



② Hon. Speaker
You may approve for
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REPUBLIC OF KENYA

13TH PARLIAMENT | 4TH SENATE | 4TH SESSION

STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL
RELATIONS; AND
STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN
RIGHTS

REPORT ON A PETITION CONCERNING RESTRAINING COUNTY
GOVERNMENTS FROM HIRING LAW FIRMS TO REPRESENT THEM IN
COURT CASES DESPITE HAVING COUNTY GOVERNMENT ATTORNEYS
TO EXECUTE THAT MANDATE

APPROVED
RT. HON. SEN
AMASON J. KINGI

[Handwritten signature]
02/04/25

Clerk's Chambers,
The Senate,
Parliament Buildings,
NAIROBI.

① Clerk

This is forwarded and recommended for
approval for tabling

MARCH, 2025

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02/04/2025

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- iii) Nairobi ELRC no 547 of 2018, Erastus Gitonga & 4 others v National Environment Management Authority (NEMA)

LIST OF ABBREVIATIONS/ACRONYMS

C.O.B	-	Controller Of Budget
C.O.G	-	Council of Governors
CAtF	-	County Attorneys' Forum
KNCHR	-	Kenya National Commission on Human Rights
L.S.K	-	The Law Society of Kenya
O.A.G	-	Office of the Auditor General
S.R.C	-	Salaries and Remuneration Commission

PRELIMINARIES

Mandate of the Committees

The Senate Standing Committee on Devolution and Intergovernmental Relations and the Standing Committee on Justice, Legal Affairs and Human Rights are established under the Standing Order 228 (3) and the Fourth Schedule of the Senate Standing Orders.

The Committee on Devolution and Intergovernmental Relations is mandated to “*consider all matters relating to devolution, intergovernmental and inter-county relations, governance and management of county governments, cities, towns and urban areas.*”

The Committee on Justice, Legal Affairs and Human Rights is mandated to “*consider all matters relating to constitutional affairs, the organization and administration of law and justice, elections, promotion of principles of leadership, ethics, and integrity; agreements, treaties and conventions; and implementation of the provisions of the Constitution on human rights.*”

Membership of the Devolution and Intergovernmental Relations Committee

- | | | |
|--|---|-------------------------|
| 1. Sen. Sheikh Mohamed Abbas, CBS, MP | - | Chairperson |
| 2. Sen. Catherine Muyeka Mumma, MP | - | Vice Chairperson |
| 3. Sen. (Prof.) Margaret Kamar, EGH, MP | - | Member |
| 4. Sen. (Dr) Oburu Oginga, MGH, MP | - | Member |
| 5. Sen. Peris Pesi Tobiko, CBS, MP | - | Member |
| 6. Sen. Paul Karungo Thangwa, CBS, MP | - | Member |
| 7. Sen. Richard Momoima Onyonka, EBS, MP | - | Member |
| 8. Sen. Mohamed Said Chute, MP | - | Member |
| 9. Sen. Hezena M. Lemaletian, MP | - | Member |

Membership of the Justice, Legal Affairs and Human Rights Committee

- | | | |
|--|---|-------------------------|
| 1. Sen. Wakili Hillary Kiprotich Sigei, MP | - | Chairperson |
| 2. Sen. Veronica W. Maina, MP | - | Vice-Chairperson |
| 3. Sen. Raphael Chimera Mwinzagu, MP | - | Member |
| 4. Sen. Karen Njeri Nyamu, MP | - | Member |

- | | | | |
|----|-------------------------------------|---|--------|
| 5. | Sen. Andrew Omtatah Okoiti, MP | - | Member |
| 6. | Sen. (Prof.) Tom Ojienda, SC, MP | - | Member |
| 7. | Sen. Crystal Asige, MP | - | Member |
| 8. | Sen. Daniel Kitonga Maanzo, EBS, MP | - | Member |

The Minutes of the two Committees in considering the petition are attached as **Annex 2** of this Report.

CHAIRPERSON'S FOREWORD

Hon. Speaker,

On 9th April, 2024, the Senate received a Petition from Mr. Laban Omusundi a resident of Nakuru County, and the Executive Director of Grassroot Civilian Oversight Initiative, concerning the matter of restraining County Governments from hiring law firms to represent them in court cases and yet they have County Government Attorneys responsible to execute that mandate.

The Petition was presented in the Senate on Tuesday, 30th April, 2024 by the Speaker of the Senate, pursuant to Standing Order 236(2)(b) of the Senate Standing Orders. Consequently, the Petition stood committed to the Committee on Devolution and Intergovernmental Relations pursuant to Standing Order 238(1) of the Senate Standing Orders.

Afterwards, the Speaker received a letter from the Chairperson, Standing Committee on Justice, Legal Affairs and Human Rights requesting that the Committee considers the Petition jointly with the Standing Committee on Devolution and Intergovernmental Relations. Upon reviewing the request and examining the matter, the Speaker issued a Communication on Wednesday, 29th May, 2024 directing that the Petition by Mr. Laban Omusundi be considered jointly by the Standing Committee on Devolution and Intergovernmental Relations and the Standing Committee on Justice, Legal Affairs and Human Rights.

Mr. Speaker,

The salient issues raised in petition were that according to the Controller of Budget yearly reports on expenditures of County Governments, Billions of taxpayers' money was paid to Law Firms for representing County Governments in courts on various issues, yet there were County Attorneys who are well facilitated by tax payers' money to execute that mandate.

The petitioner stated that some of these huge court cases were informed by deliberate administrative decisions, well knowing that there will be no personal responsibility to that effect. Additionally, he claimed that most of these cases were likely to become big enterprises for some skewed individuals in public sector to get money from these law firms as kick-backs.

In his view, this ruined the objective of devolution which was to bring services closer to the people, bearing in mind that these public funds had the capacity to transform health care services in County

Governments which were declining. The petitioner made efforts to raise this matter for its justification with Controller of Budget and Attorney General of the Republic of Kenya but did not get any response to that effect.

Mr. Speaker,

The Petitioner's prayers were that the Senate;

- a) Restrains County Governments from hiring law firms to represent them in Civil court cases by coming up with a legal framework to that effect in order to protect public funds.
- b) Recalls any law in the subject matter that fails to prioritize the interest of the public;
- c) Puts up measures to deter deliberate erroneous administrative decisions and ensure that everybody is held responsible personally for the administrative decisions they make that may end in Courts; and
- d) Provides any other relief(s) that the Senate deems necessary in the subject matter

The joint committee proceeded to consider the petition extensively and the submissions received thereon. The Committees wrote to various stakeholders requesting them to submit written responses and inviting them to appear before the Committees for further discussions on the issues raised in the petition.

Following the invitations, the Committees received submissions from six (6) stakeholders namely; the Kenya National Commission on Human Rights (KNCHR), the Controller of Budget (COB), the Office Auditor General (OAG), the Law Society of Kenya (LSK), the Council of Governors (COG) and the County Attorneys' Forum. However, the Attorney General (AG) did not send any written responses nor appear before the Committee despite receiving invitations.

The Kenya National Commission on Human Rights and the County Attorneys' Forum submitted written responses only which are annexed to this report. The Controller of Budget, The Office of the Auditor General and the Law Society of Kenya appeared before the Committees on 1st July, 2024 for further deliberations. The Council of Governors appeared before the Committees on 8th July, 2024 to present their submissions on the Petition.

