

COUNTY ASSEMBLY OF BUNGOMA

COUNTY ASSEMBLY DEBATES

DAILY HANSARD

THURSDAY 19TH MAY, 2022

Afternoon Sitting

COUNTY ASSEMBLY OF BUNGOMA

HANSARD OFFICIAL REPORT

THURSDAY 19TH MAY, 2022

The House met at 2:30 p.m.

(Mr. Speaker [Hon. Emmanuel Situma] in the Chair)

PRAYER

COMMUNICATION FROM THE CHAIR

I do have communication. Honourable Members, I will read the way it is; the Republic of Kenya, the Presidency, Ministry of Interior and Coordination of the National Government, from the Office of the County Commissioner, P.O Box 550, 5200 Bungoma, to the Clerk of the County Assembly of Bungoma, reference is National Peace Prayer Caravan.

The National Peace Caravan in conjunction with Bungoma inter-faith Council and the County Commissioner's office are organizing a peace prayer caravan day for peace before, during and after 2022 general elections at Posta grounds on 21st May 2022 between 5:00 a.m. to 8:00 a.m., I will come again, on 21st May 2022 between 5:00 a.m. to 8:00 a.m., note that time. The purpose of this letter is to invite you for the prayers and also ask you to invite all the Honourable Members of the County Assembly, the Honourable MCAs to the prayer on our behalf. Please assist and thanks in advance. That is Samuel .W. Kimiti, MBS County Commissioner for Bungoma County and Bishop Calistus Barasa, Chairman Inter-faith and Co-chair of the Inter-faith.

That means Honourable Members on 21st which is on Saturday from 5:00 a.m. to 8:00 a.m., we will be in those prayers. So kindly attend without fail.

(Consultations)

Hon. Vitalis, I think the one inviting you ought to provide your per diem and not the Office of the Speaker.

STATEMENTS

RESPONSE FROM THE COUNTY EXECUTIVE DEPARTMENT OF EDUCATION AND VOCATIONAL TRAINING TO A STATEMENT SOUGHT BY HON. HENRY MAJIMBO ON THE IMPLEMENTATION OF THE BUNGOMA COUNTY EDUCATION SCHEME REGULATIONS REVISED 2019 AND THE MANAGEMENT OF THE BUNGOMA COUNTY EDUCATION SUPPORT SCHEME

Mr. Speaker: Honourable Members, you are all aware of this matter coming up today on 11th of May 2022. We did issue summons to the concerned officers; County Executive Committee Member, Education and Vocational Training and equally the County Chief Officer for the same department. The summons was duly served and today on 19th of May 2022 at exactly 14:26 p.m, I have been served with a response from the Office of the County Secretary which I want to read the contents for your consumption before we make the next decision. It being a matter of the House, I can't make a decision on my own.

Office of the County Secretary and Head of Public Service, to the Clerk, County Assembly of Bungoma, Reference: summons to witness. Your letter No. BCA/OC/SECT/4/VOL.II (161) of 11th May 2022 signed by you, which is wrong, it was signed by the Speaker himself not the Clerk, which has been brought to my attention this morning. I wish to inform you that the Chief Officer, Education and Vocational Training, Ms. Rose Situma who is the custodian of the requested information and responsible for collecting and collating the required information has had health challenges that led to hospital admission and subsequently being put on bed rest (see attached copy of letter from the doctor). Additionally, the CEC, Ms. Betty Mayeku has had an emergency and has formally requested to deal with. This has negatively affected their ability to collect and respond to the summons.

In light of the above developments and given that the summons to appear were directed to individual officers, I wish to request and appeal that the CECM's request as earlier communicated is reconsidered in order for them to provide comprehensive reports as required by the County Assembly of Bungoma. Submitted for your kind consideration.

Wambati. J. W, County Secretary, Head of Public Service. Copy to His Excellency, the Governor, County Secretary, County Attorney, CECM - Education and Vocational Training, Chief Officer - Education and Vocational Training accordingly.

Members, that is the response. I will be able to get your views before I make my decision because we have to make the decision over the same. The owner of the original statement has heard the original statement of the same. So let me allow Hon. Opwora before I come to other members.

