

**COUNTY GOVERNMENT OF BUNGOMA**

**COUNTY ASSEMBLY OF BUNGOMA**

**COUNTY ASSEMBLY DEBATES**

**THE DAILY HANSARD**

**THURSDAY 8<sup>TH</sup> JUNE, 2023**

**Afternoon Sitting**

**3<sup>rd</sup> County Assembly**

**2<sup>nd</sup> Session**

# COUNTY ASSEMBLY OF BUNGOMA

## HANSARD OFFICIAL REPORT

THURSDAY 8<sup>TH</sup> JUNE, 2023

The House met at 2:30 p.m.

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

### PRAYER

### COMMUNICATION FROM THE CHAIR

#### 1. APPOINTMENT OF MUNICIPAL BOARD MEMBERS

Honourable Members I do have communication from the County Government of Bungoma Office of the Governor to the Clerk of the County Assembly of Bungoma appointment of Municipal Board Members.

I have received the communication from the CECM for Lands, Urban Physical Planning and Housing and Municipalities over the above matter as per the section 9, (c) and (d) of the Urban area and the City (Amendment) Act, 2019. Kindly Honourable Members take up your seats.

I have appointed and therefore forward the following individuals as Members of the Boards respectively for your necessary action as provided under Section 13 and 14 of the Urban Areas and Cities Act, number 13 of 2019.

#### KIMILILI MUNICIPALITY

NAME	GENDER	NAME OF INSTITUTION	NOMINATING INSTITUTION
Hon. Moses Wanyonyi Opicho	Male	Association representing private sector in the area ,	Chamber of Commerce
Mrs. Violet Nafula Barasa	Female	Cluster representing registered association of informal sector,	Jua Kali

## BUNGOMA MUNICIPALITY

NAME	GENDER	NAME OF INSTITUTION	NOMINATING INSTITUTION
Humphrey Wesonga,	Male	Umbrella Board Representing Professional Associations in the area	ABSEA
Mr. Philip Wekesa,	Male	Cluster representing registered association	Jua Kali of informal sector

Attached please find copies of relevant documents for your perusal and use. His Excellency, Rt. Honourable Kenneth Makelo Lusaka, EGH; Governor, Bungoma County

Honourable Members, the said nominees for municipalities is basically a Department under Lands, Urban, Physical Planning, Housing and Municipalities. I proceed to commit the said names to the Committee on Lands, Physical Planning, Housing and Municipalities for processing and reporting back to the House as soon as possible.

### PAPERS

**Hon. Joseph Nyongesa** (*Leader of Majority*): Thank you Speaker, allow me table the following reports.

1. The Report of The Auditor General Receiver of Revenue Statements- County Government of Bungoma for the year ended 30<sup>th</sup> June, 2022.
2. Report of the Auditor General on the Bungoma County Persons with Disability Empowerment Fund for the year ended 30<sup>th</sup> June, 2022.

**Mr. Speaker:** Honourable Members the two papers that have been laid on the Floor of the House that is a Report of the Auditor general on receiver of revenue statement for the County Government of Bungoma for the year ending 30<sup>th</sup> of June, 2022 and equally a report of the Auditor General on the Bungoma County persons with Disability Empowerment Fund for the

year ending 30<sup>th</sup> of June, 2022. They are jointly committed to Public Accounts and Investments Committee for processing and reporting back to the House accordingly.

## **STATEMENTS**

1. WEEKLY PROGRAM OF THE BUSINESS OF THE COUNTY ASSEMBLY FOR THE WEEK COMMENCING TUESDAY 13<sup>TH</sup> TO THURSDAY 15<sup>TH</sup> JUNE, 2023

**Mr. Speaker:** Honourable Members, I think it is a Member of HBC to give us the statement. Hon. Christine?

**Hon. Christine Mukhongo:** Thank you Mr. Speaker, the weekly program of the Business of the County Assembly for the week commencing Tuesday 13<sup>th</sup> to Thursday 15<sup>th</sup> June, 2023 pursuant to Standing Order No. 42.

**Tuesday 13<sup>th</sup> June 2023 at 2:30 p.m.**

We have;

Administration of Oath

Communications from the Chair

Messages

Petitions

Papers

1. Report of the Auditor General on the financial statements of Nzoia Water services Company Limited for the year ended 30<sup>th</sup> June, 2019.
2. Report of Audit General on the financial statement of Nzoia Water Services Company Limited for the year ended 30<sup>th</sup> June, 2020.
3. Report of Auditor General on the financial statement of Nzoia Water Services Company Limited for the year ended 30<sup>th</sup> June, 2021.
4. Report of Auditor General on the Bungoma County Disaster Management and Emergency Fund for the year ended 30<sup>th</sup> June, 2022.
5. Report by the Sectorial Committee on the Health services in Bungoma County Government nine months financial statements for the year 2022/ 2023 in respect to the departments of Health and Sanitation.

Notices of Motion

That this House adopts the Report by the Sectorial Committee on Health Services on the Bungoma County Government nine months financial statement for the year 2022/2023 in respect of the department of Health and Sanitation.

#### Question and Statements

1. It is notified that pursuant to Standing Order No. 55 the following County Executive Committee Members will respond to the questions on Tuesday afternoon 13<sup>th</sup> June, 2023.  
County Executive Committee Member for Agriculture, Livestock, Fisheries, Irrigation and Cooperative department  
Member of Ndivisi Ward, Hon. Alfred Muhanya MCA in respect to the environmental and Health menace being experienced by the residents of Ndivisi Ward living close to Makemo dam. The CECM to respond to the following...

**Mr. Speaker:** Hon. Christine you can leave out the content of the statement because it is... Just give the brief then you move on. You can now go to Item Number two.

**Hon. Christine Mukhongo:** Okay item No. 2, the County Executive Committee Member for Education and Vocational Training.

#### Question:

Member of County Assembly, Hon. John Kennedy Wanyama- MCA in relation to Muyayi Vocational Training Centre; The CECM to respond to the following: there are lined up four questions.

3. Member of Tongaren Ward Hon. Johnston Ipara, MCA in relation to lack of clear information as far as the current status of Tongaren and Milimani VTCs are concerned. The CECM will respond to the following five questions.

