COUNTY GOVERNMENT OF KISUMU

COUNTY ASSEMBLY OF KISUMU

THE HANSARD

SECOND ASSEMBLY – SIXTH SESSION

Thursday, 17th February, 2022

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): Mr. Clerk take us through the Order Paper of today.

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

STATEMENTS.

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

Hon. Otiang': Thank you Mr. Speaker. I rise to make a follow up on statement that I sought regarding the failure of the County Government to give out the Sports Gears in my Ward even after budgeting for them. You had ruled on that matter and you gave it to Sports Committee.

The Speaker (Hon. Oraro): Hon. Otiang', I will check the Motion and Statement Tracker and give further direction. I will get back to you by tomorrow or latest Tuesday.

The Speaker (Hon. Oraro): Any other Statements?

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

MOTION

LIST OF PROPOSED NOMINEES TO THE KISUMU COUNTY ASSEMBLY SPEAKERS PANELISTS.

BY

HON. KENNETH ONYANGO

LEADER OF MAJORITY

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

The Leader of Majority (Hon. Onyango): Thank you so much Honourable Speaker. Aware that the Speaker is mandated pursuant to Standing Order No. 14 to nominate three members to the Speaker's Panel at the commencement of every session, or from time as necessity may arise.

FURTHER AWARE THAT pursuant to Standing Orders No. 14(1), the Speaker Shall, with approval of the House, nominate three members who shall be known respectively as the 1st, 2nd and 3rd member of the Speaker's Panel who shall be entitled to exercise all the powers vested in the Chairperson of Committees of the Whole.

NOW THEREFORE; I pray that this Hon. House approves the following proposed Nominees to the Speaker's Panel.

1. First Panelist – Hon. Inviolate Adhiambo.
2. Second Panelist – Hon. Seth Okumu.
3. Third Panelist – Hon. Caren Muga.

Mr. Speaker, the leadership of the Assembly headed by you, made a decision that we retain the members of the Speaker's Panel because the same list of names that I have read are the same ones that had served in the Fifth Session of the Assembly. The fact that the Assembly is soon coming to an end is the reason that informed this decision. I want to appeal to the House to approve this list of nominees so that the three can continue with their work in assisting the Speaker, thank you. May I call upon the Chief Whip, Hon. Priscah Misachi to second?

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

The Chief Whip (Hon. Misachi): Thank you Mr. Speaker, I support that you retain the members of the Speaker's Panel as read in the list of nominees, as we have also done with other House Committees due to the remaining time to the expiry of our term in office. Thank you.

The Speaker (Hon. Oraro): Honorable Members, now that the Motion for the Approval of Names of Nominees to the Speaker's Panel have been presented by the Leader of Majority, Hon. Kenneth

Onyango, and Seconded by the Chief Whip, Hon. Priscah Misachi. As per our Standing Orders, I want to propose a question that the motion is open for debate.

The Speaker (Hon. Oraro): Yes, Hon. Aslam Khan

Hon. Khan: Thank you Mr. Speaker, I rise to support the motion because other than the peace that has prevailed since they joined the Panel, the gender rule has been considered. In addition, the Honorable members that we have appointed to the Speaker's Panel are experienced and have constantly displayed the experience to discharge their duties without fear or favor. They have upheld this House with integrity while executing their duty, thank you.

The Speaker (Hon. Oraro): Yes, Hon. Jennipher Obonyo

Hon. Obonyo: Asante sana Bwana Spika, nimesimama kuunga mkono mjadala wa kuhakikisha orodha ya walioteuliwa kuwa kwenye paneli ya Spika kusalia jinsi ilivyo awali katika kipindi cha tano cha bunge. Sababu kuu ni kwamba muda umeyoyoma na kipindi cha uchaguzi mkuu unakaribia. Vilevile, iwapo tumeamua kubadilisha wateuliwa hawa basi itatulazimu tuwapeleke katika mafunzo yanayohusiana na mambo yanayohitajika katika paneli hii ya Spika. Ama kweli, wamekuwa wakakamavu katika kazi yao na juhudi zao zimeonekana mara nyingi humu bungeni. Shukran.

