



**REPUBLIC OF KENYA**



**COUNTY GOVERNMENT OF NYAMIRA  
THE COUNTY ASSEMBLY**

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**SECOND ASSEMBLY - FORTH SESSION**

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**REPORT OF THE COMMITTEE ON APPOINTMENTS ON THE VETTING OF  
NOMINEE DR. JAMES ONDICHO GESAMI TO THE POSITION OF DEPUTY  
GOVERNOR COUNTY GOVERNMENT OF NYAMIRA**

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**OFFICE OF THE CLERK**

**COUNTY ASSEMBLY OF NYAMIRA**

**JANUARY, 2021**

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## **ACRONYMS**

CDF	Constituency Development Fund
EACC	Ethics & Anti-Corruption Commission
PFMA	Public Finance Management Act
MP	Member of Parliament
IEBC	Independent Electoral and Boundaries Commission

## 1.0 PREFACE

**Mr. Speaker Sir,**

The County Assembly of Nyamira Committee on Appointments is constituted pursuant to the provisions of Standing Order No. 185 (1) and has executed its mandate in accordance with the provisions of the Standing Order 185 sub-paragraph (4), which mandates the Committee:

*To consider for approval by the County Assembly Appointments under Article 182[2] of the Constitution of Kenya (2010), as read together with Section 32D of the County government (Amendment) Act, 2020 (Vacancy in the Office of the Governor)*

**Mr. Speaker Sir,**

The following are the Members of the Committee: -

- |                         |   |             |
|-------------------------|---|-------------|
| i) Hon. Moffat Teya     | - | Chairperson |
| ii) Hon. Callen Atuya   | - | Member      |
| iii) Hon. Dennis Kebaso | - | Member      |
| iv) Hon. Alfayo Ngeresa | - | Member      |
| v) Hon. Monica Mwamba   | - | Member      |
| vi) Hon. George Mosiori | - | Member      |

## **1.1 ACKNOWLEDGEMENT**

**Mr. Speaker Sir,**

The Committee wishes to value the time and extensive effort made by all parties who volunteered information before it. In particular and with humility, the Committee wishes to express gratitude to the Members of this Honourable Committee and the Members of the County Assembly who attended the Committee Sitzings for their thoughtful input and commitment in consideration of this matter.

Further, the Committee wishes to thank the Office of the Speaker and the Clerk of the County Assembly for facilitating all actions that led to the production of this report. We particularly appreciate the technical and professional input of the secretariat.

**Mr. Speaker Sir,**

It is our humble pleasure to present this report to this Honourable House to debate on it objectively and consider approving it with or without amendments.

  
Signed.....

**HON. MOFFAT TEYA,**

**Chairperson - Committee on Appointments,**

**County Assembly of Nyamira**

**18<sup>th</sup> January, 2021**

## **1.2 FORMATION AND MANDATE OF THE COMMITTEE ON APPOINTMENTS**

**Mr. Speaker Sir,**

The Committee on Appointments is constituted and draws its mandate from the provisions of the County Assembly Standing Order No. 185 (4);

*185. (4) The Committee on Appointments shall consider, for approval by the County Assembly, appointments under Articles 179(2) (Members of County Executive Committee).*

## **1.3 LEGAL FRAMEWORK**

**Mr. Speaker Sir,**

The Committee confined vetting and approval hearings process within and under the ambit of the provisions of the Constitution of Kenya, Statute laws and Regulations, Practices and legal procedures of Assemblies *inter alia*;

The process was substantively conducted within the confines of the County Governments (Amendment) Act, 2020. Section 32D (1) (a) (b) (3) (a) (b) (4) that provides thus: - *where a vacancy arises in the office of a deputy governor as provided for under section 32C, the governor shall –*

- a) within fourteen days, nominate the deputy governor, and*
- b) with the approval of the county assembly, appoint a deputy governor*

*(3) The county assembly shall –*

*(a) consider a motion for approval for the appointment of the deputy governor, within fourteen days, and resolve whether to approve the motion; and*

*(b) be deemed to have approved the motion for the appointment of the deputy governor upon the lapse of fourteen days and having failed to make a resolution.*