Hon. Speaker,

The Joint Committee did an in-depth analysis of the stakeholders' submissions and made various observations which are set out in Chapter Four of this report. The Committees observed that;

- (i) The Office of the County Attorney was facing challenges including;
 - a) Lack of relevant skills and expertise to handle complex court cases;
 - b) Inadequate remuneration for county legal counsels and non-payment of allowances;
 - c) Insufficient budgetary allocation for the office; and
 - d) Inadequate staff hindering the smooth running of the office.
- (ii) The Constitution of Kenya, the County Governments Act, the Office of the County Attorney Act, the Public Procurement and Asset Disposal Act and the Advocates and Remuneration Order regulate the outsourcing of legal services in counties by establishing the legal framework for accountability, transparency, and proper use of public resources. County governments fail to adhere to these laws thereby leading to misuse and loss of public funds.
- (iii) Expenditure on legal services was high, with irregularities in the expenditure reported by counties causing doubt on the accuracy of the legal fees. The Committee observed the need for counties to adhere to the Public Procurement and Asset Disposal Act, 2015 when outsourcing legal services and ensuring that the fees charged are in line with the provisions in the Advocates Remuneration Order and relevant statutes.

Based on its findings and observations the joint Committee made various recommendations which are set out in Chapter Five of this report. The Committee recommended that;

- (i) The County Governments should prioritize capacity-building programs for legal counsels, ensure competitive remuneration and timely payment of allowances, allocate sufficient budgetary resources, and recruit adequate staff to enhance the performance and effectiveness of the Office of the County Attorney.
- (ii) County governments should strictly adhere to the legal framework governing the outsourcing of legal services and implement strong oversight and accountability measures. Counties should specifically enforce compliance with the Public Procurement and Asset Disposal Act, 2015, the Public Finance Management Act, 2012 and the Advocates Remuneration Order to manage the expenditure on legal fees.
- (iii) County governments are advised to seek representation from external legal firms, occasionally when handling complex or specialised legal services. In this case, the

County Governments should procure external legal services through the office of the County Attorney and the costs should be in line with the relevant laws and regulations.

Mr. Speaker,

May we take this opportunity to commend the Members of the two Committees for their devotion and commitment to duty, which made the consideration of the Petition successful.

We also wish to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to the joint Committee in undertaking this important assignment. Lastly, we wish to thank the stakeholders who presented their submissions on the Petition to the Committee.

Mr. Speaker,

It is now our pleasant duty, pursuant to Standing Order 148(1), to present the report of the Standing Committee on Devolution and Intergovernmental Relations and the Standing Committee on Justice, Legal Affairs and Human Rights, on the consideration of a petition concerning restraining county governments from hiring law firms to represent them in court cases despite having county government attorneys to execute that mandate.

Signed  Date... 18/3/2025

SEN. SHEIKH MOHAMED ABASS, CBS, MP

CHAIRPERSON,

**STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL
RELATIONS**

Signed  Date... 18/3/2025


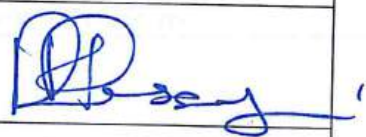



SEN. WAKILI HILLARY SIGEL, CBS, MP

CHAIRPERSON,

STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS

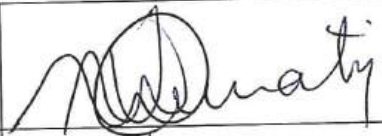
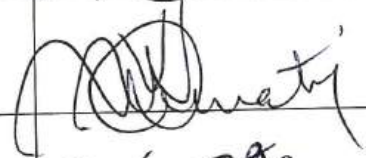




**ADOPTION OF THE REPORT OF THE STANDING COMMITTEE ON DEVOLUTION
AND INTERGOVERNMENTAL RELATIONS ON A PETITION CONCERNING
RESTRAINING COUNTY GOVERNMENTS FROM HIRING LAW FIRMS TO
REPRESENT THEM IN COURT CASES DESPITE HAVING COUNTY
GOVERNMENT ATTORNEYS TO EXECUTE THAT MANDATE**

We, the undersigned Members of the Standing Committee on Devolution and Intergovernmental Relations, do hereby append our signatures to adopt this Report-

Sen. Sheikh Mohamed Abass, CBS, MP	- Chairperson	
Sen. Catherine Muyeka Mumma, MP	-Vice-Chairperson	—
Sen. (Prof.) Margaret Kamar, EGH, MP	-Member	—
Sen. (Dr) Oburu Oginga, MGH, MP	-Member	—
Sen. Peris Pesi Tobiko, CBS, MP	-Member	
Sen. Paul Karungo Thangwa, CBS, MP	-Member	—
Sen. Richard Momoima Onyonka, EBS, MP	-Member	
Sen. Mohamed Said Chute, MP	-Member	
Sen. Hezena M. Lemaletian, MP	-Member	

**ADOPTION OF THE REPORT OF THE STANDING COMMITTEE ON JUSTICE,
LEGAL AFFAIRS AND HUMAN RIGHTS ON A PETITION CONCERNING
RESTRAINING COUNTY GOVERNMENTS FROM HIRING LAW FIRMS TO
REPRESENT THEM IN COURT CASES DESPITE HAVING COUNTY
GOVERNMENT ATTORNEYS TO EXECUTE THAT MANDATE**

We, the undersigned Members of the Standing Committee on Justice, legal Affairs and Human Rights, do hereby append our signatures to adopt this Report-

Sen. Wakili Hillary Kiprotich Sigei, MP	- Chairperson	
Sen. Veronica W. Maina, MP	-Vice-Chairperson	
Sen. Raphael Chimera Mwinzagu, MP	-Member	
Sen. Karen Njeri Nyamu, MP	-Member	—
Sen. Andrew Omtatah Okoiti, MP	-Member	—
Sen. (Prof.) Tom Ojienda, SC, MP	-Member	
Sen. Crystal Kagehi Asige, MP	-Member	
Sen. Daniel Kitonga Maanzo, MP	-Member	
—	-Member	—

CHAPTER ONE: INTRODUCTION

1.1 Right to Petition

1. The right of every person to present petitions to public authorities is provided for under Article 37 of the Constitution. Further, Article 119(1) provides that ‘Every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation.’
2. Parliament enacted the Petition to Parliament (Procedure) Act (No. 12 of 2012) to make provision for the procedure for the exercise of this right. Further, Part XXVII of the Senate Standing Orders also provides for how such right may be exercised.

1.2 Background of the Petition

3. On 9th April, 2024, the Senate received a Petition from Mr. Laban Omusundi a resident of Nakuru County, and the Executive Director of Grassroot Civilian Oversight Initiative, concerning the matter of restraining County Governments from hiring law firms to represent them in court cases and yet they have County Government Attorneys responsible to execute that mandate.
4. Pursuant to Standing Order 236(2)(b) of the Senate Standing Orders, the Petition was presented in the Senate on Tuesday, 30th April, 2024 by the Speaker of the Senate. Consequently, the Petition stood committed to the Committee on Devolution and Intergovernmental Relations pursuant to Standing Order 238(1) of the Senate Standing Orders.
5. Pursuant to Standing Order 238(2) the relevant Committee is required in not more than sixty calendar days from the time of reading the prayer to respond to the Petitioner by way of a report addressed to the Petitioner and laid on the Table of the Senate.
6. The Petitioner drew the attention of the Senate to the following:
 - (i) That, according to the Controller of Budget yearly reports on expenditures of County Governments, there are Billions of taxpayers’ money paid to Law Firms for representing County Governments in Courts on various issues, yet we have County Government Attorneys established in line with County Government Act, 2012 Section 43, well facilitated by tax payers’ money to execute that mandate of representing County Governments in legal matters;

