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## COUNTY GOVERNMENT OF KISUMU



### COUNTY ASSEMBLY OF KISUMU

### **THE HANSARD**

#### *Official Report*

#### **THIRD ASSEMBLY – SECOND SESSION**

**Tuesday 07<sup>th</sup> March, 2023**

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

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

#### **PRAYER**

**The Speaker** (Hon. Oraro): Mr. Clerk, can you please take us through the Order Paper of today.

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

#### **COMMUNICATION FROM THE CHAIR**

**The Speaker** (Hon. Oraro): Honourable Members, welcome to this session. I am informed that in the gallery are students from Bondo Township Secondary School. They are accompanied by their teachers Mr. Bob Okuku, Mr. Daniel Mbai, Mr. Elijah Ojuki, Ms. Harriet Oloo and Ms. Phoebe Jael. I want welcome you to the County Assembly of Kisumu, please feel free. Our Sergeant-At-Arms will be able to guide you appropriately.

Two, Honourable Members, I want to remind the following House Committees that you have some pending reports as at today 7<sup>th</sup> March, 2023 and these Committees are as follows;

1. Public Investments and Accounts Committee led by Hon. Kennedy Ouko, there is a report on the Auditor General's Report on the Financial Statements of the County Executive of Kisumu for the FY ended 30<sup>th</sup> June, 2020. This report was committed to

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your committee on the 02<sup>nd</sup> November, 2022 and I allowed you to work over the recess and it is overdue.

2. Procedure and Rules Committee. You have a report on the consideration of amendments to the Kisumu County Assembly Standing Orders. The Vice Chairperson is Hon. Tom Nyaoke. The due date was on 6<sup>th</sup> February, 2023.
3. Health, Housing and Sanitation Committee, you have two reports. Response to a statement raised by Hon. Fred Adonijah regarding Operational Status of Oduwo and Kibigori Dispensaries in Chemelil Tamu Ward. It is long overdue but I am aware that your report on Study tour to Mama Lucy Kibaki and Kenyatta National Hospitals is already scheduled for debate.
4. Planning, Industrialization and ICT Committee. The Report on consideration of Kisumu County Urban Project Advance Account Annual Report and Financial Statements for the financial year ended 30<sup>th</sup> June, 2022. Similarly, you also have report on consideration of the City of Kisumu Annual Report and Financial Statements for the year ended 30<sup>th</sup> June, 2022. Yet again, Response to a statement sought by Hon. Benson Adegga regarding the Status of Mamboleo Abattoir. Lastly, Response to a statement sought by Hon. Joachim Oketch regarding the shutdown of businesses within the City and confiscation of merchandises.
5. Labour and Social Welfare Committee, you have reports to present. A report on consideration of Petition to the County Assembly by the Kenya Medical Practitioners, Pharmacists and Dentist Union concerning Perennial Delays in Payment of Salaries due to employees of County Government of Kisumu. Consequently, you also have a report on consideration of a Petition to the County Assembly by Healthcare Workers Union on the Status of Healthcare Workforce and Healthcare Service Provision across Public Health Facilities within Kisumu County. A report on consideration of Kisumu County Public Service Board Annual Report for the 2022 and a Response to Statement raised by Hon. Henrietta Bodo on the Degrading Activities against Women Traders in Exchange of Fish along Beaches in Kisumu.
6. Cooperative, Finance, Trade and Enterprise Development Committee. You also have the following reports that are overdue. Response to a statement sought by Hon. Lumumba Owade regarding Safety of Trade Merchandise in Sondu Market in South East Nyakach. There is also a report on consideration of Kisumu County Assembly Quarterly Reports and Financial Statements for the period ended 30<sup>th</sup> September, 2022. Report on consideration of Kisumu County Executive Quarterly Report and Financial Statements for the period ended 31<sup>st</sup> December, 2022. The report on consideration of the Kisumu County Revenue Fund Quarterly report and Financial Statements for the period ended 31<sup>st</sup> December, 2022.

7. Children, Culture and Community Services Committee. You have a report on consideration of Kisumu County Sports Policy, 2021 and a report on consideration of Kisumu Culture Policy, 2021.
8. Budget and Appropriations Committee, you have a report on consideration of the Kisumu County Supplementary Budget FY 2022/2023. You should fast-track it.
9. ECDE, Adult Education and Vocational Training Committee. You have a report on consideration on the Kisumu County Education Fund Annual Report and Financial Statements for the financial year ended 30<sup>th</sup> June, 2022. A response to a Statement sought by Hon. Ratib Boitone regarding the County's Preparedness to the Reopening of schools in terms of Scholarships and Bursaries.
10. Water, Environment and Natural Resources Committee. You have a response to a statement sought by Hon. Kennedy Ooko regarding Storm Water Management and General Environmental Cleanliness of Ahero town. A response to a statement sought by Hon. Lumumba Owade regarding lack of Cleanliness and Unhygienic conditions in Sondu and Nyabondo markets in South East Nyakach Ward. Response to a statement sought by Hon. Kennedy Ooko regarding Sand Harvesting along River Nyando in Ahero Ward. Lastly, a report on a statement raised by Hon. Benson Adegea regarding Water Crisis in Bukna area (Katiega, Kobuya and Aora-Meya) in Kajulu Ward.
11. Public Works, Roads and Transport Committee. Response to a Statement sought by Hon. Ratib Boitone, regarding Status of Streetlights and floodlights within the County. A response to statement sought by Hon. Fredrick Adonijah regarding Status of the following projects in Chemelil -Tamu Ward; Public toilet in Kopere Centre, Corner Legio-Chepsueta Road and High Mast Floodlight at Kopere and Songhor markets. Lastly, a report on the Committee Induction Exercise.
12. Implementation Committee, a report on the committee Induction Exercise held in Nairobi. Delegated Legislation, you have a report on the committee Induction Exercise in Pride Inn Azure, Nairobi.
13. Administration of Law, Justice, Constitutional Affairs, Good Governance and Security, you have a Statement on the Emergency Status of Ongoi bridge along Chemelil – Oduwo-Muhoroni road in Chemelil Tamu Ward. Report on Status of Operations of the Village Units in the County. Lastly, Ward Development Committee, you have a report on the Committee Retreat in Nakuru.

All these reports should be given to the Chairperson, Liaison Committee. I want to direct that you should follow up with various Committee Chairpersons without delay.

Honourable Members, I also want to communicate that some times back, that is on Thursday 02<sup>nd</sup> December, 2023 on consideration of the nature of County Assembly quorum.

A Point of Order arose on Thursday 02<sup>nd</sup> March, 2023 on whether provisions for quorum of the House is not mandatory but directory and should take considerations of other official County Assembly sittings happening outside the precincts of the Assembly and should be calculated based on the number of Members not out on official functions.

Honourable Members, this is my ruling. That, the quorum rule is mandatory and this House is bound to strict observance of the quorum rule and there is no freedom founded in law of adjusting the rule depending on the number of Members present within the precincts or out on Official duties. The Committee on Liaison must therefore always ensure that the number of official functions of the Assembly does not interfere with the deliberative business of the House.

Honourable Members, you will recall that during the Afternoon Sitting of the House on Thursday, 02<sup>nd</sup> March, 2023, Hon. Peter Obaso MCA rose on a point of order before the Motion for consideration of the Report on the Status of Operations of the Village Units in the County was moved. He was seeking the direction of the Speaker on whether it was appropriate for the House to proceed with the consideration of the Motion without a quorum. In his view, the House lacked quorum to transact business in accordance with Standing Order No. 32 and therefore pursuant to the said order, the House was required to adjourn.

Honourable Members, you will similarly recall that in the same sitting, Hon. Maurice Ngeta MCA upon request of the Speaker confirmed that the House had a quorum and requested the House to consider that majority of the Members who were out on official duties. It was his view that the one third of the members required for a quorum be counted based on the Members not out on official duties. To buttress his point, he informed the Speaker that the Committee on Water, Environment and Natural Resources was out in Homa Bay while other members were attending Sub-County meetings in Vihiga and Ciala Resort.

The point of order raised by Hon. Peter Obaso elicited heated consultations with the Chair who ruled to adjourn the House pursuant to Standing Order No. 32 and requested to give a clear determination on the nature of the County Assembly quorum in the next sitting. The point arising from the point of order and the ensuing consultations was as follows:

Honourable Members, whether the requirement for a quorum is mandatory or is simply general in nature and therefore directory and whether the quorum takes Members out on official duties into considerations.

Honourable Members, the term “quorum” refers to the minimum number of members who must be present for this House to conduct or transact business lawfully. At the outset, I wish to interrogate the provisions of the Standing Orders No. 32 and Order No. 33 which was alluded to during the point of order raised by Hon. Peter Obaso, MCA. The Standing Orders states as follows:

Order No. 32 (1):

*(1) A quorum of the County Assembly or of a Committee of the whole County Assembly shall be a third of its Members.*

Order No. 33 (1)

(1) If at any time after the Chair is taken, or when the County Assembly is in Committee, a Member objects that there is not a quorum present, the Speaker or the Chairperson shall count the County Assembly or the Committee as the case may be.

Honourable Members, the Standing Order No. 32(1) is *prima facie* with the provisions of section 19 of the County Governments Act, 2012. Pursuant to the provisions of Section 19 of the County Governments Act, 2012, this Hon. House is bound to strict requirements on the quorum and such provisions, since they are established by a National Legislation; are not provisions that can be suspended by a resolution of this Honourable House or by amendment of the Standing Orders.

Honourable Members, in this regard, I thank the Hon. Peter Obaso and other Members for raising these issues in the House for my guidance. My considered determination on this matter, therefore, is as follows:

That, the quorum rule is mandatory and this House is bound to strict observance of the quorum rule and there is no freedom founded in law of adjusting the rule depending on the number of Members present within the precincts or out on official duties. The Committee on Liaison must therefore always ensure that the number of official functions of the Assembly does not interfere with the deliberative business of the House. The House is accordingly guided and I thank you Honourable Members.

Honourable Members, finally on Monday, 06<sup>th</sup> March, 2023, I received a letter from Orange Democratic Movement County Co-ordinating Committee Kisumu through the Office of the Clerk. Ref: Dewhipping of the following ODM Members of the County Assembly of Kisumu.

The County Coordinating Committee met on Monday, 06<sup>th</sup> March, 2023 and recommended the Dewhipping and or Suspension of the following 11 members with immediate effect from their respective House Committees held by virtue of party position and/or any other privilege from such position.

