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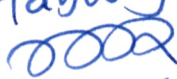
ELEVENTH PARLIAMENT - FOURTH SESSION

REPORT OF THE SENATE STANDING COMMITTEE ON FINANCE,  
COMMERCE & BUDGET  
ON

THE PETITION TO THE SENATE BY JULIUS MASIVA OBUGA CONCERNING  
EMPLOYMENT OF WORKERS AT THE VIHIGA COUNTY ASSEMBLY, AND  
WASTAGE OF PUBLIC FUNDS BY THE COUNTY ASSEMBLY

Approved  
  
Speaker  
9/6/16

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JUNE 2016

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on 9/6/2016  
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## **PREFACE**

**Mr. Speaker Sir**, on behalf of the Members of the Finance, Commerce and Budget Committee and as required under the Senate Standing Orders, I hereby present to this House, the Committee's Report on the petition by Julius Masiva Obuga concerning employment of workers at the Vihiga County Assembly, and wastage of public funds by the County Assembly, that was presented to the Senate by Senator (Dr.) Wilfred Machage, a member of the Speakers panel of the Senate.

The petition was brought to the attention of the Senate by Julius Masiva Obuga, Chair of Mungoma Budget and Environmental forum Committee (a citizens' budget oversight committee) and was then tabled in the Senate on 20<sup>th</sup> November, 2014 and thereafter, committed to the Standing Committee on Finance, Commerce and Budget for consideration and determination.

**Mr. Speaker Sir**, it is significant to mention that the purpose of the approval of this report is to protect and enhance the process of enacting legislations in the County Governments and set the benchmarks for developing a shared vision in the management of public finance.

Further, the County governments should appreciate the importance of development planning and budgeting in meeting the increasing demands in service delivery and limited resources. The committee hopes that this report will assist in entrenching the independence of county assemblies in performing their functions of representation, legislation and oversight as espoused in Section 9 of the County Governments Act, 2011.

**Mr. Speaker Sir,**

The Standing Committee on Finance, Commerce and Budget is established pursuant to Standing Order No. 208 and is mandated, to investigate, inquire into and report on all matters relating to coordination, control and monitoring of the county budgets and to:

- a) *Discuss and review the estimates of County governments and make recommendations to the Senate;*
- b) *Examine the Medium term 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.*

**Mr. Speaker Sir,**

The 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 and as currently constituted, comprises the following members:

1. The Hon. Sen. Billow Kerrow, MBS, MP. -Chairperson
2. The Hon. Sen. 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. (Dr.) Wilfred Machage, MGH, MP.
7. The Hon. Sen. Mutahi Kagwe, EGH, MP.
8. The Hon. Sen. (Dr.) Boni Khalwale, MBS, MP.
9. The Hon. Sen. (Prof.) Peter Anyang' Nyong'o, EGH, MP.
10. The Hon. Sen. Mutula Kilonzo Junior, MP.
11. The Hon. Sen. (Prof.) John Lonyangapuo, CBS, MP.
12. The Hon. Sen. Aaron Kipkirui Cheruiyot, MP.
13. The Hon. Sen. (Dr.) Zipporah Kittony, MBS, OGW, MP.
14. The Hon. Sen. Catherine Mukite Nabwala, MP.
15. The Hon. Sen. Paul Njoroge Ben, MP.
16. The Hon. Sen. (Dr.) Agnes Zani, MP.

## **PRAYERS OF THE PETITIONERS FROM WAJIR COUNTY**

Pursuant to provisions Article 119 of the Constitution of Kenya and part XXIV of the Senate Standing Orders, the petitioners sought answers to the following prayers –

That the Senate-

1. That the Senate Sessional committees on devolution, finance and public accounts conduct an investigation into the affairs and conduct of the Secretary to the Vihiga County Assembly Service Board and the Board in entirety;
2. That the Senate instructs the Ethics and Anti-Corruption Commission to investigate the books of accounts of the Assembly and those parties that are culpable be prosecuted;
3. That the Senate Call for documents and conduct an audit into the human resource of the County Assembly, nature of the recruitment and the process;
4. That the Senate Come up with any decision aimed at protecting devolution, and taxpayers' monies and any parties found to have received monies irregularly surcharged;
5. That the Senate Seeks for the services of the criminal investigating department with a view of determining any element of fraud and embezzlement; and
6. That the Senate Instructs the office of the Auditor-General to undertake proper audit on the accounts of the Vihiga County Assembly.

