

Thursday, 19<sup>th</sup> April, 2018 COUNTY ASSEMBLY OF SIAYA DEBATES

## **REPUBLIC OF KENYA**

### **SIAYA COUNTY ASSEMBLY**

#### **THE HANSARD**

##### **Second County Assembly - Second Session**

**Thursday, 19<sup>th</sup> April, 2018**

The House met at the County Assembly Chamber at 2.30 p.m.

*[The Temporary Speaker (Hon. Opanga) in the Chair]*

#### **PRAYER**

#### **MOTION**

##### **AUDITOR GENERAL'S REPORT**

**Hon. Ochieng:** Thank you, Mr. Temporary Speaker, Sir; I wish to Move the Motion:

THAT this House adopts the Report of the Public Accounts and Investments Committee on the Auditor General's Report on the financial Statements of the County Executive of the FY ending 30<sup>th</sup> June, 2016 laid on the Table of the House on Thursday, 29<sup>th</sup> March, 2018.

Mr. Temporary Speaker, Sir; on behalf of the Public Accounts & Investments Committee (PAIC) and pursuant to the provision of Standing Order 196, it is my pleasant privilege and pleasure to present to this House the report of the Public Accounts & Investments Committee's findings on the "Report of the Auditor General on the Financial Statements of County Government of Siaya for the Financial Year ended 30<sup>th</sup> June, 2016.

The County Assembly Committee on Public Accounts and Investments is established by Standing Order No. 196 and is mandated to conduct:

1. The examination of the accounts showing the appropriations of the sum voted by the County Assembly to meet the public expenditure and of such other accounts laid before the County Assembly as the Committee may think fit.
2. The examination of the workings of the County Public Investments;
3. When or while discharging its functions, the Public Investment and Accounts Committee shall further discharge the following functions:

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- a) Examine the reports and accounts of public Investments,
- b) Examine the reports, if any, of the Auditor General on public investments; and
- c) Examine the context of the autonomy and efficiency of the public investment, whether the affairs of the public investment are being managed in accordance with sound financial or business principles and prudent commercial practices.

The membership of the Committee comprises of the following Members of County Assembly;

1. Hon. William Kinyanyi - Chairperson
2. Hon. Susan Okwiry - Vice Chairperson
3. Hon. Andericus Oduor Odongo -Member
4. Hon. Joseph Wandera -Member
5. Hon. Francis Otiato -Member
6. Hon. Willis Ochieng -Member
7. Hon. Judith Oyugi -Member
8. Hon. Leonard Oriaro -Member
9. Hon Abigael Awino -Member

Article 229 of the constitution of Kenya, 2010 expects the Auditor General Within a period of six months after the end of each Financial Year to audit and report, in respect of that Financial Year, on;

- a) The accounts of the National and County governments;
- b) The accounts of all funds and authorities of the National and County governments;

The role of the Auditor General is further expounded in the Public audit act 2015 where in section 7 he is mandated but not limited to:

- a) Give assurance on the effectiveness of internal controls, risk management and overall governance at National and County Government;
- b) Undertake audit activities in state organs and public entities to confirm whether or not public money has been applied lawfully and in an effective way

Section 149 of the Public Financial Management Act, 2012 outlines the responsibilities of Accounting Officers for the County Government and County Assembly and it categorically states that;

“An accounting officer is accountable to the County Assembly for ensuring that the resources of the entity for which the officer is designated are used in a way that is;

- a) Lawful and authorized; and
- b) Effective, efficient, economical and transparent.

Article 226(1) (5) of the constitution of Kenya, 2010 stipulates that:-

“If the holder of a public office, including a political office, directs or approves the use of public funds contrary to law or instructions, the person is liable for any loss arising from that use and shall make good the loss, whether the person remains the holder of the office or not”.

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In this report, the Committee has applied Sections 226(1) (5) of the constitution and 156 of the Public Finance Management Act, 2012 to recommend the investigation and surcharging of various persons that may have been responsible for the loss of public funds.

The major challenge has been the failure by some County Executive Chief Officers and departmental heads to submit requested documents in time. Moreover, some even failed to honor requests to provide written submissions in response to the issues raised in the audit report.

The Committee wishes to acknowledge the support it received from the Offices of the Speaker and the Clerk of the County Assembly during the processing of this Report. The Committee further appreciates the cooperation it received from the various County Executive Committee Members and their respective staff members.

Final appreciation is to the Honorable Members and secretariat of this Committee as well as officers from the Office of the Auditor General, Kisumu hub who created time out of their busy schedule to attend and actively participate in the proceedings. Indeed, their commitment and devotion to duty have made the work of the Committee and production of this report successful.

I wish to confirm that the resolutions of the Committee in this report were unanimous. It is therefore my pleasant duty and privilege, on behalf of the Public Accounts and Investments Committee to table this report and commend it to this House for debate and adoption.