- (ii) That, some of these huge court cases are informed by deliberate administrative decisions, well knowing that there will be no personal responsibility to that effect, and most likely these can become big enterprises for some skewed individuals in public sector to get money from these law firms as kick-backs;
 - (iii) That, this cause defeats the objective of devolution which was to bring services closer to 'Wanjiko', considering the huge chunk of public funds has the capacity to transform health care services in County Governments which are now on death beds;
 - (iv) That, the petitioner's efforts to raise this matter for its justification with Controller of Budget and Attorney General of the Republic of Kenya bore no fruits for there was no response to that effect; and
 - (v) That, this matter is not pending in any Constitutional Court in the Republic of Kenya between the parties.
7. Therefore, the Petitioner sought the Senate to address the following prayers; That the Senate:
- a) Restrains County Governments from hiring law firms to represent them in Civil court cases by coming up with a legal framework to that effect, in order to protect the huge chunk of public funds directed to paying these law firms, which could have been used to enhance services to 'Wanjiko';
 - b) Recalls any law in the subject matter that fails to prioritize the interest of the public;
 - c) Puts up measures to deter deliberate erroneous administrative decisions that will make sure that everybody is held responsible personally for the administrative decisions they make that may end in Courts; and
 - d) Provides any other relief(s) that the Senate deems necessary in the subject matter.
8. The Speaker received a letter from the Chairperson, Standing Committee on Justice, Legal Affairs and Human Rights requesting that the Committee considers the Petition jointly with the Standing Committee on Devolution and Intergovernmental Relations.
9. Upon reviewing the request and examining the matter, the Speaker of the Senate issued a Communication on Wednesday, 29th May, 2024 directing that the Petition be considered jointly by the Standing Committee on Devolution and Intergovernmental Relations and the Standing Committee on Justice, Legal Affairs and Human Rights.

1.3 Overview of the Legal Framework

1.3.1 The Constitution of Kenya, 2010

10. **Article 235(1)** provides that a county government is responsible, within the framework of uniform norms and standards prescribed by an Act of Parliament, for-
- a) establishing and abolishing offices in its public service;
 - b) appointing persons to hold or act in those offices, and confirming appointment; and
 - c) exercising disciplinary control over and removing persons holding or acting in those offices.¹

1.3.2 The Office of the County Attorney Act, No. 14 of 2020

11. **Section 4 (1)** of Part II of the Act provides for the establishment of the Office of the County Attorney in each County, which is an office in the county public service.
12. **Section 4 (2)** states that the Office shall consist of—
- a) the County Attorney;
 - b) the County Solicitor; and
 - c) such other number of County Legal Counsel as the County Attorney may, in consultation with the county public service board, consider necessary.
13. **Section 5 (1)** of the Act provides that, the County Attorney shall be appointed by the Governor with the approval of the county assembly.
14. In addition, **Section 5 (2)** states that, 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.
15. **Section 6 (1)** provides that the County Attorney shall hold office for a term of six years. Further **section 6 (2)** states that the County Attorney shall have the status and rank of a member of the County Executive Committee.
16. **Section 7** of the Act enumerates the functions of the County Attorney, stating that; The County Attorney—
- a) is the principal legal adviser to the county government;

¹ The Constitution of Kenya, 2010

- 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.

17. **Section 8 (1)** provides for the powers of the County Attorney. It states that the County Attorney shall, in discharging the functions under this Act, have the power to —

- a) appear at any stage of any proceedings, appeal, execution or any incidental proceedings before any court or tribunal in which by law the County Attorney's right of audience is not excluded;
- b) require any officer in the county public service to furnish any information in relation to any matter which is the subject of a legal inquiry;
- c) summon any officer in the county public service to explain any matter which is the subject of litigation by or against the county executive; and
- d) issue directions to any officer performing legal functions in any department within the county executive.

18. Additionally, **Section 8 (2)** states that the County Attorney shall —

- a) establish, in consultation with the county public service board, such administrative units in the Office as may be necessary for the effective discharge of the functions of the Office under this Act; and
- b) perform any other action necessary in the administrative interests of the Office.

19. **Section 16** of the Office of the County Attorney Act, provides that;

- a) A department or public entity established within a county executive shall not engage the services of a consultant to render any legal services relating to the functions of the County Attorney without the approval of the County Executive Committee.

- b) A request by a department or public entity to the county executive committee to engage the services of a consultant for the provision of legal services, shall be in writing.
- c) An approval by the county executive committee of a request under subsection (2) shall be in writing.²

1.3.3 Other Legal Provisions

- 20. **Section 43** of the **County Governments Act, 2012**, provides that a county government may, pursuant to **Article 156(4)** of the Constitution request the Attorney-General to represent the county government in court or in any other legal proceedings to which the county government is a party other than in criminal proceedings.³
- 21. **The Advocates Act, Cap 16**, highlights legal provisions relating to advocates including; Legal education, admission and practice; duties and responsibilities of advocates; misconduct and disciplinary measures; and remuneration of advocates.
- 22. **Section 37** of the Act states that:
 - a) Any advocate who holds himself out or allows himself to be held out, directly or indirectly and whether or not by name, as being prepared to do professional business at less than the remuneration prescribed, by order, under this Act **shall be guilty of an offence.**
 - b) No advocate shall charge or accept, otherwise than in part payment, any fee or other consideration in respect of professional business which is less than the remuneration prescribed, by order, under this Act.⁴
- 23. Further, the **Advocates Remuneration Order** comprehensively outlines precise guidelines that apply to the remuneration of an advocate of the High Court by his client for provision of legal services.
- 24. **The Public Procurement and Disposal Act, 2015**, gives effect to Article 227 of the Constitution (Procurement of public goods and services). It provides procedures for efficient public procurement and for assets disposal by public entities.⁵

²The Office of the County Attorney Act, No. 14 of 2020

³ The County Governments Act, No 17 of 2012

⁴ The Advocates Act, Cap 16

⁵ Public Procurement and Disposal Act, Cap 412C

1.4 A Digest of the Petition

1.4.1 Hiring of private law firms in the National Government

25. Section 17(1) of the Office of the Attorney General Act, 2012 provides that, no Ministry or Department shall engage the services of a consultant to render any legal services relating to the functions of the Attorney-General without the approval of the Attorney-General.⁶
26. Vide a *Circular Reference Number AG/Circular/2018* dated 1st March 2018 and titled 'Guidelines on Provision of Legal Services by the Office of the Attorney General and Department of Justice' the then Attorney General the Hon. Paul Kihara notified all state corporations, constitutional commissions and independent offices that every engagement of external advocates must have the written approval of the Attorney General. Further, the guidelines provide that no legal fees shall be processed even after executions of the agreement and performance, without approval and authorization by the Attorney General among other guidelines. However, it was declared unconstitutional Order of certiorari para 18-24 of the circular, on element of legitimate expectation.
27. In the decided case of *Katiba Institute & another v Attorney General & another; Iseme, Kamau & Maema Advocates (Interested Party) [2020] eKLR*, the petitioner objected to the appointment of the firm of *Iseme, Kamau and Maema Advocates*, a private law firm, by the Attorney General, to represent him in the petition or any other civil litigation where the Attorney General or the national government was a party.
28. In the petitioner's view, a private law firm was not contemplated in the Constitution and the law as one to represent the Attorney General on behalf of the national government. It was the petitioner's case that the Attorney General could only constitutionally and legally delegate his functions to public officers and not private law firm(s) which would be a violation of both the Constitution and the law.
29. The Attorney General contended that he had power to appoint a private law firm to represent the government in matters he deemed fit in order to avoid injustice being occasioned to the public. That doing so was acting in the best interest of the public as he was required to do by both the Constitution and the law.

⁶Section 17(1), Office of the Attorney General Act, 2012

30. The Court held that the law allowed the Attorney General to procure services of a private law firm to represent him on behalf of the national government but had to do so in compliance with the Constitution and the Public Procurement and Disposal Act.