The Speaker (Hon. Oraro): Yes, Hon. Florence Olang'o.

Hon. Olang'o: Mr. Speaker, going by the mood of the House, I would like to request the mover to reply.

The Speaker (Hon. Oraro): Yes, Leader of Majority, Hon. Kenneth Onyango.

The Leader of Majority (Hon. Onyango): Thank you Mr. Speaker, I want to thank the honorable Members for unanimously approving the list of Nominees to the Speaker's Panel as they continue to discharge their mandate, thank you.

The Speaker (Hon. Oraro): Honorable Members, now that the Motion for Approval of the Three Nominees; Hon. Inviolate Adhiambo, Hon. Seth Okumu and Hon. Caren Muga to the Speaker's Panel, has been moved by the Leader of Majority, Hon. Kenneth Onyango and Seconded by The Chief Whip, Hon. Priscah Misachi, and debated, I want to put a question as per our Standing Orders.

(*Question put and agreed to*)

The Speaker (Hon. Oraro): Honorable Members, today Thursday the 17th February, 2022 at 1502 hours the House has approved the List of Proposed Nominees to serve as Speaker's panelist notable, Hon. Inviolate Adhiambo, Hon. Seth Okumu and Hon. Caren Muga.

Consequently, I want to direct that the three panelists will not take oaths of office because they did so earlier. So, that means they will proceed with the earlier oath they took. Thank you.

The Speaker (Hon. Oraro): Next Order!

MOTION

PIC/PAC COMMITTEE REPORT ON STATEMENT RAISED BY HON. JOHNSTONE GUYA ON THE ISSUES SURROUNDING THE RECRUITMENT OF THE ECD TEACHERS ON PHASES I &II IN THE YEAR 2015 AND 2018 RESPECTIVELY

BY

HON. MAUREEN OTIANG'- (CHAIRPERSON, PIC/PACCOMMITTEE).

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

Hon. Otiang': Thank you Mr. Speaker Sir and Hon. Members. On behalf of the Public Accounts & Investments Committee (PICPAC) and pursuant to the provision of Standing Order No. 188, it is my pleasant privilege and pleasure to present to this House the report of the Public Accounts & Investments Committee on the "The Statement request by Hon. Johnson Guya on the delayed payment of gratuities to ECDE teachers who were recruited in 2015 upon the lapse of their three year contracts."

Pursuant to the provisions of Standing Order No. 41(2) (b) of the County Assembly Standing Orders, Hon. Johnson Guya raised a Statement *(See Annex 1)* in this House regarding payment of gratuity to the ECDE Teachers who were recruited in Phase 1 of ECDE recruitments in the year 2015 on a three year contractual terms.

In accordance with Article 185 (3) of the Constitution of Kenya, 2010[1], Section 8 of the County Government's Act, 2012[2] read together with the County Assembly of Kisumu Standing Order No. 188(2)[3], the Hon. Speaker instructed the Public Accounts and Investments Committee to make an inquiry, investigate and cause a report on the following in regard to this matter[4];

i. The number of ECDE Teachers recruited in the Phase 1 of the Year 2015 ECDE recruitments
ii. Whether gratuity was paid to the ECDE Teachers recruited in the year 2015 upon lapse of their 3 year contracts? Documentary proof and evidence of such payments or otherwise a justification for none-payment

iii. Whether funds have been set aside to pay the current ECDE Teachers whose contractual terms of employment is set to expire in 2021.

Mandate of the Committee.

The County Assembly Committee on Public Accounts and Investments is established by Standing Order No. 188 of the Kisumu County Assembly Standing Orders and is mandated, pursuant to the Standing Order No. 188 (2)& (6) to conduct:-

1) The examination of the accounts showing the appropriations of the sum voted by the County Assembly to meet the public expenditure and of such other accounts laid before the County Assembly as the Committee may think fit.

