

**REPUBLIC OF KENYA**



**COUNTY ASSEMBLY OF KISUMU**

**SECOND ASSEMBLY**

**OFFICIAL REPORT**

**The House met at the Main Chamber on Tuesday, 05<sup>th</sup> December, 2017 at**

**02.30 p.m.**

**[Temporary Speaker, Hon. Victor Rodgers in the Chair]**

**PRAYERS**

**Temporary Speaker** (Hon. Rodgers): Good afternoon Hon. Members?

*(Response – Good afternoon)*

**Temporary Speaker** (Hon. Rodgers): Welcome to this session. Madam Clerk, can you take us through the Order Paper of the day?

**NOTICES OF MOTIONS**

**REPORT OF THE AD HOC COMMITTEE INVESTIGATING THE CONDUCT OF THE MEMBERS OF THE KISUMU COUNTY PUBLIC SERVICE BOARD**

**LEADER OF MAJORITY**

**MOTION**

**REPORT OF THE AD HOC COMMITTEE INVESTIGATING THE CONDUCT OF THE MEMBERS OF THE KISUMU COUNTY PUBLIC SERVICE BOARD**

**LEADER OF MAJORITY**

**Leader of Majority** (Hon. Kenneth): Thank you Mr. Speaker, I wish to move a motion on the adoption of the Report of the Ad Hoc Committee Investigating the Conduct of the members of the Kisumu County Public Service Board.

Mr. Speaker, the Committee wishes to sincerely thank the Office of the Speaker and the Clerk of the County Assembly for the necessary support extended to it in the execution of its mandate. The Committee is particularly grateful to the people of this County who came out in numbers during the Public Hearing for submissions and I would equally wish to express my gratitude to the Hon. Members of this Committee who made very useful contributions towards the preparations and production of this report.

The Committee wishes to record its appreciation for the services rendered by the Staff of the County Assembly who were attached to the Committee during the exercise and through their efforts made the work of this Committee possible.

## **REPORT OF THE AD HOC COMMITTEE INVESTIGATING THE CONDUCT OF THE MEMBERS OF THE KISUMU COUNTY PUBLIC SERVICE BOARD**

### **1.0 THE COMMITTEE MANDATE**

**Mr. Speaker Sir and Hon. Members,**

The committee's mandate is as follows:-

- To investigate, inquire into the conducts of the Members of the Kisumu County Public Service Board in accordance with the Article 251 (1) of the constitution.
- To examine and/or consider whether the board has acted in contravention/any violation of the constitution of Kenya.
- Make a report on this matter with recommendations to the county assembly thereof.

### **2.0 COMMITTEE MEMBERSHIP**

**Mr. Speaker Sir and Hon. Members,**

The committee as currently constituted comprises of the following Hon. Members:-

1. Hon. Kenneth Onyango - Chairman
2. Hon. Gard Olima - Member
3. Hon. Joachim Okech - Member
4. Hon. Elisha Oraro - Member

5. Hon. Beatrice Pamela - Member
6. Hon. Steve Owiti - Member
7. Hon. Philemon Ojuok - Member
8. Hon. Julius Genga - Member
9. Hon. Jenipher Obonyo - Member
10. Hon. Nancy Owiti - Member
11. Hon. Sally Okudo - Member

### **3.0 ACKNOWLEDGEMENTS**

#### **Mr. Speaker Sir and Hon. Members,**

The Ad Hoc Committee wishes to sincerely thank the office of the Speaker and the Clerk of the County assembly for the necessary support extended to it in the execution of its mandate.

The Committee is particularly grateful to the people of this County who came out in numbers during the public hearing/submissions. I wish to express my gratitude to the Honorable Members of the Committee who made useful contributions towards the preparation and production of this report.

The committee wishes to record its appreciation for the services rendered by the staff of the county Assembly attached to the committee during the exercise. Their efforts made the work of the committee and this report possible.

### **4.0 LEGAL FRAMEWORK**

#### **Mr. Speaker Sir and Hon. Members,**

Part VII of the County Government Act, 2012, provides legal establishments of the County Public Service.

- Section 55 of the CGA, 2012, provides for objectives of the County Public Service,
- Section 56 provides for establishment of a County Public Service,
- Section 57 provides for establishment of a County Public service Board,
- Section 58 provides for composition of County Public Service Board,
- Section 59 gives the functions and powers of a county public service board,
- Section 60 highlights the criteria for establishment of County Public offices,
- Section 62 gives powers to the CPSB to establish county offices,
- Section 63 gives powers to CPSB to make appointments,
- Section 65 provides for matters to take into account during appointments,
- Section 66 provides for advertisement of positions to be widely publicized, etc

Below are excerpts detailing these sections as in the Act:

### **Objectives**

**55.** The objectives of this Part are to:-

- (a) Provide for evaluation and reporting on the extent to which the values and principles referred to in Articles 10 and 232 of the Constitution are complied with in the county public service;
- (b) Provide for the organization, staffing and functioning of the county public service in ways that ensure efficient, quality and productive services for the people of the county;
- (c) Provide for institutions, systems and mechanisms for human resource utilization and development in a manner that best enhances service delivery by county public service institutions;
- (d) Provide a framework of uniform norms and standards to be applied in all counties in respect of—
  - (i) Establishment and abolition of offices in the county public service;
  - (ii) Appointment of persons to hold or act in those offices;
  - (iii) Confirming appointments; or
  - (iv) Exercising disciplinary control over and removal of persons holding or acting in those offices;
- (e) Provide for the promotion of the values and principles set out in Articles 10 and 232 of the Constitution in the county public service;
- (f) Provide for human resource management and career development practices;
- (g) Address staff shortages and barriers to staff mobility between counties;
- (h) Provide for standards to promote ethical conduct and professionalism in county public service;
- (i) Provide for the establishment of County Public Service Boards; and
- (j) Make further provisions relating to appeals in respect of county governments' public service.

### **County to have county public service Board**

**56.** (1) Each county shall, in accordance with Article 235 of the Constitution, have its own public service to be known as county public service.

(2) The county public service shall be headed by a county secretary appointed under section 44.

