

REPUBLIC OF KENYA
SIAYA COUNTY ASSEMBLY
THE HANSARD

First County Assembly - Second Session

Wednesday, 28th March, 2018

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

[The Temporary Speaker (Hon. Opang'a) in the Chair]

PRAYER

QUORUM CALL AT THE COMMENCEMENT OF SITTING

The Temporary Speaker (Hon. Opang'a): It appears that we don't quorum. Serjeant-at-Arms, can you ring the bell for five minutes.

(The Quorum Bell was rung)

(Loud consultations)

(Several Hon. Members walked into the House)

(Quorum confirmed)

NOTICE OF MOTION

STATUS OF DISBURSEMENT OF BURSARY FUNDS FOR FY 2017/2018

Hon. Adida: Mr. Temporary Speaker, Sir, I stand to give notice of the following Motion:-

THAT, this House adopts the Report of the Committee on Education, Youth Affairs, Gender and Social Services on the status of disbursement of bursary funds for FY 2017/2018, laid on the Table of this House today, Wednesday, 28th March, 2018.

STATEMENT

PAYMENT OF CESS BY MUMIAS SUGAR COMPANY

Hon. Omwende: Mr. Temporary Speaker, Sir, I rise to seek a Statement from the Chairperson of the Sectoral Committee on Agriculture, Livestock and Fisheries regarding the payment of cess to the County Government of Siaya by Mumias Sugar Company.

In the Statement, the Chairman should respond to the following concerns:-

1. The sugar cane out growers in Siaya County contracted by Mumias Sugar Company are not benefitting much from the proceeds because there is no proper representation to address their views. Can the Chairman confirm whether there is a committee constituted by the County Government of Siaya to address the plight of the out growers?
2. Is Mumias Sugar Company Ltd paying cess on sugarcane harvested by them in Siaya County. If so, can the County Government avail a report to this Hon. House?
3. The road network within the sugar cane growing areas are in a deplorable state. What is the position of the cess monies allocated for infrastructural development within the sugarcane growing areas?
The affected Wards are Sigomere, North Ugenya, parts of East Ugenya, Sidindi and Yala. Thank you, Mr. Temporary Speaker, Sir.

The Temporary Speaker (Hon. Opang'a): The Statement stands committed to the Agriculture Committee.

Hon. Ochieng: It is only that the owner of the Statement appears to have misled us at the end where he mentioned the affected Wards, yet this is not captured in the document he was reading. I don't know whether he can clarify on this or we give him more time to go and beef it up?

The Temporary Speaker (Hon. Opang'a): I think he was merely giving examples of the areas affected; but all the same, the Statement stands committed to the Agriculture Committee. Next Order!

MOTION

DEMOLITION OF TEMPORARY STRUCTURES

Hon. Otare: Mr. Temporary Speaker, Sir, I rise to move the following Motion:-
THAT, this House adopts the Report of the Committee on Lands, Physical Planning, Surveying and Housing on demolition of temporary structures in Siaya County, laid on the Table of the House on Tuesday, 27th March, 2018.

I would like Hon. Jane to second.

Hon. Atieno: I second.

(Question proposed)

Hon. Otare: Mr. Temporary Speaker, Sir, I believe all Members have copies of this Report.

The County has had an upsurge in the number of temporary structures coming up in towns and urban centres. This has reportedly posed great challenges in infrastructure and service provision and orderly growth of towns contrary to approved development plans. Notably, temporary structures that have been built on road reserves and public parks do not bring out the aesthetics in our towns and urban centres, harbour criminals at night and are therefore a risk to security.

They do not have sanitary or waste disposal facilities and therefore contravenes the minimum public health requirements and may be a source of disease outbreak, maybe an

indication of long term slums and squatters and may block access to public utilities like sewerage, water points and access roads.

Mr. Temporary Speaker, Sir, on 21st December, 2017, the County Assembly received a letter of reminder from the Lands Department on whether the Lands Committee had given its input to the policy on management of temporary structures. The Committee, through its clerk, informed the officer in charge of legislative and procedural section that it had not received any policy on the same. The Committee later received the policy on 29th November, 2017. The policy was tabled before the Committee on 1st December, 2017.

During the Committee meeting held on 1st December, 2017, the Chairperson informed the members that various traders and owners of temporary structures had been served with enforcement notices dated, 29th November, 2017 which was to last for fourteen days after which the structures were to be demolished to allow the County Government to pursue orderly physical development.

The Committee resolved in a meeting held on 1st December, 2017 that a schedule be prepared for the Committee to carry out its investigations in all the sub-counties in Siaya County concerning the enforcement notices that had been issued on 29th November, 2017.

Mr. Temporary Speaker, Sir, the next pages contain the mandates of the Committee, the membership and the introductory part. I won't go into that because they are self-explanatory. Let us turn to page 8 detailing the committee investigations.

The Committee carried out an investigation between 8th December, 2017 and 11th December, 2017 in Siaya town, Bondo town, Sega town, Ugunja town, Rarieda and Gem. On 8th December, 2017, the Committee visited Siaya town and held its meeting with the public at Agricultural Trading Centre from 9.00 a.m. and later proceeded to Bondo town at Bondo Sub-county Hall at 2:00 p.m. to meet the public.

On Monday, 11th December, 2017, the Committee divided itself into two groups. One group conducted its investigations in Sega at Sega Polytechnic from 9:00 a.m. to 12:00 noon and later proceeded to Ugunja and held its meeting at Ugunja Sub-county hall as from 2:00 p.m. to 4:00 p.m. The next group conducted investigations in Rarieda Sub-county and held its meeting at Aram market from 11:30 a.m. to 1:00 p.m. and later proceeded to Gem Sub-county and held its meetings at Akala market and Yala town at Yala Jamii hall.

Siaya town was first planned in 1971. The original plan for the town covered only a small section of public land. The original development plan guided the development of the town for over 20 years before it was revised. The plan was heavily relied on by the defunct Municipal council of Siaya while allocating land in town.

A significant number of plot owners or traders who had been served with enforcement notices alleged that they had been up to date with payments of licenses for their businesses and ground rents. They were not against the physical development of Siaya County but claimed that the notice was too short yet they had already been served with invoices.

They requested that the County Government should withdraw the enforcement notices to allow for dialogue. They informed the Committee that the encroachment of temporary structures everywhere was due to lack market viability and urge the County Government to construct designated market shades for them before they can move from where they are currently located.

The current Physical Development Plan for Bondo town was prepared in the year 2004. The Physical Development Plan was never approved and it is therefore just a plan that is used to guide physical development in town.

Public land in Bondo town covers less than one kilometer squared. A significant proportion of the current town is on private land where development control is not quite effective. The piece of land developed into commercial shops or stalls is currently used as residential units for low-income earners.

The current market that has been covered by the development Plan is not in use, this may have been attributed to the temporary structures along the roads and in any available public land. The traders informed the committee that they had once been instructed to move some steps back from the road by the Authorities some years back and they had done that since it was a road reserve before being issued with an enforcement notice.

The traders alleged that they had been paying licenses, ground rents and other charges on time yet the county Government did not issue them with services such as cleaning of the markets and maintenance of the drainage system including lack of public toilets and this was a threat to their health.

The current development plans for Ugunja town was prepared in the year 2007. However, the town must have been planned much earlier. Ugunja town is characterized by limited public land. The land set aside for open and closed markets are currently used for the same. However, the modern market which was funded by the National Government is under-utilized as traders who were allocated stalls there prefer to do their businesses outside along the busy roads.

It appears that traders follow potential customers instead of customers following them.

In Yala town, most of the traders who were issued with enforcement notices alleged that they had acquired their plots during the Defunct Local Authority. The traders who were located along the road reserve had been paying cost for licenses to the County Government and were still issued with enforcement notices to vacate failure to which their businesses will be demolished yet it is the Kenya Rural Roads Authority that should notify them.