1.4.3 Challenges experienced by the Office of the County Attorneys

31. **Section 28 (1)** of the **Office of the County Attorney Act**, provides that the County Attorney shall, as soon as practicable after the thirtieth of June in each year, prepare and furnish to the Governor a report of the operations of the Office during the year that ended on thirtieth June.

32. The Subsector Report for the Office of the County Attorney of the County Government highlights some of the challenges encountered by this office. The report from the Office of the County Attorney of Nakuru County and Nairobi County Government, (randomly sampled to represent the 47 counties) highlight some of the major challenges that are commonly experienced by this office. These include;⁷

- a) Inadequate human resource – These offices have inadequate staff like advocates, paralegals and other legal experts making them unable to provide efficient services. Some offices also lack essential staff such as accountants, accounting officers, researchers, records managers and necessary support staff.
- b) Inadequate training and capacity building–There is need for continuous professional training and capacity building for the County Attorneys and other staff to ensure they keep in step with latest developments in the profession and to effectively fulfill their mandate.
- c) Insufficient budgetary allocation – The office has an insufficient budget against very high demand for service delivery. This insufficient allocation hinders the smooth running of the office activities.
- d) Lack of payment of non-practicing allowance to legal counsels.
- e) Necessary policies between departments and sub counties not yet fully developed.
- f) Political interference – Failure by sectors to pay decretal amounts emanating from their sectors.

⁷Office of the County Attorney; County Government of Nakuru; Sub Sector Report 2021. And County Government of Nairobi; Sub Sector Report 2021.

1.4.4 Other salient issues arising from the petition

i. Conflict of Interest

33. In *Wilfred Nyaundi Konosi v Standard Group Limited & another eKLR*, the suit was as a result of a publication by the defendants (Standard Group Limited) in its Standard newspaper number 392400 of 7th January 2019 at page 25.
34. The said publication read that three law firms (*Konosi and Company Advocates, Ikua Mwangi and company advocates and Gakinya and company advocates*) in Nakuru had according to the Auditor General reports received Kshs 119 million of which the County Attorney, Mr. Harry Gakinya through his law firm Gakinya and company advocates had received Kshs 10 million therefore raising conflict of interest. Further, in the publication it was stated that according to the Auditor General reports the County claimed to have filed over 900 court cases but failed to provide the full details. The plaintiff (Wilfred Nyaundi Konosi) whose law firm was paid claimed the publication was not true and was libelous that is, an untrue publication.
35. The court held that the report as published by the newspaper was from a public office and it was meant for public consumption. The report indicated that the three law firms were paid an aggregate sum of Kshs.119million which amount included the three million paid out to Mr. Wilfred Nyaundi Konosi's law firm. There was nothing false in the publication.
36. In another example, in July 2021 the County Assembly of Nairobi adopted the report of the Committee on Justice and Legal Affairs on a petition from a Nairobi resident on the removal from office of Ms. Lydia Kwamboka, the Nairobi City County Attorney. Following the inquiry into the issues raised in the petition the Committee recommended the termination of Ms. Kwamboka's services as the County Attorney after it was found that she had flouted the provisions of the Public Procurement and Asset Disposal Act, 2015 by issuing instructions to a private law firm that had not been prequalified. The firm was demanding Kshs 300 million in legal fees from the County and had already been paid Kshs 60 million.⁸
37. In view of the aforementioned cases, it can be noted that absence of a framework for engagement of private law firms at the county level may lead to conflict of interest and corruption.

⁸Report on the removal of office of the Nairobi County Attorney, available at <https://nairobiassembly.go.ke/ncca/wp-content/uploads/paperlaid/2021/Report-of-Justice-and-Legal-Affairs-Committee-on-Petition-for-removal-of-City-County-Attorney-2.pdf> . Accessed on 12th May, 2024

ii. **Existing contracts with private law firms**

38. The Office of the County Attorney was established in 2020 by the Office of the County Attorney Act, No. 14 of 2020, that is almost eight (8) years after the onset of Devolution. Four (4) years since the establishment of the Office, the County Attorneys are still relatively new in the positions and in the County administrative structures and may still be establishing their offices coupled with the challenges of limited resources and staff as earlier highlighted.
39. Further, the County Governments may have prequalified law firms that have been handling cases for the counties since the onset of devolution that require to be wound up as per the existing contracts. In addition, the law firms may have specialized expertise that the County Attorneys may not have yet. It would be important for the Committee to consider the aforementioned issues in consideration of the petition.

iii. **Qualifications of a County Attorney**

40. The requirements for qualification for appointment as a County Attorney as provided for under **Section 5 (2)** of the Office of the County Attorney Act, is that a person should be an Advocate of the High Court of Kenya of **at least five years** standing, while the requirements for qualification for appointment as an Attorney General is the same as that of the Chief Justice as provided for under **Article 156 (3)** of the Constitution which is that a person should have **at least fifteen years'** experience as a superior court judge or as a distinguished academic, judicial officer, legal practitioner or such experience in other relevant legal field.
41. Comparing the required number of years of experience and noting that this is a profession that values experience, the County Attorneys have significantly less experience. The Committee may determine whether this has impacted the ability of the County Attorneys to sufficiently represent the counties.

CHAPTER TWO: CONSIDERATION OF THE PETITION

2.1 Conduct of inquiry into the petition

42. Pursuant to the Senate Standing Orders and the Petition to Parliament (Procedure) Act, 2012 the Committees proceeded to consider the petition and to seek stakeholder submissions.
43. At the joint sitting of the two Committees held on Monday, 10th June, 2024, the Committees deliberated on the petition and resolved to write to relevant stakeholders, requesting them to submit written responses and inviting them to appear before the Committees for further discussions on the issues raised in the petition.
44. The joint Committee wrote to the following stakeholders;
- (i) The Attorney General;
 - (ii) The Council of Governors;
 - (iii) The Auditor General;
 - (iv) The Controller of Budget;
 - (v) The Kenya National Council of Law Reform;
 - (vi) The Law Society of Kenya (LSK);
 - (vii) Kenya National Commission on Human Rights (KNHRC);
 - (viii) Katiba Institute and Transparency International
45. Following the invitations, the Committees received submissions from six (6) stakeholders namely; the Kenya National Commission on Human Rights (KNCHR), the Controller of Budget (COB), the Office Auditor General (OAG), the Law Society of Kenya (LSK), the Council of Governors (COG) and the County Attorneys' Forum (CA_TF).
46. The Attorney General did not send any written responses nor appear before the Committee despite receiving invitations.

2.2 Response from the Kenya National Commission on Human Rights (KNCHR)

47. The Committee received a written response from the Kenya National Commission on Human Rights (KNCHR) dated 24th June, 2024. The response is attached to this report as **Annex 3**.
48. KNCHR commented in line with **Article 27** of the Constitution which provides for the right to equality and non-discrimination, private law firms had the right to equal treatment and non-discrimination in the provision of services. The Stakeholder noted that restraining county

governments from hiring private firms could lead to indirect discrimination against these firms, affecting their right to compete fairly for legal service contracts.

