

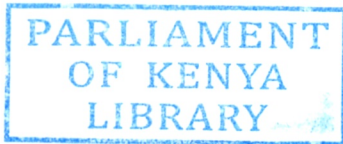
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REPUBLIC OF KENYA



PARLIAMENT  
THE SENATE

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ELEVENTH PARLIAMENT – FOURTH SESSION

REPORT OF THE JOINT COMMITTEE OF THE STANDING COMMITTEE  
ON FINANCE, COMMERCE AND BUDGET AND THE SESSIONAL  
COMMITTEE ON DEVOLVED GOVERNMENT ON THE PETITION  
BY  
SOME MEMBERS OF KISUMU COUNTY ASSEMBLY ON THE ALLEGED  
CORRUPTION AND GROSS MISMANAGEMENT BY THE KISUMU  
COUNTY EXECUTIVE

*Approved*  
*[Signature]*  
*Speaker*  
*15/11/16*

*Rt. Hon. Speaker*  
*You may approve*  
*for tabling.*  
*[Signature]*  
*14/11/16*

CLERK CHAMBERS  
THE SENATE  
PARLIAMENT OF KENYA  
NAIROBI

OCTOBER, 2016

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## ABBREVIATIONS AND ACRONYMS

CARPS	– Capacity Assessment Rationalization Program
CBEF	– County Budget and Economic Forum
CBK	– Central Bank of Kenya
CEO	– Chief Executive Officer
CFO	– Chief Finance Officer
CMC	– Cooper Motor Corporation
CPSB	– County Public Service Board
EACC	– Ethics and Anti-Corruption Commission
ECDE	– Early Childhood Development Education
FY	– Financial Year
IFMIS	– Intergrated Financial Management Information System
JOOTRH	– Jaramogi Oginga Odinga Teaching and Referral Hospital
KAT	– Kisumu Action Team
KCB	– Kenya Commercial Bank
KNCHR	– Kenya National Commission on Human Rights
KNUT	– Kenya National Union of Teachers
MCA	– Member of County Assembly
MP	– Member of Parliament
NGEC	– National Gender and Equality Commission
PFM	– Public Finance Management
TA	– Transitional Authority

## PREFACE

### 1.1 Establishment and Mandate of the Finance, Commerce and Budget Committee

The Standing Committee on Finance, Commerce and Budget was constituted by the House on Thursday, 13<sup>th</sup> March 2014 during the Second Session of the Eleventh (11<sup>th</sup>) Parliament.

The Committee is established pursuant to Standing Order 208 and is mandated, *to investigate, inquire into and report on all matters relating to coordination, control and monitoring of County Budgets and to:*

- (a) Discuss and review the estimates of County governments and make recommendations to the Senate;*
- (b) Examine the Budget Policy Statement presented to the Senate;*
- (c) Examine and report on the Budget allocated to constitutional commissions and independent offices;*
- (d) Examine Bills related to the counties;*
- (e) Examine the Budget, including the Division of Revenue Bill; and,*
- (f) Examine and consider all matters related to resolutions and Bills for appropriations, share of national revenue amongst the counties and all matters concerning the National Budget, including public finance, monetary policies and public debt, trading activities and commerce, tourism, investment and divestitures policies, planning and development policy.*

Pursuant to Standing Order 219, I am pleased to present and table the Report on the Petition to the Senate by members of Kisumu County Assembly on the alleged corruption and gross mismanagement by the Kisumu County Executive.

The petitioner submitted their prayers in line with Articles 37 and 119 of the Constitution and guided by the provisions of standing order 223 of the Senate Standing Orders.

### **1.1.1 Membership of the Committee on Finance, Commerce and Budget Committee**

The Committee as currently constituted, comprises of the following members:

1. The Hon. Sen. Billow Kerrow, MP. -Chairperson
2. The Hon. Sen. (Eng.) Peter Ole Mositet, MP. -Vice-Chairperson
3. The Hon. Sen. G. G. Kariuki, EGH, MP.
4. The Hon. Sen. Moses Wetang'ula, EGH, MP.
5. The Hon. Sen. Beatrice Elachi, CBS, MP.
6. The Hon. Sen. Mutahi Kagwe, EGH, MP.
7. The Hon. Sen. (Dr.) Boni Khalwale, MP.
8. The Hon. Sen. (Prof.) Peter Anyang' Nyong'o, EGH, MP.
9. The Hon. Sen. Zipporah Kittony, MP.
10. The Hon. Sen. Aaron Kipkirui Cheruiyot, MP.
11. The Hon. Sen. Catherine Mukite Nabwala, MP.
12. The Hon. Sen. Mutula Kilonzo Junior, MP.
13. The Hon. Sen. (Prof.) John Lonyangapuo, CBS, MP.
14. The Hon. Sen. Paul Njoroge Ben, MP.
15. The Hon. Sen. (Dr.) Wilfred Machage, MGH, MP.
16. The Hon. Sen. (Dr.) Agnes Zani, MP.

## **1.2 Establishment and Mandate of the Devolved Government Committee**

The Sessional Committee on Devolved Government is established pursuant to the Senate Standing Order 211 and is mandated to consider all matters related to intergovernmental and inter-county relations, governance and management of county governments, cities, towns and urban areas.

### **1.2.1 Membership of the Devolved Government Committee**

The Committee as currently constituted, comprises of the following members:

1. The Hon. Sen. Prof. Wilfred Lesan, MP. -Chairperson
2. The Hon. Sen. Naisula Lesuuda, MP. -Vice-Chairperson
3. The Hon. Sen. Billow Kerrow, MP.
4. The Hon. Sen. Hassan Omar Hassan, MP.
5. The Hon. Sen. Henry ole Ndiema, MP.
6. The Hon. Sen. Janet Ong'era, MP.
7. The Hon. Sen. Amos Wako, EGH, MP.
8. The Hon. Sen. Kipchumba Murkomen, MP.
9. The Hon. Sen. Beatrice Elachi, MP.

### **1.3 Committal of the Petition**

**Mr. Speaker Sir**, on behalf of the Members of The Standing Committee on Finance, Commerce and Budget and Members of The Sessional Committee on Devolved Government and as required under the Senate Standing Orders, I hereby present to this House, the Committee's Report on the Petition by Members of the County Assembly of Kisumu namely; Hon. Joseph Osano of Chemelil Ward in Muhoroni sub-county; Hon. Aggrey Ogosi of East Seme Ward in Seme sub-county; and Hon. Elijah Omondi of Central Nyakach Ward in Nyakach sub-county concerning corruption and

gross mismanagement in Kisumu County and other grievances that were presented to the Senate by the Senator for Kisumu County (Prof.) Peter Anyang' Nyong'o.

The Petition was then committed on 4<sup>th</sup> March, 2015 to the Joint Committee of The Standing Committee on Finance, Commerce and Budget and the Sessional Committee on Devolved Government for further consideration with a view to responding to the issues raised in the Petition.

**Mr. Speaker Sir,** Pursuant to provisions of Article 119 of the Constitution and Part XXIV of the Senate Standing Orders, the petitioners sought answers to the following prayers:

- (1) Investigate and look into the enumerated issues that continue to undermine the spirit of devolution and to take appropriate action;
- (2) Request the Commission on Revenue Allocation and the Controller of Budget to cease any further disbursement of funds to Kisumu County until such a time that a forensic audit of the county fiscal management is carried out and concluded;
- (3) Invite the Auditor-General to set up a team to carry out a forensic audit of the county with a view to unearthing the glaring financial malpractices as per the dictates of Article 229 (4) and (6) of the Constitution; and
- (4) Commence the removal from office of the Governor of Kisumu County if found to be culpable in running the County *ultra vires* the Constitution.

**Mr. Speaker Sir,** The Joint Committee sought the response of the County Government of Kisumu and other relevant agencies and persons including the Deputy Governor of Kisumu County, some former officials of the defunct Kisumu City Council. In view of the content of the Petition especially relating to county budgeting and implementation, utilization of county financial resources and procurement of goods and services, the Committee's attention was drawn to the content of the Report

of the Auditor General on the financial operations of Kisumu County Executive for the period July, 2013 to June, 2014. That indeed some of issues raised such as malpractices in county revenues collection and banking and release of less than budgeted conditional grants to the level 5 hospital have been captured in the Auditor's Report.

In that regard, the Joint Committee Report gives a detailed summary of the issues and the responses by various entities of the county government including the Office of the Governor as the principal respondents. The written and oral submissions, therefore, formed the basis of the Committee's observations and the requisite interventions towards the Prayers sought.

**Mr. Speaker Sir**, it is significant to mention that County governments should appreciate the importance of proper development planning and responsive budgeting in meeting the increasing demands of the residents against limited resources without compromising on the principles of transparency and public participation outlined in Chapter 12 of the Constitution and other supporting legislations such as the Public Finance Management Act, 2012. The Joint Committee hopes that the Report will also assist in entrenching independence of the County Assembly in performing its functions of representation, legislation and oversight as provided for under Article 185 of the constitution and Section 9 of the County Governments Act, 2012.

#### **1.4 Committee Response to the specific Prayers**

**Mr. Speaker Sir,**

Having considered the Petition by Members of the Kisumu County Assembly on the alleged corruption and gross mismanagement by the Kisumu County Executive and other submissions, the Committee made the following responses to the prayers and the way forward:

- (1) That on the Prayer (No.1) on the petition to investigate and look into the enumerated issues that continue to undermine the spirit of devolution and to take

appropriate action, the Committee observations and recommendations are as provided in Chapter two

(2) That on the Prayer (No.2) that requests for the Commission on Revenue Allocation and the Controller of Budget to cease any further disbursement of funds to Kisumu County until such a time that a forensic audit of the county fiscal management is carried out and concluded:

(a) The Committee does not find it necessary to action the stoppage of funds to the County at this particular point. This is further informed by the fact that the audit report on the financial operations of the Kisumu County Executive for the Financial Year 2013/2014 is currently before the Senate for examination, scrutiny and review with a view to taking appropriate action accordingly.

(b) The Committee further wishes to draw the attention of Petitioners to the provisions of Article 225 of the Constitution on financial controls and funds transfer to public entities, and Section 96 - 99 of the Public Finance Management Act, (2012) which provides for the procedure for stoppage of funds to County Government. The Public Finance Management Act vests the authority to stop transfer of funds to county governments in the Cabinet Secretary responsible for finance upon determination of serious or persistent material breach of obligations or financial commitments by the County.

(3) That on Prayer (No.3) on request to invite the Auditor-General to set up a team to carry out a forensic audit of the county with a view to unearthing the glaring financial malpractices as per the dictates of Article 229 (4) and (6) of the Constitution, the Committee is:

i).Cognizant of the Auditor General's role as stipulated in the Constitution, relevant Public Audit Act and Public Finance Management Act, 2012. The Committee recommends a forensic audit be carried out on the alleged financial malpractices raised in the Petition, and

ii).The Committee further wishes to draw the attention of the Petitioners to the fact that the Senate Sessional Committee on County Public Accounts and Investments, in line with its mandate, is examining the audit report on the financial operations of the Kisumu County Executive for period 2013/2014 and subsequently table a Report to the Senate with a view to addressing the issues raised therein accordingly.

(4) That on the Prayer (No.4) on the commencement of the removal from office of the Governor of Kisumu County if found to be culpable in running the County *ultra vires* the Constitution, the Committee draws the attention of the Petitioners to the provisions of Art. 181 of the Constitution and Section 33 of the County Government Act, 2012 on the removal of a Governor from office.

**ACKNOWLEDGEMENT**

**Mr. Speaker, Sir,** The Committee wishes to acknowledge the time and considerable effort made by all parties who volunteered information before it. I also wish to express my gratitude to my colleagues of the Joint Committee for their thoughtful input and commitment in the consideration of this matter. Further, the Committee thanks the Office of the Speaker and the Clerk of the Senate for facilitating all the actions that led to the production of this Report.

It is now my pleasant duty to table the Report of the Joint Committee of the Standing Committee of the Senate on Finance, Commerce and Budget and the Sessional Committee on Devolved Government on the Petition by the Hon. Members of Kisumu County Assembly on the alleged corruption and gross mismanagement by the Kisumu County Executive.

**Mr. Speaker, Sir,**

On behalf of the Committee, I now have the honour and pleasure to present the Report and recommendations to the House.

Thank You.

Signed ..... 

**CO - CHAIRPERSON**  
**(SEN. BILLOW KERROW)**

Date: .....

Signed ..... 

**CO - CHAIRPERSON**  
**(SEN. (PROF.) WILFRED LESAN)**

Date: ..... **4/10/2016**

Signed .....

## **CHAPTER ONE: INTRODUCTION**

### **1.1 Background to the Petition**

#### **1.1.1 The Right to Petition**

The right of Kenyan citizens to petition public authorities and Parliament is a right conferred by the Constitution under Articles 37 and 119, Petition to Parliament (Procedure) Act and by standing order 220 of the Senate Standing Orders. The right to petition is an essential citizen participatory tool that allows for direct intervention by Parliament on issues relating to the promotion and protection of the rights of citizens.

#### **1.2 The Public Petition**

A Petition presented to the Senate by the Senator for Kisumu County, Sen. (Prof.) Anyang' Nyong'o, on the alleged corruption and gross mismanagement by the Kisumu County Executive was committed to the Senate Standing Committee on Finance, Commerce and Budget on 4<sup>th</sup> March, 2015. The Petitioners are Hon. Joseph Osano, MCA Chemelil Ward; Hon. Aggrey Ogosi, MCA, East Seme Ward; and, Elijah Omondi, MCA , Central Nyakach Ward.

#### **1.3 Summary of Petition and Prayers**

The Petition on Kisumu County Executive raises several concerns, where it seeks to draw the attention of the Senate to the various issues which are summarized into sixteen (16) issues as enumerated herein below:

- (1) That Kisumu County is under a load of issues that weigh on the capability of the County to realize any meaningful growth, ranging from corruption, abuse of office, gross mismanagement and neglect of duty.
- (2) That recruitment and employment of persons to key positions in the county is riddled with nepotism and clannism.
- (3) That the County Government of Kisumu, through the County Public Service Board, advertised and interviewed for ten vacant positions for chief offices, the County Assembly vetted and cleared only four persons but the County

Governor went ahead and appointed fourteen chief officers without following the due process.

- (4) That there is inordinate delay in filling vacancies in crucial dockets such as County Secretary and County Finance Officer, thus hindering service delivery.
- (5) That the Governor has failed to constitute the City Management Board as required by the Urban Areas and Cities Act and has gone ahead to appoint the City Manager without due process and that the city manager, in the absence of the City Management Board, has no person to oversight his or her activities.
- (6) That the County Government presided over a flawed tendering process which does not adhere to the requirement of the Public Procurement and Disposal Act such as renovating the 9th Floor of Prosperity House to be used by the Governor, the Deputy Governor and the County Secretary and procurement of motor vehicles from CMC.
- (7) That the County Government set aside the Development Vote for the year 2013/2014 budget and instead requested for more development funds in the supplementary budget of 2013. There have also been several cases of irregular budget re- allocations.
- (8) That the County Budget and Economic Forum whose main responsibility is to play a consultative role in the budget-making process, has met only once since it was established, in breach of Section 137 of the Public Finance Management Act.
- (9) That there are loopholes in revenue collection in the County with revenue declared unbanked being more or less similar to the former Municipal Council of Kisumu and yet there are five former local authorities in the County.
- (10) That the healthcare system in the county has collapsed due to poor funding. Jaramogi Oginga Odinga Teaching and Referral Hospital was allocated Kshs. 396

million in the financial years 2013/2014 but the hospital only received Kshs72 million in the whole year from the County Treasury.

- (11) That the County Government has failed to disburse funds appropriated for use by the Kisumu County Assembly to the County Assembly Account, thereby compromising the Assembly's capability to effectively play its oversight role;
- (12) That the County Government has failed to prepare an annual financial report and forward it to the Auditor-General, Controller of Budget, Commission on Revenue Allocation and the County Assembly in contravention of sections 163, 164, 165 and 166 of the Public Finance Management Act.
- (13) That there is rampant misuse of public resources by the County Government for instance, allocating vehicles and fuel to persons who are not employees nor performing official duties of the county and also incurring extravagant amounts in the name of 'entertainment' in official functions.
- (14) That Governor has been creating unconstitutional offices within his office that are meant to usurp roles of ministries and further that this unconstitutional offices are headed by cronies of the Governor.
- (15) That effort by leaders from the County, led by the area Senator to dialogue and find ways of remedying the situation, has not borne much fruit.
- (16) That none of the issues raised in this Petition is pending in any court of law, constitutional or any legal body.

### **1.3.1 Prayers of the Petitioner**

The Committee notes that the petitioner prays that the Senate:

- 1) Investigate and look into the enumerated issues that continue to undermine the spirit of devolution and to take appropriate action.

- 2) Request the Commission on Revenue Allocation and the Controller of Budget to cease any further disbursement of funds to Kisumu County until such a time that a forensic audit of the county fiscal management is carried out and concluded.
- 3) Invite the Auditor-General to set up a team to carry out a forensic audit of the county with a view to unearthing the glaring financial malpractices as per the dictates of Article 229 (4) and (6) of the Constitution.
- 4) Commence the removal from office of the Governor of Kisumu County if found to be culpable in running the County *ultra vires* the Constitution.

## **CHAPTER TWO: COMMITTEE'S RESPONSE TO THE PETITION**

### **2.1 Committee Deliberations and Consideration**

The Committee sought the response of the Executive arm of the County Government of Kisumu and other relevant agencies and persons including some former officials of the defunct local authorities before coming into place devolved system of governance. In view of the content of the Petition especially on county budgeting and implementation, utilization of county financial resources and procurement of goods and services, the Committee's attention was drawn to the content of the Report of the Auditor General on the financial operations of Kisumu County Executive for the period July 2013 to June 2014. That, indeed some of issues raised such as discrepancies relating to county revenue collection, banking and management as well as release of less than budgeted amounts to the level 5 hospital have been captured in the Auditor's Report.

In that regard, the following details give a summary of the issues as contained in the Petition and response by various entities of the County Government including the Office of the Governor as the principal respondent. The written and oral submissions as well as subsequent deliberations therefore formed the basis of the Committee's observations and recommendations towards the intervention and Prayers sought.

- 1. That Kisumu County is heaving under a load of issues that weigh on the capability of the county to realize any meaningful growth, ranging from corruption, abuse of office, gross mismanagement and neglect of duty.**

#### **Response from County Governor**

The Committee was informed that the allegation is incorrect and made in bad faith and that the operations of the County Government of Kisumu are guided by the PFM Act 2012.

#### **Committee Observations**

The Committee observed that the particular allegation is of general nature and that is informed by subsequent allegations as enumerated further.

2. **That recruitment and employment of persons to key positions in the county is riddled with nepotism and clannism.**

The Petitioners informed the Committee that nepotism and clannism is present in the offices as listed below;

(a) The Public Service Board - The Board which has a membership of seven has four members related to the Governor;

- The Chair, Eng. Oguya from Kano in Nyando sub-county is a cousin to the Governor;
- Mr. Odingo, a member from Kano in Nyando sub-county is a first cousin to the Governor;
- Mr. Odeny Oyoo from Nyakach Sub County is an uncle to the Governor; and
- Mrs. Asuna from Muhoroni is a sister in-law to the Governor.

(b) Chief Officers - Six of the 14 Chief Officers come from Kadibo clan of Kano in Nyando Sub County where the Governor hails from;

- Dr. Ojwang Lusi – Health;
- Mr. Samuel Ondolla - Transport and Infrastructure;
- Mr. Derrick Obura - Lands, Physical Planning, Housing and Urban Development; and
- Ms. Mildred Omoro – Environment.

(c) Staffs in the Governor's Office - The Chief of Staff, the Personal Assistant and the Private Secretary in the Governor's office are closely related to him. The Chief of Staff and the Personal Assistant are his nephews while the secretary is a daughter in law.

(d) Ward Administrators - 15 of the 35 ward administrators hail from Kano in Nyando Sub County, the home of the Governor.

The Petitioners then queried the fact that nepotism and clannism is rampant in the County offices.

## **Response from the Governor**

The Governor informed the Committee that all the issues as raised by the Petitioner are allegations that are not true. In his submission, the Governor informed the Committee that the recruitment process in the County Government of Kisumu was done following the due process as stipulated in the County Governments Act, 2011.

## **Response from the County Public Service Board**

The County Public Service Board submitted as follows:

(a) The Public Service Board - The Public Service Board of Kisumu informed the Committee that this was an allegation that is false in that:

- The Chair Eng. Oguya hails from Kisumu East sub-county which is not in Nyando sub-county and has no relation at all with the Governor;
- Mr. Odingo is not a first cousin to the Governor and has no relations with the Governor, though he hails from Nyando Sub-county and the same Ward as the Governor;
- Mr. Odeny Oyoo is not an uncle to the Governor and has no blood relations with the Governor; and
- Mrs. Asunah is not a sister -in-law to the Governor and neither is she related in any way with the Governor.

(b) Chief Officers - The Public Service Board of Kisumu informed the Committee that this is an allegation that is false in that:

The appointments were based on professionalism and equity considerations at sub-county levels, and their locations are as follows:

- Seme sub-county - three Chief Officers
- Nyakach sub-county - Two Chief Officers
- Nyando sub-county - three Chief Officers
- Muhoroni sub-county - None
- Kisumu East sub-county - one Chief Officer
- Ugenya sub-county (in Siaya County) - One Chief Officer (residing in Muhoroni)

- Gem sub-county (in Siaya County) - One Chief Officer
- Rarieda sub-county (in Siaya County) - One Chief Officer
- Kisumu West sub-county - One Chief Officer

(c) Ward Administrators - The Public Service Board of Kisumu informed the Committee that, this is an allegation that is false in that;

SUB - COUNTY	WARDS AND APPOINTED WARD ADMINISTRATORS
Nyando	Has five wards -all Ward Administrators are residents of each of the Wards : Kobura, Kabonyo-Kanyagwal, Ahero, East Kano Wawidhi, Awasi Oniiko
Muhoroni	Has five wards -all Ward Administrators are residents of each of the Wards i.e Muhoroni - Koru, Chemelil - Ombeyi, Masogo - Nyangoma; Miwani. For Masogo-Nyangoma and Miwani Wards, the Ward Administrators hail from Gem in Siaya County
Nyakach	Has five wards -all Ward Administrators are residents of each of the Wards: Central Nyakach, North Nyakach, South East Nyakach, South West Nyakach; and West Nyakach. All Ward Administrators all hail from Nyakach
Kisumu East	Has five wards - two Ward Administrators are residents of each of the Wards : Kolwa East, Kolwa Central; Nyalenda A; Manyatta; and Kajulu. For Kajulu the Ward Administrator hails from Gem in Siaya Sub-county. For Nyalenda A, the Ward Administrator hails Nyando
Kisumu Central	Has six wards -all Ward Administrators are residents of each of the Wards : Milimani/Market Ward (the ward administrator hails from Karachuonyo, Homabay County), Railway Ward (the ward administrator hails from Gem but settled in Bondo, Siaya County), Migosi Ward (the Ward Administrator hails from Nyakach); Kondele (the Ward Administrator hails from Karachuonyo, Homabay County);
Kisumu West	Has five wards -all Ward Administrators are residents of each of the Wards: North Kisumu, North West Kisumu; South West Kisumu; West Kisumu; and Central Kisumu. All ward administrators hail from

Seme	Has four wards: Central Seme, West Seme, East Seme, and North Seme. All ward administrators hail from and are residents of their respective wards.
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### **Committee Observations**

The Committee observed that although not all persons were individually mentioned together with their portfolios and backgrounds clearly as mentioned by the petitioners, the County Government Service Board outlined in their response the location and geographical balance of the various office holders taking into account their competencies during the recruitment process. The Service Board also refutes claims in that some of the allegations relating to familial ties with the governor are not correct. (Reference made to annex 2.9)

### **Committee Recommendation**

The Committee, having taken into account the response of the Governor and the County Service Board, recommends that a special audit be carried out on the membership of the County Public Service Board (CPSB) by the Auditor General in conjunction with the Kenya National Commission on Human Rights (KNHCR) and National Gender and Equality Commission (NGEC) to establish the correctness and truth about the Board's composition and report back to the Committee within a period of one month after the approval of this Report by the Senate.