The Committee observed that;

1. The Office of the Auditor general contrary to the Public Audit Act 2015 section 31 (3.a) which states that: The Auditor-General shall include in his or her report under this section— recommendations on how a State Organ or public entity may improve the application of funds in a lawful and in an effective way; did not include his recommendations during compilation of the final audit report for the County Government (Executive) of Siaya.
2. Many County departments did not co-operate with the Office of the Auditor-General and the Committee in provision of documents in good time. Some departments completely withheld the provision of documents from the Committee contrary to the Public Audit Act 2015.
3. Abuse and misuse of cash advances (imprests), untimely surrender of imprests and poor imprest management, was a problem in the County Treasury.
4. The Public Financial Management Act, 2012, was not being strictly adhered to by the County departments.

The Committee recommends that;

1. The County departments should strive to submit documents to the Auditors at the time of Audit in accordance with the Public Audit Act, 2015.
2. The County Government of Siaya should take prompt measures that will ensure the IFMIS system is fully implemented and all required relevant modules are operational.
3. A special audit should be done by the Office of the Auditor-General on the office of the governor on several aspects. The accounting officer should submit with credible reasons

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why the documents weren't provided to the committee in good time as well as the issue being taken up by the general oversight committee within 14 days upon passing of this report.

Mr. Speaker, Sir; I want to believe that this document was given in good time and Members have gone through the document. I would wish to Move a Motion of amendment on the land issue that starts from page 12 and I want to believe that the amendments have been given to all the Hon. Members in the House.

The Committee deliberations; the valuation Report as reviewed by the Committee was done by a government valuer and evidence to this effect was issued to the Committee. It was noted that the piece of land is in Awelo, the former Bikra academy. The property sits on a 1.93ha piece of land.

The advertisement as reviewed by the Committee was for land without buildings but upon issue of expressional interest the one that was picked had a building and was valued together at the figure Kshs. 19,300,000. The valuation done worth Kshs. 19,300,000 included the buildings and the property. It is key to note that the land was valued as a commercial property and that the building requires rehabilitation.

Purchase document to this effect i.e. the transfer of ownership and sale agreement and IFMIS generated statements showing pending payments of stamp duty was brought to the Committee. Key to note from the document is the following: within the budget in the year in question; an allocation of Kshs. 25 Million was meant for investment of land and development located in this Siaya County and not expressly stated as budgetary allocation for the proposed University as stated.

The Central Bank TRFS payment pending approval as at 14<sup>th</sup> February, 2018 print out for the payment of stamp duty for the Kenya revenue authority brought to the Committee shows that the payment was initialized on 30<sup>th</sup> May, 2017 and was still under the pending bills. The Committee then wonders; why the payment hadn't been processed to pave way for the County government to acquire a title deed for the property.

This was explained that the payment of stamp duty wasn't budgeted for in the financial year in question and payment would be an audit issue if proceeded with. The Committee then furthered to carry out a green card search on the property which disclosed that as at the time of sale of the piece of land to the County government in March; the piece of land was in legal custody of one Dr. Conciliar Ondiek.

On 16<sup>th</sup> November, 2016, a court order was issued by the High Court of Kenya in Homabay revoking the grant letter of administration given to Willis Ouma Ondiek and Conciliar Aoko Ondiek on 14<sup>th</sup> December, 2016. The Committee recommendation; the Committee hereby noted that the seller of this property acted in bad faith by psychologically placing herself in a position to offer the piece of land and before processing payments of stamp duty which would mean to transfer the piece of land to the County Government to enable accreditation of Barrack Obama University then court order issue put everything to a halt.

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The Committee noted that the tax payer's money was used to acquire property and that the value for money for this purchase wasn't realized; it therefore recommends that the County Government recovers finances resulting from this transaction with immediate effect. I will call upon Hon. Oriaro to second.

**Hon. Oriaro:** Thank you, Mr. Speaker, Sir; as regards to the amendment on the question on the arbitrary process on the purchase of the land; I want to observe two things that the audit report in the previous regimes used to address matters of systems alone. A matter that is no longer the case and when the audit report was coming out it was purely on issues of systems.

Now we address even the issue of value for money; on the issues of systems you realize that it was encumbered with false. In the budget there was no mention because we talk about program based budgets; there was no mention of the University when Kshs. 25Million was being allocated.

So when the Executive opted to hide from the Kshs. 29Million in that fiscal year from Kshs. 25Million and Kshs.19, 300,000for the purchase of Bikra land meant for the Barrack Obama University we would assume that it was purely land but you will realize that they ended up buying even buildings whose structural sanity nobody came out to approve and number two on the issues of land I can an example in Coastal province that when you buy a land and coincidentally there is a plantation of coconut; you are not entitle to harvesting the coconut trees.

Yours is purely land and that is a matter in law so when we opted to buying land and I the end buying property you will realize that in the end we cannot objectively come to use that land because we did not buy the buildings. It would mean demolition but you did not buy the land so you cannot demolish. Above all procurement is a process not event.

