

Thursday, 13<sup>th</sup> June, 2019 COUNTY ASSEMBLY OF SIAYA

# REPUBLIC OF KENYA

## SIAYA COUNTY ASSEMBLY

### THE HANSARD

#### COMMITTEE OF POWERS AND PRIVILEGES MEETING WITH PETITIONERS FROM SOUTH EAST ALEGO WARD

Thursday, 13<sup>th</sup> June, 2019

The committee met at Boardroom 3, Assembly buildings at 9.30 a.m.

*(Hon. George Okode in the Chair)*

The committee members were:

- |                              |                  |
|------------------------------|------------------|
| 1. Hon. George Okode         | Chairperson      |
| 2. Hon. Carren Ayika         | Vice chairperson |
| 3. Hon. Peter Odero Oor      | Member           |
| 4. Hon. Samwel Olasi         | member           |
| 5. Hon. Linda Juma           | Member           |
| 6. Hon. Samwel Siguru        | Member           |
| 7. Hon. Andrew Omwende       | Member           |
| 8. Hon. Edwin Otieno         | Member           |
| 9. Hon. Bernard Adala        | Member           |
| 10. Hon. Agnes Awita         | Member           |
| 11. Hon. Irene Shirly Oyuago | Member           |

In attendance;

Committee secretariat:

- |                     |                   |
|---------------------|-------------------|
| 1. Salome Sijenyi   | committee clerk   |
| 2. Charles Ochieng' | Member            |
| 3. Roy Paul Okello  | Audio Technician  |
| 4. Kennedy Opiyo    | Sergeant- at-Arms |

---

***Disclaimer:*** The electronic version of the official Hansard report is for information purposes Only. A certified version of this report can be obtained from the Hansard Editor.

Thursday, 13<sup>th</sup> June, 2019 COUNTY ASSEMBLY OF SIAYA

Petitioners:

1. Shadrack Onung'a Sewe
2. Michael Odiang'a Onyuowre
3. Nicholas Rajula
4. Sylvester Nandi
5. Francis Achiela Owino

### PRAYER

**Hon. Okode:** Feel most welcome, the Petitioners. This is the Committee of Powers and Privileges of the County Assembly of Siaya. We will do a quick round of introduction and we will also invite you to also introduce yourselves.

*(The Members, Petitioners and the Secretariat introduced themselves)*

**Hon. Okode:** The reason we are here, is; first of all I want to just walk you through the mandate of the Committee and the enabling legislations, then I will get back to you the petitioners.

The Powers and Privileges Committee is a Committee established by an Act of Parliament. That Committee has the following mandates...

I am being informed that another Petitioner has arrived, tell us your name?

*(Francis Achiela Owino introduced himself.)*

**Hon. Okode:** Feel welcome; I want you to feel welcome. You are protected by the law, and your actions are within the law. I want to bring you up to speed with the mandate of the Committee. I told you the Powers and Privileges Committee is established by the Powers and the Privileges Act of 2017, and each County Assembly has such a committee. The Speaker is the Chairperson of the Committee and the functions of the committee are:

1. To inquire into the conduct of a Member whose conduct is alleged to constitute a breach of privilege and the committee shall either on its own Motion or as a result of complaint made by any Member inquire into the conduct of the Member whose conduct is alleged to constitute breach of privilege in terms of section 16 and report to the House.
2. Each County Assembly shall within its Standing Orders consider a report and recommendation there upon, and may take such action against the Member concerned as may be appropriate. That is the mandate of the Committee.

I also want to take you through the legislative framework for the petitions, so that we are on the same page.

The right to petition is under Article 37 which reads that;

---

**Disclaimer:** *The electronic version of the official Hansard report is for information purposes Only. A certified version of this report can be obtained from the Hansard Editor.*

Thursday, 13<sup>th</sup> June, 2019 COUNTY ASSEMBLY OF SIAYA

*Every person has the right to peacefully, unarmed to assemble, demonstrate, and to present Petitions to Public Authorities.* Based on that you have the right to petition the County Assembly.

Country Government Act under Section 15, Right to Petition the Assembly says; *A person has a right to petition the County Assembly to consider any matter within its authority including enacting, amending or repealing any of its legislations.* So you have a right as a citizen to do that.

Then I want to take you through the Leadership and Integrity Act, Section 41; Launching complaints and investigations. It reads:

*A person, who alleges that a State Officer has committed a breach of code, may launch a complaint with the relevant public entity and the public entity shall register and inquire into the complaint.,* which you launched, and we registered and we are inquiring into it. *Public entity may authorize any of its officers to inquire into the complaint on its behalf, and determine whether the State Officer has contravened the law.* A State officer is an elected Member, like the case we have of an MCA.