The Committee further recommends that a proper county staff audit and investigations be carried out by the Ethics and Anti-Corruption Commission to ascertain whether statutory threshold was achieved on the basis of equity, fairness and inclusivity with a view to taking legal action.

- 3. That the County Government of Kisumu, through the County Public Service Board, advertised and interviewed for ten vacant positions for chief officers. The County Assembly vetted and cleared only four persons but the governor went ahead and appointed fourteen chief officers without following the due process.**

The Petitioners alleged the County Government through the County Public Service Board advertised in the dailies 10 positions for chief officers. The Board went ahead and shortlisted and carried out interviews for the 10 positions. After having concluded the interview exercise the Board forwarded to the Governor the list of suitable candidates. The Governor subsequently went ahead and appointed fourteen Chief Officers without any explanation as to what necessitated the adjustment from ten to fourteen and what informed the final appointments. The Governor then proceeded to forward the names of the fourteen to the Assembly for vetting.

The Assembly vetted four nominees and recommended for appointment but did not clear the other eleven nominees. Instead, the Governor went ahead to appoint all the fourteen to office without the constitutional requirement for vetting in contravention of section 45 (a) and (b) of the County Government Act. (Ref. Kenya Gazette Notice of 6858 of 3<sup>rd</sup> October 2014 Pg. 2629)

The Petitioners then questioned how then, can persons be employed to positions they never applied for and how can positions never advertised/existed be filled?

### **Response from the Governor**

The Governor informed the Committee that the County Public Service Board is best placed at responding to the aforementioned issue.

### **Response from the Public Service Board**

The Public Service Board of Kisumu informed the Committee that, that was an allegation and informed the Committee that they advertised for Chief Officers for the ten County Government departments. The Board in consultation with the Executive, guided by Article 46 (1) and 46 (2) and taking into account the previous advertisement for Chief Officers, recommended candidates, after the competitive process, to be considered in filling the Chief Officer positions in the re-organized County Government structure. The names were submitted by the County Secretary to the

County Assembly and no decisions had been made by the Assembly and based on Section 9 of the Public Appointments Act Cap 136.

Hence the Governor, on non-receipt, decided to appoint the Chief Officers.

### **Committee Observations**

The Committee observed that, indeed there is an irregularity as outlined in the advert (Reference made to annex 4.3(b)(ii)) in that, the positions shortlisted as advertised are only for ten Positions but appointments were done for fourteen officers.

The Committee further observed that in the position of County Chief Officer for Education, Youth, Culture and Social Services as advertised in the newspapers was one department but during appointment, the post was split into two, one headed by Ms. Lucy Atieno Matengo, that is Gender, Culture and Sports while the other being Education which is headed by Dr. Samwel Okuro.

The other irregularity with the appointments, as observed, was that of the Department of Physical Planning, Roads and Public Works which was divided into two during appointment namely Lands, Housing and Physical Planning headed by Mr. Derick Otieno Obura and Infrastructure docket headed by Eng. Samwel Ondola.

The Department of Water, Energy and Water Resources was also split into Department of Green Energy headed by Ms. Lorna Omuondo and Department of water headed by Eng. George Koyier.

The Committee finds that the county executive did not seek the approval of the County Assembly in the re-organization of the county departments as provided for in section 62 (2) of the County Governments Act, 2012 hence violating the legal provisions in filling vacancies for non-existent departments.

### **Committee Recommendation**

The Committee recommends that the Ethics and Anti-Corruption Commission undertakes a proper audit of the County Government structure and portfolios and further ascertain whether due process was followed in the recruitment process of Chief Officers with a view to taking legal action.

The Committee further recommends that the Salaries and Remuneration Commission to investigate the same with a view to rationalize the respective portfolios in line with the provisions and objectives of the Capacity Assessment and Rationalization of Public Service Program that was jointly undertaken by the National and County Governments.

**4. That there is inordinate delay in filling vacancies in crucial dockets such as county secretary and county finance officer, thus hindering service delivery.**

The Petitioners informed the Committee that there is deliberate delay of filling vacancies in crucial dockets, an action that hinder effective service delivery. They further informed the Committee that in December 2013, the Kisumu County Public Service Board placed an advert for suitable persons to be recruited as health practitioners in different cadres. Interviews were carried out in September 2014, nine months after the advert was placed. They informed the Committee that to date not one person has been recruited in those positions.

They also informed the Committee that the position of the County Secretary is a very crucial office in the running of the county and that notwithstanding this an interim officer has held that position for over two years despite interviews being conducted and shortlisted names presented to the governor over a year ago. It is noteworthy that the names presented to the governor for appointment did not include the incumbent interim office holder.

Similarly, the petitioners further informed the Committee that the vacancy in the position of Chief Finance Officer was also advertised and interviews conducted over a year ago. The Public Service Board was not satisfied with applicants for the position and immediately re-advertised. One year later, no interviews have been conducted and the office is still held by someone who according to the Public Service Board is qualified, since the person was one of the failed applicants in the readvertised position.

Further, the petitioners queried the need for the exercise and the fate of salaries for these personnel since they had been factored in the budget. They asked the Committee

to investigate whether there is a relation between the current huge wage bill that the County government is suffering from, and the issues raised.

The petitioners also queried on whether the same fate has befallen recruitment of ECDE Assistants whereby one year down the line, the applicants are still awaiting the filling of these positions, and further inquired on who could be benefitting from the salaries of these officers.

### **Response from the Governor**

The Governor informed the Committee that Article. 15(1) & (2) of the Constitution provides for a transition period of three (3) years within which the National and County Governments were to synchronize their operations through phased transfer of functions. The period ends in March 2016. Pursuant to the constitutional provisions of the transition, the two officers referred to hereinabove were deployed by the Transition Authority pursuant to S.7(d)(iii), (l) &(m) of the Transition to Devolved Government Act and have had important historical background with institutional memory necessary in establishment of systems, structures and frameworks, including developing capacity of the newly recruited staff in various departments. While the Interim County Secretary is still holding brief as the recruitment process is ongoing, substantive appointment of the Chief Finance Officer (CFO) has been done. (*Attached appointment Letter Marked Annex 2.1*)

### **Response from the Public Service Board**

The Public Service Board of Kisumu informed the Committee that the Board advertised for positions of the health professionals in December, 2013 to address the planned strike by the health workers that was due at the time.

The Board informed the Committee that the basis of the numbers advertised was to address the shortfall in the numbers required to improve service delivery to the public, while also addressing the planned strike. After the strike ended, the requirement for health workers was no longer considered to be an emergency.

They informed the Committee that there was no budget for the health workers at the time and that the Board then decided to proceed with the interviews while awaiting

the provision of budget for their salaries. The budgetary provision was still being addressed by the relevant department (Department of Health).

The recruitment of ECDE teachers had stalled due to the decision by the Court to stop the process under a case taken to court by KNUT in 2014. No allocation had been provided in the budget 2014/2015 and that provision of their salaries in the budget was being addressed.

### **Committee Observations**

During the deliberation on the matter, the Committee noted that the county government had demonstrated lack of seriousness in filling vacant crucial dockets and as such required the Governor to furnish the Committee with minutes of the interviews and the list of applicants. As of the time of preparing this report, the Governor had not furnished the Committee with the requisite interview documents and minutes for the Committee to confirm the interviewing of the qualified persons.

### **Committee Recommendation**

The Committee recommends that, not until the minutes are provided, the Committee cannot be able to prove that proper interviews were carried out by the Board. Further, in the absence of the minutes, the Committee is not able to ascertain whether the applicants failed the interview or not and in addition the entire process. Accordingly, the Committee recommends that the Ethics and Anti- Corruption Commission should investigate the authenticity of the positions held by the persons occupying the aforementioned dockets.

The Committee also recommends that the county government expedite the recruitment of a substantive county secretary through the laid down procedure as provided for in section 44 of the County Governments Act, 2012, and without further delay. The recruitment should be concluded within 90 days after adoption of the Report.

- 5. That the Governor has failed to constitute the City Management Board as required by the Urban Areas and Cities Act and has gone ahead to appoint the city manager without due process and that the city manager, in the absence of the city management board, has no person to oversight his or her activities.**

The Petitioners informed the Committee that the acting city manager was unlawfully appointed to office without the approval of the Assembly.

The petitioners informed the Committee that the Acting City Manager not having applied for the position of the City Manager when the applications were called, was still shortlisted and interviewed for the position. The petitioners alleged that the acting city manager reports directly to the Governor.

### **Response from the Governor**

The Governor informed the Committee that S.54 of the Urban Areas and Cities Act provides that during the transition period, assessment shall be undertaken on the existing urban areas and cities in order to ascertain whether they meet the criteria for classification as urban areas or cities under the Act. Under S. 7 of the Transition to Devolved Government Act 2012 and S.15 of the Sixth Schedule to the Constitution, it is the responsibility of the Transition Authority to undertake the assessment and classifications of urban areas and cities. The assessment was not complete, and proposals on amendment of the Urban Areas and Cities Act have not been submitted. The Governor proceeded by informing the Committee that classification of urban areas and cities contained in the Act was suspended to await final classification. The classification included determination of boundaries for cities, municipalities and urban centers.

The Governor then informed the Committee that the County wage bill stands at 36% of the total county budget, above the recommended rate of 35%. It is a considered view of the county that a hurried implementation of the Urban Areas and Cities Act, without considering the heavy wage bill and the ongoing Capacity Assessment and Rationalization Program (CARPS) will raise the county wage bill two fold, making it impossible to implement development projects. The CARPS process is NOT complete. (*Annex 2.2(d)-2*).

The Governor informed the Committee that the previous holder of the office was in acting capacity, who was the town clerk in the defunct Municipal Council of Kisumu, had resigned to join the County Government of Migori as the County Secretary

thereby creating a vacancy. A Director was then appointed on an acting capacity pending completion of the recruitment process by the County Public Service Board, pursuant to the County Government Act. (*Interim results - Annex 2.2 (f)(1)*). The acting City Manager therefore presently reports to the Executive through the Department of Lands, Housing, Physical Planning and Urban Development. (Circular on the Government Structure - *Annex 2.2 (f) (2)*).

### **Response from the Public Service Board**

On the issue of the City Management Board, the Kisumu County Public Service Board responded by informing the Committee that it has widely consulted on the setting up of the Kisumu City Board including liaison with the Commission for the Implementation of the Constitution regarding the grey areas in the Constitution and there exists a contradiction in the County Governments Act 2012, and the Urban Areas and Cities Act 2011, e.g. who is designated to appoint the City Board however the Board clarified that the issue was clarified and the process to appoint the City Board and various municipal Boards was to proceed with some policy guidelines and other considerations.

### **Committee Observations**

The committee notes that section 60 of the Urban Areas and Cities Act, 2011 states provides as follows:

"Notwithstanding any other provision of this Act, the Municipalities of Mombasa and Kisumu existing immediately before the commencement of this Act shall be deemed to be cities established under this Act."

Kisumu is therefore a City and must be governed in accordance with the principles of "Governance and Management of Urban Areas and Cities" laid down in PART III of the Urban Areas and Cities Act. The county government has been managing the Kisumu City without adherence to this Act, thereby leaving loopholes for the misappropriation of the City's assets and lack of proper accountability of city revenues. This also led to degeneration of the City's environment. The Committee noted that the submission by the Governor and the County Public Service Board that

there is a lacuna in law regarding the establishment of the City Management Board is not properly grounded and also not backed by any reference to established law.

The committee notes that without a City Management Board appointed in accordance to the Urban Areas and Cities Act, 2011 there is a likelihood of limited transparency in the management of assets and financial resources of the county.

Further, Section 28 of the Urban Areas and Cities Act, 2011 states as follows:

"there shall be a city or municipal manager for every city or municipality established under this Act, who shall implement the decisions and functions of the board and shall be answerable to the Board."

And section 29 on the "Appointment of City or Municipal Manager" states as follows:

"A city or municipal manager shall be competitively recruited and appointed by an institution responsible for recruiting public servants in the county."

Based on the foregoing, thus both the governor and the County Service Board have failed to establish the City Management Board and the appointment of the City Manager.

#### **Committee Recommendations**

- (a) That the Governor and County Service Board, in accordance with the relevant laws, appoint a City Management Board with immediate effect upon the approval of this Report .
- (b) The appointment of the Acting City Manager should be regularized in accordance with Section 64 (1) and (2) of the County Government Act (2012) while the post is advertised by the County Service Board to be filled in accordance with the Urban Areas and Cities Act (2012).
- (c) That all transactions affecting the assets of the City such as land, houses and other properties without passing through the City Management Board be nullified immediately and any further transactions be frozen until such time that a City Management Board and a Manager are both in office.

(d) That in undertaking a Special Audit, the Auditor General takes proper stock of the assets and liabilities of the City and recovers all assets illegally sold or misappropriated.

6. **That the county government presided over a flawed tendering process which does not adhere to the requirement of the Public Procurement And Disposal Act such as renovating the 9th Floor of Prosperity House to be used by the governor, the deputy governor and the county secretary and procurement of motor vehicles from CMC.**

### **Response from the Governor**

The Governor informed the Committee that the refurbishment of the County Government Offices was done by following due process and strict adherence to the provisions of the Public Procurement and Disposal Act 2005 and the accompanying Regulations. He informed the Committee that the Transition Authority on 23rd April, 2013 allocated to the County Government of Kisumu Kshs. 61,592,200.00 for the development of County infrastructure both at the Assembly and for refurbishment of County offices. The money was to be committed or spent by 30th June 2013, one month after receipt thereof. The Bills of Quantities and technical documentation were duly prepared but the procurement method preferred was restricted owing to timelines provided by TA. Ten (10) prequalified Suppliers, as required by procurement regulations referred to above, were invited to bid for the works. The bidders were duly evaluated and an award made at Kshs. 25,415,649.00 compared to the Engineers estimate of Kshs. 7,000,000.00. There was therefore no variation of the estimates as alleged in the petition. A copy of the file containing relevant documents is attached hereto marked *Annex 2.3 (a)(iv)*.

The Governor then informed the Committee that the consolidated purchase of vehicles from CMC during the financial year 2014/2015 was done in compliance to section 32 of the Public Procurement and Disposal Act 2005 by using the results of the prequalification of the Supplies Branch of the National Treasury. This was meant to make the procurement of the same cost effective by making bulk purchase from CMC,

one of the suppliers approved by the Supplies Branch at Government Contracted Prices. A copy of the file containing relevant documents is attached hereto marked *Annex 2.3 (b)*.

### **Committee Observations**

The committee observed that the county government did not have a procurement plan to support the purchase of the motor vehicles in bulk; thus putting to question whether due processes and diligence have been considered from the initial stages. The Public Procurement and Disposal Act, 2005 and Regulations, 2006 provides for the procedure and methodology of sourcing for goods and services in public institutions. In addition, the Committee also notes that the matter is also raised in the Auditor General Report relating to the period July 2013 to June 2014 where its indicated that the procurement method used to procure motor vehicles did not fulfill any of the two conditions set out in section 74 (2) (b) of Public Procurement and Disposal Act, 2005.

In view of the submission relating to refurbishment of 9<sup>th</sup> Floor of prosperity House, the Committee observed there were series of meetings by the Tender Evaluation Committee and the County Tender Committee on the same.

The meeting dated 26<sup>th</sup> April 2013 details the County Tender Committee deliberations on the choice of the method of procurement in which it was decided that Restricted Tendering Method of Procurement be used. This decision according to the minutes by the Tender Committee was informed by limited timelines in light of the fiscal year coming to an end, and thus the need to commit the allocation. However, from the records availed, It is noted that the meeting to evaluate and award the tender , among the 7 responsive bids out of the ten invited, was held on December 27<sup>th</sup> 2013 being six months into the next financial year. The evaluation results indicate that m/s Skylark Construction Limited was selected as the lowest bidder and consequently awarded at bid sum of kshs 25,415,649. The minutes by the evaluation committee notes the winning bid as competitive and within the engineer's estimate of kshs 27 million. It is also noted from the same Minutes provided had also a component to procure furniture and equipment listed alongside the quotations relating to refurbishment. The details relating to procurement of the furniture and other terms were not provided and is not clear why the same was been considered. Moreover, another Minute dated on 19/02/2014 contains similar resolution on the award of the same tender that was held on 27<sup>th</sup> December 2013 by the tender committee, posing inconsistencies as to the records relating to the tender process.

### **Committee Recommendation**

The committee recommends that a special audit be done by the Auditor General on the procurement of the motor vehicles and the sourcing for contractors to refurbish the

Governor's Office at the 9<sup>th</sup> floor of Prosperity House and a report submitted to the Committee within three month after the adoption of this Report by the Senate.

The Committee further recommends that an audit be undertaken by the Auditor General to determine whether right rules and procedures as stipulated in the procurement laws were followed and further determine if there was value for money.

- 7. That the county government set aside the development vote for the year 2013/2014 budget and instead requested for more development funds in the supplementary budget of 2013. There have also been several cases of irregular budget re- allocations.**

#### **Response from the Governor**

The Committee was informed that there was no instance of the Development Budget for the FY 2013/2014 being set aside, neither was there any instance of budget reallocation. The Supplementary budget was however done, pursuant to S.135 and S.154 of the Public Finance Act 2012, to realign budget to reality during the course of execution. The budget approved by the County Assembly for 2013/2014, (*Annex 2.4 (a)*), was Kshs. 7,866,813,547.00. The supplementary budget for 2013/2014 of Kshs. 7,320,633,060.00, so approved is attached hereto marked *Annex 2.4 (b)*.

#### **Committee Observation**

The Committee analyzed the 'Kisumu County Appropriation Act, 2013' (*Annex 2.4 (a)*) and 'Kisumu County Supplementary Appropriation Act, 2014, as contained in *Annex 2.4 (b)*, indicating the enactment of the county budget for the period under consideration. In addition, there is inadequate proof to suggest that development funds for the FY 2013/2014 were set aside as other fiscal bodies like the controller of budget used such county documents to initiate disbursement and monitor budget implementation.

Further, the Committee observed that the budget approved by the County Assembly for the FY 2013/2014 amounted to KShs. 7,866,813,547.00 against a supplementary budget of KShs. 7,320,633.060.00. Moreover, the Committee notes that there is no evidence to suggest that there were irregular re-allocations of the budget as alleged by the Petitioner.

### **Committee Recommendation**

On account of insufficient evidence to suggest that there were irregular re-allocations of the budget, the Committee recommends that the matter rests.

- 8. That the County Budget and Economic Forum whose main responsibility is to play a consultative role in the budget-making process, has met only once since it was established, in breach of Section 137 of the Public Finance Management Act.**

### **Response from the Governor**

The Governor informed the Committee that the County Budget and Economic Forum (CBEF) was established and members appointed, in accordance with Section 137 of the Public Finance Act, on 5<sup>th</sup> February, 2014. He further informed the Committee that the first meeting was held on 29<sup>th</sup> April, 2014, the second meeting on 26<sup>th</sup> and 27<sup>th</sup> June, 2014, the third meeting in September 2014, fourth meeting on 24<sup>th</sup> February, 2015. The First training to build capacity of the CBEF was done on 12<sup>th</sup> to 15<sup>th</sup> March 2015, and the second training was done on 29<sup>th</sup> May 2015. Although CRA guidelines for the operationalization of CBEF were received on 3<sup>rd</sup> March, 2015, there were intense activities of the CBEF even before that as demonstrated above. The CBEF had by June 2015 held several meetings and participated in the 2015/2016 Budget hearings and Public Participation Forums. He added that they were also involved in Public Participation exercises. (*Ref. Annex 2.5.*)

### **Committee Observation**

The Committee notes that the forum is a critical means for consultation by the county government in the preparation of county plans, the County Fiscal Strategy Paper and the Budget Review and Outlook Paper for the county as well as in matters relating to budgeting, economy and financial management relating to the county.

The committee notes that the County Budget and Economic Forum had not been established by the time of preparing the 2014/15 budget documents and therefore this disadvantaged the public in engaging meaningfully the county government in budget preparation with respect to prioritization of county needs.

The Committee observed that the evidence submitted by the County Governor under *Annex 2.5* provided several documents as proof of the establishment of a County Budget and Economic Forum including participant registration forms for meetings held, letters of appointment to the said forum, minutes for meetings held and various letters as contained.

### **Committee Recommendation**

In view of the submissions that to a large extent demonstrated that the County Budget and Economic Forum has been established, and has held at least two meetings as evidenced by signed minutes dated 24<sup>th</sup> February, 2015, and 29<sup>th</sup> May, 2015 (Ref. annex 2.5), that the matter rests at this point.

In addition, the Committee recommends that the County Budget and Economic Forum be robust enough in exercising its role effectively with a view to improving the county budgeting process as well as the implementation and evaluation phase by availing all key documents to the public in good time in the spirit of fiscal transparency and enhancing effective citizen engagement.

- 9. That there are loopholes in revenue collection in the county with revenue declared unbanked being more or less similar to the former municipal council of Kisumu and yet there are five former local authorities in the county**

### **Response from the Governor**

The Governor informed the Committee that a general decline in revenue collections subsequent to devolution was rampant across counties, and is not a problem unique to Kisumu. This general decline of revenue in counties was occasioned mainly by lethargy on the staff tasked with the responsibility of revenue collection because of the fear of uncertainty on their positions occasioned by the new dispensation and change in revenue collection procedures to comply with the Public Finance Management Act, 2012. This temporary weakening of the local revenue collection capacity according to the Governor has since been addressed through streamlining of the collection system and subsequent automation of revenue collections. (Ref. *Annex 2.6(a)*). He informed the Committee that the Deputy Governor coordinated revenue collection throughout

the county, and she attended various trainings and benchmarking seminars to build her capacity for the task, as well as chairing of various revenue performance meetings to date. (Ref. Annex 2.6(b)). The status of collections, as per the attached reports marked Annex 2.6(c)(i) and (ii). He also attached a copy of the Controller of Budgets report for third quarter for the FY 2014-15 marked Annex 2.6(d) showing the growing revenue trend

### **Response by the Deputy Governor**

The Deputy Governor informed the Committee that in her efforts of streamlining revenue collection, she began a reshuffle of county staff that immediately began to bear fruits. She then informed the Committee that, two months down the line she was removed from the process and disengaged because it was perceived that she was going to be credited with the revenue collection success. This removal from the docket led to stalling of the reform measures which contributed to revenue leakages and thus the county not been able to meet its targets.

She informed the Committee that what lacked in Kisumu city , being the biggest revenue earner in the County, is that it was run by an interim city manager, who operated without an oversight body to put his actions in check.

The Committee was also informed by Hon Shakeel Shabbir and Hon. Prisca Auma, both as Former officials of the defunct Kisumu Council, as follows

### **Hon. Shakeel Shabir's Submissions:**

The Kisumu City Council had the following income and expenditure estimates during his time in office:

<b>NO.</b>	<b>ITEM</b>	<b>INCOME (KSHS.)</b>	<b>NO.</b>	<b>ITEM</b>	<b>EXPENDITURE (KSHS.)</b>
1.	WATER	20,000,000 Monthly	1.	SALARIES	20,000,000
2.	MARKET RATES	10,000,000 Monthly	2.	WATER & ELECTRICITY	5,000,000 6,000,000
3.	BUS	100,000 Daily			

	PARK				
4.	PARKING	60,000 Daily			
<b>Total</b>	<b>Monthly</b>	<b>Approx.</b>			
<b>Income</b>		<b>30,000,000</b>			

He further submitted that:

- ❖ They did compulsory banking of all transactions during their tenure.
- ❖ As a security measure, they were using embossed receipts to eliminate fraud.
- ❖ They operated three bank accounts that included Kenya Commercial Bank, Co-operative and National Bank. Currently there are many more banks in operation for the Kisumu County.
- ❖ ‘Discounting’ which is a form of not paying the actual amount transacted on by the Council is practiced in the County. This has led to losses of income by the Kisumu County. An Insurance broker was given as an example of those who engage in the discounting.
- ❖ Staffs of Kisumu County are not paid on time.
- ❖ The service delivery has gone down; Kisumu city makes 90% of the County’s income, whereas only 20% of the revenue goes to its service delivery.
- ❖ The staffs dealing with revenue collection operate without financial discipline in their accounting and management of the county revenue.
- ❖ The Market supervisors are also compromised thus affecting efficient and effective collection and general supervision.

