COUNTY GOVERNMENT OF KISUMU

COUNTY ASSEMBLY OF KISUMU

THE HANSARD

Official Report

THIRD ASSEMBLY – SECOND SESSION

Wednesday, 08th November, 2023

House met in the Main Chamber at 09:00 a.m.

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

PRAYERS

The Temporary Speaker (Hon. Okumu, MCA, East Seme Ward): Honourable Members, pursuant to the provisions of Orders No. 31 (2) of the Kisumu County Assembly Standing Orders, I want to direct that the Serjeant-at-Arms rings the quorum bell for the first five minutes.

(Quorum Bell rung for the first five minutes)

The Temporary Speaker (Hon. Okumu, MCA, East Seme Ward): The Deputy Whip, could you please confirm if we have quorum.

The Deputy Whip (Hon. Obonyo, MCA, South West Kisumu Ward): Thank you Mr. Speaker, we have quorum.

The Temporary Speaker (Hon. Okumu, MCA, East Seme Ward): Mr. Clerk, could you please take us through the order of the day.

The Temporary Speaker (Hon. Okumu, MCA, East Seme Ward): Next order!!

STATEMENTS

The Temporary Speaker (Hon. Okumu, MCA, East Seme Ward): What is it Hon. Adonija?

Hon. Adonija (MCA, Chemelil/Tamu Ward): Thank you Mr. Speaker, I have a Statement to raise.

The Temporary Speaker (Hon. Okumu, MCA, East Seme Ward): Please proceed Honourable Member.

Hon. Adonija (MCA, Chemelil/Tamu Ward): The Honourable Speaker, pursuant to the provision of Standing Orders No. 41 (2) (b) of the Kisumu County Assembly Standing Orders, I arise to seek for a Statement from the Chairperson, Standing Committee of Finance and ICT on the Status of Cess that is deducted or collected from Sugarcane Farmers in Muhoroni and Nyando Sub-counties.

Mr. Speaker, the responsibility for maintaining the feeder roads in the sugar belt areas was transferred from the former Defunct Local Authorities to the County Governments after the promulgation of the Constitution, 2010. It has since been established that, the current sugarcane farmers are being levied 1% of the cost of a ton of sugarcane delivered to millers. Mr. Speaker, these funds are channeled to the County Government through the cane millers. Mr. Speaker, the sole aim of the Cess funds is for the maintenance of feeder roads within the Sugar belt areas.

Mr. Speaker, the current Cess deducted from the sugarcane farmers by sugar millers is matter of serious concern because initially the Cess remittances was designated for the maintenance of feeder roads within the sugar belt areas.

Mr. Speaker regrettably, this is no longer the case because these feeder roads are significantly dilapidated as a result of the extensive usage by trucks and lorries transporting sugarcane to the West Kenya Region. Consequently, the local residents continue to endure hardship despite the rightful entitlement to the benefits from the remittances.

Mr. Speaker, in response to the statement, the Standing Committee of Finance and ICT should look into the following;

1. Investigate the Annual Report received by the County Government of Kisumu regarding the Cess funds and remittances collected from sugar millers who purchase sugarcane from Nyando and Muhoroni Sub-counties?
2. Examine how the collected funds have been utilized to fulfill their intended purposes.

Thank you.

The Temporary Speaker (Hon. Okumu, MCA, East Seme Ward): Thank you Honourable Member. Is the Chair Finance and ICT in the House? If the Chair is not around, then I will give the Deputy Chair.

The Temporary Speaker (Hon. Okumu, MCA, East Seme Ward): Any Member of this House Committee who can respond to this statement raised? I therefore, direct that, this statement is

committed to the Standing Committee of Finance and ICT and they bring back a report to this House in the next 21 (twenty-one) days.

The Temporary Speaker (Hon. Okumu, MCA, East Seme Ward): Honourable Members, is there any other statement to be sought?

The Temporary Speaker (Hon. Okumu, MCA, East Seme Ward): Next order!!

MOTION

ADOPTION OF REPORT BY THE STANDING COMMITTEE OF ADMINISTRATION OF LAW, JUSTICE AND CONSTITUTIONAL AFFAIRS, GOOD GOVERNANCE AND SECURITY

REPORT ON THE KISUMU COUNTY ADMINISTRATION (VILLAGE UNITS) AMENDMENTS BILL, 2023 (KISUMU COUNTY BILL NO. 5)

BY

HON. MOSES OCHELE, MCA, EAST KANO-WAWIDHI WARD.

(CHAIRPERSON, STANDING COMMITTEE OF ADMINISTRATION OF LAW, JUCTICE AND CONSTITUTIONAL AFFAIRS, GOOD GOVERNANCE AND SECURITY)

The Temporary Speaker (Hon. Okumu, MCA, East Seme Ward): Yes the Honourable Moses Ochele member representing East Kano-Wawidhi Ward and Chairperson, JLAC Committee.

Hon. Ochele (MCA, East Kano/Wawidhi Ward): Thank you Mr. Speaker and Honourable Members, with me is a report from the Standing Committee of Administration of Law, Justice and Constitutional Affairs, Good Governance and Security.

Mr. Speaker, may I begin by the Preamble.

Mr. Speaker and Hon. Members,

1. The Kisumu County Administration (Village Units) (Amendment) Bill, 2023 was read a first time in September, 2023 and subsequently referred to the Sectoral Committee on the Administration of Law, Justice, Good Governance, Constitutional Affairs and Security to facilitate public participation and thereafter report to the House in accordance with Standing Order No. 123 of the Kisumu County Assembly Standing Orders.

2. The Principal Object of the Bill is to amend the Kisumu County Administration (Village Units) Act, 2019 and takes into consideration the proposals of the Department on County Administration submitted to the Committee on Justice and Legal Affairs on 18th November, 2022 referenced: CGK/CS/ADM/20/VOL.III/177.

Establishment and Mandate of The Committee

3. The Sectoral Committee on the Administration of Law, Justice, Good Governance, Constitutional Affairs and Security is established pursuant to Standing Order No. 193 of the Kisumu County Assembly Standing Orders. Under the Second Schedule to the said Standing Orders, the Committee is mandated to consider all matters related to:

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

4. The Committee was constituted in 6th July, 2023 and is currently composed of the following members:

1.	Hon. Moses Ochele	Chairperson
2.	Hon. Reuben Rakwach	Vice Chairperson
3.	Hon. Mariam Abeid	Member
4.	Hon. Anne Ochola	Member
5.	Hon. Samuel Onyango	Member
6.	Hon. Vincent Jagongo	Member
7.	Hon. James Were	Member

5. The Secretariat of the Committee comprises the following:

   1. Mr. Harman Moses – Clerk Assistant

2. Mr. Patrick Okoyo – Hansard Officer

3. Mr. Kennedy Okise – Serjeant-at-arms

6. The Minutes of the Committee deliberations on the Kisumu County Administration (Village Units) (Amendment) Bill, 2023 has been referenced in the Committee Minutes with Ref. No. MIN.21/JLAC/23, MIN.22/JLAC/23, MIN.23/JLAC/23 and MIN.24/JLAC/23.

Acknowledgements.

Mr. Speaker and Hon. Members, I would like to express my special thanks of gratitude to all Members of the Committee on The Administration of Law, Justice and Constitutional Affairs, Good Governance and Security for their valuable contributions during the interrogation of this proposed Amendment Bill.

I also wish to extend my sincere gratitude to the Members of the County Assembly, the Office of the Speaker and Clerk of the Assembly for their support during this exercise.

It is now my privilege and duty to present this Report of the Sectoral Committee on the Administration of Law, Justice, Constitutional Affairs, Good Governance and Security, for consideration and approval by the House pursuant to Standing Order No. 182 of the County Assembly Standing Orders.

