

COUNTY GOVERNMENT OF KISUMU



COUNTY ASSEMBLY OF KISUMU

THE HANSARD

SECOND ASSEMBLY – FIFTH SESSION

Thursday, 12th August, 2021

House met in the Main Chamber at 2:30 p.m.

(The Speaker (Hon. Elisha Jack Oraro) in the Chair)

PRAYERS

The Speaker (Hon. Oraro): Good afternoon Honourable Members? Madam Clerk, take us through the Order Paper of the day.

The Speaker (Hon. Oraro): Next order!!

COMMUNICATION FROM THE CHAIR

The Speaker (Hon. Oraro): Honourable Members, welcome to this session. I have the following communications to make. First, is a reminder that Covid-19 is still with us. Honourable Members, ensure that you put on your mask to cover both your nose and mouth. You must also use a sanitized microphone. It is for your own safety. I know you were tested last time and that test is as good as that time of testing. I believe that you know what I mean by that.

Secondly, you are here by informed that the Assembly is in the process of going paperless and this is a process that did not start yesterday. It started sometimes back and that is why you were given an iPads. We also have Wi-Fi in the Assembly. We will try as much as possible to ensure that all the report and the minutes are sent to the respective WhatsApp groups. I want to urge the Clerks to maximize on the use WhatsApp groups.

Thirdly, I also want to communicate that the Assembly leadership met yesterday and we did agree that we are not going to cluster Members when attending sessions but all of us will attend as usual as we keep watching the trend of the virus. We shall ensure that we adhere to the Ministry of Health Guidelines. A concern was also raised on the issue of attendance both at the committee and at the plenary level. It was resolved that only Members who attend sessions and the committee meetings will be paid. We must transact our businesses at the committees. The Committee Clerks and the House orderlies must ensure that that is adhered to.

Lastly, we have been informed that County Assemblies Sports Association (CASA) will host his Third Edition of the Sports and Cultural Bonanza in Mombasa County from 30th September to 9th October, 2021. The disciplines to be staged include;

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| 1. Football men. | 13. Darts. |
| 2. Football ladies. | 14. Badminton. |
| 3. Beach football men. | 15. Table tennis. |
| 4. Beach football ladies. | 16. Track and field events. |
| 5. Volleyball men | 17. Beauty contest. |
| 6. Volleyball ladies. | 18. Choir (set piece, cultural dance and folk song). |
| 7. Beach Volleyball men | 19. Swimming. |
| 8. Beach Volleyball ladies | 20. Golf. |
| 9. Netball. | 21. Cycling. |
| 10. Tag of war men. | 22. Donkey race. |
| 11. Tag of war ladies. | |
| 12. Table pool. | |

I know Hon. Seth and Hon. Guya can ride a donkey. Please ensure that you practice. I will post this on our pages. Register and start practicing. Otherwise, I wish you the best.

The Speaker (Hon. Oraro): Next order!

STATEMENT

The Speaker (Hon. Oraro): Hon. Paul Okiri.

Hon. Okiri: Thank you Mr. Speaker. I have a Personal Statement. It is very painful that I lost my grandmother today and it less than one year since my mother passed on. I want to request for your prayers. Thank you.

The Speaker (Hon. Oraro): We are sorry Hon. Okiri. We shall continue to pray for you during this difficult time. Thank you.

The Speaker (Hon. Oraro): Next order!

MOTION

ADMINISTRATION OF LAW, JUSTICE, CONSTITUTIONAL AFFAIRS, GOOD GOVERNANCE AND SECURITY COMMITTEE REPORT ON THE MEMORANDUM OF AMENDMENT OF THE KISUMU COUNTY ADMINISTRATION VILLAGE UNITS ACT 2019

BY

HON. SETH OKUMU

CHAIRPERSON, ADMINISTRATION OF LAW, JUSTICE, CONSTITUTIONAL AFFAIRS, GOOD GOVERNANCE AND SECURITY COMMITTEE.

The Speaker (Hon. Oraro): Honourable Members, before Hon. Seth Okumu proceeds, this is an amendment Bill on the Kisumu County Administration Village Units Act, 2019 which was passed in 2019. This is not an amendment but a report. Proceed Hon, Okumu.