(3) For purposes of subsection (1), the designation county public officer shall be restricted to an officer appointed by the county government.

### **Establishment of the County Public Service Board**

**57.** There is established a County Public Service Board in each County, which shall be-

- (a) A body corporate with perpetual succession and a seal; and
- (b) Capable of suing and being sued in its corporate name.

### **Composition of the County Public Service Board**

**58.** (1) The County Public Service Board shall comprise—

(a) A chairperson nominated and appointed by the county governor with the approval of the county assembly;

(b) not less than three but not more than five other members nominated and appointed by the county governor, with the approval of the county assembly; and

(c) A certified public secretary of good professional standing nominated and appointed by the governor, with the approval of the county assembly, who shall be the secretary to the board.

(2) The appointment of the members of the Board shall be through a competitive process.

(3) A person shall be qualified to be appointed as a member under subsection (1) if that person—

(a) satisfies the provisions of Chapter Six of the Constitution;

(b) is not a state or public officer;

(c) in the case of chairperson or vice-chairperson, possesses a minimum qualification of a bachelor's degree from a recognized university and working experience of not less than ten years; and

(d) In the case of any other members—

(i) Possesses a minimum of a bachelor's degree from a recognized university and working experience of not less than five years; and

(ii) is a professional, demonstrates absence of breach of the relevant professional code of conduct.

(4) A member of the Board shall—

(a) Hold office for a non-renewable term of six years; and

(b) May serve on a part-time basis.

**(5) The members of the Board may only be removed from office:-**

(a) On grounds set out for the removal of members of a constitutional commission under Article 251(1) of the Constitution; and

(b) By a vote of not less than seventy five percent of all the members of the county assembly.

**(6) The board shall elect a vice-chairperson from amongst its members.**

**(7) The chairperson and vice-chairperson shall be of opposite gender.**

### **Functions and powers of a County Public Service Board**

**59.** (1) The functions of the County Public Service Board shall be, on behalf of the county government, to—

- (a) Establish and abolish offices in the county public service;
- (b) Appoint persons to hold or act in offices of the county public service including in the Boards of cities and urban areas within the county and to confirm appointments;
- (c) Exercise disciplinary control over, and remove, persons holding or acting in those offices as provided for under this Part;
- (d) Prepare regular reports for submission to the county assembly on the execution of the functions of the Board; Rev. 2013]
- (e) Promote in the county public service the values and principles referred to in Articles 10 and 232;
- (f) Evaluate and report to the county assembly on the extent to which the values and principles referred to in Articles 10 and 232 are complied with in the county public service;
- (g) Facilitate the development of a coherent, integrated human resource planning and budgeting for personnel emoluments in counties;
- (h) Advise the county government on human resource management and development;
- (i) Advise county government on implementation and monitoring of the national performance management system in counties;
- (j) Make recommendations to the Salaries and Remuneration Commission, on behalf of the county government, on the remuneration, pensions and gratuities for county public service employees.

(2) In appointing a person as a secretary to a board of a city or an urban area under subsection (1)(a), the County Public Service Board shall ensure that such person is a certified public secretary of good professional standing.

(3) The reports under subsection (1)(d) shall contain the details of persons appointed including gender, persons with disabilities, persons from the minority and marginalized communities.

(4) In the performance of its functions under subsection (1)(e), the County Public Service Board shall have powers to—

- (a) Inform and educate county public officers and the public about the values and principles;
- (b) Recommend to the county government effective measures to promote the values and principles;
- (c) Assist county government in the formulation and implementation of programmes intended to inculcate in public officers the duty to uphold the values and principles;
- (d) Advise the county governments on their obligations under international treaties and conventions on good governance in the county public service;
- (e) Visit any county public office or body with a view to assessing and inspecting the status of compliance with the values and principles;
- (f) Investigate, on its own initiative or upon a complaint made by any person or group of persons, the violation of any values and principles;

- (g) Recommend to the relevant lawful authority, any necessary action in view of the violation of the values and principles by any person or public body;
  - (h) Cooperate with other institutions working in the field of good governance in the public service; and
  - (i) Perform any other functions as the Board considers necessary for the promotion of the values and principles.
- (5) The report by the County Public Service Board under subsection (1)(f) shall—
- (a) Be delivered each December to the county assembly;
  - (b) Include all the steps taken and decisions made by the board;
  - (c) Include specific recommendations that require to be implemented in the promotion and protection of the values and principles;
  - (d) Include specific decisions on particulars of persons or public body who have violated the values and principles, including action taken or recommended against them;
  - (e) Include any impediment in the promotion of the values and principles; and
  - (f) Include the programmes the board is undertaking or has planned to undertake in the medium term towards the promotion of the values and principles.
- (6) The Board shall publish a report required under this section in the county *Gazette* not later than seven days after the report has been delivered to the county assembly.

#### **Criteria for establishment of public offices, etc**

- 60.** (1) The County Public Service Board shall establish a public office within the county public service if it is satisfied that—
- (a) The establishment of the public office shall serve public interest in line with the core functions of the county government;
  - (b) There exists no other public office in the county public service discharging or capable of discharging the duties for which the county is requested to establish another office;
  - (c) Upon the establishment of the office, the office shall be vacant to be filled competitively and transparently in accordance with the prescribed appointment or promotion procedures;
  - (d) The establishment of the office including its level of grading, qualification and remuneration shall not disadvantage similar offices in the county public service or occasion unfair competition for staff among county public bodies;
  - (e) The establishment of the office shall not confer unfair advantage to a group of or individual serving public officers;
  - (f) The county government entity has prudently utilized offices previously provided in its establishment; and
  - (g) Funding for the office to be established is duly provided for.
- (2) In determining the provision of funding under subsection (1) (g), the County Public Service Board shall take due regard to the need to limit the component of personnel emoluments to a level that does not adversely affect other budgetary provisions in the recurrent vote.

(3) A written request for establishment of an office complying with the conditions in this section shall be submitted to the Board by the concerned head of department.

(4) In deciding whether or not to establish a public office, the County Public Service Board shall take into account—

(a) the overall workload in the county public service concerned; and

(b) the suitability of that department but not any other to be the domicile of the public office to be established.