### **Committee sittings**

In deliberating on issues concerning employment of workers at the Vihiga County Assembly, and wastage of public funds by the County Assembly, the committee held a total of one (2) sittings and received both oral and written submissions from the petitioner, the Clerk of the County Assembly, Mr. Josephat Musambayi and the Speaker of the County Assembly, Hon. David Chitwah.

## **Committee General Recommendations**

The committee having considered the matters in the petition recommends that:

- (i) The Committee notes that the recruitment of staff was done according to due process and employment letters issued accordingly. The Committee further notes that the Clerk, Mr. Josephat Musambayi was interdicted on 20<sup>th</sup> April, 2015, and a new acting clerk appointed. The committee recommends that the CASB must ensure that the Clerk of the House implements the resolutions of the Board without delay to avoid similar situations in future.
- (ii) The Committee recommends that as the Clerk, Mr. Musambayi has now been relieved of his duties, the CASB must make every effort to streamline the posting of the various officers to ensure that newly recruited staff are not victimised by staff co-opted from the defunct local government authorities.
- (iii) The Committee recommends that the CASB must ensure that in future the Clerk of the Assembly meets the required qualifications to hold office and that contravention of the directions of the Board should be dealt with immediately.
- (iv) The Committee recommends that the Ethics and Anti Corruption (EACC) Commission investigate Mr. Josephat Musambayi for the allegations of embezzlement of county assembly funds. The Committee further recommends that the Director of Public Prosecutions prosecute the former clerk in the event that the EACC finds evidence of corrupt conduct.
- (v) The Committee recommends that amount of money used in the unjustified trip to Singapore be recovered from particular individuals who benefited from the aforementioned trip.

**ACKNOWLEDGEMENT**

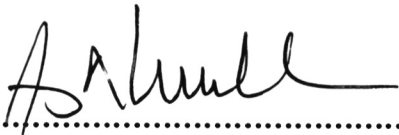
**Mr. Speaker Sir,**

The Committee is grateful to the Petitioner and the Speaker, Vihiga County Assembly who appeared before the Committee to share on their roles and the how their actions may have impacted on the employment of workers at the Vihiga County Assembly, and wastage of public funds by the County Assembly.

The Committee is also particularly grateful to the Offices of the Speaker, the Clerk of Senate for the support received as it discharged its mandate. The Committee also wishes to thank the Senators who participated in the process to ensuring that the Committee completes its report.


**Mr. Speaker Sir,**

On behalf of the committee, and pursuant to standing order 203(6), It is therefore my pleasant and honourable duty to present and lay on the table of the house the report of the Finance, Commerce and Budget Committee regarding the Petition on employment of workers at the Vihiga County Assembly, and wastage of public funds by the County Assembly on the issues raised for consideration and subsequent adoption.

**SIGNED:** ..... 

**SENATOR BILLOW KERROW, MBS, MP.**

**(Chairperson, Standing Committee on Finance Commerce and Budget)**

**Date:** ..... 

### **III. INTRODUCTION**

#### **REVIEW OF THE PETITION TO THE SENATE OF THE REPUBLIC OF KENYA IN THE MATTER OF THE COUNTY ASSEMBLY OF VIHIGA**

1. The Constitution under Articles 37 and 119 grants every Kenyan a right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation. The Petition to Parliament (procedure) Act No. 22 of 2012 makes provision for the procedure for the exercise of the right pursuant to those Articles. The Act also defines the format of petitions to be addressed to the Senate or National Assembly.
2. This petition has been presented by Bungoma Budget Oversight Committee (a citizens' budget oversight committee). The group according to the petition is chaired by Julius Masiva Obuga. The petition has been signed by the petitioner on behalf of the group.

