

COUNTY GOVERNMENT OF KISUMU



COUNTY ASSEMBLY OF KISUMU

THE HANSARD

SECOND ASSEMBLY – FIFTH SESSION

Wednesday, 18th August, 2021

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

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

PRAYERS

The Speaker (Hon. Oraro): Honourable Members, welcome to this session. Mr. Clerk, please take us through the Order Paper of the day.

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

COMMUNICATION FROM THE CHAIR

The Speaker (Hon. Oraro): Honourable Members, welcome to this session. I have the following communications to make. We were not able to proceed with the morning session because of lack of quorum and I directed that the business that was supposed to be conducted in the morning be re-scheduled by the House Business Committee. I also want to remind Members that the virus is still with us. We must adhere to the Ministry of Health Protocols on Covid 19.

Lastly, the Department of Finance and Economic Planning is reminding Members of the County Assembly of the various Wards of the Public Participation on the Kisumu County Annual Development Plan FY 2022/2023. This programme is meant to give the public an opportunity to give their views on the development priorities for the said Financial Year. These activities are scheduled to take place from 17th to 30th August, 2021. You are therefore requested to inform the

public and the stakeholders to present themselves to the said forums and be part of the whole process. The programme will be shared on our WhatsApp platform. Thank you.

The Speaker (Hon. Oraro): Next order!

PAPER LAID

THE PUBLIC INVESTMENTS AND ACCOUNTS COMMITTEE REPORT ON THE
AUDITOR GENERAL'S REPORT ON THE FINANCIAL STATEMENT ON KISUMU
COUNTY EXECUTIVE FINANCIAL YEAR, 2017/2018

BY

HON. MAUREEN OTIANG'

CHAIRPERSON, PUBLIC INVESTMENTS AND ACCOUNTS COMMITTEE

The Speaker (Hon. Oraro): Hon. Maureen Otiang'.

Hon. Otiang': Thank you Mr. Speaker. Pursuant to the provisions of the Kisumu County Assembly Standing Order No. 182 (6), I wish to lay today Wednesday 18th, August, 2021, the Public Investments and Accounts Committee Report on the Auditor General's Report on the Financial Statement on Kisumu County Executive Financial Year, 2017/2018. Thank you.

(Hon. Otiang' lays the paper before the House for consideration)

The Speaker (Hon. Oraro): Honourable Members, I confirm the receipt of the Public Investments and Accounts Committee Report on the Auditor General's Report on the Financial Statement of Kisumu County Executive Financial Year Ended 30th June, 2018 as presented by the Chairperson. I direct that this report be taken to the House Business Committee for consideration for debate.

The Speaker (Hon. Oraro): Next order!

NOTICE OF MOTION

THE PUBLIC INVESTMENTS AND ACCOUNTS COMMITTEE REPORT ON THE
AUDITOR GENERAL'S REPORT ON THE FINANCIAL STATEMENT ON KISUMU
COUNTY EXECUTIVE FINANCIAL YEAR, 2017/2018

BY

HON. MAUREEN OTIANG'

CHAIRPERSON, PUBLIC INVESTMENTS AND ACCOUNTS COMMITTEE

The Speaker (Hon. Oraro): Hon. Maureen Otiang'.

Hon. Otiang’: Thank you Mr. Speaker. Pursuant to the provisions of the Kisumu County Assembly Standing Order No. 45, I wish to give a Notice of Motion on the Public Investments and Accounts Committee report on the Auditor General’s Report on the Financial Statement on Kisumu County Executive Financial Year, 2017/2018. Thank you.

MOTION

THE JOINT COMMITTEES OF ADMINISTRATION OF LAW, JUSTICE,
CONSTITUTIONAL AFFAIRS, GOOD GOVERNANCE AND SECURITY AND LABOUR
AND SOCIAL REPORT ON THE PAYMENT OF GRATUITY TO THE FORMER COUNTY
EXECUTIVE STAFF

BY

HON. SETH OKUMU

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

The Speaker (Hon. Oraro): Yes, Hon. Seth Okumu.

Hon. Okumu: Thank you Mr. Speaker. Mr. Speaker and Hon. Members, pursuant to Standing Order No. 41 (2) (b) of the Kisumu County Assembly Standing Orders a Statement was sought from the Chairperson for the Committee on the Administration of Law, Justice, Constitutional Affairs, Good Governance and Security by Hon. Gard Olima regarding the implementation of the judgement for Case No 373 of 2018 at the Employment and Labor Relations Court at Kisumu on Wednesday, 17th February, 2021 at 1430Hrs (Annex i).