#### **Powers of the County Public Service Board to establish or abolish office**

**62.** (1) Taking into account the provisions of this Part, the County Public Service Board on its own motion, may establish or abolish any office in the county public service.

**(2) If the Board intends to establish or abolish an office it shall submit its proposal to the county assembly for approval through the county executive committee member responsible for the county public service.**

(3) The County Public Service Board shall give the county chief officer of the concerned department an opportunity to make representation in respect of any action to be taken under this section before making the decision in that regard.

(4) If the County Public Service Board establishes an office and the concerned department fails to fill the vacancy for a period of twelve months after its establishment, the office shall stand abolished and the **Rev. 2013]** County Public Service Board shall not be required to make a decision to abolish that office.

#### **Powers of the County Public Service Board to make appointments**

**63.** (1) Except as provided for in the Constitution or legislation, the County Public Service Board has the power to make appointments including promotions in respect of offices in the county public service.

(2) The power of the County Public Service Board under subsection (1) shall be exercised—

(a) At the request of the relevant county chief officer of the department to which the appointment is to be made;

(b) At the request of the clerk of the county assembly; or

(c) On the County Public Service Board's own motion on account of best interest of the county public service and parity of treatment of public officers taking into account the circumstances of each case.

#### **Matters to take into account during appointments, etc.**

**65.** (1) In selecting candidates for appointment, the County Public Service Board shall consider—

(a) The standards, values and principles set out in Articles 10, 27(4), 56(c) and 232(1) of the Constitution;

(b) The prescribed qualifications for holding or acting in the office;

- (c) The experience and achievements attained by the candidate;
  - (d) The conduct of the candidate in view of any relevant code of conduct, ethics and integrity;
  - (e) The need to ensure that at least thirty percent of the vacant posts at entry level are filled by candidates who are not from the dominant ethnic community in the county;
  - (f) The need for open and transparent recruitment of public servants; and
  - (g) Individual performance.
- (2) In determining whether an appointment, promotion or re-designation has been undertaken in a fair and transparent manner, the overriding factors shall be merit, fair competition and representation of the diversity of the county.

### **Advertisements of positions to be widely publicized**

66. If a public office is to be filled, the County Public Service Board shall invite applications through advertisement and other modes of communication so as to reach as wide a population of potential applicants as possible and especially persons who for any reason have been or may be disadvantaged.

### **Appointments to be in writing**

67. No appointment or assignment of a duty in a county public service shall be valid unless it is evidenced in writing.

### **Board to maintain records of applicants**

68. Subject to the relevant legislation, the County Public Service Board shall, for a specified period, maintain a record of all applications received in response to advertisements inviting applications and such record may be inspected by any person.

### **Re-designation of officers**

69. (1) In selecting public officers for re-designation, the criteria for appointment as prescribed under this Part shall apply.

(2) A public officer shall not be re-designated to hold or act in a public office if—

- (a) The office is not vacant;
- (b) The public officer does not meet all the qualifications, except for experience at a lower grade in the relevant cadre, attached to the public office;
- (c) The decision to re-designate the officer may disadvantage any public officer already serving in the relevant cadre; or
- (d) The officer subject to re-designation has not consented to the re- designation.

(3) If a public officer is re-designated, the officer shall not in any way suffer reduction in remuneration.

### **Provisions on appointments to apply to promotions**

**70.** (1) The provisions of this Act and regulations or procedures made under this Act that apply to appointments shall also apply to promotions.

(2) If a public officer has been promoted, the head of department shall within sixty days after the date of the promotion release the public officer to take up the promotion and if the officer is not so released, he or she stands released upon the lapse of sixty days.

(3) If a public officer has been promoted and has failed to take up the promotion, the promotional decision shall lapse upon the expiry of sixty days after the date of the decision and the officer shall revert back to the office held prior to the decision, subject to confirmation that the person received the official communication on the promotion and was released.

### **Confirmation of appointment on lapse of period**

**71.** (1) If the relevant authority fails to confirm an appointment of a public officer initially appointed on probationary terms, and the term has lapsed with or without an extension, the officer shall stand confirmed in the appointment on the due date.

(2) The period served on probationary terms shall be taken into account when computing the period of service for the purpose of payment of pension benefits, gratuity or any other terminal benefit.

(3) A probationary period of service shall not be extended except on account of—

(a) Affording the public officer further opportunity to pass an examination the passing of which is a condition for the confirmation, the officer's service otherwise being satisfactory;

(b) Affording the public officer an opportunity for improvement in any respect, in which the officer's work or conduct have been adversely reported on.

### **Action on irregularity of process**

**75.** If it comes to the attention of the County Public Service Board that there is reason to believe that any process or decision under this Part may have occurred in an irregular or fraudulent manner, the County Public Service Board shall investigate the matter and, if satisfied that the irregularity or fraud has occurred, the County Public Service Board may—

(a) Revoke the decision;

(b) Direct the concerned head of department or lawful authority to commence the process afresh;  
or

(c) Take any corrective action including disciplinary action.

### **Prohibition of punishment contrary to the Constitution**

**76.** (1) In exercising its disciplinary powers, the County Public Service Board shall observe the principles of natural justice.

(2) No public officer may be punished in a manner contrary to any provision of the Constitution or any Act of Parliament.

(3) Nothing in this section shall limit the powers conferred on the county government or any other lawful authority discharging a disciplinary function from retiring an officer from the county public service on the ground of public interest.

(4) In this section, retirement on the ground of public interest may be imposed instead of any other punishment if the decision maker considers that although the misconduct has been proven—

(a) The officer has nevertheless raised a mitigation factor that renders imposition of a punishment too harsh in view of the circumstances of the case; or

(b) The length of service benefits accrued and previous good record of the officer justifies the retirement; or

(c) Imposing a punishment against the officer is likely to adversely affect the reputation of the public body concerned or the county public service generally.

(5) If criminal proceedings are instituted against a county public officer, disciplinary proceedings against the officer for dismissal or imposition of any other punishment on any grounds involved in the criminal charge shall not be taken until the conclusion of the criminal proceedings and the determination of any appeal there from has been made.