49. The Stakeholder submitted that **Article 50** of the Constitution guarantees any person the right to a fair hearing, noting that county governments like any other entity, had the right to a fair hearing, which includes the right to choose the legal representation that they deem most suitable for their needs. KNCHR cautioned against imposing a blanket restraint just because the County has a County Government Attorney, considering this might prevent the County from seeking the best possible option to achieve justice.
50. KNCHR highlighted provisions of **Article 227** of the Constitution which provides that when State and public entities contracts for goods or services, they shall do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective. Further, the **Public Procurement and Asset Disposal Act, Cap 412C** gave effect to this provision whereby **section 33** of the Act designated the County Treasury as the organ responsible for the implementation of public procurement and asset disposal policy in the county. KNCHR commented that there was no exception for procurement of legal services by county governments which should adhere to **principles of fairness, transparency and competitiveness**.
51. The Stakeholder quoted the imprints of **Section 43** of the **County Government Act, Cap 265**, which provides that a county government may, pursuant to Article 156(4) of the Constitution request the Attorney-General to represent the county government in court or in any other legal proceedings to which the county government is a party other than in criminal proceedings. Further, **Section 7 (e)** of the **Office of the County Attorney Act, Cap 265E** provides among others that the County Attorney 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.
52. Additionally, KNCHR noted that **Section 16 of the Office of the County Attorney Act, Cap 265E** provides a safeguard on instances that a County Government can engage or outsource legal services and states that this should be with the approval of the County Executive Committee.
53. Despite the existence of a legislative framework outlining the conditions for procuring goods and services by public entities, including county governments, the Commission noted a decline in adherence to and compliance with these established guidelines.

54. The Kenya National Commission on Human Rights flagged some irregularities raised by the Auditor General's report for FY 2022/2023 on procurement of private legal services by County Executives and Assemblies. The report highlighted several instances including;
- (i) The County Executive of Baringo incurred an expenditure of **Kshs.11,604,259** on legal fees. However, tender advertisement, evaluation and award, signed service level agreements, evidence of court attendance, invoices indicating the services offered and certificates of appointment in respect of each case or transaction were not provided for audit. In addition, the procurement for the legal services was not approved by the County Executive Committee, contrary to Section 16(1) of the Office of the County Attorney Act, 2020.
 - (ii) The County Executive of Bomet incurred legal fees, arbitration and compensation payments. However, the payments were not supported with payment vouchers demand fee notes and court proceeding statements.
 - (iii) The County Assembly of Turkana paid three (3) law firms legal expenses amounting about **Kshs. 27 million**. It was the Auditor General's opinion that the payments were not supported with user requisitions, evidence of competitive bidding from the list of prequalified legal firms, professional opinions from the head of procurement unit, notification of awards and acceptance letters, the itemized instructions made to the lawyers on the services required, copies of judgement summaries where applicable, and certificates of costs on which the legal fee notes were based. In addition, there was no opinion and letter of no objection for engagement of private legal firms by either the designated principal legal advisor to the County Assembly or the county attorney who was indicated in the annual report and financial statements as the principal legal advisor.
55. The Kenya National Commission on Human Rights concluded that the gamut of the issue was not the hiring of the private firms but rather the process and procedure of issuing contracts to the private law firms and whether arriving at legal fees was done as per the Advocates Remuneration (Amendment) Order, 2014.
56. KNCHR suggested that the Committee interrogates whether the "instructions of the county government" contemplated under section 7 (c) of the Office of the County Attorney Act, Cap 265E had played a role in County Attorneys acting or not for respective County Governments, and whether there had been a deliberate attempt to bypass the provisions of Section 16 of the

Office of the County Attorney Act, Cap 265E, so as to establish levels of responsibility and accountability.

57. On account of the audit queries raised in the report of the Auditor General, KNCHR recommended that those found pilfering public funds in dubious contracts for goods and services should be held personally responsible and get sanctioned accordingly.
58. They further recommended that procurement of goods and services, including engagement of private legal firms by county entities must be done in a fair, equitable, transparent, competitive and cost-effective manner with value for public money. Therefore, restraining the hiring of private law firms should be considered in light of these principles, ensuring that any restrictions do not contravene established procurement laws.

2.3 Response from the Controller of Budget (COB)

59. The Controller of Budget (COB) appeared before the joint Committee on Monday, 1st July, 2024. She informed the Committee that, her office, through a circular communicated to all counties, sought information on payments to law firms from the year 2013 to 2024. The Controller of Budget was yet to receive responses from all counties. However, the COB expressed commitment to furnish the Committee with all pertinent information upon receipt.
60. The Controller of Budget urged that the issue needed to be well legislated and that Counties needed to enhance their capacity to handle legal matters, thus reducing reliance on external legal services.
61. Consequently, the Stakeholder vide a letter dated 19th July, 2024, sent a comprehensive report providing a breakdown of the amount paid to law firms as legal fees by all the 47 County governments, since the financial year 2013/2014 to date. The letter is attached under **Annex 4** of this report.
62. In the report, only twenty-two (22) counties provided the required information as shown in Table 1 below. Twenty-five (25) counties did not submit their data on payments to law firms.

Table 1: Amount paid to law firms by Counties from FY 2013/2014 to FY 2023/2024

S/No	COUNTY GOVERNMENT	Gross Legal Fee (Kshs)	Legal Fees Paid (Kshs)	Amount Pending (Kshs)
1.	Kwale	299,946,785.00	226,759,147.05	73,187,637.95
2.	Taita-Taveta	106,636,726.40	106,636,726.40	

3.	Embu	327,091,408.00	327,091,408.00	
4.	Machakos	1,495,963,968.59	681,744,183.85	814,219,784.74
5.	Makueni	226,850,079.35	226,850,079.35	
6.	Nyandarua	161,413,093.40	161,413,093.40	
7.	Nyeri	151,431,565.95	151,431,565.95	
8.	Murang'a CE	343,902,445.00	343,902,445.00	
	Murang'a CA	68,328,117.00	46,063,533.00	22,264,584.00
9.	Turkana	337,307,546.68	337,217,132.88	90,413.80
10.	West Pokot	104,683,897.15	70,060,539.35	34,623,357.80
11.	Trans-Nzoia	93,577,363.25	93,577,363.25	
12.	Elgeyo-Marakwet	20,635,783.00	20,635,783.00	
13.	Nandi	34,710,157.30	34,710,157.30	
14.	Laikipia	207,714,756.00	190,190,832.00	17,523,924.00
15.	Kajiado	441,202,575.28	48,830,505.65	392,372,069.63
16.	Kericho	119,894,267.54	119,894,267.54	
17.	Bomet	72,424,105.65	60,001,670.65	12,422,435.00
18.	Bungoma	420,900,920.50	373,770,323.90	47,130,596.60
19.	Kisumu	937,043,812.35	221,843,812.35	715,200,000.00
20.	Homa-Bay	80,872,946.86	41,326,057.00	39,546,889.86
21.	Kisii	110,470,399.26	97,555,491.26	12,914,908.00
22.	Nyamira	37,654,895.85	37,654,895.85	
	TOTAL	6,200,657,615.36	4,019,161,013.98	2,181,496,601.38

63. The Committee observed that the information was not sufficient and resolved to write to the Controller of Budget requesting for a detailed report incorporating any additional reports received from county governments since July 2024, including data from the remaining twenty-five (25) counties. This information would distinguish between legal fees paid or owed by County executives and County Assemblies.