In accordance with Article 185 of the Constitution of Kenya, Section 8 of the County Government’s Act, 2012 read together with Standing Order No. 185 and Order No. 193, the Hon. Speaker constituted a Joint Committee on the Administration of Law, Justice, Constitutional Affairs, Good Governance, Security, Labor and Social Welfare to make an inquiry, investigate and cause a report on:-

- I. The Status of implementation of Judgement for Case No. 373 of 2018 at the Employment and Labor Relations Court.
- II. Measures put in place to ensure that the judgement is honored by the County Government.

Consequently, the Clerk of the Assembly notified the County Secretary to provide a detailed response to the attendant demands of the Statement sought by Hon. Gard Olima vide letter Ref. CAK/CGK/CS/VOL.VI/21 (43) dated 26th February, 2021 (Annex ii).

Establishment and Mandate of the Committees.

Committee on Administration of Law, Justice, Constitutional Affairs, Good Governance and Security

Mr. Speaker and Hon. Members. Pursuant to Standing Order No. 193 of the Kisumu County Assembly Standing Orders the Committee on Administration of Law, Justice, Constitutional Affairs, Good Governance and Security is mandated to oversee and investigate;

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

The Second Schedule of the Standing Order No. 193 further outlines the Subjects of the Committee as follows:

- i. Constitutional Affairs
- ii. Administration of Law and Justice
- iii. Ethics, Integrity and anti-corruption
- iv. Coordination of Governance within the County
- v. Human Rights
- vi. Security Matters and
- vii. All matters relating to a referendum

Composition.

The committee as currently constituted comprises of the following Honorable Members;

NAME	POSITION
1. Hon. Seth Okumu	Chairperson
2. Hon. Beatrice Pamela	Vice Chairperson
3. Hon. Jacktone Ogendo	Member
4. Hon. David Arao	Member
5. Hon. Erick Agola	Member

6. Hon. Julius Genga	Member
7. Hon. Sally Okudo	Member
8. Hon. Ken Ooko	Member
9. Hon. Johnson Guyah	Member
10. Hon. Philemon Ojuok	Member
11. Hon. Joachim Oketch	Member
12. Hon. Roy Samo	Member
13. Hon. Caleb Omoro	Member
14. Hon. Vitalis Otura	Member
15. Hon. Paul Okiri	Member

Committee Secretariat

1. Herman Moses	–	Committee Clerk
2. Bill Omondi	-	Legal Counsel
3. Dennis Ogolla	-	Hansard Reporter
4. Kennedy Okise	-	Serjeant-at-arm

Committee on Labour and Social Welfare

Mr. Speaker and Hon. Members. Pursuant to Standing Order No. 193 of the Kisumu County Assembly Standing Orders the Committee on Labour and Social Welfare is mandated to oversee and investigate;

All matters relating to labour, trade union relations, manpower or human resource planning, gender, social welfare and National Youth Service.

Composition

1. Hon. Rashid Miruka	-	Chairperson
2. Hon. Consolata Ollows	-	Vice Chairperson
3. Hon. Florence Olang'o	-	Member
4. Hon. Benny Pete Oiko	-	Member
5. Hon. Lynnette Carren Muga	-	Member
6. Hon. Inviolata Adhiambo	-	Member
7. Hon. Julius Genga	-	Member
8. Hon. Habil Nyasuna	-	Member
9. Hon. Priscah Misachi	-	Member
10. Hon. Jennipher Obonyo	-	Member
11. Hon. John Atieno Atieno	-	Member
12. Hon. Samson Ameso	-	Member

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| 13. Hon. Vincent Jagongo | - | Member |
| 14. Hon. Jacktone Ogendo | - | Member |
| 15. Hon. Samuel Dede | - | Member |

Secretariat

- | | | |
|---------------------------|---|------------------|
| 1. Mr. Nelco Sagwe | - | Deputy Clerk |
| 2. Ms. Elizabeth Achieng' | - | Committee Clerk |
| 3. Mr. Dominic Muinde | - | Legal Counsel |
| 4. Ms. Jackline Atieno | - | Hansard |
| 5. Ms. Risper Auma | - | Serjeant-at-Arms |

ACKNOWLEDGEMENTS.

Mr. Speaker and Hon. Members, I would like to express my special thanks of gratitude to all members of the Joint Committee for their valuable contributions during this inquiry.

I also wish to thank the Hon. Members and the Hon. Speaker for having allowed the Joint Committee more time to conclude its investigations on this matter.

I therefore humbly submit this Report for consideration by the House on behalf of the Joint Committee on the Administration of Law, Justice, Constitutional Affairs, Good Governance and Security and Labor and Social Welfare.

LEGAL BASIS OF THE INVESTIGATION.

Mr. Speaker and Hon. Members, the subject matter of this inquiry is guided by Employment (Amendment) Act, 2019 which is An Act of Parliament that repealed the Employment Act, which declares and defines the fundamental rights of employees, to provide basic conditions of employment of employees, to regulate employment of children, and to provide for matters connected with the foregoing.