Hon. Okumu: Mr. Speaker and Hon. Members. Pursuant to Article 185 of the Constitution of Kenya, the Speaker instructed the Committee on the Administration Law, Good Governance, Constitutional Affairs and Security to consider whether the proposal to amend Section 10 of The Kisumu County Administration (Village Units) Act, 2019 by the County Attorney meets the Amendment Threshold of the Assembly in accordance with the Objects and Purpose of The Kisumu County Administration (Village Units) Act, 2019;

This directive is based on the premise that the Assembly, in fulfillment of its legislative mandates, must take into account certain mandatory considerations prior to and during the Legislation processes. These ideals spring from the Constitution of Kenya, 2010, the County Governments Act, 2012, The Kenya Law Reform Commission Guide to Legislative Processes in Kenya and the Statutory Instruments Act, 2013 which seeks to identify, consolidate and simplify the mandatory tenets, values and principles of the Constitution that ought to be applied and considered by all actors involved in one way or the other in the legislative process. Factors for consideration by Committee are summarized under the following rubrics:-

- (a) Constitutional issues;
- (b) International Treaties and Conventions ratified by the State;
- (c) Territorial Jurisdiction;
- (d) Conflict of Law;
- (e) National Law and Policy;
- (f) Policy Parameters;
- (g) Statutory Harmony;

- (h) Ethical and other concerns;
- (i) Technical Soundness or Practicality concerns;
- (j) Public Participation; and
- (k) Cost-benefit analysis as part of the process of Regulatory Impact Assessment (RIA),.

Establishment and Mandate of the Committee.

Mr. Speaker and Hon. Members, the Sectoral Committee on The Administration of Law, Justice and Constitutional Affairs, Good Governance and Security is established under Standing Order No. 193 of the Kisumu County Assembly Standing Orders, whose mandates, pursuant to the Standing Order No. 193 (Second Schedule) are as follows;

All matters relating to referendum, further Devolution in the County, issues of Integrity, Ethics and Conflicts of Interests including Anti-corruption and Human Rights; ensuring and coordinating the participation of communities and locations in governance at the local level and assisting communities and locations in governance at the local level and assisting communities and locations to develop administrative capacity for the effective exercise of the functions and powers and participation in governance at the local levels; administration of law and justice, including working and collaborating with national government operatives within the County especially on security matters.

The Subject matter of the Sectoral Committee on The Administration of Law, Justice and Constitutional Affairs, Good Governance and Security subject to this report are as stated in the Second Schedule of the Kisumu County Assembly Standing Orders No. 193 and are as follows: All Matters related to a referendum, furtherance of Devolution, Good Governance and the Administration of Law and Justice.

Composition.

The committee as currently constituted comprises the following Honourable Members:

NAME	POSITION
1. Hon. Seth Okumu -	Chairperson
2. Hon. Beatrice Pamela -	Vice Chairperson
3. Hon. Jacktone Ogendo-	Member
4. Hon. David Arao -	Member
5. Hon. Erick Agola -	Member
6. Hon. Julius Genga -	Member
7. Hon. Sally Okudo -	Member
8. Hon. Ken Ooko -	Member
9. Hon. Johnson Guyah -	Member

10. Hon. Philemon Ojuok -	Member
11. Hon. Joachim Oketch -	Member
12. Hon. Roy Samo -	Member
13. Hon. Caleb Omoro -	Member
14. Hon. Vitalis Otura -	Member
15. Hon. Paul Okiri -	Member

Committee Secretariat.

1. Owen Ojuok -	Clerk of the Assembly
2. Harman Moses -	Committee Clerk
3. Bill Otieno -	Legal Counsel
4. Dennis Ogolla -	Hansard Reporter
5. Kennedy Okise -	Serjeant-at-Arm

ACKNOWLEDGEMENTS.

Mr. Speaker and Hon. Members. I would like to express my special thanks of gratitude to all Members of the Committee on The Administration of Law, Justice and Constitutional Affairs, Good Governance and Security for their valuable contributions during the interrogation of this proposed Amendment Bill.

I also wish to extend my sincere gratitude to the Members of the County Assembly, the Office of the Speaker and Clerk of the Assembly for their support during this exercise.

Mr. Speaker and Hon. Members, I therefore humbly submit this Report for consideration by the House on behalf of the Committee.