2) The examination of the workings of the County Public Investments;

3) When or while discharging its functions, the Public Investment and Accounts Committee shall further discharge the following functions.

    a. Examine the reports and accounts of public Investments,
    b. Examine the reports, if any, of the auditor general on public investments: and
    c. Examine the context of the autonomy and efficiency of the public investment, whether the affairs of the public investment are being managed in accordance with sound financial or business principles and prudent commercial practices.

Committee Composition

Hon. Speaker, The committee as currently constituted comprises of the following Honourable Members,

NAME		POSITION
1. Hon. Maureen Otiang'	-	Chairperson
2. Hon. Benny Oiko	-	Vice Chairperson
3. Hon. Paul Okiri	-	Member
4. Hon. Seth Okumu	-	Member
5. Hon. Johnson Guya	-	Member
6. Hon. Roy Samo	-	Member
7. Hon. Beatrice Pamela	-	Member
8. Hon. Nancy Owiti	-	Member
9. Hon. John Atieno	-	Member
10. Hon. Julius Genga	-	Member

Committee Secretariat

1. Austine Ochieng - Committee Clerk
2. Charles Ageng'o - Audit
3. Edward Odanga - Hansard
4. Raphael Juma - Researcher
5. Geoffrey Omollo - Secretariat
6. Dominic Muinde - Legal Counsel
7. Abraham Odegi - Sergeant-at-arm

Summary of the Report

Hon. Speaker, Following the statement request by Hon. Johnson Guya on the delayed payments of gratuity to ECDE teachers recruited in the year 2015 and whose contractual obligations with the County Government expired in 2018, the Committee was set on motion to investigate and report to this house; (i) The number of ECDE Teachers recruited in the Phase 1 of the Year 2015 ECDE recruitments? (ii) Whether gratuity was paid to the ECDE Teachers recruited in the year 2015 upon lapse of their 3 year contracts? Documentary proof and evidence of such payments or otherwise a justification for non-payment and (iii) Whether funds have been set aside to pay the current ECDE Teachers whose contractual terms of employment is set expired in 2021.

The House Committee held several meetings with various stakeholders including the County Executive Committee member for Education, ICT and Human Capacity Development, County Executive Committee member for Finance and Economic Planning, and various County Government officers. Various documents and correspondences were reviewed and analysed including but not limited to different legal frameworks underlying the matters raised by the statement.

It was noted that a total of 659 ECDE teachers were recruited in 2015 all whom their contracts expired in 2018 and none of them has since been paid any gratuity.

In summary, the committee found that as at 30th June 2020, the department owed a total of ksh. 167,689,816.34 outstanding gratuities to ECDE teachers on contractual obligations with the County Government –monies which have not been factored in any of the previous nor current County Government budget.

Hon. Speaker, the main recommendation of the committee is that the County Executive Committee member for Finance & Economic Planning, in consultations with the County Executive Committee member for Education, ICT and Human Capacity Development and the County Secretary makes immediate requisition of the Kshs. 50,000,000 gratuity allocation in the budget of financial year 2021/2022 for immediate payment of gratuity to the 2015 ECDE teachers whose contracts elapsed

in 2018 and report on the same be submitted to this House within 3 months upon adoption of this report.

Acknowledgement

Hon. Speaker. 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 the period of this investigation.

The Committee also appreciates the invaluable support from the offices of the Speaker and Clerk of the County Assembly for providing the expertise and 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 therefore my pleasant duty and privilege, on behalf of the Public Accounts and Investments Committee to table this report and recommend it to this House for debate and adoption.

Background

Hon. Speaker, this matter emanated from a statement request by Hon. Johnson Guya dated 9th August 2021. In the statement, the honourable member sought for a response on (i) the number of ECDE Teachers recruited in the Phase 1 of the Year 2015 ECDE recruitments? (ii) Whether gratuity was paid to the ECDE teachers recruited in the year 2015 upon lapse of their 3 year contracts? Documentary proof and evidence of such payments or otherwise a justification for non-payment and (iii) whether funds have been set aside to pay the current ECDE teachers whose contractual terms of employment is set to expire in 2021.