The payment of the Kshs.19, 300,000 ought to have coincided with the processing of stamp duty because that's when the County Government separate itself with the willing seller but money was paid in advance and in the report you learn that there was no money for stamp duty so the question is there is money for buying the land but not stamp duty.

The allocated money for buying land should include all processes and it was Kshs. 25Million so the Executive saying the stamp duty couldn't be paid timely because of lack of money yet the budget for the purchase of land was Kshs.25million is null and void.

In a nut shell in the address in the matter of value for money the aspect of recovery of that Kshs. 19,300,000 from Conciliar Ondiek is ineluctably the County Government with agility that it deserves must come out to recover that money so that the money is returned to the County to address other pressing needs, I support.

**The Temporary Speaker:** I propose the question that the Report be amended by deleting page 12 and be replaced with the Report on the land issue.

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**Hon.Otiato:** Thank you, Mr. Temporary Speaker, Sir; allow me to say one or two be supporting or giving a contrary opinion. We are talking about a case of an illegality; judge Maraga when dismissing the Presidential election of August 8<sup>th</sup> said very well that election is a process just like the other Hon. Member also made it clear that procurement is a process and the procurement process starts from the budget and when we are talking about a purchase of an item which was budgeted for in the first place then we need not to be talking about all these issues.

The matters that are coming up now here about the recoveries in the first place and therefore as I will be moving with my debate I was actually even seeing this particular amendments that we are proposing is not bringing anybody to this House. Allow me to say that within the mandate as it has been said very well here.

Article 226 (5) of the Constitution of Kenya 2010 stipulates that if the holder of a public office, including a political office directs or approves the use of public funds contrary to law or approves the use of public funds contrary to law or instructions, the person is liable for any loss arising from the use and shall make good the loss, whether the person remains the holder of the office or not.

We are talking about an illegal process. Some people decided to do procurement for what was never budgeted for. An investment which was never approved in the first place. Why do we run to Conciliar? We have a direct oversight role to these officers who bent the law to do what they did. I want to make an observation that you hear that there was no money, as it has been put here, that there was no money for staff duty.

You realize that at the time of purchase of this particular land, the money which was allocated for by the land bar was Kshs.25 million. Staff duty, as per what has been put here, is around seven hundred thousand that they were supposed to use. When they were buying a property at Kshs.19.3 million and they have a budget that they have now tried to sway on the County whip of Kshs. 25million. Were they unable to get the seven hundred and forty something thousand;to pay the staff duty?

Mr. Speaker, when we move forward, there is a mention, about a case in court, which was to commence. I want to make this Assembly understand, and any other Kenyan, on behalf of my people, that for sure, by the time of this particular purchase, the land was not belonging to Conciliar, and the County failed to do the due diligence. Is it not as indicated here, that by that time, the land was even in the hands of Conciliar Ondiek?

I want to explain that by giving the exact case, the case we are referring to here which is written in that particular green card, is a High Court case, a succession case number 26 of 2013. I am also aware, that following the ruling of the High Court, that consent was entered, on the 17<sup>th</sup> February, 2014, where they were particularly revoking a letter of administration which was entered in wrongly.

So I would say this; with respect to these issues, it is not going to be right for us to assume that now if we do this particular amendment and say that we are going to get this money from Conciliar, then we will be off the hook in this particular case.

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It appears that the PIAC did not have the time to do this investigation; I would request that through your office, you form an ad hoc Committee to investigate this particular matter.

**The Temporary Speaker(Hon. Opanga):** Hon. Member Otiato, take your seat. I think you are out of order having been a Member of the same Committee, and you say that you did not have enough time. I think the timeline that you were running this Report, you ought to have done everything. I think you need to withdraw the Statement that you didn't have time.

**Hon. Otiato:** Mr. Speaker, thank you for reminding me that I was a Member. My best knowledge is that even in the Members' Committee there would be consenting voices, and in this particular matter I think we did not have enough time to proceed.

**Hon. Olasi:** Point of Order, Mr. Speaker

**The Temporary Speaker(Hon. Opanga):** yes, Hon. Olasi!

**Hon. Olasi:** Thank you, Mr. Speaker. I tend to agree with you that the Honorable Member is a Member of this particular Committee. How I wish that at the end of this debate, I know the majority will always have their way. You ought to have placed this particular Statement and long Statement he is giving us now.

When he is trying to say that there was no enough time, and he is a Member of that particular Committee, then in conclusion we can say, the Committee did not have enough time, to compile the Report for us to discuss here, so, without even discussing this document, and a Member is saying they did not have enough time, they should go back to the document, I think there is a lot of time. This is a very important document.

So I think they should take it back and create enough time for themselves, and give us enough good information so that we can be happy as a House. Thank you, Mr. Speaker.