Other law (s) that guided this investigation include:

- i. County Governments Act, 2012
- ii. The Human Resource Manual for the public service, 2016; provides guidelines in the management and development of human resource capacity towards the achievement of various national goals and objectives. The Manual incorporates provisions of the Constitution, Labour Laws and other Legislation that govern various aspects of industrial relations in the Public Service. The Manual is also anchored on other policies and guidelines governing the management of the Public Service. It provides the basis for human resource policies and regulations in the wider Public Service.

- iii. The SRC Notice of 1st March, 2013; provides for payment of gratuity only for retirement benefits of County Officers who serve on contract and paid at the end of the contract term.
- iv. The SRC Notice dated 1st March, 2013 and amended by SRC Gazette Notice of 7th July, 2017; which provides for 31% gratuity pay for every year served.

Mr. Speaker and Hon. Members, the Committee notes, for avoidance of doubt, that its mandate herein is donated by Article 185 of the Constitution of Kenya read together with Section 8 of the County Governments Act and the Standing Order No. 193 of the Kisumu County Assembly Standing Orders which requires the Assembly to act through its respective Committees on all matters related to the *administration of law and justice* and all Labor matters within the County.

Generally, however, it is not the mandate of the County Assembly to differ from the findings of fact of the courts which had the benefit of seeing and hearing all the witnesses and assessing their credibility through their demeanor. And for purposes of the Doctrine of Separation of Powers, the County Assembly is denied the occasion to interfere with determinations of the Courts outside the Judicial System and therefore this investigation is limited to the status of implementation of the Court Ruling and not an inquiry into the rightitude of the Court Ruling and the processes that led to such ruling.

BACKGROUND INFORMATION

Mr. Speaker and Hon. Members, the provisions of Article 41 of the Constitution of Kenya guarantees to workers the right to fair labour practices including the right to fair remuneration and the award of gratuity as a best practice. Gratuity is a lump sum amount that an employer pays the employee (on contract) when he retires or resigns from the organization. An employee does not contribute any portion of his salary towards this amount. The rationale for gratuity is to encourage employees to offer longer service to the employer and to ease the termination of contract of employment by offering the sum of gratuity as consolation.

Gratuity is not provided for as a minimum condition of employment. But it has developed as a good practice in employment and employees have come to expect it from their employers.

Gratuity is usually paid in the following circumstances:

- i. When the employee retires
- ii. When the employee resigns
- iii. In event of death of the employee
- iv. In event of disablement i.e. because of accident or illness.

Generally, gratuity is payable upon successful completion of the agreed contract term. In alternative, an employee qualifies for gratuity payment after a specified period of employment.

The gratuity payable depends on the terms of the contract of service. The prevalent practice is that the employer pays the employee a month's basic salary for every year of service. However, there is no reason why the employer and employee cannot agree on alternative amounts.

Mr. Speaker and Hon. Members, the matter before the Joint Committee is in accordance with Case no. 373 of 2018 (Adda Kodero Vincent & 8 others v County Government of Kisumu & another [2020] Eklr). Following the undated letter from the County Attorney which was presented before the Committee, the Committee was informed that the parties to the case were former County Executive Committee Members and included the following:

1. Eng. Adda Kodero Vincent
2. Dr. Ominde Elizabeth Mary
3. George Ongaya Okoth
4. Barak Otieno
5. Jennipher Atieno Kere
6. Rose Auma Kisia Omondi
7. Johnson Owuor
8. Rhoda Atieno Ahono Obadha
9. Michael Oduor Onyango

Take notice that pursuant to the Judgement by Hon. Justice Mathews N. Nduma on (Adda Kodero Vincent & 8 others v County Government of Kisumu & another [2020] Eklr), the Joint Committee learned that the suit was not even defended by the County Government despite service of summons to enter appearance and statement of claim.

The Judgement adduced before the Committee further indicated that the County Government was instructed by way of the Court ruling to pay the claimants gratuity and pending salary arrears accrued during their time of service as follows:

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| 1. Eng. Adda Kodero Vincent | Kshs. 1,009,050.00. |
| 2. Dr. Ominde Elizabeth Mary | Kshs. 2,904,243.75. |
| 3. George Ongaya Okoth | Kshs. 3,079,462.00. |
| 4. Barack Otieno | Kshs. 2,146,931.25. |
| 5. Jennipher Atieno Kere | Kshs. 2,904,243.75. |
| 6. Rose Auma Kisia Omondi | Kshs. 2,904,243.75. |
| 7. Johnson Owuor | Kshs. 1, 297,143.75. |
| 8. Rhoda Atieno Ahono Obadha | Kshs. 1,009,050.00. |
| 9. Michael Oduor Onyango | Kshs. 1,683,675.00 |

Four months arrear salary to the Rose Auma Kisia Omondi - Kshs. 1,400,000.

