COUNTY GOVERNMENT OF KISUMU.

COUNTY ASSEMBLY OF KISUMU.

THE HANSARD.

Official Report

SECOND ASSEMBLY – SIXTH SESSION.

Wednesday, 15th June, 2022.

House met in the Main Chamber at 02:30 p.m.

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

PRAYERS.

The Temporary Speaker (Hon. Okumu): Good afternoon Honourable Members. Mr. Clerk, could you please take us through the Order paper.

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

NOTICE OF MOTION.

The Temporary Speaker (Hon. Okumu): Yes Honourable Rashid Miruka.

Hon. Miruka: Thank you Mr. Speaker. Pursuant to the provisions of the County Assembly of Kisumu Standing Orders No. 45 (1), I wish to give a Notice of Motion Compelling the County Executive Committee Member for Finance and Economic Planning to develop and submit to this House an Equitable Development Policy Statement. Thank you.

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

MOTION.

ADOPTION OF THE REPORT FROPM THE STANDING COMMITTEE OF LABOUR AND SOCIAL WELFARE ON ITS CONSIDERATION OF THE KISUMU COUNTY OFFICERS RETIREMENT AND BENEFITS BILL, 2022.

(KENYA GAZATTE SUPPLEMENT NO. 1)

(KISUMU COUNTY BILL NO. 1)

BY.

HON. RASHID MIRUKA, MCA, NORTH NYAKACH WARD.

(CHAIRPERSON, LABOUR AND SOCIAL WELFARE COMMITTEE).

The Temporary Speaker (Hon. Okumu): The Honourable Rashid Miruka.

Hon. Miruka: Thank you Mr. Speaker. Please allow me to move this motion on a report from the Standing Committee of Labour and Social Welfare on the Kisumu County Officers Retirement Benefits Bill, 2022.

Mar. Speaker and Honourable Members. The Kisumu County Officers Retirement Benefits Bill, 2022 (Kisumu County Bills No 1. of 2022) (Annex I) was introduced in this House and underwent a first reading on the 4th February 2022 after which it was committed to the Sectoral Committee on Labor and Social Welfare pursuant to the County Assembly Standing Orders No. 123(1) for consideration and reporting.

The Bill seeks to provide for the granting of pension and other retirement benefits to persons who hold the office of Governor, Deputy Governor, Speaker and Members of the County Assembly from 8th August, 2017 and for connected purposes.

Hon. Speaker and Honourable Members. the proposed County Officers Retirement Benefits Bill, 2022 originated from the County Assemblies Forum (CAF) with an intention of offering a standardized guidance into the legislations concerning the concept of retirement benefits to respective offices within the County Government structures. The Bill was drafted by CAF and subsequently submitted to the County Assemblies for legislation in order to foster uniformity. Each County was therefore to review, customize and enact the Bill into law without amending some key provisions for purposes of uniformity and centralized management of some of the organs it seeks to create in the management of the proposed County Officers Retirement Scheme.

Pursuant to Articles 109, 110 and 185 of the Constitution of Kenya 2010, Section 21 of the County Governments Act No. 17 of 2012, and Standing Orders No. 123, 124, 125 and 130 of Kisumu

County Assembly Standing Orders, the Committee has since processed the bill and herein provides a comprehensive report on the proposed Kisumu County Officers Retirement Benefits Bill, 2022.

Committee Establishment and Mandate

Hon. Speaker and Honourable Members. The Sectoral Committee on Labor and Social Welfare is established pursuant to the provisions of section 14 (1) (b) of the County Governments Act which provides for establishment of Committees by County Assemblies read together with the Kisumu County Assembly Standing Orders No. 193 and the 2nd Schedule of the Standing Orders which mandates the Committee to investigate all matters relating to labour, trade union relations, manpower or human resource planning, gender, social welfare, and national youth service.

Committee Membership

The Committee comprises of the following Members:

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

Acknowledgement and Tabling

Hon. Speaker and Honourable Members. The Committee wishes to extend its gratitude to the offices of the Speaker and Clerk of the Kisumu County Assembly for the technical and facilitative support accorded to in the entire time of the making of this report.

The Committee also appreciates the Members and secretariat who played an invaluable role in the preparation and production of this report. It is therefore my pleasure to present to this House the final report on the Kisumu County Officers Retirement Benefits Bill, 2022.

LEGISLATIVE PROCESSING OF THE BILL

Schedule of Activities/ Committee Work plan

Hon. Speaker and Honourable Members. Pursuant to Standing Order No. 123 of the Kisumu County Assembly Standing Orders, the Committee adopted the following schedule of activities in its legislative processing of the Bill;

	DATE	ACTIVITY
1.	15th February 2022	Drafting and further adoption of the Committee work plan on consideration of the Kisumu County Officers Retirement Benefits Bill, 2022
2.	15th February 2022 - 22nd February 2022	Briefing and deliberation of the Bill by the Committee's Legal Counsel and Research Department
3.	23rd February 2022	Deliberation on the Kisumu County Officers Retirement Benefits Bill, 2022, with the Salary and Remuneration Commission (SRC), Commission of Revenue Allocation (CRA) and Retirement Benefits Authority (RBA)
4.	23rd February 2022	Public Participation
5.	24th February 2022	Consideration of submissions from Public Participation
6.	25th February 2022 - 3rd March 2022	Report writing
7.	8th March 2022	Tabling of the report on Kisumu County Officers Retirement Benefits Bill, 2022
8.	9th March 2022	Presenting the report in the House for Adoption
9.	15th April 2022	2nd and 3rd Reading of the Bill

Overview of the Kisumu County Officers Retirement Benefits Bill, 2022

Hon. Speaker and Honourable Members. The short title of the Bill is 'The Kisumu County Officers Retirement Benefits Bill, 2022'. The long title of the Bill provides that, it is, 'An Act of the County Assembly of Kisumu to provide for the granting of pension and other retirement benefits to persons who hold the office of Governor, Deputy Governor, Speaker and Member of County Assembly from 8th August 2017 and for connected purposes.'