4. The County Executive Committee Member for Roads, Transport, Infrastructure and Public works- the Member for Tongaren Ward Hon. Johnston Ipara in relation to scanty information on the Roads done in financial years 2019/ 2020, 2020/2021 and 2021/2022. The CECM will respond to the following questions as lined up.

**Wednesday 14<sup>th</sup> June, 2023 at 9:30 a.m.**

We have administration of Oath

Communication from the Chair

Messages

Petitions and then we have

Papers as listed, we have,

We have papers, two of them;

1. Report on Bungoma County Participatory climate risk assessment.
2. Report on Bungoma County Climate change Action plan.

Notices of Motion

Questions and Statements

It is notified that the pursuant to Standing Order number 49, the following Members will ask questions for reply before the House.

1. Member for Kaptama Ward Hon. Francis Chemion, MCA to seek a response from the CECM, Gender, Culture, Youth and Sports in relation to the construction of the High Altitude Training Centre Administration Block and Hostels in Kaptama Ward. The CECM to respond to the following ten questions as lined up.
2. We have Member of Kabula Ward, Hon. Wangila to seek a response from the CECM Roads, Transport, Infrastructure and Public Works in reference to the rehabilitation of road from Kabula Catholic Church to Naburerea done in the financial year 2021/22. The CECM to respond to the six questions as lined up.
3. Member for **Ndalu/Tabani Ward**, Hon. Timothy Chikati to seek response from the CECM Public Administration and ICT in relation to the lack of clear information on the contracted staff whose term is pegged on the current Governor's term. The CECM to respond to the six questions as lined up.

Motions

1. That this House adopts the Report by Public Account and Investment Committee on the Report of the Auditor General on the financial statement of Bungoma County on Disaster and Emergency Funds for the period ended 30<sup>th</sup> June, 2021, laid on the table of the House on Thursday 5<sup>th</sup> April, 2023.

**Wednesday 14<sup>th</sup> June 2023 at 2:30 p.m**

1. Administration of oath
2. Communication from the chair
3. Messages
4. Petitions
5. Papers as listed

6. Notices
7. Questions/Statements
8. Motions

Report by the Sectoral Committee on Health Services on the Bungoma County Government nine months financial statements for the year 2022/23 in respect to the department of Health and Sanitation

THAT this House adopts a report by the Sectoral Committee on Health Services on the Bungoma County Government nine months financial statement for the year 2022/23 in respect of the department of Health and Sanitation

9. Papers

Reports by the Sectoral Committee on Youth and Sports on the Bungoma County Government nine months financial statement for the year 2022/23 in the respect to the department of Youths and Sports

10. Notices and motions

THAT this House adopts a report by the Sectoral committee on Youth and Sports by the Bungoma County Government nine months financial statement for the year 2022/23 in respect to the department of Youths and Sports

**Thursday 15<sup>th</sup> June 2023 at 2:30 p.m.**

1. Administration of oath
2. Communication from the chair
3. Messages
4. Petitions
5. Papers as listed
6. Notices
7. Questions and statements
8. Motions

Report by Implementation committee on Implementation status of adopted Public Accounts Committee on the Auditor General's report for the period ending 30<sup>th</sup> June, 2020.

THAT this House adopts the report by the Implementation Committee on implementation status of adopted Public Accounts committee report on Auditor General's report for the period ending 30<sup>th</sup> June, 2022 laid on the table of the House on Thursday 20<sup>th</sup> April, 2023.

9. Papers

1. Report by the Sectoral Committee on Lands, Urban Physical Planning and Housing on Bungoma County Government nine months financial statements for the financial year 2022/23 in respect to the department of Lands, Urban Physical Planning and Housing.

2. Report by the Sectoral Committee on Tourism, Environment, Water and Natural Resources on the Bungoma County Government nine months financial statements for the financial year 2022/23 in respect to the department of Tourism, Environment, Water and Natural Resources.

#### 10. Notices of motion

1. THAT this House adopts the report by the Sectoral Committee on Lands, Urban, Physical Planning and Housing on the Bungoma County Government nine months financial statements for the financial year 2022/23 in respect to the department of Lands, Urban Physical Planning and Housing.

2. THAT this House adopts the report by the Sectoral Committee on Tourism, Environment, Water and Natural Resources on the Bungoma County Government nine months financial statements for the Financial year 2022/23 in respect to the department of Tourism, Environment, Water and Natural Resources.

#### Questions and statements

It is notified that pursuant to Standing Order 47(2) (a) a Member of the House Business Committee shall inform the House of the weekly business of the House.

Member of the House Business Committee pursuant to the provision of Standing Order 47(2)(a); a statement informing the County Assembly of the weekly business before the House from Tuesday 20<sup>th</sup> to Thursday 22<sup>nd</sup> June, 2023

**Mr. Speaker:** Thank you Hon. Christine for giving us the House order of business...Hon. Christine you laid on the floor of the House, don't take it away again, please.

Honourable Members that is the Order of business for next weeks' sittings of the House... Going forward I will ask Members that as you go away, look at Standing Order number 47(1) (2) (a), (b), (c), (d) and equally 49. When you expect feedback from the Chairman of Agriculture directly without going to the CECM, it is provided under Order 47, but when you want the CECM to give us feedback here on the floor of the House, it is basically under Order 49. So when you see us writing statements and questions, questions are from you to the CECM, but from the Chairman of Agriculture here, it will be basically a statement directly. Going forward, when you go to my people in the Legal department, they prepare for you a question and not a statement *per se*. Let us proceed.

### STATEMENT

**Hon. Aggrey Mulongo:** Thank you Mr. Speaker Sir, I am standing in for Hon. Timothy Chikati to seek for a statement on Tabani Vocational Training Centre in Ndalul/ Tabani Ward



Mr. Speaker Sir, I wish to request for a statement under Standing Order 47(2) (c) from the Chairperson Education and Vocational Training Committee in respect of Tabani Vocational Training Centre within Ndalu/Tabani Ward.