Hon. Luke Opwora: Thank you Honourable Speaker for catching my eyes. I really don't know what to say... I think it is very unfortunate that the government of the day does not respect and honor summons that come from this Honourable House. This is a House of rules and procedures and they should know that we are all working for the interest of the people of Bungoma. The executive should not behave like they love the people of Bungoma more than elected members. So those funny excuses that have been given that the Chief Officer is sick and the CECM got an emergency, I do not stand with them; I do not support them.

These are the last days in Jerusalem and we should take this issue seriously and face these people head-on because what they are doing is very unfair for the people of Bungoma. We should all be accountable to the people of Bungoma and we have every right to ask these questions and get substantive responses in due time. The executive is trying to play for us the game of cat and mouse and we will not allow it. We want the response on the issue of the bursary and scholarship. I also want a response on the issue of VTCs where I am interested as a representative of the youth. So this is a failed government and we won't allow this any further.

Mr. Speaker: Hon. Elvis, I have seen you have logged in, do you want also to speak? You will be allowed to speak but when you know you are speaking to a sick person take him so well that you know...

Hon. Rebah Wabwile: Thank you Mr. Speaker for giving me a chance to say something concerning issues of education. When we talk about institutions of planning, we do not have vacuums. First of all, I want to wish the Chief Officer - Education quick recovery because matters of health come first and then working comes later. But I am on HANSARD wondering why a whole department cannot be managed in the absence of the CECM and the absence of a Chief officer. I am very much aware that this is a department having directors of education and I am very sure that the scholarship issues, bursaries issues, Vocational Training Centres have not been managed by the CECM – Education. The work of the CECM - Education is issuing policies and not the real implementation of the work in the department so Mr. Speaker, in the absence of the CECM – Education, just like in any normal working school when the head teacher is away, the deputy is also away, the children learn and that is we are here demanding that the office of the department of education in the absence of the two should be summoned further to provide information required by this Honourable House. Thank you Mr. Speaker Sir.

Mr. Speaker: Hon. Wambulwa

Hon. Jack Wambulwa: Thank you, Mr. Speaker. I want to thank Hon. Rebah. As a House we are to oversight the executive and wherever we demand for information, it's because we want them to be accountable to Bungoma County.

I want to speak as the Chair – Budget. These are funds we allocated to the department of education and they are supposed to tell us how they are going to utilize, if indeed they don't want to come before this House and tell us how accountable are they.

On matters bursaries, in the last Supplementary Budget, we allocated 60 million towards scholarship for 3000 students and 60 million towards bursaries for form ones. As we are talking, no applications are being given to form ones, and nobody wants to account for that money. If they are using these funds as per the PFM Act, why is it that they don't want to come and tell us? I want to urge through your office, Honorable Speaker that let them appear before this House next week on Tuesday, so that they can tell us how they have utilized the scholarship and the bursaries that was allocated in the Supplementary budget.

What makes me worried about the Department of Education is that they are more concerned of bursaries and scholarship than any other developmental funding we have put a lot of money through ECDEs and VTCs they are not being worked on. As I am talking, not even BQs have been prepared, whereas we are coming to the end of the year.

How is this department going to be accountable if it cannot come before these members and explain how they have utilized these funds, how they intend to award the tenders before end of June, because I know this money if it rolls over then we would have lost. I know they are fearing for the simple reason that the money has been misappropriated and that's why they don't want to come before us.

I therefore support Honorable Rebah that they should come most likely by next Tuesday to explain how they have utilized the public fund.