- 1) Hon. Vincent Odhiambo - Central Nyakach Ward
- 2) Hon. Gard Olima - South West Nyakach
- 3) Hon. Habil Nyasuna - Masogo Nyangoma Ward
- 4) Hon. Calvin Oraro - Kolwa Central Ward
- 5) Hon. Fredrick Odari - Chemelil Tamu Ward
- 6) Hon. Pete Oiko - Kabonyo Kanyagwal Ward
- 7) Hon. Tom Onditi - Ombeyi Ward
- 8) Hon. Tom Nyaoke - North Nyakach Ward
- 9) Hon. Millicent Omuya - North Seme Ward
- 10) Hon. Caroline Lawino Opar- Nominated MCA
- 11) Hon. Regina Kizito - Nominated MCA

Honourable Members, this decision is as a result of above-mentioned members, defying numerous party positions and or directions. Signed by the Chairperson, County Coordinating Committee and copied to the Leader of Majority, Majority Whip, The Governor and ODM Secretary General.

Honourable Members, I therefore want to direct the Chairperson, Selection Committee and the Leader of Majority to make those changes for the committees to work effectively. Thank you.

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

**The Speaker** (Hon Oraro): What is your point of order Hon Olima?

**Hon Olima** (MCA, South West Nyakach Ward): (On a point of order) Mr. Speaker, I want to say that, as a member affected by the communication you made in this House, I have not received such communication. In this House, I represent the residents of South West Nyakach Ward through the ODM party. I know that I have not violated any law or regulations in the ODM party. If there is anything that may cause me to be de-whipped from any function or committee, then there is disciplinary committee to do that.

Secondly, there are summons that we ought to have received from the ODM party. My Speaker, I want to inform you that, the high handedness by which the leadership of this House is undertaking their duties will not deter those of us who come to this House to help their constituents.

Mr Speaker, I want to inform this House and Kisumu and Kisumu County at large that this high handedness of some people who feel that they are more superior to the party leader than others. We want to inform you that, whatever we did; or what do you believe that was wrong in seeing the Principal Secretary for Interior? We shall have several meetings with him because we have a lot of issues of insecurity to discuss. In Kisumu County as a government, there is no one in charge of security because security was not devolved. Therefore, as an elected Member of South West Nyakach Ward, I have to look for National Government which is essentially charged with handling the issue of Security. If you expect me to go and kneel before somebody in the name of begging so that my people get security, that I will not.

Mr Speaker, I want to assure this House that we shall do it more and more and that we are not apologetic about it. We know that whatever we are doing is for the good of our people. There are functions in this House which we cannot legislate upon. I want to inform you that, we have a myriad of challenges in our Wards in terms of administrative units. Take for instance Ombeyi Ward, the whole Ward is one location. We need to demarcate those Wards so that we have locations and sub locations. In South West Nyakach, we only two locations in an area with a population of over 30,000 people. You cannot even see the chief. I am sorry my chief is dead and we are burying him on 17<sup>th</sup> of March, 2023. Even the terrain in my area is so vast to be traversed by one person.

Mr. Speaker, I know that the Chair of ODM in Kisumu County is Prof Ayiecho Olweny. That is the person I know. Those are the people who are writing letters please inform them that I do not recognize their letters. You can do that through your leadership; that is either the Leader of

Majority or the Chief Whip. I also want to tell the Majority Whip who pronounced this issue in the funeral that let him continue mongering in the funerals. The seat you are occupying today, I sat there five years ago before you. However, if you want to take this issue personal...

**The Speaker** (Hon Oraro): Order Hon. Olima.

**Chief Whip** (Hon Kanga, MCA, Market Milimani Ward): On a point of order. Honourable Speaker, it is my belief that the Hon Olima should address the Chair.

**The Speaker** (Hon Oraro): Hon Olima, kindly address the Chair..

**Hon Olima** (MCA, South West Nyakach Ward): Thank you Mr. Speaker. I am sorry for that. This issue arose when we visited the Interior Permanent Secretary.

**The Speaker** (Hon Oraro): Honourable Member, please allow me to guide you.

**Hon Olima** (MCA, South West Nyakach Ward): Obliged Mr. Speaker.

**The Speaker** (Hon Oraro): Hon. Olima, you stood on a point of order but it is like you are debating. What is your point of order?

**Hon Olima** (MCA, South West Nyakach Ward): Mr. Speaker, my point of order is this. I want to inform those who gossip in funerals that they cannot stop us.

**The Speaker** (Hon Oraro): Hon Gard Olima, what is your point of order?

**Hon Olima** (MCA, South West Nyakach Ward): Mr. Speaker, my point of order is that removing me from a House Committee will not deter me from discharging my duties as an MCA. I want to assure them that you cannot have your cake and eat it. However much you do, you will not eat that cake peacefully. I will be here for the next four years.

**Deputy Leader of Majority** (Hon Lumumba, MCA, South East Nyakach Ward): On a point of order

**The Speaker** (Hon Oraro): Your point of order denied Hon Lumumba. Hon Olima, I have given you enough time but I have not heard about your point of order.

**Hon Olima** (MCA, South West Nyakach Ward): Mr Speaker, I have raised my point of order unless you do not want to listen to me.

**The Speaker** (Hon Oraro): On which Order are you standing? Kindly resume your seat so that I guide you. Hon Gard Olima, kindly resume your seat. Honourable Members, I have just read a communication from the party. I will not allow debate on matters party. I want to advise my good friend Hon Olima that when I heard, I thought he was making a point but instead chose to debate. I want to advise him to get hold of the party as appropriate and give his sentiments; and provide I get communication I will make it. In the meantime, I would request that we proceed because we have our Standing Orders which provides for parties in the House including minority party. As such, if there are any issues, then the same can be handled at the party level.

**The Speaker** (Hon Oraro): Why are you thanking me Hon Oiko?

**Hon Oiko** (MCA, Kabonyo Kanyagwal Ward): Thank You Mr Speaker. From your communication....

**The Speaker** (Hon Oraro): Order!! Order!! Hon Oiko. You are an old Member in the House. You cannot just rise and start debating. That is not in order!!

*(Laughter)*

**The Speaker** (Hon Oraro): What is it Hon Oiko?

**Hon Oiko** (MCA, Kabonyo Kanyagwal Ward): Mr Speaker, it is parliamentary tradition that communication from the Speaker can be debated. That is official. So, allow us to debate your communication. That is the tradition in parliament.

**The Speaker** (Hon Oraro): Thank you. I agree with you Hon Oiko one hundred per cent that communication from the Speaker can be debated. In this case, I have directed that this is communication from the party. I will be so biased if I allow it to be debated. I would be fair if I allow you to contact the party on the same.

**Hon Olima** (MCA, South West Nyakach Ward): Mr. Speaker, if you allow me...

**The Speaker** (Hon Oraro): Hon Olima, let us respect our Standing Orders...

**Hon Olima** (MCA, South West Nyakach Ward): On a point of information. I just want to give you information.

**The Speaker** (Hon Oraro): Okay. You can proceed.

**Hon Olima** (MCA, South West Nyakach Ward): Mr Speaker, I don't think there is any communication touching on me as Hon Gard Okoth Olima. I am a life Member of ODM. I do not think a letter can come to you before coming to me. That is not right. If you picked that letter without me who has being mentioned then I think that is wrong.

**Hon Adega** (MCA, Kajulu Ward): On a point of order. Mr Speaker, the Honourable Member should appeal to the party.

**The Speaker** (Hon Oraro): Thank you. I had already made that direction.

**The Speaker** (Hon Oraro): What is it Hon Olima?

**Hon Olima** (MCA, South West Nyakach Ward): Mr. Speaker, I want to inform you that, I don't regret being de-whipped for the wrongs that I have done and those I intend to do. I agree. However, this is a House of rules and the same should be followed. You know very well that you are sitting there courtesy of ODM. That is why you are a Speaker today. You were as an MCA and today you are here as a Speaker through the party. Mr Speaker, you know the rules very well and you decide to close your eyes on the rules then, please never open them again when they come to illegally to bite you.

**The Speaker** (Hon Oraro): Thank you. I have already made pronouncement on that matter. Party matters, please handle with the party appropriately. Thank you.

**The Speaker** (Hon Oraro): Next Order!!

## PAPER LAID

THE REPORT BY THE HEALTH, HOUSING AND SANITATION COMMITTEE ON THEIR STUDY TOUR AT MAMA LUCY KIBAKI AND KENYATTA NATIONAL HOSPITALS

BY

HON. VINCENT JAGONGO

CHAIRPERSON, HEALTH, HOUSING AND SANITATION COMMITTEE

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

**Hon Jagongo** (MCA, North West Kisumu Ward): Thank you Mr. Speaker. Pursuant to provisions of Standing Orders No. 182 (6) of the Kisumu County Assembly Standing Orders, I wish to table today Tuesday 07<sup>th</sup> March, 2023 the report by the Health, Housing and Sanitation Committee on their Study Tour at Mama Lucy Kibaki and Kenyatta National Hospitals. Thank you.

*(Hon. Jagongo lays the report before the House for consideration)*

**The Speaker** (Hon Oraro): Honourable Members, I confirm receipt of Health, Housing and Sanitation Committee report on their Study Tour at Mama Lucy Kibaki and Kenyatta National Hospitals submitted for approval pursuant to Standing Orders No 182 as presented by Hon Vincent Jagongo, Chairperson of the same committee. Honourable Member, I now direct that the House Business Committee consider this report for purposes of scheduling it for debate. Thank you.

**The Speaker** (Hon Oraro): Yes, Hon Dede.

**Hon Dede** (MCA, North Kisumu Ward): Thank you Mr. Speaker. Pursuant to provisions of Standing Orders No. 182 (6) of the Kisumu County Assembly Standing Orders, I wish to table today Tuesday 07<sup>th</sup> March, 2023 the report by Water, Environment and Natural Resources Committee on consideration of the Statement sought by Hon Benson Adegga regarding Water Crisis in Bukna area (Katiega, Kobuya and Aora-Meya) in Kajulu Ward. Thank you.

*(Hon. Dede lays the report before the House for consideration)*

**The Speaker** (Hon Oraro): Honourable Member, I confirm receipt of the Committee on Water, Environment and Natural Resources report on consideration of the Statement sought by Hon Benson Adegga regarding Water Crisis in Bukna area, Kajulu Ward as has been laid by Hon

Dede, the Chairperson of the said committee. I want to commit this report to the House Business Committee for purposes of scheduling for debate. Thank you.

**The Speaker** (Hon Oraro): Next Order!

## NOTICE OF MOTION

THE REPORT BY THE HEALTH, HOUSING AND SANITATION COMMITTEE ON THEIR STUDY TOUR AT MAMA LUCY KIBAKI AND KENYATTA NATIONAL HOSPITALS

BY

HON. VINCENT JAGONGO

CHAIRPERSON, HEALTH, HOUSING AND SANITATION COMMITTEE

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

**Hon Jagongo** (MCA, North West Kisumu Ward): Thank you Mr Speaker, Sir. Pursuant to the provision of the Kisumu County Assembly Standing Orders No. 45(1), I wish to give a Notice of Motion that this House adopts the report by Health, Housing and Sanitation Committee on their Study Tour at Mama Lucy Kibaki and Kenyatta National Hospitals.