In the statement, let the Chairperson provide a response as to why;

1. Tabani Vocational Training Centre stalled and is not in operation even after the contractor was awarded the tender for construction.
2. Provide the name of the contractor who was awarded the tender for the construction of the said Vocational Training Centre
3. Provide the procurement documents; tender advert, quotation or tender opening and evaluation reports, contract agreement, opinion of the procurement officer in accordance with the Public Procurement and Disposal Act, 2015 for the construction of the aforementioned Vocational Training Centre.
4. Provide the procurement plan encompassing the said construction in accordance with section 44 (2) (c) of the Public Procurement and Disposal Act, 2015.
5. State whether there was a budgetary provision for the said construction in accordance with section 44(2) (a) of Public Procurement and Disposal Act, 2015; and if yes, state how much.
6. Provide information and or a conclusive report as to whether the said Vocational Training Centre was handed over by the contractor to the County Government, how much was paid and how much is the balance.
7. If the completion and handover has not been done, what measures are being taken to ensure that the Vocation and Training Centre is completed and operational

Thank you, Mr. Speaker Sir.

**Mr. Speaker:** Honourable Chairperson of the concerned committee? Yes Hon. Jacob. I am wondering why I am not seeing your request.

**Hon. Jacob Psero:** This man displaced me.

**Mr. Speaker:** To that Honourable Member that is interfering with what you are doing, we will take action next time he does that. Proceed please.

**Hon. Jacob Psero:** Thank you Mr. Speaker; on behalf of the Chair Hon. Otsiula, I am requesting for 14 days for us to get the appropriate answer.

**Mr. Speaker:** Hon. Psero that is 14 days from today 8<sup>th</sup> and it will take us up to 22<sup>nd</sup>, but we did agree in our HBC that all our statements will be coming on Tuesdays, so we will take it to the 27<sup>th</sup> of June, 2023 in our 2:30 p.m. session. So you have more than sufficient time to prepare through your CECM for Education and Vocational Training.

## MOTION

1. REPORT BY THE COMMITTEE OF DELEGATED COUNTY LEGISLATION ON FAMILIARIZATION WITH THE PROCESSING OF STATUTORY INSTRUMENTS LAID ON THE TABLE OF THE HOUSE ON 26<sup>TH</sup> APRIL 2023

**Mr. Speaker:** Hon. Martin Chemorion, you have the honor today of moving the motion.

**Hon. Martin Chemorion:** Thank you Mr. Speaker for giving me this chance.

May I move a motion for adoption of the Committee of Delegated County Legislation on familiarization on processing of Statutory Instruments?

There is table of contents

## Chapter One

### Executive Summary

The objectives of the Committee in familiarizing themselves with the process of processing Statutory Instrument were:

- I. To gain an insight on the role and operations of the Committee on County Delegated Legislation.
- II. To study and understand the procedures and operationalization of subsidiary legislation.
- III. To understand the process of scrutiny of the Statutory Instruments.
- IV. To understand the mandate and scope of the Committee on County Delegated Legislation and equipping themselves with necessary skills.

### ACKNOWLEDGEMENT

The Committee is alive to the immense contributions and support accorded to it by the Members of the County Assembly through their concerns and contributions, this cannot be over looked. On behalf of the Committee Members, I wish to extend our sincere appreciation for the support accorded to the committee by your Office and the Office of the Clerk to ensure the Committee delivers on its mandate

### COMMITTEE MEMBERS

The Committee Membership is as follows;

1.	Hon. Linda Kharakha	Wekesa	Chairperson
2.	Hon Ndasaba	Dorcas	Vice chairperson
	Hon. Aggrey	Mulongo	Member
3.	Hon. Johnston	Ipara	Member
4.	Hon. Martin	Chemorion	Member
5.	Hon. Angeline	Rugut	Member
6.	Hon. Aggrey	Bosire	Member

7.	Hon. Florence Juma	Member
8.	Hon. Jeremiah Kuloba	Member
9.	Hon. Wafula Waiti	Member
	Hon. Godfrey Wanyama	Member

**Mr. Speaker Sir,**

I would also like to sincerely thank the Members of the Committee on Delegated County Legislation for the commitment exhibited during the familiarization and processing of Statutory Instrument Act and compiling of this report. I also appreciate the work of our Secretariat who worked tirelessly to compile this report.

Finally, Mr. Speaker Sir, it is now my pleasure, on behalf of the Committee to present this report to the House for adoption.

It is signed by Hon. Linda Kharakha Wekesa- the Chairperson, Committee on Delegated County Legislation.

## CHAPTER TWO

### INTRODUCTION

Chapter eight of the Constitution of Kenya establishes the Legislature as the sole law-making body in the Republic. Article 94(5) precludes all other persons or bodies from making provisions having the force of law in Kenya except under authority conferred by the Constitution or by legislation passed by the Legislature.

In certain cases, the Assembly may pass an Act without making provisions relating to the nitty-gritty matters of implementation but instead leave it to the implementing body to propose provisions with force of law for the better implementation of the Act or carrying out of the provisions in the Act. To this end, Assembly, through an Act passed by it, may delegate its legislative authority to certain Government agencies for purposes of coming up with subsidiary legislation.

It is worth noting that the exercise of Delegated County Legislative authority by government bodies other than Assembly is usually under strict supervision by Assembly, which donated the power to ensure that the authority to whom the power is delegated acts within the authority delegated. The County Assembly scrutinizes all Statutory Instruments made pursuant to any legislative powers delegated by the Legislature as against the Constitution and the limits of the powers delegated. Scrutiny of Statutory Instruments is guided by the provisions of the Statutory Instruments Act, 2013.

### PROCESSING OF STATUTORY INSTRUMENTS

## LEGISLATIVE FRAMEWORK GOVERNING STATUTORY INSTRUMENTS

### a) Constitution

As the supreme law of the Republic, the Constitution binds all persons and state organs at both levels of government. Any law including customary law which is inconsistent with the constitution is void to the extent of the inconsistency and any act or omission in contravention of the Constitution is invalid.