The Bill is aimed at fulfilling one single objective: to provide benefits for its members upon their retirement, or for their dependents or nominees upon the death of such members.

The Bill is divided into several parts with various provisions as summarised below:

1. Part I of the Bill provides for the preliminary provisions which include the title, interpretation of various terms, objectives of the Bill, membership of the County State Officers Retirement Benefits Scheme and re-election and re-appointment of the mentioned scheme.
2. Part II of the Bill provides for the establishment, administration and management of the County State Officers Retirement Benefits Scheme. It also establishes:
    a) The establishment of the Board of Trustees, functions, powers, committees, meetings of the Board.
    b) Tenure of office, remuneration of trustees, removal of office, vacation of office and filling of casual vacancy
3. This part also enlists the common seal of the Board.
4. Part III of the Bill provides for the benefits for the governor, Deputy Governor and Speaker. This part establishes:
    a) Persons entitled to benefit from the scheme, circumstances under which the benefits may not be paid.
    b) Pension and other benefits of retired persons.
    c) Roles of entitled persons, spouse benefits, children's benefits and entitled persons not covered under any other Act.
5. Part IV of the Bill enlists the benefits for Members of County Assemblies, which establishes:
    a) Persons entitled to benefit, contributions, reckonable service, refund of contributions.
    b) Pension of former members, retirement by reason of ill-health, commutation of pension
    c) Death before retirement, gratuity payable on death in certain cases, pensions to widows and widowers, pension to children
    d) Benefits entitled to Members of County Assemblies
6. This part also provides for the reduction of benefits, cessation of benefits, benefits not assignable and the benefits charged to the County Revenue Fund.
7. Part V of the Bill highlights financial provision. Under this part, the bill enlists the financial year in which the scheme will run through.

8. Under this part, the Bill sets out expenditure estimates for entitled persons under part III, expenditure estimates for the scheme, auditing accounts, accounts and audit and actuarial review.

2.3 Situational Review

1. Hon. Speaker and Honourable Members. In broad terms, the management of pension for County Government officers is largely reliant on the provisions of the Constitution of Kenya 2010, County Governments Act No.17 of 2012, the Pensions Act, and other policies and circulars by Constitutional bodies such as the Public Sector Remuneration and Benefits Policy of 2015 developed by the SRC. Other laws that guide the concept of pensions for public officers include; the Employment Act 2007 (rev. 2012/2014), Parliamentary Pensions Act Cap 196 rev. 2012 and recommendations on labour related best practices from International Labour Organization (ILO) and the International Finance Cooperation (The World Bank Group).
2. Section 132 of the County Governments Act 2012 provides that all members, officers and staff of a county government shall subscribe to an existing pension scheme for officers and staff of local government. At the advent of devolution, this was loosely implemented with County Government officers' grabbling with pension management largely handled by various schemes such as LAPFUND, LAPTRUST, insurance firms amongst others.
3. The Gap(s) that this bill seeks to address therefore lies in the lack of a specific law that addresses the pension and retirement needs of officers of the County Government in a structured and legal manner. The bill however focuses on addressing the pension and retirement benefits of county government state officers and specifically; MCAs, Speakers, Governors and Deputy Governors.
4. The Sixth Schedule, Part 6 Paragraph.32 of the Constitution of Kenya 2010 provides that the law applicable to pensions in respect of holders of constitutional offices under the former Constitution shall be either the law that was in force at the date on which those benefits were granted or any law in force at a later date that is not less favorable to the person. Enactment of the proposed Kisumu County Officers Retirement Benefits Bill, 2022 is therefore justifiable its provisions notwithstanding.

COUNTY PENSIONS/ RETIREMENT BENEFITS LEGAL & POLICY FRAMEWORK

Hon. Speaker and Honourable Members. The concept of pensions and retirement benefits at the County Government level can be guided by the following legislative frameworks and policy provisions;

1) Constitution of Kenya 2010
    a. The Sixth Schedule, Part 6 No.32 Constitution of Kenya 2010: which provides that the law applicable to pensions in respect of holders of constitutional offices under the former Constitution shall be either the law that was in force at the date on which

those benefits were granted or any law in force at a later date that is not less favorable to the person. Enactment of the proposed Kisumu County Officers Retirement Benefits Bill, 2022 is therefore justifiable.

b. Article 43(1)(e) of the Constitution of Kenya, 2010, entitles every person to social security and requires the State to provide appropriate social security to persons who are unable to support themselves and their dependents

2) Parliamentary Pensions Act Cap 196 revised 2012: An Act of Parliament to make provision for granting pensions to persons who have been members of the National Assembly and their dependents.
   a. Section 4 of the Act provides for the calculations for contributions by members into a consolidated fund
   b. Section 6 of the act provides that; Pensions payable shall be based on the member's pensionable emoluments for the last twelve months (whether continuous or discontinuous) during which he was a member of the National Assembly.
   c. Section 5 of the act provides for the reckonable period of service. It states that; The total reckonable service of a member shall be based on the aggregate of all periods beginning on or after the commencement of the Act during which the member was or is a member of the National Assembly, and in respect of which periods deduction of contributions has been made under section 4 of the same Act-(on contributions by members). Any person to whom the Act applies who has, at any time before the commencement of the Act, but on or after 1st June, 1963, served as a member of the National Assembly shall, if he/she applies therefor and pays to the Consolidated Fund within a period of one year from such commencement or from such later date as is approved by the Committee all the contributions applicable to his pensionable emoluments in respect of that service accumulated with interest to the date of payment, be eligible to have that service treated as reckonable service.
   d. Section 8 of the Act provides for the conditions under which pension can be tenable to former members. The section stipulates the following conditions to the same effect; That a person shall be entitled to receive a pension as from the time when the following conditions are fulfilled in respect of him -
      i. he has ceased to be a member of the National Assembly by reason of the dissolution of Parliament; and
      ii. his aggregate period of reckonable service is two terms of Parliament; and
      iii. he has attained the age of forty-five years.
3) County Governments Act No.17 of 2012: Section 132 of the County Governments Act, 2012: provides that all members, officers and staff of a county government shall subscribe to an existing pension scheme for officers and staff of local government.
4) Retirement Benefits Act

