

COUNTY GOVERNMENT OF KISUMU



COUNTY ASSEMBLY OF KISUMU

THE HANSARD

Official Report

SECOND ASSEMBLY – FIFTH SESSION

Tuesday, 11th May, 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 Hon. Members, pursuant to the provisions of County Assembly Standing Orders No. 32 (2) I want to request that the Sergeant-At-Arms rings the quorum bell for five minutes.

(Quorum bell rung for five minutes)

The Speaker (Hon. Oraro): The Deputy Leader of Majority, could you please confirm if we have quorum.

Deputy Leader of Majority (Hon. Ogendo): Mr. Speaker, we have quorum. Thank you.

The Speaker (Hon. Oraro): Mr. Clerk, kindly take us through the Order Paper of the day.

COMMUNICATION FROM THE CHAIR

The Speaker (Hon. Oraro): Honourable Members, welcome to this session. I believe you had a good weekend. I want to request that you adhere to the Covid 19 protocols. Ensure that you

properly put on your masks to cover both your nose and mouth. Last week, I did communicate that the strain from India is still with us and you understand how lethal it is. Ensure that you use the sanitized microphone.

Two, the Proposed Kisumu County Budget Estimates 2021/2022 was laid in the House on Tuesday, 04th May, 2021. I did direct that the Sectoral Committees to seriously scrutinize the Departmental Budgets. There shall be a communication on the same. It will be on Thursday and Monday. The Clerk will share the time table for same. Take this matter seriously. We want to pass the Proposed Kisumu County Budget Estimates FY 2021/2022 by 15th or 22nd June, 2021. It must be passed when you have gone through it. We shall not allow public participation before you discuss this Estimates with the County Executive through the CECs and the Budget and Appropriations Committee. Take the issue of the budget seriously because it is going to affect you and your Ward whether elected specially on representing a Ward Thank you.

The Speaker (Hon. Oraro): Next order!

MOTION

PLANNING, INDUSTRIALIZATION AND ICT COMMITTEE REPORT ON THE
CONSIDERATION OF THE PROPOSED KISUMU COUNTY REGULARIZATION OF
LAND OWNERSHIP AND DEVELOPMENT BILL, 2021

BY

HON. GEORGE OLWAL

CHAIRPERSON, PLANNING, INDUSTRIALIZATION AND ICT COMMITTEE

The Speaker (Hon. Oraro): Yes, George Olwal.

Hon. Olwal: Mr. Speaker and Hon. Members. PURSUANT to the provision of Article 185 (1) and (2) of the Constitution of Kenya 2010, the County Executive forwarded the Kisumu County Regularization of Land Ownership and Development Bill, 2021, to be introduced in the County Assembly for consideration. The Kisumu County Regularization of Land Ownership and Development Bill, 2021, Kisumu County Bills No. 1, was read a first time on Thursday, 25th February 2021.

Upon being read for a first time, the bill was committed to the Planning, Industrialization and ICT Committee to facilitate public participation, in accordance with the provisions of the Kisumu County Assembly Standing Orders, Order no. 123 (1) and (3).

The County Assembly placed an advertisement in the local dailies on Tuesday, 2nd March 2021 and Wednesday, 3rd March 2021, informing the public of the intended exercise to be conducted as from 9th March, 2021 to 19th March, 2021 in all the thirty five wards of Kisumu County.

The committee held meetings with officers from the line departments at the precincts of the County Assembly and proceeded to collect views of the public and stakeholders in all the thirty five (35) Wards of Kisumu County.

Thereafter, the committee proceeded for report writing retreat which provided the committee an opportunity to consider the submissions of the officers from the line departments, the public, and the stakeholders before going further to draft, consider and approve the report.

The committee is grateful to the offices of the Speaker and the Clerk of the County Assembly for the logistical and technical support accorded to it during consideration of the bill. Finally, I wish to express my appreciation to the Honorable Members of the committee who made useful contributions towards the preparation and production of this report.

To our clerks who did everything to make this exercise a success, I applaud you.

On behalf of the Sectoral Committee on Planning, Industrialization and ICT and pursuant to the provisions of the Kisumu County Assembly Standing Orders, Order No. 123 (4), it is my pleasant privilege and honor to present to this House the report of the Committee on its consideration of the Kisumu County Regularization of Land Ownership and Development Bill, 2021,

Hon. George Olwal, MCA

ESTABLISHMENT AND MANDATE OF THE COMMITTEE

Mr. Speaker and Hon. Members

The Committee on Planning, Industrialization and ICT is established under the Kisumu County Assembly Standing Orders; Order no 193 of the second schedule, and is mandated pursuant to Standing Order no. 193 (5) (c) and (g) to;

Study and review all County legislations referred to it, make reports and recommendations to the County Assembly as often as possible, including recommendation on proposed legislation, among other responsibilities.