(6) Nothing in subsection (5) shall be interpreted as prohibiting or restricting the power of the county government or the concerned county chief officer or other lawful authority to interdict or suspend or take any interlocutory decision against the public officer.

## **5.0 METHODOLOGY**

- Oral interviews

The assembly was to invite through the newspapers members of the public to appear before the committee on Monday 9<sup>th</sup> to Tuesday 10<sup>th</sup> October, 2017. The board members were also to be invited to appear before the committee on Wednesday 11<sup>th</sup> and Thursday 12<sup>th</sup> October, 2017.

- Written submissions

The committee was expected to receive written submissions from both members of the public and the board members.

- Observations

The committee sieved through both oral and written submissions to make observations on the subject matter.

## **6.0 SUBMISSIONS/PRESENTATIONS FROM MEMBERS OF THE PUBLIC**

**Mr. Speaker Sir and Hon. Members,**

The County Assembly invited members of the public via the local dailies i.e Star and standard newspapers on 6<sup>th</sup> and 7<sup>th</sup> October, 2017 respectively, to present their submissions either orally before the committee or by sending written memoranda between Monday 9<sup>th</sup> to Tuesday 10<sup>th</sup> of October, 2017 at Royal City Hotel – Milimani.

Consequently, the committee received oral submissions from the following members of the public under Oath:-

### **1. PROF. RAPHAEL JACOB ACHOLA KAPIYO:-**

Prof. Kapiyo, a lecturer at the Maseno University in the department of environment and management science. In his oral submission, he informed the committee that the board sought his services informally to interview the shortlisted candidates in the department of Environment in the month of March-May 2017 when it was conducting job interviews for the positions of director of environment and sub county environment officers within Kisumu County. He further informed the board that though he accepted the offer and participated as a panelist in the interview where they did ranking on the successful candidates, his attempt to regularize the invitation/appointment by a letter was futile. He further avers that on the occasions he presided over the interview process, his dues as agreed were never honored.

He finds the board's action for refusing to make his appointment regular strange, and unprocedural because ordinarily the board ought to have written to him specifying the terms and scope of his engagement prior to the exercise.

He observed that though he has never been given any monetary consideration for the service he rendered, he still feels that the board's action was demeaning, belittling and unprofessional.

### **2. QUINTER OWAWA**

Quinter is an employee of the Kisumu County Government. She was competitively employed by the board on 26<sup>th</sup> October 2016 as an Irrigation Engineer:-Job group K in the department of Agriculture, Livestock and Fisheries. She informed the committee that the revised scheme of service for professional Engineers (Agriculture) and agricultural technicians (2010), provides that the entry point for degree holders joining employment on direct appointment will be 3 increments above the minimum in the job group L which has never been followed to date. She added that they had communicated the same to the Chief Officer, Department of Agriculture, Livestock and Fisheries who further confirmed the underpayment and advised the Director

Human resource, vide a letter Ref: MALF/COLF-KSM/GC/STAFF/26/VOL. 1/65 dated 6<sup>th</sup> May 2016 to correct the anomaly.

She wondered why the Board failed or ignored to conduct due diligence on the Scheme of Service they used during the employment. She urged the committee to look into the harmonization of various cadres with a view of streamlining the remuneration disparities, citing a case of drivers who earn more than their bosses.

### **3. MAURICE OUMA OBIMBO**

Mr. Obimbo introduced himself as a senior citizen who was retrenched from Public Service in the year 1994. He is currently doing business and politics within the County. He complained to the committee that the members of the Board are employed on a full time basis, drawing hefty salaries instead of part time basis where they would only earn sitting allowances. He informed the meeting that most of the Board Members were retirees from the former Kenya Telkom Cooperation where they are still drawing pension hence they should not be in full time employment.

He alleged that the committee engaged in nepotism and favoritism while recruiting new staff to the County Government.. He further informed the committee that he is aware of some incidences where the short listed applicants are turned away when they come for interviews because they are aged and wondered if there is due diligence during short listing process.

He advised the Committee that in future the Board should be employed on a part time basis to enable the secretariat to carry out the day to day activities of the Board.

### **4. NEWTON ODONGO DACHO**

Newton informed the Committee that he is a victim of the Board. He applied twice for an advertised position of Clerical Officer in the Department of Roads and Infrastructure in the month of July 2016 and early this Year. Although he was shortlisted and appeared before the Board for interview, he has never received any communication from the Board in regards to the two interviews making him wonder what the outcome was. This is contrary to the norms and best practices worldwide.

He asked the Committee to undertake an Audit in all the recruitment exercises which have been done by the Board since its inception to ascertain his allegations on nepotism and favoritism.

### **5. AUDI GEORGE WILLIAM OGADA**

Mr. Ogada who is also the Chairman of Kisumu City Residents Voice which is a Human Rights movement based in Kisumu County took the Members through his various correspondences

written the County Government with several complaints which he got from the Residence of Kisumu who had approached his organization to address their grievances.

This is summarized as follows:-

1. Letter addressed to the Chairman County Public Service Board dated 22<sup>nd</sup> September 2014 , referenced **CONTROVERSY SURROUNDING THE APPOINTMENT OF 8 CHIEF OFFICERS BY THE BOARD**. In this letter he faulted the process of appointing the 8 chief Officers by the Governor and the Board without the process being approved by the County Assembly as required by Law.
2. Letter addressed to the County Secretary Kisumu County dated 27<sup>th</sup> June 2016 referenced **PETITION TO PROBE PUBLIC SERVICE BOARD OVER UNENDING CORRUPTION ALLEGATIONS**  
He faulted that the Board had contravened Articles 10, 27(4), 56 © and 232 (1) of the Constitution while appointing Chief Officers, Sub County/Ward Administrators , Departmental Directors, ECD Teachers, Health Workers, Drivers and promotion of Staff within the County. In his letter, he further complained that the action of the Board failed to promote the object and principles of Devolved Government, Lacked inclusivity and equality and ignored marginalized groups. He added that the Board had been accused of acts of corruption, discrimination and nepotism in their operations. He prayed that the Board be immediately investigated and action taken on the corrupt Board Members and the Board be ordered to publicize a list of all the appointees within a period of 14 days from the date of his letter and the Board be made to work on part time basis.
3. Letter addressed to the Chairman Public Service Board dated 24<sup>th</sup> May 2017 referenced **“COMPLAINTS OVER LABOUR CONTRACT/CASUAL APPOINTMENTS”**  
He pointed out that there was discrimination during the recruitment of casual laborers where the process was marred with irregularities. He further mentioned that the former MCAs unduly influenced the Board to engage their cronies. He went ahead to urge the Committee to investigate circumstances under which a Board Member Betty Asuna was engaged as a public officer while it is on record that she had been sacked as a magistrate on the ground of corruption cases. He confirmed that he was willing to bring forth further evidence of corruption at the Board.
6. **FREDERICK ABOGE**

