

Thursday, 15th February, 2018 COUNTY ASSEMBLY OF SIAYA DEBATES

## REPUBLIC OF KENYA

### SIAYA COUNTY ASSEMBLY

#### THE HANSARD

##### Second County Assembly-First session

Thursday, 15<sup>th</sup> February, 2018

The House met at the County Assembly Chamber at 2.30 p.m.

*[The Speaker (Hon. George Okode) in the Chair]*

#### PRAYER

#### COMMUNICATION FROM THE CHAIR

**Hon. Speaker:** Hon. Members, the secretariat apologizes for the late production of the Report. We had intended as I had communicated yesterday that today by 1.00 p.m., everybody was to have a copy of the Report.

I understand there was power blackout so they were not able to produce the copies in good time. However, you are also aware that you are all invited to participate in the vetting exercise. Therefore I hope that stands for sufficient notice. Apologies.

#### PETITIONS

**Hon. V. Odawa:** Mr. Speaker, I rise to report the Committee of Governance and Administration on petitions for dismissal of the Chairman of the Siaya County public Service Board and the illegal recruitment of officers into the County Public Service Board and the illegal recruitment of officers into the County Public Service.

**Hon. Speaker:** You want to expound on it? You have 20 minutes.

**Hon. V. Odawa:** Mr. Speaker Sir, On 7<sup>th</sup> December 2017, pursuant to Standing Order no 211, the Speaker conveyed to the house a petition regarding illegal recruitment of persons into the county public service and on dismissal of the chairman of the County Public Service Board; Hon Joe Donde. The petitions dated 4<sup>th</sup> November 2017, and 3<sup>rd</sup> November 2017 were addressed to the County Assembly of Siaya and lodged by Ms. Jane Adhiambo Otieno, Mr. Emmanuel K. Otieno, Mr. George Otieno Obare and Mr. Cleophas Ochola.

Key findings of the committee were as follows;

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1. The committee in its investigation, found glaring anomalies and illegalities in the process of recruitment which were initiated by the County secretary – Mr. Dave Anyona Kanundu through his written word (see annexures 1, 2 and 3) and this was executed meticulously by the County Public service Board.
2. Despite the clarity of the law as enshrined in the County Government Act Section 63 (2) (a), that requires appointments to be initiated by the Chief Officer of the departments for which the appointment shall be made; but in this case, the County secretary, Mr. Kanundu blatantly ignored this provision and usurped the legal functions of the office of the Chief Officer.
3. Furthermore, Mr. Speaker, these requests for appointments were already accompanied by the names of individuals, already identified by Mr. Kanundu, using a procedure best known to him. (See Annexures 1, 2 and 3) begging the question, were the interviews even important?
4. Is its un imaginable that the County Secretary, Mr. Kanundu who by the nature of his office, is the head of the County Public Service, and should uphold all the principles and values of the service as enshrined in Article 232 of the Constitution of Kenya 2010, which include but not limited to meritocracy, competitiveness, transparency and high level of ethics, but he chose to disregard these values with utmost ease.
5. The response the Committee got from Mr. Kanundu, to this petition and on issues raised by the committee was contemptible and it was a true act of impunity. (See Annex 8). He ignorantly, belittles and demeans this assembly and directly attacks intelligence of the Members of this house by insinuating that we have no ideas of what we are doing.
6. In his submission, Mr. Kanundu informs us that we are over gratifying ourselves in our oversight role and imagines that we have no jurisdiction to oversight on matters of Human resource----

The Chairman of the County Public Service Board, Mr. Joseph Donde, lied to us and I may call him a liar for that, I am sorry if that is un-parliamentary, I can apologize.

**Hon. Speaker:** Can you withdraw that term!

**Hon. V. Odawa:** I withdraw

**Hon. Speaker:** Thank you, proceed.

**Hon. V. Odawa:** Mr. Donde informed us that these interviews called suitability, the matter was in court. It forced us to do our investigations and found out that it was a pure lie. It is wrong for a person of his status to lie to the Committee or to the Hon. House.

The County Public Service Board is bestowed the responsibility to advise the County on human resource practices and procedures has been shown in this report having actively participated and implemented the more biased, illegal and un-procedural recruitment in the most recent times. These recruitments were neither guided by the budgetary provisions nor done as the Public Service Human Resource and Policy manual of 2016 Sec. B.

The SRC and Transition Authority gave a number of 11 persons and 6 persons respectively; that is 11 from the Governor and 6 from the deputy. Yet the County Public Service

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Board together with the County Secretary Mr. Dave Anyona decided on their own wisdom guided by---violating the laws of the land to include 22 individuals in this capacity.

The County Public Service Board headed by Mr. Donde further recruited about 79 individuals to the County Public Service in complete disregard of all the employment relations in this County. If this House cannot find Mr. Kanundu and Mr. Donde to be bear the greatest responsibility to these things then as an Assembly we have no reason whatsoever to represent the people of this great County of Siaya.

It is also not worth that some members of the Board, Mr. Okere, Mr. Ishmail Noor and Ms Florence Oketch were of contrary opinion over other members of the CPSB in regard to this suitability interviews. Actually through their letter, you can see annex 8, they explained to the Chair Mr. Donde of their discomfort in undertaking these interviews. Other members of the County Public Service Board who participated and led in these illegalities were;

1. Mr. Joseph Donde - Chair
2. Dr. Nicholas Kut
3. Ms. Rosemary Okumu
4. Mr. William Lubalo

These people, the Hon. House must find them culpable and action must be taken by the appointing authority and this Assembly. It would have been my wish that we were discussing a vote of no confidence on the County Secretary Mr. Dave Anyona Kanundu and a Motion on the removal of members of the Board who had actively participated in this process. However, kindly allow me to read out the recommendations in this report.

**Hon. Speaker:** Please conclude because time is over!

**Hon. V. Odawa:** Thank you. I will go straight to the recommendations. The recommendations we had as a Committee were:

1. On the basis that the County Secretary – Mr. Dave Anyona Kanundu initiated and saw to a recruitment process in the public service with glaring disregard to mandatory laws; and by his written word to the County Public Service Board creating new offices in the service without approval of the County Assembly, as stipulated in Section, 62(2) of the County Government Act, this committee recommends that the appointing authority instigates disciplinary procedures against him, that befits a public officer who has insatiable appetite for violating laws of the land.
2. On a second count, the committee finds the County Secretary – Mr. Dave Anyona Kanundu in violation of Article 35 of the Constitution of Kenya, 2010 that mandate him to provide information held on behalf of the public – more importantly to an oversight institution of the stature of a County Assembly. The Act of concealing information is considered an attempt to subvert justice and cover illegal actions of a public officer. This committee recommends therefore, that Ethic and Anti-corruption Commission to initiate further investigation on the actions of the County Secretary and the County Public Service Board with the aim of preferring legal actions if found liable.