**The Speaker** (Hon Oraro): Yes Hon Dede.

**Hon Dede** (MCA, North Kisumu Ward): Thank you Mr Speaker. Pursuant to provision of the Kisumu County Assembly Standing Orders No. 45 (1), I wish to give a Notice of Motion that this House adopts the report by Water, Environment and Natural Resources Committee on consideration of the Statement sought by Hon Benson Adegga regarding Water Crisis in Bukna area (Katiega, Kobuya and Aora-Meya) in Kajulu Ward.

**The Speaker** (Hon Oraro): Next Order!!

## STATEMENTS

**The Speaker** (Hon Oraro): The Honourable Leader of Majority

**Leader of Majority** (Hon Ooko, MCA, Ahero Ward): Thank you Mr. Speaker, Sir. I rise to make a Statement and also to confirm that as the Leader of Majority in this Assembly, I received the same communication that the Speaker made from the party. Mr Speaker, I want to remind Members that when they became members of the ODM Party, they were provided with the Party Constitution and Code of Conduct. One of those issues spelt out in the code of conduct is loyalty to the party. Our Party Leader the Right Honourable Raila Odinga has times without number said that we do not recognize the presidency of William Ruto. Yet some members still go against this stand by the party.

Mr Speaker, that aside, I wish to submit to you the Resolutions of the Orange Democratic Party (ODM) County Assembly Group Meeting that was held in Kisumu on Sunday, 05<sup>th</sup> March, 2023 in line with Article 7(8)(1) of the ODM Constitution. The PCAG resolved and found that the

following underlisted Members are in contravention of Article 5(4) (1) of the ODM party Constitution and were observed to have promoted other ideals contrary to Article 5(3) (1) (e) and (h) of the ODM party constitution.

Pursuant to the provisions of Standing Orders No. 159 (1) which stipulates that the County Assembly party that nominated a Member to a Select Committee, may give notice in writing to the Speaker, that the Member is to be discharged from a Select Committee. Standing Orders No. 159 (2) reads that the discharge of a Member shall take effect upon by the Speaker of a notice under paragraph (1).

Mr Speaker, I wish to give Notice of the Resolution of the ODM Party to discharge the following Members from House Committees effective immediately except for the below listed. The Members will remain in the following listed committees.

1. Hon Oiko Pete, Ward Development Committee
2. Hon Tom Nyaoke, Ward Development Committee
3. Hon. Gard Olima, Ward Development Committee
4. Hon Millicent Omuya, Ward Development Committee
5. Hon Kelvin Oraro, Delegated Legislation Committee
6. Hon Vincent Obuya, Ward Development Committee
7. Hon Regina Kizito, Children, Culture and Community Services Committee
8. Hon Caroline Opar, Agriculture, Livestock and Fisheries Committee
9. Hon Tom Onditi, Implementation Committee
10. Hon Adonija Odari, Procedure and Rules Committee
11. Hon Habil Nyasuna, Tourism, Wildlife and Heritage Committee
12. Hon Bill Odhiambo, Procedure and Rules Committee

Thank you Mr Speaker.

**The Speaker** (Hon Oraro): It is Statement time.

**The Speaker** (Hon Oraro): Yes, Hon Kanga.

**Chief Whip** (Hon. Kanga, MCA, Market/Milimani Ward): Thank you Mr. Speaker. As the Majority Whip of the County Assembly of Kisumu, I just want to make my statement based on the Statement which has just been read and laid by the Leader of Majority. .

Mr. Speaker, this House is constituted ninety-nine percent of Orange Democratic Movement (ODM) Members except for one independent candidate Hon. Bill Odhiambo. ODM is a party of order which operates within the confines of the ODM Party Constitution. Mr. Speaker, House Committee Membership is a position of privilege which is served at the behest of the party or the interest of the party. Mr. Speaker, our party leader stated not one, not twice but on numerous occasions that we do not recognize the Government of Mr. William Samoe Ruto. Mr. Speaker, some Members have continually indulged themselves with the government of President William Ruto. They have been seen visiting the offices of Principal Secretaries and Cabinet Secretaries and some of them have gone a step further to meet the President at the State House. In the case of the County Assembly, that is where I will base my argument or contributions.

Mr. Speaker, we have consulted widely with the ODM party, and I would have wished my colleague and friend Hon. Gard Olima would have been here to hear this because he did allude that I made statements in funerals. Mr. Speaker, I don't believe that statements made in funerals are considered to be factual and be used in the floor of the House because funerals are considered in-formal gatherings whereby anybody is allowed to say whatever he wish to say.

Mr. Speaker, I want to reiterate that, we have consulted widely. One of the reasons why Hon. Gard Olima was removed from the position of Chief Whip, is because he is not aware of the dynamics of party. Mr. Speaker, I know the dynamics of the party and therefore I will stand with the party and I will adhere to the constitution and instructions of the party where necessary. Mr. Speaker, when you feel that your party leader, for instance in our case the party leader is the Right Honourable Raila Amollo Odinga. If you don't believe in the ideologies or the principles of the Right Honourable Raila Amollo Odinga, you should tender you resignation and go and seek a fresh mandate from your constituency rather than staying in ODM and issuing threats to members of the party in the floor of the House that we will not know peace.

Mr. Speaker, I don't know the mightiness and valor of Hon. Gard Olima because this is a Member who is asthmatic who cannot even sustain a fight for even two minutes and he goes as far as threatening members in the floor of this House. I am sorry to say that. Mr. Speaker, we should not come in this House and threaten Members, because I can recall the last time we fought in this House, was, when you were being elected to the position of the Speaker. Mr. Speaker, it is my prayer that we should not go that direction again.

Mr. Speaker, if there is a burning issue to be discussed, let it be brought in the floor of this House than threatening Honourable Members that we will not know peace and I tend to believe that, that is unparliamentary. I want to implore my fellow Honourable Members that let them stick to the ideologies and principles of the party and then; we will have no issues with you. But, if you continue to dine and wine with our opponents, we will de-whip you from House Committees; we will not dare to leave you to enjoy the privileges of those House Committees. Even if you are a Chairperson of a House Committee, we will be de-whipped and we will not hesitate. I here that you are terming it as dictatorship but, those are the principles of our party.

Mr. Speaker, I want to implore my fellow Honourable Members that, let them stick with our party ODM and we work for the people Kisumu County. Mr. Speaker, for your information, I don't know how a Member of a County Assembly can go solicit for development yet these are devolved functions. Mr. Speaker, I believe that security is not a Devolved Function; it is the function of the National Government. I don't know how a Member of a County Assembly is saying that he visited the office of a Principal Secretary to look for an Assistant Chief to talk about the boundary of a location or sub-location. Mr. Speaker, the law is explicit because we have the National Assembly who have their functions which is to carry out their oversight roles, we also have the roles of the County Assembly which among them is to undertake the roles of oversight to the County Executive our Governors. Some of the Members are stating that they went to look for development in the National Government while leaving their Governor here with an allocation of Kshs 12 billion. Just to ask, how is that money that they allude to be going for going to be channeled and under which kitty.

Mr. Speaker, I want to implore fellow Members especially those who were elected under the ODM party to stick to our party manifesto and principles then, we will have no qualms with you. Mr. Speaker, if they continue to dine and wine with our opponents which is contrary to the directions of the party leader, I must say that I am sorry, we will de-whip you from those House Committees, even if it means that we remain the two of us I together with the Speaker. We would rather be left with two members who are loyal to the party rather than being left with errant Members. Mr. Speaker, the only Member in this House who is permitted to operate independently is my brother Honourable Bill Odhiambo the MCA for Kobura Ward. He is allowed to reason and vote independently but, when you are an ODM member we will whip you to vote in what direction the party wants us to go. Otherwise Mr. Speaker, thank you very much.

**The Speaker** (Hon. Oraro): Yes Hon. Lumumba Owade, the Deputy Leader of Majority. Hon. Bill I have seen you but because of seniority, please let me give the Deputy leader of majority.

**Hon. Bill** (MCA, Kobura Ward): Much obliged.

**The Speaker** (Hon. Oraro): Hon. Nyaoke, I have equally noticed you. I will give you the opportunity to contribute.

**Deputy Leader of Majority** (Hon. Lumumba, MCA, South East Nyakach Ward): Thank you Mr. Speaker. For once today I say congratulation to my confused Member of this County Assembly, the MCA for South West Nyakach Hon. Gard Olima. He talked candidly and honestly. Mr. Speaker, amongst the twelve Members who visited the Minister for Interior, he stated that he went to look for the Assistant Chief, yet, the other eleven should inform this House what they went to look for so that we inform you if that is possible or not and as to whether they are being taken for granted.

Mr. Speaker, let me start with my fellow colleague Member. To look for an Assistant Chief is a procedure. We have been in government for long and we know the procedures required. So, you don't have to go to Nairobi to be jived and to be given Kshs 100,000.00 then you come here and again say so. This is a process that commences from the location level, you request for it and the process ends there. Thank you.

**The Speaker** (Hon. Oraro): Yes Hon. Nyaoke.

**Hon. Nyaoke** (MCA, North Nyakach Ward): Thank you Mr. Speaker Sir for according me this opportunity to contribute to this issue. I believe that this is a House of order and respect. Mr. Speaker, whatever that we are canvassing in this House should be something that makes sense because we are being watched by our constituents, if not other Kenyans and I believe that people from other counties are equally watching us live. This is not something that is auguring well with this Honourable House especially with the competency that you have as a Speaker whereby other Members come with innuendos which have not been verified or substantiated.

Mr. Speaker, I want to state here that the position in House Committees, as my Majority Whip has stated, is at the behest of the sitting Committee that is responsible for this. Mr. Speaker, De-whipping or being De-whipped from this or that House Committee, I take it with a lot of humility. Mr. Speaker, the fact that ODM party has communicated, that we have breached some

laws which I we have not been informed about, I believe that even from where you seat, you should have equally given guidance that those allegations be verified and substantiated. Otherwise, the way this matter has taken place, I know is bad because all the Members are here to champion the aspirations of the party. Mr. Speaker, if in any case I have violated any law, there are party structures that have been put in place to deal with such kind of breaches of party laws. Mr. Speaker, I cannot just walk into the House, then, I hear that a correspondence was done to the office of the Speaker. Mr. Speaker, what if the person who has written that letter is somebody who was my competitor in the last election or a person who I competed with? It is possible and that can happen. So, some of these things as we forge ahead, I would not wish to see such things happen to other fellow MCA.