Mr. Aboge is a Bachelor of Science in Natural Resource Management graduated from Egerton University in 2014. He informed the committee that he undertook internship/attachment at the Department of Environment for a period of 3 (three) years i.e from 18<sup>th</sup> August 2014 to May 2017. During this time, he was coordinating planting of trees and control of noise pollution within the County. He told the committee the Department was understaffed and there were only 3 permanent staff hence his services were required in furtherance of devolved functions such as afforestation, solid waste management and control of Noise pollution. This necessitated the

Chief Officer to request for employment of additional workforce i.e 2 (two) Directors and 5 (five) Sub Counties Environment Officers. He added that he had been working without any monetary benefits for the love of his work and the County, but when the employment opportunities arose when the Board considered the Chief Officers request and advertised for the positions which he was qualified for, he applied for the position of Sub County Environment Officer. He was shortlisted and invited for the interviews but was not considered for employment despite the fact that he had 3 years experience in that Department and was highly recommended by the Chief officer. (kindly refer to the annexure herein attached)

He faulted the Boards action for employing all female as the Sub County Environment officers citing that the Constitution was breached by not observing the 2/3 gender rule.

He further informed the Committee that although, the Chief Officer requested for the employment of the 2 (two) Directors and the 5 (five) sub county Environment Officers, The Board went ahead and appointed 4 (four) other officers irregularly. The Chief Officer declined to deploy the additional 4 (four) staff but upon his suspension the staff came back to the Department and are now deployed.

He advised the committee to undertake an Audit of all the staff who have been recruited by the Board to ascertain that most of the recruits did not meet the pre-requisite qualification and requirements as advertised.

**DANIEL OKETCH,(PROCUREMENT OFFICER), ABISAE NDEGE OGALO (WORKS OFFICER), AND ISAAC OWINO OTIENO(ICT OFFICER)**

The three are staff of Kisumu County Government working in different Departments but were appointed between the Period of 2014 to April 2015 to the committee of Inspection and Acceptance. They informed the Committee that on 23<sup>rd</sup> April 2015 they received letters of suspension signed by the County Secretary (Mr. Humphrey Okuku Nakitare) reference number CGK/CS/CONF/14/VOL.1/14 on allegation of gross professional misconduct to conform to the specification of Bill of Quantities for Jans Academy and Obambo Nyanginja Osiri access roads.

On 31<sup>st</sup> December 2015 they were reinstated and surcharged to pay a total of Kshs 483,733.33/= vide a letter reference CGK/CS/CONF/14/VOL.1/019 signed by the County Secretary. This amount having been deducted from their accrued money while on suspension and the difference is currently being deducted from their salary at a rate of Kshs 7000/= per month. They appealed this verdict to the County Public Service Board on 19<sup>th</sup> February 2016 that the due process was not followed when they were suspended and reinstated/surcharged citing that they were not heard. This appeal was acknowledged by the Board Secretary vide his letter reference KCPSB/CONF/15/06/2016 dated 8<sup>th</sup> June 2016.

They wondered why the Board has taken ordinate long time to act on this irregularity which include being on suspension for a period of 8 (eight) months instead of 3(three) months as per the terms and conditions of service and for being surcharged without being heard. They therefore appealed to the committee to intervene on their behalf to solve this matter.

#### **7. IRENE ADOYO OMOLLO**

She introduced herself as Born in Homabay County and married in Kisumu County. She holds a Diploma in nursing from Homabay Medical training college. She told the committee that she alongside some of her class mates applied for vacant nursing positions as advertised by the County Public service Board on 9<sup>th</sup> May 2016. They were invited for the interview.

She believed that she met all the requirements for the job and has been wondering why she has not received any communication to date from the Board regarding the outcome of the interview.

She therefore asked this committee to urge the Board to communicate the outcome of the 150 vacant positions for nurses as was advertised, shortlisted and interviewed to the applicants.

#### **8. JOHN SEDA AND MAGAMBO KALUOCH**

These two officers who are employees of the Kisumu County Government are also officials of Association of Public Health Officers Kisumu Branch. They informed the Committee that they are acting on behalf of their members who were employed by the National Government as Community Health Extension workers (CHEW) under the economic stimulus programme in 2011 for renewable period of 3 ( three) years. They further informed the committee that upon the Cabinet Secretary for Health directions to the Counties in his letter referenced MOH/ADM/1/1/130/VOL.1/(52) dated 24<sup>th</sup> July 2014 advising the County to absorb the CHEW into County payroll and appoint them on permanent terms. An advice not acted upon by the Board to date. This advice has since been implemented by Machakos, Kitui and Siaya Counties among others.

The Board later advertised for these positions and asked all of them to apply alongside other new applicants. Those who ignored this call went through suitability test conducted by the Board and absorbed as new employees in total disregard of their 3 (three) years in service.

The above action disadvantaged their members as they were denied salary progression for the 3 years they had been in service contrary to the advisory letter by the Cabinet Secretary vide his letter reference MOH/ADM/1/1/130 dated 20<sup>th</sup> February 2014.

On behalf of their members, they asked the committee to further investigate this issue with a view of correcting the anomaly since the Board did not act in good faith and depicted incompetence in handling this matter.

