

## COUNTY GOVERNMENT OF KISUMU



### COUNTY ASSEMBLY OF KISUMU

#### **THE HANSARD**

#### SECOND ASSEMBLY – FIFTH SESSION

Wednesday, 07<sup>th</sup> July, 2021

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

(The Temporary Speaker (Hon. Seth Okumu) in the Chair)

#### **PRAYERS**

**The Temporary Speaker** (Hon. Okumu): Madam Clerk, take us through the business of the day.

**The Temporary Speaker** (Hon. Okumu): Next order!!

#### **COMMUNICATION FROM CHAIR**

**The Temporary Speaker** (Hon. Okumu): Honourable Members, we want to continue urging the Members, to continue putting on the masks properly to cover both mouth and nose and adhere to the Covid-19 protocols to protect yourself and your neighbor.

**The Temporary Speaker** (Hon. Okumu): Next order!

#### **PAPERS LAID**

MOTION ON TRANSFER OF KISUMU KADHIAMBO COMMUNITY LAND NO. 1549 TO  
OSETH PRIMARY SCHOOL

BY

HON. BENNY PETE OIKO

AND

THE REPORT ON GOVERNOR'S MEMORANDUM ON THE KISUMU COUNTY LAKE  
FRONT DEVELOPMENT CORPORATION BILL, 2021

BY

HON. GEORGE OLWAL

CHAIRPERSON, PLANNING, INDUSTRIALIZATION AND ICT COMMITTEE

**The Temporary Speaker** (Hon. Okumu): Hon. Benny Pete Oiko.

**Leader of Minority** (Hon. Oiko): Thank you Mr. Speaker. Pursuant to the provisions of the County Assembly Standing Order No. 45(d), I wish to lay today Wednesday 07<sup>th</sup> July, 2021 a motion on Transfer of Kisumu Kadhiambo Community Land No. 1549 to Oseth Primary School. Thank you.

*(The Leader of Minority lays the paper before the House)*

**The Temporary Speaker** (Hon. Okumu): Honourable Members. I wish to acknowledge the receipt of the motion on Transfer of Kisumu Kadhiambo Community Land No. 1549 to Oseth Primary School. I want to direct that the House Business Committee to schedule the motion for debate on the Floor. Thank you.

**The Temporary Speaker** (Hon. Okumu): Next Paper!

**Hon. Ogutu:** Thank you Mr. Speaker. Allow me to lay this Paper on behalf of Hon. George Olwal.

**The Temporary Speaker** (Hon. Okumu): Proceed Honourable Member.

**Hon. Ogutu:** Pursuant to the provisions of the County Assembly Standing Order No. 182(6), I wish to lay today Wednesday 7<sup>th</sup> July, 2021 on the recommendations on the Memorandum by the Governor on the Kisumu County Lake Front Development Corporation Bill, 2021.

*(Hon. Ogutu lays the paper before the House)*

**The Temporary Speaker** (Hon. Okumu): Honourable Members. I wish to acknowledge the receipt of the report on Governor's memorandum on the Kisumu County Lake Front Development Corporation Bill, 2021. I want to direct that the House Business Committee to schedule the motion for debate on the Floor.

**The Temporary Speaker** (Hon. Okumu): Next order!

**NOTICES OF MOTION**

**The Temporary Speaker** (Hon. Okumu): Hon. Benny Oiko.

**Hon. Oiko:** Thank you Mr. Speaker. Pursuant to the provisions of the Kisumu County Assembly Standing Order No. 45 (1), I wish to give a notice of motion on the Transfer of Kisumu Kadhiambo Community Land No. 1549 to Oseth Primary School. Thank you.

**The Temporary Speaker** (Hon. Okumu): Next Notice of Motion.

**Hon. Ogotu:** Thank you Mr. Speaker. Pursuant to the provisions of the Kisumu County Assembly Standing Order No. 45 (1), I wish to give a notice of motion on behalf of Hon. George Olwal on Governor's memorandum on the Kisumu County Lake Front Development Corporation Bill, 2021.

**The Temporary Speaker** (Hon. Okumu): Thank you. Next order!

**STATEMENT**

**The Temporary Speaker** (Hon. Okumu): Yes, Hon. Roy Samo.

**Hon Samo:** Thank you Mr. Speaker. Allow me through Standing Order No. 42 to make a Personal Statement. It is now four years down the line when matters come before you, more so, the issue of the Memorandum or any other Paper that is being laid before, it doesn't reach at the right time. This applies to Motions or even Committee Reports.

Therefore, I stand as a Member, guided by the said Standing Order that now that the Hon. Ogotu has indeed given us a Notice of Motion in terms of the Memorandum by the Governor, if you could furnish Members with these copies so that we go through them in time. This would be very helpful. Mr. Speaker, I am saying this because all the Memoranda that have come before this House rarely reach the Members in good time. We therefore end up debating on things we do not know. That's my request Mr. Speaker.

Lastly, Mr. Speaker, tomorrow, most likely, the Honourable Members will break for recess. I would wish to request, because we have the Leader of Majority in the House together with Liaison Chair, I would wish to know if we have a plan for a trip or so because there is a lot of pending work to be done. Thank you

**The Temporary Speaker** (Hon. Okumu): Thank you Honourable Member. I agree that before a Notice of Motion is put, the Report should be circulated to Members so that by the time such is read, you already have the content and can contribute objectively. This will enable us avoid short Notices that we have been having with the Reports.