### **Hon. Prisca Auma's Submission:**

- ❖ In the Financial year 2011/2012, the Kisumu City Council made revenues of Kshs.1.14 billion. This is an amount the current Kisumu County cannot achieve, despite having 4 other former municipal councils included in it.
- ❖ The Governor of Kisumu County has resisted any attempts to institute a City management Board.
- ❖ During her tenure as the Mayor of the City, there was a Kisumu Action Team Board that included the Commerce Chamber, Kenya Manufacturer's Association, and the private sector. It had co-opted the Vice Chancellor of the Maseno University as the board Chairman.
- ❖ The Kisumu Action team (KAT) had 5 goals to achieve such as improve infrastructure and promote sustainable socio economic development. There was marked increase in the revenue generated at the time.
- ❖ There was staff training with financial discipline as an emphasis to cash handlers.
- ❖ That there was no major development project in Kisumu in the year 2013/2014.
- ❖ Only few Members of the County Assembly were engaged in the oversight role as the rest had already been compromised by the County Executive through cash tokens and gifts.

### **Committee Observation**

It was evident from revenue collections data availed to the committee that there were material variations between revenue collected by the defunct local authorities and the County Governments. The Committee also noted the content of the the Auditor General Report for the same period under consideration where it indicates that the realized total local revenue collections amounted to Kshs.526,479,919 against revised budget figure of Kshs.1,800,739,230 from sub-Counties and the City of Kisumu thus represented 29 percent underperformance.

The Committee further notes that the matter of unbanked collections was also raised in the Report of Auditor General for the period July 2013 to June 2014 where under

banking of Kshs.33,755,587 was reported contrary to section 109(2) of the Public Finance Management Act, 2012 . The Auditors Report further indicates that the amount not banked was explained by the management to have been spent directly but the County Government did not avail any documents in support of the expenditure.

This the committee observes as lack of clear systems and policies in place to manage county local source of revenue hence undermining county fiscal capacity and further disadvantaging county residents in terms of service provision.

### **Committee Recommendation**

In view of the above observation and to determine the actual revenue potential of the county and management of own county revenue, the Committee recommends that the Auditor General to undertake a special audit with respect to revenue collection, management including receipting and banking, and use by Kisumu County Government within a period of three months after adoption of the Report by the Senate and submit a report to the Director of Public Prosecution with a view to taking legal action on any culpability.

The Committee recommends that the County Government must ensure that all collectible revenues of the county are banked before been spent.

The Committee also recommends that the County Government engages in revenue reform measures such as automation, and putting in place accountability measures and best practices with a view to seal revenue leakages and improve collections and management.

The Committee recommends that since the matter of unbanked county and other discrepancies have also been raised in the audit report for the same period which is also now before the Senate Sessional Committee on County Public Accounts and Investments with a view to examining the audit quarries and addressing the same accordingly.

- 10. That the healthcare system in the county has collapsed due to poor funding of Jaramogi Oginga Odinga Teaching and Referral (JOOTR) Hospital was**

**allocated Kshs. 396 million in the financial years 2013/2014 but the hospital only received Kshs 72 million in the whole year from the county treasury**

### **Response from the Governor**

The Governor informed the Committee that it was true that the National Treasury allocated Kshs. 396 million towards JOOTR Hospital in the FY2013/2014. The County government however received only Kshs 208,379,382.00, which was transmitted in full to the hospital. The National Treasury retained Kshs. 212,056,381.00, part of which Kshs. 187,620,618.00 is for JOOTRH. The analysis for the amount billed with respect to salaries for the devolved staff in the six months period (July December 2014) is attached hereto marked Annex 4.10.

### **Response by Jaramogi Oginga Odinga Hospital Management**

The management of the Jaramogi Oginga Odinga hospital informed the Committee that the total amount received with respect to conditional allocation was Kshs. 208,683,725 for FY 2013/14 while that of fiscal year 2014/15 amounted to Kshs.168.5 million. This indicated a shortfall of Kshs. 186.9 million and Kshs.80.0 million for the period 2013/14 and 2014/15, respectively, thereby affecting provision of essential health care services.

The management further submitted that:

- ❖ The Hospital has four (4) sources of income that is the Donors, Conditional grants from the National Government, Allocation from the County Government and the Cost sharing mechanism.
- ❖ The Budget for the hospital for the financial year 2013/2014 was Ksh.595M. The Hospital did not have any donations or allocations from the county government, thus it had only two (2) sources of financing. The Hospital was depending on the conditional grants from the National Government which was expected to be Ksh.396M but it was not only late but less. The other source was from Cost sharing which is the most reliable sources for financing the hospital operations compared to the other sources. The Committee heard that the hospital generates approximately 200M from the cost sharing.

- ❖ The free Maternity program whereby the hospital uses its money first and is reimbursed later by the National Government. The Ksh 5 Million is usually not enough to meet the costs already incurred by the hospital. The repayment process is usually too slow thus stagnating health care provision at times.

### **Committee Observations**

The committee noted that, while the County government might allocate additional funds for hospital needs through the annual budgeting of its annual county share, the total conditional allocations for the fiscal year 2013/14 and 2014/15 was Kshs. 395.6 million and Kshs. 248.5 million, respectively.

Similarly, it was observed that the issue of failure to release funds for the referral hospital was mentioned in the Auditor General Report covering the period ending June 2014. The Report indicates that a total of Kshs 129.6 million was released to the hospital by the County Government, leaving a balance of Kshs 266.1 million. The difference in amount between the figure reported by the Auditor General as at end of June, 2014 and the one given by the hospital management amounts to Kshs 79.1 million, being a delayed transfer to the hospital made in October 2014 by the County treasury.

In that regard, the Committee notes that while the funds released to the hospital were higher than the amount of Kshs 72 million referred to in the Petition, nonetheless the county government did not release all the conditional allocation approved for the hospital. The county government in their response stated that they had notified the National Treasury through a letter date 16th June 2015 claiming irregular retention of county transfers totaling Kshs 212.0 million, part of which Kshs. 187.6 million was for the hospital. Moreover, the request by the county government Chief Officer Finance for the non-remittance by National Treasury was made twelve (12) months after the closure of the 2013/14 fiscal year.

In addition, the Auditor General's report notes misallocation and lack of explanation on non- releases of conditional transfers to the hospital.

## **Recommendations**

The Committee recommends that the County Government remits all the Conditional Grants and voted budget allocations due to the Hospital (JOOTRH) as contained in respective County Allocation of Revenue Act, and the action thereafter be advised to the Committee to ensure compliance.

The Committee further directs that all conditional allocations to specific interventions be treated as such and remitted to the relevant users without undue delay. This is to ensure that that the county executive responsible for county finances should undertake proper cash management including to proactively consider and anticipate all conditional allocations towards strategic interventions to avoid diverting such monies to any of the other county functions.

The Committee recommends to the County Assembly to ensure Approved Budgets are implemented accordingly and that the County Assembly's oversight mandate be exercised accordingly.

- 11. That the county government has failed to disburse funds appropriated for use by the county assembly to the county assembly account, thereby compromising the assembly's capability to effectively play its oversight role.**

## **Response from the Governor**

The Governor on behalf of the County Executive informed the Committee that the Executive appreciates and promotes the principle of separation of power between it and the County Assembly. The County then facilitated the opening of operations accounts for the County Assembly both at the Kenya Commercial Bank and at the Central Bank of Kenya. The KCB account was funded adequately and regularly in line with the Assembly's projected expenditure needs.

Further, he informed the Committee that the accounts at the CBK have remained non-operational because the IFMIS infrastructure had not been set up at the Assembly to

enable them to operate the two accounts opened in December 2013. The Executive has also been building the capacity of the personnel at the Assembly to operate the IFMIS through trainings. The Assembly decides on how their money is spent. He assured the Committee that the Executive has no role and does not interfere in anyway with the operations of the Assembly finances.

### **Committee Observations**

The Committee observed that in order to adequately investigate the allegations levelled against the County Governor on failure to remit County Assembly funds, a thorough examination of the statements of the County Assembly operations accounts held in KCB and Central Bank were necessary in order to establish if there were any variations between funds appropriated and funds disbursed. It was therefore difficult to ascertain that there was failure by the County Executive to disburse funds appropriated for use by the County Assembly as the petitioners did not also provide enough evidence to support this allegation.

### **Committee Recommendation**

The Committee recommends that there is need to ensure that Kisumu County Assembly is facilitated to set up an independent IFMIS infrastructure and operational account for the Assembly in order to promote its autonomy, and ensure that there is separation of powers as required by the Constitution.

The Committee directs that the National Treasury to report on the progress of the decision by Senate Finance, Commerce and Budget Committee and National Treasury to enabling County Assemblies financial operational autonomy, and facilitation with a separate and effective IFMIS infrastructure for purposes of budget formulation and implementation.

- 12. That the county government has failed to prepare an annual financial report and forward it to the Auditor-General, Controller of Budget, Commission on Revenue Allocation and the county assembly in contravention of Section 163, 164, 165 and 166 of the Public Finance Management Act**

## **Response from the Governor**

The Governor informed the Committee that the County Government has adequately complied with S. 163,164, 165 and 166 of the Public Finance Management Act. The Annual Financial Statement, the Quarterly Reports by Accounting Officer(s) and Annual Report by receivers of Revenue for the FY2013/14 were all duly submitted to the Controller of Budget, Auditor General, National Treasury, Commission on Revenue Allocation and the County Assembly – all in a prescribed template. A copy of a file with the relevant documents is attached hereto marked *Annex 2.7*

## **Committee Observations**

On the basis of the evidence presented to the Committee by the county leadership, the Committee observes that the county government prepared the reports. This is evident by the Annual Financial Statements for FY 2013/14, the quarterly reports by Accounting Officers and Annual report by receivers of revenue for FY 2013/14 presented to the Committee.

Further, there is evidence to suggest that reports were submitted to the Auditor-General, Controller of Budget, the National Treasury and the Commission on Revenue Allocation based on the fact that the aforementioned bodies have since released reports on Kisumu for the FY 2013/2014 that are in the public domain.

However, there is no evidence to suggest that the same were submitted to the County Assembly and thus warrants further investigation.

## **Committee recommendation**

The committee recommends that the matter rests at this point since the reports have been submitted, and considering that the same informs the basis of Auditor General's Report and Controller of Budget authorization on exchequer releases as well as budget monitoring activities.

- 13. That there is rampant misuse of public resources by the county government by allocating vehicles and fuel to persons who are not employees nor performing**

**official duties of the county and also incurring extravagant amounts in the name of ‘entertainment’ in official functions**

### **Response from the Governor**

The Governor responded by informing the Committee that County Vehicles are used according to the law and are pooled and allocated to County Government officers on needs basis and that no county vehicle is allocated for any non-government activities. He further informed the Committee that the County Government has also allocated four vehicles to the County Assembly, the management of which remains the responsibility of the County Assembly Clerk. *(Annex 2.4(a) and (b))*

### **Committee Observations**

An analysis of the evidence provided in Annex 2.4(a) and (b) demonstrated that incurred expenditure by the county governments was in line with the approved budget. Further, from an analysis of the evidence provided, it was difficult to demonstrate that extravagant expenditure had indeed been incurred on entertainment during official functions since no specific occasions are stated, and no budgetary evidence has been provided to prove the same. The Committee was also informed of at some point that due to transitional challenges that the County vehicles were pooled to facilitate county entities to ensure service delivery

### **Committee Recommendations**

On the basis of the evidence presented by the County Government, the Committee recommends that the matter rests.

- 14. That the Governor has been creating unconstitutional offices within his office that are meant to usurp roles of ministries and further that this unconstitutional offices are headed by cronies of the Governor**

### **Response from the Governor**

The Governor informed the Committee that, all Governors across the country were authorized by Transition Authority to appoint certain officers to support them in

setting up of the County Governance structures. The Governor, in all his decisions as CEO, was guided by the need to ensure proper and efficient service delivery, and to strengthen managerial capacity while also designing systems to seal existing managerial gaps. The appointment of officers in the Governor's office were still not complete due to the huge wage bill, which he informed the Committee stands at 84% of the exchequer release and the recruitment of personnel for the same, is however the prerogative of the County Public Service Board that discharges this mandates pursuant to S. 60 of the County Government Act. (*Annex 2.2(d) 2.*)

### **Committee Observations**

The Committee observed that based on the evidence presented to the committee, Kisumu County undertook a capacity assessment and rationalization of the public service (CARPS) programme as part of a wider mandate covering all the county governments and ministries of the national government.

The objectives of CARPS was to ensure that ministries/departments and county governments functions were properly structured and staffed to facilitate transformation of the public service for efficient and effective service delivery both at the national and county government level.

Based on the submissions by the county and the evidence presented, the Committee observed that the county appears to be structured but the Committee could not ascertain if the employees are occupying the positions by merit as required by the Constitution and other relevant laws.

### **Committee Recommendation**

The Committee recommends that the EACC looks into this matter and submit a report to Director of Public Prosecution with a view to taking legal action.

15. **That effort by leaders from the county, led by the area Senator to dialogue and find ways of remedying the situation has not borne much fruit.**

### **Response from the Governor**

The Governor informed the Committee that the leadership of the County Government believes strongly in stakeholder engagement in accordance with the Constitution and the County Government Act. In this regard, the County Government has been involved in continuous comprehensive and inclusive engagement with all shades of stakeholders, including political, private sectors, civil society and religious leaders, and the general citizens at large.

### **Committee Observations**

On the basis of the submission from the county leadership (The Governor and his Deputy) and the County Assembly, the Committee observed that while the county government under the Governors leadership avers inclusive engagement and consultations of all stakeholders there is clear disconnect between the Governor's office and that of his deputy, to the extent that the response was not done as team. The same is also noted in the Board giving responses that were not adequate.

The Committee further notes the potential disruptive effect of such situation in the early formative years of the devolved government in that it affects service delivery to the resident and erode public confidence on the entire leadership if left to persist without amicable solution.

### **Recommendation**

The committee recommends that the county leadership should pursue dialogue as a mode of solving differences in the county government and exercise mutual respect in service delivery to the citizenry while observing fidelity to the established laws.

The Committee further recommends that the County Government must respect other constitutional bodies and organs in so far as carrying out their mandate is concerned. The county executive as well as the Assembly must strive to observe the provisions of Article 10 on national values and principles of governance, Article 174 and 175 on objects and principles of devolved government, Article 176 on constitution of county governments, and further, but not limited to, Article 185 on legislative authority of county assemblies read together with section 8 of the county government Act.

This is not only to ensure the effective exercise of powers and functions as well as constitutional roles as espoused but also to safeguard the county from mismanagement and improve service delivery to the resident of Kisumu County. Moreover the Senate and other key actors will always serve to protect the interest of the counties and their governments.

### CHAPTER THREE: COMMITTEE RESPONSE TO SPECIFIC PRAYERS

The Committee having considered the matters as raised in the Petition and subsequent deliberations arising out of the engagements with various respondents, the Committee made the afore-said recommendations and the following are responses to the prayers and the way forward:

(1) That on the Prayer (No.1) on the petition to investigate and look into the enumerated issues that continue to undermine the spirit of devolution and to take appropriate action, the Committee observations and recommendations are as provided in Chapter two

(2) That on the Prayer (No.2) that requests for the Commission on Revenue Allocation and the Controller of Budget to cease any further disbursement of funds to Kisumu County until such a time that a forensic audit of the county fiscal management is carried out and concluded:

(c) The Committee does not find it necessary to action the stoppage of funds to the County at this particular point. This is further informed by the fact that the audit report on the financial operations of the Kisumu County Executive for the Financial Year 2013/2014 is currently before the Senate for examination, scrutiny and review with a view to taking appropriate action accordingly.

(d) The Committee further wishes to draw the attention of Petitioners to the provisions of Article 225 of the Constitution on financial controls and funds transfer to public entities, and Section 96 - 99 of the Public Finance Management Act, (2012) which provides for the procedure for stoppage of funds to County Government. The Public Finance Management Act vests the authority to stop transfer of funds to county governments in the Cabinet Secretary responsible for finance upon determination of serious or persistent material breach of obligations or financial commitments by the County.

(3) That on Prayer (No.3) on request to invite the Auditor-General to set up a team to carry out a forensic audit of the county with a view to unearthing the glaring financial malpractices as per the dictates of Article 229 (4) and (6) of the Constitution, the Committee is:

i). Cognizant of the Auditor General's role as stipulated in the Constitution, relevant Public Audit Act and Public Finance Management Act, 2012. The Committee recommends a forensic audit be carried out on the alleged financial malpractices raised in the Petition, and

ii). The Committee further wishes to draw the attention of the Petitioners to the fact that the Senate Sessional Committee on County Public Accounts and Investments, in line with its mandate, is examining the audit report on the financial operations of the Kisumu County Executive for period 2013/2014 and subsequently table a Report to the Senate with a view to addressing the issues raised therein accordingly.

(4) That on the Prayer (No.4) on the commencement of the removal from office of the Governor of Kisumu County if found to be culpable in running the County *ultra vires* the Constitution, the Committee draws the attention of the Petitioners to the provisions of Art. 181 of the Constitution and Section 33 of the County Government Act, 2012 on the removal of a Governor from office.

## ANNEXTURES

1.1 MINUTES

1.2 PETITIONER'S EVIDENCE

1.3 GOVERNOR'S SUBMISSIONS

**MINUTES OF THE 89<sup>TH</sup> SITTING OF THE SENATE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET HELD AT COUNTY HALL, GROUND FLOOR BOARDROOM ON TUESDAY, 1<sup>ST</sup> NOVEMBER, 2016 AT 9.00A.M.**

**PRESENT**

- |                                       |                   |
|---------------------------------------|-------------------|
| 1. Sen. Billow Kerrow                 | -Chairperson      |
| 2. Sen. Peter Ole Mositet             | -Vice Chairperson |
| 3. Sen. Paul Ben Njoroge              | -Member           |
| 4. Sen. (Dr.) Agnes Zani              | -Member           |
| 5. Sen. (Prof.) John Lonyang'apuo     | -Member           |
| 6. Sen. Mutula Kilonzo Junior         | -Member           |
| 7. Sen. (Prof.) Peter Anyang' Nyong'o | -Member           |
| 8. Sen. (Dr.) Wilfred Machage         | -Member           |
| 9. Sen. Zipporah Kittony              | -Member           |

**ABSENT WITH APOLOGY**

- |                                  |         |
|----------------------------------|---------|
| 1. Sen. Moses Wetang'ula         | -Member |
| 2. Sen. G.G Kariuki              | -Member |
| 3. Sen. Beatrice Elachi          | -Member |
| 4. Sen. (Dr.) Boni Khalwale      | -Member |
| 5. Sen. Mutahi Kagwe             | -Member |
| 6. Sen. Catherine Mukite         | -Member |
| 7. Sen. Aaron Kipkirui Cheruiyot | -Member |

**IN ATTENDANCE**

1. Mr. Victor Bett
2. Ms. Lucy Radoli
3. Mr. Daniel Kachumbo
4. Mr. Boniface Mbiithi
5. Ms. Fatuma Abdi

**SENATE SECRETARIAT**

- Clerk Assistant
- Legal Counsel
- Parliamentary Budget Office
- Sergeant at Arms
- Audio Recording

**MIN NO. 515/2016:**

**PRELIMINARIES**

The chair called the meeting to order at 9.15 am. This was followed by a word of prayer.

**MIN NO. 516/2016:**

**ADOPTION OF THE AGENDA**

The agenda was adopted as follows;

1. Preliminaries
  - *Prayer*
  - *Remarks by the Chairperson*
2. Adoption of the Agenda
3. **Adoption of the Committee's Report on the Kisumu County Petition**
4. **Meeting with the County Government of Vihiga concerning a Petition to the Senate concerning various matters affecting the County Government of Vihiga**

5. Any Other Business
6. Date of Next Meeting
7. Adjournment

**MIN NO. 517/2016:**                    **ADOPTION OF THE COMMITTEE’S REPORT ON THE KISUMU COUNTY PETITION**

The Committee members reviewed the Committee Report on the Petition against Kisumu County and made amendments on the response to the prayers of the Petitioners as follows;

- (1) That on the Prayer (No.1) on the petition to investigate and look into the enumerated issues that continue to undermine the spirit of devolution and to take appropriate action, the Committee observations and recommendations are as provided in Chapter two
- (2) That on the Prayer (No.2) that requests for the Commission on Revenue Allocation and the Controller of Budget to cease any further disbursement of funds to Kisumu County until such a time that a forensic audit of the county fiscal management is carried out and concluded:
  - (a) The Committee does not find it necessary to action the stoppage of funds to the County at this particular point. This is further informed by the fact that the audit report on the financial operations of the Kisumu County Executive for the Financial Year 2013/2014 is currently before the Senate for examination, scrutiny and review with a view to taking appropriate action accordingly.
  - (b) The Committee further wishes to draw the attention of Petitioners to the provisions of Article 225 of the Constitution on financial controls and funds transfer to public entities, and Section 96 - 99 of the Public Finance Management Act, (2012) which provides for the procedure for stoppage of funds to County Government. The Public Finance Management Act vests the authority to stop transfer of funds to county governments in the Cabinet Secretary responsible for finance upon determination of serious or persistent material breach of obligations or financial commitments by the County.
- (3) That on Prayer (No.3) on request to invite the Auditor-General to set up a team to carry out a forensic audit of the county with a view to unearthing the glaring financial malpractices as per the dictates of Article 229 (4) and (6) of the Constitution, the Committee is:
  - i). Cognizant of the Auditor General’s role as stipulated in the Constitution, relevant Public Audit Act and Public Finance Management Act, 2012. The Committee recommends a forensic audit be carried out on the alleged financial malpractices raised in the Petition, and

- ii). The Committee further wishes to draw the attention of the Petitioners to the fact that the Senate Sessional Committee on County Public Accounts and Investments, in line with its mandate, is examining the audit report on the financial operations of the Kisumu County Executive for period 2013/2014 and subsequently table a Report to the Senate with a view to addressing the issues raised therein accordingly.

- (4) That on the Prayer (No.4) on the commencement of the removal from office of the Governor of Kisumu County if found to be culpable in running the County *ultra vires* the Constitution, the Committee draws the attention of the Petitioners to the provisions of Art. 181 of the Constitution and Section 33 of the County Government Act, 2012 on the removal of a Governor from office.

Thereafter the Committee adopted the report with amendments. The Report was proposed by Sen. (Dr.) Wilfred Machage and seconded by Sen. Peter Mositet.

**MIN NO. 518/2016:**                    **MEETING WITH THE COUNTY GOVERNMENT OF VIHIGA CONCERNING A PETITION TO THE SENATE CONCERNING VARIOUS MATTERS AFFECTING THE COUNTY GOVERNMENT OF VIHIGA**

The Committee waited for the Governor to appear but he did not appear. The Committee therefore resolved to have the matter addressed by the Director of Public Prosecution as was earlier communicated to him since the Governor has still ignored the Committees invitation following their request to meet with the Committee.

**MIN NO. 519/2016:**                    **ANY OTHER BUSINESS**

The Committee discussed correspondences that were before the Committee.

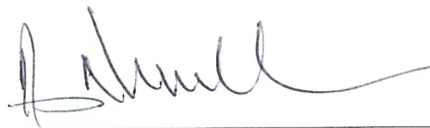
**MIN NO. 520/2016:**                    **DATE OF NEXT MEETING**

The date of the next meeting was scheduled for Wednesday, 2<sup>nd</sup> November, 2016 at the County Hall, Mini Chamber at 9.00am.