Mr. Speaker: Hon. Tony

Hon. Tony Barasa: Thank you, Honorable Speaker. I want to echo my colleagues Honorable Chair - Budget and Vice Chair - Education that indeed what we were discussing here is a matter of County importance as it deals with the children and above all, the future of Bungoma County at large. The summonses were very specific that we need the CECM and the Chief Officer to appear before this House. We did not put an alternative and we are human beings. We didn't foresee that the Chief Officer may fall sick. I have gone through the response that you have just forwarded a few minutes ago and it says that in light of the above developments and given that the summons to appear were directed to individual officers, I wish to request and appeal that the CECM as earlier communicated is reconsidered in order for them to provide comprehensive report as required by the Assembly. Unless you are going to do another communication that will give alternative if the Chief Officer whom we have seen the attached documents that she is sick, I think the owner of the statement raised this issue, he was not witch hunting anybody but he wanted to get the clarity about the funds of our kids. If it's enough or if it's not enough how are

we going to assist this County Government of Bungoma, so that our kids are to be provided with this scholarship?

We want to get your guidance so that if the Chief Officer is not coming and we know for sure that if the director could have come here, we could have chased him away because he never took an oath here, he is not an accounting officer and he is not the custodian of everything. So I want to agree with my colleagues that they appear next week probably on Tuesday or Wednesday so that they shed light but if at all the CECM will not be there, the Chief Officers will maybe still be hospitalized, we cannot force circumstances. Will we amend the summons so that the director can appear or what can we do Honorable Speaker? I beg that you direct this House.

Mr. Speaker: Hon. Sospeter

Hon. Sospeter Nyongesa: Thank you Mr. Speaker for according me this chance also to give my concerns over the same subject. There are two pupils in my Ward, who were put on the list of the beneficiary of scholarship one of them had been in a school in Mombasa but I had to intervene was given a chance at St Mary's Kibabii, this boy to date has not reported to the school and has failed to get any direction from the County Education office. As Honorable members had put it earlier, we are not witch hunting anybody but what we want is information and clarity because we are the ones that approves budget for that activity. We are all human beings we may fall sick, it is unfortunate that Madam CECM went down with that infection which I don't know may be it has been explained in that letter. Our wish is she recovers as fast as possible but now what makes it look so funny, that very day when we were just discussing of inviting or summoning the education office to appear before this House, the information was already on social media and had been posted by their so called corridor communication officers, that they are not going to appear before this House for any explanation. As much as we could agree with Madam CECM that maybe she is sick but how come it was foretold in the first case that they will not appear, we are handling a very serious issue and if they don't appear before this House, they need to be oversighted but if they don't appear. I suggest that maybe we invite this other investigative agencies, that they get us the information if they have just refused to give us information.

Mr. Speaker: Hon. Elvis.

Hon. Elvis Abuka: Mr. Speaker, I just want to raise similar concerns that have been raised by members that the issues raised are serious and they require keen interest, but I also want to rectify my colleague Hon. Opwora who is not in the House, therefore I will not talk about it.

Mr. Speaker: Thank you, Hon. Elvis.

Hon. Jane Chebet: Mr. Speaker, thank you for according me this chance to make my comments on the above subject. When you compare the first House of 2013/2017 with the current one, I

think we have been let down by the Executive. The Honourable members have done their best, a challenge is that every time we address our people in the local villages is explaining the failures that the executives have done. But we will not tire, but still say it in black and white to the people that we did our best and we left the executive to do their part. In fact it is not us who are suffering; it is the executive that is punishing innocent citizens of Bungoma County. The legacy we are going to leave in this county are the gaps, failures and the weaknesses of the executive. We will do our best and for us here we will say God will do the rest.

Mr. Speaker: Thank you, Hon. Jane Chebet. Hon. James Mukhongo;

Hon. James Mukhongo: Thank you, Honourable Speaker for this chance. This matter came up I think the other week, and some of us were having suggestions that looking at the manner in which the executive are behaving, we just summon instead of inviting them to appear before this House. But time is not on our side, in my opinion. We don't need them again to appear before this House because the issues raised by Hon. Majimbo, in one way or another, he was trying to assist the executive to run this programme smoothly. They have now politicized it that because it is a member of Ford Kenya who raised the issue, wherever the Governor is moving, he is saying that Ford Kenya members are taking him to court, when he tries to do some projects of development in the County.

I don't know how many times Hon. Majimbo has tried to take this County Government to court, because that is what they have been saying and after I have mentioned the Ford Kenya issue, you have heard some two or three members laughing, those who are supporting the same government doing misdeeds to our people. I don't know why they are laughing and this is not a laughing matter. Some of us are very seriously pressing this issue and you can see Hon. Florence and Ngang'a are laughing.