LEGAL BASIS

Mr. Speaker and Hon. Members, the following laws informed the Committee with the basic principles that inform the art and practice of legislative processes in Kenya as follows—

- (i) The Constitution of Kenya, 2010. Article 2, restates the supremacy of the Constitution. Therefore every law must be consistent with this provision, otherwise it will be null and void to the extent of the inconsistency. Further, it must be confirmed that the proponents of the law have the legal capacity and mandate to propose and pass the particular laws;
- (ii) Interpretation and General Provisions Act (Cap. 2): This Act gives the basic structure of drafting; clarifies the rules of construction of laws; avoids repetition and promotes

consistency of language. The Act also deals with amendments, repeal of legislation and gives attendant general guidelines;

- (iii) Revision of Laws Act (Cap. 1): The Act deals with the revision of laws to ensure that the statutes are up to date. Revision of laws and allocation of Chapter (Cap) numbers is done by the Attorney General and the National Council for Law Reporting (NCLR), which exercises delegated authority of the Attorney-General in this respect; and
- (iv) The public financial management laws is considered in order to ensure that the proposed law conforms to requirements of public resource management. These include the Public Finance Management Act, 2012, the Public Procurement and Disposal Act, No. 3 of 2005, the Public Audit Act, No. 12 of 2003 and the Statutory Instruments Act, No. 23 of 2013.
- (v) And any other National Policy or County Legislations. All legislative proposals must be consistent with existing laws of the State.

BACKGROUND INFORMATION

Mr. Speaker and Honorable Members, the Kisumu County Administration (Village Units) Act, 2019 is an act of the Kisumu County Assembly to provide for the establishment of Village Units, the effective coordination, management and supervision of the general administrative functions in the Village Units and for connected purposes.

The objects and purpose of the Act are as follows:

- i. Provide for the establishment of the Village Units in Kisumu County;
- ii. Provide for the further decentralization of the functions and provision of services by the Kisumu County Government in accordance with Article 176(2) of the Constitution;
- iii. Enable effective participation of the local community in the governance and development of the village units.
- iv. Enable effective accountability to the local communities in matters affecting them;

Mr. Speaker and Hon. Members, following a letter dated 21st June, 2021 from the County Attorney adduced before the Committee (Annex i), the Committee noted that the amendment sought to Amend Clause 10 (1) of the Act. Clause 10 (1) of the Kisumu County Administration (Village Units) Act, 2019 states as follows;

“A Village Administrator shall be appointed through an open and competitive process by the County Public Service Board and approved by the County Assembly in accordance with the provisions of this Act.”

It is proposed that the amendment in this Clause be caused by deleting the phrase “*and approved by the County Assembly in accordance with the provisions of this Act*” and substituting therefore with:

“The appointment of the Village Administrator shall be conducted through an open and competitive process by the County Public Service Board and in accordance with this Act.”

INTENTION OF AMENDMENT.

Mr. Speaker and Hon. Members, the proponents of this amendment have submitted as follows:

- I. THAT Section 52 of the County Governments Act which establishes the Village Administrator is uniformly applied in all the 46 Counties and it constitutionally overrides the provision of the Kisumu County Administration (Village Units) Act, 2019 pursuant to Article 191 (2) (a) of the Constitution.
- II. THAT the law envisages vetting and suitability of public officers occupying accountability positions and in a manner reflecting seniority in position.

FINDINGS ON THE PROPOSED AMENDMENTS.

Mr. Speaker and Hon. Members, Following the consideration of the reasons for the proposed amendment, the Committee made the following findings.

- I. THAT the proponents of the Amendment Bill have applied Section 52 (2) of the County Governments Act, 2012 in isolation.

Section 53 (1) of the County Governments Act, 2012 states as follows:

- (1) There is established, for each village unit, a village council comprising—
 - (a) the village administrator who shall be the chairperson of the village council; and
 - (b) not less than three and not more than five village elders competitively appointed by the village administrator with the *approval of the county assembly*, taking into account gender balance. (Emphasis Added)

By the reading of S. 53 (1) of the County Governments Act, 2012 the County Assembly has been mandated to approve the members of the Village Council. It is noted that the Village Administrator by virtue of being a member of the Village Council, falls within the approval of the County Assembly.

Further S. 52 (2) provides that the “Village Administrator shall be appointed by the County Public Service Board in accordance with the provisions of this Act.” (Emphasis added). Meaning therefore that S.52 must NOT be read in isolation from the other provisions of the Act.

- II.** THAT there is Statutory Silence in S. 52 (2) of the County Governments Act, 2012 as to whether the Village Administrator by being a member of the Village Council falls within County Assembly approval. The underlying argument for the Amendment is that Parliament must address all issues directly whenever it acts. However, it is not safe to assume that Parliament intends to address all ancillary issues directly whenever it acts. As one court has aptly put it, “not every silence is pregnant.” In some cases, Parliament intends silence to rule out a particular statutory application, while in others Parliament’s’ silence signifies merely an expectation that nothing more need be said in order to effectuate the relevant legislative objective. In still other instances, silence may reflect the fact that Parliament has not considered an issue at all.