*The Officer being investigated under this Section shall be informed by the investigating authority of the complaint made against the officer, and shall be given a reasonable opportunity to make a representation relating to the issue before the investigation is complete.*

*Person who has launched any complaint against the State Officer shall be entitled to be informed of any action taken or to be taken and in respect of the complaint and shall be accorded a hearing.*

I want you to listen to that carefully because it is your basis of being here, that we will inform you as Petitioners, who have launched a complaint against a State Officer of the action we intend to take, or that we are taking and we shall accord you a hearing. So we have called you here to afford you a hearing, and inform you of the action we intend to take.

Subject to the petition and any enforcement of the code made under this Act; A State Officer may be suspended from office pending investigations and determination allegations made against the state officer where such suspension is considered necessary.

So we want to inform you that the Member was suspended from the County Assembly Service, so that we conclude the investigation. That is for your information. Now, having taken you through that, as the Chair, I want to share with you that, once we receive the petition, at that particular time we were also discussing another matter of breach of privilege, then we committed the matter to a relevant County Assembly Committee, and we wrote letters to you the Petitioners to be able to come. Do you have a copy of the letters?

The other letter we wrote is to the Member, so that he could also come and explain himself, then again we invited you for a hearing, and also so that you know what we are doing.

Thursday, 13<sup>th</sup> June, 2019 COUNTY ASSEMBLY OF SIAYA

We are hoping that when we get your views and also review the documents that we have, in respect to his attendance of sittings and also get his defense then we would also be able to conclude the matter in the Assembly for consideration.

So the letter that was written to you all, reads:

Invitation to Powers and Privileges Committee to justify nonattendance to Plenary Sittings. On 7<sup>th</sup> of May, the County Assembly received your Petitions signed by yourself to Hon. Joseph Mboha liable for vacation of office under Article 194 (1) of the Constitution of Kenya 2010. The Committee on Powers and Privileges has commenced inquiring into the matter and is hereby inviting you to its sitting on the 13<sup>th</sup> June, 2019 at 9 a.m. in board room 3 to listen further on the issue you raised in the petition.

We talked about Article 194 (1) b. For the avoidance of doubt I will read and it says vacation of office of Member of County Assembly; the office of Member of County Assembly becomes vacant if (a) the Member dies, (b) if the Member is absent from 8 sittings of the Assembly without permission in writing from the Speaker of the County Assembly and is unable to offer satisfactory explanation for the absence. This is the letter you received?

Having walked you through that I also want to bring it to your attention that normally we process petitions within 90days that is 3months, is it 60 or 90days? We will confirm but now this one because we wanted to finish with it quickly we resorted to use the Powers and Privileges Act which usually should give its Report within 14days.

We hoped to communicate with you within 14days if you are unable for one reason or the other then we will explain to you the cause of the delay. Straight now to the petition; I want to read out the petition then I will ask you if you are familiar with it then I will give you time to talk, give your submissions and will ask Members also to engage you.

This is a petition to find Hon. Joseph Mboha liable for vacation of office under Article 194 (1b) of the Constitution of Kenya, it's addressed to the Speaker of the County Assembly of Siaya. We the undersigned citizens of Kenya residing and voting in South East Alego Ward represented at the County Assembly of Siaya by one Hon. Joseph Mboha on behalf of the residents of South East Alego draw the attention of the County Assembly to the following;

That we elected Hon. Mboha to represent us to the County Assembly and perform his duties in line with all provisions governing Members of the County Assembly and County Assembly Standing Orders. That representing us in attending County Assembly plenary sessions and defending our interest on the Floor on a case by case basis; that it has come to our notice that Hon. Mboha is a frequent absentee during County Assembly plenary sittings as evidenced in the following dates when he didn't attend.

The dates are there; that this is just two months analysis and this tendency is detrimental to our welfare as residents of South East Alego due to the fact that we are not adequately represented. That we have made efforts to reach Hon. Mboha to implore upon him to be religiously attending the sessions to no avail. That Hon. Mboha being a legislature is fully aware of what the law expects of him as far as attending plenary sessions are concerned. The benefits of doing so and the consequences of being habitual absentee are the issues raised in respect of which the petition is made are not pending in any court of law.

---

**Disclaimer:** *The electronic version of the official Hansard report is for information purposes Only. A certified version of this report can be obtained from the Hansard Editor.*

Thursday, 13<sup>th</sup> June, 2019 COUNTY ASSEMBLY OF SIAYA

Therefore our humble prayers that the Assembly invokes Article 194 (1) b of the Constitution of Kenya 2010 which states that the office of Member of the County Assembly becomes vacant if (d) the Member is absent from 8 sittings of the County Assembly without permission in writing of the Speaker and is unable to offer satisfactory explanation for the absence and investigate if there are permissions granted or satisfactory reasons given thereof and if not declare the South East Alego seat vacant.