The Constitution creates state organs and other public entities dedicated to the legislative process. Everybody is obligated to respect, uphold and defend the Constitution. In upholding and respecting the aforementioned dictates of the Constitution, the Executives and Legislatures at both levels of government and any other person or entity engaged in legislative process must ensure that the instrument in question (whether a policy, Bill, order, or a set of rules or regulations):-

- (i) Conforms to the letter and spirit of the Constitution and promotes its purposive interpretation.
- (ii) Respects the functional demarcation in the fourth schedule to the Constitution as both levels of government are required to deal with matters within their respective mandates.
- (iii) Upholds the values and principles of the Constitution set out in Article 10;
- (iv) Respects the legislative competencies.
- (v) Respects and upholds the Bill of rights and fundamental freedoms enshrined in chapter four of the Constitution. The state must not limit any fundamental freedom or right protected by the Constitution unless in accordance with the conditions stated in Article 24 of the Constitution. Specifically, the limitation must be reasonable and justifiable in an open and democratic society.
- (vi) The Constitution obligates the state and all state organs to ensure adequate public participation on all public policies, legislation or any decision that is likely to impact on the people of Kenya.

Article 196(1) (b) of the Constitution of Kenya provides that a County Assembly shall facilitate public participation and involvement in the legislative and other business of the assembly and its committees.

Similarly, Section 87 of the County Governments Act, 2012 sets out the principles of citizen participation. Section 87(b) of the same provides that there shall be reasonable access to the process of formulating and implementing policies and regulations including the approval of development proposals, projects and budgets, the granting of permits and the establishment of specific performance standards.

### b) Legislative Authority

The Constitution recognizes the Parliament at the national level and County Assemblies at the county level as organs with powers to make provisions with the force of law in the Republic.

Article 185 of the Constitution of Kenya 2010 vests legislative authority to County Assemblies thus:-

(1) The legislative authority of a County Assembly is vested in and exercised by its County Assembly.

(2) A County Assembly may make any laws that are necessary for or incidental to, the effective performance of the functions and exercise of the powers of the County Government under the fourth schedule.

(3) A County Assembly, while respecting the principle of the separation of powers, may exercise oversight over the County Executive Committee and any other County Executive organs.

Thus, no person or body can make provision with the force of law except under the authority of the Constitution or legislation.

The Constitution further recognizes that this legislative authority may be delegated through the Constitution or legislation, to other entities or persons.

Article 94(5) of the Constitution precludes all other persons or bodies other than Parliament from making provisions having the force of law in Kenya except under the authority conferred by the Constitution or delegated by a legislature through a statute.

Where such delegation has been conferred; Article 94(6) of the Constitution requires that an Act of Parliament or legislation of a County that confers on any State organ, state officer or person the authority to make a provision having the force of law shall expressly specify:

(a) The purpose and the objective for which the authority is conferred.

(b) The limits of the authority.

(c) The nature and scope of the law that may be made; and

(d) The principles and standards applicable to the law made under the authority.

The Parliament or any other legislature may therefore delegate its legislative power to other persons and bodies.

This delegated legislation is also referred to as subsidiary or subordinate legislation.

Subsidiary legislations made by Parliament or legislature are commonly known as statutory instruments.

### c) Statutory Instruments

Statutory Instruments (SI) is a form of legislation which allows the provisions of an Act of Parliament to be brought into force or altered without Parliament having to pass a new Act. They are also referred to as secondary, delegated, subsidiary or subordinate legislation.

Section 3 of Interpretation and General Provisions Act Cap 2 Laws of Kenya defines subsidiary legislation to mean any legislative provision (including transfer or delegation of powers or duties) made in exercise of a power in that behalf conferred by a written law, by way of by-law, order, proclamation, regulation, rule of court or other instrument.

The manner, procedure and criteria for considering Statutory Instruments is detailed in the Statutory Instruments Act and the Standing Orders of the County Assembly of Bungoma: The long title of the Act reads as follows “An Act of Parliament to make provision in regard to the construction, application and interpretation of written law, to make certain general provisions with regard to such law and for other like purposes”.

Section 2 of Statutory Instruments Act 2013, defines statutory instrument as any rule, order, regulation, direction, form, tariff of costs or fees, letters patent, commission, warrant, proclamation, by-law, resolution, guideline or other statutory instrument issued, made or established in the execution of a power conferred by or under an Act of Parliament under which that statutory instrument or subsidiary legislation is expressly authorized to be issued.

The object and purpose of the Act is provided for under Section 4 of the Act

The Committee mandated to scrutinize the delegated legislation at the County Assembly and Parliament is the Committee on Delegated Legislation.

#### 2.3 An overview of the origin and development of the sessional Committee on Delegated Legislation: Why was it necessary? The case of the Kenyan Parliament

The Committee on Delegated Legislation in Kenya emanated from personal frustration by Hon. Amina Abdalla, a Member of the 9<sup>th</sup> Parliament. There were unfulfilled government promises which put the legislative authority of Parliament in jeopardy. The frustration about one of the legislations which was developed under the Environmental Management and Coordination Act required an environmental impact assessment for every construction of a particular density. This prompted Hon. Amina Abdalla to initiate the process of forming a Committee on Delegated legislation. She drafted a motion on the establishment of the Committee on Delegated Legislation which read as follows:

“THAT, in view of the fact that subsidiary legislation should be consistent with current statutes; aware that certain authorities have failed to gazette mandatory rules and regulations as required by the parent Act; concerned that some of the delegated authorities have been abused by the

concerned authorities by gazetting regulations that are ultra vires to the parent law; this House resolves to establish a Delegated Legislation Committee to scrutinize all subsidiary legislation”

The Motion on establishing the Committee on Delegated County Legislation was debated and passed by the House on 21<sup>st</sup> April, 2006.

#### Reasons for delegation

- The area to be legislated on may be technically complex, making it difficult to set out all the permutations in the original statute.
- The executive may wish to implement the legislation at a later stage or to alter its details.
- Parliamentary law making process is slow and unresponsive to urgent needs. In addition, it lacks the requisite flexibility.

#### 2.4 National Legislation to apply at the County

Section 8(2) of the County Governments Act provides that if a County Assembly fails to enact any particular legislation required to give further effect to any provision of this Act, a corresponding national legislation, if any, shall with necessary modifications apply to the matter in question until the County Assembly enacts the required legislation.

Thus, in the absence of the County Statutory Instruments Act, the national legislation; The Statutory Instruments Act, 2013 shall apply.

