

Charles

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within timelines.

26/10/15



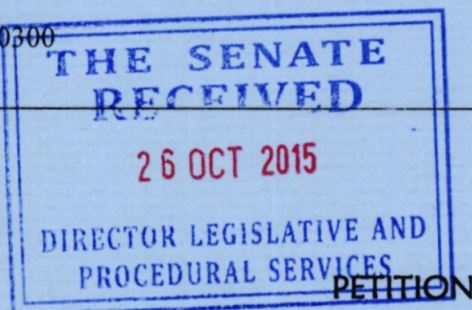
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23/10/15

REPUBLIC OF KENYA
VIHIGA COUNTY ASSEMBLY

Hon. Daniel. C. Chitwah

P. O. Box 90-50300

Maragoli



Mobile: +254 722267617

E-Mail: chitwah2001@yahoo.com

15th October, 2015

I **Hon Daniel Chitwah**, the chairman of County Assemblies Speakers Forum; Western Chapter and the Speaker Vihiga County Assembly, being the chairman of Vihiga County Assembly Service Board,

DRAW the attention of the Senate to the following:

THAT vide a letter dated 4th June 2015 addressed to the Ag Clerk of Vihiga County Assembly, the local Kenya Revenue Authority office demanded the payment of tax arrears due on per diems paid to members and staff of Vihiga County Assembly.

THAT further consultations on the matter with the KRA head office, revealed that there exists a per diem policy in every government institution including KRA itself. This policy recognizes per diem as an expense and not an income since these are monies meant to meet members expenses while on official duties out of their work stations. As such, these monies are not an income to the officers since they are used to meet their expenses.

THAT the Salaries and Remuneration Commission has put in place a per diem policy which is observed by all the 47 county Assemblies in the republic.

THAT the County Assembly received a demand notice from the KRA department of Domestic Taxes dated 26th August 2015 whereby the County Assembly was given a fourteen day ultimatum to pay the outstanding arrears failure to which KRA would institute a recovery process against it.

THAT the constitution of Kenya 2010 in article 1 sub article 1, 2, 3 reads;

1. (1) All sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution.

(2) The people may exercise their sovereign power either directly or through their democratically elected representatives.

(3) Sovereign power under this Constitution is delegated to the following State organs, which shall perform their functions in accordance with this Constitution—

(a) Parliament and the legislative assemblies in the county governments;

(b) the national executive and the executive structures in the county governments; and

(c) the Judiciary and independent tribunals.

As further read with article 1(4) which states

The sovereign power of the people is exercised at—

(a) the national level; and

(b) the county level.

THAT in exercise of the said sovereignty, the county assemblies that were created as per the provisions of article 176(1) of the Constitution of Kenya 2010 which states;

176. (1) There shall be a county government for each county, consisting of a county assembly and a county executive.

And in exercises of their roles as provided for in article 185(1) of the constitution of Kenya 2010 which states;

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

And as well exercise oversight duties over all issues and matters of governance, especially the operation of the County Executive and all organs of the County Executive, receive, deliberate on and approve;

(c) Liaise with government at the other level for the purpose of exchanging information, coordinating policies and administration and enhancing capacity.

And further has misused and/or misinterpreted the provisions of Section 78 of the Public Finance Management Act that designate it as the collector of national revenue.

THAT; while it's the obligation of every Kenyan to honour their tax obligations in line with the provisions of Income Tax Act Cap 470 of the laws of Kenya. These provisions must be applied equally and fairly to everyone.

THAT clarity on whether the Commission on Revenue Allocation is aware that this taxation mainly targets County Assemblies and their staff of the above counties which constitute an obvious case of discrimination in contravention of the provisions of the constitution of Kenya 2010 on equality and impartiality of all Kenyans before the law.

THAT Clarity on whether benefits conferred to state officers in their official capacity; which includes official cars and a housing benefit afforded to them by SRC are subject to taxation as proposed by the Kenya Revenue Authority.

THAT the provisions of Article 189 of the constitution expressly provide for mechanisms of interaction between the two levels of government; the National Government and the County Government on issues of common concern.

THAT the Senate as provided for in article 96(1) of the constitution of Kenya is duly mandated to protect and articulate interests of the counties and their governments.

THAT the matters contained herein are not a subject of any litigation in any court of law and that it's not pending before any other legal body.

HEREFORE your humble petitioner pray that;

1. The Senate committee on Finance, Commerce and Budget committee do summon the Commissioner General of KRA to substantiate the blatant violation of the law and discrimination against western region county assemblies and the matters herein raised in the petition.
2. The senate to implore KRA to refund any monies paid by the Vihiga County Assembly since this has negatively affected the operations of the Assembly.

- a) All development plans , programmes, policies and budgets of a county government ;as set out in Sections 207,220(2),201 and 203 of the Constitution of Kenya 2010 and part iv of the Public Finance Management Act 2010.
- b) After vetting all nominee for appointment as county secretary and chief officers of the county public service;
- c) The borrowing by a county Government in accordance with provisions of section 212 of constitution of Kenya 2010.

THAT the Kenya Revenue Authority which is established under the laws of Kenya as a collector of revenue has unilaterally proceeded to tax the per diem allowances of members of the county assembly and staff of Vihiga County Assembly and of three other Assemblies from the western region of the country; namely Kakamega, Bungoma and Busia County Assemblies who are exercising the above stated constitutional obligations, and in so doing frozen their bank accounts and threatened to sue the said county assemblies, hence hampering and disrupting the constitutional obligations of the said county assemblies.

THAT in exercise of its functions, the Kenya Revenue Authority failed to exercise its constitutional obligation as provided for in article 10(1)(a)(b)(c), article 10(2)(a)(b)(c) that provides for national values and principles of governance; and article 47(1) and (2) that provide for the fundamental exercise of fair administrative action.

THAT in this regard clarity is sought as to whether KRA is in order to subject these monies that are purely paid to members of the county assembly and their staff while on constitutional duties outside the precincts of the Assembly, taking cognisance of the fact that a committee or committee of the County Assembly on duty outside the precincts of the county assembly is equally an assembly in progression.

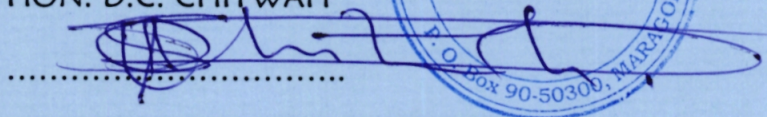
THAT further clarity as to whether Kenya Revenue Authority is in order to effect the said taxation only on members and staff of Vihiga County Assembly, Kakamega County Assembly, Bungoma County Assembly and Busia County Assembly; taking cognisance of the provisions of article 6(1) of the constitution of Kenya 2010.

THAT the Kenya Revenue Authority contravened the provisions of article 189(1) (c) of the constitution of Kenya that provides that;

189. (1) Government at either level shall—

3. The Senate Committee on Finance, Commerce and Budget do determine why there is no uniform application of Income Tax laws to other counties and the National Assembly.
4. The committee to determine whether these deductions by KRA contravene the financial ceilings set by the Commission on Revenue Allocation to the County Assembly and hence compromising the County Assembly's ability to effectively carryout their mandate.

HON. D.C. CHITWAH



SPEAKER; VIHIGA COUNTY ASSEMBLY.