Chapter Two.

Overview of the Bill.

7. The Kisumu County Administration (Village Units) (Amendment) Bill, 2023 (hereinafter 'the Bill') and its accompanying Memorandum of Objects and Reasons was published on 5th September, 2023. The Bill was scheduled to be taken for a Second Reading upon the completion of the Public Participation exercise that was conducted on Thursday 5th October, 2023 at the Sub-County Level.

8. The proposed Bill seeks to amend the Kisumu County Administration (Village Units) Act, 2019 and introduce a legal and institutional framework on the operations of the Village Council in accordance with Section 52 of the County Governments Act, 2012 read together with the Article 176 (2) of the Constitution of Kenya, 2010. The Amendment Bill also aims to "address a range of procedural issues", simplify the procedures for the recruitment of the

Village Council as well as correct legal and implementation challenges arising from the Kisumu County Administration (Village Units) Act, 2019.

9. Consequently, the Bill seeks to simplify Section 10(1) of the Kisumu County Administration (Village Units) Act, 2019 (hereinafter 'the Principal Act') which mandates the County Assembly to approve the Village Council including the appointment of the Village Administrator.

Operational Context of the Amendment Bill.

10. Pursuant to the provisions of the Act, there is no determination for 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 lacuna has paralyzed the operationalization of the Village Councils. The Amendment Bill, therefore seeks to remedy the existing gaps and provide procedures for the remuneration of the Village Council and the number of meetings in accordance with Clause 3 and 4 amendments on Section 12 and 15 of the Act respectively.

11. The Amendment Bill further gives powers to the CEC Member responsible for Public Administration to make regulations on the procedure and criteria for appointment of the members of the Village Council, operational standards of the Village Council, procedures for the suspension of a village council member and procedures for the fulfillment of the two-thirds gender rule in the composition of the Village Council.

Policy and Legislative Context.

12. The Statutory underpinnings of the Kisumu County Administration (Village Units) (Amendment) Bill, 2023 is established in Section 52 and Section 53 of the County Governments Act, 2012 which provides for the appointment of the Village Administrator and the establishment of the Village Council.

13. The County Governments Act, 2012 in Section 53 specifically mandates the County Assembly to approve the members of the Village Council.

14. This Amendment Bill, has been caused based on legal and implementation challenges faced by the Kisumu County Administration (Village Units) Act, 2019 and is not necessitated by a policy basis.

Principle Provisions of the Amendment Bill.

15. The Committee examined the main provisions of the Amendment Bill, which is 5 pages long and contains 6 amendments and provided a non-exhaustive overview of the principal provisions of the Bill as follows:

Amendment of Section 2 of the Act

16. This Amendment provides an interpretation of new terms found in the Amendment Bill for purposes of clarity. In the Act, these interpretations were either not provided for or were not existing.

Amendment of Section 10 of the Act.

17. This part provides an amendment on Section 10 of the Principal Act by inserting new sections providing for the approval procedures of the Village Administrator.

Purpose of the Amendment.

The Purpose of this Amendment is to prevent diffusion of the executive's appointment powers and enhance political accountability; by ensuring that more qualified officers are appointed. 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

Provision in the Principal Act.

The Amendment is inserted immediately after Section 10 (1) of the Act which provides as follows:

(1) 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

(2) A person shall not be appointed as a Village Administrator unless such a person has post O' level certificate in administration and meets the requirements of Chapter Six of the Constitution

(3) The Village Administrator holds office for a penod of three years' renewable term

18. This part provides an amendment by deletion and denies the County Assembly the power to provide remuneration of the Village Council Members.

19. Consequently, the Amendment mandates the County Government to apply the remuneration regulations of the SRC.

Purpose of the Amendment

The County Assembly has no powers to determine salaries and allowances of public officers.

Provision in the Principal Act.

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.

Amendment of Section 15 of the Principal Act.

20. This amendment provide for the regulation of the Village Council Meeetings. The purpose of this Amendment is to prevent a mischief that may arise from meetings conducted only for purposes of accruing allowances.

Amendment of Section 19 of the Principal Act.

21. This amendment provides for delegated authority and gives the CEC Member responsible for County Administration the power to regulate procedure and criteria for appointment of the member of the Village Council, operational standards of the village council, review, evaluation and monitoring of County Administration Policies, procedure for the suspension of a member of a village council and procedures for the fulfillment of the two-thirds gender rule in the composition of the Village Council.

Purpose of the Amendment.	**Amended Provision in the Principal Act**
The Principal Act did not provide the areas subject to regulatory authority	19. The member of the County Executive Committee responsible for Physical Planning and Survey may make regulations for the better carrying out of the purposes and provisions of this Act with the approval of the County Assembly

Miscellaneous Provisions.

22. This is an insertion of new sections after Section 19 of the Principal Act. This Part contains provisions in respect of offences relating to the conduct of Employees mandated to implement the provisions of the Act. It contains new clauses 20 and 21 1 which are outlined below.

23. New Clause 20 provides for the indemnity from personal liability protects authorized officers from personal liability in respect of any act done in the execution of powers or duties under the Act or Regulations for the Act.

24. New Clause 21 concerns the offences and penalties that apply to employees in terms of this proposed Act. Penalties under this proposed Act, based on contravention of specified provisions of this proposed Act, are set out in the Table below.

Category	Offence	Indictment
Offence under new Clause 21 (1) (a)	Disregard or abuse of the provisions of the Act or any policy issued under the Act	An imprisonment not exceeding six months and a fine not exceeding kshs. 200,000 or both.
Offence under new Clause 21 (1) (b)	Willful obstruction of any officer or agent of the County Administration	

Chapter Three

Public Participation in the Processing of the Bill.

Constitutional Framework for Public Participation.

Mr. Speaker and Hon. Members

25. The right to political participation is the foundation of public participation. Article 1(2) of the Constitution of Kenya enunciates this point on sovereignty of the people. It states that Kenyans may exercise their sovereign power either directly or through their democratically elected representatives. The language of this provision resonates with article 21 of the Universal Declaration on Human Rights (UDHR), article 13 of the African Charter on Human and People's Rights (ACHPR) and article 25 of the International Covenant on Civil and Political Rights (ICCPR).[i]

26. Article 10 of the Constitution of Kenya includes public participation as a national value and principle of governance. Clause 2 (a) of the article explicitly mentions 'participation of the people' as such. This value and governance principle is supposed to be adhered to whenever a '…state organ, state officer, public officer and all persons…enacts, applies or interprets any law…' Therefore, the processes of enacting legislations in the County Assembly must be bound by this provision of the Constitution.

27. Article 118 of the Constitution directly invokes public participation in legislative process. The provision states 'Parliament (parliament here is *pari materia* with the County Assembly) shall…facilitate public participation and involvement in the legislative and other business of Parliament and its committees.' By dint of this constitutional provision, the Assembly is compelled to engage the public in the process of law making or other legislative business.

28. Other provisions of the Constitution that provides the foundation of Public Participation are as follows:

    Article 174 (c) – which provides for the objects of devolution – to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them;

    Article 196 (1) (b) – provides for public participation and county assembly powers, privileges and immunities and;

    Article 201 (a) – provides for openness and accountability, including public participation in financial matters;

29. The County Governments Act, 2012, Clauses 87 and Clause 91 respectively which establish detailed principles and modalities and platforms for citizen participation in policy formulation and legislation and the Kisumu County Public Participation Act, 2016 which provides for the procedures to be followed when conducting public participation exercise within Kisumu County.

Call for Public Participation

Mr. Speaker and Hon. Members

30. Through an advertisement in the Nation and the Star Newspapers (*see Annexure i*), the Committee invited the public to submit views or make presentations regarding the Bill as required by the provisions of Article 118 of the Constitution and Standing Orders No 123 of the Kisumu County Assembly Standing Orders.