**MIN NO. 521/2016:**                    **ADJOURNMENT**

There being no other business, the meeting was adjourned at 11.15am.

SIGNED



(CHAIRPERSON)

DATE

3/11/2016

**MINUTES OF THE ELEVENTH JOINT SITTING OF THE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET AND THE SESSIONAL COMMITTEE ON DEVOLVED GOVERNMENT-KISUMU COUNTY PETITION HELD IN THE GROUND FLOOR BOARDROOM, COUNTY HALL ON 13<sup>TH</sup> JULY, 2016 AT 11.00 AM**

**PRESENT: FINANCE COMMITTEE GOVERNMENT**

1. Sen. Billow Kerrow -**Chairman,**
2. Sen. Peter Ole Mositet -**Vice-Chair**
3. Sen. (Dr.) Wilfred Machage -Member,
4. Sen. Catherine Mukiiti -Member,  
*Elachi*
5. Sen. (Prof.) Anyang Nyong'o -Member,
6. Sen. (Dr.) Agnes Zani -Member,
7. Sen. Paul Njoroge Ben -Member,

**PRESENT: DEVOLVED**

1. Sen. Prof. Wilfred Lesan-**Chairman**
2. Sen. Naisula Lesuuda -**Vice Chair**
- \*3. Sen. Billow Kerrow -Member  
*(Senators: Billow Kerrow & Beatrice Elachi are members of both committees)*

**ABSENT**

1. Sen. Boni Khalwale -Member,
2. Sen. Mutahi Kagwe -Member,
3. Sen. Mungai James -Member,
4. Sen. Zipporah Kittony -Member
5. Sen. Moses Wetangula -Member
6. Sen. G.G. Kariuki -Member
7. Sen. Beatrice Elachi -Member,
8. Sen. John Lonyangapuo -Member,
9. Sen. Mutula Kilonzo Junior -Member,

**ABSENT**

1. Sen. Hassan Omar Hassan -Member
2. Sen. Henry ole Ndiema -Member
3. Sen. Janet Ong'era -Member
- \*4. Sen. Beatrice Elachi -Member
5. Sen. Kipchumba Murkomen -Member
6. Sen. Amos Wako -Member

**A. SECRETARIAT**

1. Ms. Emmy Chepkwony - Senior Clerk Assistant
2. Mr. Joseph Mwangi - Clerk Assistant
3. Mr. Victor Bett - Clerk Assistant
4. Mr. Chelang'a Maiyo - Research officer
5. Mr. Gorod Abdi - Budget Officer

**MIN. 01/2016 : PRELIMINARIES**

The Chairman of the standing Committee on Finance, Commerce and Budget Sen. Billow Kerrow, MP, called the meeting to order at 11.20a.m followed by a word of prayer . He welcomed members of the joint Committee to the meeting.

**MIN 02/2016**

**: ADOPTION OF THE AGENDA**

The Agenda was unanimously adopted as follows:

1. Preliminaries
2. Adoption of the Agenda
3. Consideration of the Kisumu Petition Report
4. Any Other Business
5. Date of Next Meeting
6. Adjournment

**MIN. 03/2016**

**: CONSIDERATION OF THE KISUMU PETITION REPORT**

The Chairman of the standing Committee on Finance, Commerce and Budget Sen. Billow Kerrow, took members through the draft report and the following amendments were made:

1. On the third Petition, there were ten vacancies advertised in the media however the Kisumu County Government created and employed fourteen positions. The Committee thus recommended that the extra vacancies created by the county government through splitting two positions into one, be declared null and void.
2. On the thirteenth Petition, it emerged that the County executive had created an organogram without the consultation of the County Public Service Board. Thus the organogram was unconstitutional.
3. On the procurement of motor vehicles from CMC Motors, the Committee observed that the County Government was in breach of procurement laws as there was no hurry in procuring the vehicles warranting restrictive tendering. Thus the Committee recommended that the Director of Public Prosecutions to investigate the matter further and take the necessary action.
4. On the prayer that the Commission on Revenue Allocation and the Controller of Budget to cease any further disbursement of funds to Kisumu County until after a forensic audit was undertaken, the Committee did not find it necessary to cease payments to the county as the issue had been overtaken by events.
5. On the 8<sup>th</sup> Petition where it was alleged that there were loopholes in revenue collection in the County with revenue declared being more or less to the former municipal council of Kisumu yet there were five former local authorities in the county.

The Committee observed that the difference was negligible and thus made the following recommendations:

- a.) The County ought to automate the revenue collection systems.
- b.) That No further money should be spent without first being banked.
- c.) The Ethics and Anti-corruption Commission to investigate the unbanked monies.

The members adopted the report with the above recommendations.

**MIN.04/2016**

**: ANY OTHER BUSINESS**

There was no other business.

Having exhausted the agenda of the Joint sitting, the meeting was adjourned at 12.37pm.

SIGNED:

.....

**CHAIRPERSON –SEN. BILLOW KERROW**

DATE:

.....

SIGNED:

.....

**CHAIRPERSON –SEN. (PROF.) WILFRED LESAN**

DATE:

.....

**MINUTES OF THE TENTH JOINT SITTING OF THE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET AND THE SESSIONAL COMMITTEE ON DEVOLVED GOVERNMENT-KISUMU COUNTY PETITION HELD IN THE COMMITTEE ROOM 5, MAIN PARLIAMENT BUILDING ON 6<sup>TH</sup> OCTOBER 2015, AT 9.00 A.M.**

**PRESENT:**

- |                                |   |
|--------------------------------|---|
| 1. Sen. Billow Kerrow          | - <b>Co-Chair</b> Devolved Government & Finance |
| 2. Sen. Hassan Omar Hassan     | - <b>Co-Chair</b> Member, Devolved Government   |
| 3. Sen. (Prof.) Anyang Nyong'o | -Member, Finance, Commerce & Budget             |
| 4. Sen. Mutula Kilonzo Junior  | -Member, Finance, Commerce & Budget             |
| 5. Sen. (Dr.) Wilfred Machage  | -Member, Finance, Commerce & Budget             |
| 6. Sen. Peter Mositet          | -Member, Finance, Commerce & Budget             |
| 7. Sen. Moses Wetangula        | -Member, Finance, Commerce & Budget             |
| 8. Sen. Boni Khalwale          | -Member, Finance, Commerce & Budget             |
| 9. Sen. G.G. Kariuki           | -Member, Finance, Commerce & Budget             |
| 10. Sen. Catherine Mukiite     | -Member, Finance, Commerce & Budget             |
| 11. Sen. Paul Njoroge Ben      | -Member, Finance, Commerce & Budget             |
| 12. Sen. Amos Wako             | -Member, Devolved Government                    |

(N/B Sen. Billow Kerrow and Sen. Beatrice Elachi are members of the both Committees)

**ABSENT WITH APOLOGY**

- |                            |  |
|----------------------------|--|
| 1. Sen. Kipchumba Murkomen | -Chairman, Devolved Government         |
| 2. Sen. Naisula Lesuuda    | - Vice Chair Devolved Government       |
| 3. Sen. Stephen Ole Ntutu  | -Member, Finance, Commerce & Budget    |
| 4. Sen. Zipporah Kittony   | -Member, Finance, Commerce & Budget    |
| 5. Sen. Mungai James       | -Member, Finance, Commerce & Budget    |
| 6. Sen. Henry ole Ndiema   | -Member, Devolved Government           |
| 7. Sen. Beatrice Elachi    | -Member, Devolved Government & Finance |
| 8. Sen. Janet Ongera       | -Member, Devolved Government           |
| 9. Sen.(Dr.) Agnes Zani    | -Member, Finance, Commerce & Budget    |
| 10. Sen. John Lonyangapuo  | -Member, Finance, Commerce & Budget    |
| 11. Sen. Mutahi Kagwe      | -Member, Finance, Commerce & Budget    |

## **SECRETARIAT**

1. Mr. Joseph Mwangi -Clerk Assistant
2. Mr. Victor Bett -Clerk Assistant
3. Mr. Chelang'a Maiyo -Research Officer
4. Ms. Christine Sagini -Research Officer
5. Mr. Gorod Abdi -Parliamentary Budget office
6. Mr. John Mungai -Audio Office
7. Mr. Johnstone Okello -Deputy Director Legal Services
8. Ms. Sofiah Kerubo -Intern

## **IN ATTENDANCE**

1. Hon. Aggrey Ogosi -Petitioner (MCA)
2. Hon. Elijah Omondi -Petitioner (MCA)
3. Hon. Joseph A Osano -Petitioner (MCA)
4. Mr. Aloice Ager -Personal Assistant to Hon. Osano
5. Mr. Stephen Otieno Orot -Former C.E.C Agriculture
6. Eng. K'Odera .V. Adda - Former C.E.C Roads
7. Mr. Humphrey .O. Wanyama -Deputy Auditor General

## **MIN. 52/2015:**

## **PRELIMINARIES**

The Co-Chairman of the standing Committee on Finance, Commerce and Budget Sen. Billow Kerrow, called the meeting to order at 9.28 am, followed by a word of prayer. Thereafter he welcomed the members and the Petitioners of the Kisumu Petition to the meeting.

## **MIN 53/2015:**

## **ADOPTION OF THE AGENDA**

The agenda of the day was adopted unanimously as follows:

1. Preliminaries
  - i.) *Prayer*
  - ii.) *Remarks by the co-chairpersons*
2. Adoption of the Agenda
3. Petition by Members of Kisumu County Assembly on the alleged corruption and gross mismanagement by the Kisumu County Executive

- i.) Meeting with the Petitioners
  - ii.) Meeting with the Dismissed C.E.Cs of Kisumu County.
  - iii.) Meeting with the Auditor General
4. Any Other Business
  5. Date of Next Meeting
  6. Adjournment

**MIN 54/2015:                      i.) MEETING WITH THE PETITIONERS**

The Co-Chairman Sen. Billow Kerrow gave the petitioners the opportunity to make their presentation.

The petitioners submitted their presentation and gave a summary of the contents as follows:

**Hon. Aggrey Ogesi –Petitioner (MCA)**

1. Thanked the Committee for the invitation to give their final presentation.
2. Noted that devolution was under threat.
3. The process of recruiting the eight chief officers did not follow the due process.
4. The position of the city manager ought to be filled competitively.
5. The renovation of the 9<sup>th</sup> floor of Propensity House was manipulated from costing Ksh.7.8 million to Ksh.28 million.
6. Kshs.200 million was embezzled from the Jaramogi Odinga referral hospital.

**Hon. Joseph A Osano                      -Petitioner (MCA)**

1. The Recruitment of the County Secretary did not follow due process.
2. The tendering process had procedural flaws.

**Clarification by the Committee** was made to the effect that any tendering for more than Ksh.6 million ought to follow the open tendering system.

3. There was nepotism in the recruitment of Chief Officers, Sub County Administrators and Ward Administrators.

**Clarification by the Committee** on the need for the petitioners to demonstrate nepotism.

4. The former C.E.C Finance was dismissed from office as he was strict in dispensing his duties.

5. Kisumu county had the capacity to make revenue of Ksh.1.5 billion whereas it was currently making Ksh.500-600 million annually.
6. The petitioners had tabled a report on the revenue streams to the infrastructure committee of the Kisumu County Assembly.

**Clarification by the Committee-**A member informed the Committee that he had evidence of the flawed recruitment process. The Chairman directed that the same be given to the Secretariat. He was allowed to read through his presentation.

The meeting was concluded by the Co-Chairman Sen.Billow Kerrow thanking the petitioners for attending the session.

#### **ii.) MEETING WITH THE DISMISSED C.E.Cs.**

The Co-Chairman Sen. Billow Kerrow welcomed the former C.E.Cs to the meeting and after introduction, he gave them the opportunity to make their presentation on the renovation of 9th floor of Prosperity House.

##### **1. Eng. K'Odera V. Adda- Former C.E.C Roads**

- i.) He was not involved in the process of the renovation. The Governor was dealing directly with the contractors.
- ii.) He complained about the project costing ksh.26 million yet due process was not being followed, in a meeting in Kericho and he said that he would not take responsibility as he was not being involved.
- iii.) The governor made the necessary procurement documents after knowing that there was a petition against his government.
- iv.) The Governor used teams as opposed to the C.E.C in the renovation of the 9<sup>th</sup> floor of Propensity Building.
- v.) He sent to the Governor a protest letter on his lack of involvement on the same.

**Clarification by the Committee-**Whether there were other tenders unprocedurally undertaken.

**Response:** He confirmed that there were similar irregularities, and that the county executive used the funds for the FY 2014/2015 to finance FY 2013/2014 projects.

##### **2. Mr. Stephen Otieno Orot -Former C.E.C Agriculture**

- i. His budget had been collapsed to Kshs.12 million for paying for Sorghum and rice seeds to Kenya Seeds Limited. Only Ksh.10million was paid, a balance of Ksh.2million was outstanding. He was paying for a previous year's budget.

**Clarification by the Committee-**What his major concern was:

- a) That the practice being set by the governor, would set a bad precedent.
- b) Payment to suppliers, was being done partially according to what the Governor wanted paid for.
- c) There were instances of double payment.

The Co-Chairman Sen. Billow Kerrow thanked the two former C.E.Cs for attending the session.

**iii.) MEETING WITH THE DEPUTY AUDITOR GENERAL: Mr. Humphrey Wanyama-Representing the Auditor General.**

The Co-Chairman Senator Billow Kerrow, welcomed him and gave him the opportunity to make his submission. The following deliberations ensued:

- i.) He apologized on behalf of the Auditor general who was unable to attend the session and also wished he would have attended the session accompanied by the director of audit, Kisumu County to assist him the deliberations.
- ii.) An audit report on Kisumu County was done for Fiscal year 2013/2014 and another report that was tabled at the Senate was also done.
- iii.) The prayers of the petitioners are adequately covered by the above two reports save the forensic report, which had not been done.

**Clarification by the Committee-**Whether there was need for a forensic report.

Mr. Wanyama clarified that there was need for the forensic report and that it would be done in the next audit report by December, 2015.He stated that there were other financial concerns that the audit reports on Kisumu raised, that the petitioners did not include in the petition.

He further clarified that the forensic report would incorporate I.T (Information Technology) to include human resources and payroll matters.

The Chairman requested for a special audit for Kisumu County and concluded the session by thanking Mr. Wanyama for attending the meeting.

**MIN.55/2015:                    ANY OTHER BUSINESS**

There was no other business.

**MIN.56/2015:                    ADJOURNMENT AND DATE OF NEXT MEETING**

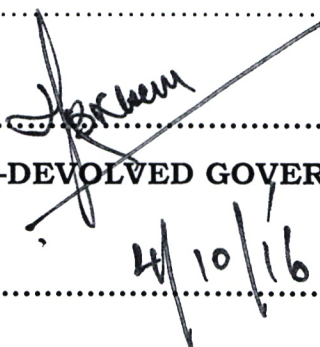
There being no other business, the meeting was adjourned at 11.17am.



**SIGNED:** .....

**CHAIRPERSON - FINANCE, COMMERCE AND BUDGET**

**DATE:** .....



**SIGNED:** .....

**CHAIRPERSON -DEVOLVED GOVERNMENT COMMITTEE**

**DATE:** .....

**MINUTES OF THE NINTH JOINT SITTING OF THE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET AND THE SESSIONAL COMMITTEE ON DEVOLVED GOVERNMENT-KISUMU COUNTY PETITION HELD IN THE GROUND FLOOR BOARDROOM, COUNTY HALL ON 30<sup>TH</sup> SEPTEMBER, 2015 AT 11.00 AM.**

**PRESENT:**

1. Sen. Billow Kerrow - **Co-Chair** Chairman Devolved Government & Finance
  2. Sen. Naisula Lesuuda - **Co-Chair** Vice Chair Devolved Government
  3. Sen. (Prof.) Anyang Nyong'o -Member, Finance, Commerce & Budget
  4. Sen. Mutula Kilonzo Junior -Member, Finance, Commerce & Budget
  5. Sen. (Dr.) Wilfred Machage -Member, Finance, Commerce & Budget
  6. Sen. Stephen Ole Ntutu -Member, Finance, Commerce & Budget
- (N/B Sen. Billow Kerrow and Sen. Beatrice Elachi are members of the both Committees)

**ABSENT WITH APOLOGY**

1. Sen. Kipchumba Murkomen -Chairman, Devolved Government
2. Sen. Zipporah Kittony -Member, Finance, Commerce & Budget
3. Sen. Paul Njoroge Ben -Member, Finance, Commerce & Budget
4. Sen. Mungai James -Member, Finance, Commerce & Budget
5. Sen. Peter Mositet -Member, Finance, Commerce & Budget
6. Sen. Henry ole Ndiema -Member, Devolved Government
7. Sen. Moses Wetangula -Member, Finance, Commerce & Budget
8. Sen. Amos Wako -Member, Devolved Government
9. Sen. G.G. Kariuki -Member, Finance, Commerce & Budget
10. Sen. Hassan Omar Hassan -Member, Devolved Government
11. Sen. Beatrice Elachi -Member, Devolved Government & Finance
12. Sen. Janet Ongera -Member, Devolved Government
13. Sen. Catherine Mukiite -Member, Finance, Commerce & Budget
14. Sen.(Dr.) Agnes Zani -Member, Finance, Commerce & Budget
15. Sen. John Lonyangapuo -Member, Finance, Commerce & Budget
16. Sen. Mutahi Kagwe -Member, Finance, Commerce & Budget
17. Sen. Boni Khalwale -Member, Finance, Commerce & Budget

## **SECRETARIAT**

1. Ms. Brenda Ogembo - Clerk Assistant
2. Mr. Joseph Mwangi - Clerk Assistant
3. Mr. Chelang'a Maiyo - Research Officer
4. Mr. Gorod Abdi - Parliament Budget Officer
5. Ms. Christine Sagini - Research Officer
6. Ms. Sofiah Kerubo - Intern

## **MIN. 46/2015:**

## **PRELIMINARIES**

The Co-Chairman of the standing Committee on Finance, Commerce and Budget Sen. Billow Kerrow, MP, called the meeting to order at 11.03am followed by a word of prayer. Thereafter he welcomed the Members to the meeting.

His opening remarks included:

1. The petition had taken a long time past its deadline of 4<sup>th</sup> May 2015.
2. Based on the information already received, the Committee would conclude the matter by end of October 2015.

### **Co-Chair Sen. Naisula Lesuuda's opening remarks:**

1. There was enough information to conclude the matter.

## **MIN 47/2015:**

## **ADOPTION OF THE AGENDA**

The agenda of the day was adopted unanimously as follows:

1. Preliminaries
  - (i) Prayer
  - (ii) Remarks by the Co-Chairpersons
2. Adoption of the agenda
3. Confirmation of minutes 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> sittings
4. Way Forward / Report Writing Retreat
5. Any other Business
6. Date of Next Meeting
7. Adjournment

## **MIN 48/2015:**

## **CONFIRMATION OF MINUTES 3<sup>RD</sup>, 4<sup>TH</sup>, 5<sup>TH</sup> AND 6<sup>TH</sup> SITTINGS**

Confirmation of minutes for the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> sittings was deferred to the following meeting.

**MIN 49/2015: THE WAY FORWARD**

The Chairman and Co-Chair remarked that the petition had taken a long time and that the committee could conclude it because the information given was sufficient enough.

The committee resolved to invite the petitioners and flag the specific areas that they needed to respond to from the responses of the governor.

Members were urged to be thorough in dealing with the petition.

A member felt that there was no interrogation during the second meeting with the Governor of Kisumu and that the petitioners had not been invited during the said meeting.

The chair (Sen. Billow Kerrow) led the committee through the brief summary on the Kisumu County Petition. During the proceedings some emerging issues were identified;

- Stalemate of the County Secretary interest in the seat, there as unable to come to a conclusion.
- The petitioners were not around to hear the Governors response, and likewise the petitioners were not given the opportunity to respond to the Governor.
- Follow up of auditors general report (Forensic audit)
- The Kisumu County Governor was directed to pay Ksh.187M

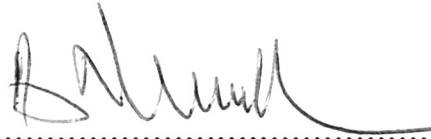
**MIN.50/2015: ANY OTHER BUSINESS**

The draft reports from 28<sup>th</sup> September.

MIN.51/2015:

ADJOURNMENT AND DATE OF NEXT MEETING

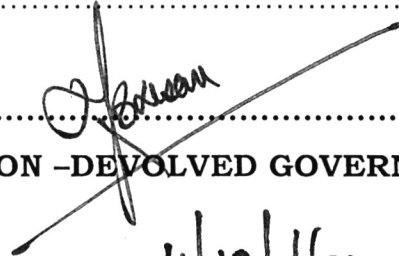
There being no other business, the meeting was adjourned at 11.45am.



SIGNED: .....

**CHAIRPERSON - FINANCE, COMMERCE AND BUDGET**

DATE: .....



SIGNED: .....

**CHAIRPERSON -DEVOLVED GOVERNMENT COMMITTEE**

DATE: .....

4/10/16.

**MINUTES OF THE EIGHTH JOINT SITTING OF THE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET AND THE SESSIONAL COMMITTEE ON DEVOLVED GOVERNMENT-KISUMU COUNTY PETITION HELD IN THE GROUND FLOOR BOARDROOM, COUNTY HALL ON 29<sup>TH</sup> JULY, 2015 AT 11.00 A.M.**

**PRESENT:**

- |                                |   |
|--------------------------------|---|
| 1. Sen. Kipchumba Murkomen     | - <b>Co-Chair</b> , Devolved Government       |
| 2. Sen. Billow Kerrow          | - <b>Co-Chair</b> , Finance, commerce& Budget |
| 3. Sen. Paul Njoroge Ben       | -Member, Finance, commerce& Budget            |
| 4. Sen. Janet Ong'era          | -Member, Devolved Government                  |
| 5. Sen. (Prof.) Anyang Nyong'o | -Member, Finance, commerce& Budget            |
| 6. Sen. Beatrice Elachi        | -Member, Devolved Government                  |
| 7. Sen. Mutula Kilonzo Junior  | -Member, Finance, commerce& Budget            |
| 8. Sen. John Lonyang'apuo      | -Member, Finance, commerce& Budget            |
| 9. Sen. G.G. Kariuki           | -Member, Finance, commerce& Budget            |
| 10. Sen. Hassan Omar Hassan    | -Member, Devolved Government                  |

(NB. Senators Billow Kerrow and Beatrice Elachi are members of both committees.)

**ABSENT WITH APOLOGY**

- |                                |   |
|--------------------------------|---|
| 1. Sen. Peter Mositet          | - <b>Vice-Chair</b> , Finance, commerce& Budget |
| 2. Sen. Naisula Lesuuda        | - <b>Vice-Chair</b> , Devolved Government       |
| 3. Sen. (Dr.) Agnes Zani       | -Member, Finance, commerce& Budget              |
| 4. Sen. Mungai James           | -Member, Finance, commerce& Budget              |
| 5. Sen. Boni Khalwale          | -Member, Finance, commerce& Budget              |
| 6. Sen. Amos Wako              | -Member, Devolved Government                    |
| 7. Sen. Stephen Ole Ntutu      | -Member, Devolved Government                    |
| 8. Sen. Henry ole Ndiema       | -Member, Devolved Government                    |
| 9. Sen. Mutahi Kagwe           | -Member, Finance, commerce& Budget              |
| 10. Sen. (Dr.) Wilfred Machage | -Member, Finance, commerce& Budget              |
| 11. Sen. Catherine Mukiite     | -Member, Finance, commerce& Budget              |
| 12. Sen. Zipporah Kittony      | -Member, Finance, commerce& Budget              |
| 13. Sen. Moses Wetangula       | -Member, Finance, commerce& Budget              |

## **IN ATTENDANCE**

### **KISUMU COUNTY OFFICIALS**

1. Hon. Jack Ranguma -Governor
2. Eng. Nashon Oguya -Chairman County Public Service Board
3. Mr. George Okoth -County Officer
4. Mr. Cephas Kasera -Chief Finance Officer
5. Mr. Alex Ayatta -Deputy Director Supply Chain
6. Mr. Humphrey Nakitare -County Secretary
7. Ms. Betty Asunah -Vice Chairman County Public Service Board

### **SECRETARIAT**

1. Mr. Joseph Mwangi - Clerk Assistant
2. Mr. Victor Bett - Clerk Assistant
3. Mr. Johnstone Okello -Deputy Director Legal Services
4. Mr. Gorod Abdi -Budget Officer
5. Mr. John Kithi -Intern
6. Mr. Chelang'a Maiyo -Research Officer
7. Mr. John Mungai -Audio Unit
8. Ms. Lucy Mwaniki -Sergeant at Arms

### **MIN. 41/2015 :**

### **PRELIMINARIES**

The Co-Chairman Sen. Kipchumba Murkomen, called the meeting to order at 11:47am. He welcomed members of the committee and the county executives from Kisumu County.