Honourable Member, with regards to what you have said on Committee activities, I know you are aware we have a lot of activities including lots of legislative proposals to look at. I believe that it

will be responsibilities of Committees to have a work plan so that they can be slotted to work during recess.

**The Temporary Speaker** (Hon. Okumu): Hon. Ngeta you wanted to make a Statement?

**Hon. Ngeta:** Thank you Mr. Speaker. Mr. Speaker, I rise to make a follow up Statement I raised last year regarding the issue of Cattle Rustling in my Ward. To date, my people have not received justice. Kindly give us a way forward regarding this issue. Thank you

**The Temporary Speaker** (Hon. Okumu): Thank you. Your Statement will be looked upon and brought before this House. Thereafter, you will have a Report to present to your residents. I remember the Statement you raised.

**Hon. Ngeta:** Thank you Mr. Speaker. It is long overdue since the matter was raised.

**The Temporary Speaker** (Hon. Okumu): Thank you. Next order!

### MOTION

PLANNING, INDUSTRIALIZATION AND ICT COMMITTEE REPORT ON THE  
STATEMENT RAISED BY HON. PAMELA ODHIAMBO ON BURIAL NOTICE BY THE  
CITY MANAGER

BY

HON. GEORGE OGUTU, COMMITTEE MEMBER

What is it Hon. Ogutu, are you moving the Motion on behalf of the Chair?

**Hon. Ogutu:** Yes, Mr. Speaker.

**The Temporary Speaker** (Hon. Okumu): Proceed.

### PREAMBLE

Mr. Speaker and Hon. Members,

Pursuant to the provisions of Standing Order No. 41(2)(b) of the County Assembly Standing Orders, Hon. Pamella Odhiambo raised a Statement in this House regarding the prohibition of burials and cremations at undesignated sites within the City. (See Annex 1)

Areas prohibited according to the statement includes the following;

- Mamboleo area
- Manyatta B Ward
- Market Milimani ward
- Railways ward

- Kaloleni ShauriMoyo ward
- Kondele Ward
- Migosi Ward
- Nyalenda B Ward

In accordance with Article 185 of the Constitution of Kenya, 2010, Section 8 of the County Government's Act, 2012 read together with the County Assembly of Kisumu Standing Order No. 193, the Hon. Speaker instructed the committee on Planning, Industrialization and ICT to make an inquiry, investigate and cause a report on the following in regard to this matter;

- i. Whether the lands in question belongs to the public, communal or private as per the articles 61, 62, 63 and 64 as enshrined in the Kenyan Constitution
- ii. Whether the County Executive Committee Member for Health Services and Sanitation was made aware of the notice as enshrined in the Public Health Act Cap.242 Section 144 (1) and (2)
- iii. Whether the County Executive Committee member for Health Services and Sanitation transmitted a regulation to the Clerk of the County Assembly as enshrined in the statutory instrument Act 2013 section 28(2)

#### ESTABLISHMENT AND MANDATE OF THE COMMITTEE

Mr. Speaker and Hon. Members,

The Sectoral Committee on Planning, Industrialization and ICT is established under Standing Order No. 193 of the Kisumu County Assembly Standing Orders, whose mandate, pursuant to the Standing Orders No. 193 (5) (Second Schedule) is as follows;

- investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned departments
- study the programme and policy objectives of departments and the effectiveness of the implementation
- study and review all County legislation referred to it

- study, assess and analyze the relative success of the departments as measured by the results obtained as compared with their stated objectives
- investigate and inquire into all matters relating to the assigned departments as they may deem necessary, and as may be referred to them by the County Assembly
- to vet and report on all appointments where the Constitution or any law requires the County Assembly to approve, except those under Standing Order 187 (Committee on Appointments)
- Make reports and recommendations to the County Assembly as often as possible, including recommendation of proposed legislation.

**COMPOSITION**

Mr. Speaker and Hon. Members,

The committee on Planning, Industrialization and ICT as currently constituted comprises of the following Members:-

- |                          |   |                  |
|--------------------------|---|------------------|
| 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. Priscah Misachi | - | Member           |
| 13. Hon. Johnson Guya    | - | Member           |
| 14. Hon. Kennedy Ageng'o | - | Member           |
| 15. Hon. Victor Rodgers  | - | Member           |

**Secretariat**

- |                        |   |                        |
|------------------------|---|------------------------|
| 1. Mr. Boaz Ouko       | - | Senior Clerk Assistant |
| 2. Mr. Austine Ochieng | - | Clerk Assistant        |
| 3. Mr. Patrick Okoyo   | - | Hansard Reporter       |
| 4. Mr. Bill Omondi     | - | Legal Counsel          |
| 4. Mr. Kennedy Okise   | - | Sergeant-at-Arms       |

**ACKNOWLEDGEMENTS**

Mr. Speaker Sir and Hon. Members, it is my privilege and pleasure on behalf of the Committee to convey my gratitude to all Members of the Committee for their valuable input throughout its proceedings. The Committee equally extends appreciation to Members of the Committee on Planning, Industrialization and ICT for taking their valuable time out of their busy schedules to participate robustly during this time of investigation on this matter.

The Committee also appreciates invaluable support from the offices of the Speaker and Clerk of the County Assembly for providing conducive atmosphere to prepare this report. To our Clerks and the technical staff who tirelessly worked through to make this exercise a success, I applaud you.

It is now my humble desire and wish to hereby submit this report to the House for consideration on behalf of the Committee on Planning, Industrialization and ICT.