The matter was laid on the floor of the House and committed to the Public Accounts and Investments Committee for investigations and reporting.

Pursuant to Part II (9) of the Fourth Schedule of the Constitution of Kenya 2010[5], the management of and discharging pre-primary education, herein referred to as Early Child Development and Education (ECDE) is a devolved function and is well within the jurisdiction of County Department of Education, ICT and Human Resource Development.

Procedure Adopted

Hon. Speaker, the committee adopted a consultative approach in handling this matter and consequently wrote and received a couple of correspondences from the County Executive department of Education, ICT & Human Resource Development[6]. Additionally, the committee conducted literature review on the legal and policy frameworks on the gratuity payments as well as in depth interviews of the County Executive Committee member for Education and other

technical officers from the department. This report is therefore a documentation of the committee analysis of the responses on the issues raised, findings and recommendations.

COMMITTEE INVESTIGATIONS

Understanding the Concept of Gratuity: Legal & Policy Frameworks

Hon. Speaker, in this section of the report, the committee unpacks the concept of gratuity in employment and labour laws and policies in Kenya. This is important in grounding the committee recommendations that shall emanate from this investigation.

According to the Public Service Commission Act 2017, gratuity is one of the classifications of pension benefits payable to a person in respect of such person's service as a public officer[7].

1. Constitution of Kenya 2010

Article 41(1)[8] provides that every person has a right to fair labour practices. Gratuity pay is money paid by the employer to the employee upon exit from service. It is a motivational pay aimed at appreciating the employee for having served the employer. It is intrusive to note that gratuity is a contractual right and not a favour that forms part of the fair labour practices under this provision.

2. Employment Act 2007

Section 35 (5) provides that an employee is entitled to service pay upon termination of employment by way of notice by either party[9]. It provides that an employee whose contract of service, is to pay wages or salary periodically at intervals of or exceeding one month, has been terminated shall be entitled to service pay for every year worked.

3. Human resource policy and procedure manual 2016 provides for eligibility for payments of gratuity and pensions to public officers upon exiting the service[10]
4. Precedents

The courts over time have dealt with the inefficiencies of the Employment Act 2007, and set some locus classicus on the matter.

Some of the notable cases in our jurisdiction that form the general rules and guidelines on this matter are;

a) *Wells Fargo Limited v. JIG (2018) Eklr* ; the Court held that as long as the employee's contract provides for it, it is payable regardless of whether the employee is a member of NSSF or not

b) *Bamburi Cement Limited v. WK (2016) Eklr*; Court held that in most cases and subject to the terms of the contract, gratuity is not paid if the employee is summarily dismissed.
c) *BPS v. Kenya Urban Roads Authority (2014) Eklr*; it was held that where the contract provides that gratuity be paid upon successful completion of the contract by the employee but the same is prematurely terminated by no fault of the employee, then gratuity is payable on pro rata basis.

Committee Review of Executive Correspondences.

Hon. Speaker, the committee held various meetings in which various correspondences on this matter from the County department of Education were analyzed and technical officers interviewed. In a letter dated 16th August 2021, the committee requested the department to respond to the concerns that were raised by the statement. (Annex 2) In a letter dated 24th August 2021, the department of Education, ICT and Human Capacity Development indicated that; a total of 659 ECDE teachers were recruited in the 2015 phase 1 recruitment process, and that since the expiry of their first contract in 2018, no ECDE teacher has since been paid any gratuity, and that there are no funds set aside for the payment of gratuities since the contract of the said teachers were extended to expire in 2022. The County Executive Committee member further explained that the department will seek to factor their gratuity payment in the 2022/2023 budget.