5) The International Labor Organization (ILO): The International Labor Organization (ILO) recommends the use of defined contribution arrangements in the civil service in order to alleviate the transfer of unfunded liabilities to taxpayers and encourage member's participation in the pension fund's governance structures. Member's participation is also important to avoid misuse of pension fund reserves and investment decisions not primarily related to retirement. ILO recommends that care should be taken to ensure that any payments relating to pension benefits are made at the time of termination of service and that it is clear how their future pension benefits will be affected and calculated[i].
6) The International Finance Corporation (World Bank Group): Recommends that, following retrenchment, one-off severance payments to employees are important to guarantee some form of financial compensation to cushion from poverty[ii].

COMMITTEE ANALYSIS OF THE BILL

Clause by Clause Review of the Bill

Clause	Provisions of Kisumu County Officers Retirement Benefits Bill, 2022	Committee Remarks
Short title	Kisumu County Officers Retirement Benefits Act 2022.	This title is contrary to the specificity in the long title and the content in the provisions of the Bill which narrows down to selected state officers and is not general to all officers of the county government.
Long title	AN ACT of the County Assembly of Kisumu to provide for the granting of pension and other retirement benefits to persons who hold the office of Governor, Deputy Governor, Speaker and Member of County Assembly from 8th August 2017 and for connected purposes.	The specificity in the officers/ offices that qualify for the pensions as proposed in this Act is tantamount to the state officers at the County Government level as provided for in General provisions 260 of the Constitution of Kenya 2010 on Interpretations save for the members of County Executive Committees. Additionally, there is need for justifications for the specificity to specific state officers and the commencement date cited as 8th August 2017 considering the provisions of the Sixth Schedule, Part 6 No.32 Constitution of Kenya 2010[iii].

Clause 3:	Provides for the objectives of the scheme as to provide benefits to its members upon retirement or dependents upon death.	Should be improved to; first provide for the establishment of the proposed scheme before making provisions for its functions as highlighted. Refer to Section 6 of the same Bill.
Clause4	Provides for the membership of the scheme to include specifically; the Governor, Deputy Governor, Speaker and MCAs.	These are basically state officers at the County Government level save for the exclusion of the CECMs. There is need for a justification of such specificity and the reasons for the exclusion of CECMs - If indeed it aimed at making provisions for state officers.
Clause 5	Re-election and re-appointment into the scheme. Provides that if a state officer is reelected, his membership into the scheme shall be deemed not to have been interrupted.	The clause should expound on the how to handle a member's contributions (if already paid out or otherwise due to resignation/ exit upon elections) and the readmission process in case of a re-election.
Clause 6	Establishes the County State Officers Retirement Benefits Scheme.	Justifies the observations made on; the short and long titles; Clause 3 and 4 on the need for justifications for the exclusion of all county state officers and the review of the titles.
Clause 7	Establishment of board of trustees and its composition.	The composition of the board is biased towards a comprehensive representation of the entities of County Assemblies and less on the executive - Whose two state officers (the Governor and Deputy Governor) are also proposed to be covered by this Act. The manner of appointment of members' no. 7 (b & c) is not expressly provided for.
Clause 18	Persons entitled to benefit: Provides that a person shall qualify for benefits if the person shall have served a term and retire as Governor, Deputy Governor and Speaker of the County.	Could be improved to comply to the provisions for reckonable period of service that qualifies for pension under Section 8 of the Parliamentary Pensions Act Cap 196 revised 2012 which provides that; That a person shall be entitled to receive a pension as

		from the time when the following conditions are fulfilled in respect of him:-he has ceased to be a member of the National Assembly by reason of the dissolution of Parliament; and his aggregate period of reckonable service is two terms of Parliament; and he has attained the age of forty-five years.
Clause 19	Circumstances under which benefits may not be paid: Provides that the County Assembly may vote to resolve that entitled person or his dependents shall not receive benefits under certain circumstances.	Contradicts the functions of the board of trustees as provided for in Section 8 (a and c).
Clause 20	Pensions and other benefits of retired persons. Provides that; Monthly Pension: Governor - 80% of basic monthly salary; Deputy Governor - 60% & Speaker - 60%. Lump sum payment for all calculated as a sum equal to one year's basic salary for each term.	Provides that the officers shall qualify such benefits upon retirement; (Refer to Section 20 (1, 2, 3, 4, 5, & 6). There is need for improved conceptualization of the words; retired governor, retired deputy governor, retired speaker; as interpreted in the preliminary sections of the Bill in order to make it more comprehensive to suit its usage in this context.
Clause 21	Role of an entitled person.	The words 'Entitled person' should be defined and a justification on the advisory role designated upon him/ her considered.
Clause 25	Benefits for MCAs: Provides that an MCA shall qualify for benefits if they shall have served a term and retired as MCA.	Could be improved to comply to the provisions for reckonable period of service that qualifies for pension under Section 8 of the Parliamentary Pensions Act Cap 196 revised 2012 which provides that; That a person shall be entitled to receive a pension as from the time when the following conditions are fulfilled in respect of him:-he has ceased to be a member of the National Assembly by reason of the dissolution of Parliament; and his aggregate period of reckonable service is