The Mode of conducting the meeting was set out.

### **MIN. 42/2015 :**

### **ADOPTION OF THE AGENDA**

The agenda was adopted unanimously by members as follows:

### **AGENDA**

1. Preliminaries
2. Adoption of the Agenda
3. Petition by Members of **Kisumu County Assembly on the alleged corruption and gross mismanagement by the Kisumu County Executive**
  - a. Meeting with the **Governor** of Kisumu County accompanied by the Chairman of the Kisumu County Public Service Board.
4. Any Other Business

5. Date of Next Meeting
6. Adjournment

**MIN. 43/2015 :**

**MEETING WITH THE GOVERNOR KISUMU**

**COUNTY.**

**Particularized Responses to the Letter Dated 25th June 2014:**

**2.1 Employment**

**Allegations:**

There is an inordinate delay in filling vacancies in crucial dockets such as County Secretary and County Finance Officer, thus hindering services.

**Facts:**

The Constitution of Kenya 2010 A.15 (1) & (2) provides for a transition period of three (3) years within which the National and County Governments were to synchronize their operations through phased transfer of functions, which period ends in March 2016.

The two officers referred to hereinabove were deployed by the Transition Authority pursuant to S.7(d)(iii),(l)&(m) of the Transition to Devolved Government Act and have had important historical background with institutional memory necessary in establishment of systems, structures and frameworks, including developing capacity of the newly recruited staff in various departments. While the Interim County Secretary is still holding brief as the recruitment process is ongoing; substantive appointment of the Chief Finance Officer (CFO) has been done.

**Clarification Sought by the Joint Committee:**

1. The reason it has taken so long to fill the position of the County Secretary.
2. How Long ago the County Secretary Job was advertised, and what the employment law states about the same.
3. How well the County Public Service Board has achieved the 30% rule of recruiting from people not necessarily from the County/local community.

**Response:**

1. They have not filled the position due to interests which the Governor is not comfortable disclosing to the Joint Committee, due to the volatility of the same.
2. The length of time is not an issue since there were logistical issues that needed to be addressed.
3. The Kisumu County Public Service Board has met the 30% inclusivity threshold.

## **2.2 City Management Board**

### **Allegation**

The Governor has failed to constitute the City Management Board as required by Urban Areas and Cities Act and has gone ahead to appoint the City Manager without the due process, and that the City manager, in absence of the City Management Board has no person to oversight his activities.

### **Facts:**

S.54 of the Urban Areas and Cities Act provides that during the transition period, assessment shall be undertaken on the existing urban areas and cities in order to ascertain whether they meet the criteria for classification as urban areas or cities under the Act.

Under S. 7 of the Transition to Devolved Government Act 2012 and S.15 of the Sixth Schedule to the Constitution, it is the responsibility of the Transition Authority to undertake the assessment and classifications of urban areas and cities. This assessment is not complete, and proposals on amendment of the

Urban Areas and Cities Act have not been submitted. This means that classification of urban areas and cities contained in the Act has been suspended to await final classification. This classification includes determination of boundaries for cities, municipalities and urban centers.

Although Kisumu is already designated as a city under the Urban Areas and Cities Act, the boundary situation is a matter that requires careful consideration. The County was undergoing County Integrated Development Plan (C.I.D.P) to determine the county boundaries, thereafter institute the City Management Board.

### **Clarification Sought by the Joint Committee:**

1. The Kisumu executive was faulted as misleading the committee in alleging that they were studying the boundaries before setting up a City Management Board whereas the Boundaries issue had already been determined by the Independent, Electoral, Boundaries Commission.

**Response:** That Kisumu County was implementing the law progressively and that there is no ill will in not appointing the City Management Board.

### **2.3 Tendering Process**

#### **Allegation:**

The County Government presided over flawed tendering process, which does not adhere to the requirements of the Public Procurement and Disposal Act such as renovating 9th Floor of Prosperity House to be used by the Governor, Deputy Governor

#### **Facts:**

The refurbishment of County Government Offices was done by following due process and strict adherence to the provisions of the Public Procurement and Disposal Act 2005 and the accompanying Regulations, specifically S.73(2)(a) and (b) of the Public Procurement and Disposal Act, S.54 of the Legal Notice No. 174 and the Threshold Matrix in Legal Notice No. 106 (Public Procurement and Disposal Regulations 2006), all attached hereto marked *Annex 2.3(a)(i), (ii)(and (iii))*. The Transition Authority on 23rd April, 2013 allocated to County Government of Kisumu Kshs. 61,592,200.00 for the development of County infrastructure both at the Assembly and for refurbishment of County offices. This money had to be committed or spent by 30th June 2013, one month after receipt thereof. The Bills of Quantities and technical documentation were duly prepared but the procurement method preferred was restricted owing to timeline provided by TA. Ten (10) prequalified Suppliers, as required by procurement regulations referred to above, were invited to bid for the works. The bidders were duly evaluated and an award made at Kshs. 25,415,649.00 compared to the Engineers estimate of Kshs. 27,000,000.00. There was therefore no variation of the estimates as alleged in the petition. A copy of the file containing relevant documents is attached hereto marked *Annex 2.3 (a)(iv)*.

The consolidated purchase of vehicles from CMC during the financial year 2014/2015 was done in compliance to section 32 of Public Procurement and Disposal Act 2005 by using the results of the prequalification of the Supplies Branch of the National Treasury. This was meant to make the procurement of the same cost effective by making bulk purchase from CMC, one of the suppliers approved by the Supplies Branch at Government.

**Clarification Sought by the Joint Committee:**

1. Whether the County Government had attained the 30% threshold for procurement/supplies to the Youth.
2. A member observed that open tendering was clearly not used for the procurement of the vehicles.

**Response:**

1. The question was overruled as it was not part of the petition.
2. There were only two companies that would supply to the County such vehicles.
3. The budget and maintenance costs were considered when the county settled for CMC.

**2.4 Budget re-allocations**

**Allegations:**

The County Government set aside the Development Vote for the FY 2013/2014 budget and instead requested for more development funds in the supplementary budget in 2013/2014. There have also been several cases of irregular budget re-allocations.

**Facts:**

There was no instance of the Development Budget for the FY 2013/2014 being set aside, neither was there any instance of budget reallocation. Supplementary budget was however done, pursuant to S.135 and S.154 of the Public Finance Act 2012, to realign budget to reality during the course of execution. The budget approved by the County Assembly for 2013 / 2014, attached hereto marked *Annex 2.4 (a)*, was Kshs. 7,866,813,547.00. The supplementary budget for 2013/2014 of Kshs. 7,320,633,060.00, so approved, is attached hereto marked *Annex 2.4 (b)*.

## **2.5 County Budget and Economic Forum**

### **Allegation:**

The County Budget and Economic Forum, whose main responsibility is to play a consultative role in the budget making process has met only once since it was established, in breach of Section 137 of the Public Finance Management (PFM) Act.

### **Facts:**

The County Budget and Economic Forum was established and members appointed, in accordance with S. 137 of the Public Finance Act, on 5th February 2014. The first meeting was held on 29th April 2014, the second meeting in 26th and 27th June 2014, the third meeting in September 2014, fourth meeting on 24th February 2015.

The First training to build capacity of the CBEF was done on 12th to 15th March 2015, and the second training was done on 29th May 2015. Although CRA guidelines for the operationalization of CBEF was received on 3rd March 2015, there were intense activities of the CBEF even before that as demonstrated above. The CBEF had by June 2015 held several meetings and participated in the 2015/2016 Budget hearings and Public Participation Forums. Moreover, they have been involved in Public Participation exercises.

It is important to note that to date, Kisumu County is one of the few Counties that have institutionalized and fully operationalized CBEF. The allegation in the petition is therefore misguided.

A copy of a file with relevant documents is attached hereto marked *Annex 2.5*.

### **Clarification Sought by the Joint Committee:**

The issue of having many budgets approved by the County Assembly that it was difficult to know the Budget that was enforceable.

### **Response:**

The county Government officials refuted the claim that they have many budgets and insisted that they do not implement a budget that has not been scrutinized by the Controller of Budgets.

## **2.6 Revenue Collection**

### **Allegation:**

There are loopholes in the revenue collection in the County with revenue declared and banked being more or less similar to the former Municipal Council of Kisumu yet there are five former local authorities in the County.

**Facts:**

A general decline in revenue collections subsequent to devolution was rampant across counties, and is not a problem unique to Kisumu. This general decline of revenue in counties was occasioned mainly by lethargy on the staff tasked with the responsibility of revenue collection because of the fear of uncertainty on their positions occasioned by the new dispensation and change in revenue collection procedures to comply with the PFM Act. This temporary weakening of the local revenue collection capacity has since been addressed through streamlining the collection system and subsequently through automation.

Documents confirming process of automation are attached hereto marked *Annex 2.6(a)*.

Immediately upon formation of the County Government, the Governor mandated the Deputy Governor to coordinate revenue collection throughout the county, and she has attended various trainings and benchmarking seminars to build her capacity for the task, as well as chaired various revenue performance meetings to date. A file of supporting documents on Deputy Governor’s leadership of Revenue Enhancement program is attached hereto marked *Annex 2.6(b)*.

The status of collections, as per the attached reports marked *Annex 2.6(c)(i) and (ii)*, is summarized as follows:

Year	Defunct Municipal Council Of Kisumu	County Government of Kisumu	Contribution from Sub counties	Other Contribution from other Sub Counties	% Contribution from other Sub Counties
<b>2007-08</b>	296,197,854				
<b>2008-09</b>	377,201,116				
<b>2009-10</b>	397,364,968				
<b>2011/12</b>	522,302,295	The County Government	N/A	N/A	N/A

		was not yet formed.		
<b>2012/13</b>	581,350,954	671,635,047	90,284,093	13%
<b>2013/14</b>	526,283,450	621,861,798	95,578,348	15%
<b>2014/2015 (as at 30.06.2015)</b>	871,456,530	970,903,407	99,446,877	10%

**Clarification Sought by the Joint Committee:**

The measures the County Government undertook to address the lethargy among the staff. It emerged that supervisors were appointed to supervise staff even though it was done late.

**2.7 Financial Reporting**

**Allegation:**

The County Government has failed to prepare the annual financial report for forwarding to the Auditor General, Controller of Budget, Commission on Revenue Allocation and County Assembly in contravention of section 163, 164, 165 and 166 of the PFM Act.

**Facts:**

The County Government has adequately complied with S. 163, 164, 165 and 166 of the Public Finance Management Act. The Annual Financial Statement, the Quarterly Reports by Accounting Officer(s) and Annual Report by Receivers of Revenue for the FY 2013/14 was all duly submitted to Controller of Budget, Auditor General, National Treasury, Commission on Revenue Allocation and the County Assembly – all in a prescribed template.

**2.8. Misuse of Public Resources**

**Allegation:**

There is rampant misuse of public resources by the County Government by allocating vehicles and fuel to persons who are not employees of the County Government or performing official duties of the County. The County has also incurred extravagant expenses through an item referred to as ‘entertainment in official functions.

**Facts:**

The County Vehicles are used according to the law and are pooled and allocated to County Government officers on needs basis. No county vehicle is allocated for any non-government activities. Records on use of the vehicles are well kept by the transport department. The County Government has also allocated four vehicles to the County Assembly, the management of which remains the responsibility of the County Assembly Clerk.

We are not aware of any expenditure known as “expenditure in official functions”. In any case the County Government expends in line with approved budget as demonstrated in Annex 2.4(a) and (b).

**2.9 Unconstitutional Offices****Allegation:**

The Governor has been creating unconstitutional offices within his office that are meant to usurp roles of ministries and further that these unconstitutional offices are headed by cronies of the Governor.

**Facts:**

All Governors across the country were authorized by Transition Authority to appoint certain officers to support them in setting up of the County Governance structures. The Governor, in all his decisions as CEO, was guided by the need to ensure proper and efficient service delivery, and to strengthen managerial capacity while also designing systems to seal existing managerial gaps. The appointment of officers in the Governor’s office is still not complete due to the huge wage bill, which stands at 84% of the exchequer release.

It is important to note that the County Government works on a budget that is approved by the Assembly and each department or spending unit have their own AIEs. Establishment of all public offices in the County Government, and the recruitment of personnel for the same, is however the prerogative of the County Public Service Board that discharges this mandate pursuant to S. 60 of the County Government Act. The Board also ratifies decisions that the Governor and the Transition Authority may have taken before its creation.

Therefore there is no such thing as unconstitutional offices within the County Government and expenditure programs are guided by AIE holders.

### **3. Response to Letter dated 15th July 2015**

#### **3.1. Procurement of 9th Floor and Motor Vehicles**

Procurement of 9th Floor of Prosperity House Building and purchase of motor vehicles from CMC have been adequately dealt with in 2.3 above.

#### **3.2. Alleged setting aside of development vote**

This has been dealt with in 2.4 above

#### **3.3. Financial Statements and Reports**

Financial statements and reports on revenue collected and banked, as well as evidence of measures put in place to seal the alleged loopholes in revenue collection has been dealt with in 2.5 above.

#### **3.4. Dismissal of Dr. Stephen Orot**

The procurement of sorghum seeds in the FY 2013/14 was not paid for in that financial year due to intermittent flow of funds from the National Treasury, which transmitted the last tranche on July 17, 2014. Part of the July transfer was meant to pay for the sorghum seeds. We however budgeted for this under pending bills in the FY 2014/15 and the same was subsequently paid on 2nd February 2015, as per the attached payment voucher marked Annex 3.4(a) and 3.4(b) respectively.

The allegation that the voucher appeared twice is not true since this was a transaction of a previous year settled in the following financial year.

Any insinuations of impropriety in the transaction and that the CEC member for Agriculture may have been sacked because of concerns about this payment is a fabrication of facts.

#### **3.5. Organogram and Leadership Structure**

This has been dealt with on 2.2(f)(ii) and 2.9 above

#### **3.6. City Manager and City Board**

This has been dealt with in 2.2 above

### **4. Response to Petition by Prof. Anyang Nyongo Dated 4th March 2015**

#### **4.1. Kisumu County is heaving under corruption**

The allegation is incorrect and made in bad faith. The operations of the County Government of Kisumu is guided by the PFM Act 2012.

#### **4.2. Recruitment and Employment Riddled with Nepotism and Clannism**

The allegation is incorrect and made in bad faith. There are more than 3800 personnel consisting of personnel transferred from the National Government, inherited from former local authorities and those employed at the inception of the County Government. The list of the latter is insignificant (approximately 1.6% of the total number of staff in the County). The list of the latter and their origin as provided in 2.9 above sufficiently rebuffs the allegation.

**Clarification Sought by the Joint Committee:**

1. The Committee sought to know whether the County had achieved the 30% threshold of recruiting from other communities other than the locals. The County executives confirmed that they had complied.
2. The issue of the Governor recruiting his relatives was also claimed to be untrue.

**4.3. Public Service Board and the Recruitment of Chief Officers**

a. In accordance with S. 59 (1) of the County Government Act, the powers and functions to

“(a) Establish and abolish offices in the county public service; and

(b) Appoint persons to hold or act in offices of the county public service..” is bestowed upon the County Public Service Board (CPSB) and it is thus incorrect to allege that the Governor appointed any officers without reference to the Public Service Board. In fact, the creation of all the 14 offices of the Chief Officers, and recruitment of person’s to hold the offices, were conducted strictly in accordance with PART VII of the County Government Act and independently by the CPSB.

b. The CPSB advertised for 10 positions of Chief Officers assuming that the County Government would only require 10 chief officers.

The fact of the matter is that several departments and sectors were combined to form Executive Offices in compliance with limit of CECs imposed by law. However, for efficient management of the sectors and departments, it was necessary to establish departments and structures consistent with the National Government for better coordination. Indeed S.46 of the County Government Act allows the Executive to “organize its departments and other structures in a flexible way in order to respond to changing priorities and circumstances”.

Therefore the fourteen chief officers were selected competitively from amongst 214 applicants.

The 12 names of the qualified candidates for appointment to the position of Chief Officers were duly submitted by the County Secretary to the Speaker of the County Assembly. Attached hereto is a copy of the letter marked Annex 4.3(f)(i). Follow-up queries indicated that the Speaker, without any just cause and in total disregard of the urgency of the matter, presented only four (4) names in the list to the County Assembly for vetting, a process that was carried out and the names approved for appointment. No communication was made to the County Executive on the fate of the other 10 nominees and/ or the reason for the Speaker's decision not to table the same to the floor of the County Assembly.

S.9 of the Public Appointments Act Cap 136 states that "if, after expiry of period for consideration specified in Section 8, Parliament (in this case County assembly) has neither approved nor rejected a nomination of a candidate, the candidate shall be deemed to have been approved."

The County Government, on unwarranted non-receipt of communication from the Speaker of the County Assembly, proceeded to issue appointment letters to the qualified candidates for positions of Chief Officers and mobilized them to immediately take office.

#### **4.4. Delay in Filling Vacancies of County Secretary and Chief Finance Officer**

This was dealt with in 2.1 above.

#### **4.5. City Manager and City Management Board**

This has been dealt with in 2.2 above.

#### **4.6. Flawed Tendering**

The issue of the 9th Floor at The Prosperity House and purchase of vehicles has been dealt with in 2.3 above.

#### **4.7. Budgetary Allocation**

This has been dealt with in 2.4 above

#### **4.8. Budget and Economic Forum**

This has been sufficiently dealt with in 2.5 above.

#### **4.9. Revenue Collection**

This has been dealt with in 2.6 above.

#### **4.10. Stagnation of the Health Care System**

It is true that the National Treasury allocated Kshs. 396 million towards JOOTR Hospital in the FY2013/2014. The County however received only Kshs. 208,379,382.00, which was transmitted in full to the hospital. The National Treasury retained Kshs. 212, 056,381.00, part of which Kshs. 187,620,618.00 is for JOOTRH. The analysis for the amount billed with respect to salaries for the devolved staff in the six months period (July-December 2014) is attached hereto marked Annex 4.10. The challenges of making utility bills payments when due is caused by intermittent disbursement of funds from the National Treasury. This is a matter common to all the counties and is being addressed through the Council of Governors. The only viable alternative would be to use cost sharing collections, but this would violate the PFM Act. The matter will best be addressed if the Treasury would disburse monies to Counties quarterly in advance as required.

#### **4.11. County Assembly Finance**

The Executive appreciates and promotes the principle of separation of power between it and the County Assembly. It is on this basis that the County facilitated the opening of operations accounts for the County Assembly both at the Kenya Commercial Bank and at the Central Bank of Kenya. The KCB account has been funded adequately and regularly in line with the Assembly's projected expenditure needs. The accounts at the CBK have remained non-operational because the IFMIS infrastructure had not been set up at the Assembly to enable them to operate the two accounts opened in December 2013. The Executive has also been building the capacity of the personnel at the Assembly to operate the IFMIS through trainings.

The Assembly decides how their money is spent. The Executive has no role and does not interfere in anyway with the operations of the Assembly finances.

#### **4.12. Financial reporting**

This has been adequately addressed in 2.7 above

#### **4.13. Rampant Misuse of Public resources**

This has been adequately dealt with in 2.8 above.

#### **4.14. Unconstitutional Offices**

This has been adequately dealt with in 2.9 above.

**4.15. Consultation**

The leadership of the County Government believes strongly in stakeholder engagement in accordance with the Constitution and County Government Act. In this regard, the County Government has been involved in continuous comprehensive and inclusive engagement with all shades of stakeholders, including political, private sectors, civil society and religious leaders, and the general citizens at large. In case there is any group that feels that it has not been given adequate opportunities for consultations and engagement, we would be happy to incorporate their interests in accordance with the law. In any case the County Government values continuous engagements with its citizens to the extent that it has developed a free sms platform for such engagements on which more than 6000 citizens have registered. We encourage others to register on the 21142 sms platform.

**Conclusion**

The Controller of Budget Report for the third quarter of FY 2014/2015 shows that there is significant improvement in expenditure management, absorption rates for both recurrent and development expenditures and general improvement in revenue out turn.

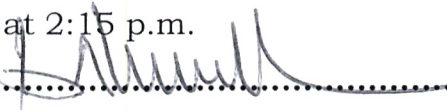
It is also important to consider that the Petitioners are members of the County Assembly and they had an opportunity to raise these matters at the County Assembly and deal with them conclusively at that level.

**MIN. 44/2015: ANY OTHER BUSINESS**

There was no other business.

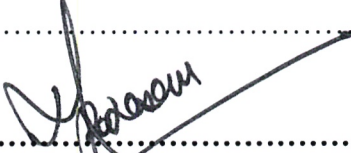
**MIN. 45/2015: ADJOURNMENT/DATE OF THE NEXT MEETING.**

The meeting was adjourned at 2:15 p.m.

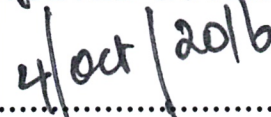
**SIGNED:** ..... 

**CHAIRPERSON - FINANCE, COMMERCE AND BUDGET**

**DATE:** .....

**SIGNED:** ..... 

**CHAIRPERSON -DEVOLVED GOVERNMENT COMMITTEE**

**DATE:** ..... 

**MINUTES OF THE SEVENTH JOINT SITTING OF THE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET AND THE SESSIONAL COMMITTEE ON DEVOLVED GOVERNMENT-KISUMU COUNTY PETITION HELD IN THE GROUND FLOOR BOARDROOM, COUNTY HALL ON 23<sup>RD</sup> JULY, 2015 AT 12.00 NOON.**

**PRESENT:**

- |                                |   |
|--------------------------------|---|
| 1. Sen. Kipchumba Murkomen     | - <b>Co-Chair</b> , Devolved Government       |
| 2. Sen. Billow Kerrow          | - <b>Co-Chair</b> , Finance, commerce& Budget |
| 3. Sen. Naisula Lesuuda        | - <b>Vice-Chair</b> , Devolved Government     |
| 4. Sen. Paul Njoroge Ben       | -Member, Finance, commerce& Budget            |
| 5. Sen. (Dr.) Agnes Zani       | -Member, Finance, commerce& Budget            |
| 6. Sen. Janet Ong'era          | -Member, Devolved Government                  |
| 7. Sen. (Prof.) Anyang Nyong'o | -Member, Finance, commerce& Budget            |
| 8. Sen. Beatrice Elachi        | -Member, Devolved Government                  |
| 9. Sen. Mutula Kilonzo Junior  | -Member, Finance, commerce& Budget            |
| 10. Sen. John Lonyang'apuo     | -Member, Finance, commerce& Budget            |

(NB. Senators Billow Kerrow and Beatrice Elachi are members of both committees.)