The Committee also visited the parcel of land which had been proposed in Yala and was referred to as Mhanda Market. The parcel of land meant for the market had been grabbed and sold out as 10*10 plots for small shops or stalls. The traders have since been selling their goods along the highway since there was no designated market shades for them.

The committee visited Aram market on a Monday 11th December 2017 being a market day, the committee was able to meet with the traders and get their concerns on the Notice that had been issued. The traders alleged that they had been up to date with their payments for licenses and rents and instead accused the County Government for failing to offer services such as garbage collection and building of toilets for the traders.

In Akala market, the traders had similar concerns and urged the Government to instead build designated market sheds for them and then re-allocate them so that the town can be re-planned afresh like other counties. They were not against the County Government's intention to re-plan the towns but instead requested that more time be given to them to allow

for dialogue .They urged the County Government to revoke the notices in writing and engage all the stakeholders.

The Committee observations; in the process of the Committee's interaction with the public and the various stakeholders, it became evident that the enforcement Notices had been issued with the intention of implementing the policy on management of temporary structures without following the correct procedure of a policy formulation.

The Committee noted that most local physical development plans were done several years ago and therefore are outdated.

Committee observed that most public land owners did not have title deeds and this was the cause for grabbing and illegal allocation.

The Committee observed that when enforcement notices were issued they were to take effect after fourteen days from the date of issue. Under the land laws Act 27 of 2016 section 152 provides that the Authority should notify in writing, by Gazette notice and newspaper, all the persons unlawfully occupying public land at least three months before eviction. Section 152F gives a reprieve to affected persons to apply to court for relief against the eviction notice. The court may confirm the notice, cancel, vary, alter or make additions to the notice on such terms deemed equitable, suspend the notice or order for compensation.

The business owners and developers of these particular plots of land had been paying ground rents and have been up to date with payment of taxes to the County Government. This shows double standard on the part of the County Government.

The Committee observed that the enforcement notices issued on 29th November 2017 did not specify the particular development that have been alleged to have been carried out in that parcel of land by the occupier without the development permission from the County Government as is required under section 38 (2) of the Physical Planning Act.

In Formulating a policy, it is paramount that the following stages are followed:-

Policy initiation is a function of a number of players including the public, the relevant department among others. Once the idea is generated, they inform the County Executive Committee Member concerned who then propels it to the next level by formulating policy guidelines.

A taskforce may then be constituted at this stage with a view to ensuring that all entities likely to be affected by the policy contribute to the policy formulation process. This will facilitate acceptability and ownership of the final product by all relevant stakeholders.

Public participation is then conducted, it is at this level that the contents of the draft policy are debated and negotiated with various stakeholders, the public and other interest groups.

Finalization of the policy comes after the policy has been properly debated and the relevant department crystalizes the issues and options available and draws up a final policy document.

County Executive Committee Approval; once the County Executive Committee Members (CECM) is satisfied that proper analysis has been conducted; the County Executive Committee Member submits the policy to the cabinet for approval. The CECM explains to the cabinet with adequate background information the features of the policy and justification.

The cabinet then makes an informed decision. Upon approval by the cabinet, the policy document is published and Tabled in the Assembly for debate and approval.

County Assembly Approval; the County Assembly introduces the policy in the House in accordance with the Standing Orders, subject it to the relevant House Committee for scrutiny and further consideration. The committee reports back to the whole House. The policy document may be approved with or without amendments.

Where significant changes are likely to be made on the policy, the House invites views of the Executive for value addition and further consideration for value addition and further clarification. Further, subject to the mandatory Constitutional principle of the public participation, the Committee may subject the policy to public and stakeholder consideration.

Upon passing the County Assembly Bill, the Speaker submits the approval policy to Governor informally endorsed by fixing the County seal and signing the policy.

Publication

Upon ascent by the Governor, the policy is published as white paper. The executive is expected to widely circulate the policy and keep the public informed of the likely effects of the policy. The white paper is a statement of defense and a detailed policy plan which form the basis of legislation.

On legal framework, I think Hon. Members will turn to section 22(1); of urban areas cities at The second schedule provides that this kind of a city, municipality or town may deliberate and make proposal to relevant bodies or institutions on proposed issues of inclusion on guiding policies and guiding legislations.

This policy was never taken through public participation as is required by article 10 of the constitution. Section 87 of the County Government acts provides for access of information and data relevant and related to policy regulations. This will enable access to the process of formalizing policy and other Government programs. Protection and promotion of minority within Counties and provisional of none state actors in formalizing and interpretation of policies.

We can just move to the recommendations of the committee.

The Committee recommended the following on the House;

1. The County government immediately begins to acquire parcels of land in various urban and market centers for construction of modern markets, shades or relocation of traders.
2. It be year marked for financial year 2018/2019.
3. That the lands department develops the policy a fresh and ensures public participation is conducted effectively and taken to County Assembly for consideration.
4. That there is urgent need to prepare new development plans for Siaya County and have it approved ready for use by the County Government.

5. The County has to invest in proper land banking that can serve future development needs. This should be done in various part of the County and such parcels be used for the intended purpose only.
6. All public lands should be planned, surveyed and title deeds issued. This will ensure that such parcels are secured and managed.
7. A public special plan should be prepared to guide future development and to guide human settlement group and development. The special plan will also inform the public about the existing and proposed public and social infrastructure to accommodate land development.
8. The available public land within the County be protected from encroachment by fencing and putting them into good use and not leave them idle.

Conclusion

The Committee recognizes the need for re-planning of our towns and urban centers. However, such re-planning and reorganizations should be guided by internal basic practices, local and national policy regulation within the requirement of the Constitution and other relevant laws.

Mr. Temporary Speaker, Sir, if you allow me, I have the report and Members also have it so I just pray that Hon. Members adopt the report. Thank you.

The Temporary Speaker (Hon. Oponga): Thank you, the report is on for debate. Hon. Oriaro!

Hon. Oriaro: Thank you, Mr. Temporary Speaker, Sir. I may take as my point of departure for my contribution to this Motion the scary nature of forcible evictions that had been brought to the attention of this House earlier. And in deed that informed the Committee on its own volition to go round.

Yesterday morning I was interested in the news bulletin in the vernacular where that matter was also revisited. Mr. Chair, County government basically also talks about County planning right from section 102 which talks about principles of planning and development. My attention might be drawn to various issues, but part(c);

One of the principles of planning is to protect and integrate the rights and interests of the minorities and add value on goods and commodities. In the objectives of planning various issues are also outlaid section 103 and of all the provisions my attention is drawn to part (b);

Facilitate the development of a well-balanced system of settlement and ensure productive use of scars land, water and other resources for economic social ecological and other functions across the County. We have got obligation under planning that is section 104 and my attention has been drawn to part 2;

The County planning shall integrate physical, social, environmental and special plan planning. In fact, it's the very definition of planning. And when we go to special planning itself of the County 105, I am remotely trying to bring on board on what the previous speakers avoided may be for the lack of content. Look at section 106, integrating National and County planning part (4);

County planning shall provide for citizen participation! What am I saying in short?

There are other many sorts of plans and pertaining to the issue of land that is spatial plan. This is where everything shall be outlaid, and I believe the County had it. Space ought to have evolved for the owners for Kiosks if there were plans. That ought to have been considered. Of all the various plans the city plan in which Siaya is a city or a town and any other town where maybe the Kiosks are. Does the city have a plan?

But above all because it will end up on matters of financial planning and we are just talking about County integrated development plans because it is a document that shall inform financial tethers. What is being done or is planned to done, evicting Kiosk owners;

Is ultra-virus the provisions of the Constitution, the County government acts and any other related acts as well as laws. Acting on what guidelines? Assembly is yet to approve such like plans. So if anybody is issuing out letters of eviction, who approved this plan. We have got the ministry of land and department of land, did they present such plan? Issues of governance because it governance if it is the philosophy of delivery of democratic goods. That is where the enforcement officers fall.