Mr. Speaker, as for me, I can take it positively with no ill motive, but it is my prayer that, such kind of incidences should never happen because if you are seated there as the Speaker and somebody writes a letter to your office that I have committed an offense, it would have been wise to invite me and ask me that Hon. Nyaoke, I am hearing that, this or that transpired. Please try and seek audience with the party hierarchy and discuss about this. Mr. Speaker, if you are not informed, then, you are charged and hanged unheard or without any information on your violations, seriously, I don't believe that is fair and I don't wish that such a thing happens to any other fellow Member in this House. Thank you, Mr. Speaker Sir.

**The Speaker** (Hon. Oraro): Honourable Members. I had noticed Hon. Bill Odhiambo. But, before that, I want to give guidance to Hon. Nyaoke that, you are protected. I cannot just purport to communicate any letter that is written about you. I did my due diligence and confirmed that the letter originated from the ODM Party and the Leader of Majority Party is in the House to affirm that it is indeed true that this is a communication from the party. I did communicate so in line with the provisions of the Kisumu County Assembly Standing Orders. Honourable Member, I want to refer you to the provisions of Standing Orders No. 59 which accords the party the responsibilities to place Members into House Committees or to discharge.

Honourable Members, any other letter that I receive that is not verified, I can assure you that you will be protected as required Hon. Nyaoke. In this case, I have confirmed and the Leader of Majority is here and he has equally confirmed and a copy of the same. Honourable Member, I did read that the letter is copied to whoever had the copy. So, I can assure you that...

*(Hon. Nyaoke rises to his feet)*

**The Speaker** (Hon. Oraro): Yes Honourable Members, what is your Point of Order?

**Hon. Nyaoke** (MCA, North Nyakach Ward): Thank you Mr. Speaker. It is on record that before you received the letter; the Leader of Majority had already informed me that, he was going to de- whip me from my House Committees. So, these issues happened before the correspondence was done. Mr. Speaker, some of these things, is not that we don't know, some of them we are aware. So, let us just take it with humility the way I have taken mine. Thank you.

**The Speaker** (Hon. Oraro): Thank you so much Hon. Nyaoke. I still give you that assurance that, you are protected but this is a communication that emanated from the Party. Honourable Members, I want to reiterate that, if there is any ill feeling.... Honourable Members, please

switch off those microphones that are not in use. I want to assure Honourable Members that, if any of you feels that the communiqué' is going against or violating your rights, please do an appeal to the party and seek for an audience and discussion. Thereafter, I will receive a communication that I will make.

**The Speaker** (Hon. Oraro): Hon. Bill, I had noticed you.

**Hon. Bill** (MCA, Kobura Ward): Thank you Mr. Speaker. Before I contribute to this matter, I wanted to know if I am protected in this House. Mr. Speaker, I have realized that I am among the Members that have been de-whipped and I am the only Independent Member in this House.

Secondly, Pursuant to the provisions of Standing Orders No. 41 (2) (a) and (b). I rise to seek a Statement from the Chairperson, Standing Committee of ECD, Adult Education and Vocational Training on the utilization of the Budgetary Allocation for Bursaries and Scholarships for the year 2022/2023.

Hon. Speaker, while Members of this House are aware that each electoral ward benefited in the Budget allocation to a tune of Kshs 4.1 million for Bursaries disbursement, that is per Ward. The County Government of Kisumu approved a Budgetary Allocation for the FY 2022/2023 allocated a total of Kshs 205 million for Scholarships and Education benefits which would have translated Kshs 5,887,142.00 per ward.

Mr. Speaker, in the Statement, the Chairperson, Standing Committee of ECD, Adult Education and Vocational Training should look into;

1. Give details on how the Department of Education utilized the allocation of Kshs 205 million which was earmarked for Scholarships and Education Benefits and why the same could not be equally distributed to warrant equal ward allocation of Kshs 5,887,142.00 for all the 35 electoral wards during the FY 2022/2023.
2. Provide data on the total County Students Bursary needs based on total Bursary allocation received verses the beneficiaries during the FY 2022/2023 and plans by the Department to address any gaps thereof.
3. Considering the projections for increments in total County Budgets allocations, the Chairperson should provide plans and modalities that the Department has put in place to increase the overall percentile Bursary allocations in order to be directly responsive to the projected Annual Budgetary allocation and increments.

Thank you.

**The Speaker** (Hon. Oraro): Yes, Chair Education.

**Hon. Okumu** (Nominated MCA): Thank you so much Mr. Speaker. If you allow me, I would like to quickly respond to some of the questions. I know the Member for Kobura Ward Hon. Bill Oliver like he has mentioned, he is an independent candidate, but he doesn't take his time probing that's why he doesn't know some of these things. The cash you have mentioned is Ksh. 205 million.

Mr. Speaker, Kenya Shillings one million goes to each and every ward. Out of that Kshs. 4.1 million for Scholarships and Bursaries, as well as the Marine students because we are supposed to take students for marine training. If you total all that up, you will get approximately Ksh. 65 million remaining on the Bursary Kitty. Mr. Speaker, Kshs. 65 million is to be used on almost 40 students that will be considered for scholarships. I just want to give you an average computation of that;

Mr. Speaker, if each student is getting at least Ksh. 50,000 (fifty- thousand only) in each of the 35 wards, you will then know how much we are spending. The money for bursaries is given equally to all the wards, and then the rest is used to consider all the scholarships that had existed before you got elected and are still in schools. I believe that we have 40 scholarships in all the wards as at now because we have been taking ten per year for the past 4 years. However, with regards to the bursary needs, I want to say that; almost 60% of the population of Kisumu is living below the poverty line. So, even without looking at the people applying, it is evident that we have so many students from poor backgrounds and in dire need of assistance...

**Hon. Rakwach** (MCA, Kolwa East Ward): A point of information Mr. Speaker.

**The Speaker** (Hon. Oraro): Hon. Rakwach, whom do you want to inform Hon. Reuben Rakwach?

**Hon. Rakwach** (MCA, Kolwa East Ward): Mr. Speaker, I want to inform Hon. Seth Okumu.

**Hon. Okumu** (MCA, East Seme Ward): Education informs Roads but you can continue.

**The Speaker** (Hon. Oraro): Sergeant-at-arms can you assist Hon. Rakwach with the portable microphone as the Hansard team works on their system.

**Hon. Rakwach** (MCA, Kolwa East Ward): (*On a Point of information*) Thank you Mr. Speaker, I just wanted to inform Hon. Seth Okumu, Chairperson of Committee on Education that; I believe that the Committee is doing very well, and we are getting finances for bursaries. I understand that our Senator Prof. Ojienda now wants that bursary money scrapped off and claims that secondary school and university students are for national functions so they should not benefit from CRF. If the Senator Ojienda is the one some of our members visit in Nairobi, and back here he doesn't want our Governor Prof. Nyong'o to fund education. The same Members are the ones who want this money to be increased. Do you want the Governor to not disburse these bursaries and Scholarships? Please let them come out clear on this. That is the point of information I wanted to pass. Thank you

(*Laughter*)

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

**Hon. Okumu** (MCA, East Seme Ward): Thank you Hon. Rakwach. I believe that is information worth knowing and it would have been my parting shot because the Member who made that statement had his social media platform plastered with photos, he had taken with the Senator who wants to scrap the bursary that he now wants to know how it is being used. We have to plan on how to increase bursary through our Own Source Revenue in the excess collections. You find

that so many people applied for Scholarships and Bursaries but, we can only offer assistance to very few students. I believe that, is the immediate response I can give to the Hon. Member and more can be furnished if we bring to the floor of the House, otherwise, thank you Mr. Speaker.

**The Speaker** (Hon. Oraro): Honorable Members, I believe that the Chairperson of Education hasn't answered all the questions. So, I want to direct that within a Calendar of 14 working days, because those are direct questions, he should bring substantive feedback on the statements raised by Hon. Bill Odhiambo to the Committee on Education.

**The Speaker** (Hon. Oraro): Yes, Hon. Benny Pete Oiko.

**The Speaker** (Hon. Oraro): Honourable Members, I have only 10 minutes left on statements' hour.

**Hon. Oiko** (MCA, Kabonyo-Kanyagwal Ward): Thank you Mr. Speaker, today you can see that even the communication system has a hitch and this could be a sign of unhappiness. This is on a light note.

Nevertheless, I am happy that you have allowed your communication to be discussed in the House, and it is a credit. I am also happy that after the Leader of Majority, his Deputy and the Chief Whip contributed, our Members broke into laughter. Could be that they were celebrating something or mocking some people. It is all good. Mr. Speaker, I hope that when there is a matter to be handled like the one on the communication you have read to Members, it should not just be done the way it has been done. However, that is the democracy we have, and I am informing my fellow Members that it is not just for nothing for MCAs to be in committees. It is not like some people would wake up to de-whip others from the committees. The explanations will come but considering the way the Leader of Majority, his Deputy, and the Whip have talked, they are referring to a record which they cannot produce in this County. We are also being condemned that no one can table that record. I pray to God to intervene because that is the circumstance we are in and we still have 4 years to be here together. You expect Members...

**The Speaker** (Hon. Oraro): Hon. Benny Oiko, I can see the Leader of Majority is on his feet. Please let me listen to him and get back to you.

**The Leader of Majority** (Hon. Ooko): Mr. Speaker, I would like to tell Members that being placed in a committee by the Party is a privilege and not a right for Members, thank you.

**The Speaker** (Hon. Oraro): Yes, Hon. Benny Oiko.

**Hon. Oiko** (MCA, Kabonyo-Kanyagwal Ward): Thank you Mr. Speaker, as I conclude I want to say that when more interpretation will come, you will find that it is not a privilege the way they put it. I am aware that more interpretation will come. I remember in the year 2018, when Hon. Omieno and former Hon. Olale were kicked out of this Assembly for 21 days, and the kind of argument I am seeing here now was there then. When proper interpretation now came, people were looking down in shame. Let us wait.

**The Speaker** (Hon. Oraro): Honourable Members, I am left with only 5 minutes for the statement's hour.

**The Speaker** (Hon. Oraro): Yes, Hon. Moses Ochele.

**Hon. Ochele** (MCA, East-Kano Wawidhi): Thank you so much Mr. Speaker, I have a concern based on contributions made by a fellow Member, touching on matters security. I am the Chairperson of the Committee on Administration of Law, Justice, Good governance, Constitutional Affairs and Security (JLAC) in this Assembly, and I want to appreciate the authors of the Constitution of Kenya, of 2010, that provided the two-tier type of government. The National government is oversighted by the National Assembly, whereas the County government is oversighted by the County Assemblies. As I stand before you, I am a representative of East-Kano Wawidhi Ward, and anything that happens in good ways or bad ways has me representing those incidences. I also have a privilege of being their representative in this Assembly. So, if there are matters of security, I can go to the chief or the police, but the sole voice of that particular ward is the representative. The best way of approaching any matter be it security is during the Statements hour in the plenary. When you can stand, seek the permission of the Speaker, and raise a statement regarding circumstances prevailing down at the ward. Mr. Speaker, that has been the tradition at the County Assembly, and it is the same way at the National Assembly. Mr. Speaker, one cannot purport to take a flight to Nairobi to seek for security in other institutions but they haven't raised in the House. You have to start from where you are but if it doesn't work, you can seek other redress.