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3. The committee finds both the Chairperson and the Secretary of the CPSB Mr. Joseph Donde and Mr. William Lubalo respectively, to have abdicated their due responsibilities by acting on unlawful instructions given by the County Secretary and putting a charge on public funds by employing persons into public offices in complete disregard of the laws they swore to defend. The committee recommends that the appointing authority execute disciplinary actions against these two officers who bear greatest responsibility of actions of the Board.
4. The suitability recruitment process so concluded is both illegal and discriminatory. This committee recommends that all the appointments done as a result of this exercise vide instructions from the County Secretary as stated in letters referenced SYA/CG/PSB/HRM/R16 (115) dated 2/2/2017, CGS/OCS/PSB/38/VOL.V (206) dated 31<sup>st</sup> August, 2017 and CGS/OCS/CONF.GEN/71/VOL.I (31) dated 18<sup>th</sup> October, 2017 save for ones that are acceptable within the prescriptions of the SRC letter Ref no. SRC/TS/CAF/3/61/49(46) and Transition Authority communication, Ref. no. TA/7/8/48, be nullified with immediate effect.
5. The committee notes that the CPSB operates in an unstructured system where the Board is not aware of the recommended staff establishment in any of the ten departments of the County executive. There are no documents showing structures and reporting lines. It is therefore shameful for the county to expend resources to a board that operates in a pedestrian mode with no patterns of operations and is bedeviled with open divisions.

This committee strongly recommends that Siaya CPSB through the secretary furnish this assembly with the following documents; staff establishment, departmental structures/organograms, an audit report of the Human resource unit and a copy of the budget clearly indicating the provision for PE for the new positions created in all the departments of the county within a period of 14 days.
6. The committee further recommends that any subsequent employment of persons to Siaya County Public Service shall be done in accordance with available budgetary provisions, competitively, in a non-discriminatory manner and with strict adherence to all statutory regulations that guide employment to a county public service in this Country.
7. The committee recommends that the petitioners may resort to laid down statutory procedures for removal of Chairman of County Public Service Board – Mr. Joseph Donde and use the findings of the committee to instigate such a process.

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8. The committee recommends that these acts of un-procedural recruitments and blatant violations of the laws be reported to the Ethics and Anti-Corruption Commission for further investigation and action by the commission.
9. Based on the engagement with the board, the committee finds that the Vice Chairperson of the Board (Ms. Florence Oketch) and two other Members of the Board; Mr. Ismael Noor and Mr. Okere Wangach were not liable to this violation of the law and hence the committee recommends that they should be vindicated from the illegalities committed by the CPSB.
10. The committee further recommends that the appointing authority of the Chairman of the Board and the County Secretary, in this case, the Governor, to undertake investigation into the illicit conduct and illegal actions of the Chairman of the CPSB – Mr. Joseph Donde and the County Secretary – Mr. Dave Anyona Kanundu, including but not limited to nepotism, exclusion of minority in employment into the county public service, regional bias and other ills and take necessary disciplinary actions.
11. On the account of the following members of the Board; Dr. Nicholas Kut, Ms. Rosemary Okumu and the Chairman Mr. Joseph Donde and the Secretary Mr. William Lubalo having participated in the illegal recruitment exercise. The committee recommends that the Ethics and Anti-corruption Commission undertake investigation into their conduct with the view of initiating legal action against them
12. The committee recommends that this report be addressed to the petitioners, the county executive, the office the Governor and other oversight institutions including the Ethics and Anti – corruption commission for appropriate legal action.

Thank you.

**Hon. Speaker:** I was told that you had a Motion, I don't know whether the Motion is still on and if Hon. Members will agree due to the short notice? Do you want to move it? Do you have copies of the Motion? Is there an objection as to the Moving of that Motion? The Motion on conflicting laws, none is standing with provisions of notice. Is there objection? There seems to be no objection.

**Hon. Adala:** Mr. Speaker, Sir, I'm not objecting such but I would be very comfortable if I was having it so that I also know the content of this Motion. Otherwise, if it's just moved and some of us are not aware of what else it contains then we may just be rubberstamping---

**Hon. Speaker:** One thing, if you don't believe in it you object, what I wanted is the leave of the House that we can Move the Motion because this Notice was very short.

**Hon. Member:** Mr. Speaker, Sir; there is no objection; you had explained to us informally about the Motion.

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**Hon. Speaker:** Can you ask them to hurry so that we all have copies?

**Hon. Member:** I'm just concerned that the Report which has just been presented to us; the Mover is not evening asking for this Report to be seconded and open for debate.

**Hon. Speaker:** Hon. Member, can you take your seat? There was a time we took this entire House to Mombasa for 10days and we trained on the Standing Orders and at the end of the day we also said we heard that people at home were shouting at us that we went to swim. We cannot use this Floor to confirm that we went to swim---

*(Laughter)*

**Hon. Speaker:** How to handle Petitions is clear in our Standing Orders. Hon. Members, if you have a look at your Standing Orders 210, and it says representation of Petitions.

That the Speaker may allow comments, observations or clarifications in relation to petitions presented or reported, and such total time shall not exceed 30 minutes.

A petition can come here, be laid, and that is it. A petition can come here, and the Speaker allows 2 minutes, and that is it. I allowed 20 minutes, that is it. We are done with that petition.

Objection! Yes.

**Hon. Mboha:** For the purpose of information, I have heard you mention that when people go from class 1 to 8, and in the end sit for KCPE examinations. What you also need to understand is....