The table below illustrates the number of ECDE teachers recruited in Phase 1 of the year 2015;

Table 1: Number of ECDE teachers recruited in Phase 1 of the year 2015

S/NO	SUB-COUNTY	NO.OF MALES	NO. OF FEMALES	TOTAL
1.	*Nyando*	7	109	116
2.	Nyakach	11	92	103
3.	Muhoroni	8	95	103
4.	Seme	12	76	88
5.	Kisumu West	8	99	107
6.	Kisumu East	7	80	87
7.	Kisumu Central	3	52	55
TOTAL		56	603	659

Source: Letter from department of Education, ICT & HR development, Kisumu County dated 24th Aug. 2021 (Annex 3)

Hon. Speaker,
The committee also learnt that due to lack of budgetary allocations in all the preceding financial years for gratuity payments, the County Government of Kisumu owes a total of ksh. 167,689,816.34 in outstanding gratuity payments due to ECDE teachers whose contracts ran between May 2015 –May 2018, May 2018 –May 2019, and May 2019 –May 2020 as illustrated in the table below;

Table 2: Total gratuity due to ECDE teachers between 2015 to 2020

CATEGORIES	DATES	OUTSTANDING GRATUITY AT 30TH JUNE, 2020
ECDE Teachers	MAY 2015-MAY,2018	84,945,956.34
ECDE Teachers	MAY 2018-MAY,2019	28,281,300.00
ECDE Teachers	MAY 2019-MAY,2020	54,462,560.34
TOTAL		167,689,816.34

Source: County Department of Education, ICT and Human Capacity Development, 24th Aug. 2021 letter.

Hon. Speaker,

The County department of Education, ICT and Human Capacity Development unsatisfactorily addressed the matters raised in the foregoing statement in their correspondences. The committee therefore invited the County Executive Committee member to attend a Public Accounts and Investments Committee meeting and shed more light on this matter (Annex 4). The County Executive Committee member in his submission, mentioned Finance and Economic Planning as the department best suited to respond to this matter. The Committee however resolved that the matter being domiciled in the department of Education, ICT and Human Capacity Development, the County Executive Committee member hold a consultative meeting with the County Executive Committee member for Finance and Economic Planning and furnish the committee with a consolidated response on the same.

The committee sought for this consolidated response via a letter dated 18th October 2021. (Annex 5)

Via a letter dated 26th October 2021, committee was informed that, as a way forward, the Executive has established an inter-departmental technical Committee to handle the matter of payment of gratuities from a countywide perspective and that the technical committee recommended that;

1. That a payment schedule be drawn based on the last employees to leave service, death cases, court cases and other emerging issues. It is instructive to note that the current budget (FY 2021/2022) factored ONLY Gratuity payments up to KES 50,000,000 against the requirement of KES 167,696,816.34 for ECDE Teachers as at May 2020, excluding other departments' staff who have left service.
2. Future Gratuity Payments due to Employees (ECDE teachers included), would be remitted to the County Pension Fund (CPF) as directed by the Council of Governors to avoid delays in payments. We hope that the recommendations would be actualized for the current ECDE Teachers whose contracts are due to expire in May 2022. (Annex 6)

Budgetary Reviews on Gratuity Allocations.

Hon. Speaker, the committee reviewed the County Government budgetary allocations for gratuity payments since the phase 1 of ECD recruitment in 2015 up to the year of expiry of their contract in 2018 and noticed that; (i) gratuity budgeting was being done per department over the years, (ii) some departments budgeted for gratuity payments while others did not including the department of education, (iii) most departments only budgeted for gratuity payments for County Executive Committee members and not for the other public officers exiting the service and those on contractual obligations.

The table below shows an illustration of gratuity budget from the FY2015/16 to FY2018/19;

Table 3: Illustration of Cumulative Budget Estimates for Gratuity Payments from 2015/2016 to 2018/2019.