Receipt of Submissions and Public Hearings on the Kisumu County Administration (Village Units) (Amendment) Bill, 2023

Mr. Speaker and Hon. Members,

31. Following the request to the general public to submit Memoranda, the Committee received a Joint Memoranda from a group of Civil Society Organizations within Kisumu County

dedicated to promoting good governance. The Civil Society Organizations include the following:

a) KMET
b) NAYA Kenya
c) KADDNET
d) TEAM
e) Youth Alive! Kenya
f) CIAG-Kenya

The Civil Society Organizations submitted as follows:

I. THAT the Bill's Attempt to Allow County Assembly (MCAs) to Vet or Approve the Recruitment of Village Administrators is unnecessary and amounts to political interference on express executive functions:

According to the Civil Society Organizations (hereinafter 'the Petitioners), proposed amendments in the Bill grants the County Assembly the authority to either vet or approve the recruitment of devolved Village Administrators. It is essential to note that Members of County Assembly are not classified as state officers therefore the vetting process should end with the position of chief officer and not extend to County Assembly. Granting the County Assembly this open opportunity may lead to unnecessary politicization and interference in the recruitment process, undermining the professionalism and impartiality required for this vital role.

II. Potential for Conflict of Interest:

The Petitioners further aver that Granting the County Assembly, the authority to oversee the recruitment of Village Administrators, who are pivotal in the effective functioning of our county, raises concern about potential conflicts of interest. We believe that this move may inadvertently blur the lines between the County Assembly's legislative functions and the public service board responsibilities. Such a situation could lead to a lack of transparency and impartiality in the recruitment process.

III. Permanent and Pensionable Terms for Ward Administrators:

The Petitioners have further submitted that strongly recommend that Ward Administrators should be placed on permanent and pensionable terms. Providing Ward Administrators with permanent positions with retirement benefits will not only ensure a stable and committed workforce but also promote growth in public service. This measure would attract and retain qualified individuals, thereby enhancing the quality-of-service delivery at the ward level.

IV. Impact of Legal Hierarchy:

The Petitioners have submitted that the important to bear in mind that the Kisumu County Administration (Village Units) Act, 2019, is subservient to the County Government Act No. 17 of 2012. The proposed amendments under consideration entail significant changes to the County Government Act No. 17 of 2012. Due to this legal hierarchy, County Assembly's capacity to make alterations to the Kisumu County Administration (Village Units) Act, 2019, is greatly restricted.

In light of these concerns, we kindly request that the County Assembly reconsider the provisions in the Kisumu County Administration (Village Units) (Amendment) Bill, 2023, and address the issues raised herein. We believe that a more inclusive and transparent approach to legislation and governance will benefit the citizens of Kisumu County.

The Petitioners have moved the Committee to engage in further dialogue and collaborate with the County Assembly to find the best solutions that serve the best interests of our county.

Proposals and Comments from the Public.

32. Pursuant to the advertisement placed in both the Daily Nation and the Star Newspaper the Committee facilitated public participation on 5th October, 2023 in accordance with the following Schedule:

Sub-county	Ward	Time	Venue
1. Muhoroni	Muhoroni/Koru	9.00am	Masogo Nyang'oma Hall
2. Kisumu East	Kolwa Central	9.00am	Ragumo Community Hall
3. Seme	Central Seme	9.00am	Kombewa Huduma Centre
4. Kisumu Central	Market/Milimani	9.00am	Kisumu Social Hall
5. Nyando	Ahero Ward	9.00am	Karanda AIC Church
6. Kisumu West	South West	9.00am	Ojola Resource Centre
7. Nyakach	Central Nyakach	9.00am	Pap Onditi Hall

33. In considering the Kisumu County TVET Bill, 2023, the Committee took into account oral submissions from the public during its sittings in the Sub-Counties. The Committee noted as follows:

S/No.	Sub-County	Recommendations	Observations
1.	Muhoroni	During the public hearing of the Bill in Muhoroni Sub-County, the members of the public submitted the following recommendation: That the Bill should provide for pensionable terms for the Ward Administrators.	None
2.	Kisumu East	During the public hearing of the Bill in Kisumu East Sub-County, the members of the public submitted the following recommendations: That the timeline for formulation of regulation for the implementation of the Act be provided. THAT clear provisions on the management and administration of the Village Unit be provided including the exact amount of remuneration.	None
3.	Seme	During the public hearing of the Bill in Seme Sub-County, the members of the public submitted the following recommendations That provisions for pensionable term be provided for Ward Administrators	The Public observed that: The Principal Act ought to have been circulated to the general public in good time alongside the

			amendment Bill.
4.	Kisumu Central	During the public hearing of the Bill in Kisumu Central Sub-County, the members of the public submitted the following recommendations: That the exact remuneration for the village council members be provided in the Bill. That the amendment Bill should be clear on the procedures of approval of the Village Council Members and specify the extent of the approval.	None
5.	Nyando	During the public hearing of the Bill in Nyando Sub-County, the members of the public submitted the following recommendations: .THAT timeline upon which the regulatory authority shall be exercised should be provided in the bill. That the Bill should provide clear provisions on the approval procedures.	
6.	Kisumu West	During the public hearing of the Bill in Kisumu West Sub-County, the members of the public submitted the following recommendations: THAT the Bill should provide pensionable term limits for the Ward Admins	

7.	Nyakach	During the public hearing of the Bill in Nyakach Sub-County, the members of the public submitted the following recommendations: That qualification for appointment of the Village Administrators should be provided.	None

Chapter Six

Committee Findings and Observations.

34. The Committee made the following findings and observations on some of the potential legislative issues that may still arise on the Kisumu County Administration (Village Unit) (Amendment) Bill, 2023:

i. THAT the Bill has not provided for the meaning or what entails a Special meeting and therefore the mischief that the amendment in Section 15 of the Principal Act intended to prevent may still exist if what entails a special meeting is not defined.

ii. THAT the Bill has not provided for a timeline within which the regulatory authority should be exercised pursuant to the amendment in Section 19 of the Principal Act.

iii. THAT the Amendment of Section 10 of the Principal Act on procedures of the Approval of the Village Council are still not clear as to what stage should the list of the Members of the Village Council be submitted to the County Assembly for approval.

Committee Recommendations.

Mr. Speaker and Hon. Members

35. In light of the submissions of the memorandum, the oral representations made before the Committee and the Committee deliberations on the Bill, the Committee Recommends: -

i. THAT Section 2 of the Principal Act be further amended by insertion of the definition of the term "special meeting" in its alphabetical sequence as follows:

> 'special meeting' means a meeting held for a special and limited purpose specifically arising from unforeseen circumstances and whose notice may not be issued within a period of twenty-one (21) days.

ii. THAT a new section be inserted immediately after Section 10 (1) of the Principal Act as follows:

> 10 (2) The Public Service Board shall within 14 days upon the completion of the interview process, submit the list of Village Administrators and the Members of the Village Council to the County Assembly for verification and approval.

10 (3) Without prejudice to the generality of Section 10 (2) above, the Public Service Board shall alongside the list of the proposed village administrators and members of the Village Council submit;

a) a Copy of the advertisement on the vacancy of the office of the village administrator made in at least two media outlets with national circulation and;

b) report on the village unit of residence and academic qualifications of the proposed village administrators and members of the Village Council.

