



REPUBLIC OF KENYA  
NYANDARUA COUNTY ASSEMBLY  
1<sup>ST</sup> ASSEMBLY-4<sup>TH</sup> SESSION  
OFFICIAL REPORT



(The Hansard)

Wednesday 2<sup>nd</sup> March, 2016

*The Assembly met at the Assembly Chambers at 9:30 A.M*

*The Speaker, Hon. Ndegwa Wahome, in the Chair*

Prayer

**QUORUM CALL AT THE COMMENCEMENT OF THE SITTING**

*The clerk-at-the-table confirms that there is no quorum*

**Speaker:** There being no quorum, I invoke the provisions of standing order No. 34 and direct that the bell be rung for an initial 10 minutes or for that time within the 10 minutes that the quorum will have been achieved.

*The bell is rung for 6 minutes and quorum is achieved as confirmed by the clerk-at-the-table*

**Speaker:** Quorum having been achieved let us proceed with the business for this morning session. Next order.

**MOTIONS**

REPORT OF THE JOINT COMMITTEE ON JUSTICE LEGAL AFFAIRS, PUBLIC SERVICE AND HEALTH SERVICES ON THE STATUS OF PAYMENT OF CASUAL WORKERS IN THE HEALTH DEPARTMENT

**Speaker:** Very well, Member for Central and chairperson of the joint committee on Justice, Legal Affairs, Public Service and Health Services, Hon. Peter Mwangi.

**Hon. Peter Mwangi:** Thank you, Mr. Speaker. I beg to move the following motion:-

THAT this House adopts the report of the joint committee on Justice Legal Affairs, Public Service and Health Services on the status of payment of casual workers in the Health Department as a report of this House, and the recommendations therein as resolutions of this House.

To start with, I would like to apologize to the Hon. Members of the two committees who wrote this report because there are few changes in the report as the committee was mandated

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**Speaker:** Before you proceed Member for Central, I have been addressing this issue elsewhere and forgetting to address it from the floor. I think it is important that we borrow from the president on what happens on the issue of reports from the Commonwealth. That is, that a report is indicated clearly for ease of reference. For instance, this being the first report, then it should be indicated that it is the first report of the joint committees on Justice, Legal Affairs, Public Service and Health Services. This should be so, so that we can always know that there is a first report for that committee. Same case to other committees, take Agriculture for instance, it has had about ten reports. This should be well indicated. This also helps in the committees over sighting themselves because it can be known which committee has how many reports. Actually, that is the tradition and I think we should go by it. It is my hope that under the office of the clerk, it will be directed through a circular to all clerks that all the reports of the committees be numbered from the first report of a certain committee onwards as it progresses. This will make it easy for us to identify which report a committee is working on and also suitable for our records.

So, proceed member for Central.

**Hon. Peter Mwangi:** Thank you, Mr. Speaker, I was stating on the mandate of this committee where it was mandated to investigate, enquire and report on all matters relating to management activities, administration, cooperation and the state of a department.

Mr. Speaker, as in the report, it is not the first time we are dealing with this issue of the casuals. Whereby we began with those who were seconded from the defunct local authorities and now those who are under the County Public Service Board of Nyandarua. The Committee summoned a sample of the affected casual workers, Ndaragwa Sub-County Administrator, the CECM health services, Finance and Economic Planning, CO health Services and the acting CS. This was in line with Article 195 of the Kenya Constitution 2010 which equips the County Assembly or its Committee with powers to summon any person to appear before it to give evidence.

### **Questioning (oral evidence)**

After summoning the said persons the Committee questioned them to gain more information on the subject matter.

It should be noted that the Committee was mindful of preserving the principle of Separation of Powers as set out in Article 185 (3) of the Constitution and Section 9 of the County Government Act. The aforesaid activities culminated in the writing of this Report.

### **Committee findings**

After prolonged Committee meetings, hearing and submissions from the different parties involved, the Committee came up with the following findings and observations.