64. In November 2024, the Controller of Budget submitted a Revised Report on the legal fees paid by counties from Financial Year 2013/2014 to Financial Year 2023/2024 as requested by the Committees. This is attached under **Annex 4** of this report.
65. In the report, the Controller of Budget provided a summary of the legal fees paid or owed by the County Governments that submitted their reports as of November 5, 2024 for financial years 2013/14 to FY 2023/24. This summary is labeled as Annex 1 to the response.
66. In her analysis of the information, the Controller of Budget observed that;
- (i) Eleven County Governments did not submit their reports on payment of legal fees during the period. These were Busia, Garissa, Kiambu, Kilifi, Kirinyaga, Kitui, Mombasa, Narok, Siaya, Vihiga and Wajir.
 - (ii) Eleven County Executives reported settling their entire legal fees as of 30th June 2024. They included Elgeyo Marakwet, Embu, Kericho, Lamu, Makueni, Murang'a, Nyandarua, Nyamira, Nyeri, Samburu and Trans Nzoia.
 - (iii) The County Governments with the highest outstanding legal fees included Nairobi City County at Kshs.21.39 billion, Machakos at Kshs.793.97 million, Kisumu at Kshs.718.78 million, Nakuru at Kshs.485.14, Kajiado at Kshs.392.37 million, Tana River at Kshs.374.42 million, and Homabay at Kshs.224.85 million.
67. In general, the thirty-six (36) County Governments cumulatively incurred a total of **Kshs.30.61 billion** on payment of legal fees from the financial year 2013/14 to the financial year 2023/24. She noted that Nairobi City County had the highest legal fees, at **Kshs. 21.39 billion**, accounting for 73 per cent of the total legal costs.
68. Additionally, as of 30th June 2024, the outstanding legal fees due to private law firms were **Kshs.25.42 billion**, accounting for 4.5 per cent of the cumulative forty-seven County Government budgets in FY 2023/24 of **Kshs.562.75 billion**. This amount is significant, even excluding the eleven County Governments.
69. The COB sampled eight (8) counties and provided the specific county government legal fees approved budget and the cumulative expenditure as per the Integrated Financial Management Information System (IFMIS) Vote Book Report for the financial FY 2013/14 to FY 2023/24. The sampled counties were; Bomet, Bungoma, Embu, Isiolo, Kajiado, Kericho, Kisumu, and Makueni. This report is attached as Annex 2 to the response.
70. The Controller of Budget comparatively analysed the legal fee payments on IFMIS and the payments reported by the Counties as shown in Annex 3 of the response.

71. The Controller of Budget reported a significant disparity between the IFMIS report on the budget and actual expenditure of legal fees from FY 2013/14 to FY 2023/24 from the information submitted by the counties.
72. She also observed that in many instances, County Governments had not been deducting nor remitting withholding income tax on the legal fees, which was 5% of the fee note.
73. The Controller of Budget recommended that;
- (i) The Senate should consider instituting measures for the County Governments to set up Alternative Dispute Resolution Mechanisms in accordance with Art.159 (2)(c) of the Constitution of Kenya, 2010.
 - (ii) The Senate should engage the Attorney General in the spirit of cooperation between levels of government as provided for under Art.189 (1) (c) to support the County Governments in enhancing the capacity of the office of the County Attorneys to handle county legal matters.
 - (iii) In the unlikely event of the need for complex or specialised legal services, the County Governments should procure external legal services through the office of the County Attorney, whose overall costs should be capped under the advice of the Attorney General or through policy legislation by the Senate.
 - (iv) The Senate should consider seeking a specialised audit of the legal fees from the Office of the Auditor General to confirm whether or not public money has been applied lawfully and effectively.

2.4 Response from the Office of the Auditor General (OAG)

74. On 1st July, 2024, the Office of the Auditor General appeared before the Committee and presented her submissions which are attached as **Annex 5** of this report.
75. The Auditor General, Ms. Nancy Gathungu, submitted that over the years, her office has included the audit of legal fees or expenditure as one of the focus areas when conducting audits. This focus was driven by public concerns, signals from parliament, new developments in devolved units, stakeholder engagements and communications, prior year audit matters and media reports.
76. The audit results indicated that three (3) counties had not established the Office of the County Attorney, which were Tana River, Lamu and Elgeyo Marakwet Counties. Additionally, the results indicated that Tana River and Bomet counties were faced with audit queries in the last

three (3) years, relating to legal fees. **Annex 5** gives the details of the counties with established the Offices of the County Attorney.

77. The Auditor General tabled in her submissions various issues identified from an analysis of the legal services provided to County Executives between the financial year 2020/2021 and 2022/2023, as summarized in Appendix II of the response under **Annex 5**. They included;

(i) Outsourcing Legal Services to Private Law Firms

78. The OAG's reports pointed out that counties continued to engage private law firms to offer legal services despite establishing the Offices of County Attorney. They also noted that counties did not adhere to the requirements of Section 16 of the Office of the County Attorney Act, 2020 which requires a county department or a public entity established within a county executive to seek for written approval from the County Executive Committee when engaging the services of a consultant to render any legal services to the County.

79. Further, during the audit review over the three years, thirty-one (31) county executives had audit findings related to outsourcing legal services to private law firms. Out of the thirty-one county executives, only Tana River County Executive had not established the Office of the County Attorney.

80. In addition, the amount queried in relation to provision of legal expenses was as shown in Table 2 below.

Table 2: Amount queried in relation to legal expenses in counties

Financial Year	Total Amount Queried (Kshs.)
2020/2021	2,177,579,014
2021/2022	23,843,180,292
2022/2023	1,456,819,087

(ii) Irregular procurement of Legal services

81. The Auditor General submitted that the outsourcing of legal services was expected to adhere to the requirements of the Public Procurement and Asset Disposal Act, 2015 and its attendant Regulations, and Section 16 of the Office of the County Attorney Act, 2020. However, County

Executives used restricted tendering or direct appointment methods of procurement without meeting the conditions specified in the procurement law.

82. For instance, in the financial year 2022/2023, the Kitui County Executive incurred legal expenses amounting to **Kshs. 25,342,454** to hire various legal firms without the approval of the County Executive Committee as required by Section 16(1) of the County Attorney Act, 2020. In the same financial year, the Nakuru County Executive directly procured legal services worth **Kshs. 116,085,352** to various external law firms. Similarly, Mandera County Executive invited only five (5) firms to submit bids instead of seven (7), contrary to Section 95(3) of the Public Procurement and Asset Disposal Act, 2015 and Regulation 102 of the Public Procurement and Assets Disposal Regulations, 2020.

(iii) Inadequate Supporting Documentation for the Legal Expenses

83. The issue of inadequate supporting documentation and lack of status report on the legal cases was a frequently raised audit finding. The payments made in relation to the provision of legal services were inadequately supported, which raised doubt concerning the authenticity of legal expenses paid by the County Executives. There were missing documents and information pertaining to:

- a) Fee notes
- b) Contracts and other procurement documents with the law firms
- c) Basis of charging legal fees
- d) Documents to confirm the value of properties used to charge the legal fees
- e) Evidence of the Court cases that the law firms represented the County Executives;
- f) Status of the cases

(iv) Pending Bills

84. The audits revealed huge amounts of pending bills as a result of provision of legal services by private law firms. Some of the pending bills were more than the County Executives' own source of revenue. Nairobi City County had the highest level of pending bills with more than Kshs. 20 Billion.
85. The Auditor General noted cases of duplicated fee notes being included in the list of pending bills. For instance, in the financial year 2022/2023, Taita Taveta County Executive included in

its list of pending bills, an amount of Kshs. 3,260,018 which had already been paid during the year under review.

86. Additionally, they observed cases of court awards against County Executives that had not been settled, which attracted further interest and penalties thereby compounding the already dire problem of high pending bills.
87. The Auditor General concluded by affirming that the petition raised pertinent issues that go beyond restraining the County Executives from engaging private law firms. She emphasized on the need to have candid discussions with other stakeholders including the legal fraternity, since the major issue noted from the audits concerns the authenticity of the legal expenses.
88. Ms. Nancy Gathungu also proposed an engagement with the Judiciary to assist in providing evidence of the court cases and assessing the validity of the fees charged. She suggested that Counties should consider engaging more in Alternative Dispute Resolution Mechanisms instead of resorting to external legal services that lead to excesses in the usage of public resources.