10 (4) The County Public Service Board shall submit the lists contemplated in sub-section (3) above in accordance with the templates provided for in the 1st and 2nd Schedules of this Act.

iii. THAT a further amendment be caused on Clause 2 of the Bill (Amendment on Section 10 (1) of the Principal Act) by amending Clause 10 (2) as follows:

> Clause 10(2) (b) is amended by deleting the word "body" immediately after the phrase "experience and qualities meet the needs of the" and replacing therefor with the word "office".

iv. THAT Clause 3 of the Bill under the Amendment on Section 12 of the Principal Act be further amended by introduction a new Sub-Section immediately after Sub-Section 12 (3) as follows:

> 12 (4) The CEC Member responsible for County Administration shall within Seven (7) days upon the appointment of the Village Council issue a notice to the

Salaries and Remuneration Commission to provide guidance on the allowances for the Village Council Members.

v. THAT Clause 5 of the Bill on the Amendment in Section 19 of the Principal Act be amended in Section 19 (1) by inserting the words "within ninety (90) days" immediately after the word "shall".

vi. THAT the Bill be further amended by introducing a Schedule to give further effect to the Amendment in Section 10 of the Principal Act as follows:

FIRST SCHEDULE

(Section 10 of the Act)

KISUMU COUNTY GOVERNMENT

THE PUBLIC SERVICE BOARD

REPORT ON QUALIFICATION OF VILLAGE ADMINISTRATORS SUBMITTED IN ACCORDANCE WITH SECTION 10 OF THE AMENDED KISUMU COUNTY ADMINISTRATION (VILLAGE UNITS) ACT, 2019.

S/No.	Village Unit	Shortlisted Persons (Max. 3)	Name of Qualified Candidate	Academic Qualification	ID No./ Passport	Ward	Village Unit of Residence
1.							
2.							

Submitted by:

Sign…….Date …….
Secretary
The Kisumu County Public Service Board

SECOND SCHEDULE

(Section 53 of the County Governments Act, 2012 and Section 10 of the Act)

KISUMU COUNTY GOVERNMENT

THE PUBLIC SERVICE BOARD

REPORT ON QUALIFICATION OF MEMBERS OF THE VILLAGE COUNCIL SUBMITTED IN ACCORDANCE WITH SECTION 10 OF THE AMENDED KISUMU COUNTY ADMINISTRATION (VILLAGE UNITS) ACT, 2019.

S/No.	Village Unit	Name of Qualified Candidates	ID No./ Passport	Ward	Village Unit of Residence
1.					

As Nominated in accordance with Section 53 of the County Governments Act, 2012 and the Kisumu County Administration (Village Units) Act, 2019.

Sign……..Date……

Name……..

The Village Administrator

Conclusion.

Mr. Speaker and Hon. Members, the Committee having considered the Kisumu County Administration (Village Units) (Amendment) Bill, 2023, the Committee therefore recommends that this Honourable House adopts this Report with amendments for inclusion at the Second Reading Stage. Mr. Speaker, I wish to call upon the able Vice-chairperson Hon. Engineer Reuben Rakwach to second.

The Temporary Speaker (Hon. Okumu, MCA, East Seme Ward): Yes, Hon Rakwach member representing East Kolwa Ward.

Hon. Rakwach (MCA, East Kolwa Ward): Thank you Mr. Speaker Sir. I arise to second the motion which has been moved by my able Chairperson. Honourable Speaker, I want to urge my fellow Honourable Member to support this motion to enable us seal the gaps in the Kisumu County Administration (Village Units) (Amendment) Bill, 2019 so as to conform to the County Government Act of 2012 and the Kisumu County Administration (Village Units) (Amendment) Bill, of 2023. Mr. Speaker, you can recall in this Honourable House we swore by the Constitution to uphold and defend the Constitution of Kenya 2010.

Honourable Speaker, the Acts provides for the establishment of Village Councils and this is the lowest level of devolution. Mr. Speaker, right now, the decisions made at the village level is being made by one person in the name of the Village Administrators. If we approve this report, it will go a long way in the operationalization and the establishment of the Village Councils as stipulated in the County Government Act of 2012, then, we will end up with the Village Councils and its Members and we will realize that decisions made at the village level will be arrived by between four to six members as opposed to now when it is being made by one person who comes from just a section of the village. Mr. Speaker, I am aware that, when establishing these Village Councils and its Members, the Members will originate from all the corners of the Villages. Mr. Speaker, I would like to implore my fellow Honourable Members to concur with this motion so that it assist's us to deliver to our constituents from Kisumu County. I second the motion. Thank you.

The Temporary Speaker (Hon. Okumu, MCA, East Seme Ward): Thank you Honourable Members. A report on the Kisumu County Administration (Village Units) (Amendment) Bill, 2023 has been moved as a motion by the Chairperson Hon. Moses Ochele and seconded by the Vice-chairperson Hon. Reuben Rakwach. Now, I propose to put a question that, we open this report for debate.

(Loud consultations)

The Temporary Speaker (Hon. Okumu, MCA, East Seme Ward): Honourable Members, we are debating a motion on the report on the Kisumu County Administration (Village Units) (Amendment) Bill, 2023.

The Temporary Speaker (Hon. Okumu, MCA, East Seme Ward): Yes Hon. Tom Nyaoke, member representing North Nyakach Ward.

Hon. Nyaoke (MCA, North Nyakach Ward): Thank you Mr. Speaker. I first want to take this opportunity to applaud this House Committee for this wonderful report that they have brought before us this morning. Further, I want to give my gratitude to both the Chair and his Vice-chairperson and the entire House Committee for work well done.

Mr. Speaker, as members of the House, we have endeavored to go through this report before us and I myself have noted quite a number of issues. While perusing through this report, I look at a particular areas which concerns the Public Participation. Mr. Speaker, we have equally keenly listened to submissions made by various stakeholders that include the recommendations and issues that were raised by the Civil Societies. Mr. Speaker, being a representative of the people, and from the basic rules of the county set-up, we have witnessed quite a number of issues and challenges and up to now, we are able to identify the types of challenges that we do encounter particularly with the management up to village level of our respective electoral wards.

Mr. Speaker, a number of issues were raised as you can see in the report which were adequately addressed by this House Committee. Mr. Speaker, for example, if you look at the issue that was being raised by the Civil Societies, which stated that, this Bill attempts to allow for Members of the County Assembly to vet and approve the recruitment of Village Administrators as unnecessary and this amounts to political interference on the Executive functions. Mr. Speaker, nothing can be further from the truth. We have interrogated and looked at all these issues practically, and we have also analyzed the systems on how the current Village Administrators are working. Mr. Speaker, there is need that we make these key amendments so that those Members who will come after we have left will use the appropriate Act that is supposed to guide the operational functions of the Village Administrators.

Mr. Speaker, I therefore concur with this House Committee on the findings and recommendations that they have provided. Mr. Speaker, if you look at section 10 that this House Committee has cited that bestows power to the County Public Service Board that after the subsequent recruitment they do all those things and what is required of us, is to submit the names of the proposed members in a prescribed format so that we are able to verify and see who are these Members of all those units that have been preferred for these duties that they are expected to do. Mr. Speaker, this is a very key recommendation, that, we are not only doing it to suit us but we are doing it for posterity. Those who will come after us, will be able to find a robust legislation that they will utilize in their system of governance. I support this Motion and impress upon Members to support and adopt it. Thank you.

The Temporary Speaker (Hon. Okumu, MCA, East Seme Ward): Yes, Hon Oraro.

Hon Oraro (MCA, Kolwa Central Ward): Thank you Mr. Speaker. The way Hon Nyaoke has contributed, I am sure he is persuading Members to support this report, which is quite in order. My only worry Mr. Speaker is that we do not want to see the problem that we have today. There is a real power struggle in these devolved units that we have created. The Ward and Village Administrators sometimes have a power struggle. Now that whoever hold the position of Village Admin thought he or she was the boss in the village, we have another team that is coming that may not even understand their mandate very well. It is therefore incumbent upon this Honourable House to address such challenges when making this legislation. Let us not just focus

on the issue on appointment but also look at the overall mandates and coordination that comes with the office of the village councils.