COMMITTEE MEMBERSHIP

Mr. Speaker and Hon. Members, the Committee on Planning, Industrialization and ICT as currently constituted comprises of the following Hon. Members:-

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|----------------------|------------------|
| 1. Hon. George Olwal | Chairperson |
| 2. Hon. Nancy Owiti | Vice Chairperson |
| 3. Hon. George Ogutu | Member |

4. Hon. Aslam Khan	Member
5. Hon. Pamela Odhiambo	Member
6. Hon. George Abaja	Member
7. Hon. Joseph Olale	Member
8. Hon. Jennipher Obonyo	Member
9. Hon. Gard Olima	Member
10. Hon. Habil Nyasuna	Member
11. Hon. Olga Aoko	Member
12. Hon. Prisca Misachi	Member
13. Hon. Johnson Guya	Member
14. Hon. Kennedy Ageng'o	Member
15. Hon. Victor Rodgers	Member

COMMITTEE SECRETARIAT

The Committee is resourced with the following technical staff, representing the office of the Clerk;

1. Mr. Ouko Boaz	Lead Clerk
2. Mr. Austine Ochieng	Clerk Assistant
3. Mr. Bill Otieno	Legal Counsel
4. Mr. Patrick Okoyo	Hansard Reporter
5. Mr. Kennedy Okise	Sergeant at Arms

LEGAL FRAMEWORK

Mr. Speaker and Hon. Members. Physical Land Use and Planning Act 2019 section 56 and 57 56. Subject to the provisions of this Act, the Urban Areas and Cities Act, 2011, and the County Governments Act, 2012, the county governments shall have the power within their areas of jurisdiction to— (a) prohibit or control the use and development of land and buildings in the interests of proper and orderly development of its area; (b) control or prohibit the subdivision of land; (c) consider and approve all development applications and grant all development permissions; (d) ensure the proper execution and implementation of approved physical and land use development plans; (e) formulate by-laws to regulate zoning in respect of use and density of development; (f) reserve and maintain all the land planned for open spaces, parks, urban forests and green belts in accordance with the approved physical and land use development plans; and (g)

consider and determine development planning applications made in respect of land adjoining or within reasonable vicinity of safeguarding areas.

57. (1) A person shall not carry out development within a county without a development permission granted by the respective county executive committee member.

(2) A person who commences any development without obtaining development permission commits an offence and is liable on conviction to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding two months or to both.

(3) A County Executive Committee member shall require a person who has commenced a development without obtaining development permission to restore the land on which the development is taking place to its original condition or as near to its original condition as is possible and that such restoration shall take place within ninety days.

(4) Where a person who is required to do so fails to comply with the provisions of sub-section (3), the relevant No.13 of 2011 No.17 of 2012 Development permission. 641 No. 13 2019 of Physical and Land Use Planning, County Executive Committee member may undertake to restore the land as required and shall recover the cost of the restoration from the person required to undertake the restoration.

(5) A County Executive Committee member may revoke development permission if the applicant has contravened any provision of this Act or conditions imposed on the development permission for any justifiable cause.

(6) A County Executive Committee member may modify the conditions imposed on development permission where circumstances require it or for any justifiable cause.

County government Act, 2012 section 110 and 111

Mr. Speaker and Hon. Members, The above sections stipulates the following on the County spatial plans;

(1) There shall be a ten year county GIS based database system spatial plan for each county, which shall be a component part of the County Integrated Development Plan providing;

(a) A spatial depiction of the social and economic development programme of the county as articulated in the Integrated County Development Plan;

(b) Clear statements of how the spatial plan is linked to the regional, national and other county plans; and

(c) Clear clarifications on the anticipated sustainable development outcomes of the spatial plan.

(3) Each county spatial plan shall be developed by the county executive committee and approved by the respective county assemblies in accordance with procedures approved by the respective county assembly.

(4) Each county spatial plan shall be reviewed every five years and the revisions approved by the respective County Assemblies.

Section 111 further outlines the following on the City or municipal plans;

(1) For each city and municipality there shall be the following plans—

(a) City or municipal land use plans;

(b) City or municipal building and zoning plans;

(c) City or urban area building and zoning plans;

(d) Location of recreational areas and public facilities.

(2) A city or municipal plans shall be the instrument for development facilitation and development control within the respective city or municipality.

(3) A city or municipal plan shall, within a particular city or municipality, provide for—

(a) Functions and principles of land use and building plans;

(b) Location of various types of infrastructure within the city or municipality;

(c) Development control in the city or municipality within the national housing and building code framework.

(4) City or municipal land use and building plans shall be binding on all public entities and private citizens operating within the particular city or municipality.

(5) City or municipal land use and building plans shall be the regulatory instruments for guiding and facilitating development within the particular city or municipality.

(6) Each city or municipal land use and building plan shall be reviewed every five years and the revisions approved by the respective County Assemblies.

Urban areas and cities act section 20 (1) (d)

The above Act outlines the following;

Functions of a board

(1) Subject to the provisions of this Act, a board of a city or municipality shall—

(d) Control land use, land sub-division, land development and zoning by public and private sectors for any purpose, including industry, commerce, markets, shopping and other employment centres, residential areas, recreational areas, parks, entertainment, passenger transport, agriculture, and freight and transit stations within the framework of the spatial and master plans for the city or municipality as may be delegated by the county government.