It should be noted that an inference drawn from Parliamentary silence certainly cannot be credited when it is contrary to all other textual and contextual evidence of parliamentary intent.

RECOMMENDATIONS.

In consideration of the findings made on this proposed Amendment, the Committee therefore recommends as follows;

- I.** THAT the Kisumu County Administration (Village Units) Act, 2019 in clause 10 (1) as it is neither contradicts nor conflicts with relevant existing National Legislations and this Hon. House should not honor the invitation to cause any amendment on this Section.

CONCLUSION

It is therefore my honor and privilege, on behalf of the Committee on the Administration of Law, Justice, Good Governance, Constitutional Affairs and Security to table this report before this Honorable House for consideration. I would like to call Honorable Johnson Guya to second.

Thank you Mr. Speaker and Hon. Members.

The Speaker (Hon. Oraro): Yes, Hon. Johnson Guya.

Hon. Guya: Thank you Mr. Speaker. I stand to second the motion by the Standing Committee of Administration of Law, Justice, Constitutional Affairs, Good Governance and Security. It is very clear that this Standing Committee went through the Acts that are available. The Constitution of the Republic of Kenyan and even the Kisumu County Administration Village Act 2019.

Mr. Speaker, if you look at the County Government Act, it provides for the creation of the Village Council. When we were doing this law that is now in operation, by then, you were the Chairperson of the Standing Committee of Administration of Law, Justice, Constitutional Affairs, Good Governance and Security. I can recall that we went through all the steps and we realized that it did

not conflict with any existing laws. There is nothing lost and the Standing Committee took its time and recommended that the Act as it is neither contradicts nor interfere with any relevant existing national legislations.

Therefore, we resolved that there is no need to amend that Act. Hon. Atieno always says here that Prof. Nyongó has several degrees. He assented to this Act on 14th May, 2019. He must have gone through it and found that the Act does not conflict with any other law. I want to request the Members to support the report of this committee. I stand to second. Thank you.

The Speaker (Hon. Oraro): Honourable Members, Administration of Law, Justice, Constitutional Affairs, Good Governance and Security Committee report on the Memorandum of Amendment of the Kisumu County Administration Village Units Act has been tabled by the Chair and seconded by Hon. Johnson Guya, I now want propose that the report be open for debate.

The Speaker (Hon. Oraro): Hon. Benny Pete Oiko.

Leader of Minority (Hon. Oiko): Thank you Mr. Speaker. The Kisumu County Administration Village Units Act, 2019 was passed by this Assembly and assented to by the Governor. Today, we are being told that the County Attorney wants some amendments to this Act be made. This Act is for the County and not for national governance. The provisions of section 52 and 53 of the County Government Act, 2012 is very clear on this matter. I support the decision of the House Committee that we reject the amendment as proposed and stick to the recommendation of the committee. Thank you.

The Speaker (Hon. Oraro): Hon. Roy Samo.

Hon. Samo: Thank you Mr. Speaker for giving me the opportunity to air my voice on this matter. I want to say that there is no provision in this Act that we passed that is conflicting. We know what sections 52 and 53 stipulates.

Mr. Speaker, we cannot read the law selectively and in isolation. Mr. Speaker, we cannot read one part of the law and omit the other part. If Section 52 is very clear on its Establishment of that office of the Village Administrator, and Section 53 stipulates on the establishment of the council which must be approved by the Assembly. If the council is being approved and the council is composed of the office of the Village Administrator and the Council Members, who are between 3 and 5, then we don't see any conflicting scenario in matters law.

Mr. Speaker, in our own wisdom as an Assembly, we passed the Kisumu County Village Administration Unit Act in 2019 of the village, and said in section 10 that it must be approved by the Assembly. That is still within the constitutional boundaries of what is within our powers. As I support the sentiments of Hon. Seth Okumu and that of the House committee, I want to say that we haven't challenged any National or County law by approving and leaving Section 10 the way it is. Initially, when I was serving as a Councillor, we were making by-laws, which were being

assigned by Ministers by then the Minister for Local Authorities. However, laws which are passed by the County Assemblies are County laws and are recognized by both the Constitution and the County Government Act as well as all other relevant law of the land.