We the undersigned are registered voters of South East Alego; Sylvester Odero, Michael Odianga, Shadrack Sewe, Nicholas Owino and Francis Owino. I will want each one of you to agree to this if this Petition is true to your knowledge and if you associate with it, so you will tell us. I will start by asking Sylvester Odero Owuor the Petition I have just read, is it true to your knowledge and prayers?

**Mr. Sylvester Odero Owuor:** Yes, it is true to my knowledge and prayers.

**Hon. Okode:** Michael Odianga!

**Mr. Michael Odianga:** Yes, Chair it is true to my knowledge.

**Hon. Okode:** Shadrack Sewe!

**Mr. Shadrack Sewe:** Yeah, It is true.

**Hon. Okode:** Nicholas Rajula!

**Mr. Nicholas Rajula:** Yes, it is true and it is within my knowledge.

**Hon. Okode:** Francis Owino!

**Mr. Francis Owino:** Yes, It's true.

**Hon. Okode:** Any other thing you may want the Committee to know about the Petition before I give Members a chance to maybe engage?

**Nicholas Rajula:** We live in Siaya and we are privy to information that is in the media that there was a court that stopped you from going ahead with this matter. I don't know whether we are facing the same problem discussing a matter in court or this is a separate matter? Please can you clarify, Sir.

**Hon. Okode:** That's a good question; I wanted to share with you but as we look for the document in the 2<sup>nd</sup> May, 2019 the County Assembly of Siaya made decisions or passed a Motion which was in effect a breach of privilege where a Member demeaned the integrity of the Assembly through misconduct in another forum. The court ordered without looking at the merits and demerits of that investigation which was ongoing that we penned we stay the resolutions of the 2<sup>nd</sup> of May 2019.

By the 2<sup>nd</sup> May your Petition had not come. Your Petition came on 7<sup>th</sup> of May so these are two different things. Even our Motion had also wanted to investigate attendance that was by way of Motion by the House but yours came on the 7<sup>th</sup> May which was now by way of Petition and we treated this as a matter that the court staged then we would be doing the Petitioners an injustice because they will ask us to prove to them that the matter is subject of the court injunction that is how we are separating the two.

**A petitioner:** Still on the same matter the Petition no.19 of 2019 that was filed by Hon. Mboha in the High Court of Kenya; I don't know if the Committee here are having any documents because of prayers there in because that is a matter that we are now trying to look at

---

**Disclaimer:** *The electronic version of the official Hansard report is for information purposes Only. A certified version of this report can be obtained from the Hansard Editor.*

Thursday, 13<sup>th</sup> June, 2019 COUNTY ASSEMBLY OF SIAYA

before so that we don't have a conflict that we are having a matter that is pending before this Committee and a Similar matter pending in Court.

One of the prayers some of us have been trying to pursue the matter with the Court apparently even right now that's one of the reasons I was late because I wanted to look at it so that we have those documents before the discussion. Because some of the things that I listed in the affidavit that Hon. Mboha is presenting are touching on the same subject matter that is before this Committee.

**Hon. Okode:** Petitioners we are serving you and we are serving the petition that you brought on the 7<sup>th</sup>. If you feel you don't want it to be pursued any further you simply tell us we withdraw the Petition but you don't engaged us on why we admitted a matter. If it is in Court you are not in contempt so if any of you or all of you feel that this matter is before the Court then it is simple; you simply say for me I withdraw my signature and then we proceed.

It is for you that we are here. The Powers and Privileges Committee on its own Motion can initiate this action. Before we proceed, I want to know; do you want us to proceed or not? It's that simple and if you don't want us to proceed then we leave it.

**Mr. Sylvester Owuor:** Mr. Chairman, Sir you have made it very clear that the matter that we are handling right now is totally different from what is in Court. Number one based on the date; the issue that is in the Court was here on the 2<sup>nd</sup>.

Now what we are discussing came 5days later. You made a peer Observation and I support it. I would like this Petition to go through because we really stated strong grounds on why we want this Petition so if there is anybody amongst us who has gone through the Petition one more time and discovered that we made a mistake I think that person should be given opportunity to withdraw his signature right away if that's possible but as Sylvester I want this issue to continue up to the end.