2.5 Response from the Law Society of Kenya (LSK)

89. The Committee met with the Law Society of Kenya on 1st July, 2024 to discuss the issues in the petition. LSK presented their submissions which are attached as **Annex 6** of this report.
90. The Law Society of Kenya challenged the averments by the petitioner which stated that in the Controller of Budget yearly reports on expenditure of the County Governments, there were billions of taxpayers' monies paid to law firms for representing county governments in court yet there are County Attorneys.
91. Further, the Petitioner suggested that monies paid to law firms were a waste of public funds which could be directed to other important services in the county. The Law Society of Kenya opposed this suggestion stating that indeed legal services are essential services and have been recognized as such by the courts with the Covid 19 Pandemic period as a case in point.
92. Section 22(2) of the Office of the County Attorney Act No. 14 of 2020 provides that the County Attorney may procure the services of such other persons as may be reasonably necessary for the purposes of assisting the County Attorney in the performance of their functions. LSK highlighted that this section expressly allowed the County Attorney to hire external lawyers

recognizing the workload and the need for specialized services that may not be available within the office of the County Attorney.

93. The Law Society of Kenya cited the petitioners claim that some of the huge court cases were informed by deliberate administrative decisions, well knowing that there will be no personal responsibility to that effect and have the likelihood of becoming big enterprises for some skewed individuals from public sector to get money from these law firms as kickbacks. LSK submitted that this assertion was unfounded. In their view, the services of external counsels ought to be competitively procured individually by public institutions through an elaborate and detailed statutory mechanism set out under the Public Procurement and Disposal Act No. 33. In case of irregularities in the procurement process, the Public Procurement Administrative Review Board was established to handle such disputes.
94. The Law Society of Kenya informed the Committees that payment of legal fees was regulated by the Advocates Remuneration Order which prescribed the amount of fees payable for services rendered by the Advocates. It specifically prohibited advocates from agreeing or accepting their remuneration at less amount than what was provided for by the Order.
95. LSK commented that restraining county governments from hiring law firms conflicted with national values and violated the principles of governance, such as inclusiveness, the rule of law, non-discrimination, human rights, equality, and equity. By limiting the choice of legal representation by county governments, the petition could impede inclusivity, denying these governments the ability to select the most qualified legal professionals to handle county cases effectively.
96. Section 6 of the County Governments Act 2017 provides that county governments may contract any person, company, firm or other body for the delivery of a particular service or carrying on a particular function to ensure efficiency in the delivery of service or carrying out of a function for which the county government is responsible. This provision acknowledges the need for flexibility in engaging external expertise to enhance capacity and improve service delivery.
97. In line with this provision, LSK emphasized that prohibiting county governments from hiring law firms could hinder their ability to efficiently handle legal matters, thereby undermining their capacity to access specialized expertise and impeding their efficiency in resolving legal issues.

98. The Law Society of Kenya concluded by stating that the petition was ill advised, discriminatory, unconstitutional, and unlawful, since it potentially violated fundamental rights, undermining the principle of equality before the law, and contradicting the statutory authority of county governments.

2.6 Response from the Council of Governors (COG)

99. The Joint Committee met with the Council of Governors (COG) on Monday, 8th July, 2024. COG presented their response which is attached as **Annex 7** to this report. The Council in their submissions, opposed the petition in its entirety noting that the petition's main objective was to prevent County Governments from seeking the services of external law firms. They provided an explanation as follows;

i) County Attorneys' Role and Expertise

100. The Council submitted that, the legal matters affecting the County Governments were complex, diverse and continuously evolving, and often required technical expertise beyond the general purview of County Attorneys. To enhance the quality of legal representation, Counties engaged external lawyers to be able to access specialized knowledge and skills that are essential for effectively addressing specific legal challenges.

101. Additionally, they stated that legal counsels within the County Governments were remunerated way below their counterparts at the Office of the Attorney General's office and the Office of the Director of Public Prosecutions (ODPP) despite being in the same job group. This disparity in payment made it difficult for County Governments to attract top talent at the entry level, provide proper training, retain skilled staff, and build the capacity needed to handle all legal matters without hiring private firms with the needed expertise. They therefore noted the need for the Salaries and Remuneration Commission (SRC) to address the disparity in pay across similar job groups with a view to discourage county governments from outsourcing legal expertise.

ii) Precedent at the National Level (Office of the Attorney General)

102. COG noted that, despite being a fully constituted office with state counsel, the Office of the Attorney General (AG) sought expertise from external lawyers in legal matters. By drawing on external expertise, the Attorney General's office and other jurisdictions were able to effectively handle complex and multifaceted legal issues that arise, thereby safeguarding the

interests of the nation. Similarly, the Office of the County Attorney sought specialized standards of legal representation for matters affecting County Governments.

iii) Practices by other institutions; state corporations and constitutional commissions

103. The Council mentioned that other state institutions including; Independent Electoral and Boundaries Commission (IEBC), Kenya Human Rights Commission (KHRC) the National Transport and Safety Authority (NTSA), Kenya Revenue Authority (KRA) among others, also engaged the expertise of external lawyers to benefit from specialized legal insights and ensure robust legal frameworks were in place to support their mandate. The counties' practice of engaging external lawyers aligned with this approach, demonstrating a commitment to leveraging specialized expertise for the benefit of public administration.

iv) Inadequate budgetary allocations/ infrastructure for the office of the County Attorney

104. County governments generally struggled with inadequate resources, as submitted by C.O.G, leading to substantial wage bills and limited budgets for operations and maintenance. In response to these constraints, county governments prioritized key sectors such as health, agriculture and education, often at the expense of the legal office due to budget constraints.

105. This budget rigidity meant that the legal office received insufficient resources, making it challenging to hire and retain lawyers skilled in expertise as they couldn't offer competitive salaries or provide the necessary training and development opportunities. Without adequate funding, county legal offices struggled to handle the complex and diverse legal challenges they faced. For that reason, outsourcing legal services was often more efficient and ensured the best legal representation for the county.

106. The Council of Governors concluded that allowing counties to engage external legal expertise ultimately serves the best interests of the public by ensuring that counties can navigate the diverse legal landscape effectively and efficiently. The Council urged the Senate to dismiss the petition, stating that it seeks to infringe upon the practical and necessary measures that County Governments take to ensure effective legal representation in the interests of Counties. They assured the Senate that the engagement of external lawyers will be undertaken professionally and within the law.

2.7 Response from the County Attorney's Forum (CAfF)

107. The County Attorney's Forum submitted their written response vide a letter dated 12th October, 2024. The response is attached as **Annex 8** of this report.
108. They made reference to the Council of Governors submissions that there was a discrepancy in the remuneration of Counsel working in the county governments vi-a-vis their counterparts in the national government, hence the challenge in retaining in house legal counsel as a result of a more competitive job market.
109. The County Attorney Forum submitted that the Salaries and Remuneration Commission (SRC) rejected their request for harmonisation of terms and conditions of service for legal personnel in the public service, citing fiscal sustainability as a challenge to harmonisation. However, the Commission made considerations for legal counsel in the State Law Office and the Office of the Director of Public Prosecutions, to be paid State Counsel and Prosecutorial Allowances at rates ranging from Kes. 20,000/= to Kes. 50,000/=.
110. In the response, the County Attorney's Forum attached advertisements for positions of similar job groups, in the Office of the Attorney General at the national government and in Kiambu County government. A comparison of the advertisements indicated that the legal counsels at the National Government earned allowances including; non-practicing allowance, prosecutorial allowance, special legal allowance, Salary Market Adjustment and Responsibility allowance (where applicable), while no additional professional allowances were available to County Legal Counsels.
111. The Salaries and Remuneration Commission conducted the second phase Job Evaluation at National and County levels and issued recommendations; which were effective 1st July 2024. From the Circulars, the County Attorney's Forum observed a general discrepancy in salaries payable to public officers at both levels of government.
112. The Forum made reference to *Nairobi ELRC no 547 of 2018, Erastus Gitonga & 4 others v National Environment Management Authority (NEMA)* where employees of the Respondent, who are Advocates of the High Court and were at the time serving as its Legal Officers, moved to the Employment and Labour Relations Court seeking payment of various outstanding sums of non-practising and prosecutorial allowance. They relied on the SRC Circular above-referenced and alleged infringement of their rights and unfair discrimination by the Respondent contrary to the principles of fair labour practices and equality.

