

**COUNTY GOVERNMENT OF BUNGOMA**

**COUNTY ASSEMBLY OF BUNGOMA**

**COUNTY ASSEMBLY DEBATES**

**THE DAILY HANSARD**

**WEDNESDAY, 16<sup>TH</sup> APRIL, 2025**

**Afternoon Sitting**

# COUNTY ASSEMBLY OF BUNGOMA

## THE DAILY HANSARD

WEDNESDAY, 16<sup>TH</sup> APRIL, 2025

The House met at the County Assembly Chamber at 2:30 p.m.

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

### PRAYER

### COMMUNICATION FROM THE CHAIR

I have two communications to make and rearrange the Order Paper.

#### 1. Invitation to Governors Easter Prayer Breakfast

The first is a communication from the County Government of Bungoma. Clerk, County Assembly of Bungoma; Invitation to the Governor's Easter Prayer Breakfast. His Excellency, the Governor, Bungoma County Government, wishes to invite you to the Easter prayer breakfast to be held on 21<sup>st</sup> April, 2025 at Kabula Pastoral Centre.

It is in the above spirit that I write to you to invite all the Honourable Members of the County Assembly. You are requested to be seated at 7:00 a.m. for the service. Psalm 33: 12 *Blessed is the nation whose God is the Lord, and the people whom he has chosen for his own inheritance.*

Resurrection, Matthew 28: 2. *And behold, there was a great earthquake for the angel of the Lord descended from heaven, and came and rolled back the stone from the door and sat upon it.*

Yours His Excellency, the Rt., Hon. Ken Makelo Lusaka, EGH, Governor Bungoma County.

#### 2. Rearrangement of Order Paper

Motion number eight will come last on the Order Paper. We will start with the motion number nine and 10. During the morning session, the House was ready but Committee on Roads was not here. Therefore, we will start with motion number nine to 10 and come back to eight. We proceed.

## PAPERS

### REPORT BY THE SECTORAL COMMITTEE ON GENDER, CULTURE AND SOCIAL WELFARE

**Mr. Speaker:** Yes, committee of Gender, Honourable Majority.

**Hon. Joseph Nyongesa:** Thank you, Speaker. On behalf of my chair, I rise to table the report by the Sectoral Committee on Gender, Culture, and Social Welfare on the Women and Disability Empowerment Fund, financial statements and reports for the period ending 30th of June, 2024.

**Mr. Speaker:** Honourable Members the report by the Sectoral committee on Gender, Culture, Social welfare on the Women and Disability Empowerment Fund's financial statements and reports for the period ending 30th of June, 2024 is hereby tabled, and the same becomes the property of the House accordingly.

## NOTICES OF MOTION

### NOTICE OF MOTION ON THE REPORT BY THE SECTORAL COMMITTEE ON GENDER, CULTURE AND SOCIAL WELFARE

**Mr. Speaker:** Yes, Honourable Majority.

**Hon. Joseph Nyongesa:** Thank you, Speaker. I rise again to give you a notice that this House adopts the report by the Sectoral Committee on Gender, Culture, Social welfare on the Women and Disability Empowerment Fund's financial statements and reports for the period ending 30th of June, 2024

**Mr. Speaker:** Honourable Members a notice having been issued, I ask the clerks at the table to share this report by the Sectoral Committee on Gender, Culture, Social welfare on the Women and Disability Empowerment Fund's financial statements and reports for the period ending 30th of June, 2024. The same be shared to the honourable members. It will be forming business on our Order Paper in the course of the week, or once the same is scheduled by the HBC accordingly.

## MOTIONS

### REPORT BY THE COMMITTEE ON APPOINTMENTS ON THE VETTING OF THE NOMINEE FOR APPOINTMENT TO THE POSITION OF THE BUNGOMA COUNTY ATTORNEY

**Mr. Speaker:** Yes the move of the report? I do hope the Honourable Deputy Speaker, you have the quorum in terms of the members as agreed in Liaison committee. I hope you have enough members to support your report. You can verify before you proceed.

**Hon. Stephen Wafula:** Hon. Speaker, we have the numbers. This being a committee of much disciplined members, the minimum required number is achieved. Even before we walked in they were the first ones to arrive.

**Mr. Speaker:** Proceed.

**Hon. Stephen Wafula:** Thank you, Hon. Speaker. I am on my feet to move a report on the vetting of the nominee for appointment to the position of Bungoma County Attorney. Hon. Speaker, allow me to skip this forward, if it's in order together so that I can...

**Mr. Speaker:** You will have to give us 1.1, the appointment.

**Hon. Stephen Wamalwa:** Pardon? Yes, 1.1, Hon. Speaker, I start with acknowledgement.

## **ACKNOWLEDGEMENT**

May I take this opportunity to thank all Members of the Committee for their input and valuable contributions and time during the approval hearing and deliberations during the compilation of the report. The Committee also thanks the Offices of the Speaker and of the Clerk of the County Assembly for the logistical support accorded to it during the exercise.

Finally, on behalf of the Committee on Appointments and pursuant to Section 14(3) (b) of the County Governments Act, 2012, Section 9(1) of the Public Appointments (County Assemblies Approval) Act, 2017, Section 5 (1) of the Office of the County Attorney Act, 2020 and the provisions of Standing Order No. 202 (7), it is now my singular duty and privilege to present to the House the report of the Committee on Appointments on the approval hearing of the nominee for appointment to the position of Bungoma County Attorney.

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

Hon. Emmanuel Situma

**SPEAKER OF THE COUNTY ASSEMBLY/CHAIRPERSON, COMMITTEE ON APPOINTMENTS**

## **PREFACE**

### **Establishment and Mandate of the Committee**

Section 14 (3) (a) of the County Governments' Act, 2012 provides that in considering any appointment for which approval of the County Assembly is required under the Constitution,

an Act of Parliament or County Legislation; the appointment shall be considered by a Committee of the County Assembly.

The Committee on Appointments is therefore established under Standing Order No. 208(1). Standing Order No. 208(4) provides that the Committee on Appointments shall consider, for approval by the House, appointments under Article 179(2) (b) of the Constitution, Section 44 of the County Governments Act, 2012 and Section 5 (1) of the Office of the County Attorney Act, 2020.

### **Committee Membership**

The Committee on Appointments as currently constituted comprises of the following Members:

1. Hon. Emmanuel Situma	Speaker/Chairperson
2. Hon. Stephen Wamalwa	Deputy Speaker/ Vice Chairperson
3. Hon. Joseph Nyongesa	Member
4. Hon. Anthony Lusenaka	Member
5. Hon. Joan Korong'	Member
6. Hon. Everyone Mutiembu	Member
7. Hon. Vitalis Wangila	Member
8. Hon. Francis Chemion	Member
9. Hon. James Mukhongo	Member
10. Hon. George Makari	Member
11. Hon. Grace Sundukwa	Member

## **BACKGROUND**

### **Notification of Nomination**

Pursuant to Section 5 (1) of the Office of the County Attorney Act, 2020 as read with Sections 4 and 6 of the Public Appointments (County Assemblies Approval) Act, 2017, His Excellency the Governor, forwarded to the Clerk of the County Assembly a letter dated 17<sup>th</sup> March, 2025, referenced CG/BGM/GVN/CA/VOL.1 (023), forwarding the name of the person nominated for appointment to the position of Bungoma County Attorney. The notification contained the curriculum vitae and testimonials of the nominee.

### **Notification to the House and Committal to the Committee on Appointments**

The Speaker, in adhering to the provisions of Standing Order No. 45(1) and vide a communication dated Tuesday 25<sup>th</sup> March, 2025 informed the House of the Governor's message on nomination of a person to the position of Bungoma County Attorney.

Pursuant to Section 7(1) of the Public Appointments (County Assemblies Approval) Act, 2017 and Standing Order No. 56 (1), the name and curriculum vitae of the nominee was committed to the Committee on Appointments for approval hearing and reporting to the House within twenty-one (21) sitting days.

### **Notification to the Public**

Article 196 of the Constitution provides that the County Assembly shall facilitate public participation and involvement in the legislative business and other business of the County Assembly and its Committees.

Section 7 (5) of the Public Appointments (County Assemblies Approval) Act, 2017 provides that the Committee shall notify the public of the time and place for holding an approval hearing at least seven days prior to the hearing. Further, Section 7(10) of the Act, 2017 provides that;

*“any person may, prior to the approval hearing, and by written statement on oath, provide the Clerk with evidence contesting the suitability of a candidate to hold the office to which the candidate has been nominated.”*

Pursuant to Article 196 of the Constitution as read with Section 7(10) of the Public Appointments (County Assemblies Approval) Act, 2017, the Clerk of the County Assembly placed an advertisement in the print media on Friday, 28<sup>th</sup> March, 2025. The advertisement contained a notification inviting the public to submit memoranda by Wednesday, 2<sup>nd</sup> April, 2025 at 9:00 a.m. in conformity with Section 7(10) of the Public Appointments (County Assemblies Approval) Act, 2017.

Further, pursuant to Article 196 of the Constitution, Section 7 (5) of the Public Appointments (County Assemblies Approval) Act, 2017 and Standing Order No. 56(3), the Clerk of the County Assembly notified the general public on Friday, 28<sup>th</sup> March, 2025 through the print media that the approval hearing of the nominee would be conducted on Monday, 7<sup>th</sup> April, 2025.

### **Notification to the Nominee**

On Friday, 28<sup>th</sup> March, 2025, the Clerk of the County Assembly invited the nominee through print media to attend the approval hearing in accordance with Section 7 (4) of the Public Appointments (County Assemblies Approval) Act, 2017.

### **Clearance and Compliance Requirements.**

On the notice of appearance for the approval hearing, the Clerk of the County Assembly informed the nominee to provide Clearance and Compliance requirements from Ethics and Anti-Corruption Commission (EACC), Kenya Revenue Authority (KRA), Directorate of Criminal Investigations (DCI), the Higher Education Loans Board (HELB) and the Credit Reference Bureau (CRB).

On 26<sup>th</sup> March, 2025, the Clerk of the County Assembly wrote to the Ethics and Anti-Corruption Commission (EACC) requesting for reports of the nominee on matters relating to ethics and integrity. Further on Thursday, 2<sup>nd</sup> April, 2025 the Clerk of the County Assembly wrote to the National Intelligence Service requesting for background information on the nominee.

On matters ethics and integrity, the Ethics and Anti-Corruption Commission (EACC) vide a letter dated 7<sup>th</sup> April, 2025 referenced EACC.7/10/5 VOL XXXI (73), stated that it had neither opened any inquiry, undertaken any investigations pursuant to its mandate nor recommended prosecution against the nominee.

The National Intelligence Service (NIS) confirmed vide a letter dated 8<sup>th</sup> April, 2025 referenced BGM/NIS/POL F. 50/4 VOL. 1, submitted that the nominee is of good moral conduct and had no known criminal record and neither does he have an adverse report.

Further, the nominee availed before the Committee certified clearance copies issued on diverse dates as follows:

NOMINEE	KRA	EACC	HELB	DCI	CRB
EDWARD ORINGE WASWA	30/06/2024	11/12/2024	05/07/2024	15/07/2024	08/07/2024

### Issues for Consideration during the Approval Hearing

Section 7(8) and (9) of the Public Appointments (County Assemblies Approval) Act, 2017 provides that:

*(8) An approval hearing shall focus on a candidate's academic credentials, professional training and experience, personal integrity and background.*

*(9) The criteria specified in the schedule shall be used by a Committee during an approval hearing for the purposes of vetting a candidate.*

Additionally, Section 8 of the Act provides that the issues for consideration by the relevant House in relation to any nomination shall be:

*(a) the procedure used to arrive at the nominee*

*(b) any Constitutional or statutory requirements relating to the office in question, and*

*(c) the suitability of the nominee for the appointment proposed having regard to whether the nominees' abilities, experience and qualifications meet the needs of the body to which nomination is being made.*

While conducting the approval hearing, the Committee was guided by the provisions of Section 7 (8) and (9) and Section 8 of the Public Appointments (County Assemblies Approval) Act, 2017.

### (a) Establishment of the Office of the County Attorney

The office of the County Attorney is established pursuant to the Office of the County Attorney Act, 2020. Section 5 of the Act confers upon the Governor the power to appoint a County Attorney with the approval of the County Assembly. The Section further provides for the eligibility of appointment of such person thus:

*(2) A person qualifies for appointment as County Attorney if such person—*

- (a) is an Advocate of the High Court of Kenya of at least five years standing; and*
- (b) meets the requirements of Chapter Six of the Constitution.*

Section 6 (2) provides that the County Attorney shall hold office for a term of six years and enjoys the status and rank of a member of the County Executive Committee.

#### **(i) Functions of the County Attorney**

The provisions of Section 7 of the Office of the County Attorney Act, 2020 state that a County Attorney:

- a) is the principal legal adviser to the county government;*
- b) shall attend the meetings of the county executive committee as an ex officio member of the executive committee;*
- c) shall, on the instructions of the county government, represent the county executive in court or in any other legal proceedings to which the county executive is a party, other than criminal proceedings;*
- d) shall advise departments in the county executive on legislative and other legal matters;*
- e) shall negotiate, draft, vet and interpret documents and agreements for and on behalf of the county executive and its agencies;*
- f) shall be responsible for the revision of county laws;*
- g) may liaise with the Office of the Attorney-General when need arises; and*
- h) shall perform any other function as may be necessary for the effective discharge of the duties and the exercise of the powers of the County Attorney.*

#### **(ii) Vacancy in the County Attorney's office**

Vacancy shall arise in the circumstances contemplated under Section. 12 and 13 of the County Attorney Act as detailed below:

Section 12 provides that the County Attorney may resign from office in writing, addressed to the Governor.

Further, Section 13 outlines the procedure for removal from office thus:-

*The Governor may, with the approval of the County Assembly, remove the County Attorney from office only for—*

- (a) Serious violation of the Constitution or any other law;*
- (b) Gross misconduct, whether in the performance of functions of the Office or otherwise;*
- (c) Physical or mental incapacity to perform the functions of the Office;*
- (d) Incompetence; or*
- (e) Bankruptcy.*

#### **(b) Leadership and Integrity**

The Committee, in determining the suitability of the nominee was guided by the provisions on leadership and integrity as outlined under Chapter Six of the Constitution. Article 73 (2) of the Constitution provides that the guiding principles of leadership and integrity include:

73 (2)



- (a) selection on the basis of personal integrity, competence and suitability, or election in free and fair elections;*
- (b) objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favouritism, other improper motives or corrupt practices;*
- (c) selfless service based solely on the public interest, demonstrated by*
  - (i) honesty in the execution of public duties; and*
  - (ii) the declaration of any personal interest that may conflict with public duties*
- (d) accountability to the public for decisions and actions; and*
- e) discipline and commitment in service to the people.*

Article 75 of the Constitution requires a State Officer, whether in public or private life to behave in a manner that avoids conflict between personal interest and public or official duties. This Article further prohibits a State Officer who has been removed from office under it from holding any other State Office.

Article 77(1) of the Constitution prohibits a full time State Officer from participating in any other gainful employment.

Article 78 of the Constitution disqualifies persons who are not Kenyan Citizens from appointment as State Officers.

