



COUNTY GOVERNMENT OF BUNGOMA



**COUNTY ASSEMBLY OF BUNGOMA
OFFICE OF THE CLERK**

THIRD SESSION

COMMITTEE ON JUSTICE, COHESION AND LEGAL AFFAIRS

**REPORT ON THE PETITION CONCERNING CONSTRUCTION OF
THE OFFICE OF THE WARD ADMINISTRATOR AS WELL AS
ALLEGED UNFAIR ALLOCATION OF BURSARIES AND FARM
INPUTS, IN KAPKATENY WARD**

**Clerks Chambers
County Assembly Buildings
P.O BOX 1886 - 50200
BUNGOMA, KENYA**

November 2024

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EXECUTIVE SUMMARY

The petition concerning construction of the office of the ward administrator as well as alleged unfair allocation of bursaries and farm inputs, in Kapkateny ward was tabled on the floor of the House on September 19, 2024. It was then referred to the Committee on Justice, Cohesion, and Legal Affairs for processing, in line with Standing Order 225(1).

The Committee invited the Petitioners, Kapkateny Ward Bursary Committee, the Chief Officer Education and the Chief Officer Public Administration .

The Committee made its observations and recommendations based on the evidence provided by both the petitioners and respondents.

CHAPTER ONE

1.1 INTRODUCTION

Hon. Speaker,

On behalf of the members of the Committee on Justice, Cohesion & Legal Affairs, I hereby present to this House, the Committee's report on petition concerning construction of the office of the ward administrator as well as alleged unfair allocation of bursaries and farm inputs, in Kapkateny ward which was tabled on 19th September 2024 and committed to Committee on Justice, Cohesion & Legal Affairs for processing and reporting back to the House.

1.2. COMMITTEE MEMBERSHIP

The Committee on Justice, Cohesion & Legal Affairs as currently constituted comprises the following Members;

1. Hon. Jacob Psero	Chairperson
2. Hon. Everlyne Mutiembu	Member
3. Hon. George Makari	Member
4. Hon. Francis Chemion	Member
5. Hon. Jeremiah Kuloba	Member
6. Hon. Timothy Chikati	Member
7. Hon. Edwin Opwora	Member
8. Hon. Idd Owongo	Member
9. Hon. Dorcas Ndasaba	Member
10. Hon. Sheila Sifuma	Member
11. Hon. Linda Kharakha	Member

1.3.THE MANDATE OF THE COMMITTEE

Hon. Speaker, the mandate of the Committee is outlined in Standing Order 213& 225(1)(2) as follows:



- a) Carry out matters of Constitutional affairs, administration of Law and Justice, including ethics, integrity, elections and human rights; and all petitions save for Petitions under Standing Order 78(5);
- b) Monitor and promote measures relating to policy and program initiatives in pursuit of Peace and County cohesion.
- c) Investigate, inquire into and report on all matters relating to inter-community cohesion in the County.
- d) Monitor and promote measures designed to enhance the equalization of opportunities and improvement in the quality of life and status of all persons, including persons who are marginalized on the basis of gender, age, disability, health status, ethnic, racial, cultural or religious background or affiliation or any other such ground.
- e) Investigate, inquire into and report on all matters relating to discrimination or marginalization of persons referred to under sub-paragraph(d);
- f) Make proposals to County Assembly including Legislative proposals for the protection, equalization of opportunities and promotion of the welfare of the groups referred to under sub paragraph (d) and
- g) Examine the activities and administration of all County Departments and statutory bodies in so far as they relate to the rights and welfare of the persons referred to under subparagraph (d)

1.4 ACKNOWLEDGEMENT

Hon. Speaker,

I would like to take this opportunity to extend my gratitude to the offices of the Speaker and the Clerk of the County Assembly for their invaluable logistical support, which greatly contributed to the successful completion of the report. Further I want to thank the petitioners and respondents who furnished the Committee with the required information.

It is now my privilege and duty, on behalf of the Committee on Justice, Cohesion & Legal Affairs, to present this report to the County Assembly for noting.

Signed..........Date..........

HON.JACOB PSERO MARUGAA, MCA CHESIKAKI

CHAIRPERSON JUSTICE , COHESION AND LEGAL AFFAIRS COMMITTEE

CHAPTER TWO

2.1LEGAL FRAMEWORK TO PETITIONS IN KENYA

In Kenya, the legal framework for public petitions is primarily governed by the Constitution of Kenya, 2010, complemented by various statutory laws, regulations, and judicial precedents. Public petitions are requests made by individuals, organizations, or groups of people, often seeking to address matters of public interest or hold public authorities accountable. The process of public petitions in Kenya allows citizens to engage with government institutions, courts, and other authorities on issues that impact public policy, governance, or individual rights.