**The Temporary Speaker(Hon. Opanga):** Hon. Mheshimiwa Ben, take your seat. Hon. Willis, take your seat. Honorable Members, there are also times for these kind of Reports, and through our office, we are not going to give much time, and this Report has to be debated. So this is my decision as the Chair. Hon. Otiato, you were on the Floor, I will give you time so that we conclude on this matter, and then we see how best we can handle it.

**Hon. Otiato:** Thank you, Mr. Speaker for protecting me,

**The Temporary Speaker(Hon. Opanga):** Yes, Hon. Ben. Adalla! Are you on a point of Order?

**Hon. Adala:** Yes, I am on a Point of Order, Mr. Speaker, Sir. Let me start by saying I am not a Member of that Committee, and it is very evident that what is laid on the Floor of this House, and a Member is suggesting that they were not having ample time, I would like to align with him, based on the fact that what we are having right now is an amendment.

So I am not aware, if this document was done collectively as a team or by one or two. If it was not done as a team, then I think he is just right to stand and express his feelings which are not aligned to the Committee.

**The Temporary Speaker(Hon. Opanga):** And that is what I have said that let us give him time to finish his submission then from there we will be able to debate further on that issue. Thank you

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**Hon. Otiato:** Thank you Mr. Speaker. My concluding remark is that possibly, likely that some of these Reports, are time bound. It was therefore my request that for the best interest of this House and this County, that an amendment like recommendation be made, to read that an ad hoc Committee do a further investigation onto the matter relating to this, because one, even the People who are actually affected, are not only Conciliar Ondiek, we have also other people who have dedicated their duty, and as the Report is, it is not clear on who is supposed to be on the spot.

From the opening remarks we have talked about the Constitution giving all the authority to the accounting officer, and the final recommendation, we are not putting these accounting Officers to task, and that there was no due diligence for this process. The process is flawed from the beginning. So to have an ample time, it was my request that the wisdom of your office finds it necessary to form an ad hoc Committee, to deal with this particular issue, of the land of Barack Obama, put in mind that the County Government has no role in Higher Education. Thank you, Mr. Speaker.

**The Temporary Speaker:** Yes, Hon. Siguru.

**Hon. Siguru:** Mr. Speaker, Sir, based on the argument that we have had in the House, regarding a Report that has come from the House Committee, and to our disappointment a Member of the same Committee comes up to challenge the same Report that he sat in probably making tells us that there is something that is completely wrong.

I really know that probably, Mr. Speaker, you know that you are the one that is supposed to be making judgments, on whether we need to proceed or not, but based on what we can see in the same Committee, and an amendment that is just coming right away, amendment of the Report that we are discussing right now, by a Member probably trying to dispute the same, means there is some bit of serious disconnect on the matter.

I do agree with Hon. Otiato, that when we want to address some of these issues, once and for all, probably for today and posterity means we need to really know where there is a problem. On this one, even if we do an amendment, then probably we will need funds to be funded by the County coffers; I tend to think there is a problem underlying somewhere. This problem is that, if this issue was not appearing in the budget anywhere, this issue only came up from somewhere that we cannot really be able to tell.

To make it worse, moneys were paid, meaning that payments had been effected before due process was followed, which means there was a problem. For us to hold other people culpable, it means that even the officers who handled this matter need to also take responsibility for their actions. Amendments will not solve all the problems; we are here to safeguard public coffers and public funds. When they are being executed like this, then there is a very serious problem somewhere.

If we go about saying that all the vendors in this case need to be surcharged, we shouldn't stop at that. I think the amendments that we have is half baked. We need to have comprehensive amendment to see to it that both the vendor and the executer of that process need to hold responsibility, and on this one, even if it means punishing to fine tune.



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These are public officers who are supposed to hold these positions on our behalf. If means telling somebody that you have to go home because you made a decision that you were not supposed to have made, I think the time is now.

So as we debate this, you have said that there are timelines, I agree there are timelines, but we should not be cowed with the issues of timelines, when we have to address serious issues that we should address once and for all. I support the amendments and I believe we need to go further with more serious amendments of this Report, before it is adopted by the House.

**The Temporary Speaker(Hon. Opanga):** Yes, Hon. Omwende.

**Hon. Omwende:** Thank you, Mr. Speaker. As Hon. Omwende, I don't want to lose my energy specifically for this amendment. I thought, Mr. Speaker, that because it is just an amendment, we have a long discussion, which I think we should use our energy over that. So I was kindly requesting, Mr. Speaker, if this amendment can go through, you put a question, after which you call the mover to move on. Thank you, Mr. Speaker.

*(Applause)*

**The Temporary Speaker(Hon. Opanga):** Yes, Hon Ben Adalla, I think Hon. Omwende has used your wisdom to read the mood of the House.

*(Laughter)*

**Hon. Adala:** Thank you, Mr. Speaker. For one, my wisdom of reading the mood of this House has failed me, so as it were, I will not be able to read the mood especially now. I rise to take note of this amendment that is being introduced on the Floor, by way of looking at it, cognizant of the fact that wisdom dictates that when somebody is speaking, you can read the spirit and the mood of the House.