### CHAPTER THREE

#### 3.1 Pre-requisites for preparation of a Statutory Instrument

Statutory Instrument must conform to-

##### 1. The Constitution

The regulation making authority must ensure that the provisions in the Statutory Instrument are in tandem with the principles, values and general spirit of the Constitution. In particular, they should not in any way reduce the rights of an individual or those who will be affected by them.

##### 2. The Interpretation and General Provisions Act

Statutory instruments must conform to the provisions of the Interpretation and General Provisions Act in regard to construction, application and interpretation. The Act provides, among other things, the following:

##### a) Effect of repeal of Act on subsidiary legislation

Where an Act or part of an Act is repealed, the subsidiary legislation issued under or made under the law, unless a contrary intention appears, will remain in force, so far as it is not inconsistent with the repealing Act; or until it has been revoked or repealed by subsidiary legislation issued or made under the provisions of that law.

b) Retrospective operation of subsidiary legislation

Subsidiary legislation may be made to operate retrospectively to any date, not being a date earlier than the commencement of the written law under which the subsidiary legislation is made, but no person shall be made or become liable to any penalty whatsoever in respect of an act committed or of the failure to do anything before the day on which that subsidiary legislation is published in the Gazette.

c) Construction of subsidiary legislation

Where an Act confers power to make subsidiary legislation, expressions used in the subsidiary legislation, except where a contrary intention appears, have the same respective meanings as in the Act conferring the power, and a reference in the subsidiary legislation to —the Act means the Act conferring the power to make the subsidiary legislation.

d) General provisions with respect to power to make subsidiary legislation

Where an Act confers power on an authority to make subsidiary legislation, the following provisions shall, unless a contrary intention appears, have effect with reference to the making of the subsidiary legislation—

(i) When subsidiary legislation purports to be made or issued in exercise of a particular power or powers, it shall be deemed also to be made or issued in exercise of all other enabling powers;

(ii) No subsidiary legislation shall be inconsistent with the provisions of an Act;

(iii) Subsidiary legislation may at any time be amended by the same authority and in the same manner by and in which it was made; but where the authority has been replaced wholly or in part by another authority, the power conferred upon the original authority may be exercised by the replacing authority;

(iv) Where an Act confers power on an authority to make subsidiary legislation for a general purpose and also for special purposes incidental thereto the enumeration of the special purposes are not deemed to derogate from the generality of the powers conferred with reference to the general purpose;

(v) There may be annexed to the breach of subsidiary legislation a penalty, not exceeding Ksh. 6,000 or such term of imprisonment not exceeding six (6) months, or both, which the authority making the subsidiary legislation may think fit.



e) Acts done under subsidiary legislation deemed done under Act which authorizes it.

An act shall be deemed to be done under an Act or by virtue of the powers conferred by an Act or in pursuance or execution of the powers of or under the authority of an Act, if it is done under or by virtue of or in pursuance of subsidiary legislation made under a power contained in that Act.

### 3. The parent Act.

In making Statutory Instrument the regulation making bodies must do so in conformity with the parent Act delegating that authority.

Particular attention must be paid to the provision delegating legislative powers including adherence to the stipulated timelines so as to ensure that a Statutory Instrument is made without unreasonable delay.

Where a Statutory Instrument requires pre-publication scrutiny by National Assembly, the regulation making body must cause the instrument to be tabled in the House before publication. For instance, Section 17 of the Election Laws (Amendment) Act, 2016, which required the independent Electoral and Boundaries Commission to table drafts of all election related regulations to the National Assembly for approval.

The principle is that the functionary on whom a power has been conferred should him/herself exercise the power because he or she is the person accountable to the legislature that confers that power.

The proclamations, Regulations and other forms of delegated legislations enacted by members of the Executive or statutory bodies by virtue of, or under powers delegated to them by the legislature concerned are subject to the enabling/empowering legislation in terms of which they are enacted and must always conform with the enabling legislation. The rule number one in the making of delegated legislation is that it must be enacted by virtue of or under some or other legislative provision.

Two maxims developed in this respect; *delegate potestas non potest delegari*- (a delegated authority cannot be again delegated); and *delegates non- potest delegare*-a delegate or deputy cannot appoint another.

### 3.2 Conformity with the Statutory Instruments Act, 2013.

The key requirements of this Act are:

- Consultation with stakeholders

Section 5 of the Act requires a Regulatory making body to carry out consultation with persons who are likely to be affected by a proposed instrument and indicate in detail in the explanatory memorandum attached to the Statutory Instrument that the consultations were carried out including the outcome of such consultations.

- Preparation of a regulatory impact statement (Sections 6, 7 and 8)

The Statutory Instrument Act provides for the need for the Regulation making authority to provide an impact statement if a proposed Statutory Instrument is likely to impose significant costs on the community or a part of the community. The Regulatory making authority must provide a certificate in writing confirming that the guidelines have been complied with and that the statement adequately assesses the likely impact of the proposed instrument. A copy of the Regulatory impact statement and the compliance certificate must be tabled in Parliament together with the instrument.

The Act exempts submission of a Regulatory impact statement where an instrument—

(a) Deals with a matter that is not of a legislative character, including, for example, a matter of machinery, administrative, drafting or formal nature;

(b) Deals with a matter that does not operate to the disadvantage of any person (other than a government entity) by—

(i) Decreasing the person's rights; or

(ii) Imposing liabilities on the person;

(c) Deals with an amendment of Statutory Instrument to take account of the prevailing Kenyan legislative drafting practice;

(d) Deals with the commencement of an Act or subordinate legislation or a provision of an Act or Statutory Instrument;

(e) deals with an amendment of Statutory Instrument that does not fundamentally affect the legislation's application or operation;

(f) Deals with a matter of a savings or transitional character;

(g) Deals with a matter arising under legislation that is substantially uniform or

(h) is complementary with legislation of the National Government or any County;

(i) Deals with a matter advance notice of which would enable someone to gain unfair advantage;

(j) Deals with an amendment of a fee, charge or tax consistent with announced government policy.