Mr. Speaker, what we are passing today is law, in case there is any conflicting scenario on it then, there must be an amendment that the Assembly must or can undertake, but in this case, there isn't as stipulated in both Section 52 and 53 of the County Government Act of 2012. If that journey is very difficult then a person can move to a court of law to challenge that, and the Constitution is very clear that when we sit in this session as well as in the House Committees, we wheel the powers of the High Court, thus whatever we pass becomes Law. The Assembly therefore must be able to approve the Council Members hence concur with my Chair as he raised an alarm at some point to the other part of the government that they should bring the entire council to be approved. This should include the Village Administrators and the Council Members. Thank you, I support.

The Speaker (Hon. Oraro): Yes, Hon. Steve Owiti.

Hon. Steve Owiti: Thank you Mr. Speaker, I also want to support the Standing Committee's recommendation that we cannot afford to amend this Law on the basis that it is inconsistent with some part of the Law in this country.

Mr. Speaker, this is one of the Laws we first enacted in this Assembly and we indeed undertook due diligence, research and was a matter of fact that was discussed at length. When we were passing this Act, it brought a lot of heat but we agreed that some of the suggestions and reasons that were made against it were not as weighty to dismiss the consistency of this Law. It wasn't inconsistent with both the Constitution of Kenya and the County Government Act. It wouldn't be in good taste for us as an Assembly to amend a Law that in essence isn't conflicting or creating any problem. If an individual somewhere feels that this Law isn't serving them the way it should be then, that would be undermining the authority of this Assembly to amend this Law. Therefore, I want to agree with this House Committee that, we aren't going to amend this Law and anyone who implements any part of this Law with disregard with whatever we passed and was assented by the Governor is committing an illegality.

Mr. Speaker, I want to beseech members of this Assembly to support and leave the Law as it is for us to be able to serve our people. One of the dragons that have been created in the recent past is the position of the Village Administrators and they must act within the Law. They aren't going to be given an opportunity to be appointed before passing through the Assembly. In that I agree with the House Committee that, the Law stands and we shall ensure its implementation to the letter. I support, thank you.

The Speaker (Hon. Oraro): Yes, Hon. Okiri

Hon. Okiri: Thank you Mr. Speaker, I want state that the term devolution and since its onset, we have seen major fruits of it. The Village Council must be there, and before I proceed, I want to say

that I support the report by the Standing Committee of Administration of Law, Constitutional Affairs, Justice and Security. If we go with amendments, it is not something that can be done in a day rather would take four to five months. Waiting for all these months to amend the bill will not give the true picture of devolution on the ground as the County government would have wasted another 10 years before the full intention of devolution.

Mr. Speaker, we make laws for the citizens of this County, and it would be uncalled for, for someone to look for a vacuum for him to work on. Whether or not I will be re-elected should not be a reason for me not to make legislative decisions. If the law doesn't contradict any Laws, then, what is the essence of bringing up all these issues. Mr. Speaker, by Kisumu County Assembly denying the amendment today shows a strong signal that we are helping our county government. It is quite absurd that something that had already been assented to by the Governor this will indicate that we are working behind the Governor. I am soon coming with a motion of disloyalty to the Governor of Kisumu. By attempting to sneak others amendments to the floor of the House, we won't take it lightly, thank you.

The Speaker (Hon. Oraro): I am seeing Hon. Agola and Hon. Olwal. Hon. Ogutu, consider that Hon. Olwal is here and now that you have seen him and yet you said he was not unwell.

(Laughter)

The Speaker (Hon. Oraro): Let us have Hon. Agola and then Hon. Olwal.

Hon. Agolla: Thank you Mr. Speaker. I served in this House Committee and we did pass a Bill which was enacted and assented to as an Act of this county which provided for the creation of Village Administrators. I remember vividly that by the time we were passing this Bill, there were concerns and there were Memoranda from the Governor and this House stood firm that the approval of Village Council and Village Administrators must be done by this House.

The other day, this House created the Office of the County Attorney and approved the nomination of a County Attorney. If I go through the prayers of the County Attorney, I was unable to see any Statute or any law that this House violated by passing the Bill.

Mr. Speaker, I urge the House to adopt this report and reject the prayers of the County Attorney. The law says that the Composition of the Village Council must have a Village Administrator, meaning by approving the village council, you are also approving the village administrator. Thank you.

The Speaker (Hon. Oraro): Hon. Olwal.

Hon. Olwal: Thank you Mr. Speaker. It is good to give priority to non-committee members to air their views...

The Speaker (Hon. Oraro): What is it Hon. Paul Okiri?

Hon. Okiri: Mr. Speaker, I wish to inform Hon. Olwal that there is no law that prohibits you from allowing any member- whether a committee members or not – from contributing to a report, provided the Speaker’s eye catches you.