		two terms of Parliament; and he has attained the age of forty-five years.
Clause 27	Reckonable service. Allows for admission of previous members of County Assembly upon application and payment of all applicable contributions.	Contradicts the provision of date in the long title.
Clause 30	Pension to former members and conditions for fulfillment for payment of pension.	In line with Section 8 of the Parliamentary Pensions Act Cap 196 revised 2012.
Clause 37	Benefits entitled to MCAs: A retired MCA shall be entitled to:- - Lump sum equal to one year's basic salary for each term served. - Full medical cover for retired member and spouse - For a member who serves for two terms or more.	The source of funds for the medical cover is not clear and how the same shall be calculated from the Members' contributions or otherwise.
Clause 38	Circumstances for reduction of benefits in cases of misconduct or false claim.	Contradicts similar provisions in Section 19 on same circumstances for other officers (Governor, Deputy Governor and Speaker).
Clause 41	Benefits charged on and payable from County Revenue Fund.	Requires comprehensive interpretation with regards to; the county budget, the Members' contributions, investments of the fund and any interests thereof.
Clause 43 (3)	Expenses in the administration of the provisions of the Act to be appropriated by the County Assembly.	Should be reviewed with regards to Section 41 and the county budget, the Members' contributions, investments of the fund and any interests thereof.
Clause 44, 45, 46	Expenditures, auditing and reporting on financials and operations of the Board.	Who shall be the accounting officer of the fund responsible for the financial reporting since the board, according to Section 7 (2), shall be a body corporate.

Comparative outlook of the provisions for benefits for MCAs vs those for Governor, Deputy Governor and Speaker.

Hon. Speaker and Honourable Members. The illustration below is a comprehensive review of the benefits the bill provides for the MCAs juxtaposed against the benefits the bill seeks to provide for the others officers (the Speaker, the Deputy Governor and the Governor);

	Governor	Deputy Governor	Speaker	MCAs
Pension	Pension of -80% of basic monthly salary	Pension of -60% of basic monthly salary	Pension of -60% of basic monthly salary	Annual amount of cumulative one three-hundredths (103%) of pensionable emoluments of each completed month/ or May commute up to one quarter as provided in Clause 32 (2)
Lump sum retirement payment	Lump sum payment calculated as a sum equal to one year's basic salary for each term	Lump sum equal to one year's basic salary for each term served in office	Lump sum equal to one year's basic salary for each term served in office	Two times the cumulated contributions plus interest
Other benefits				None
	One driver	One driver	One driver	-
	One four wheel drive car not exceeding 3000cc	One car not exceeding 3000cc	One car not exceeding 3000cc	-
	One PA/ Secretary	One PA	One PA	-
	One house keeper	Full medical cover for former	Full medical cover for former	-

		deputy governor and spouse	speaker and spouse	
	Full medical cover for local and overseas treatment for executive and spouse	-	-	-
	Vehicle Maintenance expenses	-	-	-
Deductions/ Contributions by member	Not stated	Not stated	Not stated	Twelve and three fifths percent (12.6%) of pensionable emoluments.

Legal and Policy Observations on the Bill

Hon. Speaker and Honourable Members. The Committee takes note of the following crucial legal and policy observations on the provisions of the proposed Kisumu County Officers Retirement Benefits Bill, 2022:

1. The Bill intends to grant pension and other retirement benefits to persons who held/ hold the office of the Governor, Deputy Governor, Speaker and MCAs from 8th August 2017. Notably, it fails to address the fate of the County State Officers who served during the first Assembly. This is prone to litigation as being out rightly discriminatory. This provision is also contrary to the law as it intends to apply retrospectively.
2. The Bill seeks to make provisions for retirement benefits for County State Officers with an exclusion of County Executive Committee Members, who are equally state officers at the County level pursuant to the Constitution of Kenya. This compounds the discriminatory nature of the Bill.
3. The letter of the short title of the Bill is not in spirit with its long title that is rather specific as to the officers (Governor, Deputy Governor & Speaker of County Assembly), and the time of applicability (8th August 2017) or qualifications for benefits.
4. The Bill is not clear on whether the scheme will be managed under the national joint county assemblies' management structures or each county shall have its own specific management structure. This uncertainty is bound to largely affect the uniformity in the benefits which should be a key consideration in this Bill. The provisions on the appointment of board of trustees and the role of the County Assemblies Forum on the same should be made more comprehensive in this regard.

5. The Bill seeks to empower the Assembly to legislate on matters that are not in its purview. Remuneration and benefits of public and state officers are a mandate of Salaries and Remuneration Commission (SRC)[iv]. This violates the doctrines of checks and balances and separation of powers as envisioned in the Constitution.

PUBLIC PARTICIPATION

Hon. Speaker and Honourable Members. Pursuant to Article 196 of the Constitution of Kenya 2010, Section 115 of County Governments Act 2012, and Standing Orders No. 123 (3) of Kisumu County Assembly Standing Orders, the Committee wrote to various stakeholders including; County Assemblies Forum (CAF), Retirements Benefits Authority (RBA) and the Commission for Revenue Allocation (CRA) in to provide their input and answer to various contentious issues flagged off by the Committee during her analysis. These requests were sent out by the Committee in line with Section 87 of the County Government Act, 2012 which compels the County Assembly to involve stakeholders in decision that involve them and their input taken into account. (See Annex II for copies of the requests for stakeholder input on the Bill).

Hon. Speaker and Honourable Members. It is very unfortunate that none of the stakeholders provided any input on this Bill in either form of memorandum or oral submissions despite the invitations for the same being sent out.

Hon. Speaker and Honourable Members. Based on the resources and timelines required to facilitate public gatherings on the Bill weighed against the Committee analysis of the justifications, gaps and benefits of the bill to the people of Kisumu as presented in the foregoing analysis, the Committee decided not to proceed with public *barazas* on this Bill and instead proceed to highlight the following findings and recommendations thereto.