### **Submissions from the casual workers**

The Committee summoned some of the affected casual workers, who submitted the following; Mr. Mwangi stated that he was employed on 22<sup>nd</sup> of January 2015 on contract, for three months. He was paid eight (8) days in January and the whole month of February 2015. He further stated that he had not been paid since March 2015.

Esther on the other hand informed the Committee that she started working on 5<sup>th</sup> March 2015 together with 8 others who had not been paid since.

### **Submissions from the Sub-County administrator**

After scrutinizing the submissions from the casual workers, the Committee invited the sub-county administrator for Ndaragwa Sub-county. The following were some of his submissions.

The sub-county administrator for Ndaragwa Mr. Grishon Kinyanjui appeared before the Committee on 17<sup>th</sup> November 2015. He was very concerned about casual workers not being paid in his sub-county which was also happening in other sub-counties and despite payment approval by the County Secretary.

### **Submissions from the Secretary to the County Public Service Board**

Mr. Jack Mbugua, the secretary to CPSB, explained that the board employed casual workers on behalf of the county government. He noted that some of the employed casual workers diverted to revenue collection while others were left in the health department. He was aware that the some casual workers were not being paid.

He however maintained that Kshs 11,131,156 had been factored in the supplementary budget for clearing the unpaid casual workers dues. (However the approved supplementary budget for the financial year 2015/16 has set aside for payment of casual workers in the health department).

The secretary emphasized that solid waste management needed daily interventions; hence the casual workers need to be paid since their work cannot be terminated without replacement.

### **Submissions from the CEC health and CO health**

The CECM did state that he was aware of the casual workers grievances, and was very much willing to pay them but there was no money in the budget that would be used to pay them. He explained that during the 2014/2015 budget, casual workers' salaries had not been factored.

The Chief Officer who is also the acting County secretary explained that casual workers who were absorbed from the defunct local government were having their salaries, hence was aware that those employed by the CPSB have never been paid since they were not factored anywhere in the budget.

### **Submissions from the CEC Finance and Economic Planning**

The CECM appreciated the invitation and was thankful to the Committee for its initiative to ensure that the casual laborers were paid their arrears. The Committee learnt from the CECM that some workers who were cleaners had diverted to revenue collection since they were being paid, but this caused a vacuum in cleaners and hence this necessitated the board to employ more casual workers as cleaners. The CECM stated that if there was justification on their work, the supplementary budget would have some allocations for their payment.

The CECM however acknowledged that the situation on the ground was pressing and he understood the plight of the casual workers in the health department since solid waste management was a day to day activity which if ignored would lead to diseases outbreaks.

### **Committee observations**

Section 2 of the **Employment Act, 2007** defines a contract of service as an agreement whether oral or written, expressed or implied, to employ or to serve as an employee for any period of time, this includes a contract of apprenticeship and indentured leadership but does not include a foreign contract of service. Thus employment is basically saying as an individual relationship negotiated by the employees and the employer according to their special needs. The Act also defines an Employee as an individual employed for wages of salaries and includes an apprentice and an indentured learner.

The Committee with this understanding learnt that casual workers followed the due process in applying for the jobs as they had written application letter to the County Public Service Board and attended interviews after which they were issued with letters of employment commencing on 5<sup>th</sup> March 2015 for three months renewable on merit upon review by the County Public Service Board. The casual workers have evidence of their job attendance with the sub-county administrators.

The casual workers have never been paid from March 2015 and have been working even after the period of contract expired; they had been trying to follow up on their payments and also contract extension but no breakthrough.

However the Committee learnt that the casual workers are still working and are hopeful that their cries will be heard. They got oral confirmations that their contracts were still valid to date from the Secretary to the County Public Service Board.

The Committee learnt from the submissions that the health department had not budgeted for the said casual workers and hence the delay. It was noted that the CECM Finance and Economic Planning was willing to pay the casual workers and had considered them in the supplementary budget.