In addition, the Committee considered Section 10 of the Leadership and Integrity Act, 2012 in particular which provides that:-

*A State Officer shall to the best of their ability:*

- (a) carry out the duties of the Office efficiently and honestly;*
- b) carry out the duties in a transparent and accountable manner;*
- c) keep accurate records and documents relating to the functions of the office; and*
- d) report truthfully on all matters of the organization which they represent.*

**(c) Suitability of the nominee with regard to the nominee's abilities, experience and qualities.**

The suitability of the nominee was assessed after scrutiny of his academic credentials, professional training and experience, personal integrity, background and individual qualities as well as his performance during the approval hearing conducted on Monday, 7<sup>th</sup> April, 2025.

### **Memoranda from members of the public in respect of the nominee**

Pursuant to Section 7 (10) of the Public Appointments (County Assemblies Approval) Act, 2017:

*“any person may, prior to the approval hearing, and by written statement on oath, provide the Clerk with evidence contesting the suitability of a candidate to hold office to which the candidate has been nominated.”*

The Clerk of the County Assembly placed an advertisement in the print media on Friday, 28<sup>th</sup> March, 2025 inviting the Public to submit memoranda by way of written statements on oath (affidavit) on the suitability or otherwise of the nominee in conformity with section 7(10) of the Public Appointments (County Assemblies Approval) Act, 2017. In this regard, by Wednesday, 2<sup>nd</sup> April, 2025 at 9:00 a.m., the County Assembly had not received any Petition or memoranda.

#### Pre- Approval Hearing

During the pre-approval hearing, the Committee noted the following:

- (i) **THAT**, the nominee had not notified the Clerk of the County Assembly of his withdrawal from the approval process as outlined under Section 7(12) of the Public Appointments (County Assemblies Approval) Act, 2017.
- (ii) **THAT**, the Committee would proceed with the approval hearing on Monday, 7<sup>th</sup> April, 2025.
- (iii) **THAT**, the Committee would examine the nominee against the criteria set out in Section 8 of the Public Appointments (County Assemblies Approval) Act, 2017

#### Approval Hearing

The Committee conducted the approval hearing of the nominee on Monday, 7<sup>th</sup> April, 2025. The nominee, Edward Oringe Waswa was vetted under oath pursuant to the provisions of the Public Appointments (County Assemblies Approval) Act, 2017 and the County Assembly of Bungoma Standing Orders.

#### **EDWARD ORINGE WASWA: NOMINEE FOR APPOINTMENT TO THE POSITION OF BUNGOMA COUNTY ATTORNEY**

Edward Oringe Waswa, the nominee to the position of Bungoma County Attorney appeared before the Committee on Monday, 7<sup>th</sup> April, 2025 in the County Assembly Chambers. The Committee noted the following:

#### **Citizenship, Date and Place of Birth**

The nominee is a Kenyan male of ID NO 27731833 born on 24<sup>th</sup> February, 1990 in Nabiswa sub location, Kiminini Location in Trans Nzoia District as per his national Identity Card.

#### **Academic and Professional Qualifications**

The nominee has educational qualifications from different institutions as follows:

No.	Institution	Qualification	Year of Award
1.	The University of Nairobi	PHD- Law	On-going
2.	Mediation Training Institute of East Africa	Certified Professional Mediator	2023

3.	The University of Nairobi	Master of Laws	2020
4.	The Kenya School of Law	Postgraduate Diploma in Law	2018
5.	Moi University	Bachelor of Laws	2015
6.	Graffins College	Certificate in Computer Software Application Packages	2011
7.	St Peter's College, Tororo	Advanced Certificate of Education	2010
8.	St. Patricks Boys' High School, Naitiri	Kenya Certificate of Secondary Education	2008
9.	Masaba Primary School, Kiminini	Kenya Certificate of Primary Education	2004

## Work and Professional Experience

The nominee worked at various institutions and in different capacities:

He has worked as a personal Assistant to Senator James Orengo, EGH, MP, and SC from March, 2018 to August, 2022. He also served as an Associate at J.A.B Orengo Advocates from March, 2018 to October, 2022 and at Triple A Law, LLP from July to October, 2017.

He worked as a Legal Researcher with the National Super Alliance (NASA) from July, 2017 to January, 2018 and at Kitiwa & Company Advocates from September, 2013 to December, 2015.

From January to July, 2017, the nominee served as a Legal Assistant (Pupillage) at Kipkenda & Company Advocates and as a Legal Assistant at A.T Oluoch & Company from January to December, 2016.

As an intern, the nominee worked at Makadara Law Courts from May to July, 2013.

The nominee further worked at Nzoia Sugar Company, Bungoma as an Agronomy Field Analyst from November, 2010 to May, 2011; and at Raytech Computers and Photographers as the sales person from April to September, 2012.

Other positions held by the nominee include; Chairperson of the Young Bar Association from August, 2022 to December, 2024; Director, Legal Affairs at the Universities and College Students' Peace Association of Kenya from January, 2016 to 2020; Trans-Nzoia Youth Representative at the East African Youth Parliament from 2015 to 2016; Vice-chairperson, Students Organization at Moi University, School of Law from 2014 to 2015; Basketball

Captain at Moi University School of Law from 2013 to 2015 and as Class Representative at Moi University School of Law from 2013 to 2014.

### **Income and net worth**

The nominee stated his net worth to be approximately Kshs. 30 million. He submitted that he is currently the Managing Partner of Oringe Waswa & Opany Advocates. He informed the Committee that his sources of wealth are:

- Outstanding Legal Fees estimated at Kshs. 10 Million
- Property in Lukhuna , Kiminini and Nabiswa worth Kshs. 10 Million
- Three motor vehicles worth Kshs. 10 Million

### **Professional Associations and Membership**

The nominee is a member of African Bar Association, the Law Society of Kenya, Young Parliamentarians Association, Certified Mediators of Kenya and The Young Bar Association where he served as Chairperson from 2022 to 2024.

### **Potential Conflict of Interest**

The nominee indicated that should a conflict of interest arise while in office, he would drop any case that would conflict with the discharge of any duties of the office of County Attorney.

### **Pro-bono/Charity Work**

The nominee has been involved in offering pro bono services on land cases involving the tussle for land between squatters and the Kenya Army in Eldoret Military Base. He further submitted that he handled the Endebess squatters tussle on pro-bono basis.

### **Integrity**

The nominee submitted that he has neither been charged in a court of law nor mentioned in any investigatory reports of Parliament or any Commission of Inquiry in the last three (3) years. The nominee has also never been dismissed or otherwise removed from office for contravention of the provisions of Article 75 of the Constitution.

### **SUITABILITY OF THE NOMINEE**

The Committee posed several questions to the nominee on his suitability for appointment as follows:

### **On values and principles of the public service as outlined in Article 232 of the Constitution of Kenya, 2010**

The nominee informed the Committee that the principles include integrity, accountability, transparency and fairness. He stated that public officers should uphold high ethical standards

in their conduct and decision making. Regarding transparency, the nominee emphasized the importance of making public information accessible, timely and accurate.

### **On duties of the County Attorney**

The nominee informed the Committee that the County Attorney is the Principal Legal advisor to the County Executive. He also stated that the County Attorney represents the County Executive in civil matters.

### **On litigation in Bungoma County and high cost of Legal Fees/pending Legal Fees owed by the County Executive**

The nominee submitted that he would conduct a legal audit to determine cases that require application of alternative dispute resolution mechanisms and those that will proceed to full hearing. These approaches can lead to more efficient, cost-effective, and amicable outcomes compared to prolonged court processes.

The nominee further underscored the need to comply with the principles of the Advocates Remuneration Order; which provides for remuneration of an advocate of the High Court by his client in contentious and non-contentious matters.

The nominee also informed the Committee that should there be a matter that requires procurement of legal services by the County Government, he would engage in negotiations on the legal fees to be charged for such services; and within budgetary provisions before engaging an external advocate.

### **On non-compliance by the appointing authority with the legal advice provided**

The nominee stated that as the County Attorney, he ought to provide sound legal advice to the County Executive at all times. He stated that when called upon by his appointing authority to provide such advice, he would offer documented and impartial advice.

### **On Commitment to Legal Compliance and Intergovernmental Collaboration**

The nominee stated that he would provide guidance to the County Executive Departments to ensure adherence to established legal provisions regarding content and timelines for matters with legal implications. He also informed the Committee that he would maintain regular consultations with the County Assembly on issues of mutual interest between the two arms of government.

### **Regarding his litigation history**

The nominee stated that he had successfully litigated over 80% of the cases handled in his private practice.

### **On the objectives of civic education**

The nominee informed the Committee that civic education is intended to enlighten the public on current affairs and to promote public participation in decision-making

### **Regarding legal pitfalls relating to Public Finance Management**

The nominee stated that key challenges affecting Public Finance Management and service delivery in public entities include the presence of ghost workers, mismanagement of funds, favoritism, and conflicts of interest. He pledged to ensure compliance with relevant legal provisions related to service delivery; particularly in the areas of human resource management and procurement, if given the opportunity to serve.

### **On principles to be observed by the County Public Service Board during the exercise of its disciplinary powers**

The nominee informed the Committee that, in exercising disciplinary powers, it is essential to uphold the principles of natural justice and fairness. He stated that all parties involved should be given adequate time and opportunity to present witnesses and pursue their case. He also emphasized the importance of the County Public Service Board maintaining consistency in its decision making.

### **On key principles governing the Procurement Policy**

The nominee stated that the principles of transparency, accountability, non-discrimination, fairness and the rule of law should be observed during the tendering process.

### **Regarding matters that are taken into account when making appointments to the County Public Service**

The nominee informed the Committee that merit and principles under Article 10 and 232 of the Constitution should be taken into account when making appointments to the County Public Service. The nominee also stated that for consideration for appointment, an individual's integrity should be beyond reproach.

### **COMMITTEE GENERAL OBSERVATIONS ON THE SUITABILITY OF THE NOMINEE**

The Committee having considered, the nominee's filled questionnaire pursuant to Section 6(8) of the Public Appointments (County Assembly Approval) Act, 2017, his curriculum vitae; and having heard his oral submissions during the approval hearing, made the following observations:

- 1) **THAT**, the nominee meets the requirements of Chapter Six of the Constitution of Kenya, 2010 on Leadership and Integrity.
- 2) **THAT**, the nominee has not been charged in a court of law in the past three (3) years.
- 3) **THAT**, the nominee has never been dismissed from office under Article 75 of the Constitution for contravention of the Provisions of Article 75(1) (conflict of interest) and Article 76 (financial probity).
- 4) **THAT**, the nominee was admitted to the Roll of Advocates on 28<sup>th</sup> June, 2018 thus the nominee meets the requirements under Section 5 (2) on the qualifications for appointment as County Attorney.

- 5) **THAT**, the nominee is in good standing with his professional body; he presented to the Committee a current practicing certificate for the year 2025.
- 6) **THAT**, the nominee **demonstrated** knowledge of topical, administrative and technical issues touching on the position to which he had been nominated to; and **had** the requisite abilities, academic qualifications and professional experience to be approved for appointment.
- 7) **THAT**, the nominee's average assessment score was **74.63%**.

### **COMMITTEE RECOMMENDATION**

Having conducted the approval hearing for the nominee pursuant to Sections 4, 7 and 8 of the Public Appointments (County Assemblies Approval) Act, 2017 and Standing Order 208 (4), the Committee recommends:

- 1) **THAT**, this House **approves** the nomination of **Edward Oringe Waswa** for appointment as the **Bungoma County Attorney** by His Excellency, the Governor.

Hon. Speaker, we have adoption schedule and the copy I am having is filled by members as indicated. With that allow me call upon the Hon. Anthony Namunyu Luseneke to second. Thank you

**Mr. Speaker:** Thank you. Hon. Deputy Speaker, Stephen Wamalwa. Let me ask Hon. Anthony Luseneke, our Leader of Minority to second the report.

**Hon. Anthony Luseneke:** Thank you Hon. Speaker. Let me first applaud my colleague for his eloquence in moving the motion. He has moved it in a record time of less than 30 minutes.

Secondly, I also want to appreciate the committee that was involved with the appointment. This office has been vacant for some time and it has been hindering operations in matters legal. We have so many cases pending in the court.

In fact the county government has been at risk; it has been exposed in some of those cases. So appointing a substantive person in that office will help this County sort out some of those cases that are in court. And looking at the person before us, in the committee's opinion, the person is suitable for that particular office and he demonstrated that given that opportunity, he is able and capable and ready to serve this County through that office.

So I just want to request this House that we support the report as I second and request our Members that we consider appointing that person in that office. Thank you.

**Mr. Speaker:** Thank you, Hon. Luseneke. Honourable members, I will be able to propose a motion for debate. Honourable members a motion having been moved and seconded that this House approves the nomination of Edward Oringe Waswa for appointment as the Bungoma County Attorney by His Excellency, the Governor, I propose.

**Mr. Speaker:** Yes, Hon. Jack!



**Hon. Jack Wambulwa:** Thank you Hon. Speaker. First of all, I want to appreciate the mover of the motion Hon. Stephen Wamalwa and the seconder. Having listened to the motion that is before us, if what has been said about the nominee is true, then this is the kind of County Attorney that we have been looking forward to getting in this County. We are having many pending bills in matters legal because we have never had a practicing lawyer in that office of the County Attorney.

I would wish that we give this gentleman a chance and more so looking at his background and history, he is a hustler. He has passed through several organizations working for them including NASA. He is the right person to *nasa* the characters in Bungoma who have been messing up this County. I will request that this House without wasting time approves the name of the nominee.

**Mr. Speaker:** Thank you. Hon. Allan!

**Hon. Allan Nyongesa:** Thank you Mr. Speaker. Allow me first start by appreciating a colleague teacher Hon. Stephen for reading the report articulately as a professional teacher.

Secondly, I want to take this opportunity to thank His Excellency the Governor, Kenneth Makelo Lusaka for nominating a youthful person to this position.

Looking at the year of birth from the report, this young man is born the year 1990. That means he is hardly out of the youth bracket. He is still youthful. On behalf of the youth of Bungoma, I want to appreciate the Governor for seeing it fit to nominate a youth in this docket. This is a good gesture going forward.

Secondly, from the report, this is a young man who is well educated and going with the report, I am sure he is capable of doing this work well. Yester evening I was on media and I saw one publication by the Law Society of Kenya - Bungoma branch. In their letter they were writing to oppose the nomination of...

**Mr. Speaker:** Let me correct you that was not LSK Bungoma Chapter. I am a senior member; it did not come from us. He can confirm. We are basically learned people, we have letter heads. That is not our writing and I can confirm to you, I spoke to the President of that LSK Bungoma Chapter. It's not from us, that is a masquerader, an impersonator to the LSK Bungoma Chapter.

**Hon. Allan Nyongesa:** Hon. Speaker, thank you for that clarification. I was also in support of whatever you are saying because when I read that letter, I was expecting to see a citation that he has a legal backing of their arguments but that letter was flat and I did not see any legal backing towards their argument because what they were saying...

**Mr. Speaker:** Just to assist you, that letter was not signed by any lawyer so you cannot even quote it here because it has not been signed.

**Hon. Allan Nyongesa:** Okay, thank you Hon. Speaker. I leave it out but my point was on media everywhere. People are saying in Bungoma County, we are nominating a person who is not a person from our County. After a key analysis and I am also a good student who keenly follows law. In article 41 of our Kenyan Constitution, it says every person in this country who is a citizen and has qualifications is eligible to be employed in any part of this



country. As a county, let us be a good example to other counties that anybody can be employed in any part of this country without looking into where that person is born. Without much ado, I want to support the report fully.