**ABSENT WITH APOLOGY**

- |                               |   |
|-------------------------------|---|
| 1. Sen. Peter Mositet         | - <b>Vice-Chair</b> , Finance, commerce& Budget |
| 2. Sen. Mungai James          | -Member, Finance, commerce& Budget              |
| 3. Sen. G.G. Kariuki          | -Member, Finance, commerce& Budget              |
| 4. Sen. Boni Khalwale         | -Member, Finance, commerce& Budget              |
| 5. Sen. Amos Wako             | -Member, Devolved Government                    |
| 6. Sen. Stephen Ole Ntutu     | -Member, Devolved Government                    |
| 7. Sen. Henry ole Ndiema      | -Member, Devolved Government                    |
| 8. Sen. Mutahi Kagwe          | -Member, Finance, commerce& Budget              |
| 9. Sen. (Dr.) Wilfred Machage | -Member, Finance, commerce& Budget              |
| 10. Sen. Hassan Omar Hassan   | -Member, Devolved Government                    |
| 11. Sen. Catherine Mukiite    | -Member, Finance, commerce& Budget              |
| 12. Sen. Zipporah Kittony     | -Member, Finance, commerce& Budget              |
| 13. Sen. Moses Wetangula      | -Member, Finance, commerce& Budget              |

## **IN ATTENDANCE**

### **KISUMU COUNTY OFFICIALS**

- |                        |                         |
|------------------------|-------------------------|
| 1. Hon. Aggrey Ogosi   | -M.C.A Petitioner       |
| 2. Hon. Joseph Asano   | -M.C.A Petitioner       |
| 3. Hon. Elijah Omondi  | -M.C.A Petitioner       |
| 4. Hon. Shakeel Shabir | -Former Mayor of Kisumu |
| 5. Hon. Prisca Auma.   | -Former Mayor of Kisumu |

### **SECRETARIAT**

- |                        |                          |
|------------------------|--------------------------|
| 1. Mr. Stephen Gikonyo | - Clerk Assistant        |
| 2. Mr. Joseph Mwangi   | - Clerk Assistant        |
| 3. Mr. Victor Bett     | - Clerk Assistant        |
| 4. Ms. Judy Ndegwa     | -Legal Counsel           |
| 5. Ms. Lucianne Limo   | -Media Relations Officer |
| 6. Mr. Gorod Abdi      | -Budget Officer          |
| 7. Mr. John Kithi      | -Intern                  |
| 8. Mr. Eugene Luteshi  | -Audio Unit              |
| 9. Mr. Stephen Nyakuti | -Audio Unit              |

### **MIN. 36/2015 :**

### **PRELIMINARIES**

The Ag. Chairman Sen. John Lonyang'apuo, called the meeting to order at 12:15pm. He welcomed members of the committee and the team from Kisumu County

### **MIN. 37/2015 :**

### **ADOPTION OF THE AGENDA**

The agenda was adopted unanimously by members as follows:

### **AGENDA**

1. Preliminaries
2. Adoption of the Agenda
3. Petition by Members of Kisumu County Assembly on the alleged corruption and gross mismanagement by the Kisumu County Executive.
  - Meeting with the former Mayors of Kisumu County.
4. Any Other Business
5. Date of Next Meeting
6. Adjournment

**I. Hon. Shakeel Shabir's Submissions:**(former Mayor of Kisumu City and Current Member of Parliament for Kisumu East Constituency)

1. The Kisumu City Council had the following income and expenditure estimates during his time in office:

<b>NO.</b>	<b>ITEM</b>	<b>INCOME (KSHS.)</b>	<b>NO.</b>	<b>ITEM</b>	<b>EXPENDITURE (KSHS.)</b>
1.	WATER	20,000,000 Monthly	1.	SALARIES	20,000,000
2.	MARKET RATES	10,000,000 Monthly	2.	WATER & ELECTRICITY	5,000,000 - 6,000,000
3.	BUS PARK	100,000 Daily			
4.	PARKING	60,000 Daily			
<b>Total Monthly Income</b>		<b>Approx. 30,000,000</b>			

2. They did compulsory banking of all transactions.
3. As a security measure, they were using embossed receipts to eliminate fraud.
4. They operated three bank accounts that included Kenya Commercial Bank, Co-operative and National Bank. Currently there are many more banks in operation for the Kisumu County.
5. 'Discounting' which is a form of not paying the actual amount transacted on by the Council is practiced in the County. This has led to losses of income by the Kisumu County. Eugeri Insurance broker was given as an example of those who engage in the discounting.
6. The City manager has little say in the County's decision making process.
7. Staff of Kisumu County are not paid on time.
8. The Service delivery has gone down; Kisumu city makes 90% of the County's income, whereas only 20% of the revenue goes to its service delivery.

9. The staff dealing with revenue collection operate without financial discipline in their accounting.
10. The Market supervisors are also compromised.

**II.HON.PRISCA AUMA'S SUBMISSION :**(Currently a Member of the County Assembly in Kisumu County and a former Mayor of the City.)

1. In the Financial year 2011/2012, the Kisumu City Council made revenues of Kshs.1.14 billion. This is an amount the current Kisumu County cannot achieve, despite having 4 other former municipal councils included in it.
2. The Governor of Kisumu County has resisted any attempts to institute a City management Board.
3. During her tenure as the Mayor of the City, there was a Kisumu Action team board that included the Commerce Chamber, Kenya Manufacturer's Association, and the private sector. It had co-opted the Vice Chancellor of the Maseno University as the board Chairman.
4. The Kisumu Action team (KAT) had 5 goals to achieve such as; improve infrastructure and promote sustainable socio economic development. There was marked increase in the revenue generated at the time.
5. There was staff training, financial discipline emphasis to the cash handlers.
6. She observed that there was no development project in Kisumu in the year 2013/2014.
7. Only seven Members of the County Assembly were engaged in the oversight role as the rest had already been compromised by the County Executive through cash tokens and gifts.
8. She hoped that the Senate was going to give a good resolution to the Petition.

**CLARIFICATIONS SOUGHT BY THE COMMITTEE/OBSERVATIONS**

**MADE:**

1. Clarification was sought on whether the Kisumu County had a County integrated development plan (CIDP)? It was confirmed that the plan was made and tabled at the county assembly.
2. How much revenue the County currently makes daily.
3. The reason as to why the Kisumu Airport was to be moved to Awasi.
4. It was observed that the City management Board would enhance accountability/transparency in the management of the City affairs.
5. The Joint Committee also sought to know whether there were any complains raised to the Governor concerning the lack of a city management board. It was confirmed that the members of the county assembly had written six times to the Governor on the same, and having had no response from his office.

**MIN. 39/2015:**

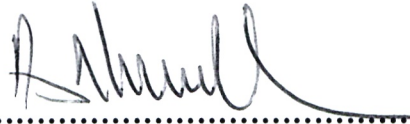
**ANY OTHER BUSINESS**

There was no other business.

**MIN. 40/2015:**

**ADJOURNMENT/DATE OF THE NEXT MEETING.**

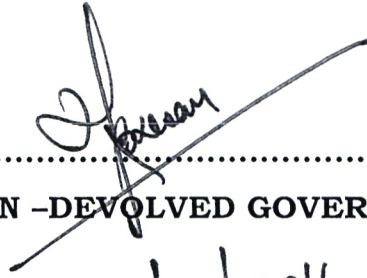
The meeting was adjourned at 1:40 p.m.



SIGNED: .....

**CHAIRPERSON - FINANCE, COMMERCE AND BUDGET**

DATE: .....



SIGNED: .....

**CHAIRPERSON -DEVOLVED GOVERNMENT COMMITTEE**

4/10/2016.

DATE: .....

**MINUTES OF THE SIXTH JOINT SITTING OF THE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET AND THE SESSIONAL COMMITTEE ON DEVOLVED GOVERNMENT-KISUMU COUNTY PETITION HELD IN THE GROUND FLOOR BOARDROOM, COUNTY HALL ON 23<sup>RD</sup> JULY, 2015 AT 10.00 AM.**

**PRESENT:**

- |                                |   |
|--------------------------------|---|
| 1. Sen. Kipchumba Murkomen     | - <b>Co-Chair</b> , Devolved Government       |
| 2. Sen. Billow Kerrow          | - <b>Co-Chair</b> , Finance, commerce& Budget |
| 3. Sen. Naisula Lesuuda        | - <b>Vice-Chair</b> Devolved Government       |
| 4. Sen. Paul Njoroge Ben       | -Member, Finance, commerce& Budget            |
| 5. Sen. (Dr.) Agnes Zani       | -Member, Finance, commerce& Budget            |
| 6. Sen. Janet Ong'era          | -Member, Devolved Government                  |
| 7. Sen. (Prof.) Anyang Nyong'o | -Member, Finance, commerce& Budget            |
| 8. Sen. Beatrice Elachi        | -Member, Devolved Government                  |
| 9. Sen. Mutula Kilonzo Junior  | -Member, Finance, commerce& Budget            |
| 10. Sen. John Lonyang'apuo     | -Member, Finance, commerce& Budget            |

(NB. Senators Billow Kerrow and Beatrice Elachi are members of both committees.)

**ABSENT WITH APOLOGY**

- |                               |   |
|-------------------------------|---|
| 1. Sen. Peter Mositet         | - <b>Vice-Chair</b> , Finance, commerce& Budget |
| 2. Sen. Mungai James          | -Member, Finance, commerce& Budget              |
| 3. Sen. G.G. Kariuki          | -Member, Finance, commerce& Budget              |
| 4. Sen. Boni Khalwale         | -Member, Finance, commerce& Budget              |
| 5. Sen. Amos Wako             | -Member, Devolved Government                    |
| 6. Sen. Stephen Ole Ntutu     | -Member, Devolved Government                    |
| 7. Sen. Henry ole Ndiema      | -Member, Devolved Government                    |
| 8. Sen. Mutahi Kagwe          | -Member, Finance, commerce& Budget              |
| 9. Sen. (Dr.) Wilfred Machage | -Member, Finance, commerce& Budget              |
| 10. Sen. Hassan Omar Hassan   | -Member, Devolved Government                    |
| 11. Sen. Catherine Mukiite    | -Member, Finance, commerce& Budget              |
| 12. Sen. Zipporah Kittony     | -Member, Finance, commerce& Budget              |
| 13. Sen. Moses Wetangula      | -Member, Finance, commerce& Budget              |

## **IN ATTENDANCE**

### **KISUMU COUNTY EXECUTIVES**

- |                       |                           |
|-----------------------|---------------------------|
| 1. Hon. Aggrey Ogosi  | -M.C.A Petitioner         |
| 2. Hon. Joseph Asano  | -M.C.A Petitioner         |
| 3. Hon. Elijah Omondi | -M.C.A Petitioner         |
| 4. Mr. Owen Ojuok     | -Former Clerk of Kisumu   |
| 5. Mr. Philip Adundo  | -Former Clerk of Kisumu   |
| 6. Hon. Pamela Omino  | -Deputy Speaker of Kisumu |

### **SECRETARIAT**

- |                        |                          |
|------------------------|--------------------------|
| 1. Mr. Stephen Gikonyo | - Clerk Assistant        |
| 2. Mr. Joseph Mwangi   | - Clerk Assistant        |
| 3. Mr. Victor Bett     | - Clerk Assistant        |
| 4. Ms. Judy Ndegwa     | -Legal Counsel           |
| 5. Ms. Lucianne Limo   | -Media Relations Officer |
| 6. Mr. Gorod Abdi      | -Budget Officer          |
| 7. Mr. John Kithi      | -Intern                  |
| 8. Mr.Eugene Luteshi   | -Audio Unit              |
| 9. Mr.Stephen Nyakuti  | -Audio Unit              |

### **MIN. 29/2015 :**

### **PRELIMINARIES**

The Co-Chairman Sen. Kipchumba Murkomen, called the meeting to order at 10:55am followed by prayer. He welcomed members of the committee.

### **MIN. 30/2015 :**

### **MATTERS OF PROCEDURE**

The secretariat read a letter from one of the invited guests Hon. Governor of Kisumu, who requested not to attend the session due to other commitments. He asked to be allowed to attend the session, the following week.

The Hon. Governor also requested to have the submissions made to the Joint Committee by the Deputy Governor, the previous week, so that he could prepare a comprehensive statement on the issues raised earlier and the Deputy Governor's allegations.



The proposal that the C.E.C Finance and the Chief Finance Officer be given the mandate to decide on the signatories of the county accounts would render the County Assembly, slaves of the executive.

The County Executive refused to allocate money to the County Assembly, meant for building its chambers and offices. This is the same reason why the Speaker was impeached having asked for the Ksh.745 million from the County Executive.

## **2. BUDGETING AND THE BUDGET CYCLE:**

I want to confirm here that we have zero regard to the set requirements the budget process as set out in section 125 of the PFM act. The Executive has continued to ambush the County Assembly with budgets that they hardly get time to scrutinize. The Challenge is because they are presented the last minute. This leads the County Assembly with no other option but to pass the budgets, to save the county from stalling. At times the County Assembly is presented with many budget documents that it is not clear which budget is in force.

In the last Financial Year 2014/15, The County Assembly debated two budgets and a supplementary one. The budgets they pass are never implemented.

It is important to note that Kisumu County did not implement a single development item, in the last financial year 2015/2016.

All these happen because some members of the County Assembly are induced to support the County Executive without being critical.

The Deputy Speaker raised her concern with the budget process to the Controller of Budget in September 2014.

## **3. USE/MISUSE OF RESOURCES:**

The County Executive has provided vehicles to members of the County Assembly who are not entitled to and the assembly is forced to fuel those vehicles from its kitty. This misuse of resources is meant to buy the loyalty of the said members. This has also fueled the continued wars that we have witnessed in the assembly in the past.

## **CLARIFICATIONS SOUGHT BY THE COMMITTEE/OBSERVATIONS MADE:**

1. The number of vehicles the County Assembly was allocated.

It was alleged that the County Assembly was allocated by the County Executive two old vehicles.

2. The circumstances under which the former Speaker was impeached.
3. The issue of the Assembly Service Board having a stay after the impeachment of the Speaker. It was clarified that another acting Speaker was elected and the Court observed that due process was not followed.
4. The Entire Service Board was charged with corruption cases by the Ethics and Anti-Corruption Commission, thereby rendering the Board not operational to date.
5. The two opening ceremonies for the County Assembly. It was clear that the one the Governor attended had not been gazette.
6. It emerged that the members of the County Assembly were divided and partisan in executing their duties.
7. Each financial year, there were sums of money that were unaccounted for the County Executive.

**MIN. 33/2015 :**

**MEETING WITH THE CLERK OF THE KISUMU  
COUNTY ASSEMBLY.**

The following was the submission by the Clerk:

- i. That the budget estimates for the fiscal year 2013/2014 was approved with the recurrent amount of Kshs 836,021,280.00 and a development of Kshs 212,000,000.00. The development component was meant for the construction of ultra-modern Assembly.  
**REF: APPROVED BUDGET F/Y 2013/2014**
- ii. That the Budget current expenditure was composed of salaries and other emoluments for members of the County Assembly and staff. The salary is payable at the treasury payroll while operations and maintenance would be wired to County Assembly's account for application according to their monthly financial plan.

- iii. That although monthly work plan would be forwarded to the County Treasury for inclusion for the requisition of funds, the receipt would not be consistent with the requisition. I further wish to state that the entire County Assembly recurrent budget for the Fiscal year 2013/2014, Kshs 836,021,280.00, actual transfers to Assembly account and salaries payable was Kshs 496,006,818.00. This gives a negative variance of Kshs 340,014,461.00
  - iv. As regards the financial year 2014/2015, the situation was different. While the County Assembly approved the County Assembly budget at Kshs 699,787,735.00, the budget had to be reduced through the County Supplementary estimates to Kshs 371,339,229.00 to conform to the requirements of the (commission for the Revenue Allocation CRA)
- Largely this budget was absorbed as much of the allocations were received by the County Assembly. To that extent there was no failure on the treasury to release funds, for the reasons that by the time supplementary estimates F/Y 2014/2015 were being approved there by reducing the County Assembly approved budget, almost half the approved budget estimates 2014/2015 had been spent.

### **RECRUITMENT/RESOURCE ALLOCATION CHALLENGES**

1. The County Public Service Board advertised ten (10 ) positions for chief officers instead Presented twelve (12) names to the Assembly for vetting. However the County Assembly of Kisumu only vetted four (4) nominees. The remaining 8 (eight) were never vetted since the positions had to be aligned with the relevant Executive Committee Positions. A letter was written by the then clerk of Assembly to the executive but there was no response.
2. The County Secretary is still in acting position. The Chief Finance Officer has been vetted and appointed formally.
3. The Governor has failed to constitute the City Management Board despite several petitions and demands by the Members of the County Assembly and Members of the Public.

4. The Budget process has been flawed as witnessed in the past where documents related to the budget are submitted late to the Assembly.
5. The tendering process has been flawed and the fact that the Director of Procurement was sent on compulsory leave is evidence.
6. The Governor has assigned two vehicles to the former Majority Leader and Hon. Gabriel Ochieng' under private arrangement while the two officers are not entitled to a vehicle.

#### **WAY FORWARD**

1. The Senate Joint committee asked the Deputy Speaker of the County Assembly to avail to it the Court ruling of both the Court of Appeal and the Industrial Courts.
2. The Deputy Speaker and the Clerk of the assembly were tasked with ensuring that the Members of the County Assembly acquainted themselves with the Standing Orders to help the integrity of the House.

#### **MIN. 34/2015:**

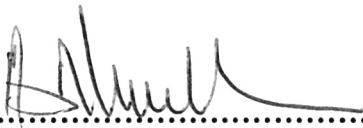
#### **ANY OTHER BUSINESS**

There was no other business.

#### **MIN. 35/2015:**

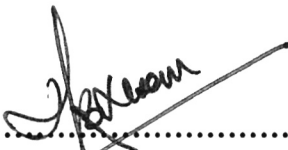
#### **ADJOURNMENT/DATE OF THE NEXT MEETING.**

The meeting was adjourned at 12:02 p.m.


SIGNED: .....  .....

**CHAIRPERSON - FINANCE, COMMERCE AND BUDGET**

DATE: .....

SIGNED: .....  .....

**CHAIRPERSON -DEVOLVED GOVERNMENT COMMITTEE**

DATE: .....  .....

**MINUTES OF THE FIFTH JOINT SITTING OF THE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET AND THE SESSIONAL COMMITTEE ON DEVOLVED GOVERNMENT-KISUMU COUNTY PETITION HELD IN THE GROUND FLOOR BOARDROOM, COUNTY HALL ON 17<sup>TH</sup> JULY, 2015 AT 11.00 AM.**

**PRESENT:**

- |                                |   |
|--------------------------------|---|
| 1. Sen. John Lonyangapuo       | - <b>Chairing</b> , Finance, commerce& Budget |
| 2. Sen. Moses Wetangula        | -Member, Finance, commerce& Budget            |
| 3. Sen. Catherine Mukiite      | -Member, Finance, commerce& Budget            |
| 4. Sen. (Prof.) Anyang Nyong'o | -Member, Finance, commerce& Budget            |
| 5. Sen. Beatrice Elachi        | -Member, Devolved Government                  |
| 6. Sen. Mutula Kilonzo Junior  | -Member, Finance, commerce& Budget            |
| 7. Sen. Zipporah Kittony       | -Member, Finance, commerce& Budget            |

(NB. Senators Billow Kerrow and Beatrice Elachi are members of both committees.)

**ABSENT WITH APOLOGY**

- |                                |   |
|--------------------------------|---|
| 1. Sen. Billow Kerrow          | - <b>Co-Chair</b> , Finance, commerce& Budget   |
| 2. Sen. Kipchumba Murkomen     | - <b>Co-Chair</b> , Devolved Government         |
| 3. Sen. Naisula Lesuuda        | - <b>Vice-Chair</b> , Devolved Government       |
| 4. Sen. Peter Mositet          | - <b>Vice-Chair</b> , Finance, commerce& Budget |
| 5. Sen. Mungai James           | -Member, Finance, commerce& Budget              |
| 6. Sen. G.G. Kariuki           | -Member, Finance, commerce& Budget              |
| 7. Sen. Boni Khalwale          | -Member, Finance, commerce& Budget              |
| 8. Sen. Amos Wako              | -Member, Devolved Government                    |
| 9. Sen. Stephen Ole Ntutu      | -Member, Devolved Government                    |
| 10. Sen. Henry ole Ndiema      | -Member, Devolved Government                    |
| 11. Sen. Paul Njoroge Ben      | -Member, Finance, commerce& Budget              |
| 12. Sen. Mutahi Kagwe          | -Member, Finance, commerce& Budget              |
| 13. Sen. (Dr.) Wilfred Machage | -Member, Finance, commerce& Budget              |
| 14. Sen. Hassan Omar Hassan    | -Member, Devolved Government                    |
| 15. Sen. Janet Ongera          | -Member, Devolved Government                    |
| 16. Sen. (Dr.) Agnes Zani      | -Member, Finance, commerce& Budget              |

**IN ATTENDANCE**

**KISUMU COUNTY EXECUTIVES**

- |                          |                                    |
|--------------------------|------------------------------------|
| 1. Mr. Humphrey Nakitare | -County Secretary                  |
| 2. Mr. Koderer V.Adde    | -County Executive Finance (Former) |
| 3. Cephas Kasera         | -Chief Officer Finance             |

**SECRETARIAT**

- |                        |                          |
|------------------------|--------------------------|
| 1. Mr. Stephen Gikonyo | - Clerk Assistant        |
| 2. Mr. Joseph Mwangi   | - Clerk Assistant        |
| 3. Mr. Victor Bett     | - Clerk Assistant        |
| 4. Ms. Judy Ndegwa     | -Legal Counsel           |
| 5. Ms. Lucianne Limo   | -Media Relations Officer |
| 6. Mr. Gorod Abdi      | -Budget Officer          |
| 7. Mr. John Kithi      | -Intern                  |
| 8. Mr.Eugene Luteshi   | -Audio Unit              |
| 9. Mr.Stephen Nyakuti  | -Audio Unit              |

**MIN. 23/2015 :**

**PRELIMINARIES**

A Brief was made by the secretariat on the second list of invitees to the meeting. They were welcomed by the Chairman to the meeting and introduction followed.

**MIN. 24/2015:**

**MEETING WITH THE SACKED FORMER**

**KISUMU COUNTY**

It emerged that Mr. Koderer Adde, a former County Executive member for Finance, was fired together with other County Executives through the press on the grounds that, they were incompetent. The County Executives affected went to court to seek redress. The matter is yet to be decided at the court.

Members resolved to allow the case to be determined and thereafter follow up in form of an inquiry.

**MIN. 25/2015:**

**MEETING WITH THE COUNTY SECRETARY**

**KISUMU COUNTY**

The County Secretary introduced himself and also his job description. His role included:

1. Taking minutes in the County Executive Meetings.

2. Conveying resolutions to the necessary heads of departments.
3. Handling Correspondences on behalf of the County Executive Committee.
4. Sending invitation letters for meetings.

It emerged that he, together with other staff, had been contracted by the Transition Authority and that he was the only one among those contracted who had not yet been absorbed by the County Government of Kisumu.

It also emerged that the County Executive Committee meetings were held in Sunset Hotel, as the office space was insufficient/inappropriate for the meetings.

Clarification was sought on the quorum for the County Executive Committee. This was as a result of having five County executives (half the total number of executives) sacked in March 2015 whereas the total number of executives was ten.

He explained that the quorum for the County Executive meetings was six members; which they achieve as the Deputy Governor and County Secretary are considered members of the County Executive Committee.

The County Secretary stated that the County Executive Committee held monthly meetings, to which he was asked to present minutes of the meetings held from the time the five County Executives were sacked.

He further said that the position of a County Secretary had been advertised and interviews conducted by the County Public Service Board.

Clarification was sought as to whether anyone had complained with regard to the delays in filling vacancies by the County Public Service Board, to which the County Secretary stated that a complaint letter had been written to the County Public Service Board.

He was asked to send to the Committee, his letter of appointment.

**MIN. 26/2015:**

**MEETING WITH THE CHIEF FINANCE OFFICER**

Clarification was sought on the revenue leaks and under banking of revenue to which the Chief Officer requested to be allowed to come and present the same alongside the Governor, the following week.