By way of the judgement, THE Court determined that the following conditions had been fulfilled to compel the County Government to pay the former County Executives gratuity as had been accrued:

- i. THAT gratuity is only payable if it is provided for in the contract. It is a mandatory payment under the Labour laws and therefore anyone seeking gratuity should ensure that it is provided for in the contract.
- ii. THAT payment of a gratuity and the applicable terms and conditions are governed by ones contract and by the employer's policies – this includes the formula to be used when calculating the gratuity.
- iii. THAT it is not normally paid if the employer has made arrangements for a pension scheme.
- iv. THAT subject to the terms of employment contract, gratuity is not paid if an employee is summarily dismissed. This was the holding in *Bamburi Cement Limited V WK* (2016) eKLR.
- v. THAT as long as an employee's contract provides for gratuity, the employee will be entitled to the payment whether or not he is a member of NSSF. This was the holding of the Court in *Wells Fargo Ltd V JIG* (2018) eKLR;
- vi. THAT where the contract provides that gratuity will be payable upon successful completion of a contract and the employee is terminated before the end of the contract through no fault of his, the gratuity will be payable on a pro-rata basis. This was the holding in *BPS v Kenya Urban Roads Authority* (2014) eKLR.

Mr. Speaker and Hon. Members, the Joint Committee vide letter Ref. *CAK/CGK/CS/VOL.VI/21* (43) dated 26th February, 2021 (Annex ii) sent to the County Secretary therefore sought to know the status of this matter, why the said suit was never defended and whether the County Government had initiated the process of honoring the Court Judgment as held.

Take notice that in an undated and unreferenced response from the County Attorney presented before the Joint Committee in its meeting held on 12th March, 2021 (Annex iii), the Joint Committee was informed as follows:

- i. THAT a set-off plan had been initiated following a memo dated 12th January, 2021 to the Human Resource Department to consider the loans that had been accrued by the aforementioned County Executive Members with a view of honoring the judgement.
- ii. THAT further action on the payment of the gratuities by the Finance Department awaits response from the Human Resource Department.

FINDINGS

Mr. Speaker and Hon. Members, following the deliberations of the Joint Committee on the Response from the County Attorney, the committee made the following findings.

- i. THAT the County Attorney failed to indicate satisfactorily why the suit was never defended. The Committee is aware that the Office of the County Attorney does not only comprise of the County Attorney himself but is equipped with a battery of legal counsels who were able to enter appearance for the County Government. The Committee therefore determines that the fact that the suit was not defended due to the absence of the County Attorney is not only irresponsible but also a dereliction of duty by the Directorate of Governance.
- ii. THAT the County Government failed to provide the specifics of the Departments held by the affected individuals as had been instructed by the letter from the County Assembly.
- iii. THAT the Office of the County Attorney has intended to inform this Hon. House that the payment of gratuity of the former County Government staff has failed to kick-off due to the delayed response from the Department of Human Resource Management.
- iv. THAT there is no dispute that the County Executive has submitted in regard to the Court's Ruling and there is no point whatsoever that gives credence to the delay of the payment of the Gratuity.

In the Committee's considered view, it is incumbent upon the County Attorney to establish why the County Government was unable to honor the Court's Ruling and the consequence that might arise from such dishonor.

RECOMMENDATIONS

Following the findings by the Committee on this matter, the Committee Recommends as follows;

- I. THAT the County Executive, having failed to appeal the ruling should make it a priority to pay the pending Gratuity as per the Ruling of the Court.
- II. THAT the CEC Member for Finance and Economic Planning and the relevant line Departments mandated to deal with this matter shall be given a period of 21 days from the date of the adoption of this Report to implement the Court Ruling failure to which this Hon. House shall treat the matter as a breach of integrity by responsible persons and shall act accordingly.
- III. THAT since there is enough evidence to believe that the payment of Gratuity of the former County Employees is being frustrated by some County Executive Officials, this Hon. House should resolve to hold such Officials directly responsible if no action aimed at paying the gratuity is realized within the stipulated 21 days.

CONCLUSION

It is therefore my honor and privilege, on behalf of the Joint Committees of Administration of Law, Justice, Good Governance, Constitutional Affairs, Security and the Standing Committee of Labour and Social Welfare to table this report before this Honorable House for consideration.

May I request Hon. Rashid Miruka to second? Thank you Mr. Speaker and Hon. Members.

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

Hon. Miruka: Thank you Mr. Speaker. I stand to second the report as read by Hon. Seth Okumu. We had a fact-finding mission to why the delay was done. We also researched on why we have the gratuity, who is supposed to be paid and what happens when it is not paid. We had an elaborate discussion on this matter and we realized that these people worked for this county. The plaintiffs went to court and sought for legal redress and the court necessitated the action through the Office of the County Attorney.