**Hon. Speaker:** Hon. Mboha, tell me if you have a point of Order.

**Hon. Mboha:** I have a point of Oder, and you can listen to it if you allow me to talk.

**Hon. Speaker:** Which is?

**Hon. Mboha:** Just give me time to talk because I think we are not in a hurry .....

**Hon. Speaker:** Hon. Mboha, you are out of Order, you don't argue with the Speaker, in fact take your seat. Hon. Members you know the rules of debate. In the first place it's out of Order for you to argue when the Speaker is giving a communication. It's even out of Order for you to revisit a matter which the Speaker has concluded. It's out of Order Hon. Mboha to revisit a matter which I have concluded. Yes.

**Hon. Mboha:** I think our concerns are really genuine. Otherwise if you want to gag some of the things we want to say here it is not fare. We want to speak to some of these issues, and I think it would have been better if you added us some more time instead of giving us only 20 minutes to discuss on such weighty matters. The time given is not enough given that the Mover has taken almost all of it, and therefore we need like an hour or so.

**Hon. Speaker:** Hon. Mboha, you are out of Order, and if you persist I will rule you out of Order and have you thrown out of the House. The reason being, I said that petitions can come here and not be debated but just Tabled. A lot of reports will come to this House, those that warrant Tabling will be Tabled and that will be it.

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The Committee had public forum and we all had opportunity to visit. Even if I allowed you 2 hours, you will not amend that petition neither will you edit it. So it is all an act in futility. Hon. Mboha I will Order you out of the House with all due respect.

**Hon. Mboha:** I have no problem with you ordering me out .....

**Hon. Speaker:** Hon. Mboha, I Order you out of the House!!

You are one of my best legislatures but I will not allow you to break the very rules.

*(Hon. Mboha is ejected out)*

**Hon. Speaker:** Yes.

**Hon. Ochola:** Thank you, Mr. Speaker, Sir, for bringing us up to speed about the Standing Orders. And I also kindly request Hon. Chair...

**Hon. Speaker:** Hon. Member, I have concluded the debate. If you will be a Speaker one day you will learn that when you sit in the chair, and you rule on a matter, it is final. If you insist, I will throw you from the House. Because these are our rules, they are not my rules. So if you are talking about that same matter, I will know what to do. So don't address it, talk about something else.

**Hon. Ochola:** Thank you, Mr. Speaker, Sir, I think it's only fare as the person guiding the House should clarify with due respect to the chair, you are right that through this session the Speaker may allow comments. So in this case is it coming clearly that you have used your discretion not to allow comment?

**Hon. Speaker:** The presentation; those were comments. I'll tell you how a petition report is laid; lying is different from what he said. What he was saying was comment. He could lay it that is presentation. Whatever he was saying throughout was comments; it doesn't say comments by another legislature. It is concluded Hon. Members. These are the rules of the House, not only here but everywhere else. Tomorrow you Members will bring petitions to this House and you will expect the same treatment. You will take petitions to National Assembly, and Senate; that is the practice of the House. That is concluded.

## PAPER

### VETTING OF NOMINEES TO THE SIAYA COUNTY EXECUTIVE COMMITTEE

**Hon. Madialo:** Mr. Speaker, Sir, I wish to lay on the Table of the House, today, the Report of the Committee on Appointments on vetting of Nominees to the Siaya County Executive Committee.

**Hon. Speaker:** Yes, Hon. Madialo, I want Hon. Otiato's Motion to take precedence.

**Hon. Madialo:** Much obliged.

**Hon. Speaker:** You are also giving notice!

**Hon. Madialo:** Yes, Mr. Speaker, Sir, I wish to give a notice that I will be Moving a motion that this House adopts the Report of the Committee on Appointment on vetting of

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Nominees to the Siaya County Executive Committee laid on the Table of the House, today, 15<sup>th</sup> February 2018.

**MOTION**

SIAYA COUNTY BURSARY EDUCATION ACT

**Hon. Speaker:** Yes, Hon. Otiato, there was no objection to your request to Move a motion. Can you Move the Motion?

**Hon. Otiato:** Allow me to Move the Motion on Siaya County Bursary Education act. I realized that on 30<sup>th</sup> April, 2016 this House passed the Siaya County Bursary Education Act 2016 to facilitate the provision of fund to bright and needy students in Schools, Colleges and Universities.

**Further** aware that the Act provides guidelines for the formation of Ward education bursary committee. One passed by this House, and an illegal one used by the education department in total disregard as per chapter 185(1) and (2) which mandates the County Assembly to make laws.

**Deeply concerned** that the official act passed by this House indicates that the Chairperson will be elected by committee members and forwarded to the executive Member for official appointment, while the Ward administrator will be an ex- official member. The illegal act being used by the executive contradicts this by indicating that the chairperson shall be appointed by the County Executive Member through a competitive process, while the Ward Administrator shall be the automatic secretary to the committee.

**Noting** that the Education Department has rolled out the 2017/2018 FY Bursary process with the deadline for forwarding the application forms expiring today Thursday, 15<sup>th</sup> February, 2018. This House **resolves** that the next step in the program for processing of 2017/2018 FY Bursary be suspended forthwith while the House resolves this conflict amicably with the Executive.

It is so painful that we are operationalizing the functions of our money that is Kshs. 75 million which is being used to support the needy kids with two different laws. You find that when you put these two particular laws, they read the same and the content is totally different. If today we don't postpone this exercise which was to be followed by the training of committee members and allow this to happen, then we will not have done our work because Assembly or our County Government will be taken to court.

It is a shame that Siaya County can be using an Education Bursary with two different Acts published on the same date. This is a fraudulent act and we need to have a serious analysis of this. I know that we are already late and other Counties have disbursed their funds. We have even tried to reach some of the officials so that they can tell us how they formed the committee. This has not been clear. They are trying to defend the position by saying that there are some



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committee members that were established previously and yet they were established using the river road law which was not passed in this House.

I request that this House takes this matter seriously and we give a period to extend this as requested in my petition. We have asked that we extend this program and once the process is resolved we will be back and ready to proceed. I beg Hon. Andiego to second.

**Hon. Andiego:** I rise to second. I want to put it very clearly as the Mover puts it. There are two Acts where one is illegal and one is legal from this House. Through your wisdom Chair, I think that we should bring down illegal Acts. I would have wished that that illegal Act be done away with and we use the right legal Act because our students are really waiting, some have already sent applications and we needed this disbursement to be done as soon as yesterday. I support.