Financial Year	Gratuity Budget Item	Amount (Kshs.)
2015/2016	Civil servants –cumulative gratuity	861,595
2016/2017	Civil servants –cumulative gratuity	2,530,181
2017/2018 (supplementary budget)	CECM –Cumulative Gratuity	11,218,917
	Civil servants –cumulative gratuity	32,642,803
2018/2019	CECM –Cumulative Gratuity	3,620,172
	Civil servants –cumulative gratuity	10,269,454

Source: Analysis of Kisumu County Government budget estimates for fy2015/16 -2018/2019 by County Assembly Research Services

Hon. Speaker, the illustration above indicates that most departments of the County Government have given more precedence to gratuity budgeting for CECMs but with little focus on the other public officers. It also indicates that many of the departments, including the department of Education, has not been budgeting for gratuities despite having staff on contractual obligations and whose contracts are eligible for gratuity benefits.

COMMITTEE FINDINGS/OBSERVATIONS

Hon. Speaker, following the comprehensive investigations on the foregoing matter, the committee makes the following findings;

1) THAT a total of 659 ECDE teachers were recruited in the 2015 phase 1 recruitment process.
2) THAT since the recruitment of the ECDE teachers in 2015, the department of Education has not been budgeting for gratuity payments despite having staff on contractual obligations.
3) THAT no ECDE teacher has been paid any gratuity since the first recruitment in 2015
4) THAT the County Department of Education, ICT and Human Capacity Development has not been factoring allocations for payment of gratuities in her annual budget estimates except in FY 2021/2022 in which only Kshs. 50,000,000 was allocated for gratuity payments against the requirement of KES 167,696,816.34 for ECDE teachers as at May 2020.
5) THAT as at 30th June 2020, the County Government of Kisumu owes a total of KSH. 167,689,816.34 in outstanding gratuity due to ECDE teachers.
6) THAT failure to have paid the gratuity to the ECDE teachers upon the lapse of their contracts, there was breach of the terms of the contract of the ECDE teachers
7) That the County Executive of Kisumu formed a technical committee which delved into the issue from a countywide perspective and came up with recommendations

COMMITTEE RECOMMENDATIONS

Hon. Speaker, following the foregoing findings, the committee makes the following recommendations;

1) THAT the CECM Finance and Economic Planning, in consultations with the County Executive Committee member for Education, ICT and Human Capacity Development, requisitions for the ksh.50,000,000 gratuity allocation in the financial year 2021/2022 budget for payment of ECDE teachers whose contracts elapsed on priority basis starting with the Phase 1 -2015 ECDE staff whose contracts elapsed in 2018 and that a report on the conclusion of the process be submitted to this House 3 months upon adoption of this report.

2) THAT the County Executive Committee Member for Finance and Economic Planning factors gratuity payments in the subsequent budget estimates
3) THAT pursuant to Section 123 of the Public Finance Management Act, 2012, the County Executive Committee member for Finance and Economic Planning, while reporting on the CFSP and Debt Management Strategy paper, submits to this House, on or before the 28th of Feb 2022, a comprehensive report and strategy on how to pay all the outstanding gratuities and service pays due to all employees who have exited the service since advent of devolution.
4) THAT the County Executive Committee member for Education, ICT and Human Capacity Development and all the other County Executive Committee Members must ensure inclusion of gratuity payment allocations for all staff on contractual obligations in their annual and supplementary budget estimates.
5) THAT in future, the department should consider employing the ECDE Teachers on a permanent and pensionable basis. This would reduce the burden of budgeting for gratuity in every financial year.

CONCLUSION

Hon. Speaker, I call upon Hon. Members to adopt this report with the recommendations herein to aid in the payment of gratuity to the ECDE Teachers.

Hon. Otiang': May I call Hon. Steve Owiti to second, thank you.

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

(Hon. Steve Owiti bows in agreement)

The Speaker (Hon. Oraro): Hon. Members, now that the PIC/PAC Committee report on Statement raised by Hon. Johnstone Guya on Delayed Payment of Gratuity to ECD Teachers have been presented by the Chairperson of the PIC/ PAC Committee, seconded by Hon. Steve Owiti. As per our Standing Order, I want to propose a question that the report is open for debate.

The Speaker (Hon. Oraro): Yes Ho, Aslam Khan.