COMMITTEE MEETINGS

Mr. Speaker and Hon. Members. In pursuit of these findings, the committee invited the following Officers from the relevant line departments to appear before it on different dates to explain the objectives of the bill and how it would impact on the lives of the residents:-

- | | |
|----------------------------|---|
| 1. Mr. Moses Orege Onyango | Chief Officer lands, Survey and Physical Planning |
| 2. Mr. George Okong'o | County Executive Committee member for Finance |
| 3. Mr. Idris N. Omondi | County Attorney |
| 4. Mr. Abala Wanga | Ag. City Manager |

During the interview/ interrogation to internalize the contents of the Bill, the officers stated reasons that necessitated the enactment of the Kisumu County Regularization of Land Ownership and Development Bill, 2021;

- a) The need to Protect public spaces
- b) Protection of the environment
- c) Increased structured revenue collection
- d) Social Inclusivity by Reducing gentrification and displacements by recognizing existing informal settlements
- e) Disaster risk reduction
- f) Protect citizens from rogue county officials especially on demolitions by providing moratorium and amnesty period
- g) Increase land use Efficiency by restricting unauthorized subdivisions
- h) Property security in loans and resale

The following also emerged from the joint meetings with the above officers;

- That Major concerns of the investors is to establish whether the owner of a building did seek for approval before development and whether the approval was granted
- The officers discovered that most of the developments within the City were not approved and in event of any risks/calamity, the owner cannot seek for compensation from any insurance firm due to lack of approval / authority from the government, hence great loss to the public and the society.
- Any unauthorized development which is not regularized under this Act after the expiry of regularization period will be demolished.
- The law will protect the law abiding citizens and vilify those who live by impunity

PUBLIC PARTICIPATION IN THE THIRTY FIVE WARDS IN KISUMU COUNTY

Mr. Speaker and Hon. Members. Public participation exercise was conducted in the thirty five wards within Kisumu County as gazetted in the dailies dated 2nd and 3rd March 2021. Members of staff were distributed in each of the wards as scheduled and highlights of the outcome from the public in various wards are as follows:-

1. NYALENDA 'A' WARD

The Assembly team reached the venue of the meeting (Kowino Market) on 9th March 2021, at 9.30 am to conduct public participation. The Ward Manager informed the team that they did not have information about the exercise. However, he requested more time to consult and make the necessary arrangements.

After the consultations, a big number of participants had gathered at the venue at 11.15 am.

The team introduced the Kisumu County Regularization of Land Ownership and Development Bill, 2021, by outlining the processes that the bill had gone through up to its current stage.

The team elaborated the necessity of the bill as spelt out in the memorandum of objects and reasons as to why it was important to get their views for consideration during committee report making stage.

The team informed the residents that the exercise was being conducted in all the thirty five wards and therefore it was important to get their views which would then form part of the committee report.

The residents of Nyalenda 'A' Ward reacted in the following manner;

- They demanded for more time to read and understand the objectives of the bill, claiming that it was the first moment they were setting their eyes on the bill.
- That their views were not collected during the drafting stage.
- That the issue of land is very emotive and therefore they could not be ambushed to make an informed decision on behalf of the greater Nyalenda A population.
- They informed the Assembly team to expect a memorandum from the residents of Nyalenda 'A' concerning the bill.

Despite all attempts by the staff of the Assembly to have the bill read, the residents were not ready to listen and demanded that the Assembly team should leave the venue and give them more time to internalize the contents of the bill.

2. NYALENDA 'B' WARD

The team arrived in Nyalenda 'B' at 10.20 am to conduct the public participation exercise. However, after a brief consultation with the village Administration, they were informed that the office of the Member of the County Assembly was not aware of the exercise.

Upon consultation with the area MCA, the residents were invited through phone calls and at 12.00 Noon; there was a good number in the hall. The exercise started by a word of prayer from a member of the public.

The team introduced the bill and explained its objectives and the need to have it enacted. The residents of Nyalenda 'B' Ward had the following views on the Kisumu County Regularization of Land Ownership and Development Bill, 2021:-

- That the County Government had not shared relevant information in form of legal notices, gazette notices and other legal and administrative /policy documents informing the public on which specific areas are informal settlements.
- Members of the Public also noted that since the draft valuation roll is contentious and is before the court of law, the land regularization should be suspended until determination of the matter. This is because issues of Land rates are intertwined with the proposed regularization procedures.

3. EAST KANO WAWIDHI WARD

The residents of East Kano Wawidhi supported the Kisumu County Regularization of Land Ownership and Development Bill, 2021 but lamented on the fact that the notice for the event came just a few hours before commencement.

4. MUHORONI KORU WARD

The residents of Muhoroni Koru ward supported the Kisumu County Regularization of Land Ownership and Development Bill, 2021 with the following comments:-

- They cited the limited time given to them to go through the bill. They promised to re-read the bill and send a memorandum to the County Assembly in case anything arise.
- They demanded that in the next public participation exercise, the Assembly should accompany themselves with transport reimbursements for the participants.

5. RAILWAY WARD

The residents of Railway Ward had the following views on the Kisumu County Regularization of Land Ownership and Development Bill, 2021:-

- They suggested that the bill be looked into properly before it can be enacted into law.
- They promised to send a memorandum on the same
- They were disappointed that the notification for public participation came on the same day that the event was taking place.
- They suggested that the County should involve experts to interrogate the bill.
- They demanded that copies of the bill should have been distributed earlier before the actual day

6. WEST KISUMU WARD

The residents of West Kisumu Ward had the following views on the Regularization of Land Ownership and Development Bill, 2021:-

- That mechanism be put in place to ensure that social lives of residents are not interfered with.