I may not be certain, but my conscience tells me that this amendment may not have the blessing of PIC and PAC. Maybe it was an amendment that was done behind scenes, so that what we are witnessing here is a case of an interest of one or two individuals. I want to take note that, looking at the part of the recommendation which says that the County Government thereby recovers loss resulting from the transaction with immediate effect, recover it.

**The Temporary Speaker(Hon. Opanga):** Hon. Adalla, you have said that it is meant to protect the interest. You know this is an Honorable House, you must have facts, about what you say on the floor, because tomorrow someone will ask you, it was about interest of certain individuals, and you might not substantiate. I kindly ask you to stick to the Report, and where you don't have facts, let it be.

**Hon. Adala:** Thank you, Mr. Speaker, for your direction. Among the subjects that I did well is English and I said maybe, and may mean that you are either certain or not. So I still stand with, maybe it is serving the interest of other people. That is now the Queen's language, Mr. Speaker.

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If we are talking about recovering finances and this amendment proposed fails to tell us, recovering these funds lost from whom? This House must not accept amendments that leave things in the shadow.

Yesterday, we were looking at the issues of education; I said that we are living in a Country whereby people nowadays know their rights. The moment we pass such an amendment that needs money recovery, who is this that we want to recover these funds from? Even if somebody was to take the other to court, who are we going to charge? I always like things that are specific.

Mr. Speaker, if I was selling you land, the onus rest on you to do due diligence. I find it rather very funny, that the buyers of this land were officials and the accounting officers of the County Government of Siaya, who paid a whopping 19million if I am not wrong.

It is very disturbing and worrying that the amendment therefore is not even suggesting actions on the officers that were tasked. Which begs the question, whose interest is this amendment serving? If you cannot task me, whom has been tasked with the task of over sighting the money, it is who paid. You are not making an amendment to take care of that, whose interest are you serving?

Finally what we need to get very clear is, I am reading and it's said that 'as at the time of sale, the land was legally in custody of Dr. Conciliar Ondiek. (And these are not my words, these are words of the Members of the Committee, I am hoping that by the time they were writing that sentence, it was one Committee) We need to get facts here. Then therefore, when was the sale done? Is it as at the time when it was legally in custody or after? If it was before then there is nothing wrong with Dr. Conciliar Ondiek.

As I finalize, I want to say that, I am not in support of this amendment, based on, one: The nature at which it has been introduced, that leaves the question that it is not having the blessing of the entire Committee. It has left gaps, it is not even suggesting to us the actions that should be taken for the people who bought land that was never even in the Budget in the first place.

**The Temporary Speaker**(Hon. Opanga):Under Standing Order 57(a) in support of what Hon. Otiato has said and also in support of the committee Reports through the Chair, a Motion by way of amendment to a Question proposed. Hon. Otiato in his own right can still amend the proposed amendment that has been brought by the Chair without any notice.

I kindly ask, Hon. Members, we will have a time to decide on this. I will give you 5 minutes we deal with this because as you are aware we still have a long way to go yet we still have to deliberate on this Report

**Hon. Oriaro:** I believe all Members heard the Auditor's Report. It is not a property of Members but the public. You will realize that in the Report he cleared questions raised on the system but going by the mandate of the committee in the Standing Orders we are the ones who did further inquiries and even came back with more documents that the Hon. Member was trying to talk about. We even invited the registrar of lands.

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The County Government never released even to the auditors the documents pertaining to title deeds. It is us who discovered these documents, revealing the nature in which they were changing hands.

That is why when we proposed these amendments it is me who came up with it and consulted with the Members and we agreed that the chairman shall help us move it through when he is doing the Motion so when you look at the matter here amendments is just two lines. Just look at the initial report and the amendments, just two lines but the County Government initiates a process to recover. Recovery entails many processes and during those processes is when matters of liability shall be framed so easily.

By mistake it was suggested that County Government sues Dr. Conciliar Ondiek. As a committee we never sat with her. In matters of law matters are dropped on issues of illegality. This is a legal document. It is both legal and illegal so we wanted to come up with a recommendation that will allow for justice to prevail and above all there is no harm when Members come up with a Motion now to expressly deal with those malpractices.

It is in good faith we are the ones who came up with different types of title deeds that were changing hands the Auditor General never saw it. The Department never wanted to cooperate so it is us who dug deeper to reveal the truth in the best interest of the public that is why we are praying we move forth and if members will not agree with it then well and good. It will be then end that we tried to follow the requisite legal channels other members sat on it. The burden of proof will now rest with the public.

**The Temporary Speaker**(Hon. Opanga): Yes, Hon. Kinyanyi.

**Hon. Kinyanyi:** Thank you, Mr. Temporary Speaker, Sir. As the Chair, I just want to clarify and emphasize what you are saying. We are only removing the name of Dr. Cecilia Ondiek she never invited us for interrogation so we cannot say prosecute or sue because she can also sue us. It is better to use technical language and I consulted with lawyers and that is why we changed that because that document goes to her, she can sue us so we only did that alteration to make it lawful.