*(4) A motion for the approval for appointment of a deputy governor shall be supported by a majority of the members of a county assembly.*

**Mr. Speaker Sir,**

The Constitution of Kenya, 2010 in Article 179 (2) (a) (b)

*(2) The county executive committee consists of—*

*(a) the county governor and the deputy county governor; and*

*(b) members appointed by the county governor, with the approval of the assembly, from among persons who are not members of the assembly.*

**Mr. Speaker Sir,**

In Chapter 6 of the Constitution of Kenya, 2010 - *on Leadership and Integrity*

Further, in Section 8(1) (a) of the County Governments Act, 2012

*(1) the county assembly shall —*

*(a) vet and approve nominee for appointment to county public offices as may be provided for in this Act or any other law;*

**Mr. Speaker Sir,**

As provided for in Section 14 (3) of the County Governments Act, 2012

*In considering any appointment for which approval of the county assembly is required under the Constitution, an Act of Parliament or county legislation—*

*(a) the appointment shall be considered first by a committee of the county assembly;*

*(b) the committee's recommendation shall be tabled before the county assembly for approval; and*

*(c) the proceedings of the committee and the county assembly shall be open to the public.*

**Mr. Speaker Sir,**

Cognizant of Section 32 (1) (2) (3) (4) of the County Governments Act, 2012 on the functions of the Deputy Governor –

*(1) The deputy governor shall take and subscribe to the oath or affirmation as set out in the Schedule to this Act before assuming office.*

*(2) The deputy governor shall deputize for the governor in the execution of the governor's functions.*

- (3) *The governor may assign the deputy governor any other responsibility or portfolio as a member of the county executive committee.*
- (4) *When acting in office as contemplated in Article 179 (5) of the Constitution, the deputy governor shall not exercise any powers of the governor, to nominate, appoint or dismiss, that are assigned to the governor under the Constitution or other written law.*

**Mr. Speaker Sir,**

The County Assembly of Nyamira Standing Order 42 (1) (2) (3) –

**Committal to committees**

- (1) *Upon receipt of a notification of nomination for appointment to an office as is under the Constitution or under any other legislation required to be approved by the County Assembly, the nomination shall stand committed to the relevant Sectoral Committee of the County Assembly for consideration.*
- (2) *Despite paragraph (1), appointments under Article 179(2) (b) of the Constitution shall stand committed to the Committee on Appointments*
- (3) *Before holding an approval hearing, the Committee to which proposed appointments have been referred shall notify the candidate and the public of the time and place for the holding of the approval hearing at least seven days prior to the hearing*

**Mr. Speaker Sir,**

Standing Order No.172 of the County Assembly of Nyamira Standing bestows powers and privileges of committees:

*172. Committees shall enjoy and exercise all the powers and privileges bestowed on County Assembly by the Constitution and statute, including the power to summon witnesses, receive evidence and to request for and receive papers and documents from the Government and the public.*



**Mr. Speaker Sir,**

The Committee strictly adhered to the procedures provided for in Section 4, 5(1), 6(1) (2) (3) (a) (b) (4) (5), 7(1) (2) (3) (4) (5) (6) (7) (8) (9) (10) (11), 8 (a) (b) (c), 9 (1) (2), 10 (1) (2), 11 (1) (2) of the Public Appointments (County Assemblies Approval) Act, 2017 (*Annex I*).

## 2.0 INTRODUCTION

### 2.1 Notification by H.E., the Governor of the nominee to the position of Deputy Governor, County Government of Nyamira

**Mr. Speaker Sir,**

Pursuant to Article 182(2) of the Constitution of Kenya, 2010, Section 32D (1) of the County Governments (Amendment) Act, 2020 and Section 6 (1) of the Public Appointments (County Assemblies) Approval Act, 2017, H.E., the Governor forwarded to the Clerk of the County Assembly of Nyamira, the name of the nominee vide the letter dated 6<sup>th</sup> January, 2021 (*Annex 2*) for approval by the County Assembly and subsequent appointment as Deputy Governor, County Government of Nyamira as hereunder.