Mr. Speaker, I was lucky to have been in the public participation exercise at Ragumo where this issue came up. Some Village Admins attended, thinking that the amendment sought to remove their offices. Others came because of their interest on the matter of term limit. Therefore Mr. Speaker, this Report prepared by Hon Ochele is very important. Actually, if there was a report that need contribution from many Members, then it is this that we are discussing today. First, who are the people to sit as Village Council Members? Some guideline has been provided for in the County Government Act, including the maximum number required. Now, if I look at this critically, Mr. Speaker, and I look at the scenario in my Ward. You know the county was in a rush and so when they said two villages per Ward, they thought it was a good idea. In my Ward it may seem fair enough because then be divided between them into two Sub locations that we have in the Ward.

Secondly, the next question that we grappled with was how to create a village unit going by the clans that exist in that village. This is where the problem begins. Thirdly, the frequency of meeting is another issue. There is a clause we read indicating the Village Administrators as the Chairperson, with powers to summon a meeting to make a quorum. This means that if the Village Administrator has members who are friendly to him, then they could make decisions which may not be in the interest of the people. An Member of the County Assembly may be happy today because while in the process of recruitment his or her preferred candidate might be considered. However, as time goes by, you will notice that the Village Administrator is not an employee of the Member of the County Assembly but rather of the Executive Government working under the administration of the county government of the day. Sometimes, the government would not be fair to what you want as a Member of the County Assembly.

Mr. Speaker, remember, the report will also be coming through the Village Council. As such, we were trying to look at how such can be addressed, such as when we are talking about frequency of meetings, it should be fair enough to represent the Ward. Remember these are people to be paid allowances only. For that reason, many felt the need to have frequency of meetings within a particular period specified. The original Bill intended to focus on reasons that can lead to a meeting. It is those reasons that were being amended. That is why we have the issue of "Special Meetings" and the understanding of the term "Special Meeting", is important. Now, the coming in of the Village Councils was the bone of contention because the Village Admins had powers in the initial Bill to appoint members of the Village Councils, which as Member of the County Assemblies felt was unfair. It was not given even to the Ward Admin.

Now, my question to the Chair, why do you think we should take the Village Council to the County Service Board? Why should the Board be involved to appoint somebody who will assist the community? Why do you want to restrict qualifications for someone who sits in a Village

Council? Remember, a member of a Village Council can be an old woman who never went to school but understands the village well, and their needs; rather than a person who thinks that because of his or her Form four certificate, he should sit in a Village Council. Therefore, this is an issue that we need to discuss. Do we need to set a standard qualification for one to be in a Villager Council? Or should we assume that a Village Council should be open for residents in that village, irrespective of their level of education and qualifications to get opportunities to sit in a council where they can share. This way, you can get a boda-boda rider to sit in that council, without denying such a person an opportunity

Therefore, Mr. Speaker, on the issue of appointment, I am praying that this House sees it as unfair for the County Public Service Board to be involved. Let us see how to strike a balance, without using the County Public Service Board. Although I know the Principal legislation was talking about the Administrators as having power. We should however give some consideration that should be put in the Bill so that those interested in being Council Members are recruited through a process that involves community. Today, you might have the advantage of choosing a Village Council Member, the next day, the Council Member may disagree with you especially during political campaigns. However, the moment we put it in a way..

The Temporary Speaker (Hon. Okumu, MCA, East See Ward): Honourable Member, I want to guide you so that you stop misleading the House further neither is the Member of the County Assembly going to choose Village Council Members, it is provided for in the Act. The process is very clear Honourable Member.

(Applause)

The Temporary Speaker (Hon. Okumu, MCA, East See Ward): I want to guide you that as you give your submissions to the House, do not give a picture that the amendments we are having before the House is meant to give the Honourable Members powers that are not provided for. I think I will allow you to proceed with your submissions

Hon Oraro (MCA, Kolwa Central Ward): Mr. Speaker, I am surprised to see Members applauding.

The Temporary Speaker (Hon. Okumu, MCA, East See Ward): Order!! Honourable Member.

Hon Rakwach (MCA Kolwa East Ward): Point of information Mr. Speaker

The Temporary Speaker (Hon. Okumu, MCA, East See Ward): Let me finish my guidance to Hon Oraro. I know you a good debater and that you want to see substance in what you are presenting before the House. I believe you stand guided by the submissions from the Chair. Let me hear from Hon Rakwach.

Hon Rakwach (MCA Kolwa East Ward): Thank you Mr. Speaker, Sir. I wish to inform my good brother Hon Oraro that it is only the Village Administrator who is expected to have minimum academic qualifications, not other members of the Village Council. Therefore, he should not generalize. Thank you.

The Temporary Speaker (Hon. Okumu, MCA, East See Ward): Yes Hon Oraro, I ma giving you an opportunity to finish your submissions.

Hon Oraro (MCA, Kolwa Central Ward): Mr. Speaker, thank you for your guidance on that issue on the appointment and qualification required for Village Council Members. Now, when you want to involve the County Public Service Board with a position that has no minimum academic qualifications then it may be awkward. I am informed Mr. Speaker. The reason I was raising up this issue in our discussion is because we live in reality. The amendment we are doing today, we do not expect to see it tomorrow. We are tying to cure a problem, and that is essentially why law is created to ensure harmonious working relationships between the offices we are creating. Today, we are given a mandate to create a law that actually will guide, assist and enable these offices to run smoothly. Mr. Speaker, I wanted to submit to you that the issue of appointment and frequency of meeting were major reasons why this Bill needed the attention of the MCAs.

Mr. Speaker, I have sometimes seen a problem with the Village and Ward Administrators. You will find that creating other offices will result in supremacy battles. What happens when there is disagreement in meetings? Who is the final boss? Is a Village Council Member allowed to present a complaint to the Ward Administrator? What would be the role of a Village Administrator during such disagreements? What will happen if the Council Members are dissatisfied with the conduct and manner of operations of the Village Administrator? This is the reason we create laws and for that main reason, I want to say that those preparing such reports did their work. However, they limited themselves to the proposals that were submitted. If we were to take into considerations of some of the things we are saying are likely to happen, you will realize that we need to create more villages in some areas. Some areas are disadvantaged by the arrangement of two village units per Ward. In fact there will be another problem of creating those village units because of clan interests and other reasons. Remember, devolution was to make people feel involved in governance. Thank you.

The Temporary Speaker (Hon. Okumu, MCA, East See Ward): Thank you Hon Member. Yes, Senior Member Hon Oiko.

Hon Oiko (MCA, Kabonyo Kanyagwal Ward): Thank you Mr. Speaker, this bill is very crucial to Members of County Assembly. When we take it lightly you may find later on how it may bring challenges. The people who made the County Government Act, 2012 Section 52 and 53 did not do it for the sake of it. They looked at the political situation on the ground and

understood who an MCA is. When you look at the political hierarchy in Kenya, the most disadvantaged politician is the MCA. I beg to believe that is what they wanted to cure by citing the provisions of Section 52 and 53. Look at the Governor, he is the owner of all wealth in the County, the MP is the owner of CDF, the Woman Representative, who most people call Women Rep, equally has an allocation and people know this. When you combine the Wards and what they get, that equivalent to the allocation of a Woman Representative.