### **II. SUBMISSION FROM PARTIES**

In establishing facts, the committee invited and met with the Petitioner, Speaker and Clerk of Vihiga County Assembly.

#### **Submission by the Petitioner**

#### **Submission by Mr. Joesphat Musambayi – Former Clerk Vihiga County Assembly**

The petitioner informed the Committee that as an advisor to the Speaker and the County Assembly Service Board, he had given advice on what he termed irregular recruitment of newly employed staff. This he says was ignored by the Board and the Speaker who went ahead to recruit and

wrote letters of offer to the successful applicants. He further informed the Committee that the National Government, through the National Treasury Circular Ref: ES1/03'H' (12) dated 17<sup>th</sup> December 2013, directed all the accounting officers in the country to stop recruitment of new staff, pay adjustments and promotion of the existing staff, an advisory that he said the Board ignored.

The Clerk further informed the Committee that the Transition Authority had issued a circular in the print media giving direction on the employment and deployment of staff drawn from the defunct local authorities and seconded by the Transition Authority. The Clerk argued that the CASB had ignored the advice given in the circular and recruited staff without due consideration of whether the county assembly needed more staff, if there were sufficient financial resources to pay the staff and whether the assembly had the infrastructure to accommodate the newly recruited staff.

He informed the Committee that the Auditor General had also undertaken a systems audit for Vihiga County Assembly in the FY2013/14 and advised the management to take appropriate action to avoid waste of public resources and contain the high wage bill until the conclusion of the staff rationalization and job evaluation exercise. He also argued that as per the Commission on Revenue Allocation budget ceilings for Vihiga County Assembly, a recruitment of 65 staff against a membership of forty Members of the County Assembly was not permissible.

The former clerk informed the Committee that in his view, the petitioner had personal and tribal interests against him. He argued that the accusations were malicious and targeted at tarnishing his reputation.

**Submission by Hon. Daniel Chitwah – Speaker, Vihiga County Assembly**

**1. Illegality on Procurement of Hotel Services**

On 29<sup>th</sup> June 2014, an amount of Ksh. 3,469,160.00 was paid to Golf Hotel Kakamega as an advance for services that were not rendered. The amount, Ksh. 2,151,520.00, the committee was informed was still unused. The Committee was informed that there were allegations that some members of public other than members of Vihiga County Assembly were utilizing the funds, most of them being the suspended Clerk's relatives and friends.

The committee was informed that a further payment of Ksh. 2,200,655.00 was made to Golf Hotel - Kakamega on 7<sup>th</sup> January, 2015, yet there was still a credit balance of Ksh. 2,151,520.00.

**2. Accommodation of Non Staff on the County assembly Account**

The Board noted that on several occasions the Clerk had sponsored strangers [people other than employees of the County Assembly of Vihiga) to a hotel on the County Assembly of Vihiga account (See attached attendance list from Hotel Perch]. These people had signed into the hotel as MCA's yet they were not recognized or known at the Assembly (See Annex marked II with their names circled). The names of those mentioned were –

1. Malaba Rashid
2. Isabirye Ibrahim

3. Alenga Benson
4. Edga Amoi
5. Boniface Atieno
6. Lydia Omondi
7. Ahmed Mohamed
8. Stanley Musambayi
9. Otindo Bruce
10. Evans Wesonga
11. Vitalis Masheti
12. Ronald Khasimwa
13. Caleb Khanyolo
14. Evans Bukhaya
15. Stephen Mwangi
16. Evans Wapali
17. Mellab Atemah
18. Richard Onyango
19. Mayaka Clara and,
20. Unidentified visitors (on 10/4/2015)

Most of the above are the Clerk's friends or relatives.