## 7.0 RESPONSES/OBSERVATIONS

Mr. Speaker Sir and Hon. Members,

**The committee response/observation to the allegations were as follows:-**

**(A) ESTABLISHING 8 OFFICES FOR CHIEF OFFICERS WITHIN KISUMU COUNTY PUBLIC SERVICE WITHOUT SUBMITTING THE PROPOSAL TO THE KISUMU COUNTY ASSEMBLY FOR APPROVAL.**

The Board went through these allegations and in their considered views the Board went against the provisions of the Constitution. Please allow me to say this before I wind up and summarize. Mr. Speaker, if you look at the functions of the Board, one of its cardinal functions is to create the City Service Board. Mr. Speaker for the last five years the county has been operating without a City Board which is a direct function of the Board. Mr. Speaker, there is no justification so ever for Kisumu County not to have established a City Board. This is because it is this Board that is supposed to safeguard the Assets of this County, it is supposed to look into how revenue is being collected and in the absence of this Board, the City lost so many properties, prime lands and this was as a result of the negligence either by commission or omission by this Board.

Mr. Speaker, I have talked of the creation of eight offices which are *ultra vires* to the Constitution and stated that the Board having failed to establish the City Board. Mr. Speaker, having looked at this litany of issues the Committee observes the following;

**COMMITTEE OBSERVATIONS:-**

The committee notes that the Board advertised for recruitment of Chief Officers in the following 10 vacant positions in accordance with section 45 of the County Government Act, 2012,

1. Health Services
2. Agriculture, Livestock development and Fisheries
3. Commerce, Tourism and Heritage
4. Education, Youth, Culture and Social Services
5. County Treasury
6. Water, Energy and Natural resources
7. Industrialization, Enterprise Development and Transport
8. Physical planning, Roads and Public Works
9. Environment Management
10. Communication, Planning and Development

However, the Board later established new 8 positions and appointed as follows:-

NO.	NAME	POSITION
1.	Mr. George Oketch Oyier	Water
2.	Mrs. Loice Mildred Omoro	Environment and Natural Resources
3.	Mrs. Lilian Atieno Ogombo	Energy and Mining
4.	Mr. Samwel Okuro Ong'wen	Education
5.	Mrs. Lucy Matengo	Gender, Culture and Sports
6.	Mr. Samwel Otieno Ondola	Transport and Infrastructure
7.	Mr. Derrick Obura	Lands, Housing and Physical Planning
8.	Mrs. Lorna Omuodo	Green Energy and Climate Change

*The Committee further observed that Section 62 of the County Government Act 2012 gives powers to the Board to establish new offices, in subsection (1) of the said section states: The county Public Service Board on its own motion may establish or abolish any office in the County Public Service and in subsection (2) states that if the Board intends to establish or abolish an office, it shall submit its proposal to the County Assembly for approval through the County Executive responsible for the County Public Service.*

The committee established that neither the County Executive Member of the relevant Committees nor did the County Assembly approve additional offices contrary to section 62 (2) of the County Government Act.

This matter was also canvassed at the Senate by a way of petition lodged by 3 Honourable Members from the first Assembly and the senate in its report of October 2016 recommended that Ethic and Anti Corruption Commission (EACC) to undertake a proper Audit of the County Government structures and portfolios, and further ascertain whether due process was followed in the recruitment process of Chief Officers with a view of taking legal action.

## **8.0 COMMITTEE RECOMMENDATIONS**

In view of the above observation, the Board acted against the law. The Committee therefore recommends that the Board be dismissed from the office immediately and further legal action be instituted to them individually or collectively for acting against the law.

The Committee Further recommends that the report of the Senate on this matter be implemented by inviting the Ethics and Anti Corruption Commission (EACC) to conduct a comprehensive audit on any impropriety meted by the Board while recruiting the Chief Officers.

**(B) FAILED, REFUSED AND/OR IGNORED TO APPOINT PERSONS TO KISUMU CITY BOARD AND OTHER TOWN MANAGEMENT COMMITTEES.****COMMITTEE OBSERVATION**

The committee noted that, the Constitution of Kenya promoted Kisumu Town to a City status. The section 60 of Urban and Cities Act 2011 operationalized the Kisumu City Status and provided that the City of Kisumu should be run by a City Management Board. Section 59 (b) of the County Government Act, gives the Board the function and powers to appoint persons to hold or act in the Board of Cities and Urban areas within the County.

The Committee further noted that, the County Public Service Board failed or refused to observe the above provisions which was within their powers this shows their incompetency.

**COMMITTEE RECOMMENDATIONS**

In view of the above foregoing the Committee recommends that the Board as currently constituted is incompetent to hold Public Office on account of failure to perform their legal obligations by constituting the Kisumu City Management Board as provided by the Law.

**C. ENGAGEMENT OF BOARD MEMBERS****COMMITTEE OBSERVATION**

The Committee observed that all the Board Members are engaged on full time basis whereas section 58 (4) (b) of the County Government Act 2012 provides that they may be engaged on a part time basis. The committee further notes that most of the Board members are retirees who are earning pension therefore they should not be engaged on salaried terms or full time employment but should be paid allowances.

**COMMITTEE RECOMMENDATION**

The committee recommends that an advisory opinion be sought from Salary and Remuneration Commission on whether the pensioners are entitled to salaried or full time employment.

**9.0 CONCLUSION****Mr. Speaker Sir and Hon. Members,**

In view of the submissions obtained both orally and through memoranda from the Members of the Public, and taking cognizance of the petitions of the last Assembly canvassed at the Senate,

the Committee was convinced beyond reasonable doubt that Members of the County Public Service Board violated the constitution of Kenya and the County Government Act 2012.

We therefore recommend to this House that Members of the Board be removed from office immediately on account of serious violation of the Constitution, County Government Act, 2012, gross misconduct in their performance and incompetency.

We further recommend that any breaches thereof, be investigated by relevant Government agencies. The Committee further recommends that the appointing authority to initiate a process of instituting a new Public Service Board expeditiously.

It is therefore my honour and privilege, on behalf of the Ad Hoc Committee to table this report and recommend to the House that the report be approved with any amendments thereof.