The Committee made the following recommendations:

1. That the CECM Health services, does speed up the process of paying the casual workers as the money was provided for in the supplementary budget.
2. That the County Secretary in conjunction with the Chief Officers does conducted a thorough audit on Human Resource audit needs and audit skills for all the County departments.
3. That the County Secretary should consider having all the casual workers being regulated and controlled from one central point for budgeting and cost cutting measures.
4. That the casual workers engaged on contractual terms be provided with written documents indicating renewal or termination of the said contracts.
5. That the terms of engagement between the casual workers and the County Government should be streamlined so that those who qualify to be employed are put on longer contracts and where possible on employed on permanent basis.
6. That if the CPSB will employ any permanent employees to conduct the duties being carried by the casual workers, those already working should be given first priority.
7. That the Finance and Health department does consider improving the working conditions of the casual workers by improving working environment and providing the casual workers with the required working tools and protective gears.
8. That the CPSB does consider employing more casual workers in environmental cleaning since those available are still inadequate hence always overwhelmed and also consider the size of the towns when deploying them.

9. That the Finance department does provide all the payments records for the paid casual workers and those not paid in all departments for further scrutiny by the Committee.
10. That the County Secretary should always ensure that there is money for payment of casual workers before they are engaged to avoid delays in payment.

In conclusion, Mr. Speaker, this Assembly has an enormous responsibility in legislating, representation and oversight. On these functions, this Assembly should while working within the ambits of the law, the principles of separation of powers and checks and balances, diligently deliver optimally.

I thus urge the members to adopt this Report with its recommendations as the resolutions of this Honourable House for implementation by the Executive.

Finally Mr. Speaker, it is my pleasant duty and privilege, to on behalf of the Joint Committee move a motion for adoption this report. I beg to move and I call the Chairperson of the Health Services Committee to second

**Speaker:** Yes member for Githabai and Chairperson of the Health Services Committee, Hon. Peter Njoroge Kairu

**Hon. Peter Kairu:** Thank you Mr. Speaker sir, the issue of casual labourers is seriously perturbing. It reminds me of a Swahili saying that states ‘*Mnyonge hana haki*’<sup>1</sup>. These casual labourers are parents with children in school but have been getting no pay. How do we expect them to feed their children and pay their school fees? Every morning, without fail, they wake up and come to work for the county. Remember these people were employed by the county public service board and were given appointment letters. If it were not say, they would have looked for other jobs elsewhere. It is time we listened to their cries.

It is so sad to find that these workers are not even provided with the right working tools. Some lack even the most basic tools like gloves yet they are expected to clean sewer lines. I can assure you, Mr. Speaker, if you do not get your salary for two consecutive months, you will be up in arms. The revenue this county seeks to improve is collected by the very people we regard as unimportant. It is unfortunate indeed. Mr. Speaker, with those remarks, I beg to second.

*Question proposed*

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**Speaker:** Yes member for Njabini Kiburu, Hon. James Gachomba

**Hon. James Gachomba:** Thank you Mr. Speaker, I rise to support this report and congratulate the committee for coming up with this report that addresses the plight of the casual workers. These workers have doing going great work for our county. You all know the filth they have to clean from our towns. I heard that an administrator from Kinangop told them to go get their salaries from an MCA and although I stand to be guided, I feel it was quite uncouth. These casual workers should be paid from the revenue collected in this county. I concur with the committee recommendations that these casuals be controlled from one central place. We have casuals in almost every department. We, the budget committee, have constantly asked for a human resource audit of the employees but they have not brought it to date. The chairman has indicated that we have 400 casual workers in this county but where are they? Surely such a number is so great that it cannot be hidden. I think we have ghost workers.

Recently we had to deal with a case of one Mwangi, an old man who comes from Njabini and has worked as a casual labourer for this county for one year now without any pay. When he went to the chief officer for help, he was dismissed. It is quite sad that they had even resorted to go to court. Where does the county get money to deal with litigations all the time? If something is not done after this, I promise you I would rather cough some little money and see to it that we sue the county government. I support.