Mr. Speaker, I have never heard any concerns from Hon. Olima who raised the issue concerning security and position of the chief as well as the death of the chief. So, as the Chairperson concerned with matters security, if that issue was raised, we would have convened a meeting with your permission and met the Department of National Security within the County. Mr. Speaker, there is a channel by which communication in this Assembly can reach the Senate because it is the bridge between the Assembly and the National government. You cannot start crying foul that you have been de-whipped because you went to look for security in Nairobi even before raising it in this House. As Members, we are falling short on that part. Mr. Speaker, I believe that you are a good man and I didn't think you are that good, because I have been in this Assembly, and I have been watching what happens in the National Assembly. Anything to do with Party, is beyond the Speaker to make a ruling. You simply communicate and allow the matter to rest, so, if there is any Member who intends to make any redress, and it is done outside the plenary, but here we are debating on Party matters. This is a House that can have even 100 party Members, but if one Party's case can have a substantive motion, then how about the rest? We are lucky that Kisumu County Assembly is ODM Party dominated save for the one.

**Hon. Oiko** (MCA, Kabonyo-Kanyagwal Ward): A Point of information Mr. Speaker.

**The Speaker** (Hon. Oraro): What is your Point of Information Hon Benny Pete?

**Hon. Oiko** (MCA, Kabonyo-Kanyagwal Ward): *(On a Point of information)* I want to alert the House that Hon. Ochele is talking about matters of security, and he is the one representing matters of security in this House. I want him to note that when you look at the Executive of Governor Nyong'o, there is no department dealing with matters of security. Therefore, this matter of security he claims he is handling, then which department does he report to?

**The Speaker** (Hon. Oraro): Hon. Benny, I want to rule you out of Order because when I heard the Hon. Rakwach talking about security he meant the departments responsible. These could be the County Commissioner if at all I am right, and I have seen the report from the JLAC Committee here after meeting several stakeholders. Nevertheless, as it has been put, I do not want us to debate on matters Party in the House, that is why I only allowed the Leader of Majority and the Chief Whip to do so because they are representatives of the Party. The Standing Orders provides that they can be given time to make such statements, as our Standing Order No. 41 (d). So, to all other Members, if you feel that that issue infringed you, I had made a guidance that please seek redress with the Party and shall proceed as appropriate.

I am seeing that the Statement time is over as it is often one hour but I have gone past by 15 minutes more. I want to request the Members who haven't had a chance to make their statements to do so in the next plenary sessions.

**The Speaker** (Hon. Oraro): What is it Hon. Kelvin Oraro? Is it a statement?

**Hon. Oraro** (MCA, Kolwa Central Ward): Mr. Speaker, just allow and listen to me please.

**The Speaker** (Hon. Oraro): Hon. Oraro, if you refer to our Standing Order, Statements are only given an hour, although I have given more by 15 minutes.

**Hon. Oraro** (MCA, Kolwa Central Ward): Mr. Speaker, through your indulgence and ruling going by Standing Order No. 1, I am asking you to allow me to echo my voice.

**The Speaker** (Hon. Oraro): Hon. Kelvin Oraro, I have already used Standing Order No. 1 and given an additional 15 minutes on statements. So, I want to request...

**Hon. Oraro** (MCA, Kolwa Central Ward): Mr. Speaker, it is my belief that I am the only one left and I really feel like adding my voice to that matter.

**The Speaker** (Hon. Oraro): I can also see Hon. Boitone up, and I have cut off Hon. Ochele.

**Hon. Oraro** (MCA, Kolwa Central Ward): Is it intentional Mr. Speaker?

**The Speaker** (Hon. Oraro): It is not.

**Hon. Oraro** (MCA, Kolwa Central Ward): So, I just beg for your indulgence Mr. Speaker

**The Speaker** (Hon. Oraro): Let us agree. Hon. Kelvin Oraro, if I give you permission to speak then that will compel me to also give Hon. Boitone Ratib and Hon Reuben, who also standing.

**Hon. Oraro** (MCA, Kolwa Central): So, I am the only one who cannot ...

**The Speaker** (Hon. Oraro): Statement time is over. Let us go to the next Order.

**The Speaker** (Hon. Oraro): Next Order Madam Clerk!!

## MOTION

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ADOPTION OF THE REPORT ON THE STATUS OF OPERATION OF THE VILLAGE  
UNITS IN THE COUNTY

BY;

HON. MOSES OCHELE, MCA, EAST KANO WAWIDHI

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

*(Resumption of Motion interrupted on Thursday 2<sup>nd</sup> March, 2023)*

**The Speaker** (Hon. Oraro): Hon. Moses Ochele, this is a motion that was interrupted and I believe that you know where you had reached with the report.

**Hon. Ochele** (MCA, East-Kano Wawidhi): Thank you Mr. Speaker, we had reached at the part of acknowledgements, and with your indulgence allow me to proceed.

**The Speaker** (Hon. Oraro): Proceed

**Hon. Ochele** (MCA, East-Kano Wawidhi): Thank you Mr. Speaker, on the same Report, I am at the item on legal basis

LEGAL BASIS OF THE INQUIRY ON THE OPERATIONS OF VILLAGE COUNCILS.

Mr. Speaker and Hon. Members,

11. During the Committee deliberations and investigations, several sources of Law informed the Committee the legal foundation of the Village Units in Kenya. The legal sources were here used to establish the legal practice in the management and administration of the Village Units and were also used to find the basic principles that inform the art and practice of legislative processes in Kenya.

12. The legal basis of this inquiry on the Operations of the Village Councils are as follows—

- I. The Constitution of Kenya, 2010. Article 2 which restates the supremacy of the Constitution thus affirming that every law must be consistent with the Constitution, otherwise it will be null and void to the extent of the inconsistency. And Article 176 (2) which provides that every county government shall decentralize its functions and the provision of its services to the extent that it is efficient and practicable to do so.
- II. The County Governments Act, 2012, Section 52 and Section 53 which provides for the establishment and administration of the Village Unit.
- III. Interpretation and General Provisions Act (Cap. 2): This Act gives the basic formula of statutory interpretation; clarifies the rules of construction of laws; and promotes

- consistency of legal language. The Act also deals with amendments, repeal of legislation and gives attendant general guidelines;
- IV. Revision of Laws Act (Cap. 1): The Act deals with the revision of laws to ensure that the statutes are up to date. Revision of laws and allocation of Chapter (Cap) numbers is done by the Attorney General and the National Council for Law Reporting (NCLR), which exercises delegated authority of the Attorney-General in this respect;
  - V. Kisumu County Administration (Village Units) Act, 2019 which provides for the establishment of Village Units, the effective coordination, management and supervision of the general administrative functions in the Village Units and for connected purposes.
  - VI. The public financial management laws is considered in order to ensure that the proposed law conforms to requirements of public resource management. These include the Public Finance Management Act, 2012, the Public Procurement and Disposal Act, No. 3 of 2005, the Public Audit Act, No. 12 of 2003 and the Statutory Instruments Act, No. 23 of 2013.
  - VII. Case Laws; these are judicial precedence that are used to shed more light on the interpretation of laws regarding the establishment and administration of the Village Units.
  - VIII. And any other National Policy or County Legislations. All legislative proposals must be consistent with existing laws of the State.

## BACKGROUND INFORMATION

Establishment of the Village Units.

Mr. Speaker and Hon. Members

13. The intent of establishing the Village Units in Section 52 of the County Governments Act, 2012 was to give effect to the Article 176 (2) of the Constitution of Kenya, 2010. Article 176(2) provides as follows:

*176(2) THAT Every county government shall decentralize its functions and the provision of its services to the extent that it is efficient and practicable to do so*

14. Pursuant to Article 176 (2), the Village Unit provides the purpose and limits of Decentralization and its health is in itself an indicator of the functionality of the Devolved Government. Therefore, the establishment and operationalization of the Village Unit informs this Hon. House, the spirit and tenor of Chapter 11 of the Constitution, and require that greater oversight intent of this Hon. House is applied on the operations of the Village Unit. The oversight role of this Hon. House, must therefore be conditioned to keep its eye on the Village Units and constantly pose whether the management of the Village Unit is done in accordance with the Law and in pursuit of a legitimate aim. The expression “*in accordance with the law*” does not merely require that the government action in management of the Village Unit should have a basis in Statutory provisions but also refers to the quality and intent of the government

action in question. In particular, the intent of such government action must be sufficiently clear in its terms and afford a measure of legal protection against arbitrary application.

15. Therefore, in terms of the manner of operations of the Village Unit, the administrative infrastructure of the units must be weighed upon the legal balance struck by National Legislations such as the County Governments Act, 2012 and Kisumu County Legislations such as the Kisumu County Administration (Village Units) Act, 2019.

16. Section 52 and Section 53 of the County Governments Act, 2012 which gives effect to Article 176(2), provides the Administrative Framework of the Village Units through the establishment of the Office of the Village Administrator and the Village Council.

17. Section 52 and Section 53 of the County Governments Act, 2012 respectively provides as follows:

THAT;

*52 (1) There is established the office of village administrator for each village unit established in a county;*

*(3) A village administrator shall coordinate, manage and supervise the general administrative functions in the village including—*

*(a) pursuant to paragraph 14 of Part II of the Fourth Schedule to the Constitution—*

*(i) ensuring and coordinating the participation of the village unit in governance; and*

*(ii) assisting the village unit to develop the administrative capacity for the effective exercise of the functions and powers and participation in governance at the local level; and*

*(b) the exercise of any functions and powers delegated by the County Public Service Board under section 86.*

*(4) In carrying out the functions and obligations in subsection (3), a village administrator shall be responsible to the relevant Ward administrator.*

*53(1) (1) There is established, for each village unit, a village council comprising—*

*(a) the village administrator who shall be the chairperson of the village council; and*

*(b) not less than three and not more than five village elders competitively appointed by the village administrator with the approval of the county assembly, taking into account gender balance. (2) A village council shall be responsible for— (a) ensuring and coordinating the participation of the village unit in governance; (b) assisting the village unit to develop the administrative capacity*

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*for the effective exercise of the functions and powers and participation in governance at the local level;*

*(c) monitoring the implementation of policies at the village unit; (d) advising the ward administrator and sub-county administrator on matters pertaining to the village; and (e) any other function necessary for the better administration of the village unit.*

Mr. Speaker and Hon. Members,

18. On 17<sup>th</sup> May, 2019, the Second House enacted the Kisumu County Administration (Village Units) Act, (Kisumu Acts No. 1 of 2019) (hereinafter the Act) whose sole object was to provide for the establishment of Village Units, the effective coordination, management and supervision of the general administrative functions in the Village Units and for connected purposes. It was this Act that established the current structure of Village Units in Kisumu County.