Mr. Speaker that is the gist of the work that the Committee did during its sittings. Mr. Speaker I wish to state that as I have given the legal frameworks that establishes this Board. It has enormous powers to whittle the Public Service in the County. Mr. Speaker, if we have a Board the does not operate in accordance to the provisions of the Constitution, then such violations cannot be tolerated. Mr. Speaker, I want to say that as we expect a new trend where we are going to operate following the law, where service delivery is going to be our number one goal and as we commence on a new trend and trajectory where recruitment of Public Service in this County is going to be done not on the account of whom you know, but on the account of your competencies and the abilities to provide services, I am of a very strong opinion that this Board must be vacated immediately and we must accord the Governor an opportunity to appoint a new Board that he is going to work with, that is going to adhere to the laws and a Board that is going to implement his manifesto.

Mr. Speaker, and Hon. Members, with all those remarks I now want to call upon the Majority Whip to second this motion? Thank you.

**Chief Whip** (Hon. Olima): Thank you Mr. Speaker. I rise to second the motion of this Committee Investigating the Conduct of the Member of the County Public Service Board.

Mr. Speaker, I want to say that having been a member of this Committee and having gone through the relevant laws like the County Government Act, 2012 with all the Sections from 55 to 66, having interviewed the Public and receiving Public Petitions and having gone through the notes that we received from the House of Senate. We were of the opinion as a Committee that this Board be disbanded and a new Board constituted. Mr. Speaker, this is as a result of grave violations of the Constitution that was done by the Board more so intentionally.

Mr. Speaker, if you look at the report you will find that there are situations where the Board was offered advisory opinions but they disregarded these opinions. So, whatever they did was outside the law and in most cases these were things they were committing which were against the

County Government Act. I would like to request this Hon. House that we adopt the Report of the Ad hoc Committee so that a new Board can be constituted which can work within the Constitutional frameworks of our land. I beg to second.

**Temporary Speaker** (Hon. Rodgers): What is it Hon. Seth Ogutu?

Hon. Ogutu Seth: I am standing on Orders No. 96 (1) and I am proposing that in the interest of time we limit the debate to three minutes per member, so that we have as many members contribute but at the same time spend a lot of time with repetition. Mr. Speaker, I am requesting Hon. George Ogutu to second?

**Hon. Ogutu:** Thank you Mr. Speaker. I rise to support the limitation of time of debate to three minutes to accord us more time to debate effectively and come up with a good report on this particular debate, thank you.

**Temporary Speaker** (Hon. Rodgers): Your point has been noted. The Chair has considered the request made by Hon. Seth Ogutu and seconded by Hon. George Ogutu as stipulated under Orders No. 96 (1) and I rule that, three minutes to allotted for each member while debating. Hon. Members you are advised to avoid repetition. The floor is now open for debate?

**Hon. Khan:** Thank you Mr. Speaker. I rise to support this motion, but on the other hand I have an issue. This is because we members we were given report this afternoon. Sincerely speaking this report has been read by the Leader of Majority but the issues raised in this report are weighty and requires a lot of concentration and requires a lot of adoptions equally requires a lot of thinking and since we were informed that this matter is also *sub-judice* and there are arms of the Government that have to speak on this matter which is the Judiciary.

Mr. Speaker, on the other hand it is my feeling and opinion that as a Hon. Nominated Member that if this House can adjourn until tomorrow morning so that we can thoroughly read through this report through the night and understands it, vet it and come up with a solution. This is because we were given this report this afternoon because even after the Order Paper had been circulated to us we never saw the report because when we came in the House there was the issues of our Welfare that was brought us, it when we commenced is when the Leader of Majority started reading the report and we had not even look at it in an accurate manner, thank you.

**Hon. Agolla:** Thank you Mr. Speaker. I rise to support this motion with an observation that due to the weighty matters raised in this report in accordance to how the Majority Leader was reading the report on the motion before the House and my own consumption after reading the report is that I would like to support the proposal advanced by Hon. Khan that we extend debate on this issue because this is a matter that is before the Court of Law and in case this House is not very

careful we may end up landing in not a very good environment. Mr. Speaker, I support the motion but request for your indulgence if the House can adjourn for tomorrow so that we continue with this weighty matter, thank you.

**Hon. Kanga:** Thank you Mr. Speaker. I rise to support this motion on the Report as presented by the Leader of Majority on the Investigation on the Conduct of Members of the County Public Service Board with reservations.

Mr. Speaker, the Leader of Majority Party has presented a very comprehensive report on the Conduct of Members of the County Public Service Board but with some rumours and innuendos in the report. This is because one Mr. Obimba to allege that the Members of the Board were receiving hefty salaries without substantively presenting before the Committee evidences in form of payslips to support these allegations. The Committee went *ultra vires* because they did not request for evidences from the members of the public.

This House should expunge these reports as these issues may bring legal matters because as you know at the in caption of this Committee they encountered some technical hitches as a result of Court Injunctions. I rise to support on the following grounds;

Mr. Speaker, Section 58 of the County Government Act, 2012 touches on the composition of the Board and gives the ground on which the County Public Service Board may be dissolved.

Part (a) paragraph five talks of on the ground for the removal of Members of the Constitutional Commission under Article 51 of the Constitution of Kenya.

Part (b) by a vote of not less than seventy-five percent (75%) of the County Assembly members.

Mr. Speaker, allegations as read by the Leader of Majority are grave which cannot go unchallenged, but, I support that the Committee and the House moves further because the Committee did a comprehensive report which we say that we adjourn until tomorrow but let us deal with this report so that we give the Governor ample time so that he commences with the issues of recruiting workers, removing those that are incompetent as far as the Constitution is concerned and state that we dispense off this matter today, thank you.

**Temporary Speaker** (Hon. Rodgers): Hon. Members, please resume your sits. Now that Hon. Khan has requested that the House adjourns until tomorrow, can we have a seconder so that we debate on the matter? What is it Hon. Muga?

**Hon. Muga:** Mr. Speaker, I don't know whether it is an oversight. I stand to support this motion and the adoption of this report that is before us. I do support this because when you refer to page eleven of the report on the interview of Prof. Raphael and you proceed to page twelve...