#### COMMITTEE INVESTIGATIONS

Mr. Speaker and Hon. Members, In a Committee meeting held to deliberate on this, the committee resolved to write a letter to the City Manager, Kisumu County Government to provide facts on the same. Consequently, a letter dated 5<sup>th</sup> March 2021 was delivered to the City Manager. The committee indicated Friday 12<sup>th</sup> March, 2021 as the deadline for submission of the response. (See Annex 2)

On 17<sup>th</sup> March 2021, a response from the City Manager was delivered to the office of the Clerk of the Assembly and the committee clerk subsequently presented the response before the committee members for deliberation.

The City Manager responded to the concerns in the following manner;

- a) That due to changes in some underlying transformation of the City, the City is evolving into a more cosmopolitan society and with that we need to look at ancestral land with less sentimental attachment so that we can realize its capital value
- b) That Cities and Public Authorities all over the World are currently placing moratoriums on burials within its City jurisdictions. This is informed by the increase in population leading to scarcity of land and Kisumu City is no exception.
- c) That in Kenya and Africa in general, burials are cultural affair and communities have a sentimental attachment to the dead. From time in memorial communities have always buried their dead in their ancestral lands, a practice that is considered cultural and which has been passed down to many generations. However, with the onset of industrialization and increase in population, the use for land has evolved and land is a fixed factor of production that cannot be equated to cultural practices alone. Kisumu being one of the Cities is subjected to, restive zoning Laws and Social Public development needs i.e housing, markets, parks and terminals.
- d) That Article 185 (1) of the constitution of Kenya 2010 assigns respective functions to both the National and County Governments as prescribed in the 4<sup>th</sup> Schedule. Part 2 S, 2(f) assigns the County Governments exclusive role over matters of cemeteries, funeral parlors and crematorium. The issue of burials therefore falls within the jurisdiction of the County Government and the City Management of Kisumu is legally justified to issue guidelines, laws, regulations and edicts on matters of burials or cemeteries. Articles 183-185 of the Constitution gives the County Governments the exclusive mandate to undertake functions as assigned in the 4<sup>th</sup> Schedule and this can be done either directly or through delegated



agencies or decentralized units. Kisumu City exercises delegated powers from the County Government under S.5 of the County Government Act 2012 and S 48 of the Urban Areas and Cities Act 2011.

- e) That Article 184 of the constitution provides for governance and Management of Urban Area and Cities Act and S.20(1) of the Urban Areas and Cities Act gives mandate to the City to carry out Land use, Planning and Zoning laws.
- f) Section 144(1)(2) of the Public Health Act provides that every person should be buried in the designated sites that are to be used as cemeteries and the burial sites within the City of Kisumu are; Mamboleo Cemetery, the Hindu crematoria and the Muslim cemetery. Section 145 of the Public Health Act further provides for authorized cemeteries within the City. The Urban Areas and Cities Act 2011 first schedule Section 5 which confers upon the City Board the function of providing spaces as cemeteries and Crematoria.
- g) That the City management acted within the law and in the best interest of the residents of Kisumu City. (See Annex 3)

#### COMMITTEE FINDINGS

Mr. Speaker and Hon. Members, The Committee in trying to dig deep into this matter noted that the directive to ban burials in the eight wards within the City was petitioned by the residents under case number ELC Judicial Review Miscellaneous Application No. 3 of 2021 at the Land Court.

#### COMMITTEE RECOMMENDATION

Following the above committee finding and Pursuant to the provisions of the County Assembly Standing Order No. 87 (2) on matters of Sub judice or secret which states “ A matter shall be considered to be sub judice when it refers to active criminal or civil proceedings and the discussion of such matter is likely to prejudice its fair determination,” the Committee recommends that the County Assembly awaits for determination/ruling on this matter by the court. We have faith that the court will give an informed ruling in the best interest of both the residents and the Kisumu County at large.

#### CONCLUSION

Mr. Speaker and Hon. Members, We all understand the plans that the County Government of Kisumu have in trying to take the County to another level. The directive to ban burials at undesigned places must have come in view of the above. However, at this time, we must be patient as we wait for determination by the Court. Thank you Mr. Speaker and Hon. Members. May I call upon Hon. Obonyo to second? Thank you

**The Temporary Speaker** (Hon. Okumu): Hon. Obonyo

**Deputy Majority Whip** (Hon. Obonyo): Thank you Mr. Speaker. As a Member of the committee, I rise to second.

**The Temporary Speaker** (Hon. Okumu): Thank you Honourable Members. A Report on a Statement raised by Hon. Pamela Odhiambo on the Burial Notice by the City Manager has been presented in this House by Hon. George Ogutu on behalf of Hon. George Olwal and seconded by Hon. Obonyo. I now propose to put a question that the Report is open for debate.

**The Temporary Speaker** (Hon. Okumu): What is it Honourable Leader of Majority?

**Leader of Majority** (Hon. Onyango). On a Point of Order. Mr. Speaker, when you read the Report and under the provisions of Standing Order No. 87, I would wish that you give directions because the Standing Committee says that this matter is in court under judicial review miscellaneous application No. 3 of 2021 at the Lands Court. I want to indulge you under the provisions of Standing Order No. 87 whether it would be appropriate to proceed with the debate. Thank you

**The Temporary Speaker** (Hon. Okumu): Thank you. Let me hear from Hon. Okiri

**Hon. Okiri:** On a Point of Order. Thank you. Standing Orders No. 87 (2) in light of the issues raised in the report indicating that it is not in order for this House to debate upon this matter because it is a matter “*sub judice*” which is a matter still in the courts of law. Further, the Committee has also indicated the Case Number 3 of 2021 is a matter should not be debated. Thank you.