1. The Constitution of Kenya, 2010

The Constitution of Kenya, 2010 forms the cornerstone of the legal framework for public petitions, particularly regarding public participation, the right to petition, and accountability mechanisms. The Constitution provides for the protection of individual rights and public participation in governance, which are crucial to the petitioning process. Key provisions include:

Article 37 - Freedom of Assembly, Demonstration, Picketing, and Petition

- This article guarantees the right of every citizen to petition the government or any public authority on matters of concern.
- It also guarantees the right to peacefully assemble, demonstrate, and picket, which can be related to petitioning for public causes.
- Public petitions can be submitted to the government or other public bodies in writing or through peaceful protest.

Article 22 - Right to Access to Court

- Allows any person whose rights or freedoms have been violated to file a petition to the court.
- It applies to public interest petitions, where groups or individuals may challenge government decisions or actions affecting the public.

- Citizens can file petitions in the High Court or the Court of Appeal, depending on the subject matter, particularly on constitutional matters.

Article 232 - Principles of Public Service

- Public petitions can be based on concerns about public service delivery, corruption, or abuse of public office. This article outlines the principles of public service, such as accountability, transparency, and responsiveness to the needs of the public.

Article 10 - National Values and Principles of Governance

- Public petitions often invoke the principles of democracy, human dignity, equity, fairness, and social justice enshrined in this article. These principles guide public institutions in their handling of petitions.

Article 47 of the Constitution provides that: -

(1) Every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) If a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

(3) Parliament shall enact legislation to give effect to the rights in clause (1) and that legislation shall—

(a) provide for the review of administrative action by a court or, if appropriate, an independent and impartial tribunal; and

(b) promote efficient administration.

2. The County Governments Act, 2012

Section 87: Public Participation

(1) County Governments shall ensure that public participation is incorporated in the decision-making processes at the county level. (2) The County Assemblies shall establish mechanisms for public participation, ensuring that county residents have the opportunity to engage in governance processes, including the submission of petitions.

Section 91: Petitions to County Assemblies

(1) Any resident of a county may submit a petition to the County Assembly on any matter within the county's jurisdiction, including issues related to local governance, development, or the allocation of resources. (2) The County Assembly shall deliberate on the petition and provide a response within a specified time frame.

3. The Public Finance Management Act, 2012

Section 125: Public Participation

This section requires the national government and county governments to facilitate public participation in the budget-making process, ensuring that citizens have the opportunity to provide input into the allocation and use of public funds.

Section 10: National and County Government Financial Management Responsibilities

This section outlines the responsibilities of both levels of government in managing public funds transparently and efficiently.

Section 12: Access to Information

This section mandates that governments provide access to information about public finances, ensuring that citizens are well-informed and can hold governments accountable.

These sections emphasize **public participation** and **transparency** in the management of public finances. Citizens can leverage these provisions to submit

petitions or raise concerns regarding budget allocations, public spending, or misuse of public funds.

4. The Leadership and Integrity Act, 2012

Section 16(1) A person who wishes to file a petition under this Act shall submit a complaint in writing to the relevant authority, providing details of the misconduct, corruption, abuse of office, or unethical behavior they are alleging.

Petitions to the Ethics and Anti-Corruption Commission (EACC):

Section 18: Petitions to the Ethics and Anti-Corruption Commission

18(1) Any person may submit a written petition to the Commission requesting investigations into any alleged misconduct, corruption, or abuse of office by a public officer.

5. The Fair Administrative Action Act

This Act gives effect to article 47 of the Constitution and provides at section 5 thereof that: -

(1) In any case where any proposed administrative action is likely to materially and adversely affect the legal rights or interests of a group of persons or the general public, an administrator shall—

(a) issue a public notice of the proposed administrative action inviting public views in that regard;

(b) consider all views submitted in relation to the matter before taking the administrative action;

(c) consider all relevant and materials facts; and

(d) where the administrator proceeds to take the administrative action proposed in the notice—

(i) give reasons for the decision of administrative action as taken;

(ii) issue a public notice specifying the internal mechanism available to the persons directly or indirectly affected by his or her action to appeal; and

(iii) specify the manner and period within which such appeal shall be lodged.