### **3. Illegality/ Irregularity in Servicing of Vehicles.**

The Board noted that on several occasions the Clerk authorized the servicing and repair of motor vehicles that did not belong to the Assembly. A letter from Kajuwala Motors Garage dated 12<sup>th</sup> May, 2015 had several invoices including invoice no. 72 marked ANNEX III A15 and dated, 26<sup>th</sup> January, 2015, of Kes 53, 950.00 in respect of repair of a unknown vehicle, registration Number, KBQ I960 Isuzu FVR Tipper. The assembly had earlier paid for the service and repair of the same vehicle

vide invoice no. 30, dated 20<sup>th</sup>, November 2014, of amount Kes 69,160.00.

The Committee was also informed that an invoice no. 28 (ANNEX III B1) amounting to Kes 134,290.00 also shows an amount spent on repair of a Toyota Hilux Van Reg' KAV 323E. This vehicle does not belong to the County Assembly of Vihiga and such, could not have been repaired using the Assembly funds.

Invoices dated 2/12/2014, 8/12/2014, and 20/12/2014 (See III A2, IIIA3 and III A4) all in respect of a Toyota motor vehicle registration no. KEY 028C are a sign of fraudulent payment as the vehicle could not have been serviced 3 [three] times within a 19 day period. There were no inspection reports prior to servicing of these motor vehicles.

#### **4. Irregular/ Unauthorized procurement of a motor vehicle KBZ 955D.**

The Board noted that the Clerk procured a motor Vehicle KBZ 955D, Toyota Double Cab, silver metallic in total disrespect of procurement rules and procedures. The Vehicle was paid in two installments of Kes 3,500,000.00 in December 5<sup>th</sup> 2014, and the second installment before delivery of Kes 2,373,000.00 on January 6<sup>th</sup>, 2015. The delivery was never made despite the payment. The Board with the help of the Vihiga CID officers traced the vehicle to a yard in Kakamega and brought it to the Assembly. (See photocopy of payment vouchers Annex IV and copy of logbook marked Annex IV1).

#### **5. Unauthorized foreign trips**

The Board noted that on April 13<sup>th</sup>, 2015, the Clerk unilaterally sponsored Members of the County Assembly, himself, and staff from the County Executive to a trip to Singapore occasioning the Assembly a loss

of Kes 2,278,500.00. This expenditure was not sanctioned by the Vihiga County Assembly Service Board and in direct contravention of the Public Finance Management Act. A copy of the payments of per diems to their Bank accounts is attached as annex V.

#### **6. Failure to Submit PAYE on allowances to KRA.**

The Board noted that from the time of inception the Clerk had failed to submit to Kenya Revenue Authority the PAYE for both staff and MCAs on their allowances occasioning the assembly a bill of Kes 71,909,666.00. (See attached assessment Schedule from KRA marked as annex VI).

Considering budgetary constraints and the imposition of ceilings by the CRA on recurrent expenditures, the assembly is now finding it difficult to budget for this money. The money that was deducted from new employees as PAYE was not remitted to KRA (see annex marked VI 'A'). Other statutory deductions were also not submitted and an audit should be done to ascertain the loss.

#### **7. Unauthorized Withdrawals from the Car and Mortgage Account**

The Board noted that the Clerk on several occasions and without authority from the Board withdrew money from the car and mortgage account fund against the rules and regulations governing the Fund. The money was used to facilitate operations at the Assembly. (A Copy of the bank statements attached and marked annex 7A and 7B).

#### **8. Space order in the Daily Nation/ Standard**

On 3<sup>rd</sup> April 2015, the Clerk bought space in the Daily Nation costing Kes 135,501.00 and Standard Newspaper on 4<sup>th</sup> April of 2015 using Assembly Funds to advertise the burial arrangements for his relative

(Grandmother) (See annex VIII). The amounts owed in this respect are still outstanding and hence an obligation to the County Assembly.

#### **10. Double Payment/Forgery**

The Clerk made double payment for professional services of facilitation on the matter of the Community Empowerments Bill. Annex XA and XD are copies of SWIFT/RTGS applications together with the payment voucher marked 'XC'.