Mr. Speaker, we realized that the suit was never responded to and that was an anomaly. We made a decision that the County Government must be compelled to pay gratuity within the time that we have indicated in the report. I support.

The Speaker (Hon. Oraro): Honourable Members, the report from a Joint Committees of Administration of Law, Justice, Good Governance, Constitutional Affairs, Security and the Standing Committee of Labour and Social Welfare has been tabled by Hon. Seth Okumu and seconded by Hon. Rashid Miruka. I therefore, want to propose a question for the discussion of the report.

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

Hon. Samo: Thank you Mr. Speaker. Allow me to ask to kindly ask your office to visit the Pensioners and confirm if our gratuity is safe. Very senior members of the last government who were CECs are the ones beseeching for the gratuity. I did attend the Joint Committee Meetings and I can confirm resolutions of the House Committees. I support the report.

The Speaker (Hon. Oraro): Hon. Vincent Jagongo.

Hon. Jagongo: Thank you Mr. Speaker. I also want to join my colleagues in saying that these men and women should be paid their dues. We sit down and watch people who gave their services to the County suffering. This money is equivalent of a pension. If somebody is denying you a pension, then he is killing you. Let us compel the County Executive to pay these people their money. I support the report.

The Speaker (Hon. Oraro): Hon. Benny Pete Oiko, Leader of Minority.

Leader of Minority (Hon. Oiko): Thank you Mr. Speaker. It is very clear when a whole CEC serves for four to five years and when he/she ask for payment then they are told it is not available.

Mr. Speaker, the Service Gratuity is a noble payment that workers are entitled to and should be remitted to the relevant Statutory Bodies proposed by the institution/employer. The picture we are shown here is that the Statutory Deductions is never remitted and that is why they are taking time to pay these officers. Another implication is that the County Assembly of Kisumu must enhance their oversight role in ensuring that the County Executive does what it should. As I read the newspapers today, there is an article where the Siaya County Assembly is taking the Siaya

Executive to task in finding out whether the Statutory Deductions is being remitted. The financial implications on this are the issue of Pending Bills that the County has failed to pay. Looking at their financial response shows that their Statutory Deductions is also part of the Pending Bills.

Mr. Speaker, these people went to court and the County Government of Kisumu will be charged penalty for that, and it is clear in the budget that there is appropriation set for Legal Fees. Hence the financial management of the County cannot account for these funds because they used some of these funds to pay for Legal Services. The County Assembly therefore has to take the County Executive to task so that this is corrected. We have concluded that a few people are benefitting from such unnecessary actions. I support this report, and once a notice is given, let us follow up with the relevant House Committees so that the Assembly gets a report whether or not the County Executive acted. I support. Thank you.

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

Hon. Ogutu: Thank you Mr. Speaker. I want to say that gratuity must be paid and looking keenly, some of these people went to court back in the year 2018, and others had their jobs terminated prematurely such as Engineer Vincent Kodera, who happens to be my uncle.

Mr. Speaker, from the tabulated amounts to be given to these individuals, I would state that even the cost of lawsuit should be included in the amount as they go as far as 5 years. If you quantify this amount now, it would not be of much help to these people as they would when they were rendered jobless. It's high time we took our oversight role seriously on this matter so that these litigants gets their gratuity in time and enjoy their sweat. It is quite unfortunate because even us members are expecting their gratuity at the expiry of their term while others have gone further to make voluntary additional payment, which they realized were not remitted and it would be detrimental if we are denied what's rightfully ours. We should therefore speed up our oversight role and compel the County Executive to pay these former CEC Members who played actively in serving the County of Kisumu in their capacity. Otherwise, I support this report, thank you.

The Speaker (Hon. Oraro): Yes, Hon. Maureen Otiang'

Hon. Otiang': Thank you Mr. Speaker, I rise to support the report and would like to make a few statements on the same. It's quite unfortunate if individuals are subjected to this kind of ordeal after working so hard and it seeks immediate redress.

The offices in-charge of deducting the Statutory Deductions should be compelled to pay because they are the ones letting us down. There's no way you can keep deducting money from somebody and fail to give them in the long run. In the report it says that, some members are frustrating the efforts to get these payments done, which is a breach of Law hence these people should also be sued. Mr. Speaker, court processes are often expensive in terms of time and money, and I do not understand why even after the County Government of Kisumu has been sued, these issues have not been addressed. The Legal Department didn't even go to represent the county. It begs the

question of whether or not that department is therefore necessary because it cannot even defend the County on such litigations. It is not that they cannot represent the Country, they cannot also pay the litigants.