6. The National Assembly and Senate Standing Orders

- Both the **National Assembly** and the **Senate** have established **Standing Orders** that govern how petitions are presented and processed in Parliament.
- Petitions presented to Parliament can be on matters related to public welfare, human rights, national policies, or legal reforms.
- **Procedure for petitions to Parliament:** Petitions to either House of Parliament (National Assembly or Senate) can be submitted to the relevant committee for consideration. Once the petition is submitted, it is assessed by the committee, which may take action, call witnesses, or initiate inquiries based on the issues raised in the petition.

6. The Judiciary and Public Interest Litigation

- The Judiciary provides a legal avenue for citizens to file public interest petitions that challenge laws, administrative actions, or government decisions affecting the public at large.
- **Judicial Review:** Public petitions can be filed to seek judicial review of government decisions that are considered unlawful, irrational, or violate the Constitution. The Judicial Review Act, 2015 allows citizens to challenge administrative actions or failures to act by public bodies.
- **Constitutional Petitions:** Petitions that challenge the constitutionality of laws or actions of public authorities affecting the public interest can be filed in the High Court or Supreme Court.

7. The Public Participation Act, 2015

- The Act ensures that public participation is a key element of governance in Kenya. Public participation includes avenues for citizens to express their views

through petitions, public hearings, consultations, or other mechanisms in the decision-making process.

- Public petitions on matters of national or local governance, policy changes, or the implementation of projects can be a form of public participation under this Act.

8. Other Relevant Legislation

- **The Environment and Land Court Act, 2011:** Citizens can submit petitions on environmental issues or land-related matters, especially where public land or natural resources are involved.
- **The Land Act** gives effect to Article 68 of the Constitution, to revise, consolidate and rationalize land laws; to provide for the sustainable administration and management of land and land based resources.
- **The Land Registration Act** revises, consolidates and rationalizes the registration of titles to land, to give effect to the principles and objects of devolved government in land registration.
- **The National Gender and Equality Commission Act, 2011:** Petitions concerning gender equality or the rights of marginalized groups can be addressed to the National Gender and Equality Commission.

9. Role of Independent Commissions and Offices

Several independent commissions and offices are empowered to receive and act on public petitions in Kenya:

- **The Office of the Ombudsman (The Commission on Administrative Justice - CAJ):** Receives complaints and petitions regarding government agencies' maladministration and human rights violations.
- **The Kenya National Commission on Human Rights (KNCHR):** Receives public petitions related to human rights violations.
- **The National Environment Management Authority (NEMA):** Receives public petitions related to environmental protection and compliance.

10. Public Interest Advocacy

- In addition to individual or group petitions, **Non-Governmental Organizations (NGOs), Civil Society Organizations (CSOs), and Advocacy Groups** often play an important role in filing public petitions on behalf of marginalized groups or the general public, especially concerning human rights, environmental justice, and anti-corruption initiatives.

11. The Bungoma County Assembly Standing Orders

- Public petitions are formal requests to the County Assembly, typically asking it to consider legislation or take action on public matters.
- Petitions must be submitted in a specified format and meet clear legal requirements regarding language, structure, and content.
- There is a structured process for reviewing, presenting, and responding to petitions, including timelines for responses and notifications.
- The Justice, Cohesion, and Legal Affairs Committee plays a central role in handling petitions, ensuring that responses are processed within 60 calendar days after committal by the House.
- Petitions are limited in terms of time for consideration, with thirty minutes allocated for discussion and comments.

CHAPTER THREE

3.1 Submitted Petition

1. That there is already land belonging to the county government of Bungoma at Kapkateny Market which is a centre of the ward.
2. That since the advent of devolution to date the offices of the ward administrator has been situated at KAPKATENY MARKET.
3. That county government had already advertised a tender for the proposed erection and construction of an office block at Kapkateny ward office at KAPKATENY MARKET by the 3rd of November 2023.
4. That unfortunately there have been IRREGULAR, UNPROCEDURAL and illegal steps being taken to move the office of the ward Administrator from KAPKATENY MARKET to Toywondet centre.
5. That such action is calculated at further spending public funds for purchase of land and other facilities/utilities leaving the land at Kapkateny Market to Toywondet Centre.
6. That this action will result in the moving away key services from the people at the central place to a far area where access is limited.
7. That already the people of Kapkateny have suffered marginalization with regard to those who are not sabaots ethnicity in the following ways;
 - There has been unfair allocation of Bursaries leading to exclusion of non sabaots from benefiting from bursaries.
 - There has unfair distribution of free farm inputs to the exclusion of non sabaots.
8. That moving the ward offices from Kapkateny market to Toywondet Centre will further remove key services from the rich of those who are non sabaots as Toywondet Centre is purely inhabited by sabaots.
9. That if the offices are moved, there will further suffering as several people will be denied services therefore defeating the basic principle of devolution.
10. That prior to approaching the county assembly, we have written to the concerned offices but there has been no response.
11. That the undersigned request and pray that;