Mr. Speaker, the good political offices in the County have resources and power. It is the office of the MCA which does not have resources and does not have power. That is why, when the Constitution of Kenya, 2010 was being promulgated, someone foresaw that how could an MCA be protected on the ground. As echoed by Hon Oraro, this thing has political connotation; the office of the Village Council. And that is why they said let the Executive do their part then approval comes to the Assembly. We should not take this issue lightly on the meaning of approval. That is the power we have been given by the Constitution of Kenya. If the leadership of the Assembly wants to play with it, then I am telling you, we are finished. We must stand our ground, go as per the Act, let them do all the formalities then they bring the list for our approval. That is all that we want. We are not saying no to the permanent terms of employment but does the Act provide that? The Act does not provide that and this is an Act that was made in Nairobi and not at the County Assembly level. If there is an amendment, then let the amendment be done in Nairobi at the National Assembly. All protests should be forwarded to Nairobi but, as it stands now the terms of employment is 3 years Fixed Term Contract which is subject to renewable.

So, let the Village Administrators do their best and when the contract elapses, they can try their luck on the renewals based on their good service. The proposals made by the Civil Societies are quite a number as documented on page 12 of the report. Let me digress a bit Hon. Speaker. When we were going for elections in the year 2022, an officer of a Civil Society in Kisumu County made a remark, and he went in public to say that; more than 98% of the then Members of the Assembly should go home. That was a remark of a member of a Civil Society. He then overpraised the Clerk of Kisumu County and termed him as the best Clerk in Kenya. I am sorry to hear that he has now passed on. The civil society should give people the truth, and they should enlighten the public. In most cases, they are fond of condemning politicians and they do not tell the public the truth.

Mr. Speaker, like when you go to their meetings; I remember attending a meeting by the civil society at one time, at Springs Hotel, as we were invited. The conversation that was there was to challenge the Members of the County Assembly on what they have done to the public. That is what they are fond of. The question is always that; what has your MCA done? What is your MCA doing on the ground? What they do not inform the members of the public is that MCAs do not have resources, no allocation and that we depend on the County Government. We depend on the Member of Parliament (MP) who has an allocation to develop the constituency. We depend

on the Woman Representative, who has an allocation on Affirmative Action. Am I saying my own things? These are the true positions. So, when they are fighting for Village Administrators to be on permanent and pensionable terms then that is good. However, let them direct that fight to the National Assembly. Let them not antagonize us with the Village Administrators. From their argument, it seems like; we are the ones who have refused these people to be employed on permanent and pensionable terms, which is not the case. When they talk of politics of the ground on this position, they are wrong because politics of the ground is what can kill us and it has killed some of us.

For example, in my ward, there were projects that were recommended for payment yet they were incomplete. And who did this? The office of the Ward Administration. A forum should be established where politicians have a sit down with the offices of the NGOs so that we tell them the truth. When a politician has no power on the ground to monitor the things that are happening, and the government officers do not see their values, I am telling you then you are finished as a politician. We are happy because these are our brothers and sisters and they should get employment even if it is on permanent and pensionable terms. The word approval was not for the sake of it and it has a lot of weight and we cling to it. That it is contract as it is now, we demand that, and we do not oppose the term "renewal". Let them try their luck then we move on. We have no power to make them permanent, and that we say "no" to the proposal that the "approval" to be removed from us. The Constitution of Kenya had given us that power, and it has a lot of political connotations. We demand that we do the approval and we move on.

Mr. Speaker, we must demand the Regulations on this Act, from the relevant County Executive Committee Member (CECM), so that it does not fail the way it failed in the Second Assembly. In the Second Assembly, we passed the Act, approved the list that was brought to us, then things got stuck. Chair, this time with your able leadership, let us see that we do it to conclusion. I so support.

(*Feet thumping*)

The Temporary Speaker (Hon. Okumu, MCA, East See Ward): Yes, the Hon. Member for Central Seme, Hon. Mildred Ajumbo.

Hon. Ajumbo (MCA, Central Seme): Thank you, Hon. Speaker. I start by commending the Members of the Committee on JLAC for the work they did. Mr. Speaker, I stand to support their findings, observations and recommendations. I am not going to read the recommendations or observations because we all know them. My only issue is on the receipt and submissions of the public hearing by the civil society organizations named above and that is KMET and the rest. My issue is on item number 2, where the civil society said that the petitioners aver the County Assembly the authority to oversee the recruitment of Village Administrators and went on to state that there is conflict of interest.

Mr. Speaker, on item 3, they have also mentioned the idea of permanent and pensionable terms. I do not know whether they are the ones who are creating confusing between the Ward Administrators and the Village Administrators Mr. Speaker.

Mr. Speaker, on number 3 on their submissions, they are calling Village Administrators the Ward Administrators. Mr. Speaker, I want to support what Hon. Oiko Pete said, that it is indeed many of our people on the ground who do not know the roles of the MCA. Quite a number of people on the ground do not even know what is entailed in the Bill that we are discussing, simply because members of the Civil Societies who are supposed to educate members of the public, are very busy talking about Village Units. And yet, there are a lot of projects that are done on the ground, Mr. Speaker, that are incomplete. Those are things that the devolution was to go down to the village units yet the people that voted and the members of the public are not feeling anything on the ground.

Mr. Speaker, when you walk in many wards, you will find a number of incomplete projects since the year 2013. Members of the Civil Society Groups are very busy inciting the village members. I am quite disappointed Mr. Speaker, that a whole Civil Society, the six of them, coming up to say that the MCAs seemingly are coming up with this Bill with malicious intentions. Mr. Speaker, this is not in good light, what the members of the Civil Societies are doing to this Assembly. Indeed, our work of oversight is being undermined by the members of the Civil Societies, and I would encourage them to go to the ground and educate the members of the public on the rights of the citizens as stipulated in the Constitution of Kenya (CoK). Mr. Speaker, as I resume my seat, I want to support the recommendations by this House Committee; as I said I won't repeat it, and want to support by saying that it is high time that the Members of this County Assembly were given their due respect and what the Constitution of Kenya says Mr. Speaker. Thank you.

The Temporary Speaker (Hon. Okumu, MCA, East See Ward): Hon. Members we are debating on the Kisumu County Administration (Village units) (Amendment) Bill, 2023.

The Temporary Speaker (Hon. Okumu, MCA, East See Ward): Yes, Hon. Zachary Okoyo.

Hon. Okoyo (MCA, Central Kisumu Ward): Thank you, Mr. Speaker. I arise to support the report by JLAC. I would like to support the Kisumu County Administration (Village units) (Amendment) Bill, 2023 because I have gone through the report and indeed want to agree that there is a lacuna in the Kisumu County Village Units Act, 2019. Mr. Speaker, it is obvious that the village unit is not complete without a Village Council. I want to bring to the attention of this House that, like other Members have mentioned, there has been a lot of misunderstandings and disagreements between the Village Administrators and the Ward Administrators in our wards. Mr. Speaker, at times we understand that the Ward Administrators were transferrable, and I would want to also mention that at times, the Village Administrators assume powers which are

not supposed to be theirs. This comes because they ought to have meetings in their Village Councils but because the Village Councils are not there, they tend to assume powers that are for the Ward Administrators.

Mr. Speaker, it is indeed also true, that most of the Ward Administrators abandon their duties because they find them not having enough responsibilities. This has been a norm which brings a lot of confrontation in our ward units. Mr. Speaker, you cannot say that we have Village Councils without mentioning how they are going to be remunerated. I believe that if we amend this Act, then we will be able to pass a Bill which is going to remunerate the Village Councils so that they be part of administration's office. This is the intention and spirit of devolution that is meant to be at the lowest point to be active. Mr. Speaker, I heard my colleagues mentioning that some areas have two Village Administrators in a ward, and I want to also mention that the Village Councils, which were supposed to be in these places, are not there. The other part of the village therefore finds itself not represented. If the Village Councils can be in place and made active, this issue of other areas which are not being represented will seize to exist. So, Mr. Speaker, I concur with these amendments and I would like to implore me fellow Honourable Members to support. Thank you.