I am surprised by one of our Members. He even went to the Clerk yesterday to do his alteration.

**The Temporary Speaker**(Hon. Opanga): Hon. Kinyanyi you are out of order!

**Hon. Kinyanyi:** I apologize.

**The Temporary Speaker**(Hon. Opanga): Yes Hon. Adala.

**Hon. Adala:** Is it in order for the Chair of PIAC to tell this Hon. House that they never purposed to contact Dr. Conciliar Ondiek and further recommend that she gets sued. From what point does our oversight role start and end?

**The Temporary Speaker**(Hon. Opanga): Yes, Hon. Kinyanyi.

**Hon. Kinyanyi:** Thank you, Mr. Temporary Speaker, Sir. Technically there are proper words that we should use when putting this document before the Assembly. That is what was altered. Even if you go to the document there is nothing there that it is better to mention the name

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the way it was mentioned but we didn't do that it is only that we are trying to use this language so that we are in the right books.

**The Temporary Speaker**(Hon. Opanga): I think we need to conclude on the issue whether we should go to the revision or the other way. Yes, Hon. Willis.

**Hon. Ochieng:** Thank you, Mr. Speaker, Sir, in the Standing Orders we just quoted it is allowed that any Member can come up with amendment on the same amendment that is within the Floor. So I think it is only a Member who is not normal...

**The Temporary Speaker**(Hon. Opanga): Withdraw that statement

**Hon. Ochieng:** I have not finished my statement, don't pre-empt what I wanted to say.

**The Temporary Speaker**(Hon. Opanga): You are out of order!

**Hon. Olasi:** Whether some of us are normal or abnormal it is not in order at all. One of the things we learnt during our induction is that Hon. Members don't lie but they can be out of order. It is out of order to refer to some Hon. Members as not normal. Kindly withdraw.

**Hon. Ochieng:** I withdraw the word abnormal and I request to be allowed to finish my statement. A normal human being can have a change of mind. It is quite in order and people do investigate. It is in order for Hon. Member from East Yimbo to rise on a point of order to request that this House approves the formation of an ad hoc committee to further investigate this land issue.

As a committee this amendment was...in this Assembly we employ the legal personnel just to guide us on the legality of the Reports we are coming up with in whatever we are undertaking and that is the reason why the amendments came. We didn't interrogate Dr. Conciliar Ondiek so it will be a breach of the law and she can sue us and that is why we came up with this recommendation. I want to be very clear...

**Hon. Oyuago:** Point of Order!

**The Temporary Speaker**(Hon. Opanga): Yes, Hon. Shirley.

**Hon. Oyuago:** Thank you, Mr. Temporary Speaker, Sir, it is only in this House that we are bringing point of confusion among PIAC members, Members argue among themselves. We are waiting for your signal on how to deal with these Members.

*(Laughter)*

**The Temporary Speaker**(Hon. Opanga): Hon. Shirley, the signal is coming.

**Hon. Ochieng:** It therefore recommends that the County Government recovers finances lost from this transaction immediately. Recovery is not just something you go and get the money back. It is a process and it will deal with all these nitty gritty things like who took title deeds and also transacted.

I wanted Members not to misinform the House on these amendments and call for your guidance on how these amendments can remain in this Report and if an Hon. Member has got an input on amendment he can also just add it on the amendment. Thank you.

**The Temporary Speaker**(Hon. Opanga): Yes, Hon. Shirley

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**Hon. Oyuago:** I rise to support the amendment and to question the committee, if they are saying they didn't interrogate Dr. Conciliar Ondiek, who then did that statement that Dr. Ondiek should be sued? They should inform this House. We need guidance from the Chair of this committee but I am in support of this amendment

**The Temporary Speaker**(Hon. Opanga): Yes, Hon. Willis Ochieng.

**Hon. Ochieng:** It is the clerk who came up with that statement.

*(Laughter)*

I want to put it very clear; the Hon. Member doesn't type the Report...

**Hon. Adala:** Point of Order!

**The Temporary Speaker**(Hon. Opanga): Yes Hon. Adala.

**Hon. Adala:** Thank you, Mr. Temporary Speaker, Sir, we all know the functions of the committee. The document that is laid before the Floor of this House is a document for Members elected or specially elected like myself. Is it in order for Hon. Willis to tell us that what is laid here was basically done by the Clerk of the Committee? This is confusion and I ask the Members to reject this amendment in totality

**The Temporary Speaker**(Hon. Opanga): Yes, Hon. Olasi.

**Hon. Olasi:** Thank you, Mr. Temporary Speaker, Sir, I don't know how Hon. Adala can easily read what other people are intending to say. Allow me to put it clear. We are the representatives of the people the same style and way he is trying to put it whether elected or specially elected. A Hon. Member is telling us that it was the interest of the clerk of the committee to give us this amendment. Surely! Total confusion!