The Governance department, what informs their actions? Because the approval of Assembly forms mainstream governance and Article section 98 all the way to 102 talks of public participation that is also under scored under planning. That planning has to meet the thresh hold of public participation and Hon. Otare is also here. He has mentioned the aspect of public participation.

Were these potential evictees brought into the picture? In short we are telling the authorities who are after playing with the lives of our people who are looking for a means to find a descent way of life.

End: 30.00

Wednesday 28th March 2018 take E from min 40.

---of encouraging things have been mentioned in this Report. I hope you are all really aware that we are all stepping on the land, and they mentioned here some markets whereby they had to put on some structures. My wish is that all these markets should be equipped with environmental things like toilets so that our people are safe. Otherwise I support the adoption of this Report.

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

Hon. Omwende: Thank you, Hon. Speaker. I want to support the Report, but partly I am still confused because of one reason, although the Honorable that has moved this Motion is one of my inner most friends, but the Report itself is more theoretical than practical. That is the basis first, that I have to say.

The reason why is that; I think we are concentrating mostly on the background, on the history of the land, but the core issue was demolition. That was the key issue, that the Report was to be surrounded with a lot of information that backed it so that we, the Members of this Assembly know the solution, because to me, there are future plans that should come from this Report and then temporarily make plans that we can use to sort out this problem that is there with us, about the demolition the so called markets.

So, my opinion Mr. Speaker is that the Report has not given us details on how we can come out of this problem. Thank you.

The Temporary Speaker (Hon. Opanga): Hon. Omwende, the Report itself was touching on policies, and I believe, for the demolitions to happen, it seems the policies that they were using was not in order, and in this Report if we look at it, it's a land policy that has to touch on the entire thing because even the structures are being built on a land. So I think on one way or the other it touches on the demolition part because it touches on the period that the Committee should come up with a policy that will help with that.

Yes, Hon. Kinyanyi.

Hon. Kinyanyi: I would really like to congratulate the very able Chairman because what he did really has saved us, because the poor people we are living with can now earn their living, but without his immediate intervention, I think the Executive would have done something that would have really cost us, so I congratulate you for what you have done, a job well done

The other thing, the eviction, or rather the demolition is denying the County also a source of revenue. So before we move, or before we do this kind of a thing and write in the notices, these are the kinds of things we need to be concentrating on. Just as my fellow colleague, Hon. Willis said, we should be thinking of model kiosks. This one will be putting us at a better position also to promote our people.

We don't like our people being on these shanties, but we better build something for them for better earnings, better Revenue for the County. So I really support what my colleague said. Apparently, the two gentlemen who are sitting here, the Honorables, all of them have been Mayors. Thank you.

(Laughter)

The Temporary Speaker (Hon. Opanga): Yes, Hon. Adalla.

Hon. Adalla: Thank you, Mr. Speaker, Sir, I rise to support the Report, laid by the Lands Committee, and thank them for a job well done. It is important that before a County decides to relocate people, then it is just right that an option be set aside. As it stands now, unless the Assembly moves ahead to stop this exercise, we may end up having the good citizens of Siaya being made to suffer a lot, because some of them rely solely on the businesses that they run in these centers.

So in supporting it, I would want to literate the fact that the Executive should consider looking for sites that the people of Siaya can be sent back to. There is also a need of Special plans, as has been outlined here, because a County without a plan, then we will end up having buildings skewed allover.

In so far as we are all aware that we need to have structures done in the modern way, but without a special plan, then all that will be in vain, but I just take the exception with the Report that I also think is inconclusive in the sense that, the team did a visit. On the 8th, they did visit Siaya town, Bondo town, Segla, Ugunja, Rarieda and Gem.

When I look at the section of findings, I am seeing Reports on Siaya town, well stated, same to Bondo, Ugunja, Aram and Akalla. Conspicuously missing is the Report relating to Segla. So I don't know what is it that when you went to Segla, you found out, because according to how I know it, (and am not saying this because I come from Segla) Segla is a serious market Centre. So if at all there are issues affecting Aram market for instance, then I would also expect that there is a lot that would have been shared with us, by a way of a Report relating to Segla.

So I don't know if everything is okay, because the last time I checked, the Businesses along the highway and even had even received notices of eviction by this Sunday. So unless it was oversight or nothing was found in Segla. Otherwise Mr. Speaker, I rise to support, albeit with anticipation that when the Mover will be replying, then I will expect a response for Segla. Thank you.

The Temporary Speaker (Hon. Opanga): Yes, Hon. Omoro.

Hon. Omoro: Thank you, Mr. Speaker, Sir. I rise to support the Committee and commend them for a job well done. It is a common knowledge that unemployment is still rampant in Siaya, and most of the wholesale business traders have devised their own means of surviving, which I may term as survival for the fittest.

You will find that people have decided to embark on small scale businesses, to earn their daily livelihoods, and make sure that they are taking their children to school; they get their medical attention through those, and therefore, it is not a light matter that can be rushed into. I am supporting the document because it has given the way how things should be procedurally done. Policies and guidelines should be put in place to cover small scale business people.

A vast majority of the residents of this County rely on small scale businesses and I must tell you that for them to get capital, they must take loans. It's difficult starting a business without a loan. The people whose structures were demolished are nursing huge bank loans and we all know how banks operate.

So, these people will be forced to beg for monies here and there in a bid to pay their loans. Many a time, you find that some of these small scale business people get good money than some of the people sitting in this Assembly. The revenue of this County comes from them.

The other thing that has led to the encroachment of road reserves is the lack of designated space for business people to transact their activities. This has in effect led to corruption since the money hungry individuals in charge of land allocation will give you any piece by the roadside so long as you can give out something.

I thank the Committee for coming up with a well channelled way of how things will be done. It is good that the views of the public will be taken during physical planning of our markets. I support.

Hon. Juma: Thank you, Mr. Temporary Speaker. Sometimes when I rise to contribute on a Motion, I always wonder why every time there is a Motion, all of us support it with or without understanding its contents. As much as I would have wanted to oppose this Motion, it forces me to support it because it will give me hard time when you put the question and I will be the only person saying 'Nay'.

Hon. Omoro: Point of order, Mr. Temporary Speaker, Sir! Is it in order for the Hon. Member to say that the House has been passing documents without reading them? That is demeaning! We are elected Hon. Members and we are not here to joke! She should apologise.

The Temporary Speaker (Hon. Opang'a): Hon. Linda, Members are usually given these documents in advance to make us familiarise with the content therein. As you are aware, you cannot debate on something you have not gone through. I think you have to withdraw the statement.

Hon. Juma: Mr. Temporary Speaker, how I wish I would withdraw that, but I will not because I never mentioned any Member's name. I was just speaking my mind. If I offended anybody, then I am sorry.

The Temporary Speaker (Hon. Opang'a): You have already withdrawn by saying sorry.

Hon. Juma: Mr. Temporary Speaker, what I wanted to say, and please protect me from more interjections so that these points do not get evaporate from my mind. As much as I would have wanted to oppose this, I will have to support it because after all, I will be the only one saying 'Nay' when the question I finally put.

It is such a shame that our markets are littered with *kiosks*, but when we go to the neighbouring counties, we see well constructed modern market shades. As a woman, I would want the *kiosks* to be demolished, but I would also want to see these beautiful shades in our county.

These people are allocated land to construct their *kiosks* by officers within the system and I wonder what the county government plans to do about this. It is good that the Committee has recommended that the county government should set aside some space and relocate these business people before commencing the demolitions.