**The Temporary Speaker** (Hon. Okumu): Yes, Hon. Muga

**Hon. Muga:** Thank you Mr. Speaker. I concur with the first two speakers. I wish to refer you to page 8, the last paragraph indicating that the matter is in court. As such, the report should not be discussed. Thank you

**The Temporary Speaker** (Hon. Okumu): Hon. Arao.

**Hon. Arao:** Mr. Speaker, sir, I want to say that I stand with the views earlier expressed on this matter. I want you to remember this, that as much as we have taken this direction, we have failed our residents as their elected representatives. The City Manager acted in a hurry.

**The Temporary Speaker** (Hon. Okumu): Order!! Honourable Member. I do not want you to sneak into contributing to the Report while at the same time supporting that it should not be discussed.

**Hon. Arao:** Mr. Speaker, I am not discussing the report. The matter is court but we failed as a House. Thank you

**The Temporary Speaker** (Hon. Okumu): Honourable Member, you are out of order. Honourable Members, I want to agree with the submissions of the Standing Committee and I want to fault the House Business Committee. Even after reading this Report on Burial Notices issued by the City Manager, before they allow a report to reach this House, they should have read it and acted before

it reaches the Floor of this House. Once it reaches the Floor of the House, it becomes the prerogative of the House to decide what to do with the Report.

Ideally, it should not be left for the Speaker to decide. If the House Business Committee which has membership agrees that the report should be discussed then in my opinion, I could only allow it to be read and seconded. I can see Members too saying that it would not be in order to discuss it because it is a matter “*sub judice*”. I can see that Hon. Atieno wants to add something before I conclude.

**Hon. Atieno:** Thank you Mr. Speaker, on the same line of thought, based on the doctrine of separation of power, this House has a mandate and must not be gagged by any arm of the government in doing something. The fact that this report has reached the floor of the House, then it should be debated upon...

**Hon. Okiri:** A point of information Mr. Speaker

**The Temporary Speaker (Hon. Okumu):** Whom do you want to inform?

**Hon. Okiri:** I want to inform the House.

**The temporary Speaker (Hon. Okumu):** Proceed Hon. Member.

**Hon. Okiri:** (*On a point of information*) The Standing Order is the guiding principle and I want to refer Hon. Atieno to refer to the provisions of Standing Order No. 87.

**The Temporary Speaker (Hon. Okumu):** Thank you, he stands informed.

**The Temporary Speaker (Hon. Okumu):** What is your point of order Hon. Guya?

**Hon. Guya:** (*On a point of order*): Thank you Mr. Speaker, I am quite astonished by this because I know that when the House Business Committee met to discuss and approve this, it was chaired by the Leader of Majority. Hon. Atieno is a member of the House Business Committee so, he must have read all the rules. If you look at our committee’s recommendations that we forwarded to the House Business Committee, based on their understanding and the fact that this report is on the floor of the House, they approved it for discussion. Mr. Speaker, your only rule after this report has been moved and seconded, is to allow it for discussion whether it fails or sails through.

**The Temporary Speaker (Hon. Okumu):** Thank you, I want to rule on Hon. Guya’s point of order. I totally agree that the Hon. Leader of Majority is in the House Business Committee and might have chaired the meeting on the said day, hence the blame falls squarely on all the committee members and not only on the Leader of Majority...

(*Laughter*)

With regards to bringing the report to the House for discussion when it was clear that it was a matter of “*sub judice*”.

**Hon. Muga:** A point of information Mr. Speaker

**The Temporary Speaker** (Hon. Okumu): Who do you want to inform Hon. Muga?

**Hon. Muga:** The House.

**The Temporary Speaker** (Hon. Okumu): Permission granted.

**Hon. Muga:** (*On a point of information*): Thank you Mr. Speaker, the Standing Committee had to bring the report to the House. However, the House has seen their report and has decided not to discuss the report with reference to Standing Order No. 87 because it is matter of “*sub judice*”. We have to leave it for the courts to continue in their ruling.

**The Temporary Speaker** (Hon. Okumu): Honorable Members, in determining whether or not to discuss a matter which is before court, it would only be fair to tell me how the discussion will affect the ruling of the case. You should tell me whether it would bring some form of biasness on the plaintiff or defendant so that it is not discussed.

**The Temporary Speaker** (Hon. Okumu): What is it Hon. Okiri?

**Hon. Okiri:** Thank you Mr. Speaker, the reason not to discuss this report here is that, the MCA Manyatta, Hon. Pamela Odhiambo is an interested party in the case. We are also aware that this House has the power as that of the High Court. Therefore, the matter should be left in court and discussed after the court makes a ruling on it. Thank you.

**The Temporary Speaker** (Hon. Okumu): Honorable Members, I will allow the Hon. Leader of Majority to make his submission then I make a ruling on the same.

**The Leader of Majority** (Hon. Onyango): Mr. Speaker, a business of the House is usually conducted under the provisions of our Standing Orders. The Standing Order from 87 (i), (ii), (iii), that talk about matters of “*sub judice*”.