**He was required to demonstrate/provide the following to the Joint Committee:**

1. Measures he put, when he realized that there were revenue leaks.
2. Measures he put in place, to safeguard the Kisumu County Government revenue.
3. Provide information on the status of bank accounts from the time of Kisumu Municipal council to Kisumu County. To also explain, the reason behind the closure of the old bank accounts and the opening of new ones.
4. To table to the Committee, a list of vehicles procured for the County executives.

It emerged that he did not have any supporting documents, as such was ill prepared for the meeting. He was allowed more time to prepare and present all the necessary documentation to the secretariat by Monday 27<sup>th</sup> July, 2015. He was also required to accompany the Governor in the following week's meeting with the Joint Committee.

**MIN. 27/2015:**

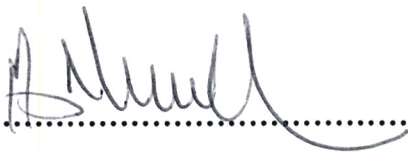
**ANY OTHER BUSINESS**

Members agreed to have a week long retreat after recess to deliberate on the petition findings.

**MIN. 28/2015:**

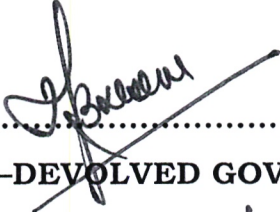
**ADJOURNMENT.**

The meeting was adjourned at 12:16 p.m.

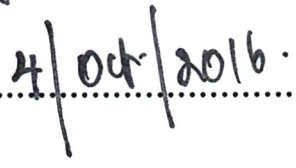
SIGNED: .....  .....

**CHAIRPERSON - FINANCE, COMMERCE AND BUDGET**

DATE: .....

SIGNED: .....  .....

**CHAIRPERSON -DEVOLVED GOVERNMENT COMMITTEE**

DATE: .....  .....

**MINUTES OF THE FOURTH JOINT SITTING OF THE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET AND THE SESSIONAL COMMITTEE ON DEVOLVED GOVERNMENT-KISUMU COUNTY PETITION HELD IN THE GROUND FLOOR BOARDROOM, COUNTY HALL ON 17<sup>TH</sup> JULY, 2015 AT 9.00 AM.**

**PRESENT:**

- |                                |   |
|--------------------------------|---|
| 1. Sen. John Lonyangapuo       | - <b>Chairing</b> , Finance, commerce& Budget |
| 2. Sen. Moses Wetangula        | -Member, Finance, commerce& Budget            |
| 3. Sen. Catherine Mukiite      | -Member, Finance, commerce& Budget            |
| 4. Sen. (Prof.) Anyang Nyong'o | -Member, Finance, commerce& Budget            |
| 5. Sen. Beatrice Elachi        | -Member, Devolved Government                  |
| 6. Sen. Mutula Kilonzo Junior  | -Member, Finance, commerce& Budget            |
| 7. Sen. Zipporah Kittony       | -Member, Finance, commerce& Budget            |
- (NB. Senators Billow Kerrow and Beatrice Elachi are members of both committees.)

**ABSENT WITH APOLOGY**

- |                                |   |
|--------------------------------|---|
| 1. Sen. Billow Kerrow          | - <b>Co-Chair</b> , Finance, commerce& Budget   |
| 2. Sen. Kipchumba Murkomen     | - <b>Co-Chair</b> , Devolved Government         |
| 3. Sen. Naisula Lesuuda        | - <b>Vice-Chair</b> Devolved Government         |
| 4. Sen. Peter Mositet          | - <b>Vice-Chair</b> , Finance, commerce& Budget |
| 5. Sen. Mungai James           | -Member, Finance, commerce& Budget              |
| 6. Sen. G.G. Kariuki           | -Member, Finance, commerce& Budget              |
| 7. Sen. Boni Khalwale          | -Member, Finance, commerce& Budget              |
| 8. Sen. Amos Wako              | -Member, Devolved Government                    |
| 9. Sen. Stephen Ole Ntutu      | -Member, Devolved Government                    |
| 10. Sen. Henry ole Ndiema      | -Member, Devolved Government                    |
| 11. Sen. Paul Njoroge Ben      | -Member, Finance, commerce& Budget              |
| 12. Sen. Mutahi Kagwe          | -Member, Finance, commerce& Budget              |
| 13. Sen. (Dr.) Wilfred Machage | -Member, Finance, commerce& Budget              |
| 14. Sen. Hassan Omar Hassan    | -Member, Devolved Government                    |
| 15. Sen. Janet Ongera          | -Member, Devolved Government                    |

16. Sen. (Dr.) Agnes Zani

-Member, Finance, commerce & Budget

**IN ATTENDANCE**

**KISUMU COUNTY EXECUTIVES**

Hon. Ruth Odinga

-Deputy Governor Kisumu County

**SECRETARIAT**

1. Mr. Stephen Gikonyo

- Clerk Assistant

2. Mr. Joseph Mwangi

- Clerk Assistant

3. Mr. Victor Bett

- Clerk Assistant

4. Ms. Judy Ndegwa

-Legal Counsel

5. Ms. Lucianne Limo

-Media Relations Officer

6. Mr. Gorod Abdi

-Budget Officer

7. Mr. John Kithi

-Intern

8. Mr. Eugene Luteshi

-Audio Unit

9. Mr. Stephen Nyakuti

-Audio Unit

**MIN. 17/2015 :**

**PRELIMINARIES**

The Ag. Chairman Sen. Anyang' Nyong'o, called the meeting to order at 9.20am followed by a word of prayer. He welcomed the members of the committee.

He invited the secretariat to give a brief on the petition areas the committee was going to address.

**MIN 18/2015:**

**MATTER OF PROCEDURE**

1. The issue of inviting the Deputy Governor was raised as it was seen as a recipe for developing bad blood between her and the Governor.

Members resolved to treat the matter with confidentiality.

2. The matter of the acting Chairman being the Senator of Kisumu County was raised by members. It was agreed that another member; Senator John Lonyang'apuo, chairs the sitting.

**MIN 19/2015:**

**ADOPTION OF THE AGENDA**

The Agenda was proposed by Senator Catherine Mukiite and seconded by Senator Beatrice Elachi as follows:

## **AGENDA**

1. Preliminaries
2. Adoption of the Agenda
3. Petition by Members of **Kisumu County Assembly on the alleged corruption and gross mismanagement by the Kisumu County Executive**
  - Meeting with the **Deputy Governor, County Secretary, C.E.C Finance and Dismissed C.E.Cs** of Kisumu County.
4. Any Other Business
5. Date of Next Meeting
6. Adjournment

### **MIN 20/2015:**

### **MEETING WITH THE DEPUTY GOVERNOR KISUMU COUNTY**

The Chairman welcomed the deputy Governor for Kisumu M/s. Ruth Odinga to the meeting. Introduction followed and thereafter the Chairman gave a brief on the petition and the objectives of the meeting.

### **SUBMISSIONS FROM THE DEPUTY GOVERNOR M/S.RUTH ODINGA**

#### **1. SKEWED EMPLOYMENT:**

The recruitment of County staff was delayed and when it came through, it was never inclusive.

The Deputy Governor was never involved or consulted during the recruitment of the ten County Executives.

The recruitment of the County Public Service Board members did not observe the constitutional requirement of representation i.e. The Youth were not represented and six out of the seven members of the board are relatives of the Governor.

The process of recruiting Chief Officers was delayed and most of them are the relatives of the Governor. Most of the Chief Officers were absorbed into service without being vetted by the County Assembly. The County Assembly had raised some queries with some of the appointees.

The same bias in employment has continued to be exhibited downwards through the recruitment of the Sub County and ward administrators.

There is also the challenge of budgeting for recruitment of staff that is never actualized. e.g. The case of health practitioners. Since the process began over one year ago and interviews conducted, the positions have never been filled. Such has created anxiety among the residents of the County, as to what happened to that budgetary allocation.

The Interviews for the County Secretary position was done almost a year ago and names forwarded to the governor. To date, it is not clear, why the position has never been filled. The holder of the office is serving on interim basis.

The Chief Finance Officer position was advertised and during the recruitment process the County Public Service Board recommended the process to be repeated as the interviewees did not meet the required standards. This directive was ignored and one of the candidate's name mysteriously taken to the County Assembly and confirmed.

The Transitional Authority had advised that Kisumu County install a City Management Board. To date the idea has not been effected, and always meets with resistance anytime it is demanded.

The NLC carried out interviews for members to the County Land Control Board over one year ago and the names forwarded to the Governor. To date that board has not been instituted.

In a nutshell, the County Public Service Board PSB has no independence at all and it operates under the direction of the Governor.

## **2. REVENUE:**

Immediately the Kisumu County Executive Committee was formed, it was agreed that the Deputy Governor be in charge of revenue collection and generation. It was agreed that the starting point would be the common revenue streams such as the markets and rates. In view of this, the Deputy Governor embarked on revenue collection streamlining such as a reshuffle for county staff that immediately began to bear fruits. Barely two months down the line, was she removed from the process because it was perceived that, she was going to be

credited with the revenue collection success. This removal from the docket, led to revenue leaks witnessed in the county to date.

The auditor general in his half report for 2013/14 indicated that about 31 million shillings was collected and not banked.

Members of the county executive Committee are unaware of how the county finances are handled. It is only the Governor and a few officers in the County Treasury who are aware.

Revenue cannot be effectively monitored without a functional inspectorate that has never been instituted to date.

Kisumu city is the biggest revenue earner in the County, is run by an interim city manager, who operates without an oversight body to put his actions in check.

### **3. CORRUPTION:**

Members of the County Assembly (MCAs) are induced by contracts and monetary handouts to perpetuate the ills in the county government. Project tenders and contracts are given to officers close to the governor saying that they are raising campaign funds for the governor.

The County road projects are crippled as three out of the five engineers for the county have been sacked. Just like five County Executive Committee members were sacked.

### **4. BUDGET:**

Kisumu has no functional budget. In the Last financial year, the county assembly has passed about four County budgets. It is not clear which budget is in force. The budget making is a preserve of the governor and the assembly who are compromised.

### **5. PROCUREMENT AND TENDERING:**

This is the area the County has faced the biggest challenge. There is a high turnover of the procurement officers posted to Kisumu County. In the last three years, the County has had three procurement officers. Professionalism is

compromised at the altar of self-interest. That is why practices such as single sourcing were used during the refurbishment of the Governor's office and the motor vehicle insurance.

**JOINT SENATE COMMITTEE OBSERVATIONS FROM THE DISCUSSION.**

- I. The Kisumu County Public Service Board is not independent.
- II. Corruption is high in the management of the County.
- III. Kisumu County being a cosmopolitan city was not inclusive, in such opportunities as employment.
- IV. Management boards such as the County Land, City Management and County Economic Forum are not functional/ instituted.
- V. The Business Community in the county felt dissatisfied and excluded by the County as not much development in infrastructure is forth coming despite their paying taxes.
- VI. The Deputy Governor would be called upon when streamlining the roles of deputy governors.

**MINUTE NO. 21/2015: ANY OTHER BUSINESS**

There was no other business.

**MINUTE NO. 22/2015: ADJOURNMENT.**

The meeting was adjourned at 11:05 a.m.

*[Handwritten signature]*

SIGNED: .....

**CHAIRPERSON - FINANCE, COMMERCE AND BUDGET**

DATE: .....

*[Handwritten signature]*

SIGNED: .....

**CHAIRPERSON - DEVOLVED GOVERNMENT COMMITTEE**

*4/ Oct/ 2016*

DATE: .....

**MINUTES OF THE THIRD JOINT SITTING OF THE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET AND THE SESSIONAL COMMITTEE ON DEVOLVED GOVERNMENT-KISUMU COUNTY PETITION HELD IN THE GROUND FLOOR BOARDROOM, COUNTY HALL ON 15<sup>TH</sup> JULY, 2015 AT 11.00 AM.**

**PRESENT:**

- |                                |   |
|--------------------------------|---|
| 1. Sen. Billow Kerrow          | - <b>Co-Chair</b> , Finance, commerce& Budget |
| 2. Sen. Kipchumba Murkomen     | - <b>Co-Chair</b> , Devolved Government       |
| 3. Sen. Naisula Lesuuda        | - <b>Vice-Chair</b> Devolved Government       |
| 4. Sen. Moses Wetangula        | -Member, Finance, commerce& Budget            |
| 5. Sen. Paul Njoroge Ben       | -Member, Finance, commerce& Budget            |
| 6. Sen. Catherine Mukiite      | -Member, Finance, commerce& Budget            |
| 7. Sen. (Prof.) Anyang Nyong'o | -Member, Finance, commerce& Budget            |
| 8. Sen. (Dr.) Agnes Zani       | -Member, Finance, commerce& Budget            |
| 9. Sen. Mutahi Kagwe           | -Member, Finance, commerce& Budget            |
| 10. Sen. (Dr.) Wilfred Machage | -Member, Finance, commerce& Budget            |
| 11. Sen. Hassan Omar Hassan    | -Member, Devolved Government                  |
| 12. Sen. Beatrice Elachi       | -Member, Devolved Government                  |
| 13. Sen. Janet Ongera          | -Member, Devolved Government                  |
| 14. Sen. Mutula Kilonzo Junior | -Member, Finance, commerce& Budget            |

(NB. Senators Billow Kerrow and Beatrice Elachi are members of both committees.)

**ABSENT WITH APOLOGY**

- |                          |   |
|--------------------------|---|
| 1. Sen. Peter Mositet    | - <b>Vice-Chair</b> , Finance, commerce& Budget |
| 2. Sen. Zipporah Kittony | -Member, Finance, commerce& Budget              |
| 3. Sen. Mungai James     | -Member, Finance, commerce& Budget              |
| 4. Sen. G.G. Kariuki     | -Member, Finance, commerce& Budget              |
| 5. Sen. John Lonyangapuo | -Member, Finance, commerce& Budget              |
| 6. Sen. Boni Khalwale    | -Member, Finance, commerce& Budget              |
| 7. Sen. Amos Wako        | -Member, Devolved Government                    |

- |                           |          |                     |
|---------------------------|----------|---------------------|
| 8. Sen. Stephen Ole Ntutu | -Member, | Devolved Government |
| 9. Sen. Henry ole Ndiema  | -Member, | Devolved Government |

**IN ATTENDANCE**

**KISUMU COUNTY HEALTH OFFICIALS**

- |                         |                     |                          |
|-------------------------|---------------------|--------------------------|
| 1. Dr. Elizabeth Ogaja  | -C.E.C Health       |                          |
| 2. Dr. Juliana Otieno   | -Med.Superintendent | Jaramogi Oginga Hospital |
| 3. Eng. George Macodawa | -Chairman           | Jaramogi Oginga Hospital |

**SECRETARIAT**

- |                         |                                 |
|-------------------------|---------------------------------|
| 1. Ms. Emmy Chepkwony   | - Senior Clerk Assistant        |
| 2. Mr. Joseph Mwangi    | - Clerk Assistant               |
| 3. Mr. Victor Bett      | - Clerk Assistant               |
| 4. Mr. Hassan Odhowa    | - Research Officer              |
| 5. Dr. Johnstone Okello | -Deputy Director Legal Services |
| 6. Ms. Lucianne Limo    | -Media Relations Officer        |
| 7. Mr. Gorod Abdi       | -Budget Officer                 |
| 8. Mr. John Kithi       | -Intern                         |
| 9. Ms. Christine Maeri  | -Audio Unit                     |
| 10. Ms. Lucy Mwaniki    | -Sergeant At Arms               |
| 11. Mr. Abdalla Mbore   | -Sergeant At Arms               |

**MIN. 11/2015 : PRELIMINARIES**

The Co-Chairman, called the meeting to order at 11.10am followed by prayer. He welcomed members of the joint Committee and the Kisumu Health Services team after introduction and gave a brief on the petition and the objectives of the meeting.

**MIN 12/2015: ADOPTION OF THE AGENDA**

The Agenda was proposed by Senator Beatrice Elachi and seconded by Senator Naisula Lesuuda as follows:

**AGENDA**

1. Preliminaries
2. Adoption of the Agenda
3. Confirmation of previous minutes
4. Petition by Members of **Kisumu County Assembly on the alleged corruption and gross mismanagement by the Kisumu County Executive -Meeting with the C.E.C Health Kisumu County, Chairman and Medical Superintendent** of Jaramogi Odinga Teaching and Referral Hospital.
5. Any Other Business
6. Date of the Next Sitting
7. Adjournment

**MIN 13/2015: CONFIRMATION OF PREVIOUS MINUTES**

The minutes of the second joint sitting was confirmed with amendments by Senator Mutula Kilonzo Jnr. and seconded by Senator Janet Ong'era.

**MIN 14/2015: MEETING WITH THE CHAIRMAN AND SUPERINTENDENT OF JARAMOGI OGINGA Odinga TEACHING AND REFERRAL HOSPITAL.**

The issue raised in the petition concerning Health care services in the county was that the health care system in the county had collapsed due to poor funding. Jaramogi Odinga Odinga Teaching and Referral Hospital was allocated Kshs. 396Million in the FY 2013/14 but the hospital only received Kshs. 72 Million in the whole year from the county treasury.

**Dr. Elizabeth Ogaja-Kisumu County Executive for health informed the Committee as follows:**

That, the conditional allocations to Jaramogi Odinga Odinga Hospital were paid out to the hospital as per the table below. She further clarified that indeed the hospital had received more than Ksh.72million centrally to the allegation on the petition that it had received only Ksh. 72,000,000. The

balances for each year, that treasury withheld were to be released to the hospital.

<b>JARAMOGI OGINGA ODINGA HOSPITAL CONDITIONAL ALLOCATIONS FOR FINANCIAL YEAR 2013/2014</b>	
<b>DATE</b>	<b>AMOUNT (KSHS.)</b>
20 <sup>TH</sup> MARCH 2014	33,629,101
19 <sup>TH</sup> MAY 2014	37,927,328
9 <sup>TH</sup> JUNE 2014	58,000,000
22 <sup>ND</sup> OCTOBER 2014	79,127,296
TOTAL	208,683,725
EXPECTED AMOUNT	<b>395,636,481</b>
<b>BALANCE</b>	<b>186,952,756</b>
<b>FINANCIAL YEAR 2014/2015</b>	
<b>DATE</b>	<b>AMOUNT (KSHS.)</b>
5 <sup>TH</sup> MARCH 2015	10,000,000
8 <sup>TH</sup> APRIL 2015	80,000,000
6 <sup>TH</sup> JULY 2015	78,505,726
TOTAL	168,505,726
EXPECTED AMOUNT	<b>248,505,726.23</b>
<b>BALANCE</b>	<b>80,000,000.23</b>

**The Committee deliberation on the matter under the petition and sought to establish the following:**

**1.) Whether Jaramogi Oginga Odinga hospital made any complaints for the balances and to whom.**

The Committee was informed that the Hospital management had written several letters requesting for the allocation of the balance to the following:

- a) The Chief finance officer letter dated 31<sup>st</sup> March, 2014, Reference Number: ACC/I/VOL.XII.

- b) The Acting Chief officer for Health letter dated 22<sup>nd</sup> August, 2014, Reference Number: ACC/VOL.XII/ (142).
- c) The Chief officer for Health letter dated 16<sup>th</sup> December, 2014, Reference Number: ACC/VOL.I

**2.) The joint Committee sought to be apprised on the Budget of the Hospital and its sources of Finance and was informed as follows:**

- That, the Hospital has four (4) sources of income that is the Donors, Conditional grants from the National Government, Allocation from the County Government and the Cost sharing mechanism.
- That, the Budget for the hospital for the financial year 2013/2014 was Ksh.595M. The Hospital did not have any donations or allocations from the county government, thus it had only two (2) sources of financing. The Hospital was depending on the conditional grants from the National Government which was expected to be Ksh.396M but it was not only late but less. The other source was from Cost sharing which is the most reliable sources for financing the hospital operations compared to the other sources. The Committee heard that the hospital generates approximately 200M from the cost sharing.

**The following were highlighted as key challenges experienced by the hospital management:**

1. The free Maternity program whereby the hospital uses its money first and is reimbursed later by the National Government. The Ksh.5Million is usually not enough to meet the costs already incurred by the hospital. The repayment process is usually too slow, stagnating health care provision at times.
2. Conditional grant from the National Government went down from Ksh.395,636,481 in FY 2013/2014 to 248,505,726.23 in FY 2014/2015,making it difficult for the hospital to dispense services as per the Constitution.

3. The budget ceilings imposed to the counties brought in a challenge in hiring of Highly Qualified Human Resource Personnel.
4. Most Kisumu residents are not enrolled in N.H.I.F.

**3.) The Committee sought to establish the proportion of the budget that is set aside for the development in the Hospital and was informed as follows:**

The Hospital in its budget allocated 40% of the budget for development whereas 60% is meant for recurrent expenditure.

The hospital has not been able however to invest on development or improvement of the facility as a result of the shortfall in conditional grants from the National Government. The at the moment provides only essential services i.e. Investment in emergency services and medicine, use of cheaper old treatment drugs such as use of quinine to treat Malaria as opposed to more expensive modern drugs and rationing of pharmaceuticals etc.

**COMMITTEE OBSERVATION**

1. The Committee observed that although the petitioner had alleged that the hospital had received only Kshs. 72 Million out of the Kshs. 396 Million allocated during the FY 2013/14 from the county treasury, the Hospital had indeed received a total of Ksh. 208,683,725 out of the allocated KSh. 395,636,481 and that there the outstanding balance totals to **186,952,756**.
2. The Committee further observed that the allegation by the Petitioner that the health care system in the county had collapsed due to poor funding particularly in reference to the Jaramogi Oginga Odinga Teaching and Referral Hospital was factual and the situation needed immediate intervention.
3. The Committee further observed that the Kisumu County Governor and the Ag. CEC for Finance at a meeting to be held on Thursday 23<sup>rd</sup> July, 2015 will be expected to provide information on the frequency of disbursement of funds to the County Government Account by the National Treasury and subsequent allocations and disbursement to the Jaramogi Oginga Odinga Teaching and Referral Hospital by the County Treasury.

**WAY FORWARD:**

1. The hospital management was required to present to the Senate a two (2) year financial report of the institution. Other reports to be forwarded to the committee included: UNDP report, and the mid-term report from GIZ.
2. There is need to provide a proper framework on funding and management the County Level 5 and 6 hospitals considering the numerous challenges facing the hospitals. Proposals were made on the possibility of creating autonomy of the level making Level 5 Hospitals in the counties.
3. The Committee on joint committee to invite the National Treasury to establish disbursement of conditional grants for the Jaramogi Oginga Odinga Teaching and Referral Hospital to Kisumu County Treasury Account.
4. More interaction between the Senate and the County Governments was sought to enhance good working relationship and information sharing.

**Papers Laid:**

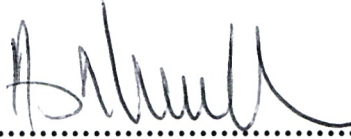
- i. A letter to the Kisumu County Chief Finance, Ref. No. ACC/1/VOL.XII officer dated 31<sup>st</sup> March, 2014 allocation of funds to the Jaramogi Oginga Odinga Teaching & Referral Hospital.
- ii. A letter to the Kisumu County Chief Officer for Health, Ref. No. ACC/1/VOL.I dated 16<sup>th</sup> December, 2014 requesting allocation of conditional funds to the Jaramogi Oginga Odinga Teaching & Referral Hospital.
- iii. The Acting Chief officer for Health letter dated 22<sup>nd</sup> August, 2014, Reference Number: ACC/VOL.XII/ (142).

**MIN.15/2015:                    ANY OTHER BUSINESS**

There was no other business.

**MIN.16/2015:                    ADJOURNMENT AND DATE OF NEXT MEETING**

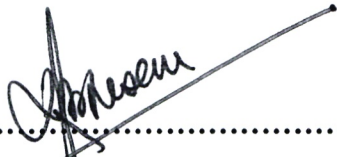
There being no other business and the time being five minutes past Twelve O'clock, the meeting was adjourned. The next Joint meeting would be held on Friday 17<sup>th</sup> July, 2015.



SIGNED: .....

**CHAIRPERSON - FINANCE, COMMERCE AND BUDGET**

DATE: .....