- The residents were concerned that demolitions of structures are done and the public anticipates developments to start immediately, however, it would take more than one year to effect developments on those respective areas
- The County should give adequate notice period that will not interfere with the economy and the social life of the people.

7. OMBEYI WARD

The residents of Ombeyi Ward had the following comments on the Kisumu County Regularization of Land Ownership and Development Bill, 2021

- They suggested that those with unauthorized developments be engaged before demolitions are done.
- Those affected by demolitions must be compensated
- That due process must be followed during the regularization process.
- Action be taken on those who during regularization will be found culpable of holding public land
- Public amenities like churches should not be demolished whichever case.

8. MASOGO NYANGOMA WARD

The residents of Masogo Nyang'oma Ward had the following comments on the Kisumu County Regularization of Land Ownership and Development Bill, 2020;

- That no public participation was conducted by the Executive during the drafting period. This therefore implies that any public participation done by the County Assembly is null and void
- That the bill was not submitted to them in time for scrutiny

9. KOLWA EAST WARD

The residents of Kolwa East Ward supported the Regularization of Land Ownership and Development Bill, 2021.

10. WEST NYAKACH WARD

The people of West Nyakach abstained from commenting or airing their views on the Kisumu County Regularization of Land Ownership and Development Bill, 2021, citing the following reason;

- That there was no public participation conducted by the Executive when the bill was being drafted

11. SOUTH WEST NYAKACH WARD

The residents of South West Nyakach Ward understood the bill without raising any concerns. However, they lamented that the copies of the bill should have been given early enough to allow them time to peruse and understand its objectives.

12. NORTH SEME WARD

The residents of North Seme Ward supported the Regularization of Land Ownership and Development Bill, 2021 with the following comments;-

- They stressed that upon enactment into law, strict measures should be taken to curb unauthorized developments.
- The residents lamented on the late arrival of the bill.

13. CENTRAL SEME WARD

The residents of Central Seme Ward supported the Regularization of Land Ownership and Development Bill, 2021 and had the following comments;

- They encouraged the County Assembly to approve the bill and enact it into law.
- They highlighted the fact that the bill should have been sent to them earlier so that they read and understand the objectives before the date of presentation.

14. MIWANI WARD

The residents of Miwani Ward supported the bill.

15. KISUMU NORTH WARD

The residents of Kisumu North ward rejected the Regularization of Land Ownership and Development Bill, 2021 and resolved as follows:

- That the bill infringes upon the rights of the people to own land and that the Bill further duplicates the roles of the National Land Commission
- That the County Assembly must be informed that they shall not be a party to any Bill that seeks to infringe upon fundamental rights and freedoms of the citizens of Kenya and any

illegality that seeks to give the County Government unrecognized mandates within the Constitution of Kenya.

16. MARKET MILIMANI WARD

The Kisumu County Regularization of Land Ownership and Development Bill, 2021 was introduced to the members of the Public who had converged at the venue. Members of the public unanimously requested to be given more time to dig deep into the bill before presenting their submissions.

17. KALOLENI SHAURI MOYO WARD

The residents of Kaloleni Shauri Moyo Ward supported the Kisumu County Land Regularization and Development Bill, 2021 bill with the following comments;

- They suggested that the bill should include how those affected by possible demolitions will be compensated.
- They suggested that the bill should be more informative on the areas considered informal.

18. ONJIKO AWASI WARD

The residents of Awasi Onjiko Ward did not turn up for the public participation exercise.

19. AHERO WARD

The residents of Ahero Ward did not turn up for public participation exercise.

20. CHEMELIL TAMU WARD

The residents of Chemelil Tamu Ward had the following to submit on the Kisumu County Regularization of Land Development Bill, 2021;

- That the bill should not spare the rural settlement areas since there are occupants of public land which are not regularized.
- That the residents should be seriously sensitized on the document by experts
- That they should be given more and ample time to thoroughly scrutinize the bill and come up with concrete views/concerns before it is enacted into law.
- The residents questioned the fate of squatters with allotments on public lands where land rates have exponentially accrued.
- There were concerns that the regularization period of twelve months and even the grace period of not more than 6 months before penalties are imposed were very short and should be extended to three years.

21. MIGOSI WARD

The residents of Migosi Ward supported the Kisumu County Regularization of Land Development Bill, 2021

22. NORTH WEST KISUMU WARD

The residents informed the technical team that they had no information on the planned event and added that it would be impossible to notify a good number of the public to attend within that time. Public participation therefore did not take place in North West Kisumu ward.

23. NORTH NYAKACH WARD

The residents of North Nyakach Ward supported the Kisumu County Regularization of Land Development Bill, 2021. There were no compelling issues.

24. KOBURA WARD

The residents supported the Kisumu County Regularization of Land Development Bill, 2021, but suggested for demarcation of Public Lands on Urban and Rural areas.