**Speaker:** Yes member for Kaimbaga, Hon. Kimani Njiraini

**Hon. Kimani Njiraini:** Thank you Mr. Speaker, first off I would like to thank the committee on Justice, Legal affairs and public service for bringing this report here. This, really, is a perturbing issue and it is very unfortunate that even after adopting a supplementary budget that had a vote head for the payment of these people, nothing has been done. It is unfair for someone who has been working for so long not to get their dues. No sane person would continue to work even in his own shamba if it does not yield him any harvest but these people are so desperate that they continue to come to work every morning hoping that they will finally be paid only for the government to keep on frustrating them. Let a comprehensive human resource skills be conducted so that we do not have new people being recruited yet there are casual workers that are more qualified. They are employing people from outside the county and yet there are qualified people from this county. They should be considered first.

The constitution is very clear on the freedom of expression and we need to listen to the cries of the casual workers. We need to ensure that they have proper working conditions. As the Speaker of this County Assembly you have witnessed their squalid working conditions. Some of them clear the sewerage system without protective gear. They can easily contract infections because of those poor working conditions.

Mr. Speaker, some of our big towns need cleaners. Those cleaners are the ones that collect revenue. The county government is in the process of employing revenue collectors and after this they will be doing their work. Some of the areas in this town are so dirty and one does not feel like visiting them; that is Huruma, Jerusalem and Site.

We have the list of those that should be paid by the government and there are other illegal payments to some ghost workers and they should stop. I have a concern on bullet 10; the county secretary should always ensure that there is money to pay the casual workers before they are engaged... If the county secretary's office is not sure of the people they are supposed to pay they are failing us. You cannot employ people without budgeting for them. These people work hard and it is good that they get paid for the work they have done. I support the document.

**Speaker:** Yes member for Karau Hon Kamau Ngotho.

**Hon. Kamau Ngotho:** Thank you Mr. Speaker I commend the committee for the work they have done. The report is on the status of casual workers in the health department and when addressing the status it is good that we see the statistics. However, the report is not showing the number for those engaged as casual labourers. They have only addressed Ndaragwa. I had to ask the chairperson whether it was a report about Ndaragwa. The committee should have done better by furnishing us with more information.

Mr. Speaker sir, I was enquiring on the difference between casual workers and casual labourer and I have been told that it is the same thing. The issues on labour is a mandate of a different committee as provided for in the First Schedule of the Standing Orders. Issues on labour are under the committee on education and labour. Is it the mandate on the committee on justice and legal affairs to do the same? I did not see what they were mandated to do by the county assembly in the report. They have only listed the mandate given to them by the Standing Orders.

Mr. Speaker, there are so many casual labourers in the health department. Some are not even known to the County Public Service Board. I wish I would have seen the number of these casual labourers the services they are offering and a schedule of payment to show how much they are paid and the mode of payment. I do not know how possible this can be but I think that the committee has left out some information that this House needs.

Mr. Speaker, the committee has a recommendation that I oppose, that is, recommendation number 8. The CPSB considers employing more casual workers to clean... Engaging more casual workers to clean the environment is not the solution. If you go to big towns like Nakuru they contract these services are. There are women and youth groups and let them not engage more casual workers. Let this work be planned and then contract those groups especially for towns like Ol'kalou, Ndaragwa, Njabini and Engineer. This will create employment opportunities.

The joint committee has denied this House a lot of information and I think that it is better if they go into details. With the AD HOC committee on status of J.M Memorial and Engineer hospital we found that some workers were paid about Ksh. 4000 and unfortunately they are not paid the amount fully. These ones are better off because they are getting Ksh. 17000.

Thank you Mr. Speaker

**Speaker:** Yes county member from Githioro Hon. Dorcas Nyambura Kihara

**Hon. Dorcas Kihara:** Thank you Mr. Speaker sir, I support the report. I believe that justice delayed is justice denied. We all see the hard work done by the casuals in our towns. If we did not have those casuals that wash the public toilets what situation would the county be in? The shops around the area would be closed down by the health officers. Most of the casuals are experienced and denying them employment would be unfair to them. As the assembly we are representatives of the people including the casuals. I would support the committee that there is need to carry out the human resource audit in the county and in particular the health department. The health department is the one that takes care of the cleanliness of our towns and health facilities. The work they do is so important that it makes us notice that there is a gap if they are not there. The county executive needs to take care of these people. The health department needs to budget for the payments of the casuals. They should make sure that their payments are not delayed.