**A petitioner:** Mr. Chairman, Sir; I think it is within your powers to advise and I am very sure that you cannot go on with what you know is a process in futility. However, I confirm that I signed this Petition I am very much willing on behalf of South East Alego residents to come out from this meeting with a Report to them. Otherwise, I support it; one more thing I would only ask; was the Member privileged to attend and defend because as politicians they may say our allegations were wrong?

**Hon. Okode:** Yes, the Member was invited but we didn't want that he sits here with you at the same time. That is not how it is done; you present your case and he will defend himself. Whatever decisions we make we communicate to you that based on his presentations we were satisfied by the explanation he gave or based on his presentation.

We were not satisfied therefore we are proceeding. Even if today we receive a Court order on this one also that even on this we want you to stop; we will just stop and inform you that the Court has said we stop in the meantime. That is it, yes!

**A petitioner:** Personally, I think we need to go to the point; I am here because I am supporting my Petition. It is my feeling that I was sober when I was signing this Petition and I am ready to be engaged with your competent Committee that we proceed with this matter. You

Thursday, 13<sup>th</sup> June, 2019 COUNTY ASSEMBLY OF SIAYA

have done it well within 14days we can get results and I am ready for that and I personally feel we need to move.

**Francis Owino:** Mr. Chairman; we came here as Petitioners and I am ready to proceed with the Petition. I want to thank the Chair and on this subject matter one of the things that we alluded to that we were aware of is that there are no other institutions or bodies that were handling this particular matter but since I have doubts I want to withdraw my signature from this Petition and allow my colleagues to proceed if they so wish.

**Hon. Okode:** What we will want you to do; first of all give everybody oath then you will write a withdrawal letter and you sign and you leave it with us then at that juncture now you will withdraw from the Committee and we proceed with those who are willing.

**Hon Oyuago:** I would wish the Member who is withdrawing from the Petition to cite reasons he is withdrawing from the Petition. Whether it's because he feels that the matter is before the Court or anything else. It should be clear.

**Hon. Okode:** Read the oath.

**Mr. Francis Owino:** I Francis Owino, do solemnly swear that the information and evidence that I have and shall present before the Committee on Powers and Privileges in respect with the matter before the Committee shall be truth, the whole truth and nothing but the truth so help me God.

**Shadrack Sewe:** I Shadrack Sewe, do solemnly swear that the information and evidence that I have and shall present before the Committee on Powers and Privileges in respect with the matter before the Committee shall be truth, the whole truth and nothing but the truth so help me God.

**Michael Odianga:** I Michael Odianga, do solemnly swear that the information and evidence that I have and shall present before the Committee on Powers and Privileges in respect with the matter before the Committee shall be truth, the whole truth and nothing but the truth so help me God.

**Nicholas Rajula:** I Nicholas Rajula, do solemnly swear that the information and evidence that I have and shall present before the Committee on Powers and Privileges in respect with the matter before the Committee shall be truth, the whole truth and nothing but the truth so help me God.

**Sylvester Owuor:** I Sylvester Owuor, do solemnly swear that the information and evidence that I have and shall present before the Committee on Powers and Privileges in respect with the matter before the Committee shall be truth, the whole truth and nothing but the truth so help me God.

**Hon. Okode:** To who is withdrawing, may I ask from what I picked it's like the reason you are withdrawing is because you are convinced this matter is before the Court. If I may ask you in the event the Court on the 17<sup>th</sup> June, 2019 gives the Assembly the authority to proceed, would you want the Assembly to invite you or you are done with this?

**Francis Owino:** In that circumstance then I will consider that the Assembly will---. Just as I have said here before; I was trying to look at the final details but the Judge has told me that

Thursday, 13<sup>th</sup> June, 2019 COUNTY ASSEMBLY OF SIAYA

they have not been printed. In that respect I will still be joining the Committee to pursue the matter.

**Hon. Okode:** Do it in writing that I am withdrawing my Membership in the Petition because I am convinced the matter is still in Court but if the Court gives authority to proceed then you consider inviting me. You can do that letter out there and you sign it, give your contact and I.D. number. We can proceed.

I want to warn Members; all of us who are here that it is an offence to take photos of proceedings of the House other than witnesses or Members and there are penalties to that effect. I also want to warn Members that leaking out any Committee proceedings before deliberations are made and taken to the County Assembly is an offence and a serious one which will also be met with equal force and we will not take it lightly both to the Petitioners and to the Members.

Members, do you have concerns for them? If we don't have we can let them go. To the Petitioners; do you have anything other than what you have said?

**Hon. Oyuago:** Is it in order for you to guide the Petitioners on how we are going to go through this thing? Because they might be convinced that it's the end of it.