Hon. Olwal: Mr. Speaker, I believe that Hon. Okiri is out of order because I didn’t command that you do that; I just requested that you give priority to non-committee members. And everything must not be written in law, we are not computers.

The Speaker (Hon. Oraro): What is it Hon. Steve Owiti?

Hon. Owiti: Mr. Speaker, I am a bit at loss on whether Hon. Olwal is in order because it is not the duty of the Speaker to know which member is a member of which House Committee. During the Plenary, members have equal rights to contribute.

The Speaker (Hon. Oraro): What is it Hon. Pamela Odhiambo?

Hon. Pamela Odhiambo: Thank you Mr. Speaker. I want to inform Hon. Olwal. He ought to have requested the Speaker to give priority to a member who has not been here for a long time so that he can also give his views.

(Laughter)

Hon. Olwal: Mr. Speaker, I believe that you should protect me because everyone was on recess and I don’t think Hon. Pamela was here debating alone.

The Speaker (Hon. Oraro): Just resume your seat Hon. Olwal. You are protected. When I noticed you, I called upon Hon. Ogutu to take notice that you were in the House. I did not take seriously your statement that non-committee members should not be given priority because I understood very well what Hon. Paul Okiri was saying. Every member can contribute whether you are in the committee or not...

Hon. Olwal: Mr. Speaker, kindly let me finish because I want to go and take my medication.

(Laughter)

The Speaker (Hon. Oraro): Let Hon. Olwal to finish then we hear from Hon. Agola. Just a minute Hon. Olwal. What is it Hon. Okiri?

Hon. Okiri: Mr. Speaker, Hon. Olwal is flouting Covid-19 protocols; he is not wearing his mask and therefore a threat to this House.

The Speaker (Hon. Oraro): Hon. Agola; just a minute Hon. Olwal.

Hon. Agolla: Thank you Mr. Speaker, I have two points. First, I want to seek your indulgence, under Standing Order No. 1 kindly to arrange for an induction and take Hon. Olwal...

(Applause)

Mr. Speaker, he has confirmed that he has been absent and unwell...

(Laughter)

The Speaker (Hon. Oraro): Hon. Olwal, I want Hon. Agolla to conclude.

Hon. Ogutu: Mr. Speaker, I just want to give a very important information.

The Speaker (Hon. Oraro): Hon. Ogutu, whom do you want to inform?

Hon. Ogutu: Mr. Speaker, I want to inform the House.

The Speaker (Hon. Oraro): Granted.

Hon. Ogutu: Thank you Mr. Speaker. I believe that it is in the public domain that my Chairperson has been unwell. I have risen in this House to undertake duties that he is expected to do. I have been briefing him promptly on what has transpired in the House. Mr. Speaker, I feel embarrassed that my Chair is being taunted by other Hon. Members. Hon. Olwal has confirmed that I have been furnishing him with brief and I am really concerned about that. Thank you.

The Speaker (Hon. Oraro): What is it Leader of Majority?

Leader of Majority (Hon. Onyango): Thank you Mr. Speaker. I am so worried because you know that Hon. Olwal was a very avid debater in the House. Mr. Speaker, since hon. Ogutu started holding briefs for him, he has developed a disease called Phenol Dementia....

(Applause)

(Laughter)

Mr. Speaker, I mean, the Hon. Ogutu has something to do with it. So, can Hon. Ogutu come clean that he does not have anything to do with Hon. Olwal's inability to function the way he has been functioning?

The Speaker (Hon. Oraro): Hon. Olwal.

Hon. Olwal: Mr. Speaker, I believe that you need to protect me. This is a House of Order and if you want to discuss the conduct of a Hon. Member, there are procedures to be followed...

The Speaker (Hon. Oraro): Hon. Olwal, I am going to protect you. Hon. Ogutu has been adversely mentioned here and I am going to give him one minute to clear his name that I will give it back to Hon. Olwal.

Hon. Ogutu: Thank you Mr. Speaker. It is true that the Leader of Majority has adversely mentioned my name and he is stating that I have something to do with Hon. Olwal's condition. I believe that every Hon. Member has interest and if at all I can be given his chair, then, let this be done procedurally.

(Applause)

(Laughter)

The Speaker (Hon. Oraro): Hon. Olwal.

Hon. Olwal: Mr. Speaker, away from the interlude. We have had our amusement as a House. Mr. Speaker, back to the topic of discussion on issues to do with the Committee report, I was stating that we as an Assembly, have a mandate which are bound by jurisdictions especially given that we are a legislative body. The County Assembly being a replica of the Senate that does not imply that we are a lesser parliament, we are here to make laws, amend them and that is the core mandate of our duty as an Assembly.

