REPUBLIC OF KENYA

KISUMU COUNTY ASSEMBLY

HANSARD

WENESDAY AUGUST 5TH 2015

AFTERNOON SESSION

TIME: 230 P.M.

[Prayers from Mr. Speaker Hon. Elijah Omondi]

{NOTICES OF MOTION}

Hon. Salome Lungafa: Thank you Mr. Speaker I rise to give a notice of Motion on the

1. Report on the Kisumu County persons living with disability Bill 2014
2. The Kisumu County persons living with disability Bill 2014 (2nd reading).

COMMENCEMENT OF BUSINESS

1. Report on the Kisumu County persons living with disability Bill 2014

Hon. Salome Lungafa: Report of the Justice and legal Affair committee on Public Participation on persons with Disability Bill 2014 presented on 5th August 2015 at 2.30P.M

Preface

Under standing orders second schedule sectorial committees, there shall be a select committee to be known as Justice and Legal Affairs.

Committee Members.

1. Hon. Akoth Okombo - Chairperson
2. Hon. Salome Lungafa - Vice chairperson
3. Hon. Gabriel Ochieng - Member
4. Hon. Aggrey Ogosi - Member
5. Hon. Joshua Auko - Member
6. Hon. Yonah Maina - Member
7. Hon. Lydia Ndege - Member
8. Hon. Faridah Ahmmed - Member

9. Hon. Jane Omollo - Member
10. Hon. Aslam Khan - Member
11. Hon. Joseph Otiende - Member

COMMITTEE STAFF

1. Mr. Owen Ojuok - Committee Clerk
2. Mr. Kennedy Okise - Sergeant at Arms.

COMMITTEE MANDATE

Madam Speaker,

The Committee derives its mandate from

(a) The Constitution of Kenya schedule four (4)
(b) Standing order second schedule sectorial committees which outlines its functions to be as follows;

Constitutional affairs, the administration of law and justice, including the elections, ethics, integrity and anti-corruption and human rights.

Hon. Faridah Ahmed: Thank you Mr. Speaker, I rise to second the report of Justice and Legal affairs committee on Public participation on person living with disability Bill, 2014

Mr. Speaker (Hon. Elijah Omondi): Hon. Members, report from the Justice and Legal Affairs Committee on Public Participation on Persons Living with Disability Bill, 2014 has been moved and seconded, so I now put a question that this House adopts the same report.

(Question put and agreed to)

Speaker (Hon. Elijah Omondi): The Justice and Legal Affairs report of the Kisumu County persons living with disability Bill 2014 has been adopted by this House.

[Motion 2]

2. Kisumu County persons living with disability Bill 2014 second reading.

Hon. Salome Lungafa: I now request the House to revert to the Committee of the Whole House so that the Kisumu County Persons Living with Disability Bill 2014 be read for the second reading and I call upon Hon. Otiende to second.

Hon. Joseph Otiende: Thank you Mr. Speaker, I rise to second the proposal by Hon. Lungafa that we revert back to the Committee of the Whole House so that we can read the Kisumu County Persons Living with Disability Bill 2014 for the second time.

{House reverts to the Committee of the Whole House – Hon Samuel Ombogo takes over the chair}

Chair (Hon. Baker Ombogo): Hon. Members, we are now in the Committee of the Whole House and I am looking for the Chair or Hon. Ochele, I want to hear from you Hon. Agwanda,

I heard that you wanted us to handle this Bill in a certain way let me hear you.

Hon. Caroline Agwanda: I think Mr. Chair, I will abide by what you say.

[Second reading of the Kisumu County persons living with disability Bill, 2014]

KISUMU COUNTY PERSONS LIVING WITH DISABILITIES BILL, 2014

ARRANGEMENT OF CLAUSES

Section

PART1—PRELIMINARY

l—Short title

2—Interpretation

3—Objects and purpose of the Act

PART II—ESTABLISHMENT OF THE BOARD

4—Establishment of the Board

5—Membership of the Board

6— Tenure of office

7— Chief executive officer

8— Functions of the Board.

Hon. Petronila Omondi: Thank you Mr. Speaker, I think the title has been amended by the Committee of Justice and legal Affair, so I suggest that we consider the amendments from the Committee visa vie the Bill so that we can include the amendments in the Final Bill.

Chair (Hon. Baker Ombogo): What we are now asking is if any Member has any input apart from what has been suggested by the Committee or even accept or reject the recommendation from the committee.