*(Applause)*

We are here for the interest of Siaya as a whole. Kindly Hon. Member you need to withdraw some of the statements. Otherwise we need to reject this Report.

*(Applause)*

**The Temporary Speaker**(Hon. Opanga): Yes, Hon. Omwende.

**Hon. Omwende:** Thank you, Mr. Temporary Speaker, Sir. You remember when I decided to reserve myself for this amendment. I knew it. Why don't we just recall that amendment to go let it be the way it is and we forget about it. Thank you.

*(Applause)*

**The Temporary Speaker**(Hon. Opanga): Yes, Hon. Odawa.

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**Hon. Odawa:** Thank you, Mr. Temporary Speaker, Sir. I was almost being convinced by my immediate Member, Hon. Willis but I can now share my fear with Hon. Adala that this amendment was not authored by the committee and that one calls for rejection of this amendment. Thank you.

*(Applause)*

**The Temporary Speaker**(Hon. Opanga): Yes, Hon. Mboha.

**Hon. Mboha:** Thank you, Mr. Temporary Speaker, Sir. I also wish to concur with the Hon. Members that this amendment be withdrawn.

**Hon. Olasi:** Point of Order!

**The Temporary Speaker**(Hon. Opanga): Yes, Hon. Olasi.

**Hon. Olasi:** The Hon. Member is not well dressed. He is a stranger in the House.

**The Temporary Speaker**(Hon. Opanga): Hon. Mboha you are not properly dressed. Go and dress properly. Yes, Hon. Omoro.

**Hon. Omoro:** Thank you, Mr. Temporary Speaker, Sir. I am also of the opinion that the matter of amendment needs to be revisited. The Committee says clearly that they never interrogated Dr. Conciliar Ondiek. At the same time here they say that the seller of the land acted in bad faith who was this who said so that they feared to interrogate.

At the same time you find here that money was illegally used because if it was out of Budget where did they get the money to procure the land and it is a matter of reclaiming the money who is going to replace this money and where is it going to be fixed?

Are we not still propagating fraud here because if it is the same officers who did this who took a chunk of money and bought the land legally and they are now subjected to reclaim the money which is out of the Budget. Are we not promoting the essence of corruption? I therefore support this---

**Hon. Temporary Speaker:** Hon. Omoro, take your seat.

**Hon. Member:** I am on a point of order. The document tells us very clearly that there was a budget of 25m.

**Hon. Temporary Speaker:** Yes, Hon. Shirley!

**Hon. Oyuago:** Mr. Temporary Speaker, we are now agreeing that at some level there was confusion with the Committee and we are waiting for their signal on how to deal with this particular point. I placed a question to the Chair of this Committee to tell us how they came up with this statement that Dr. Conciliar to be sued and he responded that it was the interest of the clerk, that is a total confusion.

**Hon. Temporary Speaker:** Hon. Shirley, take your seat!

**Hon. Ochieng:** Mr. Speaker, I will not sit here when Hon. Members are misreporting what I said. As Committee Members and Hon. Members of this House, we don't do typos, when there is a typing error, it was a technical error and I didn't say that it was the interest of the clerk to sue the seller of the land, it wasn't the interest of the clerk, it was a typo error.

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**Hon. Temporary Speaker:** I think hon. Willis has given a directive and has expounded on that issue, so let us not be repetitive on that.

**Hon. Oyuago:** I was still on the Floor and my point is this, even if the Chair is telling us that it was a typo error, they had this report like two days before it was tabled in this Assembly. They can't lie to us that this was a typo error. From the look of things, I am proposing that we adjourn until in the afternoon.

**Hon. Odhiambo:** Mr. Temporary Speaker, it is quite absurd that this is the Committee which has been mandated to check on the public funds and they also took their time to check on this report before they bring it to this Hon. Assembly.

I know these people went somewhere in a hotel and they spent some money to do this. So, I am wondering why the mover from West Yimbo is telling us all that is here is being misled by the clerk.

*(Hon. Willis on his feet)*

**Hon. Temporary Speaker:** We have talked on that issue, let us not be too repetitive. Hon. Willis, take your seat, Hon. Edwin continue!

**Hon. Odhiambo:** Thank you, Mr. Temporary Speaker for protecting me. My suggestion is, the Committee on PIC and PAC to go back and re-do this report so that we don't have too much consultation in the House. Thank you.

**Hon. Temporary Speaker:** I will stick to my earlier advice, this report has a timeline and the reason we are here is because of this report. Hon. Members, I would kindly urge you to let us agree and see to it that this report is done to its conclusion. Whether it is passed or not it has to be done within the timeframe that is required. I will give three Members, starting with the Chair of PIC and PAC who will talk last. Hon. Mboha!

**Hon. Mboha:** Thank you, Mr. Temporary Speaker, Sir. I wish to make my comments, from the look of things, Members of this Committee are not owning this report. It is proper for them to go and relook at this report and bring it back for us to pass it.