### 3.3 Stages in the making of a Statutory Instrument

#### a) Pre-publication scrutiny:

This stage involves consultation before making Statutory Instruments. Before a regulation making authority makes Statutory Instrument, and in particular where the proposed instrument is likely to have a direct, or substantial indirect effect on business or restricts completion, the Regulation making authority shall make appropriate consultation with persons who are likely to be affected by the proposed instrument.

In determining whether any consultation that was undertaken is appropriate, the regulation making authority shall have regard to any relevant matter including the extent to which the consultation drew on the knowledge of persons having expertise in fields relevant to the proposed statutory instrument. Ensures that persons likely to be affected by the proposed Statutory Instrument had an adequate opportunity to comment on its proposed content.

#### b) Publication

Every Statutory Instrument should be published prior to its tabling in the respective legislative body.

### 3.4 Demystifying the Statutory Instruments Act, 2013

The consideration of Statutory Instruments by the House is governed by the Statutory Instruments Act, 2013 and Standing Order no 214 of the County Assembly of Bungoma.

The Statutory Instruments Act, 2013 came into operation on the 25th of January 2013. Before the coming into force of this Act, the laying of Statutory Instruments before the House was previously governed by Section 34 of the Interpretation and General Provisions Act (Cap 2 of the Laws of Kenya) but this section was repealed by Section 27 of the Statutory Instruments Act, 2013.

The new procedure for consideration of Statutory Instruments by the House is now laid out in Part IV of the Statutory Instruments Act, 2013.

### 3.5 Procedure for consideration of Statutory Instruments by the House.

The procedure is set out in Part IV of the Statutory Instruments Act, 2013.

#### a) Laying and tabling of statutory instruments before the House

Under Section 11 of the Act, every Cabinet Secretary responsible for a Regulation making authority shall within seven (7) sitting days after publication of a Statutory Instrument, ensure that a copy of the Statutory Instrument is transmitted to the Clerk for tabling before the House together with an explanatory memorandum in the manner prescribed in the schedule.

Upon receipt of the Statutory Instrument, the Clerk shall enter this Instrument into the register required to be maintained under the Act.

Under section 2 of the Act, makes provisions for what constitutes an explanatory memorandum in relation to a statutory instrument.

**b) Consequences of not tabling**

Under section 11(4) of the Act, if a copy of a Statutory Instrument that is required to be laid before the House is not so laid within seven (7) sitting days after publication, the Statutory Instrument ceases to have effect immediately after the last day for it to be so laid but without prejudice to any act done under the Statutory Instrument before it became void.

**c) Referral to the Committee.**

Under section 12 of the Act, every Statutory Instrument tabled stands referred to the Committee on Delegated Legislation.

**d) Scrutiny of the Statutory Instrument.**

Section 13 of the Statutory Instruments ACT, 2013 which is replicated in the County Assembly of Bungoma Standing Order no 214 mandates the Committee to carry out scrutiny of any statutory Instrument or published Bill be guided by the principles of governance, rule of law and shall in particular consider whether the Statutory Instrument:

- (a) is in accord with the provisions of the Constitution ,the Act pursuant to which it's made or other written law;
- (b) infringes on fundamental rights and freedoms of the public;
- (c) contains a matter which in the opinion of the Committee should more properly be dealt with in an Act of Parliament;
- (d) contains imposition of taxation;
- (e) directly or indirectly bars the jurisdiction

(f) gives retrospective effect to any of the provisions in respect of which the Constitution or the Act does not expressly give any such powers.

(g) involves expenditure from the consolidated fund or other public revenues.

(h) is defective in its drafting or for any reason the form or purport of the Statutory Instrument calls for any elucidation.

(i) appears to make unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which it's made.

(j) appears to have unjustifiable delay in its publication or laying before Parliament.

(k) makes rights liberties or obligations unduly dependent upon non-reviewable decisions;

(l) makes rights liberties or obligations unduly dependent insufficiently defined administrative powers.

(m) Inappropriately delegates legislative powers;

(n) imposes a fine ,imprisonment or other penalty without express authority having provided for in the enabling legislation;

(o) appears for any reason to infringe on the rule of law;

(p) Inadequately subjects the exercise of legislative power to Parliamentary scrutiny;

(q) Accords to any other reason that the Committee considers fit to examine.

#### **e) Report to the House**

Section 16 requires the Committee in so far as it's practically possible, to confer with the regulation-making authority for which the Statutory Instrument has been made before tabling the report to the House for their information and modification where necessary. It's at this stage that the Committee shares with the Regulation making authority its desired modification to the Regulations if any.

Under section 14 of the Act and subject to section 16 of the Act, the Committee may exempt certain Statutory Instruments or class of Statutory Instruments from scrutiny if the Committee is satisfied that the scrutiny is not reasonably practical due to the number of Regulations in that class.

Upon completion of the scrutiny, section 15 of the Act requires the Committee to make a report to the House containing only a resolution that Statutory Instruments that stands permanently referred to the Committee be revoked.

Under section 17 of the Act, the Committee shall state in its Report the overall objective of the Statutory Instrument, the identity of the portion of the Statutory Instrument in relation to which the Report has been made and an indication of the Act and the recommendation thereof.

#### **f) Annulment**

Under section 18 of the Act, when a Report on Statutory Instrument has been tabled in the House, the Statutory Instrument shall be deemed to be annulled if the House passes a resolution to that effect.

#### **g) Revocation**

Under section 19 of the Act, where the House has adopted a Report or a resolution that a Statutory Instrument be revoked, the instrument shall stand revoked and the Regulation making authority shall publish the revocation within fourteen days.

### **3.6 Automatic revocation of a statutory instrument.**

This is provided for under section 21 of the Act which is 10 years after the making of the Statutory Instrument unless it's sooner repealed or expires; or a Regulation is made exempting it from expiry.

### **3.7 General Provisions**

Subject to section 22, every Statutory Instrument shall be published in the Kenya Gazette and shall be assigned a serial number as to the year in which it's made which shall be printed on the face of the statutory instrument.

### **3.8 Commencement of statutory instrument.**

This is provided for under section 23 of the Act which stipulates that the Statutory Instrument shall come into operation on the date specified in that behalf in the Statutory Instrument or, if no date is so specified, then subject to subsection (2), shall come into operation on the date of its publication in the gazette subject to annulment where applicable.