19. The Committee has taken notice that the implementation of the Act has not met the required threshold and intendment of this House. It is also in public knowledge; and the department on County Administration has admitted so (*see appendix i*), that the establishment of the Administrative Structures of the village units currently faces legal and implementation challenges which has prevented the operations of the Village Councils.

20. The Committee has also taken notice that the Village Councils are yet to be fully operational nearly four years after the enactment of the Act.

21. In a report dated 18<sup>th</sup> November, 2022 referenced: CGK/CS/ADM/20/VOL.III/177 (see Appendix i) adduced before the Committee by the County Secretary pursuant to a Statement raised by Hon. Millicent Omuya, MCA; the County Secretary informed the Committee as follows:

1. THAT upon the successful identification and recruitment of the Village Council Members, the Department forwarded the list of the Village Council Members for approval in accordance with Section 10 of the Kisumu County Administration of Village Units Act, 2019 and was approved accordingly.
2. THAT the County Assembly has failed to determine the number of meetings in a financial year for the Village Council Members and the allowance to be paid to the members as per the requirements of Sections 12(3) of the Act and therefore this failure has paralyzed the operationalization of the Village Councils.

22. The Committee also took notice that in August, 2021, the Second Assembly received a proposal to amend Section 10 (1) of the Kisumu County Administration of Village Units Act, 2019 from the County Attorney. Section 10 (1) of the Kisumu County Administration (Village Units) Act, 2019 states as follows;

*“A Village Administrator shall be appointed through an open and competitive process by the County Public Service Board and approved by the County Assembly in accordance with the provisions of this Act.”*

23. The County Attorney had proposed that the amendment in Section 10 (1) of the Act be caused by deleting the phrase “*and approved by the County Assembly in accordance with the provisions of this Act*” and substituting therefore with:

*“The appointment of the Village Administrator shall be conducted through an open and competitive process by the County Public Service Board and in accordance with this Act.”*

24. The Second Assembly was informed and it agreed so that the intention of this amendment was to deny the County Assembly the mandate and power to approve the village administrators as was envisaged by the Act.

Mr. Speaker and Hon. Members

25. This Committee during its tenure in the second Assembly moved the Hon. House to disregard the Amendment proposal on the basis that the Kisumu County Administration (Village Units) Act, 2019 in section 10 (1) as it is; neither contradicts nor conflicts with relevant existing National Legislations.

#### LEGISLATIVE AUTHORITY OF THE COUNTY ASSEMBLY ON THE VILLAGE UNIT.

Mr. Speaker and Hon. Members.

26. The basis of all powers of the County Assembly in regards to matters of the County is established in accordance with Article 185 of the Constitution of Kenya which provides for the Legislative Authority of the County Assembly as follows:

*185 (1) The legislative authority of a county is vested in, and exercised by, its county assembly.*

*(2) A county assembly may make any laws that are necessary for, or incidental to, the effective performance of the functions and exercise of the powers of the county government under the Fourth Schedule.*

27. The fourth Schedule has provided for matters devolved, thus by interpretation; the County Assembly has the legislative authority to make laws for the better implementation of the provisions of the Fourth Schedule.

Mr. Speaker and Hon. Members

28. Pursuant to Article 185 (1) and 185 (2), legislative authority of this Hon. House on the matter of the Village Unit has been well defined by the Section 52 and Section 53 of the County Governments Act, 2012 and further given effect by the Kisumu County Administration (Village Units) Act, 2019. By application, this Hon. House is bound pursuant to Article 191(2) of the Constitution on Conflict of Laws, to find its jurisdiction on the matters of Village Unit; first, in Article 176 of the Constitution and then to Section 52 and S. 53 of the County Governments Act, 2012. Only after these provisions have been fully appreciated and upheld, can this Hon. House

commit itself additional powers and roles but which must still be within the provisions of the Statutes and the Constitution of Kenya.

29. Therefore, pursuant to the provisions of the Constitution and the County Governments Act, 2012, this Hon. House enjoys jurisdiction on the following matters in regards to the Village Unit:

1. Approval of the Village Council.

30. Section 53 (1) of the County Governments Act, 2019 provides as follows:

*53. (1) There is established, for each village unit, a village council comprising—*

*(a) the village administrator who shall be the chairperson of the village council; and*

*(b) not less than three and not more than five village elders competitively appointed by the village administrator with the approval of the county assembly, taking into account gender balance. (emphasis added)*

31. By application, Section 53 subsection (1) in paragraph (b) places County Assembly approval on only the “*not less than three and not more than five village elders*” members of the Village Council and NOT the Village Administrator who is the Chair.

32. The phrase “*with approval of the County Assembly*” in Section 53(1)(b) of the County Governments Act, 2012 thus essentially mean that it is in the office of the Village Administrator to NOMINATE, and with the advice and consent of this Hon. House to APPOINT. And that there is of course, no exertion of CHOICE on the part of this Hon. House on the Village Administrator. And though this Hon. House may defeat the choices of the Village Administrator and oblige him to make another list of the Village Council, this Hon. House cannot itself CHOOSE who is and who is not appointed in the Village Council—the House can only ratify or reject the choices of the Village Administrator.

In rejecting the list of the Village Council, the general evidentiary standard applicable in rejection of nominees in the procedural propriety of appointments process is that there must be a showing by the Committee that there were substantive defects in the procedure used to arrive at the members of the Council, fundamental omissions, or a consideration of extraneous considerations as to risk rendering the cumulative appointment process unlawful.

Mr. Speaker and Hon. Members,

33. The Committee has further taken notice that while parliament was clear on the approval procedures of the other members of the Village Council in Section 53(1) (b), there is statutory silence on the procedures for approval of the Village Administrator as seen in Section 52 (2) of the County Governments Act, 2019 which provides as follows:

*52 (2) A village administrator shall have professional qualifications and technical knowledge in administration and shall be appointed by the County Public Service Board in accordance with the provisions of this Act. (emphasis added)*

34. One of the reasons why Statutory Silence may be found in an Act of Parliament is that nothing compels parliament to act comprehensively when it legislates on a subject. And therefore it is not safe to assume that parliament intends to address all ancillary issues directly whenever it acts. As one court has aptly put it,

*“[not every silence is pregnant.” In some cases, parliament intends silence to rule out a particular statutory application, while in others parliament’s silence signifies merely an expectation that nothing more need be said in order to effectuate the relevant legislative objective. In still other instances, silence may reflect the fact that parliament has not considered an issue at all. An inference drawn from statutory silence certainly cannot be credited when it is contrary to all other textual and contextual evidence of legislative intent.<sup>1</sup>*

35. Therefore, the phraseology “in accordance with the provisions of this Act” used in Section 52(2) of the County Governments Act signifies an expectation that nothing more need be said in order to effectuate the legislative objective of establishing the Village Unit; which is to decentralize government services and make such services as close as possible to the People.

36. It will be observed that the Spirit and tenor of the appointment, vetting and approval provisions of the County Governments Act, 2012 maintains a similar legislative objective, that is to; prevent one branch of Government from creating and filing the same office; prevent diffusion of the appointment powers and enhancing political accountability; and, ensuring that more qualified officers are appointed. It is therefore not in doubt that Parliament would provide the County Assembly with powers to approve the Village Council Members but deny it the power to approve the Village Administrator who is the Chair of the Village Council; it is therefore self-evident that the intention of Parliament is that the power to approve the Village Administrator resides with the County Assembly. This must be understood in light of the fact that the Village Unit is the most important component of devolution and in no way will the efficiency of the devolved government be measured without checking the good-health of the Village Unit thus the need for enhanced oversight.

## 2. Allocation of Allowances for the Village Elder.

Mr. Speaker and Hon. Members,

37. Section 53(4) of the County Governments Act, 2012 provides as follows:

*(4) A village elder shall be paid such allowance as shall be determined by the respective county assembly.*

38. This section has been given further effect by Section 12 (3) of the Kisumu County Administration (Village Units), 2019 which provides as follows:

*12 (3) A Village Council member shall serve for such period and shall be paid such sitting allowance and other emoluments as shall be determined by the County Assembly.*

39. Confusion must not be placed on the use of the term “Village Elder” which by interpretation excludes the Village Administrator in S. 53(4) of the County Governments Acts, 2019 and

“Village Council Member” which includes the Village Administrator in S. 12 (3) of the Kisumu County Administration (Village Units) Act, 2019 since by virtue of the various Labor Laws in Kenya and the Salaries and Remuneration Commission’s Regulations on payment of Allowances, the Village Administrator is entitled to allowances derived from Councils of this nature.

#### FINDINGS ON THE OPERATIONS OF THE VILLAGE COUNCILS

Mr. Speaker and Hon. Members,

40. Following the deliberations on the Report on the Recruitment of Village Councils adduced before the Committee by the County Secretary, the Committee made the following findings:

1. THAT the Department of County Administration disregarded the provisions of Section 10(1) of the Act by failing to provide before this Hon. House a list of village administrators for approval as per the requirements of the Act without an order of court or County Assembly resolution barring them from implementing this section of the Act.
2. THAT some lists of Village Councils do not meet the required threshold as some members have either died or moved to other occupations and can no longer serve as members.
3. THAT the Village Councils cannot operate without remuneration in form of allowances in accordance with Section 53(4) of the County Governments Act, 2012 read together with Section 12 of the Kisumu County Administration of Village Units Act, 2012.
4. THAT the current Village Council members are yet to be trained and inducted into their roles.
5. THAT the CEC Member responsible for matters related to County Administration has failed to course Regulations in accordance with Section 19 of the Act for the better carrying into effect the provisions of the Act.
6. THAT the current composition of the Village Councils needs immediate review because there are substantive defects in their current composition, fundamental omissions, or a consideration of extraneous considerations as to risk rendering the composition and structure of the Village Councils unconstitutional.