Hon. Moses Ochele: Mr. Chair, on the title suggested by the committee that the title be changed to read Kisumu County Person Living with Disability act, 2014, should be an act or a bill Mr. chair? Why should it be changed from an act to a bill? on that note, I want to propose that the title be stated as Kisumu County Persons with Disabilities Bill, 2014, the word living should be removed as recommended by the Committee

Hon. Elijah Omondi: Thank you Mr. chair, I second the proposal by Hon. Ochele that the title be maintained as Kisumu County persons living with disabilities bill, 2014 I think that it should be a Bill; it

should be an act after being signed by H.E the Governor.

Chair (Hon. Baker Ombogo): Hon. Lungafa, do you have anything to say, Why did your committee want to change the title to read Kisumu County Persons with Disabilities Act, 2014 and not the Kisumu County Persons with Disabilities Bill, 2014?

Hon. Salome Lungafa: Thank you Chair, we are in the committee of the whole House and I think we can correct where we fill there is a mistake so if the Member feel that it need to be a Bill and not an act well and good.

Mr. Chair (Hon. Baker Ombogo): Hon. Elijah has seconded what Hon. Ochele proposed and I want to put a question that the title of this Bill read Kisumu County Persons with Disabilities Bill, 2014 instead of what the Committee proposed.

{Question Put and agreed to}

Hon. Faridah Ahamed: We are in part two, section Four 1, where there is the establishment of the Establishment of the Board for persons with disability, in our report the word Board is to be replaced with Kisumu County Disability Committee, if you go down there at the recommendation, that is on page 4 of our report {Interrupted}

Mr. Chair (Hon. Baker Ombogo): Hon. Faridah, we are still in the arrangement of Clauses, so if we reach Part four you will raise those amendments.

Hon. Faridah Ahamed: Ok.

PART III—RIGHTS AND PRIVILEGES OF PERSONS WITH DISABILITIES

Rights of Persons with Disabilities

9—Realisation of rights of persons with disabilities

10— Right not to be discriminated in employment

11—Discrimination by employers prohibited

12—Incentives to employers

13—Records for job placement

14— Right not to be discriminated in an educational institution

15—Special and non-formal education

16— Health of persons with disabilities

17— Right to accessibility and mobility

18—Adjustment orders

19—Denial of admission into premises, etc.

20— Prohibition of adjustment orders against government institutions

21— Right to sports and recreation

22— Right to vote

23—Registration of organizations

24—Non-derogation

Privileges of Persons with Disabilities

25— Income tax exemptions

26— Donations, bequests, subsidies or financial aid

27— Promotion of access to credit

Chair (Hon. Baker Ombogo): Arrangement of Clauses on part III, so I want any Member to make any amendments if any.

{No Input on this part}

Let us proceed if there is no input.

PART VI—MISCELLANEOUS

28— Failure to obey an adjustment order and discrimination

29— Concealment of persons with disabilities

30— Negligence by doctor

31— Giving false information to get registered

32— General penalty

33— Enforcement

34—Regulations

Mr. Chair (Hon. Baker Ombogo): Is there any input on this part {28,29,30,31,32,33,34), I can see that

there is no input on this part and I want to request the Clerk to continue.

A Bill for

An Act of Kisumu County to provide for the rights and rehabilitation of persons with disabilities; to achieve equalization of opportunities for persons with disabilities; to establish the County Board for Persons with Disabilities; and for connected purposes

ENACTED by the Kisumu County Assembly as follows:—

Mr. Chair (Hon. Baker Ombogo): Any Member with Any Input on the Title. Hon. Faridah you were talking of putting a Committee to replace the Board.

Hon. Faridah Ahmed: Yes Mr. Chair, I want to seek a clarification from the House because if you look at the report, it is talking about replacing the Board with Kisumu County Executive Committee and then down there at the recommendation on page 4 of the report, the First recommendation says; since the law seeks to mainstream Gender in the County, there should be an established committee Known as Kisumu County Mainstreaming Committee, so I was seeking clarification on which committee we should adopt.

Hon. John kadede: Mr. Chair, I am yet to be convinced on why they want to replace the Word Board with a Committee, I think the committee Members should tell us why they are replacing the word board with Committee.

Hon. Aggrey Ogosi: Thank you Chair, in addition to what Hon. Kadede has just said, in writing a law you must be precise and I believe concise and so chair if you bring out the word mainstreaming, it is carried in the Bill, if you read through the Bill you will find out that the intention of the Bill is to actually mainstream matters related to PwDs, that is the intention of the Bill and so I do not see the essence of bringing the Word Mainstreaming.

Mr. Chair (Hon. Baker Ombogo): So you are proposing that it remain the way it is?