NAME	I.D NUMBER	POSITION
Dr. James Ondicho Gesami	4829570	Deputy Governor

Subsequently, the **Honourable Speaker**, on the Thursday of 7<sup>th</sup> January, 2021 at 1245 hours caused the message from H. E., the Governor containing the name of nominee to be transmitted to every Member. On 12<sup>th</sup> January, 2021 during the morning session, the Speaker in his Communication from the Chair according to Standing Order No. 39 of the County Assembly of Nyamira. Thus, the Message stood committed to the Committee on Appointments (*Annex 3*).

Further, the **Honourable Speaker**, directed that the Committee deliberates on the nominee and table its report to the Honourable House within the legal timelines.

The Committee held its sittings on Thursday 7<sup>th</sup> January, 2021 and Tuesday 12<sup>th</sup> January, 2021 to prepare for the vetting exercise.

### 2.2 Notification to the Nominee and Members of the Public

**Mr. Speaker Sir,**

On 8<sup>th</sup> January, 2021 the Clerk of County Assembly of Nyamira, pursuant to Section 32 D (1) (b) County Governments (Amendment) Act, 2020, Section 6 (2), 7 (4) of the Public Appointments (County Assemblies Approval) Act, 2017, notified the nominee and members of the public of the time and place for holding of the approval hearings.

The Clerk further notified the Public of Section 7 (10) of the said Act which provides that:

*Any person may, prior to the approval hearing, and by written statement on oath, provide the Clerk with evidence contesting the suitability of a candidate to hold the office to which the candidate has been nominated (Annex 4).*

Vide a letter Ref: CAN/CA/007/01/2021 (*Annex 5*) notified the nominee, Dr. James Ondicho Gesami to appear before the Committee on Appointments on 15<sup>th</sup> January, 2021 for Vetting and approval hearing at the County Assembly Boardroom.

**Mr. Speaker Sir,**

The Committee received two Petitions as hereunder:

1. Petition Number E002 of 2021 in High Court at Kisumu dated 13<sup>th</sup> January, 2021(*Annex 6*).
2. Petition by Carolyne Shiyenzi dated 14<sup>th</sup> January, 2021 (*Annex 7*).

**Mr. Speaker Sir,**

The Committee complied with the constitutional requirements, legal provisions and established procedures throughout the vetting process. The committee facilitated public participation and openness in all vetting proceedings. An advertisement inviting the public to submit memoranda and petitions thereto was placed in the mainstream media.

**Mr. Speaker Sir,**

It is against this background that the Committee produced this report.

### **3.0 THE VETTING PROCESS**

**Mr. Speaker Sir,**

The vetting exercise was conducted on Friday the 15<sup>th</sup> January, 2021 under the purview of the Constitution of Kenya 2010, the County Governments Act, 2012, the County Governments (Amendment) Act, 2020, Public Appointments (County Assemblies) Approval Act, 2017, and the County Assembly of Nyamira Standing Orders among other enabling laws.

#### **3.1 Vetting Guidelines**

**Mr. Speaker Sir,**

The Select Committee on Appointments examined the nominee following the guidelines below as per Section 7(8), (9) and Section 8 of the Public Appointments (County Assemblies Approval) Act, 2017:

Section 7-

*(8) An approval hearing shall focus on a candidate's academic credentials, professional training and experience, personal integrity and background.*

*(9) The criteria specified in the First Schedule and the assessment form specified in the Second Schedule shall be used by a committee during an approval hearing for the purposes of vetting a candidate.*

Section 9-

*(1) Unless otherwise provided in any law, a committee shall consider a nomination and table its report in the County Assembly for debate and decision within twenty-one sitting days from the date on which the committee first sits to consider the nomination.*

*(2) At the conclusion of an approval hearing, the committee shall prepare its report on the suitability of the candidate to be appointed to the office to which the candidate has been nominated and shall include in the report such recommendations as the Committee may consider necessary, including a recommendation on whether or not the nominee should be approved for appointment to public office.*

#### **3.2 Committee Preliminary Observations**

**Mr. Speaker Sir,**

Before commencement of the vetting process, the Committee made the following preliminary observations and findings.