25. KABONYO KANYAGWAL WARD

The residents of Kabonyo Kanyagwal Ward supported the Kisumu County Regularization of Land Development Bill, 2021 but had the following to submit:-

- They stressed on the late notice given to them to attend the public participation exercise
- They requested the Assembly team to accompany themselves with fare reimbursements next time there is public participation.
- They also pleaded for public sensitization on land matters which are very emotive in order to make informed decisions.

26. SOUTH WEST KISUMU WARD

The residents of South West Kisumu had the following comments;

- That they should be accorded more time to go through the Bill before it could move to the next level. The notice and time given was inadequate.
- That the County Government to assist in obtaining title deeds.
- They suggested that sectors like agriculture be considered before the bill is passed to ensure that they are not adversely affected by the proposed developments.

- The area MCA wrapped up the discussion with an insightful talk on the benefits of the bill if passed into law and members of the public were satisfied.

27. KONDELE WARD

The residents abstained from discussing the Kisumu County Regularization of Land Development Bill, 2021, citing late notice for the public participation.

28. KAJULU WARD

The residents of Kajulu Ward did not turn up for public participation exercise on the Kisumu County Regularization of Land Development Bill, 2021

29. EAST SEME WARD

The residents of East Seme Ward did not turn up for public participation exercise on the Kisumu County Regularization of Land Development Bill, 2021

30. WEST SEME WARD

The residents of West Seme Ward did not turn up for public participation exercise on the Kisumu County Regularization of Land Development Bill, 2021.

31. SOUTH EAST NYAKACH WARD

The residents of South East Nyakach Ward had the following to submit;

- They lamented on the limited time given to analyze the bill
- They requested that next time; copies should be forwarded before the actual event.
- There were no compelling issues on the Kisumu County Regularization of Land Development bill, 2021.

32. CENTRAL NYAKACH WARD

The residents of Central Nyakach Ward had the following to submit on Kisumu County Regularization of Land Ownership and Development Bill, 2021

- That victim of demolition must be compensated.
- That the government should confine itself on public land

33. CENTRAL KISUMU WARD

The residents of Central Kisumu had the following to submit on the Kisumu County Regularization of Land Ownership and Development Bill 2021.

- That mechanisms be put in place to ensure peoples' lives are not interfered with.
- That development should follow immediately after demolitions have been done.

34. MANYATTA ‘B’ WARD

The residents of Manyatta ‘B’ abstained from any discussion on the Kisumu County Regularization of Land Ownership and Development Bill 2021.

35. KOLWA CENTRAL WARD

The residents proposed the following recommendations on the Kisumu County Regularization of Land Development Bill, 2021

- That regularization fees be paid within a minimum of six months as opposed to the two months provided for in the Bill.
- That a notice of one week be given for demolition of unauthorized structures contrary to “without notice”.
- That the County Government to tackle alleged corruption and delay in processing approval of structures.
- There should be a provision in the Act on how it will handle land already subdivided.

COMMITTEE FINDINGS/OBSERVATIONS

- There was no mention of approved plans by the departments of Lands, Housing, Physical Planning and Urban Development.
- That the areas referred to as informal settlements are yet to be gazetted for clarity and avoidance of impunity from those who will be charged with its implementation
- The Committee noted that the title of the Bill should read Kisumu County Regularization of Development Bill 2021. Land ownership is strictly under the docket of the National Land Commission as stipulated under Article 67 (2) (a) of the Constitution of Kenya 2010 and National Land Commission Act Section 5 (1) (a).
- The committee noted that Kisumu County lacked a physical plan which would be vital in regularizing of development across the whole County.
- The committee realized that the Executive did not conduct public participation when coming with the Bill as envisaged in the Constitution of Kenya under Articles 10,118 and 174 and the Kisumu Public Participation Act. The views of the public were not taken into consideration neither was civic education undertaken on the same.

- The committee noted that the definition of “informal settlement” was not clear and would create a loophole in the law.
- The committee found out that section 14(2) of the Bill was inconsistent with the intention of the Bill since regularization was meant to acknowledge that the development carried out had met the required standards.
- The committee unearthed that the Bill under section 7 stated that unauthorized land subdivision below the acceptable size as per the zoning standards would not be regularized. The committee did not find any documentation ascertaining the acceptable size as per zoning standard

COMMITTEE RECOMMENDATIONS

1. Part I – Preliminary, Section 1 - under short title, the bill should be amended by deleting the words ‘ownership and’ to read ‘This Act may be cited as the Kisumu County Regularization of Land Development Bill, 2021’
2. Part I –Preliminary, Section 2 (1) – under interpretation on the definition of ‘informal settlements’ the bill should be amended by deleting the words ‘unplanned areas’ and inserting the words ‘Areas gazetted as informal settlements.
3. Part I – Preliminary, Section 3, under objects of the Act, the bill should be amended by adding clause (g) to read ‘Provide for the regularization of unauthorized developments erected within planned towns of Kisumu County’
4. Part II, the regularization process, Section 14(2), under liability, the Bill should be amended by deleting Section 14 (2).
5. There is need for the public to be sensitized on Physical Land Use and Planning Act especially on restrictions on land subdivisions and development approvals. There is need for extensive and proper public sensitization by the executive on this emotive issue.
6. The committee recommends for identification and gazettelement of informal settlements referred to in the Bill.
7. There is need to protect our social heritage, taking cognizant of our socio-economic diversity
8. The committee recommends for the Approval of County and City Plans before the regularization bill is passed to give the residents a reference for regularization.