Hon. Khan: Mr. Speaker, I just want to pinpoint that Hon. Steve Owiti is not a member of this House Committee so, I wonder why he has been called upon to second. It could have been in order if Hon. Okumu had been called earlier to perform this duty, thank you.

The Speaker (Hon. Oraro): Hon. Steve Owiti, I have confirmed that you are not a member of the mentioned House Committee. So, Hon. Maureen Otiang', who is your seconder?

Hon. Owiti: On a point of information Mr. Speaker Sir.

The Speaker (Hon. Oraro): What is the information?

Hon. Owiti: Mr. Speaker, I am not aware that any non-member of this committee cannot participate in this and I do not know which Standing Order (s) state (s) that only members of a specific committee shall second a debate on a report of the said House Committee because I was co-opted as part of the committee. As a member of the Assembly I am entitled to attend and be part and parcel of any meeting. If there is any law (s) that bars (s) me from that, then I should be informed.

The Speaker (Hon. Oraro): Thank you Hon. Steve Owiti. The Standing Orders provides that you can attend any committee, your views can also be heard but you cannot vote. Maybe you were joyriding in that committee. However, it is a practice that a member of the committee seconds. Hon. Maureen Otiang', can you get somebody to second your motion?

Hon. Otiang': Thank you Mr. Speaker, may I call upon Hon. Okumu to second?

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

(Hon. Seth Okumu bows in agreement)

The Speaker (Hon. Oraro): Hon. Members, now it has been seconded and I propose a question. It is now open for debate.

The Speaker (Hon. Oraro): Yes, Hon. Leader of Minority.

Leader of Minority (Hon. Oiko): Thank you Mr. Speaker. The issue that was raised by Hon. Guya on the Delayed Payment of Gratuity to the ECD Teachers was a good one. He wanted to know how the County Government is prepared when the contract comes to an end. Is the gratuity for employees whose contract has come to end ready for payment? It is a very critical issue.

Mr. Speaker, when this House Committee that was tasked to securitize this was going through this matter, it was imagined that it is the Department of Education that ought to have prepared this. Contrary, we find out that this was a mandate of the Finance Department. That is because, when we analyzed the Kisumu County Budget, only salaries are captured. The figures for gratuity have never been captured there. This paint a picture that, by the time these staff retires, where do they get money to pay for terminal benefits? It is the responsibility of this House to take the Finance Committee to task so that an allocation for Gratuity is taken care of, and it has to have its own account, it is saved it can earn interest so that by the time an employee retires from active service or a contract comes to an end, dues are ready for payment. Mr. .Speaker, we found this to be lacking in our Budgeting System.

Mr. Speaker, the staff we were looking at who are the ECD teachers, they were employed in the year 2015 and their contracts were to lapse in the year 2018. Mr. Speaker, by good lack, the County Government of Kisumu did not terminate their contracts though their contracts had come to an end. I believe that this was a good gesture, and it was not only a good gesture, the County still

needed the services of these ECD Teachers. This is the reason as to why they were still being retained in service. Mr. Speaker, another good development that came about was that, the Governor in his wisdom extended their contracts and appraised their payments. These contracts were extended, their payments were appraised and they are still on service of County Government of Kisumu. Now, what we would like to implore the Department of Finance is to prepare their dues for Gratuity so that when their contracts lapses they will get their payments without delays.

Mr. Speaker, the other issue we would like to raise is that, these are residents of this County and they were recruited ion the year 2015, they have developed different skills and experiences and we pray that they be confirmed on Pensionable and Permanent basis so that they continue serving this County so that the issue of their Gratuity does not become a serious matter now and the County Government will make proper arrangements so that by the time they retire they exit the service and get their Gratuity plus other terminal benefits.

Mr. Speaker, I concur with the report and the gesture taken by the County Government of Kisumu and the picture portrayed is that, these our people are in safe hands. Please let the report not be alarming, because the report is just an eye-opener of what was happening and the good gesture shown by the County Government of Kisumu to make these our ECD Teachers offer good services and feel part of this County Government. I support the report. Thank you.