#### AREAS FOR AMENDMENT ON THE KISUMU COUNTY ADMINISTRATION (VILLAGE UNITS) ACT, 2019

Mr. Speaker and Hon. Members,

41. Having considered the implementation challenges and legal gaps in the Act, the Committee has resolved to course an amendment of the Act to legislate the following subject matters:

- i. Remuneration for the Village Council Members

- ii. Procedure for approval of the Village Administrators and the Village Council Members
- iii. Number of meetings of the Village Council
- iv. Attendant drafting errors prevalent in the Act.
- v. Limit of Delegated Legislations

42. The proposed amendment has been attached as Appendix iii to this report.

#### RECOMMENDATIONS.

Mr. Speaker and Hon. Members,

43. Following the findings of the Committee on the operations of the Village Units, the Committee therefore recommends:

1. THAT the proposed Kisumu County Administration of Village Units (Amendment) Bill, 2023 (see appendix ii) be opened for pre-publication scrutiny before introduction to this Hon. House in the first reading as per the requirements of Standing Orders No. 113 of the Kisumu County Assembly Standing Orders.
2. THAT the list of the Village Councils be recalled for re-evaluation and re-approval. This is to ensure that the Councils are updated with current data on the status of their memberships.
3. THAT the list of the Village Administrators be re-called and re-submitted for approval by the County Assembly in accordance with Section 10(1) of the Kisumu County Administration (Village Units) Act, 2019

#### CONCLUSION

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

**Hon. Ochele** (MCA, East-Kano Wawidhi Ward): At that Point Mr. Speaker, I would like to call upon Mr. Ben Adega, who is a Member of this Committee to second. Thank you, Mr. Speaker, and Honorable Members.

**The Speaker** (Hon. Oraro): Yes, Hon. Adega.

**Hon. Adega** (MCA, Kajulu Ward): Thank you Mr. Speaker and to my Honorable Chairperson, I am Hon. Ben Adega and not Mr. Ben Adega as the Member has referred. Otherwise, I second the motion Mr. Speaker, and reason is because I found my name as a village member in that list, and this motion needs approval, thank you.

**The Speaker** (Hon. Oraro): Honorable Members, now that the report on the Status of the operations of the Village Units in the County has been presented by the Committee on Administration of Law, Justice, Good Governance, Constitutional Affairs and Security and

seconded as per our Standing Order. I now want to propose a question that the report is open for debate.

**The Speaker** (Hon. Oraro): Yes Hon. Oiko.

**Hon. Oiko** (MCA, Kabonyo Kanyagwal Ward): Hon. Speaker, I do not want to contribute as such but rather beg. This report is very important to us especially the elected Members of the County Assembly. Considering its literary writings, one may find some areas to support as well as condemn other areas. I want to plead that we adjourn for a while and convene Kangaroo court so that we interrogate it without the official record. That is what I am asking. It is important to ask on the elected and maybe the nominated but, we know that it had been passed. We know that we now have new Members. Before we interrogate on its negativity and positivity, we should agree, to adjourn a little then we have our little *Kamukunji* so that we chart a way forward. That is my request. However, I do not know which Standing Order allows that, I therefore seek for your guidance.

**The Speaker** (Hon. Oraro): Yes Honourable. Kelvin.

**Hon. Kelvin** (MCA, Kolwa Central Ward): Thank you Mr. Speaker. On the issue raised by my colleague from Nyando Sub County, indeed we are talking about a weighty matter and the background is, it starts from somewhere. Whatever he is trying to insinuate, I also understand that, if possible, before we put a lot of English and debate within the floor of this House, can we have an adjournment so that we have a small *Kamukunji* to check on the report. It will give Members time to actually know what the gist of this entire report is. From then, the debate will be guided. Mr. Speaker, I really support his sentiments.

**The Speaker** (Hon. Oraro): Honourable. Members, Hon. Bennie has raised an issue and I was just trying to look if he has a seconder. However, I did not see any. Honourable Kelvin is proposing adjournment while Honourable Bennie is proposing suspension of the House for some time but they never gave us any seconder, so, we will proceed. The report is therefore open for debate.

**The Speaker** (Hon. Oraro): Yes Hon. Kelvin.

**Hon. Kelvin** (MCA, Kolwa Central Ward): Thank you Mr. Speaker, if my request for adjournment was not seconded, but my request was not for full adjournment. Now, this is my take in this report. Our Governor, His Excellency Prof. Peter Anyang' Nyong'o by having Village Administrators in place unlike in some Counties which are still trying to implement Devolution to the lowest level, he has executed that level and meaning. We have a Village Units Headed by a Village Administrators. By then, I do not know if it was justice, but going by implications, they recommended that all the Wards to have two villages. In my ward (Kolwa Central) it fits very well because we have two Sub Locations. It will therefore be very easy to say; one Village Kasule and another one is Nyalunya and it worked well since it is easy to understand. In other Wards, you are aware of certain where there are disparities in Village Councils. In a village Council, they expect that representation to be there and you know the number. To some extent during the term of the Second Assembly, you had reached somewhere and the names were proposed about the Village Council. For that reason, I do not know if the

Chairperson is given the power to forward the names so that we are able to analyze them as an Assembly. That is why I thought of having a round table talk to inform Members so that we do not debate with our emotions and disguise the things that maybe are on a different stage.

Nevertheless, since you have given us the freedom to debate, I would like to request that any time they will be establishing the village council, according to the County Government Act 2012, to some extent the Village Council had even given a proposal of the composition of the Village Council. It might be tricky on some areas to balance the entire Ward. That is why I am requesting the Committee to open a new debate or to make a follow up so that other Wards also get justice. I am looking at other Wards such as North Nyakach and Masogo Nyang'oma which are geographically vast that even understanding their village operation unit may be so difficult. Then, it would have been easy to design a uniform for all the Wards. Manyatta "B" and Nyalenda "A" are my immediate neighbors. There are sub locations that ended up being divided into two.

Mr. Speaker, I am going to support the motion but, I am also going to ask the Chairperson whom I perceive to know what I am talking about; how the village was being divided. As a County, we should come out like people who want to help the County and understand the nature of areas of where we are coming from. What is good for the goose may not be good for the gander. Some issues may favour one member and not the other if you consider their locality.

Meanwhile, as I support this motion, I want to ask the Chairperson of the committee that, if indeed he talks about justice as one of the component of his committee, he needs to sit down and review the boundaries of these villages. I am informed that Member of the Executive to decide that... you find that Kisumu County has Seven Constituencies. You cannot therefore force Siaya or Homa Bay Counties to have the same number. On the other hand, you look at our wards based on how they are geographically demarcated. For instance, the clan level so that by the time you will be reaching at the consensus on how to form a village council, then you will not have clan conflict and many other things.

Mr. Speaker, this is to the Chairperson, once again I support your report but I also want you to convene and with your own wisdom, you look at it critically. As for Kolwa Central, I do not have any problem when you say two Village Units because it is clear. However, I am only emphasizing on other places and how they ended up with that demarcation. It is upon you to also find out so that at the end of the day; if I am a Member from Kolwa Central Ward, I should be able to understand how it was also done in North Nyakach Ward. Mr. Speaker, for now I have around seventeen Sub Locations, thank you.

**The Speaker** (Hon. Oraro): The Honourable Lumumba Owade, Deputy Majority Leader then Honourable James Omollo.

**Deputy Leader of majority** (Hon. Owade, MCA, South East Nyakach Ward): Thank you Mr. Speaker. Foremost, allow me to thank the Chairperson and his team. I want to echo the sentiment of my colleague for Kolwa Central. However, I also have one or two issues here to comment on. Mr. Speaker, I fully support the recommendations but with some input. For instance, No. 29 which says that The County Government Act 2012 that it is the office of the Village Administrator to nominate and with the advice and consent of the Honourable House to appoint.

For some of us who had the privilege of attending some of this forums will agree with me that if that mandate is left solely with a Village Administrator, then we are going to have double problem as we just like before.

Mr. Speaker, I suppose either a body or team is created to appoint or nominate the Village Council to work with the Village Administrator. For example, if the Village Administrator appoints these people; One, we are not going to get any tangible results because he/she will manipulate them as the appointing authority. Two, on No. 31 where it has stated that Public Service Commission section 52 paragraph 2; A village Administrator shall have a professional qualification and technical knowledge on administration and shall be appointed by the Public Service Board. What is this 'professional Qualification'? I beg this House that we come up and agree on this professional qualification. As it is, these people had no qualifications at all and they were appointed on the basis of politics which has also created problems to some of us in the village.

That is why I am in full agreement and support the recommendation of the committee where they indicated; *“that the list of the Village Administrators be-recalled and re-submitted for approval by the County Assembly in accordance with Section 10 (1) of the Kisumu County Administration (Village Units) Act, 2019”*.

Mr. Speaker, the reason why they have to be re-called, I would have wished that by that time, we would have come up with professional qualifications so that when they are being re-appointed, Mr. Speaker that should be looked into.

My other agreement is that the list of Village Council to be recalled. On my case, I do not think that will happen because they are not there. In some places they are not there. So, I support the idea of starting afresh. Once they have been appointed in some places, we will have to do the appointment in accordance with the recommended and agreed rules and regulations thereof. Otherwise, I support the report, thank you Mr. Speaker.

**The Speaker** (Hon. Oraro): Honourable James Omollo.

**Hon. Omollo** (MCA, West Nyakach Ward): Thank you Mr. Speaker, I rise to support the report of my colleague Hon. Ochele. It is a very elaborate report which has captured a lot. Devolution only works when it is devolved up to the last unit. On our case as the people of Kisumu County, is the Village Unit. We have villages in place which were delineated and the public participation was done. However, what did not come out clear is when the next delineation would take place. That is because, as we progress, there are factors and dynamics which do change. We have two village units per ward but, until when will we do delineation to get the correct number of village units?

Mr. Speaker, we have some Wards which are very diverse. For instance, West Nyakach Ward where Anding’o Opanga is far flung than any other, so, it would be better if it has a unit on its own, and not being merged with another Location where now is when they are conducting public participation as a village, I must say that, they are really disadvantaged. So, I would wish that this is captured that we do have a timeframe for another delineation so that we take consideration of some weighty matters to get another village units for instance the far-flung areas and also

those wards which have very many sub-locations. A case in point is North Nyakach Ward. So, to believe as one of them with fifteen sub-locations. On the other hand, when you go to Kolwa Central Ward as has been said, they only have two sub-locations. It was so easy vis-a-vis the seventeen for North Nyakach Ward. I therefore believe that in future we should have this considered.

Mr. Speaker, I also want to recommend the way it has been stated that we re-call the Village Administrators and Village Councils and re-do them once more. We will have to redo this because there are dynamics which have changed. I know they were on contract and I believe that their contract period is almost ending. Therefore, before it ends let this House have to ratify the new Village Administrators in all our 35 wards we have and also the Village Councils per ward. Let it come to us and we debate about it and pass it as it is. We have to be in charge because that is our oversight role as Members of the County Assembly. This list need to come to us and we make changes as we feel we should and then pass fresh list for Village Administrators and Village Council Members. If we do that, we would be getting it right as our roles dictate in the County Government Act, 2012.

Mr. Speaker, I want to commend the Committee for doing a very thorough investigation on this. I believe some of our colleagues are not even aware of the list of the Village Council. It was done during the Second Assembly, but it is somewhere whereby no one has access to it. Personally, I have gotten the list from the Village Administrator from my Ward. However, I am sure some of us as we speak, do not even know who their Council Members are. That calls for us to re-do a fresh council leadership and the list come to this House, pass it or make necessary changes.