**Mr. Speaker:** Hon. Nganga, you proceed!

**Hon. Everton Nganga:** Thank you Hon. Speaker for giving me this chance. First, I rise to support the motion that has been moved by the Deputy Speaker. He has moved the report eloquently and the way he has been phonetically pronouncing the terms in the report, he is equal to the task.

I support this motion because you are one of the renowned, seasoned advocates in Bungoma County and you are the Chair of this committee. I am happy that all the requisite papers that were required were provided. I have looked at the academic credentials of the person. Oringe Waswa, actually qualifies to work in that position. I do not have much. I support the report.

**Mr. Speaker:** Thank you. Hon. Job, then I will have Majority! Hon. Deputy Speaker you prepare to reply. Job you go!

**Hon. Job Mukoyandali:** Thank you Hon. Speaker. Sometimes when you give me chance to speak just before my senior friend Hon. Majority speaks it gives me a lot of fear. I guess on what I am going to speak...

**Mr. Speaker:** Say what you have.

**Hon. Job Mukoyandali:** First, let me laud the mover of the motion. When the Deputy Speaker speaks, I see my history teacher speaking. So eloquent and sometimes it keeps me gazing on what follows next.

First, this is a young man who has actually grown through the profession and as somebody who has schooled well at his age and is pursuing a masters, it is something positive and encouraging to the young generation. Looking at his experience compared to his age, seemingly he is somebody who has been aggressive in life. He has moved fast to acquire what he has right now. Looking at his job experience and what he has been doing all through since he came out of form four, it's clearly evident that he is somebody who is focused and for a very long time we have not been having somebody substantive in that position.

When I went through the report looking at his background, I thought of supporting the report because this is somebody who qualifies but wanted to oppose the nominee based on his background. Of course somebody will say I am becoming tribal or something else but there are people who have grown under senior lawyers in this town like Emmanuel Situma. There are young lawyers who have grown under the hands of senior lawyers like Makokha in this town. I would have wished to see somebody who practices from within Bungoma town getting that position.

As much as the Governor has considered a youth, I would have been extremely happy if I saw that it is somebody who has grown in the hands of Senior Counsel Emmanuel Situma.

**Mr. Speaker:** I am yet to be called a Senior Counsel. From the roll of Senior Counsel in Kenya, they are only 66.

**Hon. Job Mukoyandali:** I withdraw that.

**Mr. Speaker:** You are conferred this one by the Chief Justice only. I will share so that you understand a Senior Counsel as per the role of advocates.

**Hon. Job Muokoyandali:** Hon. Speaker, I am not a lawyer; these are matters of the law. I am well guided but I would have been happy if I saw somebody who has been raised by a senior lawyer or advocate within the town like Hon. Emmanuel Situma getting that position. All in all I am in support of the report. The young lawyer to get that position but in future when such positions come, let us look around for those people who are applying.

Actually we have people from within the town and Bungoma that have the same qualifications. Let us also give chance to our people so that they can grow in their profession. I support the report.

**Mr. Speaker:** Thank you. Hon. Majority you close up. Deputy Speaker, prepare to reply!

**Hon. Joseph Nyongesa:** Thank you Mr. Speaker. First, allow me also appreciate the mover who is our Deputy Speaker and the seconder who is our Leader of Minority and all Members that are supporting. I also rise to support.

First I was also thinking the way Hon. Job is thinking but given that I was part of the committee and when the nominee came, I was thinking he is a young person because the age was 35. When the gentleman appeared with his posture, I was again convinced that this one is not 35 may be he is around 40 years. The way he handled questions really convinced me because the passion and knowledge he had in answering questions because this was the third person we are handling in terms of the County Attorney, I was totally convinced.

This issue of 30% applies across the counties so let Hon. Job also know that we as Bungoma residents can also apply elsewhere but what makes us be considered should be how determined we are. The way the nominee was so determined even the Chairperson whom I do not want to say was also convinced and also got scared with the way the nominee was answering because the nominee was really vast with what he was going to handle and the other character I noticed and allow me say this, this character of aggressiveness and scaring of the opponent was also present in this nominee and I looked at the chairman and wondered if it is the character of lawyers.

That person was very aggressive and also scared the committee by handling issues so I got confused and said this is the right person that we should give this position.

**Mr. Speaker:** Honourable members, for clarification, the committee was never scared by the nominee and I can confirm we took him on properly.

*(Laughter)*

Hon. Mukhongo can confirm if you want...

*(Loud consultation)*

But the Chair was not scared. The chair took on the nominee properly. Wind up please.

**Hon. Joseph Nyongesa:** Hon. Speaker, the chair was the one who was so determined and could pose questions courageously but when the nominee was answering, our Chair also got relaxed and convinced that actually the nominee was aware...

**Mr. Speaker:** Because he was answering rightly but not scared.

**Hon. Joseph Nyongesa:** Thank you Mr. Speaker for guiding and you know there are so many ways that you may use because getting convinced and scared so that you could not pose more questions is also another way of getting convinced and what I am putting across is that actually he is the right person in this position and the way he tackled the issue of handling pending bills and the way he could advice the executive, you could see that actually if given this position, the nominee could be the best.

Otherwise, we support the report but my key issue is that that character of aggressiveness that I have seen in you, it also appeared in that nominee.

**Mr. Speaker:** Thank you Hon. Majority. Hon. Deputy Speaker, reply to the motion please!

**Hon. Stephen Wamalwa:** Thank you Hon. Speaker. The Majority Leader has actually made me laugh because I did not know that you are aggressive but I am discovering today that you are an aggressive character.

I want to thank the contributors, those members who have actually contributed to dissect and open this report so that we can understand it well.

This report is so explicit that we cannot even try to do anything because it has talked through its observations and recommendations only that I want to mention that when it comes to appointment, we have to take care of the requirements of the constitution and the issue of ethnicity and region also comes to play as envisaged in our constitution and the County Government's Act and also the requirement of National Integration Commission and that is why you realize that even a non-resident of this County can be appointed to serve in this County.

On the issue of scaring as alluded by the Honorable Leader of Majority, this nominee was just confident. He demonstrated the character of a confident nominee and looked as one to pose a required character if called upon to represent this County in a court of law and that is why maybe he looked so.

Otherwise, Honorable members, I urge you that we support the report so that we can adopt it and it may go a long way in helping our County. I submit.

**Mr. Speaker:** Thank you Hon. Deputy Speaker for the reply to the motion. Just for our sharing, Lusenaka is here, in our daily practices, the judicial officers are known for harassing lawyers. When you appear timid or shivering, you will have to take off so that design of the nominee of facing us off and answering our questions firmly is basically what he has been practicing in a court of law. So he was just in order.

Honourable members, I will now put a question to the motion so that we are able to make a decision. Honorable members, a motion has been moved and seconded that this House

approves the nomination of Edward Oringe Waswa for appointment as the Bungoma County Attorney by His Excellency, the Governor

*(Question put and agreed to)*

The ayes have it!

*(Applause)*

Honourable Members, the House has approved the nomination of Edward Oringe Waswa for appointment as the Bungoma County Attorney by His excellency, the Governor and Honorable members, pursuant to section 11 of Public Appointments County Assemblies Approval Act 5 (2017), the Clerk shall notify the appointing authority of the decision of the County Assembly within 14 days from today for the appointing authority to formally appoint the nominee and arrange for the swearing of the same. Thank you. Next item!

#### REPORT BY THE HOUSE BUSINESS COMMITTEE ON THE AFFAIRS OF THE COUNTY ASSEMBLY FOR THE THIRD SESSION OF THE COUNTY ASSEMBLY

**Mr. Speaker:** Yes Chair, on behalf of HBC proceed Hon. Lusenaka!

**Hon. Anthony Lusenaka:** Thank you Honorable Speaker. I am here to move...

**Mr. Speaker:** Hon. Lusenaka, they are asking you to confirm your membership!

**Hon. Anthony Lusenaka:** Hon. Speaker, this is an engine of this County Assembly so definitely we have a quorum.

**Mr. Speaker:** Just confirm so that they will proceed!

*(Loud consultation)*

**Hon. Anthony Lusenaka:** Hon. Speaker, the Chair of this committee is Hon. Situma who is present. Hon. Stephen Wamalwa, Majority Leader Hon. Joseph Juma, Hon. Anthony Lusenaka, Hon. Meshack Simiyu, Hon. James Mukhongo, Hon. Jack Wambulwa, and Hon. Mildred

**Mr. Speaker:** We have quorum. Proceed!

**Hon. Anthony Lusenaka:** We have a quorum!

*(Applause)*

Allow me to start from chapter one

Objectives of the report

The report seeks to provide a comprehensive documentation of legislative activities undertaken during the third session of the third Assembly

#### CHAPTER ONE

#### OBJECTIVES OF THE REPORT

The report seeks to:

1. Provide a comprehensive documentation of Legislative activities undertaken during the third Session of the third Assembly.

2. Evaluate and track progress on Legislation and identify any gaps or areas for improvement by identifying strategies for improvement during the fourth Session.
3. Comment on any general matters which are considered important.

This report covers activities of the County Assembly of Bungoma from Tuesday 13<sup>th</sup> February, 2024 to Monday 10<sup>th</sup> February, 2025.

## **1.2 ESTABLISHMENT AND MANDATE OF THE COMMITTEE**

I think it is well known. Allow me to...

**Mr. Speaker:** Yes proceed!

### **COMMITTEE MEMBERSHIP**

The Committee as currently constituted comprises of the following Members:

- |                            |                       |
|----------------------------|-----------------------|
| 1. Hon. Emmanuel Situma    | Speaker (Chairperson) |
| 2. Hon. Stephen Wamalwa    | Deputy Speaker        |
| 3. Hon. Joseph Juma        | Member                |
| 4. Hon. Anthony Lusenaka   | Member                |
| 5. Hon. Meshack Wekesa     | Member                |
| 6. Hon. Miliah Masungu     | Member                |
| 7. Hon. James Mukhongo     | Member                |
| 8. Hon. Violet Makhanu     | Member                |
| 9. Hon. Jack Wambulwa      | Member                |
| 10. Hon. Hentry Nyongesa   | Member                |
| 11. Hon. Johnston Ipara    | Member                |
| 12. Hon. Cornelius Makhanu | Member                |
| 13. Hon. Jacob Psero       | Member                |
| 14. Hon. Metrine Nangalama | Member                |
| 15. Hon. Mildred Barasa    | Member                |

### **ACKNOWLEDGEMENT**

The Committee extends its appreciation to the Offices of the Speaker and the Clerk of the County Assembly for the support accorded to it in the execution of its mandate. On behalf of the House Business Committee, I now have the honor to present the report to the House for deliberation and adoption.

It is signed by the Chairperson Hon. Emmanuel Situma

## **SPEAKER OF THE COUNTY ASSEMBLY**

### **CHAPTER TWO**

#### **RESUMPTION OF THE HOUSE, CALENDAR AND SITTINGS OF THE HOUSE**

The County Assembly resumed its sittings on Tuesday 13<sup>th</sup> February, 2024 after the December, 2023 recess. The first business undertaken by the House at the commencement of the Session was to approve the membership of the House Business Committee and the Calendar of regular Sittings.

On Tuesday, 13<sup>th</sup> February, 2024 the County Assembly by resolution, approved the House Business Committee. The House also considered and approved its Calendar of Regular Sessions 2024 while introducing periods of short and long recess to give Members of County Assembly sometime to visit their electorates, perform Committee functions and to take well deserved breaks with their families. During the period under consideration, the County Assembly had anticipated one hundred and thirty one (131) Sittings from 13<sup>th</sup> February, 2024 to 10<sup>th</sup> February, 2025.

The House adjourned from Wednesday 5<sup>th</sup> June, 2024 at 9.30 a.m. to Thursday 13<sup>th</sup> June, 2024 at 2:30 p.m. to pave way for the Sector Committees' interrogations of the Annual Budget Estimates FY 2024/2025 hence targeted Sittings for the month of June, 2024 were not achieved.

The House also altered its Calendar on Tuesday 30<sup>th</sup> July, 2024 by adjourning its Sittings from Wednesday 31<sup>st</sup> July, 2024 at 9.30 a.m. to Thursday 30<sup>th</sup> August, 2024 at 2.30 p.m. for a long recess. Further, the long recess that had been scheduled in the month of September, 2024 was altered hence the House resumed its sittings on Tuesday 3<sup>rd</sup> September, 2024 at 2.30 p.m. The House further adjourned on Wednesday 16<sup>th</sup> to Tuesday 29<sup>th</sup> October, 2024 at 2:30 p.m. to allow various teams prepare for the County Assembly Sports Association games that were held in Bungoma County from 18<sup>th</sup> to 27<sup>th</sup> October, 2024.

At the end of the Session, the House managed one hundred and one (101) Sittings including five (5) Special Sittings translating to 77.1% achievement as shown in the table below:

<b>S/No.</b>	<b>MONTH</b>	<b>REGULAR SITTINGS</b>	<b>SPECIAL SITTINGS</b>	<b>Total</b>
1.	February, 2024	12	-	12
2.	March, 2024	11	-	11

3.	April, 2024	12	-	12
4.	May, 2024	01	03	4
5.	June, 2024	07	-	07
6.	July, 2024	13	-	13
7.	August, 2024	-	-	-
8.	September, 2024	16	-	16
9.	October, 2024	08	-	08
10.	November, 2024	12	-	12
11.	December, 2024	04	-	04
12.	February, 2025	-	02	02
	<b>Total</b>			<b>101 (77.1%)</b>

Attendance of Sitzings of the County Assembly offers pertinent and invaluable contributions to the legislative processes. House Sitzings are a forum for debate, decision-making, and policymaking. They provide a platform for Members to deliberate on issues of public interest, enact various legislations, approve County budgets, and hold the County Executive accountable.

### **SPECIAL SITTINGS OF THE COUNTY ASSEMBLY**

The House held five special Sitzings during the period under consideration. On Wednesday 15<sup>th</sup> May, 2024, the House held three Special Sitzings for consideration of the following businesses:

1. Tabling of the report by the Budget and Appropriations Committee on the Bungoma County 2<sup>nd</sup> Supplementary Budget for the FY 2023/2024
2. Issuance of Notice of Motion on the report by the Budget and Appropriations Committee on the Bungoma County 2<sup>nd</sup> Supplementary Budget for the FY 2023/2024
3. Motion on the report by the Budget and Appropriations Committee on the Bungoma County 2<sup>nd</sup> Supplementary Budget for the FY 2023/2024
4. Second reading of the 2<sup>nd</sup> Supplementary Appropriation Bill, 2024
5. Committee on Supply
6. 3<sup>rd</sup> Reading of the 2<sup>nd</sup> Supplementary Appropriation Bill, 2024
7. 1<sup>st</sup> Reading of the Bungoma County Public Participation and Civic Education Bill, 2024
8. 1<sup>st</sup> Reading of the Bungoma County Valuation and Rating Bill, 2024



#### 9. 1<sup>st</sup> reading of the Bungoma County Access to Information Bill, 2024

During the two Special Sitting of 4<sup>th</sup> February, 2025, the businesses considered by the House were:

1. Tabling the name of a nominee for appointment to the position of Chair of the Bungoma County Rural and Urban affordable Housing Committee (CRUAHC).
2. Consideration of the report by the Sectoral Committee on Lands, Urban, Physical Planning and Housing on the vetting of the Members to Bungoma and Kimilili Municipalities.