COMMITTEE FINDINGS AND OBSERVATIONS ON THE KISUMU COUNTY RETIREMENT BENEFITS BILL, 2022

Hon. Speaker and Honourable Members. Based on the foregoing technical review and analysis of the Bill, the Committee makes the following observations and findings;

1. THAT the Bill seeks to make provisions for retirement benefits for County State Officers with an exclusion of County Executive Committee Members. This raises questions as to the legislative authority of the County Assembly to legislate on matters pension and retirement benefits of state officers and for purposes of uniformity in the management of retirement benefits and pensions for such officers across the country.
2. THAT the short title of the Bill is not in spirit with its long title that is rather specific as to the officers (Governor, Deputy Governor & Speaker of County Assembly), and the time of applicability (8th August 2017) or qualifications for benefits

3. THAT the Bill is not clear on whether the scheme will be managed under the national joint county assemblies' management structures or each county shall have its own specific management structure. The provisions on the appointment of board of trustees and the role of the County Assemblies Forum on the same should be made more comprehensive in this regard.
4. THAT the Bill envisages a centralized management of the scheme under the leadership of the County Assemblies Forum (CAF) despite its cross-cutting provisions including the provision for benefits for state officers from the executive arm of the County Government who are not members of CAF. This also brings into question the legal status of CAF with regards to its intended role in such affairs. This is implied in Clause 7 (a) in which the composition of the board of trustees whose appointment is directly charged to CAF.
5. THAT the provisions of the Bill have an effect on the County Government budget since it is not purely contributory. This raises serious questions as to whether the County Government shall manage to shoulder the expected demands of pension and retirement benefits envisaged in the Bill considering the high rate of turn-overs of state officers at the County level after every five years.
6. THAT The Bill seeks to make provisions for retirement benefits for County State Officers with an exclusion of County Executive Committee Members, who are equally state officers at the County level pursuant to the Constitution of Kenya. This compounds the discriminatory nature of the Bill.

COMMITTEE RECOMMENDATIONS

Hon. Speaker and Honourable Members. Having comprehensively considered the Kisumu County Officers Retirement Benefits Bill, 2022 as presented here above, the Committee makes the following recommendations for approval and adoption by this House:

1. THAT this House rejects the proposed Kisumu County Retirement Benefits Bill, 2022 in its entirety because of the following reasons:
    a) The matters and or provisions presented thereto are matters of national concern that require uniformity in legislations thus the need for a national legislation and not a County legislation pursuant to Article 191 (3) of Constitution of Kenya 2010. The County Assembly therefore lacks jurisdiction to legislate on matters thereto as proposed in the Bill
    b) The Bill has outright discriminatory provisions that are a fodder for litigation. It provides for state officers but excludes the County Executive Committee Members (CECMs), and all state officers who served prior to 08th August 2017.
    c) The Bill has far-reaching budgetary implications with serious ramifications on the County Government budget thus raising questions as to the ability of the County Government to manage the

expected demands of pension and retirement benefits envisaged in the Bill considering the high rate of turn-overs of state officers at the County level after every five years.

d) Remuneration and benefits of public and state officers are a mandate of the Salaries and Remuneration Commission (SRC). The Assembly will be violating the doctrines of balances and separation of powers as envisioned in the Constitution if it is given such matters to legislate.

Mr. Speaker and Honourable Members, having look at that, we as a House Committee did resolve that we reject the Bill as it is. Mr. Speaker, please allow me to invite the Leader of Minority to second this report. Thank you.

The Temporary Speaker (Hon. Okumu): The Leader of Minority, Honourable Benny Pete Oiko.

Leader of Minority (Hon. Oiko): Thank you Mr. Speaker. From the onset this Bill looked to be beneficial to the Members of the County Assemblies. In deep analysis, this Bill is skewed in favour of the Governors, the Deputy Governors and the Speakers. If Members of the County Assemblies allow this Bill to sail through, we shall be in breach of our fundamental rights. The Speakers will put us in ransom when you look at the benefits that they are entitled to.

Mr. Speaker and Honourable Members, we are the ones who are expected to pass this and what we are entitles to as Members of the County Assemblies is peanut. I want to implore Members of the County Assembly of Kisumu to throw this Bill out and request County Assemblies Forum (CAF) to sit down in consultation with the leadership of the County Assemblies so that a refined and viable Bill is drafted that will be beneficial to the ordinary Member of the County Assembly. Mr. Speaker, with those few remarks, this Bill stands rejected. I second the rejection of those Bill as moved by the Chair, Labour and Social Welfare Committee.

The Temporary Speaker (Hon. Okumu): Thank you Honourable Members. The Standing Committee of Labour and Social Welfare has moved a motion on its report on its consideration of the Kisumu County Officers Retirement Benefits Bill, 2022. The Motion has been ably moved by the Chairperson the Hon. Rashid Miruka and seconded by the Leader of Minority. I therefore, want to propose that we open the report for further debate.

The Temporary Speaker (Hon. Okumu): Yes Senior Member, Hon. Khan.

Hon. Khan: Thank you Mr. Speaker. For the first time, I arise not to support this Bill. Mr. Speaker and Honourable Members, I want to stand to be counted among the Honourable Members of County Assembly of Kisumu who are not going to support the Kisumu County Officers Retirement and Benefits Bill, 2022.

Mr. Speaker, reasons being that, as you look at the Bill, it looks quite ambiguous and does not in what so ever form, or whichever way you look at it, is either beneficial or is going to be beneficial to Members of the County Assembly of Kisumu. This Bill is homegrown and brought down so that it can benefit Members of the Kisumu County Assembly and the State Officers, but in no way I have I seen where it is going to benefit the Members of the Assembly but will only benefit some senior Members of the Government in Kisumu County.

Mr. Speaker, it is my belief that you might be aware that, recently I saw an advertisement in the local dailies where they wanted the County Assembly of Kisumu to source for people who are experts to manage the Car Loan and Mortgage Scheme Fund. Mr. Speaker, my question would be and which the House Committee equally found out is how are these funds going to be managed? Mr. Speaker, sincerely speaking, it becomes hard and it is my belief that it is not going to be beneficial.