Mr. Speaker, we have not overstepped our legislative mandate nor have we transgressed our jurisdictions as a County Assembly. We did not make laws for Kakamega but we made this law for Kisumu County. We did not make this law that contradicts any national legislation of the Constitution of Kenya. So, I believe that it is impulsive that an officer who is supposed to be offering advisory services to the County when it comes to legal issues, has to do a letter advising the Assembly to undertake an illegality. In regards to that, for the first time I want to be in concurrence with Hon. Seth Okumu, Chairperson, Standing Committee of Administration of Law, Constitutional Affairs, Good Governance and Security and reiterating that the Committee has done a commendable job although he has not been doing much of the work of late. Otherwise, I stand to support. Thank you.

The Speaker (Hon. Oraro): Leader of Majority.

Leader of Majority (Hon. Onyango): Thank you Mr. Speaker. I sat here keenly listening to the Hon. Members and it has put me between the anvils of their logic and the hammer of the silence consequence of passing this report.

Mr. Speaker and Hon. Members, that as it may be, I would wish to support the report but we look at a political solution to the silence consequences that this report entails. Thank you.

(Hon. Speaker is relieved by the Temporary Speaker Hon. Muga)

The Temporary Speaker (Hon. Muga): Yes, Hon. Pamela Odhiambo.

Hon. Pamela Odhiambo: Thank you Madam. Speaker, I will not call the mover to reply because the Standing Committee has done a good job. This is a Committee that is being chaired by Hon.

Seth Okumu. Madam Speaker, were either elected or nominated to this House to represent our people. We must not always amend laws just to benefit a few people. Madam Speaker, that law is the law and before we pass this law, we must all be in consensus where it is taken to the relevant House Committee, then it is brought back to this House. So, even if sometimes we have political biff that we need to look at, we are always supposed to abide and adhere to the Constitution of Kenya and laws that have been passed in this House.

Madam Speaker, I support the Committee report and I am requesting all House Committee Chairpersons to always work the way this House Committee has done, so that Kisumu County is seen as a County that is serious. I support the report, thank you.

The Temporary Speaker (Hon. Muga): Hon. Otiang’

Hon. Otiang’: Thank you Madam Speaker. I arise to support this Committee report. I want to appreciate the House Committee for being bold and putting records straight. As a House that legislates Bills and laws in this County we are in-charge of making such decisions and the decision that we make resonate well with our constituents.

Madam Speaker, as you are aware, the Constitution allows for public participation. So, an officer in his own intent and purpose, I don’t know why he tried to undo what this House had approved as an Assembly. It is good that we are calm and composed and state that we did what we did which we believe was right. So, this Committee has affirmed our earlier decision and our mandate as legislators and they have affirmed that this is a House of rules and procedures and we abide by them. So, I stand in support and I stand to say congratulations to the Standing Committee for being bold enough. Madam Speaker, sometimes it is very hard when such matters are brought to this Assembly but standing your grounds I believe that is the best thing that ever happened. Madam Speaker, for the Committee through the Chairperson, I want to say thank you. For the House, I would like to urge us to stand tall and do whatever is necessary to uphold the law.

Madam Speaker, if it is not in any way contradicting relevant National Legislations, then I believe that it is virtuous. So, I stand to support. Thank you.

The Temporary Speaker (Hon. Muga): Hon. George Ogotu.

Hon. Ogotu: Thank you Madam Speaker. I stand to support this report and for the first time I want to applaud this House Committee. Sometimes it is very hard when an amendment is brought to this House because they sometimes have political implications. This House Committee has brought a comprehensive report and they have pointed exactly what was supposed to be done in this area. If you can remember when the County Attorney was being passed in this House I stood and defended the County Attorney with all my strength. I believe that the County Attorney has brought this amendment with outmost faith in this Assembly. Madam Speaker I am not going to support this amendment the way the committee has put it in plain paper. Let us take this particular Act back to the sender so that the person can be aware that the County Assembly is listening and

they know the law because if you can see the recommendations of this particular House Committee, then, you would conclude that they are indeed good recommendations. On that note I stand to support the recommendations from this committee. Thank you.

The Temporary Speaker (Hon. Muga): Yes Hon. Miruka.