**Hon. Okode:** That I can do, I think that's good. Dear Petitioners; it is good that you need to know what we are doing. We have listened to your presentations, you have identified with the Petition, we have taken you through legislative architecture of your intervention and also we want to share with you the process.

Once we have listened to you we will also listen to the Member then we will review our documents in the Assembly because we are talking about attendance. You will see from our attendance; has there been compliance as required by the law or not then we will write a Report. That Report will be taken to the Assembly; we had envisaged 14days within which to do that.

Once we have debated and a decision is made then a communication will be given to you. If it's a decision that requires forwarding to the IEBC it will also be communicated to you in the event there is vacation of office. If we take a decision that is not in that line then we will communicate to you.

Why I keep saying this is different from the other case is that on the other case Members for example cannot hold the Speaker liable for not proceeding with the debate on that matter. But on this one if I kept quiet then you can again take me to Court and ask me why we have not acted. If there is a Court intervention between now and the remaining days then we will again communicate to you because the Courts are open. Somebody can go to Court and still say that even this matter we want it injunctioned.

What I want you to know as Petitioners is that; that wasn't a ruling and that is where somebody said I am being targeted and therefore can the process stop. Then the Court said; as we look at your presentation and the presentation of the Assembly let us wait. It simply pauses, it is different from a ruling that the Court makes.

On the 17<sup>th</sup> June we expect that the Court will make a ruling on that other one not this one. If we receive new information or for one practical reason or the other we are unable to conclude then we will communicate to you; maybe we will write a Report to the Assembly that we only listened to the Petitioners and the Member didn't come or the Member came but we are

---

**Disclaimer:** *The electronic version of the official Hansard report is for information purposes Only. A certified version of this report can be obtained from the Hansard Editor.*



Thursday, 13<sup>th</sup> June, 2019 COUNTY ASSEMBLY OF SIAYA

still looking at our register so we are not able to finish within 14days, give us additional time. That is how we want to process it.

**Hon. Oyuago:** Thank you, Mr. Speaker. My question to the petitioner is that there is a rumor outside there that the petitioner was influenced to bring in the petition. So I would ask each and every petitioner how they got the information and how they came up with the petition.

**Hon. Okode:** Whether or not they were influenced?

**Hon. Oyuago:** Yes, for the benefit of people of Siaya, the Committee members and the people of South East Alego.

**A petitioner:** Thank you very much, Hon. Member for that question. Indeed, this issue has generated a lot of heat in Siaya, and being the characteristic of politics, a lot of rumors have also germinated from the same. I would like to say that as the five petitioners and right now the four remaining petitioners we were wondering why we are not getting effective services from our MCA.

So this led us to start being attentive on how our MCA handles the business that we elected him to do. Indeed, we came up or found out that he has been missing this number of days, and as the Hon. Speaker has said that this is a process that you are going to find out whether it is true or not that he missed the sessions.

To put that into rest I would like to say that what informed this petition is not beyond what we have indicated, we are just voters who would like our people to get good services. So as politicians or as those people who are playing politics outside there it is my prayer that undue influence won't get into these.

That kind of game we play it outside there, but here I am ready as an individual to stick to what I penned my signature on even though the rumors that you said Hon. Member, they are very painful. This matter is also taking some dimensions that in my whole life I didn't know such a simple issue of accountability could take.

As a person and as far as I am concerned, nobody influenced me and have not received any money from any individual who is a stranger to me. This is just an innocent petition based on the law so whoever feels that it is politics that we play or that it's dirty business that we are doing that is his own cup of tea. Therefore, I conclude by saying no body has influenced my decision and I mean nobody has influenced my decision! Thank you.

**A petitioner:** Nobody influenced me and I am not that kind of person who can be influenced that easily.

Secondly, I am just playing my oversight role because I do understand that MCAs or MPs have legislative, oversight and representative functions, so within my Ward, I am simply playing my oversight role. True, just as my colleague has said, it is painful.

Last Sunday, somebody came to me and asked me, "hey! Why are you here? I heard that you were given Kshs. 4 million from Parliament to share." I said, "I don't know". I have never met any Member of the committee not even the chair. So Hon. Member take it from me that it is simply passion that has pushed me to find out whether we are adequately and properly being served because previously we have suffered causality of the former MCA, Hon. Osuri and not all of us can go to Parliament.

---

**Disclaimer:** *The electronic version of the official Hansard report is for information purposes Only. A certified version of this report can be obtained from the Hansard Editor.*

Thursday, 13<sup>th</sup> June, 2019 COUNTY ASSEMBLY OF SIAYA

Yes, they say we are bitter for having lost because all of us here ran against him, but he has been a friend to us, we have been talking and we have been advising him. So before even this matter started I called him and told him, “Joseph, I hear something, can you come we talk then we advise on what to do?” So it is never malice.