### **3.9 Can the House amend a Statutory Instrument?**

The decision on whether or not the House can amend the Statutory Instrument was made in a ruling made by Hon. Justice Muturi, Speaker of the National Assembly of Kenya dated March 26, 2014 which stated as follows “it’s apparent that Part IV of the Statutory Instruments Act does not contemplate the full involvement of the House in Regulation making process. As such, the House is not required to approve or make any amendments to the Statutory Instrument. Rather, the House is only required to annul the whole or any part of the Statutory Instrument that the House is not happy with. In making the annulment of the whole or any part of the Regulation, the House is required to give reasons which will guide the Regulation making authority in formulating new provisions to replace the ones annulled by the House.

Indeed a reading of sections 15, 18 and 19 of the Act clearly contemplate an annulling resolution by the House. There’s no contemplation of amending or approving resolution.”

## **CHAPTER FOUR**

### **4.1 Conclusion**

**Mr. Speaker,**

Given that the making of statutory instruments is a delegated mandate, it is the duty of every regulation-making authority to ensure that it complies with the Constitution, the Statutory Instruments Act, the Interpretation and General Provisions Act, the parent Act of the Instrument and relevant legislation. The County Assembly is expressly mandated to annul any instrument that does not comply with the stated legislation.

## 4.2 COMMITTEE OBSERVATIONS

**Mr. Speaker,**

- I. The mandate of the Committee is technical and may present challenges in understanding and exercising it. Further, Statutory Instruments can be highly technical and complex, which can make them difficult for non-experts to understand. This can lead to confusion and misinterpretation and may also make it harder for affected parties to comply with the requirements of the Instrument.
- II. Some of the Regulation making authorities do not adequately engage with stakeholders and the public when formulating subsidiary legislations. This has led to inadequate consideration of the potential impact of the Statutory Instruments and lack of input from stakeholders who may be affected by the instruments.
- III. There is minimal co-ordination and consultation between the committee and the executive in generating subsidiary legislations.
- IV. The Executive arm is a bit slow in developing or generating Regulations despite the existence of various Acts passed by the County Assembly and which require regulations to operationalize them.
- V. Whereas the Statutory Instruments Act requires every Statutory Instrument to be accompanied by an explanatory memorandum, this has not been usually the case. In most cases, the Committee through the office of the Clerk has been forced to request for the explanatory memorandum from the Regulation making authorities well after the fact.
- VI. Statutory Instruments may be formulated at different times, by different County departments or agencies, and under different legislative frameworks. This can result in inconsistencies and contradictions between Instruments, which can be confusing and difficult to reconcile.

## 4.3 COMMITTEE RECOMMENDATIONS

**Mr. Speaker,**

Upon deliberations, the Committee recommended the following;



- I. The Regulation making authorities should endeavor to ensure that the process of making statutory instruments is as consultative as possible by engaging the relevant stakeholders in the making of statutory instruments.
- II. There should be joint capacity building workshops between the members of the County Assembly and the Executive with the aim of increasing in depth understanding of the procedures of processing Statutory Instruments and enhancing the spirit of forging a working relationship. This will also build capacity of the Executive on the importance and mandate of the house committees.
- III. To improve scrutiny of Statutory Instruments, there should be opportunities for interested parties to provide feedback on the proposed instrument before it is passed, and a requirement for the regulation making authority to respond to concerns raised during this period.
- IV. To improve clarity and understanding, Statutory Instruments should be written in plain language, with clear and concise explanations of any technical terms or concepts used. The Regulation making authority should also provide guidance and training to help affected parties understand and comply with the requirements of the instrument.
- V. To address inconsistencies, there should be greater coordination and cooperation between County departments and agencies when drafting Statutory Instruments. A central repository of all Statutory Instruments should be created and regularly updated to make it easier to identify and solve any inconsistencies or conflicts.
- VI. The Regulation making authorities should embrace the principle of public participation in the legislation making as enshrined in the Constitution to enhance transparency. The Regulation making authority should ensure that the process of formulating Statutory Instruments is open to public scrutiny. This can include publishing draft instruments for public consultation, providing regular updates on the progress of the instrument, and making all relevant documents and information publicly available.

Then we have the adoption schedule, you can see them, the members that had attended the adoption meeting.

Mr. Speaker Sir, thank you, the report has a lot of legal jargon and I believe just before I leave the stage, can I take this opportunity to invite my Agriculture Chair Committee member, *Mheshimiwa...*

**Mr. Speaker:** Thank you Hon. Chemorion for the well moved motion of the Committee of Delegated County Legislation. It is good that the Chairs who are here, you share this work. When the Chair delegates on some of your members to assist you, it makes work easier. Hon. Waiti Wafula, you have the honor of seconding the motion of the Committee.

**Hon. Waiti Wafula:** Thank you Mr. Speaker. As I stand here, I am a member of the Delegated County Legislation Committee, but not as the Chair, Agriculture.

**Mr. Speaker:** He said “Who is also a Member of the Committee”... he was very clear.

**Hon. Wafula Waiti:** Thank you, I didn’t get that. Mr. Speaker

**Mr. Speaker:** Don’t say because of old age, please proceed.

*(Laughter)*

**Hon. Wafula Waiti:** Mr. Speaker, as you get it, it observed by the Committee Members, these things are done in the process of regulation making, in many cases, we may realize from that report that the process is engaged without involvement of other stakeholders and as such, you will find out that things are done in a manner as if there is no regulations in place; because of less involvement during the formulation process. So, if this Honourable House can pass this report there shall be sanity in the regulation making process.

I stand to second the motion.

**Mr. Speaker:** Thank you Hon. Waiti. Honourable Members I will now proceed and propose a motion for the House to debate.

*(Question on the motion proposed)*

**Hon. Florence Juma:** Thank you Mr. Speaker for giving me an opportunity to say a word. I am a Member of the Committee on Delegated County Legislation and I would say that this is a Committee that uses a lot of jargon. There are so many technical words that even as a Committee Member I can appreciate the fact that I am still learning.