**Hon. Omwende:** Point of order!

**Hon. Temporary Speaker:** What is it, Hon. Omwende?

**Hon. Omwende:** Thank you, Mr. Temporary Speaker. I need direction from you. 1) It is as if Hon. Members are rejecting the entire report which is not the case. The issue here is the amendments and for that reason, there is a room for calling the amendment back so that it can be relooked at again. It is not the entire report that is having problems. Thank you.

**Hon. Temporary Speaker:** Hon. Chair, proceed!

**Hon. Kinyanyi:** Thank you, Mr. Temporary Speaker. My suggestion is this; we either don't amend it because we are trying to put the technical illegality in it. We can still proceed with the way it is, there is no harm. I don't think why we should take a lot of our time, it is only that we are trying to correct and put some legality in it.

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**Hon. Temporary Speaker:** But again we cannot leave it because it is already captured in the Hansard.

**Hon. Adala:** Point of order!

**Hon. Temporary Speaker:** What is it Hon. Adala?

**Hon. Adala:** Thank you. You always read the mood, I don't know what is wrong today. In line with the sentiments that have been said by the Chair, it appears that he has recalled the amendments.

**Hon. Ochieng:** Point of order, Mr. Temporary Speaker!

**Hon. Temporary Speaker:** What is it, Hon. Willis?

**Hon. Ochieng:** Is it in order for Hon. Adala to speak on behalf of the Chair? He is saying that the Hon. Chair has recalled the amendments and yet the Chair has not mentioned anything to do with that.

**Hon. Adala:** He has said, we can proceed, that one basically means a recall.

**Hon. Temporary Speaker:** Hon. Adala, take your seat. Hon. Kinyanyi, you are on the floor, I give you one minute you conclude.

**Hon. Kinyanyi:** What I am saying, Mr. Temporary Speaker, the points that we are talking about we have them all in form of amendments ----, I am asking you kindly, you can give us direction. If the Members feel the other way round but give us direction.

**Hon. Temporary Speaker:** Hon. Members, you have all the powers of doing amendments or accepting this. As the Chair, allow me to put the question that the amended report on the land issue be part of the report.

*(Question put)*

**Hon. Temporary Speaker:** Hon. Members, through my wisdom, we don't have a winner, we will do a division on the amendment. I now kindly request the Table to organize we do a division of the report so that we move. We are doing division on the amendment, if it is passed we attach it as part of the report, if it is not passed we leave it and move ahead with the report.

**Hon. Oyuago:** Mr. Temporary Speaker, but there is nobody who stood up for the division!

**Hon. Temporary Speaker:** Yes, Hon. Adala!

**Hon. Adala:** Thank you, Mr. Temporary Speaker. Standing Order No. 77 is very clear--

**Hon. Oriaro:** Mr. Temporary Speaker, you made a ruling, do you want us to debate your ruling?

**Hon. Temporary Speaker:** I made a ruling to be followed.

*(Loud consultations)*



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As I was speaking, the Hon. Members were 50/50 and that is why I made a decision on the issue of division. We are not going to debate about it. I call the serjeant- at- Arms to ring the division bell.

*(Division bell is rung)*

Those who are outside can come in. Those in support of amendments is a 'yes' and those not in support of amendments is a 'no'. This is the directive, the Table will call the names out, after you receive your ballot paper, you vote, fold it well then place it on my left hand side.

*(Names of Hon. Members are called out)*

*(Members voted)*

**Hon. Temporary Speaker:** Hon. Members, I think the process is over and we are doing the counting.

*(‘Yes’ 13 votes and ‘No’ 13 votes)*

**Hon. Temporary Speaker:** Hon. Members, we will do another round of voting.

*(Names of Hon. Members are called out for voting)*

*(Members voted)*

*(‘Yes’ 12 votes and ‘No’ 13 votes)*

**Hon. Temporary Speaker:** Hon. Members, having gone through the vigorous process, the amended report on land issue is not part of the report.

*(Applause)*

As I had earlier said, in our deliberation, just as the Chair of PIC and PAC had requested this report, any amendment is still open to it just as Hon. Otiato had intended to do. We are not back to the report.

**Hon. Ochieng:** As I was moving the amendments, I said it very well that this document was given early enough and I want to believe that every Member has gone through it. I now call upon Hon. Oriaro to second.

*(Hon. Oriaro stands to second)*

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*(Question is proposed)*

**Hon. Oriaro:** Thank you, Mr. Temporary Speaker, on behalf of Central Alego electorates who saw to it that I represent them in this Hon. House, and as a Member of Public Accounts Committee---

**Hon. Temporary Speaker:** Hon. Oriaro, pursuant to Standing Order No. 27, which all of us are aware of and if you check on your watches we are past time. Will we be upstanding for adjournment until 2.30 p.m.

The House rose at 3.55 p.m.