When I called and he could not answer the call because I called and called and called, but he didn’t respond to the calls then I said fine, let me now proceed to look for my rights. So no malice, influence or cowardice. Thank you.

**Shadrack Sewe:** The chair and Members of Privileges and Powers committee, I want to state as follows;

- Only God knows what Shadrack Onunga sirkal can cost but not a human being. The cost of a human being can only be determined by God so to that regard I am not influenced. I am making a follow up as a member of the Ward and as a voter. First, I would like to say that Hon. Mboha is a friend, we elected him to be our servant to represent us in the Assembly and also to do oversight role.

When you go to the Ward, whenever there is a function in the Ward he has been a conspicuous absentee and you will never find him there. When shoddy work is being done in the Ward to reach him has been really a pain in the neck almost nil to slim.

- So as a Ward that has really suffered 5 years during the advent of devolution, we are trying to make a follow up of how things are being done at the Ward level. So on realizing that it was not easy to access him or that he was not even attending public participation if may be there is a Budget Committee that is coming to the Ward.

Actually we were not able to see him, which prompted us to make a follow up with the Assembly. It is never a secret when there is an Assembly, it is public and one can just go to the public gallery and easily find out not that we are being influenced or in politics.

We know how to get information. So on realizing that he was not accessible at the Ward prompted us to petition the Assembly through the Speaker so that investigations can be done because he is the prefect of Assembly and has the register of attendance and if a Member is not attending then we should be able to find out from the register.

That is why we simply indicate that investigation be done and if maybe he was absent we should be told , if he was absent with apology we should also be told and that is where we are.

- So we will not allow politics to infiltrate our Ward because we are getting disadvantaged, miss representation and we are lacking so many things. So I am a person of sound mind and therefore cannot be influenced. I am here as a petitioner and I am here to defend.

Therefore, we should get the information from the Speaker whether he has been attending and that is in the register! So that is where I am, thank you.

---

**Disclaimer:** *The electronic version of the official Hansard report is for information purposes Only. A certified version of this report can be obtained from the Hansard Editor.*

Thursday, 13<sup>th</sup> June, 2019 COUNTY ASSEMBLY OF SIAYA

**A petitioner:** Yes, Influence, rumors, politics and all those other things aside, I think the law covers him here to know how my representative is performing. I go with the adage that you are the Headmaster and I am the parent down there. My child has not been coming back home with good results and I am wondering, what is going on in that Assembly? Are there guidelines, are there policies, are there rules, is there good teaching and debates?

Now, It came to my notice through the media that he has not been attending classes, which is one of the reasons that has made me come here, and when I wrote to you that I want to come and find out whether he has been coming to class, I felt privileged to be before you to know why he has not been doing well in his class work. I want you to have on record what fellow petitioner, Mr. Shadrack has said, the additional information that he is not attending crucial meetings on the ground.

One such meeting was Budget participation at Karemo which he never attended and was nowhere to be asked any question. The second one was when we were launching Ward office at Barogongo, he never attended and we were asking where he was? so we have come to confirm if probably he was here attending Assembly session and so that is why he was not present on the ground.

So have it on record that even on the ground he is not doing very well. I know you are going to ask why we people who contested against him are the ones who petitioned. Common sense should tell you that we have people who also voted us also and we represent them whether we don't represent them in this Assembly, we do it on the ground. So you cannot expect the whole South East Alego residents to come here and I know there is a law for that, if they want to recall him on that other law, they can do that.

I want to say that I feel privileged that you are listening to us and it is not a favour that you are doing to us, you have taken your time together with your Members to perform your prime duties to listen to us. So as a parent I will agree with whatever decision you would make, but I would want to change him to another school because this school is too much for him. Thank you.

**Hon. Okode:** Yes, Hon. Adala.

**Hon. Adala:** Thank you, chair, I still link my concern to what was asked by Hon. Shirly in respect to the fact that there is a feeling that you are being used for this and as a Member of this Committee I would want to get it clear, and I don't know if his name is Shadrack or Mike, the guy in the far end.

In your submission you were saying that the basic reason you did write this document was to ascertain if Hon. Mboha has been absent from the sessions, and I also recall that you have been citing and seeing when we are having plenary. So what I find rather interesting is that when I look at this document you are specific on the dates that Hon. Mboha missed and it's something that even I who sits in the Assembly may not be aware of. Therefore, if you are this specific then it basically means you are speaking of what you know, but again you are saying that you wanted to know if at all he was there on the said dates or not.

