

PETITION TO THE SENATE BY HON. MARGARET W. KIIRU, MCA
CONCERNING UNLAWFUL ESTABLISHMENT AND OPERATION OF A
MUNICIPAL COURT BY THE NAKURU COUNTY GOVERNMENT

PARLIAMENT
OF KENYA
LIBRARY

Honourable Senators,

1. Pursuant to Standing Orders 220 (1) (a), and 225(2) (b), I hereby report to the Senate that a petition has been received from one Hon. Margaret W. Kiiru, a Member of the Nakuru County Assembly and resident of Nakuru County, concerning the unlawful establishment and operation of a Municipal Court by the Nakuru County Government.
2. As you are aware, under Article 119(1) of the Constitution, and I quote: "Every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation."
3. Honourable Senators, in her Petition, the petitioner states as follows:
 - 3.1 *THAT, prior to promulgation of the Constitution of Kenya 2010 and the County Governments Act 2012, the repealed Local Governments Act (Cap 265) established city courts and municipal courts and created offences and penalties arising out of violations of the various local authorities by-laws;*
 - 3.2 *THAT, the repeal of the Local Governments Act rendered the said courts obsolete, wherefore offences arising out of violations of county government by-laws would now be heard by Magistrates' Courts established and operationalized within the framework and structure of the Judiciary;*
 - 3.3 *THAT, indeed, in March 2015, the Chief Justice recalled all judicial officers previously assigned to municipal and city courts, and directed that all cases then pending before these courts would henceforth be heard before the Magistrates' Courts in various counties as would any new cases arising from new county legislation;*
 - 3.4 *THAT, since 2013, the Nakuru County Government established and to date continues to operate, wholly outside the structure of the Judiciary, a municipal court at the county headquarters allegedly to try offenders who flout County Government laws. Even after the said directive by the Chief Justice in March, 2015, the said court is still fully operational;*

The Speaker
The Petition is ok
Please approve for
Tabling
Mungu
14/5/15

Approved
24/6/15
SSN

The clerk
The petition is in order
Please approve for forwarding
to the Speaker for his approval
14/5/15

- 3.5 *THAT, the Municipal Enforcement Officers prosecuting and overseeing operations in the said court have not been gazetted as investigative or judicial officers. It is also unclear whom the officers are answerable to as the said court is neither an organ of the Judiciary, nor of the county government;*
- 3.6 *THAT, no accounts of the said court, including of the revenue collected by the said court exists, which the Nakuru County Assembly would exercise oversight over;*
- 3.7 *THAT, the court, which is non-existent in law, has been used by the county government operatives to unlawfully detain, harass and extort money from small scale traders trying to eke a living, particularly youth, women and other vulnerable groups in Nakuru County. The funds collected in this scheme are never deposited in the county accounts and only benefit a small group of people around the County Secretary;*
4. The Petitioner also states that she has made the best efforts to have this matter addressed by the relevant authorities, including by the Nakuru County Assembly, without success, and that none of the issues raised in the petition is pending before any court of Law, Constitutional or any other legal body.
5. The Petitioner therefore prays that the Senate:
- i) **Urgently investigates** the issues raised in the petition and comes up with appropriate recommendations as may be necessary to address the issues raised in the petition;
 - ii) **Requests** the offices of the Attorney General, the Chief Justice and the Director of Public Prosecutions to undertake an inquiry into the setting up and continued operation of the said municipal court, and take appropriate action thereof, including commencing prosecution of those found criminally culpable; and
 - iii) **Requests** the Office of the Auditor General to investigate the accounts of the said municipal court and recommend appropriate action thereof, including directing recovery of public funds from those found to have irregularly benefitted from the same; and
 - iv) Pending completion of the above processes, **requests** the office of the Chief Justice in liaison with the Governor of Nakuru County to oversee the immediate closure of the said unlawful municipal court.

6. Honourable Senators, pursuant to standing order 226, I shall now allow comments, observations or clarifications in relation to the petition for not more than thirty minutes.

[after comments by Senators]

7. Honourable Senators, pursuant to standing order 227(1), the Petition stands committed to the relevant standing committee, in this case the Standing Committee on Legal Affairs and Human Rights. In terms of standing order 227(2), the Committee will be required, in not more than sixty days from the time of reading the Prayer, to respond to the Petitioner by way of a Report addressed to the Petitioner and laid on the Table of the Senate.

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3.5 *THAT, the Municipal Enforcement Officers prosecuting and overseeing operations in the said court have not been gazetted as investigative or judicial officers. It is also unclear whom the officers are answerable to as the said court is neither an organ of the Judiciary, nor of the county government;*

3.6 *THAT, no accounts of the said court, including of the revenue collected by the said court exists, which the Nakuru County Assembly would exercise oversight over;*

3.7 *THAT, the court, which is non-existent in law, has been used by the county government operatives to unlawfully detain, harass and extort money from small scale traders trying to eke a living, particularly youth, women and other vulnerable groups in Nakuru County. The funds collected in this scheme are never deposited in the county accounts and only benefit a small group of people around the County Secretary;*

4. The Petitioner also states that she has made the best efforts to have this matter addressed by the relevant authorities, including by the Nakuru County Assembly, without success, and that none of the issues raised in the petition is pending before any court of Law, Constitutional or any other legal body.