#### Comparison of House Sitzings during the second and third Sessions

In comparing the Sitzings and targets for 2023 and 2024 County Assembly Sessions, there was noticeable growth in the number of sittings held in 2024 but a decline in terms of the achievement rate relative to the targets.

For the 2023 Session, the County Assembly set a target of 112 sittings, and the Assembly achieved 95 sittings, including 1 special Sitting. This resulted in an achievement rate of 84.8%, indicating that the Assembly was able to hold a significant number of the planned Sitzings despite adjustments to the Calendar. However, seventeen (17) Sitzings were lost due to adjournments and changes in the Calendar, which impacted the total number of Sitzings held.

In 2024, the Assembly increased its target to 131 Sitzings, expecting a higher number of Sitzings than in 2023. The Assembly managed to hold one hundred and one (101) Sitzings including five (5) special Sitzings. There was noticeable increase in the actual number of Sitzings compared to the previous year. However, despite holding more Sitzings, the achievement rate dropped to 77.1% in 2024, lower than the previous year's 84.8%. This decline in the achievement rate suggests that although the Assembly aimed for more sittings, changes to the Calendar and adjournments had a larger impact on the final number of Sitzings than in 2023.

### **VISITING DELEGATIONS AND PUBLIC INTERACTIONS WITH THE COUNTY ASSEMBLY**

As part of citizen participation in its proceedings in accordance with the principles of citizen participation under Article 196 of the Constitution, the County Assembly has been welcoming citizens in both its Chamber and Committee proceedings. There were various



schools that visited the County Assembly on learning tour and followed proceedings from the Public Gallery. These included the following:

1. Nang'eni Girls Secondary School from West Bukusu Ward; 14<sup>th</sup> February, 2024
2. St Francis of Assisi Myanga Secondary School from Kimaeti Ward; 22<sup>nd</sup> February, 2024
3. Little Marafiki Academy from Musikoma Ward; 12<sup>th</sup> March, 2024
4. Baptist Girls High School from Township Ward; 13<sup>th</sup> March, 2024
5. St Mary's High School Webuye from Maraka Ward; 26<sup>th</sup> March, 2024
6. Toroso S.A Primary and Junior School from Chesikaki Ward; 28<sup>th</sup> March, 2024
7. Friends Secondary Kibisi from Mbakalo Ward; 2<sup>nd</sup> April, 2024
8. Dreamland Education Center from Kibingei Ward; 23<sup>rd</sup> June, 2024
9. St. Mary Magdalene Namamuka R.C from Musikoma Ward; 24<sup>th</sup> July, 2024
10. Chesiro Secondary School from Mt. Elgon, Cheptais Ward; 25<sup>th</sup> July, 2024
11. Kimilili Friends Girls High School from Kibingei Ward; 30<sup>th</sup> July, 2024
12. Masaek SA comprehensive Primary School from Kapkateny Ward, 30<sup>th</sup> July, 2024
13. Marell Junior Academy from Musikoma Ward, 30<sup>th</sup> July, 2024
14. Friends School Makuselwa from Ndivisi Ward; 12<sup>th</sup> September, 2024
15. Marobo Secondary School from Luuya Bwake Ward, 17<sup>th</sup> September, 2024
16. Milo Boys Secondary School from Sitikho Ward; 19<sup>th</sup> September, 2024
17. Chemweisus S.A. Secondary School from Elgon Ward; 24<sup>th</sup> September, 2024
18. Bridge International from Musikoma Ward; 25<sup>th</sup> September, 2024
19. Lugusi Comprehensive School from Mihuu Ward; 1<sup>st</sup> October, 2024

School visit program enabled students to visit the Assembly and acquire knowledge of Legislative processes. During the period under review, over 1,200 students from primary and secondary schools accompanied by their teachers participated in these visits. The program focused on guided tours, attendance of Plenary sessions and lectures on:

- Functions of the County Government and the County Assembly
- Roles of the Governor
- Impeachment procedures for the Governor and the Speaker
- Law-making processes
- Revenue sources for County Governments
- Relationship between National and County Governments

During the Session, a delegation from Turkana County Assembly visited the County Assembly during the period under review on 28<sup>th</sup> February, 2024. They followed the proceedings of the House from the public gallery.

Further, a student of Philosophy and History from Jaramogi Oginga Odinga University of Science and Technology conducted a study in the County Assembly. This in essence broadened the scope of public interactions with the Assembly. Notably, on 25<sup>th</sup> June, 2024, His Highness Owelukoosi Umukuuka (The Third) III, Jude Mike Mudomo in the company of key leaders from Inzu ya Masaaba paid a visit to the County Assembly and followed its proceedings from the Speaker's Gallery.

Visiting delegations to the County Assembly promote openness and collaboration. They play a critical role in strengthening democratic governance and providing exposure to Legislative process.

#### Comparison of Visits to the County Assembly during the second and third Sessions

The 2023 and 2024 reports highlight the County Assembly's efforts towards encouraging citizen participation and promoting transparency by welcoming visitors especially schools to understand the legislative process.

In 2023, the Assembly hosted a variety of educational institutions and other groups. These included several secondary schools such as St. Joseph's Nalondo Girls' Secondary School (March 30, 2023), Kimilili Friends Girls' Secondary School (April 11, 2023), and Mbakalo Friends Girls' Secondary School (September 12, 2023), alongside primary schools like Moi DEB Primary School (April 20, 2023) and Sio RC Primary School (September 7, 2023). Additionally, the Assembly welcomed other groups including officers from the Senate, a delegation from the Turkana County Assembly on a benchmarking activity and participants in a joint Committee meeting between Trans-Nzoia and Bungoma County Assemblies. The third Session saw a similar commitment to public engagement with a notable increase in frequency of visits.

The 2024 report lists several schools visiting the Assembly with the first visit occurring in February 14, 2024, by Nang'eni Girls Secondary School. Other notable visits included Baptist Girls High School (March 13, 2024) and St. Mary's High School Webuye (March 26, 2024), and a range of primary and secondary schools from various wards. The number of visitors grew substantially in 2024 with over 1,200 students from primary and secondary

schools visiting the Assembly as compared to a smaller though still significant number in 2023.

In conclusion, while the 2023 report shows a significant level of engagement, the 2024 report illustrates a clear increase in the number of visits and a broader educational outreach that reflects an overall growth in public interaction with the County Assembly.

## **PRESIDING SPEAKERS DURING THE PERIOD UNDER REVIEW**

A Presiding Speaker plays a critical role during House Sittings. They are responsible for maintaining order during debates and presiding over the Legislative proceedings. As a result, the Speaker acts with impartiality in upholding the rules of the House and facilitating fair discussions.

During the third Session, Speakers presided over one hundred and one (101) Sittings as follows:

Hon. Emmanuel Situma (Speaker); **77 Sittings**

Hon. Stephen Wamalwa (Deputy Speaker); **17 Sittings**

Hon. Benjamin Otsiula (Member of the Speaker's Panel); **07 Sittings**

The Hon. Speaker presided over most of the House Sittings followed by the Deputy Speaker and a Member of the Speaker's Panel.

By maintaining order, interpreting rules and facilitating debates the Speaker plays a vital role in supporting the legislative process. Their impartiality, leadership and ability to manage complex procedures are important for seamless flow of debates.

Comparison during the second and third Sessions

In 2024, the County Assembly saw an increase in number of Plenary Sittings, with a total of 101 Sittings as compared to 95 Sittings in 2023. The presiding Speakers in 2024 included Hon. Emmanuel Situma, Hon. Stephen Wafula Wamalwa and Hon. Benjamin Otsiula. In addition, Hon. Christine Mukhongo, a member of the Speaker's Panel was observed chairing the Committee of the Whole House in both years. This reflected her involvement in facilitating legislative processes.

This increase in the number of Sittings compared to 2023, where Hon. Emmanuel Situma presided over 68 Sittings, Hon. Stephen Wamalwa over 23 Sittings and Hon. Benjamin

Otsiula over 3 Sittings indicates a more active legislative process. The Speaker, Deputy Speaker and Members of the Speaker's Panel played an enhanced role in maintaining order, interpreting rules and facilitating debates.

## **BUSINESS UNDERTAKEN DURING THE PERIOD UNDER REVIEW**

### **Communication from the Chair**

Communication from the Chair is crucial for maintaining order and ensuring debates are conducted as per the procedures of the House. The Speaker addresses the House on various issues arising from debates or requests for rulings by any Member of the County Assembly. The Presiding Speaker issues formal communication to the House while responding to emerging issues or to address issues relating to the conduct of legislative business.

The Presiding Speaker may also issue a communication when he has information to pass to the County Assembly from his Office or any other Office. The Committee underscored the importance of the same and noted that there is need to track the action points for reference.

During the period under review, a total of fifty three (53) communications were delivered.

They were summarized alongside the following subject lines:

- i. Alteration of the Order Paper;
- ii. Plenary and Committee sittings;
- iii. General legislative administration;
- iv. Coalitions issues and political events;
- v. Visiting delegations;
- vi. Events by the County Government;
- vii. Honorable Members' welfare;
- viii. Amendment of the Standing Orders;
- ix. Adjournments; and
- x. Public holidays among others.

The distribution of Communication per month was as follows:

Year	Feb 2024	March 2024	April 2024	May 2024	June 2024	July 2024	Aug 2024	Sept 2024	Oct 2024	Nov 2024	Dec 2024	Feb 2025	<b>Total</b>
2024	11	05	05	03	05	08	-	11	01	02	01	01	<b>53</b>

In conclusion, the Speaker serves as a contact point between the County Assembly, the media and the public. The Speaker's Communication during House proceedings is central to the smooth and orderly conduct of business.

### Comparison of Communications from the Chair during the second and third Sessions

In both 2023 and 2024, the Speaker of the County Assembly issued communications to guide the House on various issues. This ensured smooth operations and clarity in legislative proceedings. In 2023, a total of forty six (46) communications were delivered. They covered an array of topics including procedural rulings, guidance on legislative matters, convocation of special sittings and recognition of visiting delegations. The Speaker's role was crucial in maintaining order in the House and ensuring Members were informed about political affairs, Committee business and the status of ongoing Legislative matters. These Communications helped provide direction and structure during the proceedings of the House hence fostering efficient decision-making.

In 2024, the Speaker issued fifty three (53) Communications reflecting a slight increase from the previous year. The subject of Communications included alterations to the Order Paper, Plenary and Committee Sittings and visiting delegations. However, there was an increase in the focus on issues such as members' welfare and public holidays. This increase in the number of communications suggested a growth in the level of communication activity. It further mirrored an expanded effort by the Speaker to address the administrative and procedural needs of the House.

### Messages from H.E the Governor

During the period under review and pursuant to Standing Order 45, the House received and processed ten (10) Messages from H.E the Governor. The Messages ranged from invitation of Honorable Members to consultative meetings to submission of nominees for approval by the County Assembly.

### Comparison in the number of Messages received during the second and third Sessions

In 2024, the County Assembly received and processed ten messages from the Governor. This reflected a noticeable increase compared to the six messages received in 2023. Messages in both years primarily focused on nominations to key positions such as County Executive Committee Members, Chief Officers and other significant roles within the County Government. The increase in messages in 2024 suggests a higher volume of gubernatorial appointments and a more frequent need for the Assembly's confirmation. Thus an expansion of governance activity within the County compared to the previous year.

### Public Petitions

The provisions of Article 37 of the Constitution and Section 15 of the County Governments Act, 2012 state that a person has a right to petition a County Assembly to consider any matter

within its authority including enacting, amending or repealing any of its legislation. Every Petition presented pursuant to Section 15 of the County Government's Act, 2012 stands committed to the Committee on Justice and Legal Affairs. The Committee is expected to respond to the petitioner by way of a report addressed to the petitioner or petitioners in not more than sixty calendar days from the time of reading the prayer.

During the period under consideration, four Petitions were considered by the Committee on Justice, Cohesion and Legal Affairs. They were:

1. Petition by the integrated and Chebui cave dwellers community on the need to assist the IDPs and evacuate the 11 families from Chebui Cave – *Prayers granted*.
2. Petition by Martin Musungu Kichamba, Martin Mulumeti, Ben Matabili and Leonard Watima concerning poor management of the new Chesikaki farmers' Co-operative Society and illegality of the current office bearers – *Prayers not granted*.
3. Petition by residents of Milima Ward on the relocation of Milima Ward Administrator's Office and alleged violation of established processes and public participation procedures – *Prayers not granted*
4. Petition by residents of Kapkateny Ward concerning construction of the office of the Ward administrator as well as alleged unfair allocation of bursaries and farm inputs in Kapkateny Ward- *Prayers not granted*

It is imperative to note that public Petitions are an essential part of the democratic process. They allow the public to engage directly with the Legislature in the Legislative decision-making. They serve as a formal way for the public to raise concerns, propose changes or request action on specific issues that affect their communities.

### **2.5.3.1 Comparison of Petitions processed during the second and third Sessions**

In 2024, the County Assembly processed four public Petitions, two were concluded within the stipulated time frame while the other two sought for extension of time. The third Session 2024 saw a slight increase in the number of Petitions processed. This underscored the County Assembly's commitment towards addressing public concerns.

### **2.5.4 Papers laid during the Session**

During the period under review, a total of one hundred and sixty seven (167) Papers were laid before the House. Out of these, one hundred and one (101) emanated from various Committees as outlined in the table below:

S/NO	COMMITTEE	REPORTS TABLED
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1.	House Business Committee	03
2.	Liaison Committee	03
3.	Finance and Economic Planning	09
4.	Public Administration and ICT	06
5.	Labour Relations, Members' Services and Facilities	04
6.	Health Services	06
7.	Lands, Urban, Physical Planning and Housing	07
8.	Roads, Transport, Infrastructure and Public Works	03
9.	Education and Vocational Training	07
10.	Youth Affairs and Sports	05
11.	Gender, Culture and Social Welfare	03
12.	Agriculture, Livestock, Fisheries, Irrigation and Cooperative Development	05
13.	Tourism, Environment, Water and Natural Resources	10
14.	Trade, Energy and Industrialization	04
15.	Budget and Appropriations	05
16.	Public Accounts and Investments	08
17.	Delegated County Legislation	03
18.	Justice, Cohesion and Legal Affairs	03
19.	Committee on Implementation	01
20.	Selection	02
21.	Committee of Powers and Privileges	03
22.	Procedure and House Rules	00
23.	Speaker's Panel	00
24.	Committee on Appointments	00

25.	Joint-Public Administration and ICT and Labour	01
26.	<b>Total</b>	101

Other Papers laid were:

1. Nomination list of Members to serve in the House Business Committee for the third Session of the Third County Assembly
2. Legislative Calendar for the third Session of the third County Assembly, 2024 (Regular Sittings) 13<sup>th</sup> February, 2024 –11<sup>th</sup> February 2025.
3. Four (4) reports from the County Assembly Service Board
4. Twenty one (21) Policies/Guidelines from the County Executive
5. Thirty two (32) other reports from the County Executive
6. Thirteen (13) reports of the Auditor General

Reports table in the House are a critical tool in reviewing, analyzing and making recommendations on various matters of public or County importance.