The letter from ASHCOL TRADING AND SERVICES CO. LTD dated 12<sup>th</sup> March, 2015 and marked ANNEX 'X' is purported to be a forged document

#### **11. Expenditure outside the Budget**

The Clerk engaged in activities that were not included in the County Assembly of Vihiga budget for FY 2013/2014 and FY2014/2015. Such activities include renovations and constructions of buildings and the perimeter wall, (see annex 11 A and 1 IB)

#### **12. Integrity**

The Clerk procured a number of items without following the due process of procurement and wanted the assembly procurement Officers to regularize the irregularities. The procurement office wrote a letter to the CASB highlighting the irregularities the Clerk was involved in and the clerk in efforts to intimidate the officers authorized unlawful deductions from the concerned officers' salaries [see annex 12 A).

### **13. Failure to Pay Salaries to the Staff and Allowances to the External Member of the Board**

The Clerk failed to pay salaries to newly recruited staff members and this elicited a court case at the Kisumu Industrial Court vide Claim No. 295 of 2014. Despite the court issuing an order to the Clerk to pay the said salaries, he failed to comply with the order and this prompted contempt proceedings to be taken against him (see annex 13A and 13B). The Clerk also failed to remit the stipulated payments to the external members of the County Assembly Service Board.

### **14. Action Taken**

The Board had suspected a massive embezzlement of funds at the Assembly and due to that initiated an internal inquiry as evidenced vide annex '14A'. The Board shared the findings of the report with the EACC, the Auditor General and the Criminal Investigations Department for further investigation and action.

On 18<sup>th</sup> April, 2015, the Board wrote a letter to the Clerk asking him to step aside and pave way for further investigations into his behavior and conduct as the Clerk of Vihiga County Assembly (see annex '14P1'). After the suspension of the Clerk, the MCAs constituted an Adhoc Committee to investigate the conduct of the Clerk. The committee came up with its findings and recommendations and concluded that the suspension of the Clerk which had been given by the Board be upheld until the Clerk was cleared by several Government Investigative Agencies (**see annex '14Q'**).

### III. HIGHLIGHTS OF THE ISSUES PETITIONED

1. **THAT**, in line with Section 12 of the County Governments Act (No. 17 of 2012), the Vihiga County Assembly Service Act established the Vihiga County Assembly Services Board tasked with, among others, providing services and facilities to ensure the efficient and effective functioning of the county assembly, constituting offices in the county assembly, and undertaking the recruitment, appointment, supervision, promotion and demotion of persons appointed to those offices.
  
2. **THAT**, Section 23 of the Vihiga County Assembly Service Act confers on the Vihiga County Assembly Services Board ('CASB') the function of setting the schemes of service of staff employed by the County Assembly, including determining the job scales and salaries and other allowances payable to such employees in accordance with the guidelines set by the Salaries and Remuneration Commission.
  
3. **THAT**, the CASB undertook competitive recruitment of fifty-seven (57) new employees for the County Assembly and the new employees reported to work on 1<sup>st</sup> April, 2014 having been issued with appointment letters signed by the Speaker in his capacity as Chair of the CASB.
  
4. **THAT**, the recruited employees included the Deputy Clerk of the County Assembly, clerk assistants, legal counsel, hansard reporters, sergeants-at-arms, research officers, protocol officers, liaison officers, among others, all of whom are very central to the effective functioning of the County Assembly.
  
5. **THAT**, the Clerk of the County Assembly, who was also recruited by the CASB, refused to recognize the new employees, to issue them with staff employee numbers, and to enter them in the payroll of the County Assembly as directed by the CASB. It is now over six months since the said employees were recruited by the CASB and their employment is yet to be rationalized.

6. **THAT**, in August 2014 the Clerk purported to pay off the new employees their outstanding salaries for the four months they had been in employment, and to terminate their employment without any formal communication. This was justified on the grounds that the recruitment of the new staff was undertaken un procedurally as the Transition Authority had, at the time, written to the County Assembly freezing recruitment in the House.

#### **Committees Observation**

The Committee observed that the allegations made by the petitioner had been confirmed by the Speaker and acting clerk of the Assembly. The Speaker in his submissions had informed the committee that the former clerk, Mr. Josephat Musambayi had failed to pay salaries to newly recruited staff members and this had elicited a court case at the Kisumu Industrial court. The Committee was further informed that despite the court order to the Clerk instructing him to pay the said salaries, he failed to comply and this had prompted contempt proceedings against him (**See Annex II**). The Committee learned that the Clerk had sent home all the newly recruited employees without any formal written communication.