**Temporary Speaker** (Hon. Rodgers): Order Hon. Member. We are not yet through with Hon. Khan's proposal that we adjourn until tomorrow before we proceed. Since we have seconder can we debate on whether we adjourn the House or continue debating on this motion?

**Hon. Otura:** Thank you Mr. Speaker. Going by the adoption of this Report, it is order that we debate it in the next session. Reasons, the comprehensive nature of this report does not require a minimal thirty minutes exhaustion of what is contained in it. I want to support that we adjourn and debate on the report tomorrow, thank you.

**Hon. Owiti:** Thank you Mr. Speaker. I wish to oppose the adjournment of the House until tomorrow. One, as a member of the Ad hoc Committee the nature and manner in which the so called County Public Service Board handled this House was disrespectful. The report that is before the House is a report that is not based on rumours and innuendos, but it is a report based on facts because we also received a report from the House of Senate that deliberated on the actions taken by the Board Members.

Mr. Speaker, I would like to urge Member of this House that the quorum required that has been mentioned by Hon. Kanga is there and we need to look at this matter as it goes on unless times dictates that we adjourn if Members feel so. Mr. Speaker, I want to plead with Hon. Members that we deliberate this report because we all know that there are a lot of underground movements because this week this House passed the motion that was appointing County Executive Committee Members and these ministers will not be able to perform their duties without the Chief Officers. The appointments, hiring of these Chief Officers is the duty of the Board Members. Mr. Speaker, if we don't have a well constituted Board, if we have a compromised Board there is no way this County Government of Kisumu will deliver on its services that it promised the residences. Mr. Speaker, I want to plead with the House for serious indulgence that we delve into this matter and if possible I support the recommendations made by the Committee that this Board be dissolved forthwith because there is no way our able Governor will be able to deliver on the promises it made to its people. Thank you.

**Hon. Oraro:** Thank you Mr. Speaker. I rise to support the proposal that we adjourn and proceed with the debate tomorrow. Reasons being, that this is a matter that requires in-depth analysis and discussion.

Mr. Speaker, I happened to be a member of the Ad hoc Committee and I agree with what Hon. Owiti said that the Committee went through a lot. Two, the Hon. Members of the Assembly need

to understand the intensity of the allegations and dispense with this matter effectively. On the other hand in 11<sup>th</sup> April, 2014 Garissa County did sent the Members of the Board packing on similar allegations and if you look at the County Government Act, 2012 talks of seventy-five percent in debating such debates, it might require the House to vote which will also require the same threshold to be applied. Mr. Speaker, if I look at the Members who are present in the House, we don't meet that threshold. So, I want to support that we adjourn and we deliberate on this matter tomorrow in in-depth, thank you.

**Temporary Speaker** (Hon. Rodgers): Hon. Member for North Nyakach.

**Hon. Guya:** Thank you Mr. Speaker. Mr. Speaker, I am Hon. Guya MCA for North East Nyakach, not North Nyakach. I also want to support this motion that we adjourn and have time to look at this report. Mr. Speaker, when the Leader of Majority was presenting this report, it is in the public domain that at some point when the Ad hoc Committee was working on this report there was a Court Case served and I would request that when this report is being presented the Committee attaches a copy of the Court Case so that we also have time to see the issues that the defendants raised.

Mr. Speaker, just as other Members have said, this report has just been circulated to us in the House today and we have not had time to peruse through it and we don't want to do something that will be illegal in this House and we don't want to do something that will not stand the test of time. So, I want to support what other Member have said that you give us time, we go look at this report in details in line with the Constitution of this Republic and in line with the mandate and duties of this Board, so that tomorrow when we resume we will have the adequate time to debate on what we have gone through and understood to enable us make informed decisions. I beg to support that we adjourn until tomorrow. Thank you.

**Leader of Majority** (Hon. Kenneth): Thank you Mr. Speaker. I would have wished that we dispense with this motion today because as you are aware we are only left with two sittings before we adjourn our sessions until February, 2018.

Mr. Speaker, however, it is a Constitutional requirement that a Bill of this magnitude must pass with three quarters (3/4) of the Members of the House which translates to 75%. The 75% translates to 36 Members of this House. Mr. Speaker, I am afraid that the number that we have here in this House today at the moment does not meet the threshold of what the Constitution provides. Otherwise, it would have been in my interest and the interest of the Governor that this matter is dealt with expeditiously so that he may have a free hand to commence recruiting the kind of Public Service Board and by extension Public Service Employees that can deliver on his manifesto. Mr. Speaker, having considered those facts, I would also support that we adjourn to tomorrow so that we have the requisite numbers to pass this motion. Thank you.

**Hon. Ogendo:** On a Point of Order. Mr. Speaker, I rise on Standing Order No. 36 (2) which states that; *“The Order Paper shall be published in the County Assembly Website and shall be made available to Members at least 12 hours before the County Assembly meets, and a Supplementary Order Paper shall be made available at least one hour before the County Assembly meets.*

Mr. Speaker, having considered that, I support the motion that we adjourn the House until tomorrow because if you look at this report is a 20 pages document which I believe all these members have not gone through. So, if you humbly give us time so that we go through this report to enable us debate on it tomorrow it would be the humble prayer of this \House who are in support of the same, thank you.

**Hon. Olale:** On a Point of Order. Mr. Speaker, as you are considering to adjourn the House until tomorrow I would like to request the Leader of Majority that in the appendix of the Report he is the only one that has appended his signature and if this could be signed by all Members of the Committee then it will be termed as a complete report rather than being signed by one person.

**Temporary Speaker** (Hon. Rodger): That is noted.

**Temporary Speaker** (Hon. Rodger): Hon. Members having fully debated on the Adjournment motion may I now put the question?

*(Question put and agreed to)*

### ADJOURNMENT

**Temporary Speaker** (Hon. Rodger): Hon. Member, this House stands adjourned until Wednesday, 06<sup>th</sup> December, 2017 at 09:00 a.m.

*The House rose at 5:30p.m.*

*ADDENDUM*

*Hansard Reports*

*Roseline Awuor*

*Zablon Otiende*

*Edward Odanga*

*Fanuel Okode*