(Loud consultations)

The Temporary Speaker (Hon. Okumu, MCA, East Seme Ward): Yes the Hon. Member representing North Kisumu.

Hon. Dede (MCA, North Kisumu Ward): Thank you Mr. Speaker for according me this opportunity to give my sentiments concerning the motion at hand. Foremost, as it has been elaborately explained that the Ward Administrators should be in the office for a certain period of time and according to the views from the Civil Societies, I believe their views were somehow misleading by stating that these officers should be employed on permanent and pensionable terms.

Mr. Speaker, according to my considered opinion, the Civil Society Groups were trying to mislead members of the public when you look at their submissions. When these Ward Admins are placed on Permanent and Pensionable basis, you will realize that in their areas of jurisdiction they delegate duties to their counterparts the Village Administrators because they hold positions as the secretaries to the Project Management Committees (PMCs) and instruct the Village Councils to prepare reports with regards to completion of development projects in our respective wards and this brings controversies. Again, it is public knowledge that their term should lapse after every three years. Mr. Speaker, according to the provisions of relevant statues that guide their benefits, there is nowhere indicated that they are entitles to pension this is because they having survived in these positions for a period of three years and that implies that they should only be entitled to Gratuity and not Pension.

Mr. Speaker, with regards to the level of education as provided by this Act, which should be a minimum of "O" Level. In this position, I would recommend that this should be reviewed so that we get people who can work with dedication this is because the level of education provided in the Act with an "O" level, it is my considered opinion that this is somebody who can reason well and be in synch with what is happening in their jurisdiction. Mr. Speaker a person with an "O" level education which fits the position of Village Councils, this is somebody who is able to reason well and address issues within their regions. Mr. Speaker, you will note that from the selection for the position of Village Councils you will observe that laws are being adhered to and when being recruited, Gender parity should be considered from all the regions. So, I support these amendments and pray that Members of these Village Councils should be brought on board and we should not put more emphasis on the level of their education and what should be considered is that they are they well verse and conversant with what is taking place with their borders. Thank you.

The Temporary Speaker (Hon. Okumu, MCA, East Seme Ward): Yes the Hon. Member representing North Seme, Hon. Millicent Omuya.

Hon. Omuya (MCA, North Seme Ward): Thank you Mr. Speaker for bestowing me this opportunity to make my contributions on the report that has just been read by the Standing Committee of Administration of Law, Justice, Constitutional Affairs and Security.

First, let me take this opportunity to applaud the Chairperson, Hon. Ochele and his entire team for doing such a magnificent report. Mr. Speaker, I can recall that before this Act was brought for amendments, there was a Statement that was sought and the major concern was how these Village Councils were going to be remunerated and we want to know as to why this process was started and later stalled. Mr. Speaker, I am glad that this House Committee has done so much than what we had requested in the statement. It is my plea and humble request that, as much as this House Committee was working on these issues; I personally believe that this is the appropriate time as an Assembly we bring sanity in the administration of this County. Mr. Speaker, if you look at the way the Village Councils are encountering so much challenges in terms of the administration of our wards because you will find out that, some of the Village Councils Members are so powerful and influential more than the Ward Administrators and if you go beyond the administration most of them are so much into politics.

Mr. Speaker, if we put up mitigating measures and streamline the Village administrations and this should be right from the Villages to the County level, we will have corrected so many things. Mr. Speaker, I heard a Member talk about the approval of development projects that are wrongfully completed and these contractors end up being paid. So, you will realize that these approvals are done by the Village Council Members. So, it is my prayer that by the recommendations that have been made and contained in the report of this House Committee concerning the issues of administration, this will help streamline and put us in a better position

with our administration and ensure that all the mistakes that have been happening contrary to the laid down laws and regulations are addressed. Mr. Speaker, I want to appreciate you so much and I support.

The Temporary Speaker (Hon. Okumu, MCA, East Seme Ward): Yes Hon. Geoffrey Warindo, Member representing Miwani Ward.

Hon. Warindo (MCA, Miwani Ward): Thank you Mr. Speaker for conferring me this opportunity to support this report. Mr. Speaker, it is always my belief that the intention and the spirit of Devolution was to take services closer to the people. Mr. Speaker, having these Village Councils and the Village Units as the smallest unit of devolution are the villages. Mr. Speaker, it is high time that they are given the recognition that they deserves. Mr. Speaker, if you go through the report, I equally believe that the intention and the purpose of this Bill is to bring clarity in what these Councils should be doing.

Mr. Speaker, actually the Ward Admins, Village Admins and the Councils need to understand their roles and mandates as a Council and what is expected of them to do. Mr. Speaker, another clarity is that we need to know what the Civil Societies are representing out there because most of the forums that we have held in their presence we have always witnessed antagonism between the Civil Societies and the elected leaders and we doubt if at any particular time that will ever yield a positive recommendations to the elected leaders. Mr. Speaker, I am one of the elected leader who had been profiled as one fighting the Village Administrators and as one who intends to usurp powers to choose the Members of the Village Councils because, if you look at what the reports states here clearly that the Village Administrator and the Council Members should be appointed and I would like to applaud this House Committee for having brought out this issue explicitly and in an elaborate way on their terms of engagement. Mr. Speaker, if you read on how they are supposed to be recruited and if we really want to see services being delivered at the ward level, let us support this report. Thank you so much.

The Temporary Speaker (Hon. Okumu, MCA, East Seme Ward): Yes Deputy Whip!!

The Deputy Whip (Hon. Obonyo, MCA, South West Kisumu Ward): Thank you Mr. Speaker. I can see that the House has exhaustively deliberated this report so, may I call upon the mover to reply. Thank you.

The Temporary Speaker (Hon. Okumu, MCA, East Seme Ward): The mover Hon. Ochele!!

Hon. Ochele (MCA, East Kano/Wawidhi Ward): Thank you very much Honourable Speaker. May I take this opportunity to commend the House and Members for their positive contributions towards this motion. Mr. Speaker, it is very encouraging to get a debate where unanimously the entire House has given their positive views and this implies that indeed it is a matter that touches our constituencies which are the wards and is a matter that is of importance to our County.

Mr. Speaker and Honourable Members, the intentions of the proposed amendments is just to simplify the work of the County Executive. It is to ease their work in the best way possible to come up with the devolved units and its councils.

Mr. Speaker, in the provisions of the County Government Act of 2012, sorry before I move to the County Government Act, in the Constitution of Kenya 2010 it is indicated that we have two governments and the second government can expressly be mentioned to be 48 Governments and these 48 Governments must be interdependent. Mr. Speaker, in the County Government, the County Governments Act of 2012 expressly states that, there are the arms of government notably the County Executive which is headed by the Governor, then there is the Legislature which is the headed by the Speaker of the County Assembly and then there is the Village Council headed by the Village Administrators. This is a three tier arrangement of governments in Kisumu County.

Mr. Speaker, the intention and purpose of this Kisumu County Administration (Village Units) Amendment Bill, 2023 as was stated by Hon. Nyaoke, it is not for the sitting Members of the County Assembly neither is it for the sitting Members of the Village Administrators or Councils but it is for posterity. It will used during the time of my children and again it will be used forever unless other further amendments are proposed for the future.

Mr. Speaker, Hon. Warindo raised a concern in the confusion in the submission of Members of the Civil Societies where they confused the two subjects. Mr. Speaker, subject one which is about the Village Council Members. Mr. Speaker, in their own submissions which was done in soft-copy, they are mostly referring to Ward Administrators. So, I don't want to assume that, they meant otherwise, I want to pick that the Ward Administrators are on Permanent and Pensionable Terms and we cannot argue about that, and if that is what they intended and this House cannot go any other way because these Ward Administrators are on Permanent and Pensionable Terms and that implies that, and they are transferrable.