(Loud consultations)

Mr. Speaker: Hon. Barasa Mukhongo, I have Hon. Florence Wekesa not Florence laughing, Hon. Florence.

Hon. Everton Nganga: *(Point of information)* Mr. Speaker, thank you for giving me a chance. I would like to inform members that this is a House that has to provide oversight to the executive. Honourable Members, it is not the first time Hon. Mukhongo is mentioning my name, all the time he is giving out his contributions; he is always mentioning my name. I don't know why?

Mr. Speaker: Hon. Nganga, what is the information? Be very clear here.

Hon. Everton Nganga: Honourable Speaker, I would like to inform the House that Hon. Mukhongo should desist from mentioning my name all the time.

Mr. Speaker: Honourable Nganga, for fairness I haven't recorded anything observed in that communication of yours, you are doing side shows please. Yes Hon. Tony, it is information, let's hear him first.

Hon. Tony Barasa: Honourable Speaker, allow me inform the House that my good friend Hon. Florence was mentioned by Hon. Mukhongo. You know why she was laughing; she was doing so because he was privileged to be have been served with water by a Ford Kenya guy. That was the only thing why she was laughing.

Mr. Speaker: Thank you, Hon. Tony. Hon. Barasa Mukhongo you proceed.

Hon. James Mukhongo: But these are not Ford Kenya members, we Ford Kenya members are unlucky, so let them laugh and let them continue tomorrow. We will also laugh in this same Honourable House.

(Loud consultations)

Mr. Speaker: Hon. Chebet, you are out of order. Hon. Barasa stick to your point please.

Hon. James Mukhongo: Honourable Speaker, always when I am on my feet, the House is live, you know why some of us are so much concerned is we want to assist the same government to correct some mistakes that they have been doing, and now that they have refused to come, my request is that we put the matter at rest *halafu tuachane na wao* so that...

Mr. Speaker: Hon. Barasa, you know the Standing Order No. 71; please if you are speaking in English then stick to it.

(Loud consultations)

Hon. Stephen speak from the dispatch. Hon. Opwora did you share what you ate with him? When you speak that way then I suspect what you have consumed before you came here.

Hon. Stephen Wamalwa: Thank you Honourable Speaker for according me this opportunity to make a contribution to this very important issue before the House. There was a time in history when the children of Israel wanted to have a king because they did not believe that God was actually their king. So they wanted to have a physical king...

Mr. Speaker: Honourable members, kindly consult in low tones.

Hon. Stephen Wamalwa: So the Israelites wanted to have a king, a king who is physical, whom they can see, touch, share with, laugh with and they can also cry with. Honourable Speaker I am not a pastor neither a Bishop but these are things that are written in the Holy book of Christians called the Bible. God gave the Israelites a king because they cried to have a king but there was a time when the grace of God went away from the king and when that time came, the king behaved

as if he was mad, and that is King Saul. He could not hear anything and he turned away from God. The king could not hear any good issue that came from God. I am not preaching.

In Public Service, there is no any office in Public Service that can be vacant and therefore I want to agree that the Chief Officer - Education comes from my Ward and indeed she is very sick. Having said that, she does not run that department alone, and we should not burden that lady that she is carrying all the donkey work. That office has officers in this County who should be responsible for the actions they take. The Chief Officer is sick, but when she fell sick, was there no officer who took charge of the office? Is everything standing because the Chief Officer is sick?

Nothing is happening in the Department of Education in this County because the Chief Officer is sick, we should be taken seriously. People should be competent to warrant them to be in those offices. I'm disappointed that the entire County is sick because the Chief Officer - Education is in hospital. For those who are Christians, like on 21st go and pray for our County. Our County is sick.