*(Question proposed)*

**Hon. Speaker:** Yes, Hon. Oriaro.

**Hon. Oriaro:** Thank you, Mr. Speaker, Sir. On the affirmative side, in consonance with the matter in question, I am almost led to believe that we have only had one recess since the inauguration of this second Assembly and I am also aware that I was part of the First Assembly where I was privileged to be the Chair of County Implementation and on matters of over sighting implementation et al. I was very key in executing that on behalf of the Assembly. I was imagining that during recess contrary to the session we had before recess, somebody came in and sneaked matters if legislation.

One, in coming up with legislation the process is very clear, that there is public participation. Before coming up with such a legislative piece, I can recall that public participation was done on a document maybe one of those documents is the one. A question is raised that who makes laws? In the 2010 Constitution, there are only three bodies that make laws the Senate, the National Assembly and County Assemblies.

What we are hearing is a crime the Catholics refer to as the sacrilege. A legislative, representative and democratic sacrilege, somebody somewhere is coming up with laws outside the established 3 bodies that I have talked about. This matter must be taken seriously and in your ruling and giving directions with speed these two documents must be made bare and the public is made to know which one is valid as possessed by this House.

Fortunately you are still the Speaker, so which document came and which one was midwived in your tenure? This must come out with speed so that justice is also done as prayed by the Mover, that we dispense matters of bursary disbursement. We are too late, fortunately this time round, Form ones, the new admission got entrance on the same date with those who were continuing. In some counties, a bursary is now a forgone thing. They have done away with it. We want to know the truth, as the then Member of Central Alego, we want to know who is out to doing things behind our back and this one should also be a warning. Could be other resolutions, other legislations we came up with, once taken for gazzetment and taken for Government Printing are different versions. I support.

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**Hon. Speaker:** If there are no contributors, will the mover reply!

**Hon. Otiato:** Thank you, Mr. Speaker, I am happy that we are getting a good support. Just to conclude by saying that this is a criminal act, defiling the proper work done by the Assembly should not be entertained and as we resolve into this, the Committee on Education will do the right thing by ensuring that the person who committed this fraud be charged. Thank you.

*(Question put and agreed to)*

*(Applause)*

### **MOTION**

VETTING OF MR. JAOKO OBURU ODINGA  
CECM NOMINEE - ENTERPRISE, INDUSTRY & ENERGY

**Hon. Speaker:** I want to seek leave of the House that the Notice was short and we had discussions on this, therefore if there is any objection you can bring it to my attention.

*(Silence)*

**Hon. Speaker:** There being none, will you proceed, Hon. Madialo!

**Hon. Madialo:** Mr. Speaker, I stand to move the Motion, that this House adopts the report of the Committee on Appointments on vetting of nominee to the Siaya County Executive Committee. The entire Membership present in this House this afternoon I believe is part of the forming of the report.

Page 3 of 13 is the preference of the report and permit me to bring to the House attention that on the 15<sup>th</sup> day of February 2018, the Committee on Appointments undertook an exercise of vetting one Mr. Jaoko Oburu Odinga who comes from Bondo Sub County, West Sakwa Ward, who has been nominated by His Excellency the Governor to be the CEC in charge of Enterprise, Industry and Energy.

Mr. Jaoko Oburu appeared before the Committee today in the morning. The Session was extra ordinary session in this manner that for this case the Hon. Speaker permitted pursuant to the Standing Orders of this House that the House Committee on General Oversight was allowed to be attendant and be part of the Committee.

The deliberations, presentations and verifications given by Mr. Jaoko Oburu I believe is in the knowledge of the majority of us because the majority of us were in attendance when he was being vetted. Allow me to confirm that Mr. Jaoko Oburu once appeared before the Committee pursuant to an advertisement placed in the daily newspapers on the 8<sup>th</sup> of February 2018.

In concurrence and in respect to the requirements that were specified in that newspaper advertisement, he provided the Committee with his ID, CV, KRA Compliance Certificate, HELB

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Clearance, EACC Clearance, Certificate of Good Conduct issued by the CID Department, he is not a member of any professional bodies, endorsement by the CRB, Accreditation from the Commission of the University Education for foreign degrees, he did display an original of his duly certificate, there was endorsement by our relevant quality assurance bodies for purposes of higher education.

The questionnaire that is demanded by County Government Act and the County Government Appointments Vetting Act was attached and was presented. An approval herein was undertaken this morning in the presence of the public, the media, stakeholders and the Committee

Mr. Speaker, Sir; an approval hearing was undertaken yesterday in the presence of the public, media and stakeholders and the Committee indicted the audience on the nomination progression. The Committee specifically dwelled on the guide on legal framework and other expectations of all functions devolved. During the public approval hearing which was held in the County Assembly boardroom B; the Committee orally interacted with the nominee for the appointment as member of Siaya County Executive Committee. In order to show that the nominee was held to personally account for his submissions to the Committee he undertook an affirmation he revealed information or evidence regarding his suitability.

By undertaking the affirmation voluntarily the Committee presumed that the nominee undertook to be held liable should it later emerge that the information he gave the Committee was not true. This Committee was awake in the second schedule of the Public Appointment (County Assemblies Approval) Act no.5 of 2017 and in its own wisdom opted not to employ that schedule for purposes of approval because the specifications required nominees are clearly stated in the Constitution of Kenya 2010, the County Government Act 2012 and the Public Appointment (County Assemblies Approval) Act no.5 of 2017.

The Committee was of the feud that the form doesn't prescribe personal side therefore lacks objective and assessment... The form more so doesn't consider statutory status assessments such as gender and regional proportions and adherence to the provisions of Chapter 6 of the Constitution.

Jaoko Oburu Odinga; holds a bachelor's degree in Commerce (Accounting and Finance Options) from St. Mary's University of Halifax, NS Canada. He did attach and display a police abstract that indicated that his certificate for 'A' level and 'O' level suffered destruction by way of fire and that's why he couldn't physically avail those certificates.

He was able to demonstrate that he has been the Investment and Resource Mobilization Advisor for the County Government of Siaya for four years. During his tenure, he was the lead person in the development a county investment policy on Financial Inclusion for Rural Microenterprises under the sponsorship of United States Agency for International Development (USAID).

They collaborated with the USAID developing the investment portfolio of the Siaya County. While in Canada, he formed AFRIKBATIK Company which specialized in importation and exportation of African artifacts. He was the Managing Director of Afriglobal Enterprises

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Ltd, dealing with distribution of petroleum products, for three years where he was the overall in charge business development strategy.