### **2.5.5 Policies and Guidelines**

During the period under review, the County Assembly considered twenty-one (21) Policies and/or guidelines.

### **2.5.6 Regulations**

Section 12 of the Statutory Instruments Act, No. 23 of 2013 (revised 2015) requires that the relevant Committee of the County Assembly considers any Statutory Instrument made under any law, before it could have a full force of the law. The relevant Committee is the Committee on Delegated County Legislation, which may, in exercise of the delegated power give a “no-objection” verdict to a Statutory Instrument on behalf of the County Assembly or recommend that the House annuls all or part of a particular Statutory Instrument.

During the Session, one (1) Regulation; The Public Finance Management (Bungoma County Executive Employees’ Car loan and Mortgage Scheme Fund) Regulations, 2023 which was introduced on 7<sup>th</sup> December, 2023 was *annulled*.

#### **2.5.6.1 Comparison of Policies and Regulations processed during the second and third Sessions**

During the third Session, the County Assembly saw growth in Legislative activity. The House considered twenty-one Policies/Guidelines. Out of these, eight had been committed to various Sectoral Committees during the second Session. The Assembly also processed one Regulation that was annulled as compared to the second Session during which one regulation was approved. This indicates significant growth in the number of Policies and Guidelines processed in 2024; and although the Regulation activity remained consistent during the two Sessions, the outcomes differed.



## 2.5.7 Questions and Statements

Members have an opportunity to raise matters of concern to the people. Standing Orders 46, 47 and 48 allow Members to make or request general statements or raise personal statements in the House, and also allow the Party Leaders and Chairpersons of Committees to issue Statements on matters under the mandate of Committees' purview. This allows Members to play their oversight and representative roles on behalf of the people therefore resolve matters of concern. During the period under consideration, twenty four (24) Statements issued were pursuant to the provision of SO 47 (2) (C) informing the House of the business coming before it during the following week.

Thirteen (13) Questions were directed to County Executive Committee Members and Chairpersons of respective Committees. The table below indicates the status of all Questions before the House whether responded to and satisfactory, unsatisfactory or not responded to.

NO.	REQUESTED BY	STATEMENT DIRECTED TO	SUBJECT	DATE REQUESTED	DATE TO BE RESPONDED TO	STATUS
1.	Hon. Johnston Ipara	CECM; Tourism, Water, Environment and Natural Resources	Unclear operation of the County Water rig	30/04/2024	The Statement was to be responded to on 04/06/2024  and  24/07/2024  Response was availed	Response was satisfactory
2.	Hon. Johnston Ipara	CECM; Health and Sanitation	Lack of clear information on the current position of Director of Medical Services in the County	30/04/2024	It was to be responded to on 05/06/2024  Response was not availed	Response was not availed
3.	Hon. Johnston Ipara	CECM; Education and Vocational Training	Lack of financial support for Vocational Training	02/05/2024	The Statement was to be responded to	Response was satisfactory

			Centres		on 25/07/2024	
					Response was availed	
4.	Hon. Johnston Ipara	CECM; Finance and Economic Planning	Low revenue collection in the County	02/05/2024	It was to be responded to on 30/07/2024  and 12/09/2024  Response was availed	Response was satisfactory
5.	Hon. Anthony Lusenaka	CECM and Chief Officer, Department of Finance and Economic Planning  CECM and Chief Officer, Department of Education and Vocational Training	Response by the CECM and Chief Officer Finance and the CECM and Chief Officer Education on Matters County importance in relation to County Scholarships, bursaries and VTCs	23/07/2024	The Statement was to be responded to on 25/07/2024  Response was availed	Response was satisfactory
6.	Hon. Kennedy Wanyama	Chairperson, Sectoral Committee on Roads, Transport Infrastructure and public works;  and  Chairperson, Sectoral Committee on	Response in relation to lorries and trucks along Kanduyi Sang'alo junction dual carriage road and its current status.	09/07/2024	It was to be responded to on 12/09/2024  Response was availed	Response was satisfactory

		Lands, Urban Physical Planning and Housing				
7.	Hon. Kennedy Wanyama	Chairperson, Sectoral Committee on Health Services	Three hundred (300) bed capacity medical facility at the County headquarters	04/09/2024	The Statement was to be responded to on 25/09/2024  Response was not availed	Response was not availed
8.	Hon. Francis Chemion	Chairperson, Sectoral Committee on Public Administration and ICT	Status of construction of Mt. Elgon Medical Training College	02/10/2024	The Statement was to be responded to on 21/11/2024 and 28/11/2024  Conclusive response was not availed	Progress report was issued on 21/11/2024 but conclusive response was not availed
9.	Hon. Miliarh Masungu	Chairperson, Sectoral Committee on Education and Vocational Training	Bursary disbursed to Vocational Training Centres in Bungoma County since 2013	30/10/2024	It was to be responded to on 4/12/2024  Response was not availed	Response was not availed
10	Hon. Hentry Nyongesa	Chairperson, Sectoral Committee on Health Services	Payment of Stipend to Community Health Volunteers by the County Government of Bungoma.	6/11/2024	It was to be responded to on 26/11/2024 and 3/12/2024  Conclusive	Progress report was issued on 26/11/2024 but conclusive response was not availed

					response was not availed	
11	Hon. Hentry Nyongesa	Chairperson, Sectoral Committee on Agriculture, Livestock, Fisheries, Irrigation and Cooperative Development	Cess money	20/11/2024	It was to be responded to on 4/12/2024  Response was not availed	Response was not availed because the owner of the Statement was not present at the time. It was thus dropped.
12	Hon. Job Mukoyandali	CECM and Chief Officer, Department of Education and Vocational Training	Expenditure of the allocation of funds for bursary and scholarship in the FY2023/24	20/11/2024	It was to be responded to on 27/11/2024  Response was availed	Response was satisfactory
13	Hon. Jack Wambulwa	Chairperson, Sectoral Committee on Roads, Transport, Infrastructure and Public Works	Painting and marking of lanes on the Musikoma – Kanduyi dual carriage road	28/11/2024	It was to be responded to on 5/12/2024  Response was availed but not satisfactory	Response was not satisfactory

Inquiries provide a platform for Committees to single out areas or subjects within their mandate, embark on detailed investigations and report to the House. Recommendations made by Committees are crucial in terms of influencing policy directions and public discourse on such subjects where inquiries have been undertaken.

#### **2.5.7.1 Comparison of Questions and Statements processed during the second and third Sessions**

During the third Session, twenty four (24) Statements were issued regarding business coming before the House and thirteen Questions were raised to the County Executive Committee

Members and Committee Chairpersons. This contrasts with 2023, where a total of 70 Statements and Questions were recorded, with 47 directed to Executive Members and Committee Chairpersons, and 22 informing the House of upcoming business alongside one personal statement. This reduction in activity in 2024 reflects a decrease in the frequency of these procedures compared to the previous year.

### **2.5.8 Motions**

During the period under review, the House considered one hundred and thirteen (113) Motions; this included one Motion on the report by Joint Committees of Public Accounts and Investments of Bungoma and Trans Nzoia County Assemblies on the interrogation of the Nzoia Water Services Company Limited, Auditor General's report on the Financial Statements for the period ended 30<sup>th</sup> June, 2022; four procedural Motions on alteration of the House Calendar pursuant to Standing Order 31(4); a Motion on the extension of sitting time pursuant to Standing Order 33(3) and one Motion on a matter of County importance.

During the Session one hundred and ten (110) Motions were passed and three not adopted. The reports were referred back to the respective Committees. These were:

1. Motion on the report by the Sectoral Committee on Agriculture, Livestock, Fisheries, Irrigation and Cooperative Development on the Bungoma County Government 4<sup>th</sup> Quarter financial statements for the period ended 30<sup>th</sup> June, 2023 with respect to the Department of Agriculture, Livestock, Fisheries, Irrigation and Cooperative Development.
2. Motion on the report by the Sectoral Committee on Youth Affairs and Sports on the Bungoma County Government 4th Quarter Financial Statements for the period ended 30<sup>th</sup> June, 2023 with respect to the Department of Youth and Sports.
3. Motion on the report by the Committee on Roads, Transport, Infrastructure and Public Works on the status of Road Projects (box culverts) implemented under Disaster Management Emergency Fund FY 2020/2021.
4. A motion on the extension of sitting time pursuant to Standing Order 33(3)

#### **2.5.8.1 Comparison of Motions considered during the second and third Sessions**

In 2024, the County Assembly considered 113 Motions, slightly fewer than the 120 Motions considered in 2023 indicating a decline in the total number of Motions. Of the 113 Motions in 2024, 110 were passed while 3 were referred back to respective Committees. In comparison, 2023 saw all 120 Motions being adopted. This indicates a slight decrease in both the total number of Motions and the number of matters discussed in 2024 compared to 2023.

### **2.5.9 Bills**

Article 185 of the Constitution mandates the County Assembly to enact legislation. Committees assist the House in the in detailed consideration of Bills and Legislative Proposals by incorporating public participation in the legislative process.

Apart from the Statutory Bills; the Bungoma County 2<sup>nd</sup> Supplementary Appropriation Bill, 2024; the Bungoma County Government Annual Appropriation Bill, 2024 and the Bungoma County Finance Bill, 2024, two Bills were passed:

- i. The Bungoma County Public Participation and Civic Education Bill, 2024
- ii. The Bungoma County Access to Information Bill, 2024

The Bungoma County Valuation and Rating Bill, 2024 did not proceed to second reading.

#### **2.5.9.1 Comparison of Bills considered during the second and third Sessions**

In 2023, the County Assembly introduced eleven legislative proposals with nine new Bills and 2 carried over from the first Session. The Bills were passed by the House. Apart from the Statutory Bills, the Assembly introduced three new Bills, a decline from the previous year. Two Bills were successfully passed while one was pending second reading. Despite the reduction in the number of Bills introduced, the Assembly continued to pass key Legislations. This was a clear reflection of a decrease in Legislative proposals but consistent Legislative productivity in terms of successful Bills.

#### **2.5.10 Summary of public nominations considered by the County Assembly for appointment**

The County Assembly exercised its oversight role as mandated by law in undertaking vetting of nominees for appointment to public office forwarded to the House by H.E the Governor.

During the period under review, the nominee for appointment to the position of Bungoma County Attorney was vetted by the Committee on Appointments in April, 2024. However, H.E the Governor wrote to the Clerk of the County Assembly withdrawing the name of the appointee before the Committee's report was tabled in the House. In November, 2024; the Appointing authority for a second time forwarded a name of a nominee for appointment to the same position. Equally, the name was withdrawn before consideration of the report by the House.

Notably, Sectoral Committees vetted nominees for appointment to various offices as follows:

1. Vetting of the nominee for appointment to the Position of Chief Officer; Gender and Culture.
2. Vetting of the nominee for appointment to the Position of Chief Officer; Finance and Economic Planning.
3. Vetting of the nominee for appointment to the Position of Chief Officer; Education and Vocational Training.
4. Vetting of the nominee for appointment to the Position of Chief Officer; Livestock, Veterinary and Fisheries.

5. Vetting of the nominee for appointment to the Position of Chief Officer; Housing, Municipalities and Urban Areas.
6. Vetting of the nominee for appointment to the Position of Chief Officer; Youth and Sports.
7. Vetting of nominees for appointment to the position of members of the Municipality Boards of Bungoma and Kimilili.

As at the close of the period under consideration, the name of a nominee for appointment to the position of Chair of the Bungoma County Rural and Urban affordable Housing Committee (CRUAHC) had been committed to the Sectoral Committee on Lands, Urban, Physical Planning and Housing for processing.

#### **2.5.10.1 Comparison of public nominations considered during the second and third Sessions**

The reduction in appointments reflects that the government has successfully placed individuals in key positions to drive service delivery. During the period under review, various nominees were vetted with several appointments made. This decline in new appointments highlights that most of the essential offices have already been filled and remaining appointments are necessary to ensure full functionality and optimal performance of the government. As such, this is a positive indicator of progress and the government's commitment to effective governance with the expectation that the remaining offices will be filled to ensure effective service delivery and operational efficiency.

### **CHAPTER THREE**

#### **3.1 GENERAL OBSERVATIONS AND RECOMMENDATIONS**

The Committee having considered the analysis of the affairs of the House makes the following:

##### **OBSERVATIONS**

1. **THAT**, there was a significant decline in the number of Questions (13 in 2024 compared to 47 in 2023) and Statements (24 in 2024 compared to 70 in 2023). This decrease reflects a drop in the frequency of Members holding the Executive accountable through questions and statements.
2. **THAT**, some of the Questions, directed to the CECMs were not adequately responded to.
3. **THAT**, despite the adoption of 113 Motions in 2024, there was no report tabled or considered by the House regarding the implementation status of the resolutions passed. According to Article 183 (3) of the Constitution, the relevant County Executive Committee Member (CECM) should provide a report to the relevant Committee of the County Assembly within sixty days of a resolution being adopted.



## RECOMMENDATIONS

1. In compliance with Standing Orders 49-54, when a Question is raised, the County Executive Committee Member (CECM) will respond within 14 days for general matters and 7 days for urgent ones. If the response is received, it will be forwarded to the relevant Committee, with the Member invited to participate. If no response is received, the Committee will follow up. The Committee Chairperson will submit a progress report on all Questions, including answered ones and pending matters. If unresolved, the Committee will propose the matter to the House for further consideration.
2. Committees should actively oversee the implementation of adopted resolutions; ensuring reports are submitted within the required period. If there are delays or non-compliance, the matter should be escalated to the House. As per Standing Order 193 and Article 183 (3) of the Constitution of Kenya, Committees must review actions taken by the County Executive and ensure a report is provided within sixty days of a resolution's adoption. Non-compliance should be flagged out and addressed.
3. Assembly Committees should conduct quarterly reviews of all adopted Motions and resolutions to assess their implementation status, identify gaps, and address challenges. This review will help evaluate the long-term impact of decisions and ensure intended outcomes are achieved. As per Standing Order 212(5), Committees must submit reports on their findings. If the County Executive is non-compliant, the issue should be raised in the House and referred to the Implementation Committee for final consideration.

Adoption schedule; we members of the House Business Committee pursuant to Standing Order 202(5) adopt the report, we append our signatures to affirm the approval of the contents therein

The report has been signed by 14 members out of 15, allow me Honourable Speaker to call Hon. Leader of Majority Hon. Joseph Juma Nyongesa to second the report.

**Hon. Joseph Juma:** Thank you Speaker, first allow me appreciate the mover, Hon. Luseneke for moving the report eloquently and also appreciate the member of the committee for having sat and come up with the analysis that has been shown to us. As you are aware, this is the general analysis of the activities that have been done to this House and our evaluation on the oversight role depends on the kind of reports we come up with in this House and the kind of statements that we normally raise.

It is just a wake-up call as much as we are faring on well in terms of motions but the key issue is that the responses of the statements from the executive sometimes have always been delayed and unsatisfactory. We are also calling upon the executive to ensure that they respond on time and especially through the sector committees. Another thing that is coming out clearly is that most of the resolutions from our reports need to have a key follow up through the committee on Implementation so that at least we get what is due for this House.

Again we encourage members that we also come up with statements; those will also rate us in terms of overnighing.

Otherwise, I support the report and again urge this honourable House to support it.