The Clerk in his submissions contested that he had advised the CASB that the recruitments of new staff was irregular and unprocedural, but the Speaker had gone ahead to recruit and write letters of offer to the successful applicants.

#### **Committees Recommendation**

The Committee observed that the recruitment of staff was done according to due process and employment letters issued accordingly. The Committee further notes that the Clerk, Mr. Josephat Musambayi was interdicted on 20<sup>th</sup> April, 2015, and a new acting clerk appointed.

The committee recommends that the CASB must ensure that the Clerk of the House implements the resolutions of the Board without delay to avoid similar situations in future.

**7. THAT,** the Clerk has failed to assign any duties to the new employees who have spent the last six (6) months sitting at or outside the County Assembly without anything to do. Further, the Clerk has gone ahead to generate a new list of employees and a payroll where the salaries of employees have been arbitrarily and without the involvement of the CASB been either upgraded or downgraded.

**Committees Observation**

The Committee learned that the allegations made by the petitioner had been confirmed by the Speaker and members of the County Assembly Service Board in their submissions to the Committee.

**Committees Recommendation**

The Committee recommends that as the Clerk, Mr. Musambayi has now been relieved of his duties, the CASB must make every effort to streamline the posting of the various officers to ensure that newly recruited staff are not victimised by staff co-opted from the defunct local government authorities.

**8. THAT,** there exists seemingly irreconcilable differences between the Speaker of the County Assembly who is also the Chair of the CASB and the Clerk of the County Assembly who is also the Secretary of the CASB and this, in addition to leaving employment of the said new staff in limbo, threatens to bring operations at the County Assembly to a standstill.

**Committees Observation**

The Committee observed that the Clerk, Mr. Josephat Musambayi, had been relieved of his duties to allow room for investigations and disciplinary action where found culpable of gross misconduct.

**Committees Recommendation**

The Committee recommends that the CASB must ensure that in future the Clerk of the Assembly meets the required qualifications to hold office and that contravention of the directions of the Board should be dealt with immediately.

9. **THAT**, the Clerk has also refused to attend meetings of the CASB, operates bank accounts not authorized by the CASB and whose status and amounts held therein is unknown to the CASB or the Speaker, has assigned junior staff the roles of departmental heads, has single handedly without involvement of the CASB recruited employees and proceeded to place them on the payroll where they receive salaries, has exhibited favoritism towards certain employees, has openly displayed disrespect to the MCAs and staff of the County Assembly including using insults and abuses against them, and has, instead of acting as adviser to the Speaker, assumed the role of head of the County Assembly.
10. **THAT**, efforts have been made to resolve the conflict, including inviting the County Governor to intervene, but these have not yielded any fruit. The Speaker has also tried to have the Clerk disciplined, removed or replaced but without success.
11. **THAT**, there is very little service delivery-taking place at the County Assembly due to this gridlock, and the County Assembly itself seems unable or unwilling to help resolve the conflict between the office of the Speaker and that of the Clerk.

#### **Committees Observation**

The Committee observed that the Speaker and other members of the County Assembly confirmed the allegations raised by the petitioner. The Committee further observed that the board had initiated an investigation into the conduct, behaviour and abuse of office by the former clerk of the county assembly, Mr. Josephat Musambayi (**See Annex III**). The Committee noted that the investigation had led to the indefinite suspension of the clerk on 20<sup>th</sup> April, 2015, and ultimately his dismissal.

### **Committees Recommendation**

The Committee recommends that the Ethics and Anti Corruption (EACC) Commission investigate Mr. Josephat Musambayi for the allegations of embezzlement of county assembly funds. The Committee further recommends that the Director of Public Prosecutions prosecute the former clerk in the event that the EACC finds evidence of corrupt conduct.