9. The committee recommends for documentation ascertaining the acceptable size as per zoning standard

CONCLUSION

Mr. Speaker and Hon. Members. Aware that the Constitution of Kenya 2010 tasks the County Governments with the responsibility of physical planning, unauthorized developments have been made in Kisumu County over the years and these need to be brought within the orbit of a legal planning framework. However, for the efficacy of the bill, there is need to approve the City Plan and carry out public sensitization before passing this bill into an Act. We therefore recommend and conclude that we defer this bill process until the above conditions and committee recommendations are met.

Thank you Mr. Speaker and Hon. Members. May I ask Hon. Nancy Owiti, the Vice Chairperson to second?

The Speaker (Hon. Oraro): Proceed Hon. Nancy Owiti.

Hon. Nancy: Thank you Mr. Speaker. I stand to second the report as read by the Chair.

The Speaker (Hon. Oraro): Honourable Members, Panning, Industrialization and ICT Committee report on the consideration of the Kisumu County Regularization of Land Ownership and Development Bill, 2021 has been presented by Hon. George Olwal, Chairperson of the Committee and seconded by Hon. Nancy Owiti. As per our Standing Order, I want to propose a question that this report is open for debate.

The Speaker (Hon. Oraro): Yes, Hon. David Arao.

Hon. Arao: Thank you Mr. Speaker. I want to begin by appreciating the committee for such a comprehensive report. I totally support the conclusive part of the report as read by the Chair. I want to propose that this Bill be deferred. Not for any other interest but for the interest of the people of this County.

We have freehold land that are on lease. Apart from the informal settlements that has been exempted by the Bill, we also have our rural homes or setups which cannot be handled as per the prayers of the Bill. Mr. Speaker, you are aware that people are not doing developments due to stringent requirements made by the government. How do you put a fine of Kshs. 500,000 for people who want to develop their county? This is ridiculous. How can I sought for the CEC's approval to put up a chicken pen? This is unpopular Bill. I support that we defer this Bill. Thank you.

The Speaker (Hon. Oraro): Yes, Hon. Priscah Misachi.

Chef Whip (Hon. Misachi): Thank you Mr. Speaker. As a Member of this Committee, I stand to support the report and say that we must do justice to our people. People must be given a chance to develop their parcels of lands. My understanding of this Bill is to regularize the places where we would want to develop so as to enable the government get revenue. When we engaged the CEC, this regularization is only going to work within the planned areas only. So, I believe we have to domesticate personal land to our own situation so that we can get our Land Rates and Plan Approvals when we go by the Bill. In that context, I support the report.

The Speaker (Hon. Oraro): Hon. John Atieno.

Hon. Atieno: Thank you Mr. Speaker. I allow me to express my concerns over this Bill. It is clear as the Chair has read that by the popular opinion of our people that they do not support this legislative proposal. The County Executive wanted to sneak this bill without getting the views of the people, and never did Public Participation which is a constitutional requirement. Mr. Speaker, the fact that the County Executive did not seek public views when coming up with this legislative proposal, means that it is a faulty, and an illegal legislative proposal that shouldn't have found its way to the floor of this House. It is the prerogative of the County Executive to do Public Participation for the public to authenticate and approve that they fully support the document. I support that this bill should not only be deferred but also discarded in totality. Thank you.

The Speaker (Hon. Oraro): Yes, Hon. Vitalis Otura

Hon. Otura: Thank you Mr. Speaker. Let me first thank the Chair of the Sectoral Committee of Planning and ICT for a commendable job and good presentation they have done. The most important bit of this report is the data collection from various wards. Mr. Speaker, from the exhibition, it is clear that people from a number of wards abstained from this Land Regularization Bill, some contributed with good amendments whereas others disowned the bill in totality.

Mr. Speaker, another good thing on the report is the Sectoral Committee's observations and findings. I like part 8 of the recommendations which says that; the Sectoral Committee recommends the approval of County and City Plans before the Land Regularization Bill is passed to give the residence a reference for regularization. This could be the cause of the jittery of some people in various wards. Mr. Speaker, in addition, the Sectoral Committee likewise recommended that this report to be deferred.

Mr. Speaker, I believe that it is imperative to have a document see the House, I won't put it exactly how Hon. Atieno did but, the process should be started afresh so that first, there is sensitization of members of the public so that the amendments originate from people on the ground. As I support this report, I want to appeal that this process be start afresh and if the term "deferred" can be used then let it be so. Thank you.

The Speaker (Hon. Oraro): Yes, Hon. George Ogutu

Hon. Ogutu: Thank you Mr. Speaker. I would want to associate myself with the Sectoral Committee Report on the Kisumu County Regularization of Land Ownership and Development Bill, 2021 as one of the Sectoral Committee members.

Mr. Speaker, Honorable Members are only thanking the Chairperson of the Sectoral Committee but I also want to thank the entire secretariat for carrying out the heavy task on collection of data. Without the secretariat, we couldn't have come up with such a good report. I want to lightly say that this Kisumu County Regularization of Land Ownership and Development Bill, 2021 doesn't have a head or tail in its process because there are a lot of issues in this bill that needs to be addressed. Therefore, the major thing that this Sectoral Committee recommended for this bill is deferment until the right process is followed for the people of Kisumu County.