Third, is that the effective dates of this Bill is from 08th August, 2017. Other than the drafters of this Bill focusing on since the inception of Devolution in 2013 where we had the pioneers of the First County Assemblies. So, the question here where its states that you have to be a two term Member does not arise when you similarly exclude other Members. It clearly states that when you become a Member of the County Assembly whether for a period of ten or one year then, you are eligible or entitled to it. Mr. Speaker, this Bill is attempting to remove other Honourable Members from this Scheme.

Lastly, I would like to say that and call upon my colleagues Honourable Members to reject this Bill in totality. Mr. Speaker, I equally want you to note that, when this report was being moved, it more or less addressing the Speaker as opposed to addressing both the Speaker and Honourable Members. This is because I have not seen anywhere while the chair was reading the report he was just quoting Honourable Speaker excluding or leaving the Honourable Members whose benefits are actually contained in this Bill and this becomes very interesting. In the same breadth when Public Participation was being conducted, we were not involved and this shows clearly that this Bill is not meant for us. Thank you.

The Temporary Speaker (Hon. Okumu): Yes Hon. Vitalis Otura.

Hon. Otura: Thank you Mr. Speaker. It is well known that this is a House of Rules and Procedures and going by the provisions of our Standing Orders, we have the Standing Committee of Labour and Social Welfare which I believe has done its work where they have brought out very valid observations towards this Bill.

Mr. Speaker, moving forward the Committee has enumerated very good recommendations and in the spirit of supportive engagements that I seat as a Chair of the Committee of Agriculture Livestock and Fisheries and Honourable Miruka chairs the Committee of Labour and Social Welfare. Having faith in all these House Committees, this Committee has done the task mandated

to it and has made very good recommendations which we have to adhere to. This is because they undertook their research, complied their work and going by the observations it is outright that this Bill is not meant for us. Mr. Speaker, in this regard, if you look at recommendation number one, is as clear as water. I want to implore this House that we adopt what is recommended by this House Committee so that we encourage the spirit of togetherness, teamwork and above all, this being a House rules and procedures, we go by what this House Committee has recommended. Mr. Speaker, I beg to reject this Bill. Thank you.

The Temporary Speaker (Hon. Okumu): Yes Hon. George Ogutu, MCA, West Nyakach Ward.

Hon. Ogutu: Thank you Mr. Speaker. Please allow me to state one thing. Foremost, let me express my sincere gratitude to this House Committee for a job well done. Mr. Speaker, it is my belief that this Bill is well known by Members of County Assemblies.

Mr. Speaker, if you can recall when CAF - Nyanza Charter visited us in Kisumu at the Royal Swiss Hotel, it is the same Bill that was brought to us. Mr. Speaker, let us look at page fifteen of this report, then definitely we cannot allow to be used as Honourable Members to pass a Bill which is not going to benefit us as Honourable Members. Mr. Speaker, this Bill is entirely meant to benefit three cadres notably the Governors their Deputies and the Speakers of County Assemblies. In column one, page fifteen it is clearly indicated there that the Governors, their Deputies and the Speakers and Members of the County Assemblies. In the first column, it touches on Pension of 80% of Basic Monthly Salary for the Governor. His Deputy is eligible of Pension of 60% of Basic Monthly Salary, then the Speakers will take home a Pension of 60% of Basic Monthly Salary.

Mr. Speaker, when you go to the Members of the Count Assemblies, who is supposed to pass this Bill, you will realize that, the statement is ambiguous. It does not illustrate where we are supposed to get our monies. MCAs will be entitled to take home Annual amount of cumulative one three-hundredths (103%) of pensionable emoluments of each completed month/or may commute up to one quarter as provided in Clause 32 (2) of this Bill.

Mr. Speaker, we are aware because we discuss these issues when we were at the Royal Swiss Hotel. It is our salaries which will be deducted and reimbursed back to us. Mr. Speaker, as for the Governors and their Deputies, this pension will be sourced from the public coffers. Mr. Speaker, the drafters of this Bill were really unfair to members of County Assemblies. If you clearly see, the effective date of this remunerations which states that it commences 08th August, 2017. It is meant particularly the three senior officers whom are their main targets.

Mr. Speaker, if we pass this Bill in this House, which means that, in the first place, we are not aware of what our mandate is and it is my sincere belief that this House Committee has done a commendable job. Mr. Speaker, we are going to go by the recommendations made by this House Committee and we are not going to approve this Bill in its current draft but go by the

recommendations made by the Committee which states that this Bill must be taken back to its origins. This will enable us safeguard our Members.

Mr. Speaker, it will be really painful if we become the House that passes this Bill and our welfare as Honourable Members is not taken care of. In the Bill it is stated that, the effective date of this Bill is 08th August, 2017 and yet Members of the First Assemblies are excluded, why didn't the drafters of this Bill include MCAs of the First County Assemblies? Mr. Speaker, if this Bill is good then, the commencement date should have factored in the inception of devolution which is 2013. So, that all cadres of MCAs or pioneer MCAs in the First Government similarly benefits from the same Bill.

Mr. Speaker, I want to categorically state here that, I will go with the recommendations given by this House Committee which has done a very good report to this House.

The Temporary Speaker (Hon. Okumu): The Honourable Beatrice Pamela.

Hon. Beatrice Pamela: Thank you Mr. Speaker. I arise in support of the recommendations made by this House Committee and reject this Bill in its current draft. Mr. Speaker, if you read that Bill, it is my belief that the drafters were a little bit selfish and self-centered because they did not consider the peoples of the Counties who are the populace that they are supposed to serve.

Mr. Speaker, how do you allocate 80% of somebody's Monthly Salary as a Retirement Package? Let us take for example a Governor who for example earns Kshs 1,000,000 per month. So, you are telling us that we should pay them Kshs 800,000.00 per month from the public coffers. On top of that give them a Personal Assistant, a Four Wheel Vehicle, give them a Domestic Worker, a Medical Insurance that allows them to be treated both locally and internationally.