Thursday, 13<sup>th</sup> June, 2019 COUNTY ASSEMBLY OF SIAYA

My thinking is that should it be something that you are not certain about then you would not have been specific with these dates. Thank you.

**A petitioner:** Thank you, what I said was very clear. I said that at the Ward level I am a voter and I stay at the Ward so getting the Hon. Member has been slim and again that getting information more so petitioning the office to investigate from the register if he has been attending...

**Hon. Okode:** But what the Member is asking, I get his concerns. Well even if you said that you did your own private investigations and came up with the dates, no one will crucify you, but he just wants to know how meticulous not to hold you accountable but just to know because somebody will ask, you must be so particular, how did you get these dates? Because you could have even say check on any dates or it could be exact dates just like in our Committee the letter we have written to him is not only these dates we have asked for all the dates.

It would worry you if you are here the way he is how you got the information, but even if you said you got from him no body will penalize you.

**A petitioner:** No! I did not get the dates from anybody.

**Hon. Okode:** Ok, fine. Someone seems to have a better answer!

**A petitioner:** Yes, I would like this to go on record that our Hon. Member is a perennial absentee and if we were to table all the days he has missed, people would be surprised, but the threshold is 8 days, so we decided to give him 15 days.

So what I would like to request as you have said that the next vote of call will be you going through the dates and confirming whether they are more than 8 or not. So if the threshold is above 8, then Article 194 is very clear on this. So that is what I feel about the dates.

**Hon. Okode:** But you agree it will concern someone how you got the dates? But now we pick it that you just sampled dates, but again it is for the committee to establish or confirm whether on these dates there was attendance and whether there was permission in writing.

Yes, Hon. Linda.

**Hon. Juma:** Thank you, Chair. I think most of the questions I wanted to ask have been attended to, but one has caught my eye here that in the petition there is a section that you said 'the missing of the Hon. has resulted to the people of South East Alego missing on the budgetary consideration'. So my question was, do you want to confirm to us that the year 2018/2019 South East Alego was not allocated any ward fund and are you sure that there is no project that has been done in South East Alego?

**A Petitioner:** To answer on that, what we felt as the people of South East Alego was to have adequate guidance as far as the budget process is concerned from our Hon. Member. The budget consideration that we got as the people of South East Alego, we feel that it could have been better if we had direct supervision and involvement of our Hon. Member.

Being one of the 30 wards in Siaya County it would be absurd for South East Alego not to have anything; it is not possible even if an MCA is not there. But we expect our MCA to be

---

**Disclaimer:** *The electronic version of the official Hansard report is for information purposes Only. A certified version of this report can be obtained from the Hansard Editor.*

Thursday, 13<sup>th</sup> June, 2019 COUNTY ASSEMBLY OF SIAYA

around to help us to go through the budget as our representative. So as far as the budget is concerned we did not know how to access our MCA and tell him this is what we want on the budget of South East Alego.

We cannot access him on the ground, when we come to look for him at the Assembly we cannot also get him, so one of the dates here maybe we were looking for him on the budget issue we did not find him and we also put that date here. Thank you.

**A Petitioner:** To add on that, yes we had a budget, but in the normal circumstances when you are missing something, representation becomes skewed. The budget can be there, I missed somewhere and when I come I just do something for purposes of pulling that budget. What do I do? I do it very hurriedly and I will do it in a way or replaces --- to understand.

Same with the 1920 though we do not want to bring it here, it is one ward which has always had a skewed budget, skewed work in the sense you find that, yes the budget is there, allocation has been done but they all go to one place, I am not afraid to say, his village. Even this time, although I do sympathize with parliament because our Hon. Representatives are given less money, we saw at the budget participation, some Kshs. 9.4m.

Even with the Kshs. 9.4million, before we could reject it, 60% or 50% was in his area. This has prompted a number of questions which has triggered us to lift our antenna on oversight role that what is it that is missing in South East Alego. Is it the representation, oversight or the allocation of resources? Equity must be done at the devolution point in Sub Counties and the Wards. We still continue as voters to petition, we are looking at a number of issues. Thank you very much.

**Hon. Okode:** Yes, Hon. Andrew!

**Hon. Omwende:** Chair, first and foremost, I must say that I need to thank the petitioners on one ground here. That they have decided to defend what they have petitioned to this Assembly. Sometimes it is very key because I was concluding that it was witch hunting when one decided again not to defend his petition but I have to thank the four of you because this is a matter that is so serious to us. My question is, I would like to know whether they have made other items to their MCA. What triggered you to meet together could also trigger you to meet your MCA. Did you make any attempt maybe in terms of writing to meet your MCA?