**Mr. Speaker:** Thank you Honourable Leader of Majority for seconding a report moved by Leader of Minority, allow me now propose a motion for debate

*(Motion proposed)*

*(Question put and agreed to)*

The Ayes have it!

REPORT BY THE SECTOR COMMITTEE ON ROADS, TRANSPORT, INFRASTRUCTURE AND PUBLIC  
WORKS ON THE STATUS OF COMPLETION OF THE MISIKHU-NAITIRI-BRIGIDIA ROAD IN  
BUNGOMA COUNTY

**Mr. Speaker:** Yes Hon. Job? Members as we proceed in the near future, even the window for members retreating mid-week will all be cancelled so that we are all here because there are no special people who only want to go for retreats. I will have them cancelled.

Hon. Job, confirm and proceed. I only have apologies for Hon. Hentry and Hon. Ali Machani who is doing examination.

**Hon. Job Mukoyandali:** Thank you Hon. Speaker. Let me confirm the quorum, Hon. Franklin Simotwo is present, Hon. Polycarp Kimeta is out with Lands Committee, Hon. Stephen Kaiser is unwell, Hon. Jerusa Alehu...

**Mr. Speaker:** The word unwell comes to the Speaker, the apology is sent to my office. Nobody else.

**Hon. Job Mukoyandali:** That is okay Hon. Speaker, Hon. Jerusa Aleu is away, and Hon. Meshack Simiyu is present...

**Mr. Speaker:** Is away where? If she is not on Lands then she is absent to us.

**Hon. Job Mukoyandali:** She is absent, Hon. Meshack Simiyu is present, Hon. Hentry Nyongesa...

**Mr. Speaker:** Is away with my permission.

**Hon. Job Mukoyandali:** Hon. Johnston Ipara is with the Committee on Lands, Hon. Everton Nganga is present, Hon. Godfrey Mukhwan is present, I am present, Hon. Ali Machani...

**Mr. Speaker:** He is doing an exam; I have his apologies. Hon. Nangulu has gone for physiotherapy at Life Care.

**Hon. Job Mukoyandali:** Hon. Machani is away on permission, Hon. Nangulu is away on permission, Hon. Everlye Mutyembu is present, Hon. Iddi Owongo is present, Hon. Violet Makhanu is absent. 7 members are present in this House

**Mr. Speaker:** Hon. Mildred, I will send you outside. I will not allow that none sense here. It is me to ask why they are not present not you.

**Hon. Job Mukoyandali:** 7 members Hon. Speaker are present, 3 are out on permission, and 2 are with Committee on Lands.

**Mr. Speaker:** Do you meet the threshold?

**Hon. Job Mukoyandali:** Considering that 3 members are out on permission and 2 are out with Committee on Lands, I don't know if you can allow us we proceed with the 7 that are present?

**Mr. Speaker:** Members want to make contributions, let me hear from Hon. Allan

**Hon. Allan Nyongesa:** *(On a Point of Order)* Mheshmiwa Spika, Mheshmiwa Museveni ananitishia kwa kuongea. Naomba unisaidie

**Mr. Speaker:** You are protected.

**Hon. Allan Nyongesa:** *(On a Point of Order)* What I wanted to say is not even on the issue of quorum of the committee but the quorum of the House. Two, this issue of lands Committee being out and the Chairperson has been here...

**Mr. Speaker:** Hon. Job are you aware that where Hon. Nganga is sitting Hon. Polycarp was there when we came in?

**Members:** No!

**Mr. Speaker:** When I walked in Hon. Polycarp was in...

*(Loud consultations)*

It was not Polycarp? You know I have the list that they mark here. I will just confirm. The moment you step in this House, you are marked present...they have told me he was not around so Hon. Allan, I want to know where you are heading to. Are you doing it formerly or just talking?

**Hon. Allan Nyongesa:** *(On a Point of Order)* I am serious on this issue, when you say members are out on official duty yet their Chairperson is here, how do we treat that issue?

**Mr. Speaker:** You know for you I know you are present in this House but when I see you passing on the road, I don't see you because it maybe your local arrangements maybe the Chair is away himself.

**Hon. Allan Nyongesa:** *(On a Point of Order)* Back on the Standing Orders, the quorum issue, Standing Order 37(1), are we meeting the threshold?

**Mr. Speaker:** You move with me accordingly then you call a seconder then we ring the bell

**Hon. Allan Nyongesa:** *(On a Point of Order)* I am moving that the House is not having enough quorum and I am now calling the chairperson of Liaison committee to Second.

**Mr. Speaker:** The one you are citing you are out of order and we can't rely on it. Standing Order 37 is during commencements, in proceedings is another one so you are out of Order, lets proceed.

*(Laughter)*

**Hon. Allan Nyongesa:** *(On a Point of Order)* It is commencement of a motion.

**Mr. Speaker:** No, of the House, commencement of the County Assembly; if the Speaker walks in and there is no quorum, it is 37(1), during such proceedings and there is no quorum and you want to raise a point of Order, it is 38(1). So you are out of order.

Hon. Job you will proceed with this motion with my permission.

**Hon. Job Mukoyandali:** Thank you Hon. Speaker. I am here on behalf of the Committee on Roads, Transport, Infrastructure and Public Works to move a motion on the report of the status of completion of Misikhu-Naitiri-Brigidia Road in Bungoma County.

## **CHAPTER ONE**

### **Preamble**

**Hon. Speaker,**

I am pleased to present this Report by the Committee on Roads, Transport, Infrastructure and Public Works on the Status of Construction of the Misikhu- Naitiri - Brigadier Road. The information and insights contained in this report have been gathered through oral submissions, site visits and analysis of documents submitted by the County Executive Department of Roads, Transport Infrastructure and Public Works.

### **Committee Membership**

**Honorable Speaker,**

The Committee on Roads, Transport, Infrastructure and Public Works as currently constituted comprises the following Members:

- |                          |                  |
|--------------------------|------------------|
| 1. Hon. Franklin Simotwo | Chairperson      |
| 2. Hon. Polycarp Kimeta  | Vice Chairperson |
| 3. Hon. Stephen Kaiser   | Member           |
| 4. Hon. Jerusa Aleu      | Member           |

5. Hon. Meshack Simiyu	Member
6. Hon. Hentry Nyongesa	Member
7. Hon. Johnston Ipara	Member
8. Hon. Everton Nganga	Member
9. Hon. Godfrey Mukhwana	Member
10. Hon. Job Mukoyandali	Member
11. Hon. Ali Machani	Member
12. Hon. Charles Nangulu	Member
13. Hon. Everlyne Mutiambu	Member
14. Hon. Idd Owongo	Member
15. Hon. Violet Makhanu	Member

## **Acknowledgement**

### **Honorable Speaker,**

On behalf of the Honorable Members of the Sectoral Committee on Roads, Transport, Infrastructure and Public Works, I wish to convey my gratitude to all Members of the Committee for their invaluable input throughout the proceedings up to the conclusion of this report.

The Committee is equally grateful to the County Executive Department for availing documented information on the project, accompanying the Committee during its field visits on the project site and for appearing in person to provide crucial information as regards the contents that have formed part of the narrative and findings of this report.

The Committee further appreciates the offices of the Honorable Speaker and Clerk of the County Assembly for the support received as it prepared this report.

It is therefore my privilege to table this report for consideration and adoption by this Honorable House.

The report is signed by Hon. Franklin Simotwo, the Chairperson.

## **CHAPTER TWO**

### **2.1 The Misikhu - Naitiri -Brigadier Road Project**

#### **2.2 Introduction**

##### **Honourable Speaker,**

Originally, the Misikhu-Naitiri-Brigadier Road project with coverage of the Webuye East and Tongaren Sub-Counties spanned 39 km and was intended as a capital project of the first regime of the County Government of Bungoma that was at the helm from 2013- 2017.

The road is classified into categories: D1826 from Misikhu to Naitiri and part of C635 road from Naitiri market to River Nzoia in Soysambu/Mitua Ward. Bungoma County first budgeted for the works in the financial year 2016/2017 budget and entered into a gentleman's

arrangement with the national government on the co- funding of the project works. No MoU was officially signed.

The project was to be co-funded by the County and National Government but due to the bureaucracy involved and lack of a framework in the releasing of the funds to the County Government, it was impossible to execute the arrangement. The County Government proceeded independently and de-scoped the project works to cover only the Naitiri- Brigadier stretch i.e. Naitiri Market- Nasianda- Kiminini Bridge- Makhonge- Nzoia River- Corner section; a distance of 20.8 Km.

### 2.3 Budgetary Summary for the Project

**Honorable Speaker,**

The County Assembly has appropriated a total sum of Kshs1, 399,856,728 for the Misikhu- Naitiri-Brigadier road project since its inception in the FY 2016/17 as summarized in the table below.

<b>ANNUAL BUDGETARY ALLOCATIONS FOR MISIKHU - BRIGADIER ROAD</b>		
<b>Financial Year</b>	<b>Approved Budgetary Allocations</b>	
	<b>Phase 1</b>	<b>Phase 2</b>
2016/17	172,500,000.00	
2017/18	457,356,728.00	
2018/19	150,000,000.00	
2019/20	100,000,000.00	
2020/21	100,000,000.00	
2021/22	60,000,000.00	
2022/23	100,000,000.00	
2023/24	140,000,000.00	
2024/25	12,528,000.00	107,472,000.00
<b>TOTAL SUM</b>	<b>1,292,384,728.00</b>	<b>107,472,000.00</b>

The first supplementary budget for the F/Y 2024/25 has proposed an additional sum of Kshs250, 000,000 for the road project.

## 2.4 De-scoping Of Works

"De-scoping of works" refers to the act of removing or omitting a part of the work originally assigned to a contractor within a construction project, essentially reducing the scope of work they are required to complete, often done through a "variation clause" in the contract. It is considered a "negative variation" where the employer instructs the contractor to remove certain elements from the project, potentially leading to adjustments in the contract price due to the reduced work scope.

The Scope of works for the entire Misikhu- Naitiri- Brigadier road project was:

1. Site clearance
2. Preparation of the sub grade including improved sub grade in some sections to receive pavement layers as per the standard specifications
3. Provision of 200mm thick gravel sub base
4. Provision of 150mm thick cement improved base to carriageway
5. Provision of Double surface dressing pre coated chippings to carriageway
6. Provision of vehicle accesses and access culverts from road side properties
7. Provision and installation of road furniture as specified
8. Installation of erosion and erosion protection works

De-scoping of the works was done after a meeting held on 7<sup>th</sup> September, 2020 between the National and County Government Officials (*Annexure 1: Minutes of the meeting*). It was agreed in this meeting that the County Government of Bungoma issues a termination notice to the contractor to wind up works on the existing contract upon which the County Department was expected to furnish the MOTIHUD (Ministry of Transport, Infrastructure, Housing, and Urban Development) with termination documents and a package of balance of works on the project.

From this package, the Ministry was expected to float an open tender for the remaining works and finance the project through Treasury allocations.

The Contractor (Midland construction Co. Ltd) expressed willingness to negotiate exit terms once all the outstanding contractual matters were agreed upon and settled by the two parties in line with the existing contract.

The County therefore advised the contractor to concentrate on the de- scoped works between Naitiri and River Nzoia.

The County portioned the de- scoped project works into two phases.

## 2.5 PHASE I OF THE PROJECT

### 2.5.1 Project Data

1	Project Title	Upgrading of Misikhu – Naitiri – Brigadier Road
2	Contract No.	BGM/CNTY/OIT/01/2016-2017
3	Employer	County Government of Bungoma
4	Employer Representative	CECM – Roads, Infrastructure, and Public Works
5	Supervisor	Chief Officer - Roads, Infrastructure, and Public Works
<b>TIME MANAGEMENT</b>		
6.1	Letter of Award Date	4th November 2016
6.2	Contract Signing Date	21st November 2016
6.3	Site Handover Date	19th December 2016
6.4	Contract Commencement Date	19th December 2016
6.5	Contract Period	Twenty Four (24) Months
6.6	Contract Completion Date	18th December 2018
6.7	1 <sup>st</sup> Extension of Time granted	12 Months
6.8	2 <sup>nd</sup> Extension of Time granted	16 Months
6.9	3 <sup>rd</sup> Extension of Time granted	24 Months
6.10	Revised Completion Date	18th June 2023
6.11	Defects Liability Period	Twelve (12) months
6.12	Expected Completion Date	17 <sup>th</sup> June 2024
<b>FINANCIALS</b>		
6.13	Contract Amount	Kshs 1,115,939,198.00
6.14	Approved Variations to Date	Kshs 0
6.15	Revised Contract Amount	Kshs 1,115,939,198.00
6.16	Payments to Date	Kshs 822,910,367.31
6.17	Maximum Retention to be held	5% of the contract sum



6.18	Liquidated Damages	10% of the contract sum
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### 2.5.2 Project Scope of Works

The tender was advertised in 2016 for upgrading of Misikhu- Naitiri – Brigadier road under the contract no. BGM/CNTY/OIT/01/2016- 2017. The tender was processed and awarded to Midland Construction Limited of P.O Box 4- 50100, Kakamega. The contract agreement was entered on the 21<sup>st</sup> November, 2016. The total contract sum was Kshs 1,115,939,198.00/= (one billion, one hundred and fifteen million, nine hundred and thirty nine thousands, one hundred and ninety eight shillings only. The contract was to be executed within a period of 24 months.

During the engagement with the Committee, the Department reported that this phase of the project was complete and had involved the execution of the following works:

- Construction and equipping of the County Materials Laboratory at Webuye.
- Site clearance
- Earthworks
- Excavation and filling of drainage structures
- Culverts and drainage structures
- Natural sub-base and base material
- Cement/ lime treatment of the base material
- Bituminous surface treatment and surface dressing
- Construction of 2 No. bridges
- Purchase of 2 No. double cab vehicles

The table below summarizes the extent of works undertaken under phase one

Item No.	Description	Unit	Quantity of Works	Completed Works
1	Site Clearance/ Topsoil stripping	Km	39	39
2	Earthworks – includes cut to spoil, fill in soft material, cut in hard material, Fill in hard material and sub grade layer	Km	39	27
4	Excavation and Filling for structures (Stone pitching)	M <sup>2</sup>	1000	6489
5	Culverts (600 mm diameter)	M	1896	666

6	Culverts (900 mm diameter)	M	500	260
7	Sub base and Base layers	Km	39	20.7
8	Cement stabilized base	Km	39	17.5
9	Double seal surface dressing	Km	39	17.5
10	Bridges	No.	3	0
11	Road Markings	M <sup>2</sup>	11700	0
12	Speed Humps	M	400	0
13	Road signs	No.	30	0
14	Road Kerbs	M	2000	0
15	Road Channels	M	2000	0

Due to the de-scoping of the works from Misikhu- Naitiri- Brigadier to Naitiri- Brigadier and completion of the works that were already in progress, the items 11-15 that were in the contract were implemented under a separate contract (Phase two). This is as a result of the closing out on the initial contract.

## Financials

### Payments status under phase I of the project

From the contract figure of Kshs.1, 115,939,198.00, total payments made to the Contractor amounts to Kshs**842, 026,563.23**. This excludes claims payment.