Mr. Speaker, I believe that something serious should be done even if it means coming up again and getting to the root cause of this matter as to why these appellants cannot be paid and the reason as to why the legal team is not taking their work seriously. Then, I believe that if we don't do that, it is going to be a big disservice to these plaintiffs. Mr. Speaker, as it is hon. Members are unanimously agreeing that these plaintiffs must be paid. Even us as Hon. Members, we concur, we also have to get our Gratuity at the expiry of our term. So, why should we go looking for ours when those preceding us have not received theirs? Mr. Speaker, as I resume my seat, I support this report and let the necessary action be taken to the people who are responsible for such kind of errors of omissions. Thank you.

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

Hon. Atieno: Thank you Mr. Speaker Sir for according me this opportunity to ventilate on this important matter. I want to state categorically that, it is disconcerting for this kind of anomalies to be tabled in the floor of this House.

Mr. Speaker, if you are keen, then something comes into mind on the crisis these employees are facing have reached this scale. Mr. Speaker, one this that comes to mind is that, were the deductions being remitted to the Statutory Bodies as required by law? Mr. Speaker, if these monies were being remitted, and these are the same people who were in the first government, then that money is there. I don't see why somebody can maliciously refuse to give these former officers their dues. If it is true that was done and then somebody somewhere is maliciously refusing to pay these plaintiffs their dues, then what comes to mind is that this issue of Legal Fees that sometimes finds its way in our Estimates, then that means that somebody want to make money out of this issue. If these monies are in the relevant Statutory Accounts, then, why not pay them.

Mr. Speaker, in as much as I support this motion that these appellants need to be paid their Gratuity, but this Joint Committee is not coming out strongly on what could have been the impediment why these people are not being paid their rightful dues. These people were in the first Government for five years, and if these monies were being deposited in the Statutory Accounts, then that money should be there. Then there is no valid reason as to why they should not be paid. Mr. Speaker, if these appellants are not being paid, why? Does it mean that these funds were not being remitted into the Statutory Accounts? If these funds were not being remitted, the CEC Finance and Economic Planning is among the people who are listed as plaintiffs in this case, then, where was he taking these monies?

Mr. Speaker, I believe that the Joint Committee should have delved deeper so that we get the gist of this matter...

The Speaker (Hon. Oraro): Hon. Guya, What is your Point of Order?

Hon. Guya: On a Point of Order. Thank you Mr. Speaker. If I look at the report presented by this Joint Committee, I see Hon. John Atieno as one of the Committee Members who similarly appended his signature to this report. The Hon. Atieno is telling this House that they did not delve deeper into the issues that were raised by this House. Mr. Speaker, could he just clarify as to whether he is supporting this report or this report does not meet the thresholds and standards of this House. Thank you.

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

Hon. Atieno: Thank you Chair. Mr. Speaker, if I can recall, somebody once said in the floor of this House that somebody who does not change his/her mind, change will change him/her. That aside, but these things sometimes we learn and as we move forward and new ideas crop into our minds day by day. Mr. Speaker, what I say that, it does not mean that I did not append my signature to this report. Mr. Speaker, when I went through this report and similarly hear my colleagues contribute, then something clicked into my mind that maybe there was an error of omission somewhere.

Mr. Speaker, in as much as I support the recommendation of the Joint Committee and if it true as per the research conducted by the Joint Committee, then they ought to have been paid, but, something just crept into my mind that there is a lacuna somewhere which may have caused the delayance in release of their payments. Mr. Speaker, I believe that the CEC for Finance then, did not remit their Statutory Deductions to the relevant bodies and it is the reason as to why the County Government does not have funds to pay them. Mr. Speaker, if these funds were there, then, it is just easier and simple and they ought to have been paid four years ago. I support. Thank you.

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

Hon. Guya: Thank you Mr. Speaker. Please allow me to equally join my colleagues in supporting this report. Mr. Speaker, if you look at the issues that were raised here, you will realize that as the Leader of Minority has put it clearly that as an Assembly, we have a lot of work to do. Just to be sure, that it is not just these nine plaintiffs that were affected but all the other employees of the County are safe.

Mr. Speaker, just last week I brought a Statement here on the fate of ECD Teachers. The issues that were raised there were that same, on Gratuity for staff who had worked on Fixed Contractual Terms and these contracts lapsed in the year 2018, they had not been paid to date. So, if you add that and this, and several others that have not been mentioned here, then, definitely there are issues that needs to be interrogated and investigated in this County.

Mr. Speaker, we might be here and several staffs in this County are really suffering. Mr. Speaker, there are other who are not able to seek for legal redress. If you look at these former officer affected

here, you will realize that three of the plaintiffs originate from my ward, (South East Nyakach Ward). So, as South East Nyakach Ward, we are really affected, because maybe we would have utilized these monies to undertake other investments or other developments within the village.