Mr. Speaker, Standing Order No. 87 (ii) reads; *A matter shall be considered to be of “sub judice” when it refers to an active criminal or civil proceeding.* The Standing Committee has displayed that this matter is actively in court, and in any case, we would discuss this report then what were the prayers of this House committee? The committee recommends that following the above findings, and pursuant to the provisions of the County Assembly Standing Order No. 87 (ii), on matters of “*sub judice*” which states as I read earlier, the committee further recommends that this matter is “*sub judice*”. and should not be discussed. Mr. Speaker, let me remind you that right now we are on live broadcast hence it is likely for the ones involved in the same issue to know

which direction this House is taking. At that point it becomes a matter of “*sub judice*” to the issue in court. It can compromise the findings of the court, thank you

**The Temporary Speaker** (Hon. Okumu): Thank you, Yes Hon. Guya, you seem to have a burning issue to air.

**Hon. Guya:** Thank you Mr. Speaker. Mr. Speaker, whenever a House Committee works on a report, it is forwarded to the House Business Committee to scrutinize whether or not the report is viable for debate. Hon. Members contributing here should have done so in the House Business Committee meeting. The Standing Committee of Planning, Industrialization and ICT made a recommendation that reads; ‘The County Assembly awaits the ruling on this matter by the court.’

So, if the House Business Committee sat and approved this report for discussion then the same people should not come here to stop the process. Once it is in the House, we are obligated to debate upon it. The only option is now for us to debate meaningfully. Mr. Speaker, if we accept this report then the conclusion of the ruling of the House will read that the House recommends that the County Assembly waits for the determination of the court. Even if we debate, we approve that we wait for the ruling of the court.

**The Temporary Speaker** (Hon. Okumu): Thank you; you have read my mind. That is why I was telling Hon. Members that you look at the prayer of the house Committee when they are concluding their report; and they are concluding that you wait for the determination of the court.

Hon. Members, when we adopt the report, we cannot do any amendment so your contributions should centre on either adopting the report the way it is or waiting for the determination of the court. For us to do that waiting as requested by the House Committee, it is this House to approve and they can only do so by adopting the report that has been presented to us by the Standing Committee of Planning. I want to put it open that we debate this report and I cannot limit any member from contributing.

**The Temporary Speaker** (Hon. Okumu): Yes, Hon. David Arao.

**Hon. Arao:** Thank you Mr. Speaker for the Solomonic ruling and for not allowing Hon. Members to be gagged from discussing a report that has been brought to the floor of the House. When Hon. Pamela Odhiambo brought up this matter, it was in court at the time. Even at the committee level, they could not reach a conclusion of the matter without bringing it to the House for debate.

You can see that my ward is enlisted among those affected...

**The Temporary Speaker** (Hon. Okumu): What is it Hon. Paul Okiri?

**Hon. Okiri:** I want to inform the House...

**The Temporary Speaker** (Hon. Okumu): Just wait, the House is still there; you will inform after he has completed. Proceed, Hon. Arao.

**Hon. Arao:** Thank you Mr. Speaker. The City Manager did not realize that his office requires consultations with the Assembly and the people of Kisumu...

**The Temporary Speaker** (Hon. Okumu): Hon. Arao, I guided that restrict your contribution to either agreeing with the report or not and why you think so.

**Hon. Arao:** I support this report – you know you cannot support a report without deliberating on it. We are where we are because there were anomalies and our mandate was ignored. The people of Kisumu are now expecting justice from the court yet they were the one who were supposed to take up the issue and give them what they want as a people. I am supporting the court ruling which I am optimistic...

**The Temporary Speaker** (Hon. Okumu): Order!! Order!! Hon. Member. You are out of order. We are discussing a report that has a prayer; we are not discussing the court.

**Hon. Arao:** Mr. Speaker, I am discussing the prayer that we wait for the court to make a determination on the matter and I am saying that I am optimistic our people will get justice. I thank Hon. Pamela Odhiambo for raising the matter in the Assembly because we are the people's representatives.

Mr. Speaker, I want to assure you that if the court upholds the action of the City Manager then we will bring the same issue back to this House to seek justice. You cannot tell a ward which part of it is in the city and another part outside the city not to bury their beloved ones in their indigenous lands. I support the position of the House Committee. Thank you.

**The Temporary Speaker** (Hon. Okumu): Hon. Paul Okiri, I agreed to give you to inform the House.

**Hon. Okiri:** Mr. Speaker, it comes with different ideas. I want members to listen to me very carefully and this should go to the archives of this Assembly. Even with your ruling, you can only adopt or reject a report after debate. If that is the case, now we want to debate a matter under Standing Order No. 89. If we adopt a report, it means we have debated on it. So are we debating the report or not?

**The Temporary Speaker** (Hon. Okumu): Hon. Member I want to guide you again that we are debating to either agree with the prayer of the Standing Committee that we wait for determination of the court or not. I don't know which part of that ruling you don't understand.

**The Temporary Speaker** (Hon. Okumu): Yes Hon. Roy Samo.

**Hon. Samo:** Thank you Mr. Speaker. Hon. Okiri is senior member of this House. He seems to be a senior member in terms the duration he has taken in this House but very junior when it comes to understanding because you have given a very good explanation...

*(Applause)*

**The Temporary Speaker** (Hon. Okumu): Order!! Hon. Paul Okiri and Order!! Hon. Samo. What is your point of order Hon. Johnson Guya?

**Hon. Guya:** Thank you Mr. Speaker. I wanted to know through you; is it in order for somebody to stand and contribute even before being given the opportunity to talk?