Mr. Speaker, first, in this Kisumu County Regularization of Land Ownership and Development Bill, 2021, when you are talking about land, you are talking about a very emotive issue. The first failure on the people who brought this Bill is that they never conducted public participation. You cannot bring such a Bill that touches on land to the Assembly without first taking it to the people. That is why we started correcting this Bill from the title to the end.

Let us defer this Kisumu County Regularization of Land Ownership and Development Bill, 2021 back to the drafters so that they can rework on it and bring it afresh, as the committee recommended - so that we can get a Bill that will serve Kisumu county for a long time.

We will be a laughing stock if we pass this Bill the way it is. I support the recommendations brought by the committee. Thank you.

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

Hon. Okumu: Thank you Mr. Speaker. I support that we defer this Kisumu County Regularization of Land Ownership and Development Bill, 2021 until the conditions set by the Sectoral Committee are met. The Bill was a sneaky way of oppressing the people of Kisumu. In the objective, the Bill requires that the county, the city and the towns within the county should have a plan.

The same Department that brought to us this Bill is the same Department that should bring to this House Plans for us to approve. It is with this plan that we can begin to talk about regularization of land. I therefore agree with the Sectoral Committee recommendations that they first need to bring to us the plan before regularization; without that, we will be passing a Bill that will later be used to oppress the people of Kisumu. Thank you.

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

Hon. Olga: Thank you Mr. Speaker. I call the Mover to reply.

The Speaker (Hon. Oraro): Before the Mover replies, I had noticed Hon. Rashid Miruka, Hon. Samuel Dede, and Hon. Roy Samo. Let me give them one minute each. Hon. Dede.

Hon. Dede: Thank you Mr. Speaker for giving me the opportunity to add voice to the debate. First, we have different types of land and different ways of acquisitions. Most of the lands are ancestral in nature of which when going to the Land Boards to change the names takes a long time and will therefore disenfranchise our people. At the same time, it has been stated in the Bill that the developments within a particular parcel of land shall be demolished within a period of time. I differ with that because the ownership of the land there; for example, the elderly people who does not know the right procedure to follow will find it difficult to interpret these laws. In addition to that, if they develop their lands, it will also take them time to get the correct allotment letters for the land. So, I rise to join my fellow colleagues in supporting the deferment of this motion pending further discussion. Otherwise, thank you.

The Speaker (Hon. Oraro): I had noticed Hon. Vitalis and I am also seeing the Deputy Leader of Majority Hon. Ogendo on his feet.

Deputy Leader of Majority (Hon. Ogendo): Thank you very much Mr. Speaker. I want to associate myself fully with this report, mainly on two recommendations that have been brought by the Sectoral Committee. The first recommendation is No. 5 which states that;

“There is need for the public to be sensitized on physical land use and planning especially on land subdivisions and development approvals”.

Mr. Speaker, there is need for extensive proper public sensitization by the County Executive on this emotive issue. Mr. Speaker sir, we are aware that when it comes to the issue of land; it is also important that the Sectoral Committee has also recognized that it is very emotive when you touch on issues of land. We have Ndungu Land Report that is currently within the lands department at the National level. To date, nobody has availed that report. It means that it is a very sensitive matter that if we have to deal with, we need to think seriously and handle it properly.

Another recommendation is that; *“there is need to protect our social heritage taking cognizant of our social economic diversity”.* I hail from Kasagam next to this city. I am aware that our community had served this Assembly with a petition in regards to this Kisumu County Regularization of Land Ownership and Development Bill, 2021. It would have been my wish that the Office of the Clerk should have furnished Sectoral Committee with the Petition so that they would have highlighted the issues raised by our community in regards to this Bill.

Mr. Speaker sir, it is very unfortunate that the Office of the Clerk is sleeping on its job because it has not submitted such an important document to the Sectoral Committee when such matters are being discussed regarding the Kisumu County Regularization of Land Ownership and Development Bill, 2021. I therefore support the recommendation at the final stage of deferring this report. I rest my case.

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

Hon. Miruka: Thank you Mr. Speaker. I also rise to support the deferment of the Kisumu County Regularization of Land Ownership and Development Bill, 2021. If you look at it, the bigger objective, if it followed the procedures, it would have been excellent more so to people living within the areas of the newly created towns. But, the processes that it followed were not right. I want to challenge the Sectoral Committee that they should have not gone this far discussing this Bill when they had learnt that a Constitutional Right that is conducting of public participation was never adhered to.

Secondly, I support this because I am learning that most of the ward members of this community were never sensitized on this and I am wondering why there was such a rush to have this Bill passed as it is. I am adding that it should not be returned to the owner but rather suggest that let it be given another trial; another prescribed time when it is properly amended. Thank you Mr. Speaker, I support.

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

Hon. Samo: Thank you Hon. Speaker. I want to submit to us that the Honourable Chairperson of this Sectoral Committee has done a good job by asking us to defer this motion. I support that so that a lot of things can be put in order. The Hon. Rashid has put it clear that we cannot have a document that the people have not been taken through in terms of public participation.