SIGNED: .....

**CHAIRPERSON - DEVOLVED GOVERNMENT COMMITTEE**

4/oct 2016.

DATE: .....

**MINUTES OF THE SECOND JOINT SITTING OF THE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET AND THE SESSIONAL COMMITTEE ON DEVOLVED GOVERNMENT-KISUMU COUNTY PETITION HELD IN THE GROUND FLOOR BOARDROOM, COUNTY HALL ON 8<sup>TH</sup> JULY, 2015 AT 10.00 AM.**

**PRESENT:**

- |                                 |  |
|---------------------------------|--|
| 1. Sen. Peter Mositet           | - <b>Co-Chair</b> , Finance, Commerce & Budget |
| 2. Sen. Henry ole Ndiema        | - <b>Co-Chair</b> , Devolved Government        |
| 3. Sen. Moses Wetangula         | -Member, Finance, Commerce & Budget            |
| 4. Sen. Amos Wako               | -Member, Devolved Government                   |
| 5. Sen. G.G. Kariuki            | -Member, Finance, Commerce & Budget            |
| 6. Sen. Hassan Omar Hassan      | -Member, Devolved Government                   |
| 7. Sen. Beatrice Elachi         | -Member, Devolved Government & Finance         |
| 8. Sen. Janet Ongera            | -Member, Devolved Government                   |
| 9. Sen. Catherine Mukiite       | -Member, Finance, Commerce & Budget            |
| 10. Sen. (Prof.) Anyang Nyong'o | -Member, Finance, Commerce & Budget            |
| 11. Sen. Mutula Kilonzo Junior  | -Member, Finance, Commerce & Budget            |
| 12. Sen. (Dr.) Agnes Zani       | -Member, Finance, Commerce & Budget            |
| 13. Sen. John Lonyangapuo       | -Member, Finance, Commerce & Budget            |
| 14. Sen. Mutahi Kagwe           | -Member, Finance, Commerce & Budget            |
| 15. Sen. (Dr.) Wilfred Machage  | -Member, Finance, Commerce & Budget            |
| 16. Sen. Boni Khalwale          | -Member, Finance, Commerce & Budget            |

(N/B Sen. Billow Kerrow and Sen. Beatrice Elachi are members of the both Committees)

**ABSENT WITH APOLOGY**

- |                            |  |
|----------------------------|--|
| 1. Sen. Billow Kerrow      | - <b>Chairman</b> Devolved Government & Finance, |
| 2. Sen. Kipchumba Murkomen | - <b>Chairman</b> Devolved Government            |
| 3. Sen. Naisula Lesuuda    | - <b>Vice Chair</b> Devolved Government          |
| 4. Sen. Zipporah Kittony   | -Member, Finance, Commerce & Budget              |
| 5. Sen. Paul Njoroge Ben   | -Member, Finance, Commerce & Budget              |
| 6. Sen. Stephen Ole Ntutu  | -Member, Finance, Commerce & Budget              |
| 7. Sen. Mungai James       | -Member, Finance, Commerce & Budget              |

**IN ATTENDANCE**

## **KISUMU COUNTY**

1. Hon. Jack Ranguma -Governor
2. Mr. George Anyong'a -Chief Officer Planning and Development
3. Mr. Cephas Kasera -Chief Officer Finance
4. Mr. Joshua Nyamori -Technical Assistant City Manager

## **SECRETARIAT**

1. Ms. Emmy Chepkwony - Senior Clerk Assistant
2. Mr. Joseph Mwangi - Clerk Assistant
3. Mr. Victor Bett - Clerk Assistant
4. Mr. Gorod Abdi -Parliamentary Budget Office
5. Mr. Johnstone Okello -Deputy Director Legal Services
6. Mr. Hassan Odhwa - Research Officer
7. Mr. Chelang'a Maiyo - Research officer
8. Ms. Lucianne Limo -Media Relations Officer
9. Mr. John Murimi -Intern

## **MIN. 06/2015: PRELIMINARIES**

The Acting Chairman of the Standing Committee on Finance, Commerce and Budget Sen. Peter Mositet, MP, called the meeting to order at 10.35am followed by prayer and introduction.

He welcomed members of the joint Committee and the Kisumu County executives led by the Governor Hon. Jack Ranguma for a round of introductions. He stated the objective of the joint sitting. He thereafter read the petition, and invited the Governor to make his submission.

## **MIN 07/2015: MATTER OF PROCEDURE**

The Governor of Kisumu, Hon. Jack Ranguma raised a concern that there was a conflict of interest with having the Senator of Kisumu County, Sen. Anyang' Nyong'o present in the meeting. He alleged that the Senator had declared an interest to contest for the position of Governor Kisumu County and the Members of the County Assembly who are the petitioners before the Senate were members

of his CDF management Committee in his former office as a member of the National Assembly.

The Committee requested the Governor and his team to withdraw from the meeting to enable the Committee to consult on the matter of procedural.

The Committee deliberated on the procedural matter as follows:

- Reference was made to the S.O 93 which requires a Senator who wishes to speak on any matter in which he/she has a peculiar interest or proprietary interest to first declare that interest. Senator Anyang' Nyong'o informed the Committee that he had no peculiar interest on the matter except that he would wish that the Committee addresses the concerns of the people of Kisumu County raised on petition.
- Further reference was made to the provision of the S.O 220(1) on the submission of the Petition to the Senate where a Senator is required to present a petition on behalf of a Petitioner. It was observed that a Senator sponsoring a petition does not amount to conflict of interest but administration of constitutional duty.
- Further reference to the constitutional duty of the senate and Senator was made by the Committee. It was observed that although a Senator who sits in the Senate has a constitutional duty to ensure proper use of resources and protect the interest of the county he/she represents, the constitution does not compel a Senator to prosecute a petition such as the one before the Committee in person. The Committee noted that the concern raised by the Governor is likely to affect both the process and the product (report) and observed that there was need to ensure that the prosecution of the petition was above reproach. The Senator informed the Committee that in the interest of fairness he would wish to withdraw from the meeting and allow the joint committee to prosecute the petition.
- A ruling was made by the Co-Chairman Sen. Peter Mositet to have the Sen. (Prof) Anyang' Nyong'o remain in the meeting but not to participate in his capacity as a Joint committee member.

**MIN 08/2015:**

**ADOPTION OF THE AGENDA**

The Agenda was unanimously adopted as follows:

**AGENDA**

1. Preliminaries
  - i) Prayer
  - ii) Remarks by the co-chairpersons
2. Adoption of the Agenda
3. **Petition by Members of Kisumu County Assembly on the alleged corruption and gross mismanagement by the Kisumu County Executive.**
4. **Meeting with the Governor of Kisumu County**
5. Any Other Business
6. Date of Next Meeting
7. Adjournment

**MIN 09/2015:**

**MEETING WITH THE GOVERNOR OF KISUMU COUNTY**

**At a meeting with the Kisumu Governor the Committee required him to respond to the following matters under the petition:-**

1. **That, there are inordinate delays in filling vacancies in crucial dockets such as County Secretary and County Finance Officer, thus hindering service delivery.**

**Response:** The two officers, mentioned above were deployed by the Transition Authority. The Interim county secretary is holding brief as the Kisumu County Public Service Board concludes the recruitment process. Substantive appointment of the County Finance officer (CFO) has been done.

During the deliberation on the matter, the Committee noted that the county government has demonstrated lack of seriousness in filling vacant crucial dockets and as such required the Governor to furnish the Committee with documents detailing the recruitment processes and holders of officers in the county as at the time of the petition. The Governor was also required to demonstrate that the Kisumu County Public Service Board had followed due

process in the appointment of the County Finance officer (CFO) by presenting evidence of advert of position, minutes of the interviews and the list of applications to the Committee before its next sitting in two weeks time.

**2. That, the Governor has failed to constitute the City Management Board as required by the Urban Areas and Cities Act and has gone ahead to appoint the City Manager without the due process and that the City manager in the absence of the City Management Board has no person to oversight his activities.**

**Response:** The current acting City Manager was recruited through a competitive process and has the necessary experience and competence. The recruitment process is yet to be finalized. The Acting City Manager was assigned to act on the basis of her competence, seniority in the County Government, and relevant experience, when the previous holder of the position, who was the Town Clerk in the defunct local authority, resigned to join the County Government of Migori.

The current acting City Manager applied for the position of City Manager was shortlisted and interviewed along others as advertised in the local press. We are awaiting finalization of the process. However, the Kisumu County Public Service Board (CPSB), pursuant S. 29 of the Urban and Cities Act and under S. 59(1)(b) of County Government Act, is authorized to appoint persons to hold or act in offices of the County Public Service including in the Boards or Cities/ Urban areas within Kisumu County.

The Committee expressed dissatisfaction with the response from the Governor regarding the appointment of the City Manager and the nonexistence of a City Management Board. It was observed that there was no documentary or legal evidence presented to justify the appointment of a City Manager in the absence of a city Management Board. The Governor was tasked to prepare and respond on the matter in two weeks time.

**3. That, the County government presided over flawed tendering process which does not adhere to the requirements of the Public Procurement and Disposal Act such as renovating 9<sup>th</sup> floor of Prosperity House to be used by the Governor, Deputy Governor and the County Secretary and procurement of motor vehicles from CMC.**

The Committee was informed that the refurbishment of County Government Offices was done by following due process and strict adherence to the provisions of the Public Procurement and Disposal Act 2005 and the accompanying Regulations.

The Transition Authority on 23<sup>rd</sup> April, 2013 allocated to County Government of Kisumu Kshs. 61,592,200.00 for the development of County infrastructure both at the Assembly and for refurbishment of County offices. This money had to be committed or spent by 30<sup>th</sup> June 2013, one month after receipt thereof.

The Bills of Quantities and technical documentation were duly prepared but the procurement method preferred was restricted owing to timeline provided by TA. Ten (10) prequalified Suppliers, as required by procurement regulations, were invited to bid for the works. The bidders were duly evaluated and awarded at Kshs. 25,415,649.00 compared to the Engineers estimate of Kshs. 27,000,000.00. There was no variation of the estimates as alleged in the petition because the Engineers BQ had put the entire works at Kshs. 27 million.

The consolidated purchase of vehicles from CMC during the financial year 2014/2015 was approved by the Cabinet and this was meant to make the procurement of the same cost effective by making bulk purchase from CMC, one of the suppliers approved by the Supplies Branch at Government Contracted Prices.

On the tendering process the Committee observed that Governor had not presented evidence/documentation to show that there was competitive bidding and that the purchase of the vehicles was subjected to the tendering Committee as opposed to single sourcing. The Governor was tasked to present to the Committee they said evidence within two weeks and including respective advertisements done in local dailies, exemption letter from the Public

Procurement Oversight Association (PPOA) or related legal evidence that the law on public procurement was not flouted and a list detailing how many Vehicles were purchased and to whom they were allocated.

**4. That, the County Government set aside the Development vote for the FY 2013/2014 budget and instead requested for more development funds in the supplementary budget in 2013/14. There have also been several cases of irregular budget reallocations.**

**In responding to the allegations the Governor informed the Committee as follows:**

- That, the Development Budget for the FY 2013/2014 was never been set aside at any instance and that there was no instance where the County Government conducted budget reallocation.
- Supplementary budget was however done to realign budget to reality during the course of execution. The budget approved by the County Assembly for 2014 / 2015 was Kshs. 11.4 billion. This was inclusive of expected Grant from the National Government of Kshs. 2 billion under the Kisumu Urban Project (KUP). The grant is managed at two levels - execution is managed at the County while the financing agency, AFD and the Ministry responsible for Urban Development manages the financing.
- The Development expenditure is however recorded by the National Government, not the County, thus not included in the County's financial records. The supplementary budget for 2014/2015 was prepared to comply with the ceilings given by the Commission on Revenue Allocation (CRA).

**5. That, the County Budget and Economic Forum whose main responsibility is to play a consultative role in the budget making process has met only once since it was established, in breach of section 137 of the Public Finance Management (PFM) Act;**

Response: The County Budget and Economic Forum was established and members appointed in November 2013. CRA guidelines for the operationalization

of CBEF were however received on 15th March 2015. Thereafter the County Government organized for training for the members to take them through their mandate and the guidelines. The CBEF had by June 2015 held a total eight formal meetings and participated in the 2015/2016 Budget hearings and Public Participation Forums held from 4th to 15th April 2015.

It is important to note that to date, Kisumu County is one of the few Counties that have institutionalized and fully operationalized CBEF.

On the several cases of irregular budget re-allocations, the Committee tasked the County Executive to provide the aforementioned budgets and to justify the budgetary reallocations.

**6. That, there are loopholes in revenue collection in the County with revenue declared and banked being more or less similar to the former Municipal Council of Kisumu yet there are five former local authorities in the county.**

Response: A general decline in revenue collections subsequent to devolution was rampant across counties, and is not a problem unique to Kisumu. This general decline of revenue in counties was occasioned mainly by lethargy on the staff tasked with the responsibility of revenue collection because of the fear of uncertainty on their positions occasioned by the new dispensation and change in revenue collection procedures to comply with the PFM Act. This temporal weakening of the local revenue collection capacity has since been addressed through automation.

The county government of Kisumu has invested on a GIS and has included in the 2015/2016 budget a provision for investment on a new valuation roll. This together with the automation exercise in process would enable the county to improve on its revenue collection significantly.

The status of collections is summarized as follows:

Year	Defunct Municipal Council Of	County Government of	Contribution from Other Sub	% Contribution from other
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	<b>Kisumu</b>	<b>Kisumu</b>	<b>counties</b>	<b>Sub Counties</b>
<b>2011/12</b>	522,302,295	The County Government was not yet formed.	N/A	N/A
<b>2012/13</b>	581,350,954	671,635,047	90,284,093	13%
<b>2013/14</b>	526,283,450	621,861,798	95,578,348	15%
<b>2014/2015 (as at 30.05.2015)</b>	64,817,325	964,264,202	99,446,877	10%

The Committee expressed concern on the dwindling revenue collection in the County and observed no significant increase in revenue collection in comparison to what was collected by the defunct county councils. The Committee required the county government to furnish the Committee with the Financial Statement reports detailing revenue collection of the County Government and a comparative analysis from the defunct local councils in two weeks time.

**7. That, the County Government has failed to prepare the annual financial report and forwarding it to the Auditor General, Controller of Budget, Commission on Revenue Allocation and the County Assembly in contravention of section 163,164,165 and 166 of the PFM Act;**

The Committee heard that the County Government has adequately complied with S. 163, 164, 165 and 166 of the Public Finance Management Act. The Annual Financial Statement, the Quarterly Reports by Accounting Officer(s) and Annual Report by Receivers of Revenue for the FY 2013/14 were all duly submitted to Controller of Budget, Auditor General, National Treasury, Commission on Revenue Allocation and the County Assembly – all in a prescribed template.

**8. That, there is rampant misuse of public resources by the county government, allocating vehicles and fuel to persons who are not employees nor performing official duties of the county and also incurring extravagant amounts in the name 'entertainment' in official functions;**

The Committee was informed that the County vehicles are pooled and allocated to County Government officers on need basis. No county vehicle is allocated for any non-government activities. Records on use of the vehicles are well kept by the transport department.

We are not aware of any expenditure known as "expenditure in official functions". In any case the County Government expends in line with approved budget.

**9. That, the Governor has been creating unconstitutional offices within his office that are meant to usurp roles of ministries and further that these unconstitutional offices are headed by cronies of the Governor.**

The Committee was informed that all Governors across the country were authorized by Transition Authority to appoint certain officers to support them in setting up of the County Governance structures. The Governor, in all his decisions as CEO, was guided by the need to ensure proper and efficient service delivery, and to strengthen managerial capacity while also designing systems to seal existing managerial gaps. The appointment of officers in the Governor's office is still not complete due to the huge wage bill which stands at 84% of the exchequer release.

Establishment of all public offices in the County Government, and the recruitment of personnel for the same, is however the prerogative of the County Public Service Board that discharges this mandates pursuant to S. 60 of the County Government Act. The Board also ratifies decisions that the Governor and the Transition Authority may have taken before its creation.

The Committee directed that the Governor furnish the Committee provide an organogram demonstrating the leadership structure from the ward level to the

Executive level together with the organogram the Governor should provide a list of employers as in the position in the organogram indicating which ward or area to which the employees come from.

10. **In the manner in which the former County Executive in charge of Agriculture, Livestock and Fisheries Dr. Stephen Orot was dismissed from service**, the Committee expected the County Executives to provide the letter of his dismissal and evidence of his incompetence to the Committee within two weeks.

**Other Emerging Issues from the discussion:**

- i) Clarification was sought on whether during budgeting the County executives used data from the defunct local councils or they started the process all over without reference to the previous Municipal Councils.
- ii) The Auditor General's report indicated that there was under banking of the revenues declared from the County and that the submission of the financial records to the Auditor General's office was not done.
- iii) Clarification was sought on the purchase of Sorghum seeds that were paid for twice leading to the sacking of the then County Executive for Finance Dr. Stephen Orot, having refused to cooperate in the fraudulent deal.
- iv) The services at the level 5 hospital in Kisumu had deteriorated yet money had been allocated to the facility. It emerged that the County Executives had not been aware of this allegation, so they requested for more time to respond to it.

**Committee observation and way forward**

The Committee felt that some of the responses given by the Kisumu County Executives were not satisfactory as they lacked documentary evidence. The Committee further required the Governor to present a written and signed response to the matters raised under the petition together with documentary evidence on his response within two weeks.

**MIN.10/2015: ANY OTHER BUSINESS**

The Co-Chairman Sen. Peter Mositet thanked the Governor for attending the meeting and noted that all the Governors should appear before the Senate Committees to respond to matters affecting their counties as the Senate is mandated by the Constitution to oversight and protect the interest of the Counties.

**MIN.11/2015: ADJOURNMENT AND DATE OF NEXT MEETING**

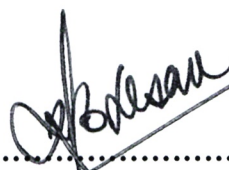
There being no other business and the time being forty minutes past Twelve O'clock, the meeting was adjourned. The next Joint meeting will be held on Wednesday 15<sup>th</sup> July, 2015.



**SIGNED:** .....

**CHAIRPERSON - FINANCE, COMMERCE AND BUDGET**

**DATE:** .....



**SIGNED:** .....

**CHAIRPERSON - DEVOLVED GOVERNMENT COMMITTEE**

4/Oct/2016.

**DATE:** .....

**MINUTES OF THE FIRST JOINT SITTING OF THE STANDING COMMITTEE ON FINANCE, COMMERCE AND BUDGET AND THE SESSIONAL COMMITTEE ON DEVOLVED GOVERNMENT-KISUMU COUNTY PETITION HELD IN COMMITTEE ROOM 5, MAIN PARLIAMENT BUILDING ON 11<sup>TH</sup> MARCH, 2015 AT 9.00 AM.**

**PRESENT FINANCE AND BUDGET**

1. Sen. Billow Kerrow -Chairman,
2. Sen. Moses Wetangula -Member,
3. Sen. G.G. Kariuki -Member,
4. Sen. Beatrice Elachi -Member,
5. Sen. Catherine Mukiite -Member,
6. Sen. (Prof.) Anyang Nyong'o -Member,
7. Sen. Mutula Kilonzo Junior -Member,
8. Sen.(Dr.) Agnes Zani -Member,
9. Sen. John Lonyangapuo -Member,
10. Sen. Mutahi Kagwe -Member,

**PRESENT DEVOLVED GOVT**

1. Sen. Kipchumba Murkomen-Chairman
  2. Sen. Henry ole Ndiema -Member
  - 3.Sen.Hassan Omar Hassan- Member
  - 4.Sen.Stephen Ole Ntutu - Member
- (Senators: Billow Kerrow, Beatrice Elachi and Prof. Anyang' Nyong'o are members of both committees)

**ABSENT**

1. Sen. Peter Ole Mositet - Vice Chair
2. Sen. (Dr.) Wilfred Machage -Member,
3. Sen. Boni Khalwale -Member,
4. Sen. Paul Njoroge Ben -Member,
5. Sen. Mungai James -Member,
6. Sen. Zipporah Kittony -Member

**ABSENT**

- 1.Sen.Naisula Lesuuda -Vice Chair
- 2.Sen.Amos Wako -Member

**IN ATTENDANCE**

**A. KISUMU PETITIONERS**

1. Mr. Aggrey Ogosi-MCA
2. Mr. Elijah Omondi-MCA
3. Mr. Joseph Orwa Osano-MCA
4. Mr. Aloise Ager (Member of the Public from Kisumu County )

**B. SECRETARIAT**

1. Ms. Brenda Ogembo - Clerk Assistant
2. Peter Mulesi - Clerk Assistant
3. Mr. Peter Muchira - Clerk Assistant
4. Chelang'a Maiyo - Research officer
5. Ms. Anne Wanjiru - Parliamentary Intern

**MIN. 01/2015 : PRELIMINARIES**

The chairman of the standing Committee on Finance, Commerce and Budget Sen. Billow Kerrow, MP, called the meeting to order at 9.20am followed by prayer and introduction. He welcomed members of the joint Committee, the sponsor and the petitioners who are Members of the County Assembly of Kisumu.

He explained the background of the petition which is about financial mismanagement by the Kisumu County Government.

He stated the objective of the joint sitting.

The Chairman of the Sessional Committee on Devolved Government Sen. Kipchumba Murkomen, MP, explained that the allegations contained in the petition cut across the mandate of the two Committees and that the report on the petition would segregate different chapters for the two committees but would be submitted to the House as one report.

The petitioners from Kisumu County County were invited to make their presentations to the joint Committee.

**MIN 02/2015 :PRESENTATION BY MEMBERS OF KISUMU COUNTY ASSEMBLY (PETITIONER)**

The petitioners informed the Committees as follows: That;

1. The petition was presented in accordance with Articles 37, 96 (1) and 119 of the Constitution of Kenya so that the Senate takes action to save the County of Kisumu from collapse, corruption, gross mismanagement and neglect of duty;
2. The work of the Assembly was to oversight the executive besides representation and legislation;

**MIN. 03/2015 :DELIBERATIONS ON THE KISUMU PETITION**

Members deliberated on the concerns raised and resolved that the issues were weighty to warrant a thorough interrogation. It was resolved that all those mentioned in the petition be invited to a meeting of the Committee to respond to the allegations raised against them.

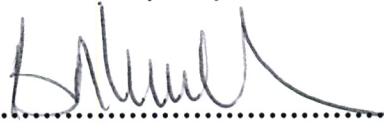
Members also deliberated on the modalities of prosecuting the petition including visiting the county and assessing the context of the petitioners preamble and prayers.

**MIN.04/2015 : ANY OTHER BUSINESS**

The Chairman informed members on the following upcoming event.  
High level workshop on Accountability and the County level of Government which was to be held on **19<sup>th</sup> -21<sup>st</sup> March, 2015 at Great Rift Hotel, Naivasha**. All oversight bodies including the Ethics and Anti-corruption, Commission (EACC), Controller of Budget, Transitional Authority (TA), Criminal Investigation Department (CID), Commission on Revenue Allocation (CRA) had been invited to make presentations. Members were invited and encouraged to attend the committee event.

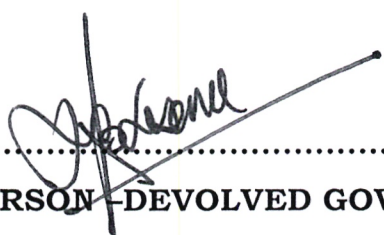
**MIN.05/2015 : ADJOURNMENT AND DATE OF NEXT MEETING**

Having exhausted all issues set out in the agenda, the meeting was adjourned at 12.20pm. The next meeting would be communicated by way of notice.

**SIGNED:** ..... 

**CHAIRPERSON - FINANCE, COMMERCE AND BUDGET**

**DATE:** .....

**SIGNED:** ..... 

**CHAIRPERSON - DEVOLVED GOVERNMENT COMMITTEE**

**DATE:** ..... *4 Oct 2016.*