I support simply because of the recommendations, but actually as leaders, we should look everything in deeper aspects that would bring a lasting solution than leaving it as it is. It's a shame that our County Siaya; most of the public land don't have title deeds and this is

where the Cartels are getting money through back door and our County is moving backwards because we are not getting the revenue at the right time as required. I therefore support this Motion.

The Temporary Speaker: I would like to respond to Hon. Linda; as you are aware in supporting a Motion in this House is usually a personal decision whether you like it or not; you can either support or reject the Report. It will be wrong for you to put it that any Hon. Member always support. Hon. Members I can read the mood of the House and we still have another Motion so I will give two Members opportunity then I will call the Mover to reply.

Hon. Atieno: Mr. Temporary Speaker, Sir; he outcry about this devolution was the time given for notices. The notice given by the Executive was only 15mins and according to our Constitution 2010 recognizes the needs for all arms of the government to engage the public in formulation of policies.

The Executive developed and approved the policy on the 3rd August 2016; the policy was only submitted to the County Assembly by 2017 and more than year later when the policy was delivered to the County Assembly for approval. The same month the department issued those notices.

The issue here was how this was done and it was done without the Assembly acting on this policy and the outcry out there was not because they don't want this structures to be demolished but they want to be given time. We are asking that the policy should go through the normal channels of approval before they are implemented.

Hon. Audi: I have risen to support the Motion as per the recommendations of the Committee. First of all; I want to talk about Akala Market which is in my area. The construction is done at night with authorities from the so called staffs who are the enforcement officers.

Another thing is that instead of the County government looking at the best ways of increasing collection; Akala market is really stinking because of the garbage site in the central business area and currently the residence are almost striking and blocking revenue collection. If you look at our offices they are more temporary than the kiosk we have. I support this Motion, thank you.

Hon. Ousa: Thank you very much, Mr. Temporary Speaker, Sir; let me thank the Committee for having come up with a Report to protect the people of Siaya. I think when we are brought in this Assembly we are also brought to protect our people. I thank the Members of this Committee for having done something that is going to protect our people.

The point that I wanted to add in fact I became surprised when I came to realize that there were some plots in Aram Market that the owners were given notice that the structures were to be demolished but before I came to this Assembly I was a witness when Siaya County Council were giving out to people and they even went as far as paying for these plots. If at all it is a must that time must now come for this thing to be demolished the only thing that I would advise; since Siaya County has really benefited from plot rent; the owners of the plot should be compensated because they have been paying rent for years. Thank you.

Hon. Oyuago: Thank you, Mr. Temporary Speaker Sir; mine is very short and clear. I feel it will be unfair and incomplete without me thanking my Chair and thanking myself. We all know that anything dealing with land is very sensitive and dangerous; just wanted to

remind the Hon. Members that what we went through while going round and meeting the marketers we met a lot of hostility like in Bondo and other places for example, we were almost being killed, but thank you very much for liking our Report more especially the controversial Honorable, whom I am not going to mention by name because I don't want to be told to apologize. I am really happy and once more I thank my chair plus the entire Committee on Land for the good work.

I also urge you to continue supporting us because you know it is very sensitive and we will be meeting whatever comes head on which again is not safe for us. Thank you.

The Temporary Speaker (Hon. Opanga): Yes, I now call the Mover to reply.

Hon. Otare: Thank you, Mr. Temporary Speaker, Sir. First of all I will say that I appreciate the Hon. Members who have contributed to this report positively because none of them has contributed negatively.

Secondly, I will just say that when we started this journey I was very impressed with all the Members of this House because when we were in Bondo all the Members of this House were there and contributed to the public about this issue. When we went to Rarieda all the Members again were there not minding that there were Members of Lands committee and in all the sub-counties where we went we found that Members were already there to receive us.

The reason for this is because the issue was affecting our people and in real sense I will not shy from mentioning that Mr. Temporary Speaker, you are the first person who called me when you heard that there were some eviction notices in Asembo.

I will just apologize on the behalf of the Committee to Hon. Adala. I think if you look at the report we were in Seka and we had a meeting in Seka polytechnic but it's unfortunate that that report is not in this document and I think it's a typing error. But in our recommendation we state what affects the whole County and no any specific sub-county.

I will just respond to Hon. Wandera about Sidindi and Sigomre. It is unfortunate that when we stated this journey we were moving to places that we had received their notices. And these places were mostly the sub-county headquarters. Therefore, we as Land committee are still available and if this House can adopt the report we can still have time to go to Sidindi and Sigomre and at this moment I hope that we are going with full force because we now have the recommendation from the Assembly.

The most important issue here is public participation and the public or owners of Kiosks were not rejecting the plan of County government. But what is so important is public participation and consultation that is in our Constitution. Therefore, they were just saying that the County government should consult them because they are the owners of this County and no one is above the law.

The most important thing in this new Constitution is per service delivery and therefore, the County government should be the first person to give services to its people. And by giving the services it means that these kiosks that they are now saying are illegal should be constructed to the modern one that they want to the people of Siaya to continue with their businesses.

Because if you look at the revenue collection has it has been mentioned by one of our Members here, in Siaya County even in the finance bill you will find that 80 percent of revenue collection is coming from these small traders because when we look at Siaya there is no supermarket that can give us good revenue. So the time when we are fighting these small traders it means that we are not going to collect our revenues according to finance bill.

Lastly, I will just respond to Hon. Linda's issue and mostly it touches on the Trade department, and I hope Trade and Finance chairperson is here and from today he/she will take

the matter to the Committee. What we want is our towns and markets to be planned properly with the aim of improved the living standards of our people.

The reason why this Honorable House does pass these bills is because they do touch on our people's lives and you cannot purport that we just pass reports without looking at them. So once a report is brought to this House we cannot afford not to pass it when it is touching on the lives of our people because they elected us so as to provide the good services that they deserve. Just as Hon. Oriaro said earlier that, two days ago there was a report from the Executive warning the public that from next week the demolition is going to be effected without any notices.

So I am just appealing to this House that this House is the speed governor for the executive and if incase this report is approved, I just urge Members to stand their ground and defend the report. From looking at the mood of the House, I am actually sure that it is going to be passed. I want to tell Hon. Members to ensure that they support the report either way the outcome may be.

Tomorrow I will be calling all the information officers so that we can get to hear what the public has to say. Otherwise, I want to appreciate this honorable House for what they have done to the Committee, and I want to tell the House that approving a Committee report is not easy task and as time goes your reports will be rejected and you will hate it.

As for me I happy that my report will be passed and tonight I am going to sleep but some Members especially Hon. Ousa may be asking where I am going to sleep. Hon. Member that just leave to God!

(Question put and agreed to)

MOTION

STATUS OF BURSARY DISBURSEMENT FOR FINANCIAL YEAR 2017/2018

Hon. Adida: Thank you, Mr. Temporary Speaker, Sir. I wish to Move a Motion that this House adopts the report on Education, Youth affairs, Gender and Social services on Status of Bursary disbursement for financial year 2017/2018 laid on the Table of this House on Wednesday, 28th March, 2018.

I want to bring Members to speed by starting with introduction and the sectorial committee on Education, Youth affairs, Gender and Social services is constituted pursuant to provisions of the County Assembly Standing Orders 200 (4) and (5), I read together in parts, in part 2 of the fourth schedule of the Constitution of Kenya 2010. Its mandates are as below but I will leave Members to read that on their own, same as the Membership of the Committee after which I will go through the executive summary which is the back bone of this report.

The program for processing the 2017/2018 financial year bursary fund was rolled out on 15th December, 2018, by the Education department. According to the program the successful candidate applicants were to receive funds directly to their respective schools by early April, 2018.