Mr. Speaker, it is very sad that even a response from the County Attorney is not referenced or dated. Mr. Speaker, these raises issues here and a lot of concerns as to whether this thing was done intentionally, because you will realize that even the Department, the County Attorney and his officers neither of them appeared in court even to put a defense. Mr. Speaker, were they really aware of what was happening or there was some kind of conspiracy to ensure that the Voteheads for Legal Fees that we always appropriate in the Estimates are consumed.

Mr. Speaker, a whole County Attorney can communicate to the County Assembly without a date or reference. All those said and done, the Leader of Minority has stated here that, the County Assembly of Siaya today, have not approved their Budget Estimates for FY 2021/2022, reason being that, they are delving into the issues of Statutory Deductions for the whole County and things are not adding up. Maybe, in this County we were not keen enough to take our time and go through them but soon we might be encountering the same problems.

Mr. Speaker, the issues of Gratuity are a must for all employees who are on Fixed Contractual Terms and I believe that it is none-negotiable. Mr. Speaker, it is like these nine former CEC Members to some extent have been denied justice because they would have spent these monies to do other things. I really want to support this report and I want to state here that, the 21 (twenty-one) days that we have given here and I want to believe that it will be 21 (twenty-one) days which I believe that it will be on the 08th September, 2021.

Mr. Speaker, I want to believe that by 08th September, 2021, this House should be able to get a feedback or a report and not just a report, this House should be able to be told that, Gratuity for the nine former CEC Members have been settled and by that time I believe that IFMIS shall have been opened. So, there will be no excuse as to why that will have not been paid.

Mr. Speaker, the Joint Committee has done its work and I want to say that I being a Member of this Joint Committee, we did what we could and I also want to appreciate Hon. Gard Olima who found it wise to bring this Statement to this House, because without him we would not be discussing this issue today. Otherwise, I want to support this report and I want to plead that when you will be making your ruling, you should include that as the expiry of the 21 (twenty-one) days, this House must be given feedback from the County Executive on the Progress of this Report. Thank you.

The Speaker (Hon. Oraro): Yes, Hon. Ojuok, Deputy Minority Whip

Deputy Minority Whip (Hon. Ojuok): Thank you Mr. Speaker for giving me this opportunity. I want to states here that it is a very sad thing for such a thing to happen and you question if somebody has the audacity to do that with this House established to ensure that such kind of things

don't happen. Mr. Speaker, I believe that this House should take a firm stand on such issues so that those kinds of anomalies don't happen.

Mr. Speaker, I want to say that even my interactions with some of the staff, even with some of the documents that have been submitted to this House. This kind of impunity has reached fever pitch that people don't even care whether or not to even remit Statutory Deductions on time for employees to a point that working to the Government becomes unattractive and these are some of the things that kill devolution.

Mr. Speaker, as an assembly we need to be firm and also want to concur with the sentiments of Hon. Guya in terms of the timelines of remitting these Deductions to Statutory Bodies. It is really unfortunate and I want to speak to the Office of the County Attorney because the manner in which the issues to do with remittances and legal cases is happening, there is a lot of lethargy in that Office. I am even aware that the point at which we are talking to the County Attorney on the issues to do with regulations, there is need for that office to up its game and I know some of these CEC Members are coming from my ward on the pain they are experiencing regarding this unremitted Gratuity and it is something that should never happen. Mr. Speaker, I just don't want it to stop there, I believe that it is something that we need to penalize under this watch and impunity was carried out. I support, thank you.

The Speaker (Hon. Oraro): Hon. Members, I have noticed Hon. Otura.

Hon. Otura: Thank you Mr. Speaker. I arise in support of this Joint Committee Report. Mr. Speaker, being a Member of this Joint Committee, I believe that we did all the best that we could to come up with this report.

Mr. Speaker, as is always noble, though cases are built on the Constitution of Concern. In this particular case, we lacked words in this report. I see that sense in this report that there is a precedence that has been set and this precedence must be monitored, if it is left unchecked then, that means that we shall all fall in the same circumstances. Mr. Speaker, this is the only thing that makes me to further and urge ourselves as the Oversight House that there must be something amiss. As we proceed on, this House will need to be furnished with a report similar to this one to be submitted to this House today from the line Department and not only from the County Executive, but even from the County Assembly. Mr. Speaker, because matters Gratuity, cuts across. I would wish to see myself leaving this place without walking back again every now and then simply because I am in pursuit of my Gratuity.

Mr. Speaker, I see the sense in doing the right things only if it is done correctly. Mr. Speaker, the precedence that is being set here make me worry because probably because I don't have the requisite knowledge in accounting and I may fall a victim very soon and I don't know if I will get very friendly Hon. Members of the Third County Assembly. Mr. Speaker, I know that I will be alone same to other Member who will equally be alone. Mr. Speaker, there is what we call

embezzlement of funds. As we speak now, we are struggling to use the little that we have as a County, but, let us look at it in this particular case...