12. **THAT**, there is wanton wastage of funds by the Members of the County Assembly (MCAs) including in undertaking unjustified foreign trips where allowances and per diems are paid to millions of shillings, as supported by the various reports of the Auditor General on the County.

### **Committees Observation**

The Committee observed that the Speaker in his submission to the Committee had stated that the Clerk unilaterally sponsored members of the county assembly, himself and staff from the county executive to a trip to Singapore occasioning the assembly a loss of Ksh. 2.28 million. The Committee noted that the Vihiga County Assembly Service Board had not sanctioned this expenditure (**See Annex II**).

### **Committees Recommendation**

The Committee recommends that immediate recovery of the said amounts be instituted from particular individuals who benefited from the aforementioned trip.

### III Prayers of the Petitioners

The petitioners' prayer was that the Senate of the Republic of Kenya intervenes and: -

1. **That the Senate Sessional committees on Devolution, Finance and Public Accounts conduct an investigation into the affairs and conduct of the Secretary to the Vihiga County Assembly Service Board (CASB) and the Board in its entirety;**

**Committee Response:** The Committee noted that the CASB of Vihiga had initiated and concluded an investigation into the affairs and conduct of the Secretary to the Vihiga County Assembly Service Board, which had ultimately led to his dismissal from the assembly.

2. **That the Senate instructs the Ethics and Anti-Corruption Commission to investigate the books of accounts of the Assembly and those parties that are culpable be prosecuted;**
3. **That the Senate Come up with any decision aimed at protecting devolution, and taxpayers' monies and any parties found to have received monies irregularly surcharged;**
4. **That the Senate seeks for the services of the criminal investigating department with a view of determining any element of fraud and embezzlement;**

**Committee Response:** The Committee in its recommendations has directed that the EACC immediately commence investigations into the matter of embezzlement of funds at the County Assembly of Vihiga. The Committee has further directed that anyone found culpable of corruption offences be prosecuted by the DPP and held personally liable for loss of public funds.

5. **That the Senate Call for documents and conduct an audit into the human resource of the County Assembly, nature of the recruitment and the process;**

**Committee Response:** The Committee having reviewed the circumstances surrounding the petition and the submissions made by the County Assembly Service Board, was satisfied that the contention around the recruitment process was linked to the former clerk, Mr. Musambayi. The Committee is of the opinion that with the dismissal of the Clerk, the contentious issues around the recruitment of staff can be adequately addressed by the CASB who had consistently supported the recruitment process.

6. **That the Senate Instructs the office of the Auditor-General to undertake proper audit on the accounts of the Vihiga County Assembly.**

**Committee Response:** The Senate Committee on Public Accounts and Investment is seized of the matter and will table its report on the audited accounts of Vihiga County Assembly.

## **COMMITTEE RECOMMENDATIONS**

The committee having considered the matters in the petition recommends as follows:

- (i) The Committee notes that the recruitment of staff was done according to due process and employment letters issued accordingly. The Committee further notes that the Clerk, Mr. Josephat Musambayi was interdicted on 20<sup>th</sup> April, 2015, and a new acting clerk appointed. The committee recommends that the CASB must ensure that the Clerk of the House implements the resolutions of the Board without delay to avoid similar situations in future.
- (ii) The Committee recommends that as the Clerk, Mr. Musambayi has now been relieved of his duties, the CASB must make every effort to streamline the posting of the various officers to ensure that newly recruited staff are not victimised by staff co-opted from the defunct local government authorities.
- (iii) The Committee recommends that the CASB must ensure that in future the Clerk of the Assembly meets the required qualifications to hold office and that contravention of the directions of the Board should be dealt with immediately.
- (iv) The Committee recommends that the Ethics and Anti Corruption (EACC) Commission investigate Mr. Josephat Musambayi for the allegations of embezzlement of county assembly funds. The Committee further recommends that the Director of Public Prosecutions prosecute the former clerk in the event that the EACC finds evidence of corrupt conduct.
- (v) The Committee recommends that amount of money used in the unjustified trip to Singapore be recovered from particular individuals who benefited from the aforementioned trip.