**The Temporary Speaker** (Hon. Okumu): Hon. Paul Okiri, listen to the point of order from Hon. Guya. It is not in order to just start talking – everybody will be talking in this House. It is honourable to stand up and attract the eyes of the Speaker. You are a senior member and it should also be seen when you stand up. This is just to bring order and ensure that is adhered to. Continue Hon. Roy Samo.

**The Temporary Speaker** (Hon. Okumu): Whom do you want to inform?

**Hon. Muga:** I want to inform the House.

**The Temporary Speaker** (Hon. Okumu): You will have to wait because the House is here to eternity. Just allow Hon. Roy to proceed then you will get the chance to inform the House.

*(Hon. Muga is consulting loudly.)*

**The Temporary Speaker** (Hon. Okumu): Hon. Member this is not a House of excuse, it is a House of order. Proceed Hon. Roy.

**Hon. Samo:** Mr. Speaker, today you have reminded me of one; the Speaker of National Assembly (Hon. Justin Muturi). You are very brave, candid and direct. Some actions here tells you why someone would be a senior member or a junior... and I have not mentioned anybody sir.

*(Loud consultations)*

**The Temporary Speaker** (Hon. Okumu): Hon. Roy, could you just make your submissions without touching emotional issues.

*(Loud consultations)*

**The Temporary Speaker** (Hon. Okumu): Hon. Members, please allow Hon. Roy Samo to conclude since he has agreed to do that without touching on anybody's emotions.

*(Loud consultations)*

**The Temporary Speaker** (Hon. Okumu): Order!! Hon. Members, Order!! Proceed Hon. Roy.

**Hon. Samo:** Mr. Speaker the Committee led by the Hon. George Olwal on the Planning and Industrialization and ICT did sit and agreed to look in to the matter that was sent to them by the Hon. Speaker. He mandated this Committee to look into other matters, among them was; whether the lands in question belongs to the public communion or private as per Article 61, 62, 63 and 64 as enshrined in the Constitution of Kenya 2010.

Again, the Hon. Speaker, did direct in part 11 that this committee should look into, investigate and cause a report whether the County Executive Committee Member for the Health Services and Sanitation was made aware of the notices and enshrined in the Public Finance Management Act Cap 2 (42) Section 144 (1) and (2).

The third one Mr. Speaker was: whether the County Executive Committee Member for Health Services and Sanitation forwarded the Regulation to the Clerk of the County Assembly for as enshrined in the Statutory Instrument Act 2013 Section 28 Sub-Section (2). Mr. Speaker, land is an emotive issue in this Country, in Africa and the entire World.

Mr. Speaker, we did say that the City Manager or any other person would not just wake up today and say that we are giving you a notice “*you are not going to bury*” and so I would want to agree with this Committee as they have put a requirement which is their prayer that we listen to what the courts of Kenya would give a ruling on. I also wanted to submit on the same and submit to us in this Assembly on the same. Mr. Speaker, reflecting on what happened, when Hon Justin Muturi was faced with a serious matter on the issue of Security Laws at the National Assembly and it was brought before the House, the Hon. Members did say that the matter was active in court and they could not touch on it.

Mr. Speaker, if you go back to the ruling of the Hon. Muturi, he did say that whatever comes in to this House, so long as it has been approved by the House Business Committee as you just stated, then we are allowed to debate about it. However, what matters is that what kind of prayers are we seeking as a House? In this case, I am want to agree with Hon. Olwal; that we wait for is what the court is going to make a ruling on because we cannot give them the mandate to just arbitrarily decide. Why do I say so? It is because Kajulu (Ward) is both city and rural. The rural part of it is where I come from which is Kajulu East. The town part of it is the Mamboleo side which borders Hon. Victor Rodgers (Migosi Ward). If this kind of announcement could be allowed without being challenged, it is going to affect both I as a person and the entire community.

My last submission Mr. Speaker is that we need to agree with the lawyers in this House like Hon. Arao that legal minds is very important- and when he say that we have to wait for what the court says, I agree with him, thank you Mr. Speaker.

**The Temporary Speaker** (Hon. Okumu): Hon. Members, because we have another motion that we have to discuss, I want to limit the debate to two minutes for every Hon. Member. I am giving



a chance to Hon. Pamela Odhiambo. Still to guide that we are discussing the report that we wait for the court's determination.

**Hon. Pamela Odhiambo:** Thank you Mr. Speaker, I am the one who sought for this Statement. When it was taken to court, I said that whatever had gone to court cannot be discussed in this House because it is a Law. Mr. Speaker, there was a ruling in this House made by the Speaker and some Hon. Members were advised not to sit in some Committees and in the plenary. The court then brought them back meaning that the court is supreme. We cannot therefore discuss this matter because even the Statement that has been brought here I raised one but I am not seeing answers written by the Planning, Industrialization and ICT Committee. My prayers were with them yet I am not seeing those prayers in this report. We are therefore not discussing it, let us wait for the ruling of the court.

**The Temporary Speaker (Hon. Okumu):** Hon. John Atieno.

**Hon. Atieno:** Thank you so much Mr. Speaker. You have said something which was quite fundamental and I believe the House did not quite get it properly. You said that if we go ahead and discuss this, how will it affect the ongoing case at the court?

Mr. Speaker sir, courts and legislatures are interdependent and also dependent. We are also the representative of the people and whatever is going on is affecting each and every one of us. It is all known that courts derives their decisions based on the Laws that has been enacted while other times they derive their decision based on jurisprudence meaning, that they can rely on what this House has come up with. That is because, what is at the court is more so cultural issue and the issue of the dead and the land is quite fundamental to our people.