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

Hon. Atieno: On a Point of Order. Thank you Mr. Speaker, I am a bit perturbed by the statements raised by the Hon. Member on the floor by stating the his contributions is not being remitted. Mr. Speaker, is that the situation that he is putting to us in because he is stating that he will be alone and desperate and there will be nobody to come to his rescue. Mr. Speaker, from his statements, does he mean that his contributions is not being remitted which is the same fate befalling the nine former CECs?

The Speaker (Hon. Oraro): Hon. Otura, please clarify.

Hon. Otura: Thank you Mr. Speaker. Unless he is reading in between the lines of my statement then I didn't intend to say so. I only intended to say that he needs to be careful because if we fall victims at that time then I will not be in company of Hon. Atieno or Hon. Philemon.

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

Leader of Majority (Hon. Onyango): On a Point of Order. Mr. Speaker I am just concerned that Members are lamenting so much about these deductions and yet every time finance report is brought into this Assembly then details are supposed to be in that report so that we are sure whether these things are being remitted or not.

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

Hon. Otura: Thank you Mr. Speaker. I believe that should not be responded to because that is his worry. I support this report and say that we need to up our game in this House over the same. Thank you.

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

Hon. Pst. Arao: Thank you Mr. Speaker. Allow me also to contribute by supporting this report that has been done by the Joint Committee. I am only getting so much disturbed in that when a matter is taken to the Courts of Law then it is heard, determined and a ruling is made. The County Executive does not attend, they don't even appeal judgment and they sit as if nothing has happened.

Mr. Speaker we are not in a banana republic whereby rulings are made and are put under lock and key. This is a violation of human rights, court contempt and violation of our Constitution. I would like to beseech you that when there will be a correspondent between the Assembly and the other Arm of the Government I wish you direct that after 21 days they should come and present themselves in this House and inform on the action taken accordingly in response to this report. We cannot entertain a Government that is not going to honor rulings that have been made by the law

courts. These people have really suffered and the earlier the better for them so that they can also get to live their lives normally. Thank you.

The Speaker (Hon. Oraro): Yes Hon. Ngeta.

Hon. Ngeta: Thank you Mr. Speaker I wish to call the mover to reply.

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

Hon. Okumu: Thank you Mr. Speaker and Hon. Members for debating on this report and agreeing to support the report. It is injustice if Members of Kisumu County were supposed to be paid gratuity and 4 years down the line they have not been paid gratuity. We want to say as an Assembly that, we are concerned and we want to use our authority as an Assembly to stamp our feet so that justice is accorded to these staff who have served this County. We are not doing it because of one reason or the other but, we are doing it because it is what is supposed to be done. If we hear Hon. Members talking then, it is not out of biasness or out of what Hon. Ogutu said the relationship they are having with the staff but it is because of what is in the law and it is the best interest of the County if these people can get their pay.

Mr. Speaker we have said 21 days and all Hon. Members are agreeing that we give the 21 days' notice that if they do not act within the 21 days and they do not give a reason as to why they do not act then, as an Assembly we shall hold those officers individually responsible. I want to thank Hon. Member so much for supporting this motion and I want to request that, when it comes to voting on the motion you do so that the report is implemented as it is with the recommendations that we have put. Thank you.

The Speaker (Hon. Oraro): Hon. Members now that the report by the Joint Committee on Administration of Law, Good Governance and Security and Labour and Social Welfare Committee on the Payment of Gratuity to Former County Executive Staff has been presented, seconded and debated. I therefore want to put a question on the adoption of the same.

(Question put and agreed to)

The Speaker (Hon. Oraro): Therefore Hon. Members the report by the Joint Committee on Administration of Law, Good Governance and Security and Labour and Social Welfare Committee on the Payment of Gratuity to Former County Executive Staff is hereby adopted today 18th August 2021 at 1550 hours.

Hon. Members, I do direct that the Hansard Report be prepared and the communication be made to the Executive for prompt action as per the recommendations of the Joint Committee.

The Speaker (Hon. Oraro): Next order!

ADJOURNMENT

The Speaker (Hon. Oraro): There being no any other business to transact, the House stands adjourned to 19th August 2021 at 2.30 p.m.

(House rose at 03.55 p.m.)

Addendum

The Hansard Team

Zablon Otiende – Senior Hansard Reporter

Edward Odanga – Hansard Reporter

Fanuel Okode – Hansard Reporter

Patrick Okoyo – Hansard Reporter

Jacklyne Otieno – Hansard Reporter

Denis Onyango – Hansard Reporter

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