He informed the committee that he had been in the management team of Lake and Sea Resources Company Ltd – dealing with fish farming and related value addition. Those are but a few testimonials he did display to the Committee in proof of his undertakings in investments, energy and industry. Mr. Jaoko Oburu has been recommended by this Committee for approval by the House to the position of the CECM Enterprise, Energy and Industry.

Allow me to start with the known fact that Jaoko Oburu Odinga is a son of the primate family of our land and there was expectation or imagination that his approval would be attended by favor derived from the fact that he has a degree. I wish to disabuse the public and any pretenders to that type of assumption.

Mr. Speaker, Sir; allow me to state that when the first list of CECMs came to this House; Jaoko Oburu Odinga was nominated in the portfolio of Tourism and this same House rejected his nomination on grounds that he didn't meet the requirements of section 35 of the County Government Act and therefore he was not suitable for that post and his name was taken back to the Governor with the recommendation that he wasn't suitable for Appointment to that docket.

He was not favored because of his family background at that time. At this time, I have already arrived and stated what was before us and the Committee was satisfied that for purposes of his vetting; Mr. Jaoko satisfy the requirements of the County Government Act 2012 section 35, 3(d) and the Appointments Act, an Act of the Senate of Kenya. When I question was poised to Jaoko as to whether he felt that he was now better placed or misplaced in terms of docket; he stated that now he was home that he is more suited to the docket in which he has now been nominated.

Mr. Speaker, Sir; I wish to draw the attention of this House to this fact. The first Report to come to this current House on Appointments carried the name of Jaoko Oburu and several others; a total of 10 and only one person was approved for appointment. Thereafter, the names came and another name that was in the first Report, Dr. Elizabeth.

We are all aware that on the second attempt she was approved to hold another docket other than that which she had earlier been nominated. Jaoko Oburu constitutes the 3<sup>rd</sup> person who has been brought before this House. Rejected because of misplacement of docket returned back with proper docket and a recommendation has come from the Committee that he be approved for appointment. I will be asking this House to please support this Report and endorse the Committee's recommendation that Mr. Jaoko Oburu Odinga be appointed to be CECM Energy, Enterprise and Industry.

There is something I didn't mention at the inception; that the name of Jaoko Oburu didn't come singular. It came with two other names, Adrian Ouma, comes from South Gem, Gem Sub County and was nominated for Physical Planning and Urban Development in relation to this nomination. We were supposed to look at the procedure we used to arrive at the nominee including the criteria for shortlisting the constitutional requirements and the suitability of the

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nominee for the appointment proposed having regard for the nominees credentials, experience, abilities and qualities meets the needs of the body which the nominee is being placed.

I want to emphasize on experience. The County Assembly Public Appointments Approval Act was enacted in 2017 by the Senate. The County Government Act which started talking about experience was enacted in 2012, it also talks about experience. The reason why I draw a parallel in the years is this, we vetted people in 2013, 2014 and 2015 but when it was discovered that additional law should be enacted now not by Parliament but by the Senate, 5 years later they still emphasized experience which means that even after the original Act it is still...

**Hon. Oriaro:** Point of Order!

**Hon. Speaker:** Yes, Hon. Oriaro.

**Hon. Oriaro:** Thank you, Mr. Speaker, Sir, is it in order for the Mover to give a lengthy Move alongside sneaking in replies in between the lines?

**Hon. Speaker:** Replies is part of his Moving but the length is also worrying me. Could you be brief.

**Hon. Madialo:** Sorry. I am now going to be brief. The reason why I am lengthy is that we keep talking about these things over and over I wanted to be a teacher today.

I wish to conclude by stating the following. In deciding that the two names Mr. Adrian Ouma and Mr. Dismas Wakla be returned back to the appointing authority, we were following precedence done to Ms. Dorothy Owino and Mr. George Rubiik that when you are nominated in the same position you get returned. Just by precedence alone, our hands were tied.

Secondly, we have had no consideration on these nominees outside what is required of them constitutionally and initiatory. Lastly, there are no considerations exterior to our role as oversight and legislative body I ask Hon. Oor to second.

**Hon. Oor:** I second.

*(Question Proposed)*

**Hon. Oriaro:** Thank you, Mr. Speaker, Sir, in being mathematically collinear, I want to make very terse observations.

In progressive democracies, especially ones anchored on constitutional democracies, governmental practices are such that opportunities abound for all and sundry, rich or poor, connected or not. That is a regards with the nature of energy or industry et al. Jaoko Oburu whether he comes from the mightiest family in the county or not is also one of our sons such that if he has the requisites following matters of law he stands the opportunities.

I also observe that this one was not a shortcut venture, indeed he was rejected because he lacked the threshold initially so this is an opportunity for Mr. Jaoko Oburu to take oath of affirmation to join the other 5 to help steer this County.

**Hon. Audi:** Point of Order!

**Hon. Speaker:** Yes, Hon. Member for South Gem.

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**Hon. Audi:** Is the Member on the Floor, according to the dressing code in the right place?

**Hon. Speaker:** Hon. Oriaro, will you stand and imagine that you are seeing a mirror in front of you then decide whether you are withdrawing or not.

**Hon. Oriaro:** I have withdrawn but I have been heard loud and clear. I support.

**Hon. Speaker:** Yes Hon. Andiego.

**Hon. Andiego:** Thank you, Mr. Speaker, Sir, I rise to support this Report. Sometimes we may be told about a Report and when you are told about Report which you have not read sometimes we find it getting to an opinion for your interest which at times is not part of the Report.

Since we started doing the vetting when 10 CECMs were brought to this Assembly and one was passed and there was a Report indicating why the 9 were rejected, a lot of issues have emerged. To the extent that a lot insults, abuse and even stones were thrown to this House of which I believe that those who throw stones or insults are not keen on reading the Reports that we give.

I want to appreciate this committee for this detailed Report, citing a lot of laws and other statutory documents that Hon. Members should read before commenting. Last time, we well cited the law that informed this House that once a nominee's name has been rejected, you cannot return it as it was unless the circumstances have changed. That is what the Appointments Act of 2017 says. It is not Andiego's law!

Mr. Speaker, Sir, I also wanted to make this House understand the powers of the Appointments Committee. The Act says that an appointment under constitution or any other law for which the approval of the County Assembly is required shall not be made unless the appointment is approved by the relevant County Assembly in accordance with this Act.