The table below highlights the status of payment made in Phase I of the project

<b>COUNTY GOVERNMENT OF BUNGOMA</b> <b>DEPARTMENT OF ROADS, INFRASTRUCTURE AND PUBLIC WORKS</b> <b>MISIKHU - BRIGADIER PHASE 1 PAYMENT RECORDS</b>				
Date	Certificate No.	Advance Payment	Claims	Amount Paid
3-Jan-17	Cert 1	111,593,919.80		
1-May-17	Cert 2			59,475,876
1-Jun-17	Cert 3			46,560,438
Feb. 2018	Cert 4			46,407,192
Feb. 2018	Cert 5			39,933,624
1-May-18	Cert 6a			33,726,327
1-May-18	Cert 6b			32,139,343
Nov-18	Cert 7			79,177,291
Feb-19	Cert 8A			53,389,167
Apr-19	Cert 8B			34,578,877
	Claim Cert		155,561,216	71,920,000
	Claim Cert		150,127,039	-
	Claim Cert		114,341,014	-
	Claim Cert		317,826,898	-

Jun-19	Cert 11A			16,018,736
Jun-19	Cert 11B			32,000,000
Oct-19	Cert 11C			20,655,860
Feb-20	Cert 12A			42,384,877
Feb-20	Cert 12B			35,809,404
Jan-21	Cert 13			24,922,313
14-Jun-23	Claim Cert		107,946,648	26,589,794
14-Jun-23	Cert 15			63,315,962
10-Nov-23	Cert 16			76,509,173
8-Feb-24	Cert 17			51,864,703
19-Apr-24	Cert 18			40,629,000
19-Apr-24	Cert 19			12,528,000
<b>TOTAL</b>				<b>940,535,956</b>
<b>Contract Sum</b>		<b>1,115,939,198</b>		<b>940,535,956</b>

## Claims

A "claim" in a construction contract is a formal request made by one party (usually the contractor) to the other party for additional compensation or an extension of time, due to unforeseen circumstances or a perceived breach of contract terms that have impacted their ability to complete the project as originally agreed upon. Essentially, it is a request to be reimbursed for extra costs or time needed because of issues not anticipated in the initial contract.

The contractor, Midland Construction Co. Ltd has made claims as summarized below due to suspension of the works arising out of delayed payments and de-scoping of the works:

Claim No.	Amount of Claim	Amount Paid	Remarks
CLAIM NO.1	155,561,216.13	71,920,000.00	Evaluated
CLAIM NO.2	150,127,039.36	-	Not yet to be evaluated
CLAIM NO.3	114,341,014.00	-	Not yet to be evaluated
CLAIM NO.4	317,826,898.18	-	Not yet to be evaluated
CLAIM NO.5	107,946,648.41	26,589,794.00	Evaluated
<b>TOTAL</b>	<b>845,802,816.07</b>	<b>98,509,794.00</b>	

From the table above, only claim Nos. 1 and 5 totaling to Kshs**98, 509,794.00** were evaluated and paid for.

## Variations

From the Department's submission;

- No contract variation of price has been carried out on the project.
- Time variations were carried out on the project arising from a number of factors.

A total of three extensions on time (variations) were made i.e. by 12 months, 16 months and 24 months respectively; thus altering the expected completion period from 18<sup>th</sup> December, 2018 to 17<sup>th</sup> June, 2024.

The factors under time delays were stated as follows:

- Delayed payments of IPCs;**
- Covid-19 Pandemic**
- De-scoping of the works**

The table below outlines the delays (days) per certificate

IPC No.	No. of days delayed
2	204
3	120
4	50
5	121
6a	94
6b	152
7	209
8a	64
8b	123
11b	118
12	43
13	359
<b>Total Number of days delayed</b>	<b>1657 days</b>

## Challenges

The following are some of the major issues that were cited by the Department as limitations to the timely execution of the contract;

### 1. Covid-19 Pandemic

This was a global pandemic that affected many projects worldwide, including this one. Due to government's directives aimed at curbing the spread of the disease; there was an ultimate delay in the project implementation.

### 2. De-scoping of the Works

At the start of the project in FY 2016/2017, there was a verbal agreement between the County Government and National Government for the co-funding of the works. The contractor was therefore awarded the works from Misikhu- Brigadier; a total length of 39Kms. However due to bureaucracies involved; a termination agreement with the contractor for the section between Misikhu- Naitiri was agreed upon. The negotiations for the mutual termination of the portion of works took a lot of time, further delaying the project.

### 3. Delayed payments of IPCs

Delayed payments resulted in the suspension of works by the contractor. The employer was unable to pay the contractor timely due to budgetary constraints.

The amounts allocated for the project within the financial year were not adequate enough to cover the certified works done.

## PHASE II OF THE PROJECT

The tender was advertised in 2023 for - completion of Naitiri – Brigadier – R. Nzoia road, Contract No: BGM/CNTY/RPW/OT/023/2023 -2024.

The works for Completion of Naitiri – Brigadier – R.Nzoia Road were awarded to **Midland Construction Co. Ltd** through a letter dated 18<sup>th</sup> March 2024 at a contract price of **Kshs525, 999,390.00**. The contractor's letter of acceptance was dated and received on 21<sup>st</sup> March, 2024. The contractor agreement was signed by the parties on 8<sup>th</sup> April, 2024. The commencement date for the works as agreed by both parties was 14<sup>th</sup> April, 2024. The contract period is 24 months with the defects liability period of 12 months.

The contractor commenced the execution of the works as agreed and there has been noticeably progress.

## Project Data

1	Project Title	Completion of Naitiri – Brigadier – R.Nzoia Road
2	Contract No:	BGM/CNTY/RPW/OT/023/2023-2024

3	Employer	County Government of Bungoma
4	Employer Representative	CECM – Roads, Infrastructure and Public Works
5	Supervisor	Chief Officer - Roads, Infrastructure and Public Works
<b>TIME MANAGEMENT</b>		
6.1	Letter of Award Date	18 <sup>th</sup> March 2024
6.2	Contract Signing Date	8 <sup>th</sup> April 2024
6.3	Site Handover Date	14 <sup>th</sup> April 2024
6.4	Contract Commencement Date	14 <sup>th</sup> April 2024
6.5	Contract Period	Twenty Four (24) Months.
6.6	Contract Completion Date	13 <sup>th</sup> March 2026
6.7	Defects Liability period	Twelve (12) Months.
6.8	Expected Completion Date	12 <sup>th</sup> March 2027
<b>FINANCIALS</b>		
6.13	Contract Amount	Kshs. 525,999,390.00
6.14	Approved Variations to Date	Kshs.0
6.15	Revised Contract Amount	Kshs.525,999,390.00
6.16	Payments to Date	Kshs. 115,571,206.00
6.17	Maximum Retention to be held	5% of the contract sum
6.18	Liquidated Damages	10% of the contract sum

## Project Scope of Works

The major works to be executed under the contract comprise mainly of the following:

- a) Site clearance
  - b) Preparation of the sub grade including improved sub grade in some sections to receive pavement layers as per the standard specifications
  - c) Provision of 200mm thick cement improved gravel sub base
  - d) Provision of 150mm thick cement improved base to carriageway
  - e) Provision and laying Asphaltic Concrete pavement layer.
  - f) Provision of vehicular accesses and access culverts from road side properties
  - g) Provision and installation of road furniture as specified
  - h) Installation of erosion and erosion protection works
- g) Any other activity not listed above but may be deemed necessary and instructed by the Engineer.

## **Physical Progress of Works**

### **Preliminary and General Items**

This section is dedicated to the costs under Bill I that cannot be attributed to the specific measured work items, but are necessary for the construction of the works successfully. Under this item the contractor hasn't done any works.

### **Earthworks**

The works carried out under this Item is the fill in hard material at the approaches of River Kiminini Bridge. The Committee, during its fact finding, established that the contractor has completed the works on this section of the project.

### **Excavation and Filling for structures**

The works carried out under this item is stone pitching of the open drains on both sides of the road at selected areas. This was necessary to safeguard the road from being eroded. Under this item the contractor has not done any works.

### **Culverts and Drainage Structures**

The works involved under this item is the installation of the culverts at selected points along the road. Under this item the contractor has not done any works.

### **Shoulder Repairs**

The works involved under this Item is the repair and gravelling of the road shoulders in order to safeguard the road pavement. Under this item the contractor has not done any works.

### **Bituminous Mixes**

The works involved under this item are the pothole patching and provision of AC overlay. Under this item, pothole patching has been done from Chainages 0+ 000 to Chainages 4+500; whereas AC overlay has been carried out from chainages 0 + 000 to chainages 5+000.

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### **Summary of Work Done**

<b>Bill No.</b>	<b>Description</b>	<b>Weightage (%)</b>	<b>Works Done (%)</b>
1	General office administration, overheads and preliminaries	12.12	-
5	Earth works	0.01	4.24
7	Excavation and Filling for structures	2.76	-
8	Culverts and Drainage Works	1.50	-
9	Passage of Traffic	0.01	-
11	Shoulder Maintenance and Repairs	0.93	0.69
12	Natural material base and sub base	0.00	2.05
14	Cement and Lime Treatment	-	0.05
15	Bituminous Surface Treatment and Surface dressing	0.99	0.6
16	Bituminous Mixes	73.48	24.07
20	Road Furniture Repair and Maintenance	5.88	-
26	Street Lighting	2.32	-
	<b>TOTAL</b>	<b>100.00</b>	<b>31.70</b>

Overall progress of works stands at 31.70%.

## Financials

### Payment Certificates

A total of **Kshs 115, 571,206** has been paid to the contractor for this phase as summarized below.

<b>IPC No.</b>	<b>(CERT)</b>	<b>Amount Certified</b>	<b>REMARKS</b>
1		70,468,666.00	IPC Cert.No.1 – paid
2		45,102,540.00	IPC Cert. No.2 – paid
3		22,320,720.00	IPC Cert. No.3 – yet to be paid



4	17,980,417.60	IPC Cert. No.4 – yet to be paid

## Challenges

The Department reported no serious challenges since the project started.

## CHAPTER THREE

### Committee's Findings, Observations and Recommendations

#### Findings

##### I) Analysis of the Bills of Quantities, the Payment Certificates and submitted documents

#### Honorable Speaker,

Upon review of the Bills of Quantities, the Payment Certificates and submitted documents, the committee raised a number of concerns with the Department to which the following justification was presented;

1. The Committee sought to understand why the totals for Bills 1 to 20 for Phase I was Kshs.849,167,100.00; being Kshs.266,772,098.00 less than the contract figure of Kshs.1,115,939,198.00

The Department submitted that total of Bills from the contractor's summary page is Kshs.874, 425,500.00 and that the addition of the contingencies and VAT is what gives the contract figure of Kshs.1, 115,939,198.00

2. The Committee observed from the submitted copies of BQs for Phase II; Bill 01-50-14 and 01-50-016 (preliminaries) catered for provision of two project vehicles while the same items (Two vehicles) were provided for under Phase I of the project in bill 1 (preliminaries 01-50-014 and 01-50-016).

The Department submitted that both contracts had provision of the two project vehicles that would revert back to the employer after the completion of works. For the first phase, the contractor supplied two No. double cabin vehicles that are now stationed at Kanduyi roads office.

For Phase II, the Contractor has not been issued with instructions for the purchase of new vehicles since the vehicles acquired under Phase I and those from the C33- dual carriageway project are still in good condition; and therefore available for use on the project.

2.The Committee inquired about Bill No.01 -50-010 on laboratory furniture and equipment billed at Kshs.500, 000.00 and bill 01-50-012 On survey equipment at Kshs.500,000 while the same had been provided for under Phase I of the projects in Bill 1 (Preliminaries 01-50-010) at a cost of Kshs.20M.

3. That Bill item 01 -50-010 under Phase I was for equipping the materials lab with the required equipment. The lab was constructed at Webuye (Roads and Public Works Office).

This facility was also being utilized by the County on the implementation of other projects like CEF, RMLF and building works.

4. The Committee raised concerns from the listed scope for Phase II where there was a bill for earthworks, excavations and fillings for structures. The Committee interpreted that these were basic elements that ought to be taken care of during the initial phase of the project (Phase I). The Department was put to task to elaborate how again they appeared under Bill 07-60-005 at Kshs.11.9 million. This element includes stone pitching.

In the Departments response, the Bill item 07-60-005 provided for under Phase II is for stone pitching along the road on both sides towards River Kiminini and River Mabusi bridges. That it was necessary to protect the road shoulders from wearing out caused by surface water. The stone pitching done along the road under Phase I was around Sosyambu and Brigadier area.

5. The Committee Inquired about an element of bitumen surface treatment captured as Bill No.15 (Kshs.4.2M) yet it also appears in the scope of works for Phase I under Bill 15(Kshs.152.7M); and sought to establish under what phase it was undertaken.

The Department submitted that the element of bitumen surface treatment under Phase II is for the prime coat that will be utilized in the repair of the potholes and repair of the road shoulders before the laying of asphaltic concrete pavement (AC).That this is the correct procedure required and therefore necessary. That what was provided in the first phase was for the prime coat, bitumen 80/100 penetration grade and surface dressing.

6. The Committee questioned the specifics under the financial data sheet,(financials 6.16)total payments on phase one is Kshs.842,910,367.31 while summary certificates indicates Kshs.842,026,563.23 (after lessening the recovered advance). This excludes Kshs.98M paid as claims. Total phase one payments together with paid claims is Kshs.940M.Therefore, how can payment of above 90% on the original contract sum yet the de- scoping of works reduced the scope of works of works from 39Km to 19Km.

The Department averred that Payments made are based on the actual works carried out. The contractor had been awarded the entire road of 39Kms but after de-scoping the County remained with 20.8Kms of the road.

<i>Item No.</i>	<i>Description</i>	<i>Unit</i>	<i>Quantity of Works</i>	<i>Completed Works</i>
1	Site Clearance/ Topsoil stripping	Km	39	39
2	Site clearance and top soil stripping	Km	39	39

3	<i>Earthworks</i>	<i>Km</i>	39	27
4	<i>Excavation and Filling for structures(Stone pitching)</i>	<i>M<sup>2</sup></i>	1000	6489
5	<i>Culverts (600 mm diameter)</i>	<i>M</i>	1896	666
6	<i>Culverts (900 mm diameter)</i>	<i>M</i>	500	260
7	<i>Sub base and Base layers</i>	<i>Km</i>	39	20.7
8	<i>Cement stabilized base</i>	<i>Km</i>	39	18.65
9	<i>Double seal surface dressing</i>	<i>Km</i>	39	18.65
10	<i>Bridges</i>	<i>No.</i>	3	2
11	<i>Road Markings</i>	<i>M<sup>2</sup></i>	11700	0
12	<i>Speed Humps</i>	<i>M</i>	400	0
13	<i>Road signs</i>	<i>No.</i>	30	0
14	<i>Road Kerbs</i>	<i>M</i>	2000	0
15	<i>Road Channels</i>	<i>M</i>	2000	0

At the time of de- scoping the contractor had carried out the following works which included the section between Misikhu to Naitiri:

The amounts paid in claims were not part of the actual works to be executed but by the contractor but came about as a result of the employer's failure to meet his contractual obligations on time and thus the losses.

7. On Certificate No.13 the Committee sought to understand the rationale as to why on the budget utilization summary, it is shown that the certificate is costed at Kshs 20,484,735.79 while the second summary of payment certificates indicates a figure of Kshs.24, 922,313.00; to which the Department clarified that the correct amount of payment made for Interim certificate No.13 was Kshs. 24,922,313.00

8. The Committee inquired whether there was an advance payment made for Phase II of the project to which the Department stated that there was none. This explains why the Department did not submit the advance payment certificate and bank guarantee.