Hon. Aggrey Ogosi: Yes.

Hon. Lungafa Salome: I want to second the proposal By Hon. Ogosi.

Hon. Moses Ochele: Hon. Chair, I think even the committee does not know why they suggested some of

the changes in their report, I think the Disability Act that was passed by the National Assembly has a Board and National Legislation is all inclusive and so if we have a board at the National level, this is my opinion that in the 47 Counties that we have, we can have Committees and that the umbrella body will be the Board at the National level. I think this report has not been domesticated by the committee members because if you proposed a change and you cannot say why you have made that change, I find that quite challenging.

Chair (Hon. Baker Ombogo): Hon. Ochele, I want you to make your proposal, Hon. Lungafa who read the report is not even defending the report instead she is the one who is seconding that the word Board remain the way it is, I do not understand where the Members of the committee are.

Hon. Lungafa Salome: I think what I have seconded is what we proposed as a Committee, but I did not bring a new amendment**.**

Hon. Elijah Omondi: I think the Spirit of the Committee Members is not in the report I think this report is a foreign documents and the committee members of Justice and Legal Affairs are seeing it for the first time on the floor of the House. This report looks strange to them.

Hon. Lungafa Salome: Hon. Chair, I want to say that every time the Hon. Members are used to fight the Committee of Justice and Legal Affair, we have brought the report to the House for discussion and they are supposed to amend where they think is wrong and do the necessary adjustment.

Hon. Samuel Ong'ow: Mr. Speaker, the Bill we are almost finalizing is a very important Bill to this County and it would not be right and I want to repeat that it will not be right since many members of this Committee are good friends of mine and it will not be right for me to appear not to be supporting the document but the only way that members who are not members of the Committee can follow what was discussed in a particular committee, is by explanations from the committee Members of that Committee because they had enough time and they can collect data from other places.

Mr. Chair, looking at the contributions generally, I think that you have heard Hon. Faridah talking, who is a member of this Committee, you have heard Hon. Ogosi talk, he is also a member of this Committee and the list can continue, looking at how they are contributing to the report, it is like they are also not owning the report. They also want to make more amendments with us. We are not rejecting the report but

it is important for the committee members to own the report on our behalf before we all own it in the House. It is like this is a strange report to them and most of them do not own the report, I don't know if I am the only member who is seeing this.

Hon. Faridah Ahmed: Mr. Chair, kindly allow me to say this, the fact that a report is brought to the floor of the House does not mean that it is 100% perfect and that is why it is introduced to other members to input further on it. Chair, you remember when I was defending the short title, I was doing that because I am a member of the Committee of Justice and Legal Affair and I realized that some members of the Committee did not understand that Bit and so there is no harm on us inputting on it and arguing on it so that we can come up with a better Bill. So Chair, I want to humbly ask my Colleagues and more importantly I want to inform the Members that the owner of the Bill is in the House and we can always seek more clarification from her if at all we have messed, thank you.

Hon. Moses Ochele: Point Of Information. Mr. Chair, may I start by clarifying the assumption that the owner of the Bill is Hon. Agwanda. This bill is a Document of the House, it stopped to be a document of an individual long time ago from the moment it was tabled and approved so it is not right for a member to insinuate that it is someones' property.

The Hon. Chair, you are quite informed that Hon. Ogosi is a member of that Committee, Hon. Maina is a member, Hon. Jane here is Member and Mr. Chair all of them are saying that they have never seen this report, they have seen it today, so my question is where was it discussed, was it discussed in a Hotel and that is why I was saying that the committee of Justice and Legal Affair is notorious of bringing outside documents and they try to domesticate it. I think before a report is brought in this house from a committee, it should be owned by the committee Members and by owning the report it is not just a matter of appending our signature but you must understand the flow of your report, what we are being told her that if Members you find anything wrong you just correct. This tells you clearly that they are not aware of what is happening and where this report was cooked and what I suggest is for the committee to come out clean and tell us that the report was done somewhere and brought to the House without their Knowledge otherwise we are here to debate it because this Bill is very important but we need guidance from the Committee Members.

Hon. Elijah Omondi: Mr. Chair, let us be sincere with ourselves, I have gone through the report and it

is full of contradictions, each part is contradicting the other, I don't know if the Members saw it, like for example we have always been told that we should not refer to people Living with disability to people With disability and in the report People Living with Disability is repeated so many times which is against the spirit of Hon. Agwanda, she has always corrected that.

Hon. Lungafa Salome: Mr. Chair I am at a loose, are we discussing this report after adopting it or what. Mr. Chair when I read the report no one stood to reject it and now we have adopted it and we have moved further to the Bill is when you want to reject the report, so I fail to understand what is wrong.