Hon. Henry Majimbo: Thank you, Mr. Speaker. I want to take this opportunity to express my sympathy and empathy to the Chief Officer, Madam Rose Nafula Situma for the admission and the discharge and for the sick leave that has been given to her. Madam Rose is sick, looking at these documents that have accompanied this memo from the County Secretary. That notwithstanding, Madam Rose is an individual, she is not an office. An office comprises of structures. Just like the way you were away, this House did not adjourn because you were away, but it continued with its business because your able deputy took up the duties and the powers and the responsibilities of the Speaker and conducted business in this House.

I believe these summons were issued under Article 195 of the Constitution as read together with section 18 of Powers and Privileges Act. In your ruling of that day, you cited Article 195 (1) and (2). My understanding of section 18 of Powers and Privileges Act, invitation and summoning of witnesses, which I believe is the section that was invoked together with Article 195 to summon both the Chief Officer and the CECM - Education and with your permission, I want to quote section 18 of the Powers and Privileges Act subsection 1, *'the County Assembly or its committee may invite or summon any person to appear before it for the purpose of giving evidence or providing any information, paper, book, record or document in possession or under the control of that person, and in this respect, a County Assembly or its committees shall have the same powers as the high Court as specified and Article 195 of the Constitution.*

I also believe that these sermons were duly personally served to the officers and as an accounting officer of any Government entity; you stand to answer for any personal liabilities. I'm looking at this letter from the County Secretary, and as much as he has indicated here and I want to agree with the first part that indeed the Chief Officer is sick but this last section on the second paragraph, that additionally, the CECM MS Betty Mayeku has had an emergency... Which is

this emergency more than honoring summons by the Assembly? Which are these emergencies? For my information, I have not seen her for quite some time. The last time, I heard about her was that she was wedding in Kisumu. Is this an emergency that comes with marriage? Was she going to be admitted to deliver or what is it? What is that emergency that can stop her to come and honor lawful summons? Simple understanding of summons is that you are supposed to produce this information. I want to submit that they must produce these names as stipulated under Article 195 as read together with section 18 of the Powers and Privileges Act. Let them submit the documents, let them come we put them on oath.

For your information and for the consumption of the members, there is something here that I would wish that members are also alive to; *Privileges of the witnesses that is section 20(3) that evidence given under oath or affirmation by a person before a County Assembly or a committee shall not be used against the person in a court of law and other place outside the County Assembly except in criminal proceedings where the person concerned stands trial on a charge of perjury or a charge contemplated under section 27 (1)(c).*

I now come to the word emergency; you know if it comes out that indeed it was not an emergency and this information is already on HANSARD, I think she stands also to answer further charges of lying unless she demonstrates that indeed it was an emergency but bringing here information that it was an emergency and you have not yet even tabled the evidence of the emergency, then I think these provisions of the law might take effect.

I plead that we give them another chance. Let's invoke the principle of fair administrative hearing. Let them not think that whoever generated this statement was being informed by malice or mischief. From where I sit and stand, I think I am above being malicious and mischievous. I am a Kenyan adult of sane mind who is driven by the fact that we need to put our House in order. That is the driving force behind me bringing this statement.

We are in the process of considering the Budget, minus the information from the executive. How do they want us to consider the budget because the information they would have tabled in this House under oaths could have formed the basis of our consideration of the budget especially in regard to the Department of Education because as I submitted last time, you were not there Mr. Speaker. I said we have ourselves to blame for some of the messes we are encountering and I was very categorical that some of our sectorial committees have been underperforming.

I have no fear of contradiction to say that; that some of our sector committees when you make recommendations on bursaries and scholarships, you must look at the Bungoma County Education Support Scheme Regulations. What does it say? Does it say we give the executive a blank cheque or we have to provide funds based on the provision of the regulations? As much as we want to blame the executive and I want to repeat what I said last week, we have to blame ourselves first. What has the Education committee been doing? Has it been going to bed with the executive to bring us to this mess when they first heard that the Chief executive of this County

had made a pronouncement that it is going to award 7,000, what did they do? If we had not brought this statement, had the Education committee been dissolved? From where I sit, it has not been dissolved. Let us be pragmatic in conducting our business.

Mr. Speaker: Hon. Majimbo, sometimes you can flog a dead horse which is very dangerous.