When I am concluding, when my friend was talking, can we also extend security towards them because the way he is speaking at least I was touched. This was just a very simple thing, they wanted to know how their MCA is working to them but it has developed to other security threats. We may think this matter is light but it is not that light as such. These people have not done us wrong, they are within the law and we also have to think about their security. Thank you.

**Hon. Okode:** Firstly, I want to remind Members that there is another important Committee which should be using this Committee room in the next 3 – 10 minutes, so we really need to conclude. If there is something so burning you can ask, if there isn't just going through the same things you have asked then you don't have to. But you have raised a very pertinent issue.

Thursday, 13<sup>th</sup> June, 2019 COUNTY ASSEMBLY OF SIAYA

Let me share with you the provisions on enforcement of the Act, , 27 (2a) says, a person who commits an offence and is liable to conviction or to a fine not exceeding Kshs. 200,000 or to imprisonment for a term not exceeding 6 months or both. If that person commits an offence where the person threatens, obstructs, assaults or insults a Member of staff or Member appearing before the Committee uses abusive language directed at the Member, induces another person to refrain from giving evidence or produce documents before the Committee, gives false evidence, assaults or penalizes or threatens another person or deprives that person of any benefit on account of giving or proposed evidence before the Committee.

In other words we are saying that anybody out there who attempts to threaten a person whose matter is legally before the Committee can upon conviction feel the dire consequences. But as you said, security being a private matter, if any of the petitioners feels that their lives are at risk, let them liaise with my office; I liaise with government agencies to provide you with security. Not only him even the MCA, if he feels he is threatened he can also liaise with me and we provide security including Members and members of staff. Yes, Hon. Olasi!

**Hon. Olasi:** Thank you, Chair. I am attracted to one of these prayers where the petitioners are saying, they have been missing out in budgetary considerations and other benefits. I think it was this year that we passed an Act guiding the allocations but all along we have had this gentleman's agreement where it has been Kshs. 30million per ward.

I will ask you people that have you ever attempted as the people of South East Alego to attend this forum where the membership of the ward register the interest of what they think should be done for them in a Financial Year?

The matter of missing to attend plenary, that one I think we will leave it for the records to tell us if it is true.

**Hon. Speaker:** That matter I think was addressed.

**Michael Odianga:** There is one specific one he has asked whether we do attend the public participation and present also our requirements or demands. Personally I am a Member of the 7 development committees of ---Sub Location. We did attend a function at ---where we were presenting the requirements of the people as per the Sub Locations. We did attend, none was there, and we only had the ward administrator. We went to Karemo again he was never there so he always do that we do normally present I do normally participate in all of them he has never been there, take it from me, Michael Odianga.

**Hon Olasi** I started by saying that I am sorry for coming late, I missed that part again the membership should be informed that Hon Mboha is a member of Budget and Appropriations committee of which I also belong. Sometimes we found ourselves outside our wards but that does not mean I miss the budget process and with the ward manger around I think our position can be served.

**Shadrack Sewe:** one burning issue as much as the law covers us in this attendance, do we have other laws that cover your collective responsibilities because as we talk our ward representative is always in media and public in town about him fighting corruption here and that is why he is targeted and also ill about some of us petitioners.

Thursday, 13<sup>th</sup> June, 2019 COUNTY ASSEMBLY OF SIAYA

Is there any other law that would stop him from discussing you people, the petitioners and what goes on in here because I believe he has a forum where those issues can be addressed and it is here.

**Hon Okode:** I want us to conclude now that there is nothing so burning. Let me address the issue of if anybody in here or outside feel that anyone has defamed them, talked about him or her negatively in a manner that reduces their standing in the community then you have the root to file for defamation and then you get damages that is for everybody including yourselves.

For the assembly we have our standing orders, we have code of conduct which also give duties and responsibilities to all of us where we even expect people to be factual, we expect people to observe confidentiality, we expect people to act with dignity and integrity both in private and public.

If you follow keenly the reason that a Motion was initiated by house and adopted was for the utterances which could not be justifiable and malicious and demeaning the integrity of the House. So that we have provisions with the standing orders, leadership and integrity act and also Powers and Privileges to deal with that among ourselves so that is what we are pursuing.

I think so far so good we will communicate to you, thank you for coming and some questions we have asked you. I don't want you to leave here thinking that our members are defending one of their own, they are asking questions other people are asking because if for example, they don't ask if you have been influenced? Then somebody will not know if they really care, so do not take those questions personal.

Our focus is on attendances. And we expect if there is any justifiable reasons as to why he was absent if he was, then again we will explain to you otherwise thank you so much as I have said if you feel you are under any threat, communicate to us, even you members and all of us including our staff.

The committee rose at 11.16 a.m.