On remuneration; it has been stated that their salaries will be decided by the Salaries and Remuneration Commission (SRC). I suggest we should really know where the decision should come from. I know how extreme the SRC can be. Just recently, our ECD Teachers were put on quagmire when their salaries were recommended to be reduced to some level which to me is not humane. That is a good example to let us know that even if we leave it for the SRC to decide, on our side we should be in a position to know and dictate the remunerations for these Council Members. That is because, they are our village people who will be holding meetings and would need the sitting allowances. Therefore, let us have in place something commensurate to their sittings which will be taking place as they deliberate on various issues.

Mr. Speaker, as I conclude; I would like to say that it is very key in terms of development; the people who will be helping the elected Members of the County Assemblies are the Village Council members. They know how their villages are and their needs so they will be convening committee meetings and deliberating on issues of development for our wards. I believe that we should value them and to make it correct at this start. Thank you, Mr. Speaker, I beg to support.

**The Speaker** (Hon. Oraro): I am seeing Hon. Obaso and Hon. Mildred, so let me consider gender and give Hon. Mildred.

**Hon. Achieng Biko** (MCA, Central Seme Ward): Thank Mr. Speaker, going through the report I wish it was in hard copy, some of us have issues with our sights like Hon. Pete; therefore hard copies will be very good for us.

Mr. Speaker, I want to congratulate the JLAC Committee; they have done a very wonderful job. We were going through this report one by one, in fact the job they have done is so recommendable that they have seen the need for this House to recall the list and even the Village Council and Village Administrators that was done in the Second Assembly. Many of us that are new we know nothing about it. So, it is very important that it come back to the Assembly as recommended by the Chair and his team so that we can go through the list.

Mr. Speaker, our villages are quite unique. In my ward we have two villages, West Seme for example has so many sub-locations. If you look at the village in terms of population and size, then every village is unique in every ward. So, I believe that there is work to be done and we cannot do it in a hurry because we need time to go through this list but I want to support the recommendation by the committee thank you.

**The Speaker** (Hon. Oraro): Hon. Obaso.

**Hon. Peter Henry Obaso** (Nominated MCA): Thank you Mr. Speaker, let me start by supporting the Motion. Secondly, I am in this committee and I think we really did a good job, to my able chair Hon. Ochele and our able clerk who has a vast knowledge in this issue really helped us a lot. I trust that if these recommendations can be enacted and implemented then, the local *Mwananchi* will feel the real benefit of devolved function, thank you and I beg to support.

**The Speaker** (Hon. Oraro): Hon. Pete Oiko

**Hon. Oiko** (MCA, and Kabonyo Kanyagwal Ward): Thank you Mr. Speaker, this report is very essential to the members and just as I had earlier indicated, we need to own this report and I want members to be very keen and when we leave here today, we know what we have discussed.

When you look at this report, generally people are saying that it is a good report; the committee states that they were not given the list of the Village Council and Administrators. Like when you look at page 13 the current composition of the Village Council needs, how will you do that if you have not seen the list, I don't want to dwell or puncture or make holes on that report because it will build us on the ground. Therefore, my plea is after passing it let us sit as a community and get our way forward, I end there.

**The Speaker** (Hon. Oraro): Yes Hon. Pamela of Migosi ward.

**Hon. Pamela Oyoo** (MCA, Migosi Ward): Thank you Mr. Speaker, I stand to support this report. I just want this House to consider the recommendations made by this committee towards the report.

First, I want to say as a member of the committee, we recommended that the administration disregarded the provisions of Section 10(1) and I would want to say that the recommendation should be made legal and what was disregarded must be done. They should review the formation of the list because some of us do not even know the Village Council Members yet we are the MCAs of those areas.

Mr. Speaker, these Village Council Members, I don't ponder if they know their mandates well, the committee recommended training and induction which I consider should be a recommendation from this House. As they establish a Village Council, members should be trained on the constitution and to know what their role is. I want to say this report is quite elaborate and it is important to this House because it is going to help us to realize our mandate as the MCAs of those areas. I want to say that this report should be taken into consideration and the Village Councils and Administrators manage to be streamlined and made constitutional, I beg to support.

**The Speaker** (Hon. Oraro): Yes Hon. Micky.

**Hon. Mickey** (Nominated MCA): Mr. Speaker, I was just standing to leave the room, thank you.

**The Speaker** (Hon. Oraro): Let me give Hon. Alando now that so many men have contributed, please let me consider Hon. Alandoh.

**Hon. Alando** (Nominated MCA): Thank you Mr. Speaker, having seen the mood of the House I want to call the mover to reply.

**The Speaker** (Hon. Oraro): Honourable Members, I was buying time to see if Hon. Ruben wanted to stand but it looks like he is satisfied. Hon. Ochele can you reply to the questions or concerns raised by the members.

**Hon. Ochele** (MCA, East Kano Wawidhi): Thank you once more Mr. Speaker. May I take this opportunity to first thank the Honourable Members who have contributed to the success of this report. May I likewise take this opportunity officially to sincerely thank the secretariats attached to this committee who have made this work a success. Mr. Speaker, I will not forget your office which has done all that it could to make us reach where we are today.

Mr. Speaker, there are a number of issues raised by the Honourable Members who have contributed. May I start by the concern raised by Hon. Deputy Leader of Majority on the issue of the powers vested on the Village Administrators to nominate members of the council? Mr. Speaker this section is beyond the powers of this Assembly because it is directly borrowed from the County Government Act which in itself is a superior legislation. We have no powers to amend it and which is one of our roles of legislations. I would have recommended that we amend that section but it's a national government legislation so we just take it as it is.

Mr. Speaker, on the same, the Deputy Leader of Majority raised an issue on professional qualifications. Mr. Speaker the report entirely is born out of the intention to amend the Kisumu County Government Administration Act and I believe we will get time in the second reading where Members shall contribute in the committee of the Whole House on where they feel amendment should be in line with what the committee has proposed to be amended.

Mr. Speaker, there was a concern raised by Hon. Omollo on remuneration that we have no power to remunerate. Mr. Speaker, in the amendment, the most fundamental thing that has barred the implementation of the village council are two issues and if you are keen in the report, you will realize that it is about remuneration and how many time, they should sit in a financial year. Mr.

Speaker, that power is delegated to the Assembly that you can propose a remuneration that is based on the guidelines by the SRC and in the amendments, the committee in deed proposed some remunerations considering the guidelines given by the SRC. Therefore, it is not beyond our purview Hon. Members.

Mr. Speaker, Hon. Kevin Oraro talked elaborately on delimitation. We may talk now that some wards are too big than others or may require more villages than others, that is being naturally human. Mr. Speaker, in this House every Member want the exact allocation as the other. We will talk but what we have going by history we prefer equality and not equity, that if it is two everybody gets two. In this House, we are 35 members, so when counting Village Administrators, I would not be happy when Hon. James Omollo is counting ten and I am counting two, that is about equality but in essence what Hon. Oraro was talking about, he was talking about equity. We make delimitation equitably which might not be that applicable.

Mr. Speaker, I am very happy that the mood of the House is indeed the mood for his House and how I wish that somebody seconded the motion raised by the Hon. Pete at the early stages. This is because I have realized that the members had some underlying issues which they really needed clarifications before they contributed but all that is water under the bridge. I will just thank the Honourable Members very much and may we meet at the Committee of the whole House if the Speaker so wishes. Thank you and I beg to second.

**The Speaker** (Hon. Oraro): Honourable Members, now that the Committee of the Administration of Law, Justice, Good Governance and Constitutional Affairs and Security have presented their report on the Status of Operations of the Village Units in the County and seconded and debated as per our Standing Order, I want to put a question.

*(Question put and agreed to)*

**The Speaker** (Hon. Oraro): The report on the Status of the Operation of the Village Units in the County as presented by the Committee of Administration of Law, Justice, Good Governance, Constitutional Affairs and Security has been adopted today Tuesday the 07<sup>th</sup> March 2023 at 5:01 p.m.

Honourable Members, I direct that the recommendation of the report be communicated to the respective person's immediately and the committee proceeds with the process of amendment of the Kisumu County Village Council Act as has been recommended in the report.

**The Speaker** (Hon. Oraro): Next Order!

## MOTION

REPORT ON THE CONSIDERATION OF ANNUAL REPORT AND FINANCIAL STATEMENT FOR KISUMU COUNTY REFERAL (LEVEL 4) HOSPITAL FOR THE YEAR ENDED 30<sup>TH</sup> JUNE, 2022.

BY

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**HON. VINCENT JAGONGO****CHAIRPERSON, HEALTH, HOUSING AND SANITATION COMMITTEE**

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

**Hon. Jagongo** (North West Kisumu Ward): Thank you Mr. Speaker, I have just been informed that the House Business Committee is supposed to meet after this and looking at the report that I have here, it may take time so, I am requesting Mr. Speaker, if you can allow me read the report on Wednesday that is tomorrow, the first thing in the morning.

**The Speaker** (Hon. Oraro): Are you saying you are withdrawing the report for today?

**Hon. Jagongo** (North West Kisumu Ward): Mr. Speaker, I am withdrawing the report for today and if you can, give me time tomorrow in the morning.

**The Speaker** (Hon. Oraro): Hon. Members is there any member who has contrary opinion?

*(Silence)*

**The Speaker** (Hon. Oraro): The Honourable Member for North West Kisumu, Chairperson of Health and Sanitation Committee has requested that he present his report tomorrow but I think that I want to confirm to you that it may not be as per your request but as per the determination of the House Business Committee depending on the activities that shall be available. Thank you.

**The Speaker** (Hon. Oraro): Next Order!

**ADJOURNMENT**

**The Speaker** (Hon. Oraro): Honourable Members, I want to request the House Business Committee that we meet immediately after this session. Now that there is no any other business in the Order paper to transact, the House stands adjourned until tomorrow Wednesday, 08<sup>th</sup> March 2023 at 9.00 am.

*(House rose at 5:10 p.m)*

**Addendum**

**The Hansard Team**

*Zablon Otiende – Senior Hansard Reporter (Ag. Editor)*

*Edward Odanga – Hansard Reporter*

*Fanuel Okode – Hansard Reporter*

*Patrick Okoyo – Hansard Reporter*

*Jacklyne Otieno – Hansard Reporter*

*Jesca Otieno – Hansard Reporter*

*Vallery Achieng’ – Hansard Reporter*

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<sup>i</sup> *Burns v. United States*, 501 U.S. 129, 136 (1991) (quoting *Illinois Dep't of Public Aid v. Schweiker*, 707 F.2d 273, 277 (7th Cir. 1983)).