The Speaker (Hon. Oraro): Yes Senior Member, Hon. Misachi.

Chief Whip (Hon. Misachi): Thank you Mr. Speaker. I arise to support the report and to reiterate by stating that the Gratuity is a serious matter because the employer gives you Terms and Conditions of Service before you are employed and in the exit you find that you are not safe and that is a breach of contract by the employer.

Mr. Speaker, I believe that the recommendations made by the Standing Committee where the Committee informs the County Executive Committee Member for Finance to put things in order so that even staff who are retiring or exiting from service like the MCAs who are here now, when they will be looking for their Gratuities, let them not experience the same thing. So, I support this report. Thank you.

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

Hon. Khan: Thank you Mr. Speaker. I arise to support this report and the recommendations therein and especially if you look at this Gratuity is actually a right and not a favour and therefore if it is due, therefore, it has to be paid when it is due.

Mr. Speaker, if you look at the colossal amount of Kshs 167,000,000.00, I wonder how the County Government Department of Education, Human capacity and Development where one of their mandate is to develop the capacity of the human and go ahead and ignore such an important aspect. Therefore, I beg to support. Thank you.

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

Hon. Olga: Thank you Mr. Speaker. Looking at the mood of the House, I beg to call upon the mover to reply.

The Speaker (Hon. Oraro): The mover, Hon. Otiang'

Hon. Otiang': Thank you Mr. Speaker and Hon. Members. Indeed it was a privilege for this House Committee to investigate into this matter. Mr. Speaker, gratuity is a right and it should be treated as such. It is unlawful that it was not budgeted for and it is really affecting our ECD teachers especially for those whose contract have lapsed and they have not received their gratuity.

Mr. Speaker, I would really recommend that the House adopts this report so that our teachers can enjoy there gratuity and also for us as Members must also check that our gratuity is in order. We investigated and found out that the CECMs factor in their gratuity and they don't care about the general public servants who are under them. That is very selfish and I believe that we have to call upon on the CECM for Finance to look into this matter and put it to rest. Thank you.

The Speaker (Hon. Oraro): Thank you Hon. Otiang'. Hon. Members now that the PIC/PAC Committee have presented their report on the Statement by Hon. Guya on Delayed Payment of Gratuity to ECD Teachers and debated, I therefore want to put a question on the adoption of the same.

(Question put and agreed to)

The Speaker (Hon. Oraro): The report from the Committee of PIC/PAC on the Statement by Hon. Guya on Delayed Payment of Gratuity to ECD Teachers is hereby approved and adopted today Thursday, 17th February 2022 at 1546 hours.

Honorable Members, I further direct that the findings and the recommendations of the report be conveyed to the relevant department for action as appropriate.

Consequently, I also want to direct that the Committee of Implementation to follow up on the matter. I also want to add that I have looked at the Membership of the Committee of PIC/PAC and the Committee of Budget and Appropriation where have realized that 60% of Members are also Members of Budget committee. That is; Hon. Otiang', Hon. Pete, Hon. Guya, Hon. Seth Okumu, Hon. Nancy Owiti and Hon. Okiri. I have also noted that the Budget Chairperson was here when he attempted to second the report as well as other Members of Budget Committee who were present.

Honorable Members, the Budget process has started and I can see that most of the recommendations in the report are in line with the Budget Making Process. So, it is upon you to ensure in the transition budget that is captured clearly and that the gratuity for teachers is taken care of. We may also blame the Department of Finance but as Members of Budget Committee we

ought to ensure that this one is taken care of. It is our mandate to ensure that the Gratuity for ECD Teachers and any other Contractual staff who will enquire gratuity by the end of their contract is taken care of by the Budget Committee. Thank you.

The Speaker (Hon. Oraro): Next Order!

ADJOURNMENT

The Speaker (Hon. Oraro): There being no any other business to transact, the House stands adjourned to 22nd February 2022 at 2.30 p.m.

(House rose at 3.55 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

Jesca Otieno – Hansard Reporter

Vallery Achieng' – Hansard Reporter