However, the implementation of the program delay due to constrains faced by Members of the County Assembly. Members said that two legislative frame works were used to guide the disbarment in which one was passed by the Assembly on 30th April, 2016 and amended version of the same Act. Amendment of the Act was unilaterally done by the Executive contrary to Article 185 (1) of the Constitution of Kenya, 2010 which clearly stipulates that the legislative authority of a County is vested in, and exercised by the County Assembly.

The two Acts in operation had conflicting clauses particularly on the lifespan and composition of the Ward Bursary Committee causing unnecessary confusion on the operationalization of the Act. This realization prompted sharp reactions from Members of the County Assembly.

The reactions culminated into a Motion sponsored by the MCA, Yimbo East Ward - Hon. Francis Otiato passed by the Assembly on 15th February, 2018. The Motion urged the Executive to suspend forthwith the next programme for processing 2017/2018 FY bursary to pave way for wider consultations between the Executive and the County Assembly.

Communication on the Resolution of the House was formerly done to the Executive through the official channel vide a letter Ref. No. SC. ASS/CORRES/C.EXC/17 VOL X -124 dated 19th February, 2018 (Refer to Annex 1.0).

The Executive responded to the Motion vide a letter Ref. No. SC/EDS/CAC/3/6 VOL.I/81 dated 07th March, 2018 (Refer to Annex 2.0). The response was presented in the Plenary by the Chair-Education Committee on Tuesday, 20th March, 2018 in the Afternoon Sitting. The Executive response elicited sharp reactions from the floor of the House which attracted subsidiary questions; these include;

- i) Which Act was in operation? Is it the one passed by the Assembly or the amended version by the Executive?
- ii) What was the fate of disbursement of bursary fund for 2017/2018FY?
- iii) Was it in order for the Ag. Co-Education to sign the response letter from Education Department?

These subsidiary questions informed the Committee to initiate an inquiry. To actualize this, the Committee invited the CECM and Ag. CO–Education on Wednesday, 21st March, 2018 for a meeting within the Precincts of the Assembly to respond to the subsidiary questions raised by Members.

Members observed that it was inappropriate for the Executive to usurp powers of the Assembly to amend the Bursary Fund Act; Members observed that the current CEC and Ag. Co-Education were not substantive office holders by the time the Bursary Fund Bill was being processed.

Members were dissuaded by the submission of the CECM –Education that the Act in operation was the one enacted by the Assembly on 30th April, 2016 because the two existing Acts were mutually operational.

The Committee found out that; the Siaya County Bursary Fund Act enacted by the Assembly on 30th April, 2016 had conflicting clauses, the Executive erred by usurping the role of the County Assembly of legislative supremacy by amending the Bursary Fund Act contrary to the provisions of Article 185(1)&(2); the Ag. Co-Education irregularly signed the response from the Executive in total disregard to the provisions of Section 45(1)(b) of the County Government Act; the Executive had stopped the processing of bursary fund for 2017/2018FY as resolved by the Assembly on 15th February, 2018.

Based on the findings, the Committee recommends that; the Executive to initiate the process of amendment of the current Bursary Fund Act forthwith; the Executive should at all times refrain from usurping the legislative powers of the County Assembly and respect the Constitutional provision of legislative supremacy; correspondences from Education

Department to the Assembly should strictly be signed by the Chief substantive officer in line with Section 45(1)(b) of the County Government Act; processing of bursary fund for 2017/2018FY to proceed subject to reconstitution of Ward Bursary Committees within a period of 14 days from the date of adoption of this report.

We had acknowledgements and I believe Hon. Members can read.

Methodology used for Information gathering: The Committee invited the CEC and the Ag. Co-Education for Board Room meetings to submit written responses and make oral submissions on matters related to processing of bursary fund for 2017/2018FY. A total of eight (8) meetings ensued which culminated into the development of this report.

4.0 Submission by the CECM and CO – Education.

The CEC and the Ag. Co-Education while appearing before the Committee made the following submissions;

4.1 Submission by the Ag. CO- Education

- i) The Ag. Co-Education informed Members that in the year 2016, the National Treasury quashed the release of bursary funds to County Governments since it was impractical to do so without a legal framework. This was informed by the fact that National Treasury recognized that most of the Counties had embarked on assisting needy students in Secondary schools, Tertiary Colleges and Universities despite the fact that issuance of bursaries was not within the armpit of County Governments.
- ii) The Controller of Budget insisted on a legislation to operationalize the disbursement of bursary fund to bright and needy students. Due to the time pressure and the biting need of bursaries, the Executive borrowed an existing legislation on bursaries from Bungoma County with a view of domesticating it.
- iii) Due to the strict timelines set by the Controller of Budget, the processing of the Bill was hurriedly done by both Arms of Government. This culminated into passing the Siaya County Bursary Bill, 2016 by the County Assembly on 30th April, 2016 and subsequent Assent by the Governor.
- iv) The Ag. Co-Education reported that the hurried nature of processing the Bill did not provide ample time for adequate consultation between the Executive, the County Assembly and other relevant stakeholders. This environment made it impractical to critically analyze the Bill.
- v) He informed Members that the Controller of Budget (COB) raised concern on the Bill as passed by the Assembly. He clarified that the COB had issues with the clause of the Bill which mandated MCAs to propose three names amongst whom the CEC shall appoint one person as the Chairperson of the Ward Bursary Committee. The COB pointed out that this clause was in total contravention with oversight role of MCAs. This was contrary to the principle of separation of powers between the Executive and the County Assembly as enshrined in Article 179(1) and Article 185(1)&(2) respectively.
- vi) He pointed out that this bottleneck prompted the Executive to delete the clause in a bid to secure the bursary funds for the 2015/2016FY which was desperately

needed by the bright and needy students. He further explained that the delay in the release of bursary funds almost brought the County to stand still.

4.2 Submission by the CECM - Education

The CECM while responding to the question asked by Members on which Act was in operation pointed out that the Act in operation was the one passed by the Assembly on 30th April, 2016. She further clarified that the Executive did minor amendments to address the concerns raised by the COB in order to secure bursary funds which was badly needed; this made it appear as if there were two Acts in operation.

She owned up that it was not appropriate for the Executive to unilaterally amend the Act since the responsibility of amendments of legislation strictly lies within the ambit of the County Assembly. She opined that lack of inclusiveness/wider consultation prior to the amendment may have habited mistrust between the two arms of Government

The CEC assured Members that the episode will not recur. She promised to stick to the principle of separation of powers between the Executive and the County Assembly as enshrined in the Constitution.

Prayers of the CECM and the Ag. Co-Education

The CECM and the Ag. Co-Education informed members that the COB had no issue with the amended version of the Act, thus, it could be used to requisition bursary funds for 2017/2018FY. For this reason, they requested the Assembly to allow the Executive to proceed with the programme for processing bursary funds for the 2017/2018FY. In the meantime, concerns raised by MCAs particularly on the Composition of Ward Bursary Committee could be handled case by case

The CECM and the Ag. Co-Education pointed out that the Department had rolled out elaborate plans on the amendment of the Act in due course to accommodate concerns raised by Members and other emerging issues. They promised that all the relevant stakeholders will be brought on board during the amendment and that quality time will be accorded for the exercise.

Committee Observations

1. Members observed that it was inappropriate for the Executive to usurp powers of the Assembly to amend the Bursary Fund Act regardless of the circumstance under which the amendment was done. This is because the Constitution is crystal clear on which Arm of the County Government should amend any legislation.
2. The Committee observed that the current CEC and Ag. Co-Education were not substantive office holders by the time the Bursary Fund Bill was being processed.