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- iv) Pending completion of the above processes, **requests** the office of the Chief Justice in liaison with the Governor of Nakuru County to oversee the immediate closure of the said unlawful municipal court.

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PETITION MADE TO THE SENATE PURSUANT TO ARTICLE 119 OF THE
CONSTITUTION OF KENYA AND PART XXIV OF THE
SENATE STANDING ORDERS

BY

HON. MARGARET W. KIIRU, MCA
AND RESIDENT OF NAKURU COUNTY

CONCERNING

UNLAWFUL ESTABLISHMENT AND OPERATION OF A MUNICIPAL
COURT BY THE NAKURU COUNTY GOVERNMENT

May, 2015

Petition to the Senate by Hon. Margaret W. Kiiru, MCA and resident of Nakuru County concerning unlawful establishment and operation of a municipal court by the Nakuru County Government.

I, the undersigned,

Citizen of the Republic of Kenya, nominated Member of the County Assembly (MCA) of Nakuru, and a resident of Nakuru County;

DRAW the attention of the Senate to the following:

1. *Unlawful establishment and operation of a municipal court by the Nakuru County Government*
 - 1.1 THAT, prior to promulgation of the Constitution of Kenya 2010 and the County Governments Act 2012, the repealed Local Governments Act (Cap 265) established city courts and municipal courts and created offences and penalties arising out of violations of the various local authorities by-laws;
 - 1.2 THAT, the repeal of the Local Governments Act rendered the said courts obsolete, wherefore offences arising out of violations of county government by-laws would now be heard by Magistrates' Courts established and operationalized within the framework and structure of the Judiciary;
 - 1.3 THAT, indeed, in March 2015, the Chief Justice recalled all judicial officers previously assigned to municipal and city courts, and directed that all cases then pending before these courts would henceforth be heard before the Magistrates' Courts in various counties as would any new cases arising from new county legislation.
 - 1.4 THAT, since 2013, the Nakuru County Government established and to date continues to operate, wholly outside the structure of the Judiciary, a municipal court at the County Headquarters allegedly to try offenders who flout County Government laws. Even after the said Directive by the Chief Justice in March 2015, the said court is still fully operational.
 - 1.5 THAT, the Municipal Enforcement Officers prosecuting and overseeing operations in the said court have not been gazetted as investigative or judicial officers. It is also unclear whom these officers are answerable to as this court is neither an organ of the Judiciary, nor of the county government as to fall under the oversight of the County Assembly.
 - 1.6 THAT, no accounts of these courts, including the revenue generated, has been accounted to the Nakuru County Assembly, and it is unclear where the same goes.

Petition to the Senate by Hon. Margaret W. Kiiru, MCA and resident of Nakuru County concerning unlawful establishment and operation of a municipal court by the Nakuru County Government.

- 1.7 THAT, this court, which is non-existent in law, has been flagrantly used by the county government operatives to unlawfully detain, harass and extort money from small scale traders trying to eke a living, particularly youth, women and other vulnerable groups in Nakuru County. The funds collected in this scheme are never deposited in the county accounts and only benefit a small group of people around the County Secretary.
2. THAT, I have made the best efforts to have this matter addressed by the relevant authorities, including by the Nakuru County Assembly, without success as the Speaker of the County Assembly has frustrated any such attempt.
3. THAT, none of the issues raised in this Petition is pending in any court of Law, Constitutional or any other legal body.

WHEREFORE, your humble petitioner prays that the Senate-

1. Urgently investigates the issues raised in this petition and come up with appropriate recommendations, including making proposals for legislative interventions, as may be necessary to address the issues raised in the petition;
2. Requests the offices of the Attorney General, the Chief Justice and the Director of Public Prosecutions to undertake an inquiry into the setting up and continued operation of the said municipal court, and take appropriate action thereof, including commencing prosecution of those found criminally culpable; and
3. Requests the Office of the Auditor General to investigate the accounts of the said municipal court and recommend appropriate action thereof, including directing recovery of public funds from those found to have irregularly benefitted from the same; and
4. Pending completion of the above processes, requests the office of the Chief Justice in liaison with the Governor of Nakuru County to oversee the immediate closure of the said unlawful municipal court.

Dated this...12TH...day of...MAY...2015.

NAME & SIGNATURE

HON. MARGARET W. KIIRU



ADDRESS

P.O. Box 13439 - 20100
NAKURU

Phone: 0712583508

Email: maggyw83@gmail.com

ID NO.

23538640