Hon. Henry Majimbo: I am not addressing the Vice Chair, I am addressing the committee and we must face the truth for we to correct this mess, we must bite the bullet. Let us not burry our heads in the sand and pretend that we have not been on the wrong. It is we to blame. The regulations are very clear; they have given us instructions on how the monies are supposed to be appropriated. If I ask any member of the Education committee here, what does regulation 7 of the Bungoma County Education Scheme say? None of the members will even tell us what it says and it is the one that is supposed to give us guidance on how we are supposed ...

There is another regulation you brought here Honorable members which you have even forgotten. When I was doing the research, I discovered that there is a regulation for 2019 which now mixed up things further.

Honorable members, let us bite the bullet; we have an opportunity to correct this mess. Let us correct the mess. We are servants of God. God has given us an opportunity to serve him through his people. The people have given us the mandate, they have trust in us. Do not be scared when you hear the executive saying those nasty things. The other time I said I am like an antelope which has lived many years. You know an antelope that has lived many years has evaded so many *misukunis* so I also want you to evade those *misukunis* because all of us hide our heads. We do not want to say it. Who is going to correct this mess? I want to thank the members who have spoken and I want to call upon them to rise up to the occasion.

We are the people's representatives, pursuant to the provision of article 1, let us serve the people diligently, faithfully, God will reward you. This element of coming here, you listen to what Majimbo has said and you go and call and say this is what Majimbo has said, on you. I do not care! I have the right to say...

Mr. Speaker: Hon. Opwora, I will send you out!

Hon. Henry Majimbo: I have the constitutional right to say what I am saying as long as it is not prejudicial or casting aspersions on anyone. I rest my case.

(Applause)

Mr. Speaker: Thank you. Hon. Opwora in the near future, although the term of the House is going to get to an end soon, I think we need to send you away because your behavior is unbecoming. Hon. Opwora, I will not allow you to speak after Hon. Majimbo has spoken. Resume your seat!

Honourable members, the summons were issued by my office to the concerned officers individually and not by the office of the clerk. The summons had been issued under article 185(1) and article 195(1 and 2) which were properly invoked and I will want to go to article 195 (1 and 2) and be able to have them be on HANSARD.

Article 195(1); *The County Assembly or any of its committees has powers to summon any person to appear before it for the purposes of giving evidence or providing information.*

2. For the purposes of clause 1, *an Assembly has the same powers of the high court to enforce the attendance of the witness and examining them on oath, affirmation or otherwise and compel the production of the documents and issue a commission or request to examine the witnesses as requested.*

Honourable members, I have looked at the response by the County Secretary, Bungoma County. Honourable members, the County Secretary has no powers to purport to seek or direct the sittings of this House... The earlier request to appear before this House on 2nd June, 2022 by the CEC and Chief Officers was declined and equally here, I decline the request by the County Secretary to request for further extension.

Honorable members, I have looked at the medical documents availed to my office. I wish the said officers quick recovery. One of the documents is very clear that her sick leave is for 5 days commencing on 16th May 2022, computation gives up to 22nd of this month. That means she is available to this House after 22nd for giving evidence. On that basis, I do re issue a fresh summon to the said officers to appear on 24th of May, 2022. That is basically for the Chief Officer, Education.

The evidence issued to us here for the second officer CEC is not even tenable. There is no evidence of her emergency and to us it is basically avoiding to come before this House accordingly. Failure to appear on 24th May, 2022 they will have sanctions issued as per Article 195 and members, I may issue this sanctions now but when you will be in the next Assembly taking office in September, those sanctions are still applicable to you. I may have gone away but come September, November onwards my sanctions to the said officer will be in force. When I punish you as the judge of the high court and I die tomorrow, that punishment is applicable to you even if I am gone. When I punish them next week and they fail to come, even if I am not in this office after that time, they will still have that punishment in place. I think the advisors be advised accordingly

(Applause)

Honourable members, under motions there was no item. That being our last item, members we will adjourn our sitting and resume our sitting on 24th May, 2022 in our 2:30 p.m. session. We adjourn accordingly.

(House adjourns)