3. Even though the CEC-Education had indicated in her submission that the Act in operation was the one enacted by the Assembly on 30th April, 2016, Committee Members were dissuaded by this submission because the two existing Acts were mutually operational; both were used to guide the management and administration of bursary fund

Committee Findings

- i) The Siaya County Bursary Fund Act enacted by the Assembly on 30th April, 2016 had conflicting clauses. This hampered the operationalization of the Act
- ii) The Executive erred by usurping the role of the County Assembly by amending the legislation. This was a clear manifestation of lack of commitment and respect for the legislative power and authority of the County Assembly as provided for under Article 185(1)&(2) of the Constitution of Kenya, 2010.
- iii) The Ag. Co-Education irregularly signed the response from Education Department. This is contrary to Section 45(1)(b) of the County Government Act. The committee is bereft of any information on the appointment of the said Chief Officer either in an acting capacity or in substantive appointment. The committee takes note that such appointment must be done in accordance with the law
- iv) The Executive had stopped the processing of bursary fund for 2017/2018FY as resolved by the Assembly on 15th February, 2018 through a Motion sponsored by Hon. Francis Otiato, MCA-Yimbo East Ward

Legal Perspective

- a) Article 1 of the COK, 2010 stipulates that all sovereign power belongs to the people and shall be exercised only in accordance with the Constitution. For this reason, the Constitution should be interpreted in a manner that promotes public interest and does not infringe on the human rights and fundamental freedom
- b) Article 259 of the COK, 2010 postulates that in interpreting the Constitution, it should be done in a manner that promotes its purposes, values and principles; advances the rule of law, the human rights and fundamental freedoms in the Bill of Rights.

These aforementioned relevant Articles in the Constitution of Kenya, 2010 affirms that while interpreting the law or dealing with any other matter that touches on the public or infringes on human rights or fundamental freedom; public interest should override any other interest and human rights and fundamental freedom should be protected at all costs.

Furthermore, the doctrine of proportionality requires that a proper balance should be maintained between adverse effects which the interpretation of the law may have on the rights, liberties and interest of persons and the purpose which such interpretation intends to achieve.

Guided by these relevant Articles of the COK, 2010, Members of Education Committee proposes for the House to resolve that the Executive proceeds with processing bursary fund for 2017/2018 FY. This will enable bright and needy students of Siaya County access the much needed bursary fund so that they are not denied their right to education as enshrined in the Constitution

Committee Recommendations

- i) The Executive to initiate the process of amendment of the current Bursary Fund Act forthwith. The committee to report back progress to the House within a period of 30 days from the date of adoption of this report
- ii) The Executive should at all times refrain from usurping the legislative powers of the County Assembly and respect the legislative supremacy of the County Assembly
- iii) All official correspondences from Education Department to the Assembly should strictly be signed by either the substantive or Ag. Chief officer appointed in accordance with the law
- iv) Processing of bursary fund for 2017/2018FY to proceed subject to reconstitution of Ward Bursary Committees within a period of 14 days from the date of adoption of this report.

Mr. Temporary Speaker, Sir, I beg to move and further ask Hon. Nancy Wamwai to second.

(Hon. Wamwai seconded)

(Question proposed)

Hon. Oriaro: Asante sana, Bwana Spika mshikilizi kwa nafasi hii.

(Laughter)

Nimeamka kwa niaba ya wakaazi wa Alego ya kati ili kuipa sura hoja iliyoletwa na kamati ya elimu. Nataka kudokeza kwamba, katika kuchangia swala hili, itanibidi nime risasi kuiunga mkono kwa muktadha mbili.

Ya kwanza, wale ambao wameishikilia Wizara hyo, katibu mkuu, na Kiongozi wa Idara, hawakuwapo awali. Kwa jambo hilo inanibidi niunge mkono swala, kwa muktadha wa kuuma risasi. Nambari ya pili pia ni kwamba, wanafunzi wenzetu wameteseka, na hatuna budi kuchangia mikono ama kuwezesha Idara kupeana pesa ili mambo ya elimu iendelee mbele.

Lakini, lazima nitataja jambo moja. Bunge la kwanza nlikuwa mmoja wenu kama Mwakilishi, na jambo ambalo limedhihirika ni kwamba, hakukuwako na muda wa kutosha katika huo mwaka wa Elfu Mbili Kumi na Sita, ndiposa sharia duni ikabuniwa. Hisia zangu zanieleza wazi, katika historia ya kubuni sharia ya maongozo katika elimu, ya kupeana pesa ya masomo, nakumbuka vizuri Bwana Spika, na ninataka jambo hilo lieleweke wazi, ibaki katika kumbukumbu za Kongamano hili letu.

Ilikuwa mwakilishi wa Ugenya Kusini, Mheshimiwa Kadera, ambaye alikuja na pendekezo la kupeana pesa za Elimu, mwaka wa Elfu mbili, kumi na nne, na likawa jambo zuri sana, Bunge hili likapitisha. Ngambo ile haikuwa tayari kuweka mikono. Gavana hakuweka mikono. Wakaendelea tu kupeana pesa bila Sheria, baadaye, uongozi wa juu ukaweka vizingiti. Nitataja kwamba, hilo pendekezo la Sheria, ambalo lilitupwa na Siaya, watu wa Bungoma waliichukua jinsi ilivyo, na wakaitumia. Sasa Mwaka wa Elfu mbili kumi Na sita, Kaunti yetu ya Siaya ikaenda Bungoma kuichukua sharia hilo ili hapa kwetu pia tuifuatilie.

Mambo ya jinsi ya kuchagua Mwenye Kiti, ilikuwa wazi kuwa sisi kazi yetu sii kukalia mambo ya kupeana huduma. Kwa hivyo Bungoma jinsi ilivyoweka Mwenyekiti kuwa Yule wa kuchaghuliwa na viongozi wa Wadi, haikuwa katika hyo Sheria ambayo yetu ilikuja nayo. Kwahivyo Executive, watu wa utenda kazi, watu wa kutekeleza jambo lile, kusema kwamba ilikuwa ni sisi, hiyo si kweli. Hiyo ilikuwa ni Sheria yao, pengine, hawakutaka kutumia Sheria.

Kama nia yao ni kubuni Sheria, wajitokeze wakiwa wanamiliki kadi ya kura, waende wachaghuliwe ili wabuni Sheria. Hyo si kazi yao. Ingawa wana mamlaka, jinsi ilivyo katika Katiba yetu, inawapa kazi ya kutekeleza huku sisi tukichunguza. Yale ambayo yalitendeka, yasije yakatendeka tena.

The Temporary Speaker (Hon. Opanga): Kiswahili wakati mwingine ni lugha ghumu sana, kwa hivyo tumeyaelewa yale yote ambayo umeyasema. Mheshimiwa Otiato, nafasi ni yako.

Hon. Otiato: Thank you very much Mr. Speaker. I am challenged. Kiswahili can challenge. I think we have all got what Hon. Oriaro is trying to say. I would want to commend this work that has been done, the efforts are actually visible. For us to work harmoniously, every Department should be doing their job. Assembly should be left to do its job; executive must do its job.

When we allow some of these things; I know Members have been in a hurry to pass this thing, watoto wetu wanataka Bursary, but we better take our time to make the Policies, make proper laws. Today my argument is, and my conscience is very clear. You know, what we are doing today, we might be taking advantage that we are here, and we might be here for days, and years or what! But tomorrow you will be outside there. The answers are here, and

will follow you are leaving. We will not be Supervisors of illegalities on the means of the end justifies the means.

In this particular Report, our missions were very clear, or rather what we wanted put in black and white was very clear. If there was amendment of the law which was passed by the Assembly, who did it? And it was done at what level? And if that happened, is it the same law that is being used?

To the positive, the Executive has admitted that somebody committed this offense. Went and did a forgery, in the name of, the time is not with us, and we have to get a way of getting money by approval from COB; Controller of Budget. So they went, committed a forgery, and got money from the Central Government. Let's look at the argument presented from the Education Department. That yes we agree, time was short. Why was a law that was passed by the Assembly was be rejected by the Controller of Budget?