- The county assembly orders offices of the ward administrator Kapkateny Ward be retained at Kapkateny Market.
- That there be fair allocation of bursaries regardless of ethnic background.
- That there be fair distribution of farm inputs regardless of ethnic background.

3.2 Interrogation of the Petitioner (Benard Wakhungu)

On 8th November 2024 in committee room one county assembly administration block, the committee received one petitioner despite having invited 3 of them. He submitted as follows:

On the Petition being in Court

- He stated that the petition has not been presented in any court of law.

Efforts to Solve the Problem

- The petitioner stated that they were invited for a meeting at the governor's residence, officials from the county government were present namely: the governor, County Executive Committee Member for Education and Agriculture. The petitioner said that they were promised a response within two weeks, but no communication has been received yet.

Location of the Ward Office

- He informed the committee that the ward office is located at Kapkateny Market, where land is available.
- Further, the residents are concerned about the current MCA's proposal to move the office to Toywondet, where no government land is available.
- He referred to a gazette notice (tender no. BGM/CNTY/PA/OT/005/2023-2024 NEG. NO. 1361872-2023/2024) that indicated proposed erection and construction of an office block at Kapkateny ward office Kapkateny market
- He also observed that the County Government of Bungoma would incur additional costs to purchase land at Toywondet, where land is unavailable, while Kapkateny Centre has land and already offers necessary social amenities (water, security) and is easily accessible.

- Despite this, no construction has taken place at Kapkateny, as the office may be moved to Toywondet anytime.

Public Participation Evidence

He stated that he could not access the minutes from the public participation, but the relevant office holds the records.

Bursary Issue

- That the bursary distribution was discriminatory, with the Sabaot community receiving 98.5%, the Bukusu 1%, and the Teso 0.5%, this raised concerns about the procedure used in the vetting.

Farm Inputs Supply Program

- He informed the committee that the ward agricultural officer was too old and incompetent to manage the farm input programs.
- To add on that farm inputs distribution was seen as biased with specific villages and people benefitting.

3.3 Submissions by the Ward Bursary Committee Kapkateny

On 18th of November 2024 at the County assembly chambers the Committee received 5 respondents from the Ward Bursary Committee, the committee interrogated all of them. They submitted as follows:

- **Ethnic Disparities in Bursaries:** The ward administrator stated that he received complaints about ethnic bias in the bursary and agriculture input programs. He further informed the Committee that he was posted to Kapkateny ward in October 2023 and that no bursary-related documents were handed over by the outgoing ward administrator.
- **Rift Between Bursary Committee and Village Administrators:** The Committee was informed that involvement of village administrators in collecting bursary forms contributed to ethnic disparities in the bursary distribution for the year 2023.

- **Efforts to Resolve the Issue:** The ward administrator attempted to convene a meeting in January 2024, but it did not take place. The ward has been volatile, and the administrator faced accusations of biasness towards both communities.
- **Further** it was the ward administrator's view that if the list of bursary beneficiaries submitted by the petitioners is the real list then the same is discriminatory.
- **MCA's Involvement:** A member of the bursary committee stated that the current MCA was not involved in the bursary process.
- **Bursary Criteria:** A member of the bursary committee outlined the criteria for bursary awards as listed:
 - ✓ Applicants should be bright and needy students.
 - ✓ Priority given to total or partial orphans, resource-poor parents, regional and gender balance, and inclusivity.

3.4 Submissions by the Chief Officer Education

He stated that no bursary returns for 2023 had been submitted to the Department of Education as requested by the committee, however the list of 2024 applicants and minutes of Kapkateny ward bursary committee held on 3/6/2024 and the final list were tabled before the Committee and the same forwarded to the Clerk's Office.

He went ahead to inform the committee about the existing bursary policies and that he works directly with the ward administrator and not the village administrator.