Mr. Speaker, the mandate and the procedures for Recruitment of Village Council Members is explicitly given in a superior legislative document which is the County Government Act of 2012 and we leave it at that and we don't have any capacity to propose any amendments to the County Government Act of 2012. Mr. Speaker, going by the provisions of section 52, it gives the procedures on how a Village Administrator can be recruited. It is expressly given to the County Public Service Board and it is done competitively. Therefore, there is no any other way this Assembly nor the Committee of Justice and Legal Affairs could have proposed otherwise. This Assembly has the mandate to oversight what the Executive does including recruitment of the Village Administrators and its cabinet. Mr. Speaker, in the County Government Act, section 53 narrates on how we come up with Village Council. I heard a Member mentioning that the Village Council should also be competitively advertised, no! The Village Council Members are appointed by their president who is the Village Administrator. After appointing, they sent the list to the County Public Service Board for onward submission to the Assembly. So you can see how

powerful the Village Administrators are. He/she can chose to consult the Village Administrator or the Sub-County Administrator but, the power is vested in the office of the Village Administrator. It is also expressly given by that superior legislation that the Village Administrator is the Chairperson of the Village Council, so we cannot talk of a Village Council in separation. They are the same since there cannot be a Chairperson without a Council. When we are talking of the Village Council, then we are talking of a whole sub-unit, the committee and the cabinet at the village level.

Mr. Speaker, in the same County Government Act, it mandates this Assembly the power to approve the Village Administrators but, the County Government Act states that the Members of the Council are not State officers. The authors of the Act realized that for effective and smooth running of the village functions then, they have to be approved by this House. How do we approve a committee and forgetting to approve a Chairperson? Why must we separate a Chairperson from his team? Why must we separate a father from his children? The Act gives us express powers to approve the Village Administrators. Therefore, I find no contradiction and I have realized that Members are in agreement that there is no contradiction on the superior law. We are adhering to the law to the latter. Mr. Speaker, as we speak today, Kisumu County has heard Village Administrators. I heard from Hon. Dede that they are working and their work has some confusion because they even overlap to the functions of the Ward Administrators. Mr. Speaker, by the spirit of the Constitution and the spirit of the County Government Act, the role of the Village Administrator is entirely tied to the Council, he has no any other role outside the one that is given by the law about the Village Council. Since we don't have the Village Council in operation, these people find no role to do other than to do that which is to be done by the Ward Administrator. So, the overlap is created because the Village Council is not in place. Therefore if the role of the Village Administrator rotates among the Council therefore it means that for the past three years these Village Administrator have not done their role and if a serious legislative regime is in place then they can even be asked where they have been earning their salaries without their functions being operationalized.

Hon. Oraro talked about the qualifications of the Village Council Members and the Village Administrator and the way they are appointed. In the Kisumu County Village unit Act, 2019, it is indicated and borrowed from the County Government Act that the only position that is advertised by the County Public Service Board is the position of the Village Administrator and therefore there is attach the level of academic qualification that is and or post of "O" level in administration. Otherwise, I have not met anywhere in the Act where we talk of the Village Council's qualifications. It only mentions the Chairperson that he/she must have a minimum level or plus a post level certificate in administration.

Mr. Speaker, I was talking about the powers as indicated by Hon. Oraro. If the Council is well constituted, then it is a very powerful organ and more powerful than even the Sub-county

Administrator because the first powerful thing it has is that it only share that power with the County Public Service Board and the Governor himself who can directly appoint a member into an office. So, you can see the importance attached to this office. Anything on the grassroots be it public participation, the report is written by the Village Administrator through the resolution of its council. They will be having a parliament where they legislate matter of development in their village unit. This is not a simple office because it is lowest ranking but it has a lot of powers attached to it because of the roles assigned to it by the Constitution.

Mr. Speaker, I want to echo what Hon. Pete said that we are in collaboration with Members of the civil society but a number of occasions they betray the noble course that should be geared towards the legislature and themselves to developing or to bettering the livelihood of the people of our citizen. Mr. Speaker, there are so many provisions in the law where Members are appointed on contract basis. In the last Government, we had 10 County Executive Committee Members who were hired on a contract of 5 years. When their term came to hold, they went home. Nobody supported them, Members of the civil society supported them but they did not raise a finger. We had the positions of the Chief Officers, when their contract came to an end, they went home including your friend Mr. Speaker whose name I don't want to mention. They applied for the positions, went through vetting process and got successful. When they were going home, Members of the civil society were there and they kept quit because that is the position of the law. We had about 52 directors and when their contract came to hold, all of them went home.

Mr. Speaker, we find it very funny that why critic this law that gives the Village Administrators three years contract and bring controversy? What interest does it attach which cannot be attached to any other position. I would like to call upon the civil society Members to be non-partisan and conversant with the law and protect the law as it is without observed biasness.

Mr. Speaker, Hon. Pete talked of Sub-county Administrators, the Ward Administrators and the Village Administrators. I have gotten complaints that the Sub-county Administrators are getting it easy working with Village Administrators and therefore by-passing the Ward Administrators. The hierarchy should be adhered to and not by-passed but as it is now since the Village Administrators do not have anything to do, they are being used by the Sub-county Administrators to undermine the Village Administrators. We want harmony to prevail in our sub-counties and don't want anybody to feel belittled. Everybody has a duty and we should allow them to perform such duties as enshrined in their contracts of service.

Mr. Speaker, I want to summarize by saying that there is no anomalies with anybody in this County. This House is majorly composed of Members on contract and in the next 4 years the contract of these Members will be over. They will not go to court but will go to the public court to seek for new mandate. Therefore, as Members who understand that there is obligation and understanding of the law based on contractual obligation, we will go home. We are urging those that will go home that they should do so and that they are encourage to apply if the positions are

advertised. Otherwise, this House has no mandate to recruit; this House has no intention to usurp powers of the County Public Service Board. We are ready to work with them at any time when they are back but so long as the law is followed to the later. Thank you.

The Temporary Speaker (Hon. Okumu, MCA, East Seme Ward): Honourable Members, a report the Administration of Law, Justice, Good Governance, Constitutional Affairs and Security Committee report on the Kisumu County Administration (Village Units) (Amendment) Bill, 2023 has been moved, seconded and debated upon, I therefore want to put a question on the same.

(Question put and agreed to)

The Temporary Speaker (Hon. Okumu, MCA, East Seme Ward): Honourable Members, the report the Administration of Law, Justice, Good Governance, Constitutional Affairs and Security Committee on the Kisumu County Administration (Village Units) (Amendment) Bill, 2023 has been adopted today Wednesday, 08th November 2023 at 11:06 hours. Honourable Members, this report will inform the changes on the Kisumu County Administration (Village Units) (Amendment) Bill, 2023 during our 2nd reading. Thank you.

The Temporary Speaker (Hon. Okumu, MCA, East Seme Ward): Next order!

ADJOURNMENT

The Temporary Speaker (Hon. Okumu, MCA, East Seme Ward): Honourable Members, there being no any other business to transact, the House stands adjourned to today Wednesday, 08th November, 2023 at 2.30 p.m.

(House rose at 11.08 a.m.)

Addendum

Hansard Team

Zablon Otiende	-	*In-charge, Reporter*
Edward Odanga	-	*Reporter*
Fanuel Okode	-	*Reporter*
Patrick Okoyo	-	*Reporter*
Jesca Otieno	-	*Reporter*
Dennis Onyango	-	*Reporter*
Jacklyne Otieno	-	*Reporter*

[i] *Kenya Small Scale Farmers Forum and 6 others v. Republic of Kenya and 2 others (2013) eKLR, paragraph 47*