One. They are saying that,' the acting Chief Officer informed the Members that in the year 2016, the National Treasury quashed the release of Bursary funds, to the County Governments since it was impractical to do so without legal framework'. Then they are saying, that 'this was informed by the National Treasury recognizing that most of the Counties had embarked on a system, needy students at Secondary School, Tertiary colleges and Universities despite the fact that issuance of Bursaries was not within the update of the County Government.'

If that was the argument, has this law provided for something else rather than that? We have to tell you the same, and the Executive is telling us that County Government Controller of Budget is having no problem with that. If that was the basis, why is he not now having a problem now with that?

Two. You realize that they are saying, 'we hurriedly did this and went to Bungoma and took an Act of Bungoma, and went with it to do this Act.' Clear confirmation that actually this thing was done outside the law. So the argument about hurried, they hurried way that this was done, is not adding up. In part five that is page seven; the part says that 'he informed Members that the Controller of Budget raised concerns on the Bills as passed by the Assembly.

He clarified, that the COB had issues with the Clause of the Bill which mandates MCAs to propose three names, amongst whom, the CECM shall appoint one person as the Chair of the Ward Bursary Committee. The Controller of Budget pointed out that this Clause was total contravention with oversight role of the MCA.' Then he goes ahead to say, 'that contravenes the separation of power.' The law which was passed by the Assembly is very clear. We don't have such a provision in the law which was passed by the Assembly.

It says here, those names that are opposed, how the Chair person was supposed to be elected, that a Chair person elected by Members, and forwarded to the CECM for official appointment. There is no place written that MCAs will nominate 3 people where the CECM will appoint one of them. Where did they get that law from? It is not in writing; the only provision for the Members is that as long as the MCA is an ex-officio there is a provision of section 2 (h) which talks about two persons not of the same gender nominated by the County Assembly to be appointed by Executive Member.

Just in the appointment of Members you are having two of your representatives in which section five of the Act says that for the purposes of appointment of Members 2(h) The County Assembly Member shall propose three names of persons among them the Executive shall appoint two.

Two people of different gender not to be the Chairs of those Committees; this issue of trying to confuse what the Act was actually intended to and the purposes of why they were doing the amendment is not clear and therefore the many arguments that we are fronting here. Other than this the Acts which was passed by the Assembly and this one I want to be very clear to the mind of our people as we discuss this matter that yes, in this law there was a creation of another vetting level at the County in that law which was brought by the Executive.

The law we are now saying cannot be used; they were to competitively appoint the Chairman and then they were to create another level of vetting at the County which in our Act it was passed by the Assembly. We were saying no, that should not be the case. Once the vetting has been done at the Ward level by the Ward Committee. With introduction of these many things and with the acceptance that was an irregularly introduction of a new law.

I will only support this Motion if your able Chair will allow us to support it with amendments so that it comes clear. This Report is not answering direct question which we have asked; which law are we using? I will propose that in this Report we have it clear that the other one was done irregularly and it is not applicable and we use the law which was passed in the Assembly.

If that is the case that we are now going to use the law which was passed in the Assembly in which the Executive cannot show us why we should not be using it because all the grounds they are trying to bring is not reflected in this law.

They have no reason to reject this law; we agree to use this particular law which was passed in the Assembly and this particular law gives us a provision of reconstituting Members of those Committees as recommended in the next 14days so that the Member who is fine with it; if I was a Member and I am fine with the Committee I can proceed on with the Committee and I only look at what was required in this law, did they really conform to it and if not we liaise with the particular department or case by case and we ensure that we reconstitute according to this particular law.

In summary, Momanyi Act be declared null and void; we should not be having that Committee because what are they going to do? Once we have selected our 300people why should it be brought for another vetting; do they know people from my Ward?

This particular Committee is going to do double work for no reason or even do amendments because at the end of the day if you bring the list of 300 and they are changed and you will hear the bursaries were deposited at the colleges and universities. I wish we would be allowed to pass this particular Report with those express amendments with some of the recommendations.

Hon. Ochieng: Thank you, I want to believe that the Committee has brought a very detailed Report and per the issues that were raised in this Hon. House; I think there was a problem with the formation of Ward bursary committees. Recommendation no.4 which reads that; the processing of bursary fund for FY 2017/18 to proceed subject to reconstitution of

Ward bursary committee within a period of 14days from the date of this adoption of this Report.

I am not seeing any problem here; if there was a problem with the committee and the recommendation of this Report state that they be reconstituted within 14days and I want to believe that these committees that will be reconstituted within the 14days are the ones who will seat in the finalization of the list of beneficiaries in the respective wards.

I want to support this Report and I would just urge my fellow representatives that let's support this Report and move with speed because as I have read this Report; there is some clause here that has indicated when they were now looking on the illegalities of the Constitution.

There is a part on page 10, these affirmations that were articulated in the Constitution of Kenya 2010; affirms that while interpreting the law or dealing with any other matter that touches on the public or infringes on human rights or fundamental freedom, public interest should over right any other interest and human rights and fundamental freedom to be protected at all costs. I want to believe that if we consider the number of Elected or MCAs that are in this House against the number of public waiting to benefit from this bursary---

Hon. Otiato: Point of Order!

The Temporary Speaker: Yes, Hon. Otiato.

Hon. Otiato: Is it in order for a Hon. Member to mislead the House by trying to insinuate that another arm of the government can violate the Constitution, over sapping the powers of another arm and commit a criminal offense by auditing what is not supposed to be audited and then use the other parts of the Constitution to justify an illegality?

The Temporary Speaker: I give a directive that we let him finish.

Hon. Ochieng: Thank you, for having given me this chance again. I want to clear the air that I have not mentioned anything to do with what the Hon. Member has just said. There are a number of people or students that are waiting for the bursaries.

One of the recommendations of this Report puts it very clearly that within 14days there is a room for reconstitution of Ward bursary committee which means if any Hon. Member Here is not comfortable with the committee that were constituted by the former MCAs; they are at liberty to constitute new committees within 14days which will do the oversight as well as oversee the vetting of these administrators?

So I am requesting this Hon. House, Hon. Temporary Speaker to just support this report so that when it reaches second term it finds that the student have benefited from received the bursaries. Therefore, I support it very much, thank you.

The Temporary Speaker (Hon. Opanga): I think Hon. Otiato's issue was the use of two laws, there was a different Act and there was an Act that was passed in this Assembly. If the first recommendation says that they be given 30 days so as to be able to rectify that problem that is there within the Committee where they seat, so that we leave the process to go on. We are aware that as elected Members the people are on your neck on the issue of bursary.

Yes, Hon. Adala

Hon. Adala: Thank you, Mr. Temporary Speaker, Sir. I rise to support the report as laid by the Education Committee. Much has been said about the state in which we find ourselves in and this is a matter that has been here for I think now over one month. All of us

are now aware until at what stage did the rain start beating us especially in regards to issues bursaries.

When the chair was laying her report, there were two types of submissions. There was one submitted by the executive arm of the County of Siaya where they really ascertain as to what happens. And for me as a Member of this House I take that in itself as an act of being very honest and modest. Because if it were any other person a lot of rumors could have been used to make a wrong move right but, as I was looking at this reported reading I was seeing the elements of somebody being very honest.

All of us are aware and we cannot bury our head in the sand that there was a violation somewhere, and it is this that led my friend Hon. Otiato to write a statement seeking so many other things which have now been explained.

A time comes when the issues that were raised in his question was relating to the conflict of interest, whether the controller of budget was not aligned with the fact that elected MCAs should have a hand in the selection of Committees as it has happened in the past. Again, we were also made to understand that there were two sets of Laws that were being used and it was clarified as which one.

The point which I want to base my argument on is the human face. The Constitution chapter 4 is expressly about the Bill of rights, and again Article 57 is about the rights of children. A law is made first and for most to serve and protect the interest of the people. So a law that does not serve the interest of the people is then null and void.