If somebody has read this Act several times, then it makes you wonder the reasoning that time has elapsed so they can just go ahead and swear some people. In our Report, we have mentioned the names of Adrian and Wakla. The Report has something about them! At time when you don't understand something, you can ask a friend for translation.

As the Majority Chief Whip of the party where the Governor belongs, I would ask him to always consult before making decisions. I was not happy when I heard some people making utterances out there to the effect that Members of this Assembly are class eight and form four drop-outs. It was said that we don't have the requisite knowledge to vet somebody with a degree.

Yes, I may be a form four drop-out or a Diploma holder, but I also know something that can benefit a Master's Degree holder! It is high time that this House be respected! We have a mandate which must be respected! However much you know, respect us!

Mr. Speaker, Sir, I do support the Report. Thank you!

**Hon. Aringo:** Thank you, Mr. Speaker, Sir. I first of all rise to appreciate the Appointments Committee for a job well done and for keeping us updated with the relevant laws that guide their work. It is clear that what they have done has been above board and without any malice whatsoever.

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Yes, Mr. Jaoko Oburu is related to Dr. Oburu and it also happens that I am his Ward representative. That had brought some fireworks down there but I am happy that it has been solved today. I want to ask the Assembly to be strong because we are just performing our duty. Whether they say that we are class eight or form two drop-pouts, the Constitution has put us here to vet them with all those degrees they have. I want to ask Members to be strong! Do not be swayed! Do not panic when you are doing something right!

Mr. Speaker, Sir, I support!

**Hon. Opang'a:** Thank you, Mr. Speaker, Sir. Allow me to also appreciate the work of the Appointments Committee. In their Report, they have cited reasons why other nominees were not considered. It has been a norm for some people out there to accuse the Assembly of derailing development in the County, but our mandate is very clear- to oversight and do what we do in the Committees. It is in our best interest to give the people of Siaya services and not to block services from them.

I rise to support the Motion.

**Hon. Ochola:** Thank you, Mr. Speaker, Sir. Let me start by acknowledging and indicating that in the past couple of months we have had issues in and outside this House regarding the vetting of these nominees and you all agree with me that it has been very emotive where this House has been wrongly accused.

Before I comment on the Report, Mr. Speaker, Sir, I want to take an exception and I would request this House to join me in this; we have to rebuke in very strong words and put it that we are Members of this County Assembly as enshrined by law, we are guided by law and we are a creation of the constitution.

We also have the National Assembly which is enshrined in the constitution and also guided by law. I don't think there is any law that gives any Member of the National Assembly any right to read the riot act to Members of the County Assembly unless that law was enacted last night and I am not aware. Probably, Hon. Madialo can tell us.

Mr. Speaker, Sir; what I'm trying to say is that based on these issues where we will be performing our duties we vary instances and personally, I have walked into such exchanges where our Hon. Members have made a riots act and told us what to do as far as what we are supposed to do in the right tendency.

I am longing for a situation where this Assembly can come out and the leadership and we put a very strong press statement rebuking his coz this is what has happened because at any time if such things happen and we keep quiet then we take them as we don't know what we are doing or we are cowards. This is one opportunity I can let it go on record because it's not in very good state.

I am calling upon our leadership in the Assembly and the Party; please can we have an official response to Members of the National Assembly who have abused us or threatened us as far as vetting of these nominees or approval is concerned. Reading through this Report we have gone through the credentials and the testimonials which have been attached here and ideally

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based on this information that we find here that Jaoko Oburu surely fits the approval and appointment for the position which is given.

Mr. Speaker, Sir; allow me to comment a bit just on the Mover's contribution on these Reports and actually a very good explanation on the reasons for the rejection of the other two. I want to believe I would be in order if I go through this, I don't want the experience of the last debate that the names of the two proposals have been rejected based on the fact that the nominating authority brought back the same names for the same portfolio and yet no circumstances has changed.

That is correctly articulated in the Act which says, a nominating authority shall not resubmit the name of a candidate whose nomination has been rejected by the County Assembly unless the circumstances relied on for the rejection of the appointment of the candidate did not exist.

My understanding of this law contrary to the explanation that the Chair is given is that the circumstances must only be that these names are brought back to the Assembly but on different portfolio. I'm not going to differ with that interpretation because the circumstances could be and ideally this is the circumstance because when the first names were brought to this House the information was not adequately provided.

We were only provided with their C.Vs but there were no testimonials to back those particular claims. I want it to go on record that there are circumstances can be that some documents which were not there are now available and that could make the suitability of such a candidate. I want to take this opportunity to urge my party leaders who are here to advice the appointing authority and the leader of majority that when some names were brought to us the C.Vs were showing that they were suitable for that particular portfolio. There were no testimonials to back the fact that they were suitable for those portfolios.

**Hon. Andiego:** Point of Order!

**Hon. Speaker:** What is your Point of Order?

**Hon. Andiego:** Is it in Order for the Member to discuss a Report which has been discussed and dispensed with.

**Hon. Speaker:** I find him to be making influence, he is in Order. Proceed!

**Hon. Ochola:** Most obliged Mr. Speaker, Sir; thank you. If this House finds that interpretation a circumstance because we agreed that when we were vetting this candidate; he did not have certificate of clearance from the C.I.D. but now he has gotten the certificate of clearance then it means this circumstances have changed. The reason why I'm saying this Mr. Speaker, Sir; is that we could have another window to give some of these people that we rejected for vetting because the circumstances have changed and then they have been appointed to their respective portfolio.

I come from Gem and I am not talking over the fact that those who have been rejected here are coming from Gem; that is not my point. My point here is that one of the series that I have seen, this person did not have testimonials to support but if there is a window that the



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leadership can advise and I remember Mr. Speaker, Sir; you told me as a member of ODM, I need to ask my party leaders to advise accordingly.

If they can advise and then a circumstance is changed and the name brought here with the right credential then we will be happy to pass those nominees. I wish to support this Report as it is with a homework that I have given to my party leaders.

*(Laughter)*

**Hon. Speaker:** Hon. Members, let's not be repetitious. Hon. Otiato.

**Hon. Otiato:** Thank you, Mr. Speaker, Sir; I'm so happy that we are moving in the right direction. Now Siaya can be able to proceed on with its work well because even today I got an opportunity to be where Jaoko Oburu was, the gentleman was actually able to show that he has the knowledge in this job and I commend him for that. The last time we did the vetting; there was thinking that we might be able to give in to some pressures. It's a matter of qualification and expressing oneself in that direction.