Before I continue, the Hon. Olga had really perused this document and told me to go through the part for Kajulu Ward. I want to thank her for that. She asked me to go to the wards such as, Kondele, Kajulu and East Seme. In all of those wards, the residence abstained from discussing this document. So, I concur with the Hon. Chair that we need to take this one to another stage later on.

Mr. Speaker, the Hon. Sheikh Ojwang Ogendo of Masjid Musa of Nyalenda “A” Ward is very clear on this. I do not want to add more on what the senior has said. The only thing that still baffles me is that he is still representing the youths in ODM Party, yet he is now 51 years of age.

(Laughter)

So I cannot go against my senior and I want to agree with him that we need to defer this to a later date. Thank you Mr. Speaker.

The Speaker (Hon. Oraro): The mover of the motion had been called to reply though I had given time for some few members to contribute. Hon. George Olwal, can you move straight to the reply. I hope that you have captured the sentiments of different Hon. Members.

Hon. Olwal: Thank you so much Mr. Speaker sir. Foremost, I must thank all that Hon. Members for their fruitful deliberation on this report.

Mr. Speaker, I must give my personal submission that this is best Bill that this County has ever had and it is only that the sensitization process that the County Executive overlooked as was captured in our report and as was highlighted by Hon. Members.

Mr. Speaker, the public was not involved during the formulation of the Kisumu County Regularization of Land Ownership and Development Bill, 2021. If you look at our report, especially on the benefits of the Bill then I believe that it is one of the best Bills that is going to protect our people. The Kisumu County Regularization of Land Ownership and Development Bill, 2021 concentrates so much on the protection of public spaces and social inclusion. Preventing metrication is about protecting the poor not to be replaced by the rich.

Mr. Speaker and Hon. Members, as you have seen in Kisumu County there have been demolitions but these come about because of unauthorized development. So, we need to control this unstructured development for the future as we have taken other grabbed public spaces then we also need to put a halt to this practice and this is one of the main agenda of the Bill.

Mr. Speaker and Hon. Members, we also know that there have been several spread of informal settlements in Kisumu. If this is not brought to the ambit of the law, then, very soon Kisumu will be a mass of informal settlements. There is need that we follow the right procedure to pass this Bill into law. There is already an existing national law; I heard Hon. Arao quoting the fine and I would like to say that the fine is not a creation of this Bill but on Physical Planning and Land Use Planning Act of 2019 (PLUPA 2019) which is a National law. So, whether we pass this or not, we are still bound by the national law to pay a fine on unapproved spaces development.

Mr. Speaker and Hon. Members, we need to understand and differentiate between Land Ownership Regularization and Land Development Regularization. The Bill doesn't talk much about land ownership though the title erroneously had the word land ownership so as we had already suggested and recommended that the word ownership be expunged from the title so that we as the County Government only deal with land development regularization which is also one of the mandate of our County Government as stipulated in various laws that were cited in this report.

Mr. Speaker and Hon. Members, we as a Sectoral Committee deemed it prudent that there is need that the Development Plans be brought for approval to give us reference for regularization. You only regularize something based on a particular plan. When we go to regularize land in Muhoroni without proper plan we know that Muhoroni is an Agricultural Zone. So, we need them to understand that Muhoroni is an Agricultural Zone so that they avoid these several sub-divisions because roads also take part of land.

Lastly, this is the only Bill that offers moratorium especially for those who violated the regulations earlier. So, it is going to give them a grace period and also exonerate them for their past mistakes so that they can start afresh and put them on the framework of Physical Planning and Land Use Planning Act of 2019 (PLUPA). I beg to reply thank you.

The Speaker (Hon. Oraro): Hon. Members now that the Sectoral Committee on Planning, Industrialization and ICT Public Participation report on the Kisumu County Regularization of Land Ownership and Development Bill, 2021 has been presented by Hon. Olwal, seconded by Hon. Nancy Owiti and debated by Hon. Members, I therefore want to put a question on the adoption of the same.

(Question put and agreed to)

The Speaker (Hon. Oraro): Hon. Members, the Sectoral Committee on Planning, Industrialization and ICT Public Participation Report on the Kisumu County Regularization of Land Ownership and Development Bill, 2021 has been adopted today 11th May 2021 at 1608 hours.

Mr. Speaker and Hon. Members, I want to direct that the request by the Sectoral Committee on deferment for sensitization of the public on the same report for purposes of ownership be implemented within a period of 21 days. The Chairperson of Planning, Industrialization and ICT Committee need to meet with Planning Department, the City and the relevant stakeholders to plan for sensitization and work on the Bill and report back with the feedback from the public on 2nd June, 2021.

The Speaker (Hon. Oraro): Next Order!

ADJOURNMENT

The Speaker (Hon. Oraro): There being no any other business to transact, the House stands adjourned to 12th may 2021 at 9.00 a.m.

(House rose at 4.12 p.m.)

Addendum

Hansard Team

Zablon Otiende – Senior Hansard Reporter

Edward Odanga – Reporter

Fanuel Okode – Reporter

Patrick Okoyo – Reporter

Jackline Otieno – Reporter

Jesca Otieno – Reporter

Dennis Ogolla – Reporter