Mr. Speaker sir, I wish that let Hon. Members of this House to speak their minds so that even the courts would hear what the people's representatives are thinking so that they make a decision. Suppose they come up with what is not in conformity to what we expect them to come up with...

*(Hon. Ngeta on his feet)*

**The Temporary Speaker (Hon. Okumu):** Whom do you want to inform Hon. Maurice Ngeta?

**Hon. Ngeta:** Honourable Member on the floor.

**The Temporary Speaker (Hon. Okumu):** Hon. Atieno do you want to be informed?

**Hon. Atieno:** No, Mr. Speaker.

**The Temporary Speaker (Hon. Okumu):** Hon. Atieno do not want to get the information.

*(Hon. Ngeta consulting loudly)*

**The Temporary Speaker (Hon. Okumu):** No, you cannot inform him by force.

**Hon. Ngeta:** I want to inform the House.

**The Temporary Speaker** (Hon. Okumu): Then just wait because the House is here, you will inform the House.

**The Temporary Speaker** (Hon. Okumu): Please proceed Hon. Atieno.

**Hon. Atieno:** Thank you so much Mr. Speaker sir for protecting me. Suppose the court come up with a decision against the expectation of this House, what will we say? Because it was the prerogative of this House as the representative of the people to take a leading role of which we did not do that. Then the residents are the people who took the matter to the court. I therefore believe that the court should listen to what we have to say so that when they will be demanding jurisprudence they will have read the minds of the people's representative Mr. Speaker sir. That is paramount and it is the reason why we should discuss this issue. Thank you.

**The Temporary Speaker** (Hon. Okumu): So, the Hon. Member, in your submission you believe that we should not wait for the court determination but rather go ahead and make our own determination. Can you make it clear?

**Hon. Atieno:** Thank you so much Mr. Speaker. That is what I meant.

**The Temporary Speaker** (Hon. Okumu): Yes Hon. Maurice Ngeta, you wanted to inform the House, what was the information? Or the information is not available.

**Hon. Ngeta:** Thank you Mr. Speaker but you denied me the chance. While the former speaker was on the floor of the House, he was misleading the House and I wanted to correct him.

**The Temporary Speaker** (Hon. Okumu): That is why I have given you chance to inform...

**Hon. Ngeta:** It is also allowed that I can rectify a member on the floor while he/she is misleading the House Mr. Speaker.

**The Temporary Speaker** (Hon. Okumu): In that case, you should not stand on a point of information.

**Hon. Ngeta:** But, I stood on a point of information and you denied me a chance.

**The Temporary Speaker** (Hon. Okumu): You wanted to inform the House, so go ahead and do that.

**Hon. Ngeta:** I wanted to inform the member who was on the floor.

*(Hon. Ngeta consulting loudly)*

**The Temporary Speaker** (Hon. Okumu): Order!! Member. You are out of order.

*Hon. Ngeta is consulting loudly*

**The Temporary Speaker** (Hon. Okumu): I had sensed that you did not have information that is why I did not want to give you a chance.

*(Laughter)*

*(Applause)*

Hon. Members, we are contributing on a report from the Planning, Industrialization and ICT Committee.

**The Temporary Speaker** (Hon. Okumu): Yes Hon. Philemon Juma Ojuok.

**Hon. Ojuok:** Thank you Hon. Speaker, I want to say that I am in concurrence that we wait as the Standing Committee suggests. However, I want to say the following.

One, we have disappointed our people and it is very unfortunate that solutions were not found and we have to sit with the other arm of the government to make decisions. It is actually even unfortunate that some of our utterances where we are even accepting that the Courts are supreme and the legislature is a lesser arm of the government which I believe is not true and that is one of the decisions that is going on there. Both arms are supposed to complement each other because there are times that the Courts make decisions that this arm should check and there are times when the President makes decisions that the legislature can check. That does not imply that the other is supreme or lesser.

Mr. Speaker, let us give the same respect the way we respect the Courts of law. If it is said that we have the same powers as the High Court, then we should be able to also respect this House and carry ourselves at that level. This is because even our own selves we look at this House as a lesser thing, then what about the other arm of the government. No wonder other people are looking at us as a lesser people. Thank you. I support.

**The Temporary Speaker** (Hon. Okumu): Yes Hon. Olima.

**Hon. Olima:** Thank you Mr. Speaker. I would like to call upon the mover of the mover to reply.

**The Temporary Speaker** (Hon. Okumu): Hon. Ogutu.

**Hon. Ogutu:** Thank you Mr. Speaker. Considering the mood of the House, I can see that the House has made a decision that because this matter is still in Court, we wait for the decision of the courts to make a determination on this matter. I will reply on that when the Courts have made a ruling. So, let us go by the recommendations given by this Standing Committee. I reply. Thank you.

**The Temporary Speaker** (Hon. Okumu): Thank you. Hon. Members, a Report from the Standing Committee of Planning, Industrialization and ICT on a Statement sought by Hon. Pamela

Odhiambo, MCA, Manyatta “A” on the Burial Notice by the City Manager was presented as a Motion in this House by Hon. George Ogutu on behalf of Hon. George Olwal. This was ably seconded by Hon. Obonyo and deliberated by hon. Members. I now want to put a question for adoption.

*(Question put and agreed to)*

**The Temporary Speaker** (Hon. Okumu): Hon. Members, and the Report from the Standing Committee of Planning, Industrialization and ICT on a statement sought by Hon. Pamela Odhiambo, MCA, Manyatta “A” on the Burial Notice by the City Manager is hereby adopted today, Wednesday, 07<sup>th</sup> July, 2021.