Mr. Speaker, we are all aware right now that most Counties are struggling financially and they cannot undertake development projects. There are no pharmaceutical and none-pharmaceutical drugs in our hospitals, the ECDs are not well equipped and we need as leaders to rise up and take care of our citizens. We should stop being selfish and it is my belief that the drafters of this Bill and the Council of Governors (CoG) were not being realistic and fair.

Mr. Speaker, I believe that the package that the SRC has already given them is good enough and I don't consider that as a House we should come up and think that we are the only people who deserve to live. Our citizens equally deserve to live, and the also deserve to have good healthcare and access to services and we need to allocate funds to development projects and institutions that can serve everybody in the County. Mr. Speaker, I stand to reject this Bill. Thank you.

The Temporary Speaker (Hon. Okumu): The Honourable Hon. Roy Samo.

Hon. Samo: Thank you Mr. Speaker. I want to thank you for according me this chance to also ventilate my concern. Foremost, I want to state that I am in support of the recommendations given

by this House Committee. This has been ably handled by the Chairperson, Hon. Miruka and Members of his Committee.

Mr. Speaker, I can recall a few months ago, I was being reminded by the Hon. Otura when we convened at the Royal Swiss Hotel which is in my ward and we were going through this Bill and I said something that I would wish to remind you and say it again. Mr. Speaker, the drafter of this Bill were borrowing word for word from the Act on the Retired Presidents and their Deputies and Prime Ministers Act which is now an Act of parliament but, they forgot to understand the foundations of the devolved institutions which are the County Governments.

Mr. Speaker, if I don't dwell much because the Hon. Beatrice Pamela and the Hon. George Ogutu have exhaustively explained this. We cannot say that we are going to pay somebody 80% of his/her Monthly Salary if he is voted back to serve for a second term. For the position of the Speaker, if he/she is voted in to serve for a second term he will be eligible for 80% Monthly Salary as Pension and for one term is 60% Monthly Salary.

Mr. Speaker, the Members of the County Assemblies who are supposed to pass this Bill, they are being told that we are going to work for you something for you to take home. I believe that these people are taking us for granted because they are aware that, we will just look at this Bill and just pass the way it without scrutiny. Mr. Speaker, I am very happy that this House has very able minds the likes of Hon. Ogutu, Hon. Miruka, Hon. Pamela Beatrice and others who have keenly scrutinized the Bill and notice and the way the Leader of Minority was also bringing it clearly that our take as MCAs is not properly factored in this Bill.

Mr. Speaker, I want to say that, it is not only Kisumu County Assembly that has rejected this Bill, I want to be explicit that this Bill has been rejected by 27 (Twenty-seven) County Assemblies who have managed to debate it. Mr. Speaker, I can furnish this House with names of County Assemblies that have rejected this Bill because I belong to a forum where I have seen the way they have voted on this Bill. So, Kisumu just adds up to the number of County Assemblies that have rejected this Bill because it is a requirement that this Bill must be passed by a majority of the County Assemblies in Kenya. Mr. Speaker, the way things are going, I don't believe if this Bill will see the light of day.

Mr. Speaker, we are aware that the Deputy President and the Prime Ministers have been accorded that preferential treatment due to the fact that they are national leaders. Mr. Speaker, if you take a look at the County Governments, it would have been very clear if our people take into cognizant roles that the MCAs are playing in the ground. Mr. Speaker, the first point of call of any resident in this County is the MCA. They rarely find the Member of Parliament (MPs) at home because they say that they are busy in Nairobi passing legislations but, you will find Hon. Oiko, Hon. Ogutu Hon. Samo other Members in their respective wards. Mr. Speaker, their first point of contact is you the MCA. So if they come to you, you are their benefactor and Father Christmas. If all these things are appropriately put together, then you want to trust that person to come up with a Bill or

an Act of Parliament. So, I want to concur with the Committee and the recommendations made by the Committee because they did the right thing because we are saying as MCAs that we reject this Bill in its current draft in totality. Thank you.

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

Hon. Ojuok: Thank you Mr. Speaker for according me this opportunity. Foremost, let me take this opportunity to reject this Bill the same way that the House Committee has recommended and done. I want to say that this House Committee has done a commendable job and actually it shows the level of brains that are here in this House. Mr. Speaker, I want to appeal to the MCAs to first honour themselves and know that they are legislatures in their own rights and they are not messengers to anybody. There is that inferiority complex that has affected a number of MCAs. As at this moment, majority of the MCA are campaigning and I want to say that, there is no single person that is giving you funds to campaign with and you are campaigning on your own…

Hon. Ogaga: On a Point of Order.

The Temporary Speaker (Hon. Okumu): Hon. Member, whom do you want to inform?

Hon. Ogaga: Thank you Mr. Speaker. I want to inform this House that there are some Members in this House behaving like weaver birds because they are making a lot of noise and we cannot get the contributions of other Members.

The Temporary Speaker (Hon. Okumu): Hon. Members, please consult in low tones so that the Hon. Ogaga can grasp the Hon. Ojuok's submissions.

Hon. Khan: Mr. Speaker, if you may allow me to interject…

The Temporary Speaker (Hon. Okumu): Order!! Order!! Honourable Member. Hon. Ojuok, please proceed.

Hon. Ojuok: Mr. Speaker, I really want to appreciate this Standing Committee for what they have done…

The Temporary Speaker (Hon. Okumu): Order!! Order!! Hon. Samo. Please allow the Hon. Ojuok to conclude.

Hon. Khan: Mr. Speaker, I arise on a Point of Order!!

The Temporary Speaker (Hon. Okumu): Honourable Member, disallowed. Hon. Ojuok, please proceed.

Hon. Ojuok: Mr. Speaker, again, I want to thank the House Committee…

Hon. Khan: Mr. Speaker, I arise on a Point of Order!!

