, 2019 and met with the Head of the Institution, that is Professor Dr. Alexander K. Kahi – The Acting Vice Chancellor/ Deputy Vice Chancellor In Charge of Academic Affairs and Dr. Mwanarusi Saidi- Acting Academic Registrar in the University’s Boardroom, at 10:30 PM.

They submitted THAT:

1. That they have authority to provide the information required by this Committee and that the information is not subject to confirmation by any other person.
2. M/S Rosaita was admitted to Egerton University in 1990 to study Bachelor of Arts and then successfully applied for an inter faculty transfer to the faculty of Agriculture to study Bachelor of science in Natural Resources Management (Annex 7 and 8).
She was also a student leader during her studies though there is no documentation to confirm this position.
3. She did not successfully complete her studies as she failed some units, that is AGEN 330 and AGEN 380 and did not successfully retake them. As a result, she did not graduate because of these 2 units (Annex 9).
4. The degree certificate she submitted to the Assembly at the time of vetting was not authentic and did not emanate from Egerton University. It is dated 15th November, 1996 while the graduation ceremony for that year was held on 4th December, 1996. In addition, the University did not use serial numbers in the certificates neither did they indicate registration numbers on degree certificates, which are key features in certificate submitted by the Accused (Annex 10).
5. A letter of completion is usually issued to students by the relevant faculty of the University once students complete their studies, pending graduation, but it is not adequate proof that a person attended university. Once they graduate, a degree certificate and transcripts are issued.

If there are pending, incomplete or failed units, no letter of completion is issued.

6. Egerton University has never conferred any Degree certificate upon her and therefore she is not a bonafide graduate of the University.

3.0 GENERAL FINDINGS AND OBSERVATIONS

Mr Speaker,

Based on the interrogation of witnesses and evidence submitted, the Committee made the general findings and observations THAT:

1. Article 179(2)(b) of the Constitution as read together with section 30(2)(d) of the CGA authorize the Governor to appoint CECMs, while section 35(3) of the CGA provides for the qualifications of a CECM. Based on these legal provisions, H.E. The Governor, as the appointing authority, was legally mandated to ensure that CECM nominees and appointees were duly qualified for the positions by verifying the credentials, certificates and documents submitted with the relevant universities. As such, she cannot allege that she did not have a duty to confirm the authenticity of the documents submitted by the nominees.
2. Article 185(3) of the Constitution gives the County Assembly power to oversight the county executive committee and any other county executive organs. The County Assembly is the spokesperson of the public, and the watchdog and gatekeeper of public resources and therefore this House cannot ignore or sweep under the carpet issues raised by the public concerning unqualified and incompetent people holding state offices and administering public resources.

In addition, the County Assembly does not have to receive a complaint from H.E. The Governor regarding the CECMs for the County Assembly to execute its constitutional oversight role.

3. The allegation that the County Assembly is “re-vetting” the nominees is unjustified and misleading because the Governor has not re-nominated and re-submitted CECM names to the County Assembly, neither has the Accused been invited to appear before the Appointments Committee for a vetting exercise.

4. In exercise of their sovereign power under Article 1(2) of the Constitution, the public raised concerns on the qualifications of some CECMs and therefore Hon James Munuve, in sponsoring the motion on inquiry into the authenticity of CECMs academic qualifications, was acting on behalf of the people as a democratically elected representative of the people under Article 1(2) of the Constitution.

In adopting this Motion and the Report by the Appointments Committee on the verification of education credentials for the Kitui CECMs, 2019 the County Assembly was exercising its constitutional oversight role as enshrined in Article 185(3) of the Constitution. This is evidence that the County Assembly is ready and willing to serve the citizens of Kitui County and correct any injustices and wrong doings perpetrated by the County Executive.

5. Section 35(3)(b) of the County Governments Act requires that for one to be appointed as a CECM, they should be holders of at least a first degree from a University recognized in Kenya. The Report by the Appointments Committee on the verification of education credentials for the Kitui CECMs 2019 revealed that Ms. Rosaita Mbukua Ngina was appointed as the CECM Health and Sanitation notwithstanding the fact that she does not hold a first Degree from a university recognized in Kenya, contrary to section 35(3)(b) of the County Governments Act. This fact was confirmed by both Ms. Rosaita and Egerton University when they submitted their evidence to the Committee.
6. As the oversight and watchdog authority over the County Executive, these impeachment proceedings are legal and in line with section 40 of the County Governments Act which provides for the removal of a CECM from office.
7. Ms. Rosaita Mbukua Ngina informed the Committee that she applied for the position of CECM- Environment and Natural Resources but was shortlisted for the position of CECM- Health and Sanitation. However, the application documents in the custody of the County Assembly indicate that she applied for the position of CECM- Agriculture Water and Livestock Development.
8. The Accused submitted that she is no longer the CECM Health and Sanitation and the Governor made a verbal statement to this Committee that the officer under investigation is no longer in service. The documents availed by the Accused as at 12th November, 2019 to prove this were:
 - i) The Accused's resignation letter which is not received;

- ii) The Governor's letter to the Accused re-designating her to a non-existent position;
- iii) The CPSB letter to the Accused informing her that it is presumed that she has ceased to be the CECM- Health and Sanitation;
- iv) Ms. Rosaita's written response to the special Committee dated 7th November, 2019 following her invitation to appear before the Committee.