Again, this is a committee whose body making regulation is actually the Executive and many a times, they are a bit slow. I can say that there is minimal coordination between the Committee and the Executive in generating the subsidiary legislation; it is also a bit slow in developing the regulations despite the existence of various Acts passed by the County Assembly.

I would only request that maybe these technical terms should be improved and written in clarity, explained in a language that many people could understand and maybe also to implement in the

making of the regulations; and also training and guidance is needed to help the affected parties understand and comply.

**Mr. Speaker:** Thank you Hon. Florence, Hon. Okasida?

**Hon. Johnston Ipara:** Thank you Mr. Speaker Sir. I rise to support the report for the adoption. Previously, I was also among the few who were wondering what exactly Statutory Instruments were, but towards the end of the period that I was there, I was made to understand that it is a body of all laws. It is a legislation which allows the provision of any regulation to be enforced; it is also a provision that can be altered without parliament having to pass it to a new law.

I did also wonder as to why it is important and with the two items that convinced me that it is always good for every department to have a regulation that enforces a particular item. I decided that I should identify with this and the major purpose is to promote justice and the second importance is to prevent any harm. You remember we were also victims, particularly on Trade Loans. We did award loans during the period of 2013/2014, and this particular loan that was given out did not have a regulation that guided the awarding.

So, I say in those few words that I want to identify myself and also appeal to Honourable members that let us pass the report; it will save us a lot of money. I support.

**Mr. Speaker:** Thank you Hon. Ipara. Members, allow me invite the mover of the motion, Hon. Martin Chemorion. You can still respond from your side if you have your card there.

**Hon. Martin Chemorion:** Thank you, Mr. Speaker Sir for giving me this chance. I would like to thank the contributors to this motion for supporting this report. I know it is full of legal jargon, but as a people, we are not too old to learn. So, as a Committee, we are very firm and clear in discharging our mandate that any regulation or any statutory instrument that comes to the Assembly or comes from the Executive should meet the minimum requirements in making this statutory instrument. I don't think I have much to say, but I want to thank you.

*(Applause)*

**Mr. Speaker:** Thank you Hon. Martin Chemorion. Members, before I put a question to this motion, I will ask that we focus at what they were quoting on page 20; judgment or a ruling delivery by Hon. Justin Muturi, the Speaker of the National Assembly. It is important that at least you have a copy you look at that decision. It is good because from what he said, these instruments are handled at individual and committee level, especially Sector Committees. So in the near future, we will be having so many laws passed here, as they pass the law, it will be accompanied by a regulation to make it operational. So, you ought to know that even for now, the one you have been talking about, the Scholarship Regulations, we will be reviewing them. So basically that ruling will give you guidance because it is never done in the Whole House like the budget, it will be given to the Committee on Delegated Legislation. You can go before the Committee and you give your opinion accordingly.

Members, thank you very much for your contributions. Allow me proceed and put a question to the said motion for the House to make its decision.

*(Question to the motion by the Committee on Delegated County Legislations on familiarization with the processing of the statutory instrument put and agreed to.)*

The report by the Committee on County Delegated Legislation is hereby adopted accordingly as the report of the House.

## **BILLS**

### **1. THE BUNGOMA COUNTY GOVERNMENT SECOND SUPPLEMENTARY APPROPRIATION BILL, 2023**

**Mr. Speaker:** Chair, Committee on Budget and Appropriation, Hon. Jack. Sorry, I am wondering which one is your microphone here. Just find out.

**Hon. Jack Wambulwa (Chairperson, Committee on Budget and Appropriations):** Thank you Hon. Speaker, I hereby move a motion that the Bungoma County Government's second Supplementary Appropriation Bill, 2023 for the financial year 2022/2023 be read for the third time. I call upon my Vice Chair Hon. Nangulu to second.

**Mr. Speaker:** Hon. Nangulu please proceed.

**Hon. Charles Nangulu:** Thank you Hon. Speaker, I second.

**Mr. Speaker:** Honourable Members, the said motion is being moved in compliance with Standing Order 153(2) of our Standing Orders. On that basis, I will proceed and, being a motion, I will propose a motion for you to debate, if you don't debate, then I will put a question.

*(Motion proposed)*

Thank you Honourable Members for your contributions, let us proceed.

Honourable members, a motion has been moved and seconded that the Bill Bungoma County Government Second Supplementary Appropriation Bill for the Financial Year 2022/2023 be read for a third time.

*(Question put and agreed to)*

A BILL OF AN ACT OF THE COUNTY ASSEMBLY OF BUNGOMA TO AUTHORIZE THE ISSUANCE OF A SUM OF MONEY OUT OF THE COUNTY REVENUE FUND AND ITS APPLICATION TOWARDS THE SERVICE OF THE YEAR ENDING 30<sup>TH</sup> JUNE, 2023; AND TO APPROPRIATE THAT SUM UNDER SUM VOTED ON ACCOUNT BY THE COUNTY ASSEMBLY FOR CERTAIN PUBLIC SERVICE AND PURPOSES. *Third Reading*

**Mr. Speaker:** Honourable Members, the Bill having been read for a third time, it's now deemed as dully passed by this House and it now becomes an Act of the County Assembly of Bungoma for the appropriation of the moneys that are contained in what you passed yesterday, that is in compliance with section 24 of the County Government Act, it's for forwarding to the governor for ascend to the same as per the relevant sections 24 of the County Government Act. Thank you. Next?

Honourable Members, I am duly informed by our Table Clerks that that was the last item on our Order Paper and so we will adjourn our sitting for today being the 8<sup>th</sup> June, 2023 and resume on 13<sup>th</sup> of June, 2023 at 2:30 p.m. We are done, thank you and have a good weekend and a good evening.

But as you go, I hope you have seen the schedule of our sector committee presentations through the Committee on Budget. I think the sector Chairpersons of various committees should share with the Honourable Members on their respective walls how you will all appear before the Committee chaired by the Chairperson, Budget and present your views.

On the issue of welfare, you are going to appear there as per the timetable, but I think the Sector Chair is going to tell you how it is going to cover as we did for the Sector in delegations. So don't ask me which days, but you will be there for the two days for presentations. I think the other angle is for the other number of days that you were in Kisumu equally. I hope the message is at home. Thank you, we adjourn.

*(House Adjourns)*