### 3.2.1 Statutory Requirements for the Nominee

**Mr. Speaker Sir,**

As provided for under Article 180 (2) and 193 of the Constitution of Kenya, 2010 read together with Section 7 (8) (9) and Section 8 of the Public Appointments (County Assemblies Approval) Act, 2017 and Independent Electoral and Boundaries Commission (IEBC) requirements for nomination to the position of deputy governor:

1. National Identification (ID) Card. The nominee presented an original ID card on the date of approval hearing.
2. Academic qualifications. The nominee is academically qualified for the position he was nominated to.
3. Kenya Revenue Authority (KRA) tax compliance certificate. The nominee produced a valid tax compliance certificate.
4. Higher Education Loans Board (HELB) clearance certificate. The nominee did not produce a clearance certificate from HELB. Instead he produced a letter dated 30<sup>th</sup> March, 2017 indicating that the certificate was lost/misplaced (*Annex 8*).
5. Credit Reference Bureau (CRB) certificate. The nominee did not produce this certificate. Therefore, the Committee was unable to ascertain his credit status.
6. National Police Service - Certificate of Good Conduct. The nominee **did NOT** produce a current clearance certificate. Instead, he presented to the Committee **an expired** certificate dated 20<sup>th</sup> April, 2017 whose remarks under offence(s) were that he had **fraudulently acquired public property and that the trial was still outstanding.**
7. Party Nomination certificate. The nominee was unable to produce a certificate from the Orange Democratic Party (ODM) that he alleged to have nominated him.

### 3.2.2 Petition by Mr. Vincent Marita Omao

**Mr. Speaker Sir,**

In this case, a Petition was filed in court (Petition No. E002 of 2021 at the High Court of Kenya in Kisumu – Employment and Labour Relations Court) on the grounds that the nominee misappropriated Constituency Development Fund (CDF) in West Mugirango while serving as the Member of Parliament (MP) thus touching on his integrity under Chapter Six of the Constitution of Kenya and other Statute legal provisions.

**Mr. Speaker Sir,**

In the said Petition, the Court issued Orders that:

- 1. The application is certified as urgent and fixed for inter parties hearing in Kisumu on 20<sup>th</sup> January, 2021.*
- 2. Respondents are hereby restrained from presenting the name of the interested Party to the 3<sup>rd</sup> respondent for vetting pending inter-parties hearing of this Application.*

#### **Observations by the Committee on the Petition**

**Mr. Speaker Sir,**

The Committee observed that Mr. Vincent Omao, the Petitioner, had withdrawn the mentioned Petition vide Notice of Withdrawal of Petition duly filed in Court dated 14<sup>th</sup> January 2021 and served upon the County Assembly of Nyamira, Office of the Speaker on 14<sup>th</sup> January 2021 at 5:00 p.m.

#### **3.2.3 Petition by Carolyn Shiyenzi Imbali**

**Mr. Speaker Sir,**

This Petition filed with the County Assembly of Nyamira, the Petitioner brought out the issues raised in High Court Nairobi Constitutional & Judicial Review Division Miscellaneous Civil Application No. 264 of 2010 and High Court Nairobi Petition No. 376 of 2011 *inter alia*

- a) Certiorari calling into this honorable Court for purposes of quashing the decision of the respondent vide the member of parliament West Mugirango Constituency, Hon. Dr. James Ondicho Gesami (referred to as the patron) who is the agent of the respondent, in complete disregard of the provisions of the Constituencies Development Fund Act.*
- b) Prohibition restraining the mismanagement of the West Mugirango Constituency Development Fund by Respondent by itself or its agents or otherwise managing the fund in any way which is contrary to the provisions of the Constituency Development Fund Act (2003).*
- c) Prohibition prohibiting the respondent from disbursing to the West Mugirango Development the tranche of the funds for the 2009/2010 financial year.*
- d) mandamus (in the alternative to prayer (a) hereinabove compelling the respondent to set in motion a process of reconstituting the West Mugirango Constituency Development Committee in accordance with the provisions of the Constituencies Development Fund Act (2003)*
- e) Mandamus compelling the respondent to cause a newly constituted West Mugirango Constituency Development Committee to convene constituency development meetings in each*

*location within the constituency to consult the constituents on development projects to be funded.*