Today other than being possibly a class 4 drop out at it is being speculated outside there, that this particular law that was passed by those who are bright enough envisaged this and they knew very well that the people who are voting down here will not vote you because of your degrees but they will vote you because of the leadership that you are having. And in that it is said that the Governor will not do it by him, it will pass through the Assembly to be vetted by those stupid fools who are in that Assembly.

If that is our position, yes, the people who made those laws were right enough and they are the people who are now saying that we don't have the right to do what we are doing. The appointment is done in two levels, there is no one single person to do the vetting.

I am happy that today that even in the Executive Wing, we have very good lawyers and the law is so clear. Go and look at your dictionaries the meaning of knowledge, and when we talk about distinguished career, so in my own moving around, kindly try to Google because I don't have a dictionary. How do you express your knowledge? The level of our knowledge can only be expressed by what we can be able to say.

I might be having a 1<sup>st</sup> class honors and I used 'mwakenya' throughout my life in university but when I appear before the board, I cannot be able to show that I am capable of doing that job. You will not expect me as an Assembly just to pass that name because of the degree with a 1<sup>st</sup> class honors if you cannot be able to express yourself. So, anybody else who is here making some noise around by saying that the people who were dropped were having certificates or CVs they were never part of the Appointments Committee and therefore they had no opportunity to express or hear how these people express themselves.

Distinguished career that we are talking about is whether this person has been having a very successful career in that particular field. I am so happy that we are moving in the right direction, the decision that was made by the Appointments Committee, I applaud them for that but let's not do jobs for other people, let us do our own duty. If the other Committee had done

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their job, you had the opportunity to visit there as a friend of that Committee and maybe asked to ask questions! I appreciate the Appointments Committee, I support this report, thank you.

**Hon. Speaker:** Yes Hon. Adala!

**Hon. Adala:** Thank you, Mr. Speaker. I want to commend the Appointments Committee for a job well done. The Committee that we are having is a blessed one. One, it has our very able Hon. Speaker in it, it has a lawyer and we only have one in our Assembly and again it is so lucky enough, it has got 4 old Hon. Members who were in the first Assembly. So, I think it is very competent. Thank you, for a job well done.

Having said that, I want us to be brutally honest. The first time the list was sent here we rejected it and we left here with heat but with our heads held high. Why? Because we were insisting that we were following the law. It was about Section 35d. So, you could walk around and say that the reason the list has been rejected is because Section 35d was not adhered to. We came here for a second list and without mixing words I must say that laws were bent. We were not very strict on Section 35d, we passed a list here of 4 names without looking at Section 35d. Let us be very honest with ourselves.

The reasoning according to me, is the requirement that was never there in the first place which is here, No. 10 (documentary evidence) which is not the CV, that was never there but in the 2<sup>nd</sup> and 3<sup>rd</sup> vetting, it is now there. The question is who sneaked this in our Standing Orders? We passed the 4 by bending rules! Let us be very honest to ourselves. I am asking myself, that if you have set a pace that you can make a law and sometime stick with that law at it is then next time you bend it to suit needs of that time which I don't know which are these needs!

The question therefore is, if we have bent the laws, what now stops us from saying that Mr. Adrian Ouma and Mr. Dismas Wakla, what is stopping us? I know I will be told that a Section says that a name which has been submitted and has been rejected cannot be re-submitted unless circumstances have changed, I know it has been said over and over again.

We are very strict on that but Section 35d has been altered and none of us is very keen on this. My submission therefore is that, we have set a very bad pace and there is absolutely nothing that would stop this Hon. House from endorsing Mr. Adrian Ouma, Mr. Rubik, Ms. Dorothy and Mr. Dismas Wakla.

As I finish, when the worse comes to the worst, two wrongs don't make a right anyway! But there is nothing that is stopping these people, let us have all of them that have been left to come and serve. Finally, don't mind about the National Assembly guys who are insulting us.

I have been here for the last 4/5 months, I know that the composition of this Assembly has people with wisdom and very sharp minds. If anybody thinks that he is a Member of Parliament and therefore he is so sharp, bring that person we sit down and see who has substance somewhere in the brains. When looking at a person you vetted in a Ward then you must not ask a woman, you can only ask a man. Thank you.

**Hon. Speaker:** Hon. Olasi!

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**Hon. Olasi:** Thank you, Mr. Speaker, Sir. I support. I don't want to dilly dally about the others. Allow me to say that the Mover took a lot of time and talked of almost everything that every Member was thinking of talking about. So next time the Mover should have limited time.

That notwithstanding, I believe that Mr. Jaoko Oburu passed the vetting. There is no favour. Anybody who was in that room could say the man convinced the committee. One would say it was because the circumstances changed. Last time he was a nominee under Tourism, Culture and Sports and he said authoritatively that he is now convinced that he is at the right department. His papers showed it.

Hon. Members, we have to be honest with ourselves. The majority will always rule and the majority will always have their say. Have your say and convince the Members, they will always cross. Don't say the Members have changed the rules. That is why you are given the opportunity to convince the Members that you are saying this but I believe that this is the best way to go. We need not blame one another that the rules were bent, after all rules were made by man and the way we interpret the rules is what can differ but rules will always remain the same.

Public Appointments Act 10 part I and II is very straight. I want to comment on something that was read by the Mover when the appointing authority was trying to state to us that other people who were vetted but were in the first list because one or two is not done stand. As far as the appointing authority is concerned those are already passed.

Those who made this law were not foolish. Let the appointing authority go ahead and swear in those guys that they think should be in office. Why should they bring this to the Assembly? If he has some powers under some laws that you guys might not know then he can possibly go ahead allow those people to be sworn in. Thank you.

**Hon. Speaker:** Yes, Hon. Filly.

**Hon. Akoth:** Thank you, Mr. Speaker, Sir, It is now good that he has been taken to a department he deserves. I appreciate the way the vetters have done it lawfully because my learned friends are very lawful. Thank you.

*(Applause)*

**Hon. Speaker:** Yes Hon. Shirley.

**Hon. Oyuago:** Thank you, Mr. Speaker, Sir. I would like to take this opportunity to commend the work that has been done by the Committee on Appointments basically on two things.