3.5 Submissions by the Chief Officer Public Administration

On 21st November 2024 in the county assembly committee room one the Committee interrogated the chief officer public administration and she submitted as follows:

On the need for service centres

She informed the committee that a meeting was held in August 2023 and they saw the need to establish ward service centres in five wards namely:

- Chepyuk
- South bukusu
- Kapkateny
- Milima
- Kimaeti

On the advertisement

An addendum was put up on the newspapers advertising for the tenders showing proposed erection and construction of an office block at Chepyuk ward office Chepyuk market, South Bukusu ward office near mateka market, Kapkateny ward office at Kapkateny market, Milima ward office at Nabingéngé market and Kimaeti ward office at Kimaeti market , However for Chepyuk ward office the area representative together with stakeholders agreed to move construction of the ward office from the originally advertised location to another site namely Cheptoror market which is centrally located South Bukusu and Kimaeti were also moved from the initial location in the advertisement.

On Public participation

The Committee was informed that according to the 2014 task force report public participation was done on 25th November 2013 members of the public were present as well as the civil society organisations, it stated that Toywondet had community land available and was most preferred, Chebich had national government land and was to hold central government office.

Handing over of site

She informed the committee that the previous night before site handover she received messages from Bukusu council of elders who complained that Toywondet was not the central location of Kapkateny ward the governor also received the same complains and asked her not to rush.

Further she informed the committee that the area was volatile as the Bukusus wanted Kapkateny and the Sabaots wanted Toywondet. The area MCA was asked to pick a neutral place but it never happened. Site visit was done at Toywondet by the department

but there were neither residents nor the area MCA and hence the site was not handed over.

On using other available means to solve the issue:

She stated that the governor invited ten members each from the Sabaot and Bukusu communities, along with the area MCA, for a meeting. However, no agreement was reached during the discussion. As a result, the governor emphasized the need for public participation to gather broader community input and ensure more inclusive decision-making.

On interference by Local leaders

The committee was informed that the area MCA approached the office of public administration after the advertisement as she preferred Toywondet to Kapkateny.

CHAPTER FOUR

COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

4.1 OBSERVATIONS

- 1. THAT** the current ward office is located at Kapkateny Market.
- 2. THAT** there were lapses in inviting public views prior to undertaking of the decision of moving ward offices from the current location as provided by section 5 of the Fair Administrative Action Act.
- 3. THAT** the initial tender advertisement showed proposed construction of an office block at Kapkateny ward Office Kapkateny market.
- 4. THAT** there were no bursary records comprising of list of applicants, minutes and final list of award for the year 2023 from the ward administrator or from the Chief officer Education.
- 5. THAT** the petitioner did not provide or lead any evidence to show that other wards received 500 bags of fertilizer while Kapkateny ward received 345 bags

4.2 RECOMMENDATIONS

Prayer one: The county assembly orders offices of the ward administrator Kapkateny Ward be retained at Kapkateny Market.

- 1. THAT** the county assembly cannot order construction of offices at a particular place but rather ensure that the ward offices are constructed on land belonging to the county government with proper documentation and pursuant to public participation.

Prayer two: That there be fair allocation of bursaries regardless of ethnic background.

- 2. THAT** the petitioners did not satisfy the committee that there was unfair allocation of bursaries in Kapkateny ward, there was no evidence adduced to that effect.

Prayer three: That there be fair distribution of farm inputs regardless of ethnic background.

- 3. THAT** the petitioners did not satisfy the committee that there was unfair distribution of farm inputs in Kapkateny ward, there was no evidence adduced to that effect.

CONCLUSION

All Prayers are therefore declined

ANNEXURES

1. Adoption schedule
2. Submitted Petition
3. Adoption Minutes
4. Letters

ADOPTION SCHEDULE

We the undersigned members of Justice Cohesion and Legal Affairs Committee affix our signatures adopting this report with the contents therein

	MEMBERS NAME	DESIGNATION	SIGN
1	Hon. Jacob Psero	Chairperson	
2	Hon. Everlyne Mutiembu	Member	
3	Hon. George Makari	Member	
4	Hon. Francis Chemion	Member	
5	Hon. Edwin Opwora	Member	
6	Hon. Jeremiah Kuloba	Member	
7	Hon. Timothy Chikati	Member	
8	Hon. Idd Chamawi	Member	
9	Hon. Dorcas Ndasaba	Member	
10	Hon. Sheila Sifuma	Member	
11	Hon. Linda Kharakha	Member	