- f) Mandamus compelling the respondent to restore funds withdrawn from West Mugirango Constituency Development fund account at the instance of the Patron, Hon. Dr. James Ondicho Gesami, for personal use contrary to the provisions of the Constituencies Development Fund Act.*

## Observations by the Committee on the petition

From the foregoing, the Committee observed that the issues raised in this Petition were the same issues raised in High Court Nairobi Constitutional & Judicial Review Division Miscellaneous Civil Application No. 264 of 2010 and High Court Nairobi Petition No. 376 of 2011, which cases were fully settled by the verdict of the Court in Criminal Cases No. 354 of 2011 and number 355 of 2011 in Resident Magistrate Court Kisumu.

### 2.3.0 Other Specific Observations

**Mr. Speaker Sir,**

1. The nominee hails from Bogichora Ward, Nyamira South Sub-county and is a family man aged 68 years.

Further, **Honourable Speaker**, he holds a Master of Medicine (in Medicine) (1990), Bachelor of Medicine and Bachelor of Surgery (MB.ChB) (1983), from the University of Nairobi. He is a registered member of the Medical Practitioners and Dentist Board - Registration Number 2332 dated 28<sup>th</sup> January, 1985.

The Nominee has a cumulative work experience of 37 years having worked in Government of Kenya in different capacities, including senior positions up to the portfolio of Assistant Minister in the Ministry of Public Health and Sanitation, Member of Parliament for West Mugirango, Assistant Director of Medical Services, Provincial Medical Officer, Medical Superintendent, Hospital Chief Administrator and Medical Officer 1.

2. **Interest in and knowledge relating to specific position.**

Despite the fact that the nominee had interest in the position of the Deputy Governor, he exhibited **very little knowledge and understanding** of the functions of the said office and the core roles of the executive arm of the County Government. He managed to state only one role of the executive which is implementation of county programmes.

3. **Integrity.**

The nominee had cases in court touching on misappropriation of public funds hence bringing his integrity into question.



#### **4. Communication Skills.**

The nominee was some worth eloquent and coherent in his communication.

5. The nominee exhibited some characteristics of partiality in decision making having gone on record of acknowledging to have favoured his clansmen stating that charity begins at home. If he will be discriminatory as the deputy governor, residents of Nyamira who are not related to him will be sidelined in service delivery.
6. The Nominee admitted that one of his weaknesses was temperamental. The committee noted if given an opportunity to serve as a Deputy Governor, this will hinder his ability in executing the roles of his office.
7. The Committee noted that his ability is wanting and he was less energetic because of his age as those who accompanied him sometimes tried to answer some questions on his behalf.
8. The nominee scored an average of 46.17% from the assessment made by the Committee on Appointments as per Schedule 2 criteria set out in the Public Appointments (County Assemblies Approval) Act, 2017.

### **3.0 RECOMMENDATION OF THE COMMITTEE**



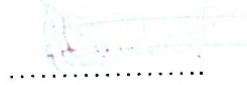



**Mr. Speaker Sir,**

Having considered the Constitutional, statutory requirements, academic credentials, abilities, experience, personal integrity, background, qualities, among others, of the nominee pursuant to chapter six and Article 180 and 193 of the Constitution of Kenya 2010, Section 7 and 8 of the Public Appointments (County Assembly Approval) Act No. 5 of 2017, Section 25, 26, 27 of the Elections Act, 2011 and the independent, Electoral and Boundaries Commission guidelines, the Committee recommends that **NOMINEE TO THE POSITION OF DEPUTY GOVERNOR COUNTY GOVERNMENT OF NYAMIRA, DR. JAMES ONDICHO GESAMI IS REJECTED.**

## 5.0 CONFIRMATION

Mr. Speakers Sir,

We the Members of the Committee on Appointments affix our signatures to prove the authenticity and accuracy of this report.

NAME		DESIGNATION	SIGNATURE
Hon. Moffat Teya	-	Chairperson	 .....
Hon. Callen Atuya	-	Member	 .....
Hon. Dennis Kcbaso	-	Member	 .....
Hon. Alfayo Ngeresa	-	Member	 .....
Hon. Monica Mwamba	-	Member	 .....
Hon. George Mosiori	-	Member	 .....