



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 THE
CONSTRUCTION OF THE WARD ADMINISTRATOR'S OFFICE,
MILIMA WARD

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

November 2024

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EXECUTIVE SUMMARY

The Petition concerning the construction of the ward administrator's office Milima 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 for oral submissions, however the petitioners did not show up even after phone calls were made to them. The Chief Officer for Public Administration, gave her submissions on November 21, 2024

Based on the submitted petition and the submissions by the chief officer Public Administration, the Committee made its observations and recommendations.

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 the construction of the ward administrator's office Milima 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. George Makari	Member
3. Hon. Francis Chemion	Member
4. Hon. Everlyne Mutiembu	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.

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

LEGAL 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. Existing land and Office location

We bring to your attention that the land for the office of the ward administrator for milima ward already exists at Nabingéngé sub location under plot No.

Bgm/kamakiowa/569 this is in full compliance with the County Governments Act, specifically section 51, subsections 1,2 & 3(a) (b) (c) (d) (e) (f) (g) and 4, which govern the establishment of the office of Ward Administrator. The office has been operational at this location since the onset of devolution. We question why the first member of County Assembly (MCA) purchased land at Mukuyuni for a dispensary when there was existing land at Nabingéngé designated for the ward Administrators office. Furthermore, we challenge the current MCA's assertion that there is no land at Nabingéngé, despite the fact that the office has been functioning there since devolution began.

2. Public Participation and Establishment of Office

Public participation was conducted and office was established on the said plot number as stated in the first petition evident on the sketch map. The process adhered to the provisions of the County Governments Act, with proper public participation that satisfied the people of Milima ward. This public participation validated the location of the ward administrators office, which was then established accordingly.

3. Continuity of Established Office and Misappropriation Concerns

The office of the ward administrator was established during the tenure of the first MCA, the inaugural product of devolution. The second MCA allocated funds to the same office and location, with the County Assembly approving these allocations. From August 2022 to date, procurement processes were undertaken, tenders advertised, awarded and a bill of Quantities (BQ) produced. These actions were in compliance with the Fair Administrative Action Act no. 4 of 2015 and the County Governments Act of 2012 under section 87, which emphasize citizen participation in county matters. We question the rationale behind the proposed change of location after the tender has been awarded and

all necessary procedures have been followed. This raises concerns of a potential hidden agenda behind this relocation.

Alleged duplicate public participation and political interests

The purported public participation held by the sitting MCA on 29th August 2024 appears to be motivated by personal political interests. This event seems to be a duplicate of the already minuted, passed and established office, potentially creating an avenue for the embezzlement of County Government funds. This action violates the County Government Act no 17 of 2012 concerning the role of members of the county assembly as outlined in section 9, subsections 1 (a), (b), (c), (d) & (e) of 2012

Selective communication and breach of principles of public participation

The communication regarding the change in the location of the ward administrator's office was selectively communicated to the MCA's political allies, after the advertisement of the already established office. This raises serious concerns about the impartiality and fairness of the process, as it contradicts the principles of citizen participation as stated in County Governments Act sections 87 (a), (b), (c), (d) & (e). This selective communication undermines the previous public meeting and decisions, as outlined in petitions 1, 2 and 3 of this letter

Violation of the Rights of milima ward residents

We assert that the rights of the people of milima ward have been violated and infringed upon by the current MCA, who has failed to fulfill his role as provided under the County Governments Act section 9, subsections 1 (a), (b), (c), (d) & (e). The actions taken by the MCA represent a duplication and disregard for what was previously established through proper processes.

Request for immediate Action

We hereby request that the public administration committee of the county government of Bungoma take immediate action to nullify any other presented minutes or decisions regarding the milima ward administrator's office that propose a relocation from Nabingenge, where a legitimate committee has already established it. Failure to

address this issue will leave us, the undersigned and representatives of many concerned electorates, with no choice but to pursue legal action as provided for in the Constitution of Kenya, to protest against any unconstitutional decisions made in this regard.

3.2 SUBMISSIONS BY THE CHIEF OFFICER PUBLIC ADMINISTRATION

The Committee interrogated the chief officer public administration on 21st November 2024 and she submitted as follows:

On whether she is aware of the petition

She informed the Committee that she is aware of the petition as the copy was sent with the invitation letter, the same petition was also interrogated before by the committee on public administration and ICT.

On whether land is available

The Committee was informed that the land at Nabingéngé belonged to the county government of Bungoma.

Site handing over

Aside from Nabingéngé being gazetted on the addendum Mukuyuni was handed over as the area member of County assembly wanted Mukuyuni then complains arose from the people of Nabingéngé .

CHAPTER FOUR

COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

4.1 OBSERVATIONS

1. That the petitioners failed, neglected and/or refused to appear before the committee to offer any evidence despite being formally invited twice.
2. That the petitioners never made any formal communication to the committee as to why they did not appear on the prescribed dates and times
3. That on numerous occasions the petitioners were called via their mobile phone numbers which calls went unanswered.
4. That the committee however decided to consider the petition on its merits

4.2 COMMITTEE RECOMMENDATIONS

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 .

CONCLUSION

The prayers have therefore been declined

ANNEXURES

1. Adoption Schedule
2. Adoption Minutes
3. Submitted petition

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	