Mr. Speaker, the cleaners do not have protective gear. Once I found a cleaner and she was using polythene papers and she tied them with rubber bands to protect herself. They need gumboots, gloves, masks and dust coats. I support and hope that the executive will implement this report.

**Speaker:** Mover, member for Central Hon. Peter Mwangi Maina

**Hon. Peter Maina:** Thank you Mr. Speaker, I thank the Hon. Members for supporting this motion. I would like to state that this issue came up when Nyandarua casuals came to this assembly after being turned away from the County Public Service Board and the office of the County Secretary. That is why we examined this issue. By this time they had not been paid for nine months and even now they have not been paid and that goes up to twelve months. Those that were employed recently for instance those in Magumu have not been paid for two months and measures are being taken to handle this.

There is an investigation on the 400 casuals and with your guidance the committee will continue with the investigation so that they can be put in one department to solve all the discrepancies on payments where some are getting Ksh. 4,000 while others are getting Ksh. 17,000. Mr. Speaker we would like to seek your advice so that we can advise the casuals who have taken the county government to court to solve this case outside the court. The image we are setting is not the best for this county. We are also wasting too much money on litigations which can be used to settle their arrears.

The other issue is on the person that holds the highest seat in this county the governor. Mr. Speaker kindly remind him that among his electorates are these casuals and we are heading to the national elections and if he just sits and is unaware of what the staff in the executive are doing we are all going to lose in the elections. This needs to be done immediately.

I beg to move this motion.

*Question put and agreed to*

**Speaker:** Hon. Members I would not be left out in commenting on this issue: it is not only immoral but criminal to put a casual worker, who is among the lowliest of our citizenry in the public service, without pay for twelve months. That amounts to a very serious indictment and it should not happen at this age. I appreciate that some of us earn huge salaries and benefit with huge allowances; but I, for example, was concerned when my salary was delayed by two days. We are talking here of the lowliest of public servants who have not been paid for twelve

months whereas our county government behaves as if everything is okay. That is not fair and right; and as an Assembly we need to put this into a very clear perspective. We shall confront the Executive on this issue.

Hon. Members, the law is very clear: that if anyone works for you for three continuous months they should be awarded permanent and pensionable terms of employment. That is according to the Employment Act which is very clear and I cannot understand why that cannot be adhered to in the case at hand. This Assembly has set the pace on this one; where we find that we cannot employ a person on permanent and pensionable basis we contract them for six, eight or twelve months. This is because we should treat our people with dignity. If our government cannot pay the casuals would it be able to handle the matter that is in court? Remember the casuals are paid wages not salaries. Actually I am going to engage the CECM in charge of this matter and the Director of Legal, Justice and Public Service to first know why this unfair thing should happen under their watch.

Actually the committee that came up with the report at hand was formed to address matters of justice, health and labour, the latter which also falls under the mandate of the Committee on Education, Culture and Social Services though I do not think the committee that compiled the report at hand was out of its jurisdiction by tackling this matter concerning labour. Whatever the committee did was commendable. What I would wish to know is whether this committee can get the entire employment history of the casual workers in question, that is, when they were employed, the last time they were paid and how they were paid. That is for the purpose of Assembly records.

Otherwise, issues that have been raised in the just concluded motion have made me sick and I cannot be proud to be associated with the leadership of Nyandarua if this is the way we treat our people, which is not fair at all.

*Applause*

Next order

## **ADJOURNMENT**

**Speaker:** Very well; the business for this sitting having been exhausted I now, Hon.

Members, wish to adjourn the House until later today, Wednesday, the second day of March, 2016 at 2:30p.m.

*The House rose at 10:12 a.m.*