

Third Assembly
(No. 019)

Third Session
(078)

COUNTY GOVERNMENT OF TAITA TAVETA



COUNTY ASSEMBLY OF TAITA TAVETA

THIRD ASSEMBLY – THIRD SESSION

ORDER PAPER

WEDNESDAY, MARCH 27TH, 2024 AT 2:30 P.M

ORDER OF BUSINESS

PRAYERS

1. Administration of Oath;
2. Communication from the Chair;
3. Messages;
4. Petitions;
5. Papers;
6. Notices of Motion;
7. Statements;
8. **MOTION: THE PROPOSED REMOVAL FROM OFFICE BY
IMPEACHMENT OF MS. ELIZABETH MKONGO, MEMBER OF
COUNTY EXECUTIVE COMMITTEE FOR LANDS, PHYSICAL
PLANNING, MINING AND ENERGY (Hon. Amos Makalo, MCA
Kasigau Ward, Deputy Minority Leader, Chairperson Adhoc Committee)**

THAT WHEREAS, pursuant to Section 40 of the County Governments Act 2012, on Tuesday 20th February, 2024, this Honourable Assembly approved a Motion proposing the removal from office, by impeachment, of Ms. Elizabeth Mkongo, Member of County Executive Committee for Lands, Physical Planning, Mining and Energy.

*Denotes Orders of the Day

And **WHEREAS**, pursuant to Section 40 (3) (a) of the County Governments Act, 2012, and Standing Order No. 65 (6) , the County Assembly of Taita Taveta, by a resolution on Wednesday 21st February, 2024 appointed a Special Committee comprising of five Members to investigate the matter on the proposed removal from office, by impeachment of the CECM for the Department of Lands, Physical Planning, Mining and Energy and to report to the Assembly on whether it finds the particulars of the investigation substantiated.

And **WHEREAS**, pursuant to Section 40 (3) and (5) (b) of the County Governments Act and Standing Order No. 65 (6), the Special Committee investigated the matter and tabled its Report on Friday 1st March, 2024.

And **WHEREAS**, pursuant to Section 40 (3) and (5) (b) of the County Governments Act and Standing Order No. 65 (6), the Special Committee has determined that;

I. ON THE ALLEGATION OF INCOMPETENCE, THE COMMITTEE MADE THE FOLLOWING FINDINGS;

1. On failure to complete the county land valuation roll, the Committee has found this allegation to be **substantiated**.
2. On failure to propose policies, legislative proposals and regulations that will guide the county government manage and protect its land, the Committee found the allegation to be **substantiated** being that there is no evidence of a draft policy presented to the County Assembly while this is the core mandate of a CECM.
3. Failure to propose policies, legislative proposals, and regulations on account of the county mining sector, the Committee has found this allegation to be **substantiated** for the reason that The CECM admitted that no legislative or policy proposal has been presented to the County Assembly on account of the County Mining Sector.
4. On failure to propose policies, legislative proposals, and regulations to guide the county energy agenda, the Committee has found this allegation to be **substantiated** on account of there being no legislative or policy proposal has been forwarded to the County Assembly for consideration by the time of this impeachment process.
5. On the allegation of approaching the County Assembly for approval of plans late, the Committee has found this allegation **not to be substantiated** as the presentations by the CECM clarified that the department had strict timelines to complete the development of the Voi and Taveta municipal charters.

6. On failure to observe chain of command within the department, the Committee has found this allegation **not to be substantiated** for the reasons that the source of the evidence presented on account of this claim cannot be established.
7. On failure to respond to statements sought on the floor of the Assembly, the Committee has found this allegation to be **substantiated** for the reason that the CECM acknowledged that indeed she has not responded to the quoted statement by Hon. Patricia Mwashighadi on 27th September, 2023.
8. **FAILURE TO IMPLEMENT DEPARTMENTAL PROGRAMS**
The Committee finds this allegation to be **substantiated** for the following reasons; that Government expenditure is not based solely on cashflow and as such the presentation that budgeted funds were not realized does not hold water. Additionally, the CECM being a public officer and a senior one for that matter ought to understand government spending. The under-absorption in the department is captured in public documents being the County Budget Review and Outlook Paper (CBROP) for financial year 2022-2023 and the Controller of budget's Annual Implementation Report for Financial year 2022-2023.
9. On failure to provide leadership and solutions to challenges, the Committee finds this allegation to be **substantiated** for the reason that It is clear from the evidence of the CECM EM6 which is the same as the Motion Movers evidence marked EM4A that the CECM did not offer advice on how the issue will be handled including that of approaching the National Land Commission to look into the matter, much as the same is public land, or even proposals on sourcing for alternative land for the residents.
10. On the failure to initiate boundary verification between Sagala ranch and the community, the Committee finds this allegation to be substantiated for the following reasons; that Survey is a devolved function under the fourth schedule of the Constitution of Kenya, 2010. The CECM has never procured the said boundary verification by way of a survey and there is no evidence to suggest that the CECM procured survey of Sagala Ranch.

II. ON THE ALLEGATION OF GROSS MISCONDUCT, THE COMMITTEE MADE THE FOLLOWING FINDINGS;

11. On failure to honor county assembly invitations, the Committee finds this allegation to be **substantiated** for the following reasons; that the CECM never made any follow up of her invitations for 26th July 2023, 8th August 2023 and 13th December 2023 indicating that she had no plans of honoring the same. Accordingly, the failure to honor invites of the County Assembly is contrary to Section 39(2) of the County Governments Act, No. 17 of 2012.
12. On supervision of the beaconing of Voi inspection plot, the Committee finds this allegation **not to be substantiated** for lack of evidence to the effect that the CECM was indeed at the Voi Inspection plot to oversee the beaconing of the plot.
13. On failure to respond to statements sought on the floor of the assembly, the Committee has found this allegation to be **substantiated** for the reason that the CECM acknowledged that indeed she has not responded to the quoted statement sought.
14. On misleading members of the County Assembly and other officers on the acting county chief officer for mining and energy, the Committee finds this allegation **not to be substantiated** for the reasons that there is no evidence of such utterances by the CECM to the effect that Mr. Peter Sholo was introduced as the County Chief Officer for Mining and Energy.

NOW THEREFORE, pursuant to Section 40 (2) (a) (c) and (d) of the County Governments Act 2012 and Standing Orders number 65 (9) and 66 (1) (a) and (b) of the County Assembly of Taita Taveta, the County assembly of Taita Taveta after according the CECM for the department of Lands, Physical Planning, Mining and Energy – Ms. Elizabeth Mkongo an opportunity to be heard;

Therefore, this Third County Assembly of Taita Taveta **Resolves** to impeach the CEC Member for Department of Lands, Physical Planning, Mining and Energy - Ms. Elizabeth Mkongo on grounds of Violation of the Constitution of Kenya 2010, incompetence, and Gross misconduct.