Based on the information in this paragraph, the Committee proceeds under the assumption that she is no longer the CECM- Health and Sanitation and is not holding any other position in the County Government.

- 9. Despite the Committee's assumption that the Accused is no longer the CECM- Health and Sanitation and her request that the Committee should discontinue the removal from office proceedings as she was no longer serving as the CECM- Health and Sanitation, the Committee has a specific mandate from the House to ascertain various allegations including whether she is duly qualified for the position in question and therefore the Committee could not accede to her request.

4.0 RESOLUTIONS

Mr. Speaker,

Based on the above witness submissions, interrogation of both written and verbal evidence, findings and observations, the Committee resolved on each allegation as below:

- i. **Gross violation of the Constitution and any other relevant laws;**
 - (a) By grossly violating section 35(3)(b) of the County Governments Act, 2012, which provides that for a person to be qualified to hold the office of the County Executive Committee Member, she must amongst other things be a holder of at least a first degree from a university recognized in Kenya.

The County Executive Committee Member (CECM) for Health and Sanitation, Ms. Rosaita Mbukua Ngina was appointed to the office based on the fact that she was a holder of a degree certificate from Egerton University. The degree certificate was later on confirmed to be forged, not authentic and did not emanate from the institution which purported to have issued it.

The Committee unanimously resolved that this allegation is substantiated for the following reasons: THAT:

- 1. Ms. Rosaita Mbukua Ngina confirmed to the Committee that she does not hold a first Degree from a University recognized in Kenya, and therefore was appointed as a CECM contrary section 35(3)(b) of the County Government Act, which requires a CECM appointee to be a holder of a first Degree from a University recognized in Kenya.**
- 2. Egerton University confirmed that Ms. Rosaita Mbukua Ngina is not a bonafide graduate of the University and that the Degree Certificate she submitted to the County Assembly was not authentic and did not emanate from the University.**
- 3. As per the graduation list for the year 1996 availed to this Committee by Egerton University, Ms. Rosaita Mbukua Ngina was not in the graduation list for Bachelor of Science in Natural Resources Management. In addition, the degree certificate she availed to the Committee was dated 15th November, 1996 while the graduation for that year was held on 4th December, 1996.**

(b) By knowingly violating the provisions of note (d) of the First Schedule of the Public Appointments (County Assemblies Approval) Act No 5 of 2017 which expressly prohibits any nominee from tendering false information during vetting as doing so leads to an automatic disqualification of the candidate.

The Committee unanimously resolved that this allegation is substantiated for the following reasons: THAT:

- 1. Ms. Rosaita Mbukua Ngina confirmed that note (ii) of the questionnaire prohibits candidates from submitting false information to the Committee and that she indeed misled the Committee by stating that she holds a Degree certificate from Egerton University.**
- 2. Egerton University also confirmed that she does not hold a Degree certificate from the institution.**

(c) By grossly contravening Chapter Six of the Constitution on Leadership and Integrity by misleading the County Assembly's Committee on Appointments during the vetting process by providing a forged degree certificate purported to have been conferred upon her by Egerton University. This act contravenes the principles of leadership and integrity as outlined under Article 73 (2) (a) which is selection on the basis of personal integrity, competence and suitability;

The Committee unanimously resolved that this allegation is substantiated for the following reasons: THAT:

- 1. Ms. Rosaita Mbukua Ngina confirmed to the Committee that she does not hold a first Degree certificate from a University recognized in Kenya, and therefore was appointed as a CECM contrary section 35(3)(b) of the County Government Act, which requires a CECM appointee to be a holder of a first degree from a University recognized in Kenya**
- 2. Egerton University confirmed that Ms. Rosaita Mbukua Ngina is not a bonafide graduate of the University and that the Degree Certificate she submitted was not authentic and did not emanate from the University.**

(d) By refusing to vacate from office even after a resolution was passed by the Assembly requiring her dismissal. This contravenes the spirit of article 73 (1) (a) (iv) which requires a state officer to act in a manner that promotes public confidence in the integrity of the office she holds. Further, the blatant refusal to vacate office amounts to a violation of Article 73 (2)(d) which provides that one of the principles of leadership and integrity is accountability to the public for decisions and actions,

The Committee unanimously resolved that this allegation is not substantiated for the following reasons: THAT:

- 1. Ms. Rosaita Mbukua Ngina submitted a resignation letter dated 1st July, 2019 to confirm that she resigned from the position of CECM Health and Sanitation with effect from July, 2019 and is no longer serving as the CECM Health and Sanitation.**

2. **The Kitui County Public Service Board (KCPSB) wrote a letter to Ms. Rosaita Mbukua Ngina dated 6th August, 2018 to the effect that after her re-designation to an office that did not exist, it presumed that she resigned and/or ceased to be the CECM- Health and Sanitation.**
3. **H.E. The Governor verbally informed this Committee that the CECM under investigation was no longer in office.**

(ii) Incompetence

Section 35 (3)(b) of the County Governments Act No 17 of 2012 expressly outlines the minimum education qualification that one must meet to be appointed as a member of the County Executive Committee which is to be a holder of **at least** a first degree from a university recognized in Kenya.