Hon. Members, the prayers of the Standing Committee of Planning, Industrialization and ICT is for this House to wait for the determinations of this case by the High Court.

So, I direct that we don’t have any further discussions pertains this notice until its determination by the High Court. Thank you.

**The Temporary Speaker** (Hon. Okumu): Next order!!

## MOTION

MOTIONN ON THE MATTER FOR CONSIDERATION ON LEGISLATIVE PROPOSALS.

BY

HON. KENNTH ONYANGO, LEADER OF MAJORITY

**The Temporary Speaker** (Hon. Okumu): Yes, Leader of Majority.

**Leader of Majority** (Hon. Onyango): Thank you Mr. Speaker. I would like to seek you indulgence that before we are able to move on with this motion, I would wish that we suspend this House for atleast ten minutes to enable us do some consultation. I would wish to ask the Hon. Ngeta to second.

*(Hon. Maurice Ngeta Bows)*

**The Temporary Speaker** (Hon. Okumu): Thank you Hon. Members. The Leader of Majority has requested that this House be suspended for ten minutes as we consult so that we reconvene for the discussion to the motion. I want to agree that we suspend the House for atleast ten minutes let us be clear on that. So, ten minutes is the least but we can extend based on how long the discussion is going to take place.

*(House is suspended for ten minutes)*

---

*House resumes after ten minutes)*

**The Temporary Speaker** (Hon. Okumu): Yes, Hon. Members we were on the second motion and the Leader of Majority was to move it.

**Leader of Majority** (Hon. Onyango): Thank you Mr. Speaker. Aware that, there are three Legislative Proposal (Bills) to be considered by the House that is

- a) The Kisumu County Facility Improvement Fund (FIF) Bill, 2021;
- b) The Kisumu County Environmental Health and Sanitation Bill, 2021, and;
- c) The Kisumu County Administration (Amendment) Bill, 2021

Mr. Speaker, aware that pursuant to the provisions of Article 196 (1) of the Constitution of Kenya 2010, section 87 of the County Government Act, 2012 read together with County Assembly Standing Orders No. 123 (3). There will be need to conduct Public Participation for the same.

Mr. Speaker, therefore, this Assembly requests leave of this House to borrow Kshs 13,500,000.00 (Kshs Thirteen Million Five Hundred Thousand Only) from the Car and Mortgage Account to facilitate Public Participation and the Publication exercise. Thank you. May I ask the Hon. Samo to second?

**The Temporary Speaker** (Hon. Okumu): Hon. Samo.

*(Hon. Roy Samo Bows)*

**The Temporary Speaker** (Hon. Okumu): Hon. Members, a motion has been moved by Hon. Kenneth Onyango the Leader of Majority on Matters for Consideration on Legislative Proposals. This was seconded by Hon. Samo. Now I want to propose a question that we open this matter for debate.

**The Temporary Speaker** (Hon. Okumu): Hon. Okiri.

**Hon. Okiri:** Thank you Mr. Speaker. From the mood of the House I call upon the mover to reply.

*(Applause)*

**The Temporary Speaker** (Hon. Okumu): Hon. Members, by calling the mover to reply, I believe that no Member is denied the chance to contribute to this motion and Members are in concurrence that the mover of this motion can reply because there is no controversy on this matter.

**The Temporary Speaker** (Hon. Okumu): Yes, Leader of Majority.

**Leader of Majority** (Hon. Onyango): Thank you Mr. Speaker. I want to thank the Hon. Members for allowing the Administrator of the Assembly to borrow Kshs 13,500,000.00 (Kshs Thirteen

Million Five Hundred Thousand Only) from the Car Loan and Mortgage Account so that the above exercise can be facilitated. Thank you.

**The Temporary Speaker** (Hon. Okumu): Thank you Hon. Members. A motion has been moved by the Leader of Majority for the Consideration by this House requiring for the borrowing of Kshs 13,500,000.00

*(Question put and agreed to)*

**The Temporary Speaker** (Hon. Okumu): Hon. Members, this House has debated the proposal to borrowing of (Kshs Thirteen Million Five Hundred Thousand Only) from the Car and Mortgage Account to facilitate Public Participation and the Publication exercise on the three Bills notably;

- a) The Kisumu County Facility Improvement Fund (FIF) Bill, 2021;
- b) The Kisumu County Environmental Health and Sanitation Bill, 2021, and;
- c) The Kisumu County Administration (Amendment) Bill, 2021

This was seconded by Hon. Samo and Hon. Members have resolved and the Hon. Okiri has requested the Leader of Majority to reply. Now, it is time for me to put a question for the adoption of the same.

*(Question put and agreed to)*

**The Temporary Speaker** (Hon. Okumu): Hon. Members, the Motion on the Matter for Consideration of Legislative Proposal by Hon. Kenneth Onyango has been adopted today Wednesday, 07<sup>th</sup> July, 2021 at 16:12 hours.

Hon. Members, I want to direct that, the Vellum of this proceeding be taken to the Clerk of the Assembly for immediate consideration. Thank you.

**The Temporary Speaker** (Hon. Okumu): Next order!!

### ADJOURNMENT

**The Temporary Speaker** (Hon. Okumu): Hon. Members, there being no other business to transact, this House stands adjourned to tomorrow Thursday, 08 July, 2021 at 02:30 p.m.

*(House arose at 16:20 hours)*

**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*