Hon. Arwa Osano: Mr. Chair, I want to request this House not to go personal. This is a serious document in this House and I believe for us to discuss a document of this nature some of us must have preview to this Document, but from what I am seeing today, personally I do not belong to that committee and I am seeing this document for the first time and from what the person who moved the motion is talking about is like there are people who sits in this committee and there are also seeing this report for the first time and that is why Hon. Lungafa is saying that when she read the report no one said anything until the House adopted it.

It is high time we speak the truth because this is one thing that will help the County or it can also bring the County Down. It is not personal please Hon. Lungafa allow me to talk please, let just debate positively and if there is a problem with the report there is no harm we can still go back and discuss it.

Hon. Moses Ochele: Mr. Chair, I think at this stage the standing Order allows us to ventilate what is in the report and match it with what is in the draft Bill. Mr. Chair, you cannot discuss the Bill without marrying the two. I think what we are doing is the right thing to compare the two documents so someone should not claim that we did not raise our concern when the report was read.

Mr. Chair, I want to tell Hon. Faridah that it should be deleted from the Hansard, she is again repeating that she was defending the proposed amendments on the Short title, I want to refer her to page 3 {Interrupted}

Mr. Chair (Hon. Baker Ombogo): Please let us not go back, I had already overruled on that.

Hon. Isaya Omwango (Chief Whip): Thank you Chair, I am sorry because I have heard Members

discussing something that they know they did not make themselves. Mr. Chair, it is a trend in this Committee; I want to say members like Hon. Ogosi who is speaking here is one Member that you will not find attending a Committee Meeting, and so you cannot walk with a paper so that Hon. Ogosi can sign, I think that one is unfair to the committee, though this committee has never done anything good and I know the members know what I am talking about.

I think the report from the committee cannot deny us from discussing the Bill, I think yesterday something of the sought happened in parliament where Members discussed issue of Hansard and when the committee report was laid in the House the Committee Members turned against it. I think as Hon. Members we are supposed to do what is right, it is not a must that we must finish this Bill today, we can go through it and we do whatever is right and we come up with a document that is acceptable to all Members instead of going round and round.

Mr. Chair, lastly, I want to request you not to every time listen to Hon. Ogosi, he is misleading you because he always want to find his way and that is not right.

Hon. John kadede: Mr. Chair, I only want to ask one question why we are replacing the word Board.

Chair (Hon. Baker Ombogo): That is what we asked the Committee and we have not gotten an answer.

Hon. Samuel Ong'ow: Thank you Chair, I may be making wrong proposals at times but I am concerned with this Bill and first of all the sponsor of this Bill is a good friend of mine and indeed I want this Bill to be passed, but what I want to remind this House Mr. Chairman is that the Business before us is a Bill, it is not a Motion, we are in the process of passing a bill which is going to be a legislation to be used in a Court of Law. This is what a sitting Judge will be using is Court of Law to determine any violation in any part of the Bill and so it is very Important for us as a House to do the right thing, we have seen even the National Assembly passing Laws that have been challenged in Court, you even remember the Security Bill that was challenged by CORD in Court and they won the case and this shows that the parliamentarians did not do their work properly and I may not want this Assembly to go that direction but I may request that the Clerk be given time now that we do not have a legal person, but we have some in our list of prequalified tenderers, we want the Clerk to find one who can help the committee.

Mr. Speaker, I want to propose that the Committee withdraws this Motion so that more research can be

done and be brought for discussion in a later date.

Hon. Moses Ochele: Thank you Chair, I want to second the proposal by Hon. Samuel, I think we withdraw the report so that more research can be done, I think we do not want to do harm to the People of Kisumu County. Mr. Chair, the Bill is very Ok and it just requires some panel beating here and there, but the way this report has been done is not right. I got a chance to go through the report from yesterday and the report and the Bill are promoting total contradiction and I think the best way to help this report, because I know that Hon. Agwanda is traveling soon to South Korea, and the best tool for her to carry is a Bill from this Assembly, but if she carrys something that is not consistence it will affect her personality which she has built over the years. The best thing to do with this report is to withdraw it and allow the committee to sit and the Clerk to find a Legal Person to help the committee to come up with a good report.

Hon. Gabriel Ochieng: Thank you Mr. Chair, I have consulted with the Vice Chair of the Justice and Legal Affair and we have decided that we withdraw this report because we do not want to waste a lot of time on this. As a committee we think that we need to do some more research on this report so that we can bring it to the House for discussion.