Hon. Miruka: Thank you Madam Speaker for allowing me to expound on the report. I would like to appreciate the team for having done a splendid job. I believe that sometimes in 2019 we were all here when the Bill was brought, we debated and passed this Bill and it was taken back to the Governor for assent. When he brought the memorandum we still stood our grounds and that is what made the Act that we have today.

Madam Speaker, it is a provocation of what we had rejected as a team is now being brought back to us. I am wondering why that is coming into this floor. I want to say that if we can go the direction that we have taken then, we are going to correct the messes that we have in as much as the recruitment of the Village Administrators and the Village Councils is concerned. I know quite a number of us here are bereaved. We are not finding it very well when it comes to articulating the functions of the Village Administrators in our rural wards and town wards. If we stick to this then, I am sure that any other intention that may want to betray our good thinking is going to be thwarted. Thank you.

The Temporary Speaker (Hon. Muga): Hon. Guya, it is my belief that you had seconded this motion. I fail to understand why you are standing again.

The Temporary Speaker (Hon. Muga): Yes Hon. Jagongo.

Hon. Jagongo: Thank you Madam Speaker. I also want to support the recommendations of this Standing Committee. This is the third time we are discussing the same issue. We discussed it, there was a Memorandum that was brought by the Governor, we rejected it and now this is the third time we are discussing the same issue.

Madam Speaker, I believe that the County Attorney has failed this County because we had an Act. The same thing happened with the Health Act and we rejected it. The same thing is happening again with this Act and we are still rejecting it. I trust that the County Attorney needs to consult widely before making any amendments to this Assembly. I would like to request that we send a strong warning to the County Attorney to stop messing with the County because these are silly mistakes that we should not have going forward. Thank you.

The Temporary Speaker (Hon. Muga): Yes Hon. Manuche.

Hon. Manuche: Thank you Madam Speaker. I wish to call the mover to reply.

The Temporary Speaker (Hon. Muga): Yes Hon. Seth Okumu.

Hon. Seth Okumu: Thank you Madam Speaker. I want to thank the Hon. Members for unanimously agreeing that we do not agree with the amendments proposed by the County Attorney on the Kisumu County Village unit Act, 2019. Madam Speaker I want to remind the County Attorney of Article 1 of the Constitution which talks about sovereignty of the people. Which reads;

‘(1) All sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution.

(2) The people may exercise their sovereign power either directly or through their democratically elected representatives.’

Madam Speaker it is the wish of the people of Kenya that anybody that is employed to serve them should know that they should participate in their employment. Madam Speaker, since they cannot do that they have delegated power to this House. That is why before the Public Service Board starts its operation the Membership have to be approved in this House. The only reason as to why we are doing this is because we are delegating these duties further to another body. Otherwise we will be responsible for even the recruitment as was the dreams of the people of Kenya.

Madam Speaker I don't want the County Attorney to interfere with this. If this House feels that they have the right to approve the Village Administrators and it is also written in an Act then let it be so. I want to urge the House to ensure that any person in the Village Council that is going to work in this County of Kisumu must be approved by this House as required by the law that we made in this House and in the County Government Act. If there is any person in the Village Council that needs to be approved in this House then let us ensure that these people are approved in this House before they can get any money from the Exchequer. We cannot even have the CECs starting to be paid before they are approved in this House. Thank you.

The Temporary Speaker (Hon. Muga): Thank you. The report on the has been read by Hon. Seth Okumu, seconded by Hon. Guya and debated by Hon. Members. I therefore want to put a question on adoption of the Kisumu County Administration Village Units Amendment Bill, 2021.

(Question put and agreed to)

The Temporary Speaker (Hon. Muga): Hon. Members, the Report on the Memorandum of Amendment of the Kisumu County Administration Village Units Act 2019 for consideration of the Kisumu County Administration Village Units Amendment Bill, 2021 has been adopted today, 12th August, 2021.

Hon. Members, I do direct that the Hansard Report and the Vellum be prepared and be forwarded to the relevant County Department forthwith. Thank you

The Temporary Speaker (Hon. Muga): Next Order!

ADJOURNMENT

The Temporary Speaker (Hon. Muga): There being no any other Business to transact the House stands adjourned to 17th August 2021 at 2.30 p.m.

(House rose at 4.12 p.m.)

Addendum

The Hansard Team

Zablon Otiende – Senior Hansard Reporter

Edward Odanga – Hansard Reporter

Fanuel Okode – Hansard Reporter

Patrick Okoyo – Hansard Reporter

Jacklyne Otieno – Hansard Reporter

Denis Onyango – Hansard Reporter

Jesca Otieno – Hansard Reporter