A bank guarantee is a requirement for advance payment together with an authenticating letter from the Head of Procurement as per Sections 146&147 of PPDA, 2015 and Regulation 136(a) of PPDA Regulations 2020.

9. The Committee interrogated the rationale behind the disparity in the first bundle of documents showing certificate No.16 at Kshs.63, 315,962.90 (materials certificate recovered in grand total) while the second bundle of documents did not have certificate No.16. (However certificate No.15 is complete with the retention amount of 10 per cent and has the same figure of Kshs.63, 315,962.00). The Committee questioned whether it eventually treated as a normal certificate.

The Department owned up to a mix up in the submission of the summary report on the payments made. That Interim Payment Certificate No.16 is the one that was paid amounting to Kshs.63, 315,962.90. That Certificate No.15 was submitted by the contractor and is for claim No.5 amounting to Kshs.317, 826,898.18 as a result of the de-scoping of the works. Additionally, the payment for materials delivered on site certificate; but not yet built into the works is permitted under the contract – sub clause 39 of the Conditions of Particular Application (Interim Payments) and clause 60.1 of the Fidic conditions of contract.

### **Findings from the fact-finding activity**

The distance from Naitiri to Nzoia River where the County project terminates is 20.8Kms

Of the 20.8Kms, 16.2Kms was not upgraded. This section lacks an overlay and the tarmac layer was done in the Phase 1 (Nasianda- Kiminini Bridge- Makhonge- Nzoia River- Corner)

4kms of this road had been upgraded and with an overlay

No works have been done on 1Km each for Kiminini River, Makhonge River and Nzoia River

The two bridges- Kiminini River and Makhonge River are complete; though the guardrails had not been installed. At the time of the Committee's visit, river trailing was on going on at the Kiminini River

No works have been done on the part/ stretch for the national government (Misikhu- Naitiri) and the section was in a bad state; though motorable.

## CLAIMS

From the documents submitted, the following were the major reasons for claims:

- Covid 19 protocol issued by the government
- Delayed payments
- Suspension of works arising from de-scoping of the works

The contractor submitted 5No. Claims for payment and so far only two have been analyzed and settled. The total Number of days that payments delayed is indicated as 1657 days.

Contractual claims on delayed payments are provided for under clause 60.7 of the contract (Over-due payments).

***“Unless otherwise stated in the appendix, interest shall be paid on the overdue amounts and the interest to be paid shall be in accordance with prevailing commercial bank rates”***

Further to that, Section 140(a) of the Public Procurement and Assets Disposal Act (PPADA), 2015 under provides that “unless the contract provides otherwise, the procuring entity shall pay interest on the overdue amounts”

The payment becomes overdue when it is not made within 28 days from the date it was certified by the project manager as provided for under the Appendix to the conditions of contract.

## Committee’s Observations

From the foregoing, the Committee made the following deductions;

**That** the County Assembly of Bungoma has appropriated a total sum of Kshs1, 399,856,728 for the Misikhu-Naitiri-Brigadier road project since the project’s inception in the FY 2016/17 to date

**That** the County Government of Bungoma had intended to undertake as a capital project of first regime to upgrade the 39KM stretch of the Misikhu- Naitiri- Tongaren road to Asphalt Concrete (AC) standards at a contract sum was Kshs 1,115,939,198.00/=; to cater for the increased loading that could not be sustained by the status of the road at earlier designed.

**That** the National Government’s Ministry of Transport (MOTIHUD), though informally, sought to partner with the County Government on the project; an agreement which was never executed. The County Government of Bungoma later sought to de- scope the works so as to

undertake and complete works on a 20.8KM stretch from Naitiri market to River Nzoia in two phases.

That that total of Bills for the project in the first phase is Kshs.874, 425,500.00 and that the addition of the contingencies and VAT is what gives the contract figure of Kshs.1, 115,939,198.00. The total Payments to the Contractor is **842,026,563.23** this excludes claims payment.

**That** the first phase of the project has five claims totaling Kshs**845, 802,816.07**. Of these, only claim No. 1 and No. 5 totaling to Kshs **98,509,794.00** were evaluated and paid for.

**That** claims arise as a result of delayed payments of IPCs. The total Number of days delayed on the IPCs on this project is 1657 days at the time of this report.

**That** the second phase works, for Completion of Naitiri – Brigadier – River Nzoia Road, were awarded to **Midland Construction Co. Ltd** through a letter dated 18<sup>th</sup> March 2024 at a contract price of **Kshs. 525,999,390.00**. Of this amount, a total of **Kshs115, 571,206** has been paid to the contractor and works progress valued at 31.70 per cent.

#### Committee's Recommendations

The Committee therefore recommends;

**1. That** claims on delay in works resulting from Covid- 19 protocol working arrangements should be shared between the County Government and the contractor. The County can plead *force majeure* on Covid- 19.

**2. That** the analysis/evaluation of the claims should be done as provided for under the contract. Claims on Delayed payments should be based on the number of days delayed beyond the days stipulated under Appendix to the conditions of contract (28 days plus 1). The Department therefore should counter check the 1657 days of delayed payments.

The Department therefore should counter check the 1657 days of delayed payments.

**3.** That claims on delay in works resulting from Covid-19 protocol working arrangements should be shared between the County Government and the contractor. The County can plead *force majeure* on Covid-19.

**4.** Further the Committee recommends that the Department also considers counter claims against the contractor (e.g. delayed performance as provided for under Section 140(b) of PPADA 2015 for purpose of bargaining downwards the total claims (Kshs 845,802,816.07 as they analyze the claims: 140(b)

***“The contractor shall be liable to liquidated damages for delayed performance”***

5. That the County Departments of Roads and Finance should put in place system and procedures to ensure that IPCs are paid within the time limits set in the conditions of contract to avoid unnecessary claims that diminish the county's resource basket. These include; signing of the contract only when there's enough budgetary provisions on projects and negotiate the duration for honoring certificates from 28+1 days to 60 +1 days for major projects etc.

Hon. Speaker, the vehicles are provided. You can see the photos of stone pitching, you can see the ongoing works during the site visit and what was happening on the road that particular day. You can see the laboratory in Webuye and we can see the bridges have been provided on the photos. We can see some excavation going on.

Hon. Speaker we the under-signed committee Members hereby append our signatures adopting this report. Annexures have also been provided. I now call upon Hon. Nganga to second this report.

**Mr. Speaker:** Thank you Hon. Job Mukoyandali for moving the report. Let me ask Hon. Everton Nganga to second the report.

**Hon. Everton Nganga:** Thank you Hon. Speaker. First, I would like to applaud the mover of the motion. He has taken time to go through the report.

Hon. Speaker, the Misikhu - Brigadier road has taken almost a decade and it is yet to be completed. Hon. Speaker, this project has faced very many challenges. Hon. Speaker, one of the challenges we discovered that there were delayed payments that were supposed to be paid to the contractor and because of the delayed payments, a number of claims have been raised. These claims are actually extra costs to the County Government of Bungoma. They are increasing the amount of money that is supposed to be paid to the contractor.

Because of the COVID-19 and the National Government raised protocol issues whereby some of the works were halted. The issue of de-scoping came as a result of the National Government not honouring the gentleman's agreement. This is a contract that was not written as per the essentials of a contract. It was just verbal and at the end, the National Government did not honour what it promised to do of the section of the 19 kilometers. This led to the de-scoping. This culminated into a new tender that was advertised in the year 2023 that was awarded to Midland Company to construct the road from Naitiri to Brigadier.

Hon. Speaker, honourable Members can look at the scope of work as it has been highlighted or shown in the report on page 20. They can also look at the work to date up to the time we were writing this report, it's found on page 21. We have indicated that work to date is at 31%. As a committee, we came up with this idea because of the hot air that is circulating in Bungoma County.



This road has taken time and when you look at the second phase, where the contract has been entered between the County Government and Midland, the contract price is Kshs 525 million. We wanted to ascertain the level or the extent of the execution of the contract and what has been paid. So far, Kshs.115, 571,206 has been paid. When you look at our recommendations, on the figure of Kshs 845, 802,816 which has accumulated because of the claims. These claims were as a result of the delayed payments.

We have also recommended that the County Government should also look at the delayed performance. The contractor also delayed to perform the works as per the laid down period in the contract. The County Government, by doing that, they can negotiate it to reduce the figure. Hon. Speaker. Therefore, I request honourable Members to support this motion. I second. Thank you, Hon. Speaker.

**Mr. Speaker:** Thank you, Hon. Everton Nganga. Honourable Members, allow me to be able to propose a motion for debate;

*(Motion proposed)*

Yes, Hon. Stephen Wamalwa, you proceed.

**Hon. Stephen Wamalwa:** Thank you, Hon. Speaker. Members, this is a project that was begun by the Hon. Lusaka when he was the First Governor. I think this is one of the first flagship projects of this County. When you listen and follow the report, you realize that both the government and the contractor have some areas that have not performed well. Because the contractor will be quick to point out that he has been made to behave in such a way as a result of maybe the delayed payment by the County Government. If our government purposed to complete this project, they can do it especially the area where the County Government said they have to undertake. Before they start these other new mega projects, why can't the government focus on one project and finish? A lot of millions is going to other new projects. When you observe, you realize that the government is not keen to completing the initial projects. Members, this is going to cost the government. It's going to cost the people of Bungoma in terms of resource because in as much as the government may think it's trying to run away from its obligations, remember, penalties, those certificates, those claims are coming back to eat us. We run away but we are being eaten. It's an obligation that the government likes it or not, it has to comply.

Hon. Speaker, we are biting more than we can chew. Why can't we chew what we can bite and bite what we can chew? It's as simple as that. This report is bringing out another funny thing; that it was just a gentleman's agreement; between the County Government and the National government.

Hon. Speaker, the other day they were making noise in that Assembly in Nairobi, and they were saying that County Governments never make roads. I'm sure honourable Members heard this. One Hon. Member called Kimani Ichungwa, said that County governments never

make roads. When you look at the Misikhu- Naitiri Brigadier Road Hon. Speaker, the section where the County government undertook, at least you can see some light. You can see some work but where the National Government, where our Members of Parliament sit and claim to be working and building roads, Hon. Speaker, is zero.

In as much as we can blame them, the County Government began the project and is obligated to complete it for value of money. Members let us talk to our government as an entity, as an institution, so that they complete those projects they began before they start new projects. Otherwise, honourable Members, this is another avenue for pending bills. The Leader of Majority you are here, unless we look at these issues keenly, it is another avenue that is going to balloon pending bills.

Honourable Members, I seek your indulgence that we can address this issue in a pragmatic manner so that the government can finish projects it began before we allocate or give them money for new projects. I support Hon. Speaker.

**Mr. Speaker:** Thank you. Hon. Lusenaka.

**Hon. Anthony Lusenaka:** Thank you Hon. Speaker. I also want to support what Hon. Stephen is saying. That these flagship projects have become a nightmare in this county. I want to thank this House and the Budget Committee for allocating enough funds to complete Naitiri -Brigadier Road. Equally, this should apply to all flagship projects across the County.

For instance Kamukuywa Market, Kanduyi Bus Park, the High Altitude Centre, Kanduyi Stadium and the dual carriage way. I think this House can make a decision and allocate money during the coming financial year so that we complete all these major projects so that come 2026/2027 financial year, we embark on new projects. Because we are being slapped with penalties, interest on these major projects and that is wastage.

I want to blame the Executive. Sometimes we allocate funds for these projects and they don't pay. I remember in 2022/2023, or 2023/2024, we allocated money almost Kshs 300 million for the dual carriage and they only paid, I think Kshs 100 million. Where did the 200 million go to? When we allocate money for a specific project, let that money be utilized to pay that project. I want to request concerned departments and sector committees that once we approve the budget, they should follow-up and ensure that the money appropriated by this House is utilized for the intended purposes.

These major projects like the Misikhu-Brigadier road has been there for the last 10 years. It has been launched and re-launched several times. If we keep on rotating on the same project for 10 years that is being unfair to this County. Let fund completion of these projects before we embark on new ones. Thank you, Hon. Speaker.

**Mr. Speaker:** Thank you. Hon. Job, you have the honour to reply to the motion.

**Hon. Job Mukoyandali** (*Mover to reply*): Thank you, Hon. Speaker. Indeed something we must agree as a House in line with what the two senior Members of this House have said, that allocating money is one thing and paying that money has always been a different story. Year in year out, that is what is necessitating these penalties and pending bills. In future, somebody should carry the cross in case this House allocates money and somebody causes us to pay penalties that could be avoided.

I want to agree with what the Leader of Minority, Hon. Lusenaka has said. Last time we allocated money which was not paid on the dual carriage way. Even in the last supplementary budget, money was allocated to this same road. I ask this House that in the main budget that is coming soon, we should fund for completion of other mega projects for closure.

Coming from a member of the Budget Committee, on the issue of allocating and clearing, Hon. Speaker, we should as a House take it seriously. I thank this House because in the last supplementary budget, some money was allocated on the same project. I ask this House that even in our main budget, let us look at all the remaining mega-projects so that we can complete them. Even Misikhu-Brigadier Road let us allocate enough money to clear our bit. Every time the President is around, it's Misikhu-Brigadier. These MPs will stand there and it seems like it is the National government implementing yet the only work that can be seen on that particular road is for the County Government. I urge this House that we allocate enough funds for completion of this road so that during campaigns, we ask them what bit they did. For us the County government, which they claim we are doing nothing, would have completed our bit. This road has taken very long to be completed and every financial year we have been singing about it.

Hon. Speaker, we should crack a whip as a House. We cannot allocate money, then come the following financial year when we are doing interrogations, somebody comes up with stories that the money was not paid. It's unfortunate and eventually somebody says, we are doing weak oversight. Hon. Speaker, it's something which is sickening. Let's wake up as a House.

Mr. Speaker, all the monies that we've allocated in the supplementary budget, on these mega projects must be paid. If that money will not be paid, let somebody carry the cross.

This report has brought out issues that there was no formal agreement with the National Government over the completion of this road. There was no formal agreement whatsoever. We were thinking that maybe extra money has been paid. You've seen that when the road began, 39 kilometers were done in the first phase, before it was terminated. Therefore, no extra money was paid. It's because the earthworks were done for 39 kilometers before the contract was terminated, we came back to 20.8 kilometers.

The report is bringing out all the issues that Members can go through and understand. If they support this report, it's going to bring a solution, to that particular road and as a County we

will never go back to where we were initially. Hon. Speaker, I submit and urge this House to approve this report. Thank you.

*(Applause)*

**Mr. Speaker:** Thank you Hon. Job for your reply to the motion. Allow me to be able to proceed and put a question;

*(Question put and agreed to)*

Ayes have it.

The report plus its observations and recommendations is hereby moved.

## **ADJOURNMENT**

Members looking at our Order Paper that was the last motion. We adjourn and resume tomorrow, at 2.30 p.m.

I wish to appreciate all the Members who sat to ensure this motion is approved. Equally as I warned earlier on, we are going to collapse all the sittings of midweek; people must come to the House. I think people are taking advantage of those retreats to make fun of this sitting. With those few remarks, thank you.

***The House rose at 5:45 p.m.***