Hon. Salome Lungafa: Thank you Chair, I want to request Hon. Members to be fair to the people with Disability, it is not fair when they come to this assembly all the time and then going back, it is not good, last time some who were here and left, and now they are here again. With that I want to second that the report on the Justice and Legal Affair on the Kisumu County Persons living with disability be withdrawn as suggested by Hon. Gabriel Ochieng who is a Member of this Committee.

Hon. Gabriel Ochieng: Hon. Chair, I want this to go on record, that we need a serious committee clerk to work with this Committee and as we are going to engage in the reviewing of this Bill I think our standing Order allow us to engage an expert, let your office make sure that we get an expert to assist the Committee so that we can go ahead with this important Bill.

Mr. Chair, if you would allow me, I could shame some of the Members of this Committee who do not attend the committee meetings and you will find their signature appended in the attendance register and when they come to this house they are the first to throw rocket missile at their own report. I am saying

this because it is so embarrassing that every time when this Committee brings its report it is thrown out because of the laxity of some of the committee members who rarely attend the Committee meetings that we call. Mr. Chair, we are very sorry for that and I support the withdrawal and I know that when you give us time we are going to come up with a very conclusive report, thank you.

Mr. Speaker (Hon. Baker Ombogo): Hon. Members, I think we need not to dwell so much on this report, I can see some Hon. members raising their hands, but I want to say that the deputy has withdrawn the report.

Hon. Members who are members of Justice and Legal Affairs, we have seen report that come to the floor of the House from your Committee and they have not been good reports, I want to request the office of the Clerk to ……...

[Inaudible Due to Power Failure]

Hon. Gabriel Ochieng: Mr. Speaker at this juncture I want to propose that we revert to Plenary so that we can adjourn due to power failure since we cannot continue due to lack of Microphones.

Hon. Aggrey Ogosi: I want to second the proposal by Hon. Gabriel Ochieng that we revert to the Plenary so that we can adjourn.

[House reverts back to Plenary]

Mr. Speaker (Hon. Elijah Omondi): Hon. Members, I want to call upon the Chair of the committee of the Whole House to give a report on the second reading of the Kisumu County People with Disability Bill, 2014.

Hon. Samuel Ombogo: I want to report back to the Plenary on the progress that we made on the Kisumu County People with Disability Bill, 2014. Second reading {Interrupted}

Hon. Moses Ochele: Point of Information.

Mr. Speaker (Hon. Elijah Omondi): What is the Point Of Information you want to give.

Hon. Moses Ochele: Thank you So much Mr. Speaker, I think that we are now suffering from a

technical hitch, but I have seen the Sergeant-At-Arm bringing something before me, I wish to ask if it is working.

Mr. Speaker (Hon. Elijah Omondi): Yes it is.

Hon. Moses Ochele: If it is working then let me resume my seat.

Hon. Samuel Ombogo: Thank you Mr. Speaker for your concern, Mr. Speaker when the Members started deliberating on the report, the Members of the Committee requested the withdrawal of the report to allow for the Consultation with the office of the Clerk and up to this juncture we had only recommended on the title of the Bill, when we started on the content of the Bill , that is the second part of the Bill, the committee requested for the withdrawal and we gave an order through the Chair that the Bill be withdrawn until proper consultation be made between the committee members and the office of the Clerk so that it be introduced on a later date. That is the position that we are right now.

Mr. Speaker (Hon. Elijah Omondi): Hon. Members, it has been a resolution of the Committee of the Whole House that both the report and the Motion on the second reading of the Kisumu County Persons Living with Disability Bill, 2014 be withdrawn. That is the resolution that I want this House to adopt and I want to put a question that we adopt the resolution of the Committee of the whole House to withdraw both the report and the Motion on the second reading on the Kisumu County Persons Living with Disability Bill, 2014.

If there is no other debate on that I want to put a question that this House adopts the resolution of the Committee of the Whole House , that the Committee report on Legal and Justice affairs Committee and the Motion on the Second reading on the Kisumu County Persons Living with Disability Bill, 2014 be withdrawn.

{Question put and agreed to}

Both the Motion on the second reading on the Kisumu County Persons Living with Disability Bill, 2014 and the report on the Bill has been withdrawn in this House this Afternoon.

Is there any other Motion in the order paper?

{No other Motion}

[Adjournment]

Mr. Speaker (Hon. Elijah Omondi): If there is no other Motion the House stands Adjourned Until Tomorrow Thursday 2.30 P.M.

All Rises

Speaker Procession

House Adjourned at 6.10 P.M