By virtue of the fact that the County Executive Committee Member (CECM) for Health and Sanitation, Ms. Rosaita Mbukua Ngina does not possess this minimum qualification automatically renders her incompetent and unqualified to hold such an office.

This allegation was substantiated by majority of the members of the Committee. Four members of the committee voted to the effect that the allegation is substantiated for the following reason: THAT:

1. **Section 35(3)(b) of the County Government Act requires one to be holder of Degree from a University recognized in Kenya, which she does not hold as was confirmed by the Accused and Egerton University, and this automatically renders her incompetent.**
2. **That where the law provides for the minimum qualifications for one to hold an office, in the absence of such qualifications, such a person is under law presumed to be incompetent, unsuitable and unqualified to hold that office.**

Dissenting opinion.

Hon. Antony Ndooh resolved that this allegation is not substantiated for the following reason: THAT:

- 1. Education/academic qualification is not the only basis on which competence can be measured and that there are other parameters including work experience, talent, etc that determine competence of a person. According to him, Ms. Rosaita Mbukua Ngina was competent enough to execute her duties based on her work experience.**

Mr. Speaker,

In summary, the Committee finds that all the allegations as contained in the Motion by Hon. Peter Kilonzo on the Removal from Office of County Executive Committee Member (CECM)- County Ministry of Health and Sanitation – Ms. Rosaita Mbukua are substantiated save for the allegation that she refused to vacate office even after a resolution was passed by the Assembly requiring her dismissal.

5.0 CONCLUSION AND RECOMMENDATIONS

Mr Speaker,

As stated above, the allegation that Ms. Rosaita refused to vacate office even after a resolution was passed by the Assembly on 6th August, 2019 requiring her dismissal was found to be unsubstantiated because at the time of making the resolution requiring H.E. The Governor to dismiss her, she was no longer serving as the CECM Health and Sanitation. The information and evidence received by the Committee revealed that she ceased being the CECM- Health and Sanitation upon her re-designation to a non- existent office and subsequent resignation in July 2019. As such, she could not possibly have vacated an office which she did not hold at the time.

Mr Speaker,

The Committee finds herself in a very unique situation that was not envisioned by the drafters of the County Governments Act as well as our Standing Orders. This unique situation is the fact that whereas upon finding that allegations in an impeachment motion are substantiated, the Special Committee should recommend that the Governor dismisses the CECM and during debate on the Report, the CECM is supposed to be heard by the House and the House should subsequently vote on the whether to approve the resolution requiring the county executive committee member to be dismissed, in our case, we are faced with a situation whereby the Accused is

no longer in office. In an ideal situation, if the Report is adopted, the Governor should dismiss the CECM in line with section 40(6) of the CGA.

Mr Speaker,

In this case, the evidence gathered by this Committee, all which is annexed to this Report, reveals that despite Ms. Rosaita Mbukua Ngina having been appointed based on counterfeit qualifications, she is no longer serving in that capacity, and as a result, the Governor has no one to dismiss upon approval of this Motion.

In light of the above explained procedural dilemma, engineered by a strange legal lacuna, occasioned by unprecedented legislative gap, this Committee concludes by requesting and unequivocally recommending that, pursuant to Standing Order No. 1, you guide this House on the procedure that shall be followed once this Report is tabled in the House. In particular, your guidance is requested on the following:

1. Whether the County Assembly shall debate this Report considering that the Accused person is no longer working as the CECM- County Ministry of Health and Sanitation;
2. Whether the Accused person shall be called upon to submit to the County Assembly pursuant to Standing Order No. 63(1)(b) on the right to be heard by the County Assembly, considering that she is no longer working as the CECM- County Ministry of Health and Sanitation.

THANK YOU.

We, the members of the Committee Special Committee investigating the removal from office of the County Executive Committee Member (CECM) County Ministry of Health and Sanitation- Ms. Rosaita Mbukua Ngina hereby affix our signatures to confirm our approval and authenticity of this report.

<u>NAME</u>	<u>DESIGNATION</u>	<u>SIGNATURE</u>
1. Hon Philip Nguli	Chairperson
2. Hon Grace Sammy	Vice Chairperson
3. Hon Elizabeth Ndunge Peter	Member
4. Hon Waziri Bakari	Member
5. Hon Antony Ndooh	Member