One, you know I come from Bondo Sub- County and the list that has been confirmed by the County Assembly of Siaya has 3 people from Bondo and we really thank you for that.

Secondly, we know the devolution that we are now enjoying was born in Bondo and it is almost buried in Central Nyanza. It would have been so unfortunate for this Assembly or anybody else to deny a son of the soil a job. I am really happy with the Committee for doing a good job in awarding Mr. Jaoko Oburu the job that he deserves. Thank you.

**Hon. Speaker:** Yes Hon. Otare.

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**Hon. Otare:** Thank you, Mr. Speaker, Sir. I want to appreciate the Committee on Appointments. Initially I thought that they were going to resign because of pressure but they have stood their ground.

We are heading in the right direction, both the Assembly and the Executive. I am saying this because Mr. Jaoko Oburu was first brought under the docket of Tourism and we gave out our recommendation that he should be put in the right place. I think the Executive has come to realize we were right and have decided to put him in the Trade docket. I think we are just moving in the right direction and let us stand our ground so that we can give Siaya people the breakthrough that they deserve.

It is very disappointing to find out that we are talking of CECMs that are going to work for the Governor. These people are going to work for the people of Siaya. These people are not going to work for the Governor and as we are seated here we are also the people of Siaya. When we are doing things don't think that we are against the Executive. We are just trying to ensure that things are done in the right way so that the people of Siaya can get the good service they deserve.

The Executive must make sure that they do the right thing at the right time. For the 4 that are remaining, let them follow the law. There is no shortcut and if you have one then next week just go and give them the Bible and you will see the consequences. Thank you.

**Hon. Speaker:** Yes Hon. Abigael.

**Hon. Abigael:** Thank you, Mr. Speaker, Sir, first of all I would like to correct the Hon. Member who said that a law was sneaked. As a Member of the Appointments Committee we would like to tell you that children always have a milestone in their lives. That was just a guiding principle nothing was sneaked.

**Hon. Olasi:** Point of Order!

**Hon. Speaker:** Yes, Hon. Olasi.

**Hon. Olasi:** Thank you, Mr. Speaker, Sir, is it in order for a Hon. Member to say that he wants to correct another Hon. Member? The Hon. Member was in order to stand on a point of order to state why the Hon. Member was not in order.

I expect if possible the Hon. Member should withdraw that particular statement.

**Hon. Speaker:** Hon. Abigael, you are out of order! All your comments should come through the Chair. Would you please proceed and honour the rules. Could you please sit down and honor the rules!

**Hon. Abigael:** Okay, I withdraw. First of all I would commend the work of Appointment Committee because when they were conducting their vetting, I think the Committee on General oversight was present. And you realize that initially the nominees would come, and not demonstrate the 35 (3d). So as a guiding principle it was necessary to let the others go the right direction, and I would say that we did not bend any rules in appointing the last four. It was through principle, and that they came with supporting documents that attested to the same, that they were capable, thank you.

**Hon. Speaker:** Hon. Majority leader.

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**Hon. Oor:** Thank you, Mr. Speaker, Sir. I want to take this opportunity to than the Committee on Appointment for the work well done. I want to ask Members of this House to work as a team because if are not together then we will be having a lot of gossips which will not really help us given that we want this County to grow and be better economically. I would also wish to tell the Members who spoke about the leadership that we are here and very capable and more so ready for anything that may be brought our way.

**Hon. Olasi:** Hon. Speaker....

*(Laughter)*

**Hon. Speaker:** Hon. Olasi I know you are behind in line, Hon. Oor address through the chair. Do not address the Members directly. You are out of Order!

**Hon. Oor:** Thank you, Mr. Speaker, Sir, I apologies.

*(Laughter)*

That's why I am saying that with your leadership including chief whip and I we have done much and have not heard any issues so far. Let me support Jaoko Oburu because he did not mention Odinga's family when he was applying for the job, so God bless everybody.

**Hon. Speaker:** Hon. Members, if there are no contributors the Mover reply.

**Hon. Madialo:** Mr. Speaker, Sir, I am lucky Hon. Oriaro is not here to call your attention on anything. I wish to thank the Members who have contributed, and I have not heard anything to oppose. But give me a minute to say this so that we don't have much to say about the MPs.

They have a reason to do what they are doing, you know that the Speaker, chief whip, Mover and Madam Adida, this is our 6<sup>th</sup> year experience on vetting nominees. So all this MPs from here have never vetted anybody, and therefore we are a head of them in terms of experience, and that's why we understand this things.

*(Applause)*

Hon. Shale is right that devolution was born in Bondo but, the conception happened somewhere in Alego. I have heard contributions that the Committee bent laws in respect of the other 4. I am just wandering which one of the 4 was favored by bending laws. Going forward I would encourage us that if we think that persons should not be approved because the law is bent. Rise and contribute while we are on the floor that I oppose the approval because you are bending laws.

I would also wish to enlighten us on what Hon. Abigael said "she is gone." The Member said that who sneaked the word not CV! Allow me to explain that if you look at we required we list those requirements including the CV. But, you know a CV is a document and that's why we say other documents but not a CV because a CV is required independent of other documents. In the first vetting people thought that by giving a CV you have demonstrated that you have a

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certificate or that you have experience, and we made it easier to understand what document they were supposed to bring other than submitting the CV.

Let me correct this notion; Hon. Adala, the sitting Speaker is a lawyer, and it's not one lawyer, they are two, so next time when you address us remember that. I wish to sit down by saying that I appreciate that today's appreciation of the work that has been going on has been at a higher level, and arguments have been constructive.

Thank you so much Hon. Members for being constructive in your argument, and I would urge you as I sit down to take queue Hon. Nick Ochola, that you take queue even as the majority leader admits that when advisory comes from this side it is not in bad faith. Perhaps if those advisory had been taken as of good faith at that time in October, there wouldn't be a situation today because what is supposed to be done would have been done right, and we get over with. I wish again to urge Members that when you are voting remember us. Vote yes.

*(Question put and agreed to*

**MOTION**  
**ADJOURNMENT**

**Hon. Speaker:** Members there being no other business this House stands adjourned until next week Tuesday, 20<sup>th</sup> February, 2018 at 2.30 p.m.

The House rose at 4.58 p.m.