So in as much as there might have been issues that arose which have been shared with us, a time comes when we put the big human face. In this context human face means that where else we are seated here, the Education Committee has come up with a way forward which will help not us seated here, but, will thus help the needy students of Siaya County.

This thing is not about a person who is elected, who feels the heat of his/her Ward but it is about the wellbeing of that needy child who stay in Segwa, your village from where I come from. So mat times we need to put the human face and because the Education Committee has given us elaborately a time frame, a road map with which we can sort out the stalemate that we are having.

Recommendation number one is elaborate about the whole Act now being looked a fresh, something that will take a whole process which means that we will even have to go to the public to get their views. With this they are suggesting that within the next 14 days there should be redistribution. This is a piece mill, and at times there might be a piece mill amendment to save a scenario. All of us are aware that the best thing to have is an ideal law which takes care of every other thing.

But again if we want to go the long way, then I want to ask the Members of this Assembly if we have that time! Remember, we are towards the end of the month of March, in less than two months the financial year shall have end. If it ends without this expenditure being met then again all of us are aware of what happens. So can we be able to look at the plight of these needy kids and use the four recommendations as a bench mark of unlocking the stalemate with which we find ourselves.

That is my humble plea, and as a Member of Education Committee we are very concerned and determined as well as focused to ensure that once we are done with the stalemate with which we find ourselves then we will serious seat down and focus on what is best. So that we make a Law that will now not again be subject to the kind of discourse that we are now facing in this Assembly. Thank you.

The Temporary Speaker (Hon. Opanga): Hon. Otare.

Hon. Otare: Thank you, Mr. Temporary Speaker, Sir. I just wish to say that the Committee has actually done their best, but the only problem I have is that you find that the Committee in their recommendation have got evidence that the executive changed the Act in

their recommendation I am not seeing any action that is going to be taken against the person who has brought this big problem.

So that this kind of thing can be a thing of the past in this Assembly such that the executive cannot amend what the Assembly has done. So I am just requesting that this person can be penalized once and for all.

Secondly, if you go to page 8, you find that there is a concern raised by Members particularly that committee of bursary should be handled case by case. This is not a matter of handling issues case by case; it is something that is touching on all Members of this House including the people of Siaya. Therefore, there is no way the executive can tell us that they want to deal with it case by case. I think that is dived and rule hence, this thing should been done concerning all the people of Siaya not Ward by Ward.

If you go to the findings, and this people are very much ready and we hope that after passing or rejecting given that it is now in the public domain and if you go to No. 9 which is very challenging concerning the findings of this Committee No. 4, you find that the executive has stopped the processing of disbarment of bursaries funds 2017/2018 as informed by the Assembly on 15th February.

This thing is very much risky and if the people of Siaya as well as the needy find out that it's the Assembly that has stopped the disbarment of bursaries funds then we might be in hot soup. Therefore, I just pray that Members could look at the recommendation of the Committee and we pass this thing and give the Committee 14 days as they have said so that we can be on the safer side. We may talk of money being there and maybe the money is not there.

Hon. Temporary Speaker: Hon. Omoro!

Hon. Omoro: Thank you, Mr. Temporary Speaker. I rise to support the document and also commend the Committee for a job well done. You must know that justice delayed is justice denied and the moment you deny a very little child the space to go to school in time then you are ruining the life of such a pupil.

I therefore commend the work done by the Committee on Education by disclosing to us that there were some versions of legislation on the Bursary Fund. As much as they have done that to us, we should work very fast to see to it that we salvage our needy students from sitting at home because they cannot access school fees.

The conflicting versions of the Act as cited out which the other part was erroneously done by the Executive will be handled as it has been said. I also appreciate the fact that the Executive has agreed that the amendment can be done to see to it that the law passed by the Assembly is reinstated which gives the Assembly powers to legislate and pass laws.

As elected leaders, we must know that we equally have vested interest in this because we must have powers and this can be exercised when we are at liberty to maybe appoint some of the Education Committee Members.

Hon. Temporary Speaker: Yes, Hon. Kinyanyi!

Hon. Kinyanyi: Thank you, Mr. Temporary Speaker. I support what has been said. The same way we have been supporting the projects for 2017/2018, I think we should give the Committee Member their own initiative to start our own bursary system of education. I am requesting that we support it so that the Executive can release the money to get our people going back to school as our projects are still going on in the Wards. I support this.

Hon. Temporary Speaker: Yes, Hon. Omwende!

Hon. Omwende: Thank you for giving me an opportunity to also air out my view over the same. I have to thank Hon. Otiato Francis for coming up with a Statement which evolved into a Motion. Generally I have to say that, I really appreciate the Committee on Education, Youth Affairs. It was a long discussion when we were meeting with the Executive.

As Hon. Members, we really pushed them to the wall until they accepted. Generally the pertinent issue that was there, one of them was the two Acts. The one that is in operation is of April 30th. What they failed to do, and I was really longing if they can attach the two Acts, the one that has been amended and the controversial one. The two Acts should have been attached to this Motion so that we give a justification of what they are trying to say. This can also add value.

I was also interested on the letter that the Controller of Budget wrote to them, the letter could have been important. Without the letter, it is difficult for us to trust them. Having said that, I am requesting as a Member of this Committee if we can adopt this report so that the children of Siaya can benefit out of this. Thank you.

Hon. Temporary Speaker: Hon. Mboha!

Hon. Mboha: Thank you, Mr. Temporary Speaker. I rise to urge Hon. Members to support this report. Thank you.

Hon. Temporary Speaker: Hon. Linda!

Hon. Linda: Thank you, Mr. Temporary Speaker. I will not say much but it will not be good if our Hon. Chair for Education has tabled such a good Motion in the House, and as women we are just quiet, we are not contributing to it. First of all I want to say, thank you Honorable Lorna, it has been a tag of war for you as a Chair, but as a woman you have managed it and now you have brought it to the House and now we debating it, congratulations.

Again I want to say, even for some of us to stand in front of Honorable Members like most of us here; it is Education that made us what we are today. So as much as we found that there are so many mistakes which were made, I urge this House that we do justice, just as Hon. Omoro said so that we don't deny our children the opportunity to be courageous, to be honorable Members, maybe in the future when we are not there. Thank you so much. I support.

The Temporary Speaker (Hon. Opanga): Hon. Members, I will give Hon. Audi chance then I give the Mover to reply

Hon. Audi: Yea, Members I have just risen to support this, for one; I can see something almost closer to one of my prayers. Members, you should not say that in terms of the constitution of the Bursary Committee, the MCAs should not have a hand.

Politics have a connection with development, and as Members of the County Assembly of Siaya, you will believe that politicians like maybe throwing their weight in terms of any development or anything that happens positive within their knowledge. So I rise to support, kindly because of page 4. Thank you.

The Temporary Speaker (Hon. Opanga): I now call upon the Mover to reply.

Hon. Adida: Thank you, Mr. Speaker. Allow me to appreciate Honorable Members in supporting this document and even those people with dissenting opinion. What I would

also retaliate is that the Committee of Education read all these challenges, but in all situations, we must always find a rider because whoever is suffering in this case is our students.

I want again to tell this House that in terms of the amendment this Act, the Committee on Education is really spearheading the Amendments, and I believe even the CECM, and the CO, the Executive Department of Education, they are critically aware right now that whatever we have right now is something that can even take us to court.

So they are really working round the clock to ensure that this Act is amended. I beg to say thank you Members for supporting the Report.

(Question put and agreed to.)

MOTION

ADJOURNMENT

The Temporary Speaker (Hon. Opanga): There being no other Business, this House adjourns until tomorrow Thursday, 30th at 2.30 p.m.

The House rose at 5.00 p.m.