The Temporary Speaker (Hon. Okumu): Honourable Member, disallowed.

Hon. Ojuok: Mr. Speaker, I want to thank the House Committee for doing a commendable job and I want to appeal to the Members that, we be Members that respect themselves. In fact it has come to a point whereby somebody somewhere thinks that we are just voting robots and that we don't go through documents brought into this House and they can recommend anything to this House and we just take it in and we are not able to analyse or do anything about it.

Mr. Speaker, in fact one of the recommendations that I would have added is that, from this moment moving forward, the that House recommends that the Pension for the Members of the County Assemblies, the County Executive State Officers be compared to those once at the national government. If you are going to place a certain percentage, then, they should be compared to that of the national government and any changes that are done, should affect all that is for fair treatment. This is because, if you look at the terms of service of the County Assembly Members, even as at the moment, you will get to realize that, there is a way that it is not fair at all and there is a way that the Counties are treated as extra governments. Those ones of the Governor compared to that of the President, the County Secretaries, the Cabinet Secretaries, if they are compared in such a way that also, if this economy has the financial muscle to cater for that. So that, in the event that the economy is not able to cater of these benefits and they have to be reduced, then we reduce from up going down. If we apply that, it is the only way people will feel that we are getting fair treatment.

Mr. Speaker, I wonder why the body mandated to do this the SRC has not been able to do something about the fair treatment of all the County Assemblies. This is because the work that we do and because the Governor is like the President of the County, the Deputy Governor is equivalent to a Deputy President. So, if we are going to do those things we have to come up with recommendations that, these remunerations are compared so that they can agree that this particular place can be lowered but, the proposal in terms of when you are supposed to be eligible for this pension, how much you are to get, the kind of support staff that is supposed to be assigned to you all these are supposed to fairly be given to us which includes even the salaries. I believe that, it can be done in any other way and it is the reason why Members of Parliament were able to reject the Ward Development Fund knowing very well that at the same time they were recommending for an increase to the CDF fund. The reasons that they were giving for the rejection of the Ward Development Fund is lack of funds. Mr. Speaker, at the same time they are making recommendations to increase funds for the CDF. Mr. Speaker, that unfair treatment must be cured in a way that all legislations that emanate from the top and affect all of us especially when it comes to issues or matters that deal with Human Resource.

Mr. Speaker, I want to thank the Committee once again for recommending that we reject this Bill. So, let us reject this Bill in totality. Thank you.

The Temporary Speaker (Hon. Okumu): Yes Honourable Beatrice Odongo.

Hon. Beatrice Odongo: Thank you Mr. Speaker. Going by the mood of the House, please allow me to call the mover to reply?

The Temporary Speaker (Hon. Okumu): Yes the Honourable Rashid Miruka.

Hon. Miruka: Thank you Mr. Speaker and the Honourable Members. I want to thank everyone for the effective participation on this Bill. Honourable Members I tell you that we looked at this Bill and if we propose it to be adopted it its draft format, implementation will be very costly and dear to the common man. Honourable Members, I want to commend you for rejecting it because we want a Bill that does not discriminate in any way. It is high time and I want to remind you to be going through these documents because if we don't do that, we would ratify very derogatory items that would be very costly to us. On that note, I want to say thank you and beseech you as Members and the Office of the Speaker that you help the Committee to reject this Bill because we want what is good for this nation and this great County of Kisumu. Thank you very much.

The Temporary Speaker (Hon. Okumu): Thank you Honourable Members. The Sectoral Committee on Labour and Social Welfare has moved a report before this House on their consideration of the Kisumu County Officers Retirement Benefits Bill, 2022. The motion has been moved by the Chairperson, Hon. Rashid Miruka, seconded by the Leader of Minority Hon. Benny Oiko Pete ably debated by the Honourable Members. Now I want to put a question on the adoption of the Report?

Honourable Members, I want to make it clear that, if we adopt this report then, this Bill stands rejected. If we reject this report then the Bill stands accepted.

Honourable Members, I want to put a question. That for those of the opinion that we adopt the report of the Sectoral Committee on Labour and Social Welfare on their consideration of the Kisumu County Officers Retirement Benefits Bill, 2022?

(Question put and agreed to)

Honourable Members, and the report of the Sectoral Committee on Labour and Social Welfare on their consideration of the Kisumu County Officers Retirement Benefits Bill, 2022 has been adopted today Wednesday, 15th June, 2022 at 15:29 hours.

Honourable Members, with the adoption of this report, the House has unanimously agreed that the Kisumu County Officers Retirement Benefits Bill, 2022 is rejected.

Honourable Members, I want to direct that, the Hansard Report of today's proceedings together with the Bill be communicated to County Assemblies Forum (CAF) so that they can move on by either drafting a new Bill or communicate the same to other County Assemblies. Thank you.

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

ADJOURNMENT

The Temporary Speaker (Hon. Okumu): Honourable Members, there being no any business to be transacted, this House stands adjourned to tomorrow Thursday, 16th June, 2022 at 02:30 p.m.

(House arose at 15:35 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

[i] Social protection for all. A policy brief by ILO. Accessible online via https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjv-biJuv_1AhWMzIUKHRbgA8YQFnoECAcQAw&url=https%3A%2F%2Fwww.social-protection.org%2Fgimi%2FRessourcePDF.action%3Fid%3D55234&usg=AOvVaw0eE0Fn59dn57ElAVekpyOu

[ii] Holzmann, Hinz& Dorfman M. (2008), Pension systems and reform conceptual frameworks, Social Protection and Labour, the World Bank.

[iii] Provides that the law applicable to pensions in respect of holders of constitutional offices under the former Constitution shall be either the law that was in force at the date on which those benefits were granted or any law in force at a later date that is not less favourable to the person. Enactment of the proposed Kisumu County Officers Retirement Benefits Bill, 2022 is therefore justifiable.

[iv] Article 230 (4) of CoK, 2010