113. The court found that the actions by the Respondent in not paying the allowances was unlawful, wrongful and unfair. Further that subjecting the claimants to unequal treatment amounted to discrimination and unfair labour practices by denying them the subject matter allowances. The County Attorney's Forum noted that county governments have been unable to implement payment of allowances to county legal counsel, thus perpetuating unfair labour practices and affecting their ability to retain county legal counsel no thanks to a more competitive job market.
114. CAAtF provided an extract from the IPPD showing a list of job designations for officers in the Office of the County Attorney. They noted that the IPPD provided for a Deputy County Attorney at Job Group 'Q', whose designation does not exist in the Act. The Act provides for a County Solicitor, who under Section 17 (3), shall be the principal assistant of the County Attorney in the execution of the functions of the County Attorney. By virtue of this mandate, the forum was of the opinion that the County Solicitor position should be at Job Group 'S', equivalent to a County Chief Officer. Their opinion was that the County Solicitor should be responsible to the respective county executive committee member for the administration of a county department as provided under Section 45 (3) of the County Governments Act.
115. The Forum opined that the actions by the SRC promoted discrimination against County Legal Counsels by authorising different remuneration to them, despite performing similar tasks at similar job groups as their peers at the Office of Attorney General and the Office of the Director of Public Prosecutions. They noted that this was not the case for professionals such as doctors or engineers who earned similar remuneration at each job grade whether they worked at national or county government(s).
116. Based on the foregoing, the County Attorney Forum stated that their submissions form the basis for consideration of improving terms and conditions of employment for county legal counsel to enable them provide better service delivery. They emphasized on the achievement of the SRC pillars on equal remuneration to persons for work of equal value and the need to ensure that public services are able to attract and retain the skills required to execute their functions.
117. Additionally, they recommended that the Salaries and Remuneration Commission does the following;
- (i) Approves payment of all allowances payable to Counsels at the Office of the Attorney General to County Legal Counsel, depending on their job group(s);

- (ii) Includes a salary market adjustment for County Legal Counsel based on the just concluded Job Evaluation;
- (iii) Introduces a County Legal Counsel Allowance similar to State Counsel Allowance and Prosecutorial Allowance.

118. The County Attorneys Forum believed that the above measures would greatly assist county governments in reducing loss of talent to other state agencies that causes the over-reliance on outsourced legal services.

CHAPTER THREE: ANALYSIS OF STAKEHOLDER SUBMISSIONS

3.1 Challenges affecting the Office of the County Attorney

a) Inadequate skills and expertise

119. County Attorneys were facing a challenge of navigating the complex, diverse and continuously evolving legal matters affecting County Governments. These issues often demanded specialized technical expertise that may exceed the general scope of County Attorneys' expertise. To enhance the quality of legal representation, Counties engaged external lawyers to be able to access specialized knowledge and skills that are essential for effectively addressing specific legal challenges.
120. In lieu of the above, Section 22 (2) of the Office of the County Attorney Act, 2020 allowed the County Attorneys to procure services of external lawyers for the purposes of assisting the County Attorney in the performance of their functions. LSK emphasized that this section recognized the workload and the need for specialized services that may not be available within the office of the County Attorney.

b) Inadequate pay for legal counsels

121. Legal counsels within the County Governments were reportedly remunerated way below their counterparts at the Office of the Attorney General's office and the Office of the Director of Public Prosecutions (ODPP) despite being in the same job group. This disparity in payment made it difficult for County Governments to attract top talent at the entry level, provide proper training, retain skilled staff, and build the capacity needed to handle all legal matters without hiring private firms with the required expertise.
122. County legal counsels did not earn the same allowances as legal counsels at the National Government despite them being advocates in the public service and in the same job group. They had been receiving less or no allowances, which the County Attorney's Forum stated was unfair and affected the ability to retain county legal counsels.

c) Budgetary constraints

123. County governments generally struggle with inadequate resources, leading to substantial wage bills and limited budgets for operations and maintenance. The Council of Governors stated that the county legal office received insufficient funding, making it challenging to hire and retain skilled lawyers to handle complex and diverse legal issues. County governments

couldn't offer competitive salaries or provide the necessary training and development opportunities for lawyers with the required expertise.

3.2 Non-Compliance to the Law when outsourcing Legal Services

124. Three counties had not established the Office of the County Attorney as per the audit results in 2024. These were Tana River, Lamu and Elgeyo Marakwet Counties. This was two years after the enactment of the Office of the County Attorney Act, 2020, which provided for the establishment of the Office which should consist of the County Attorney, the County Solicitor, and such other number of County Legal Counsel as the County Attorney may, in consultation with the county public service board, consider necessary.

125. In addition, counties did not adhere to Section 16 of the Office of the County Attorney Act, 2020 which provides that a department or public entity established within a county executive shall not engage the services of a consultant to render any legal services relating to the functions of the County Attorney without the approval of the County Executive Committee.

126. The outsourcing of legal services was expected to adhere to the requirements of the Public Procurement and Asset Disposal Act, 2015, its attendant Regulations and Section 16 of the Office of the County Attorney Act, 2020. However, the OAG mentioned that County Executives used restricted tendering or direct appointment methods of procurement without meeting the conditions specified in the procurement law.

127. Payment of legal fees was regulated by the Advocates Remuneration Order which prescribed the amount of fees payable for services rendered by the Advocates. It specifically prohibited advocates from agreeing or accepting their remuneration at less amount than what was provided for by the Order. Therefore, the fees charged by Legal firms representing Counties should have been guided by the order.

3.3 County Expenditure on Legal Fees and Pending Bills

a) Expenditure on Legal fees

128. Counties paid a significant amount of money to private law firms for legal representation. The Controller of Budget submitted a Report highlighting a summary of legal fees owed and paid by thirty-six (36) counties from Financial Year 2013/2014 to Financial Year 2023/2024. Eleven (11) County Governments did not submit their reports on payment of legal fees during the period.

129. According to the report, the gross legal fees billed by private legal firms, for the thirty-six (36) counties was **Kshs. 30,612,420,704**. Out of this, the total amount of legal fees paid was **Kshs. 4,888,270,337**. This means that the pending amount to be paid to private law firms by the counties was **Kshs. 25,420,311,007**.
130. Notably, Nairobi City County had the highest legal fees, at **Kshs. 21.39 billion**, accounting for 73% of the total legal costs.
131. Upon doing a comparison of the legal fee payments on IFMIS and the payments reported by the Counties, the Controller of Budget observed that the IFMIS report on the budget and actual expenditure of legal fees from FY 2013/14 to FY 2023/24 varied significantly from the information submitted by the counties. This created doubt on the accuracy of the figures reported by the counties and the charges for legal services.
132. Additionally, County Governments had not been deducting nor remitting withholding income tax on the legal fees, which was 5% of the fee note.

b) Pending bills

133. The Controller of Budget stated that as of 30th June 2024, the outstanding legal fees due to private law firms, for thirty-six (36) counties was **Kshs. 25.42 billion**, accounting for 4.5% of the cumulative forty-seven County Government budgets in FY 2023/24 of **Kshs. 562.75 billion**.
134. Out of thirty-six (36) counties, the counties that reported the highest outstanding legal fees included Nairobi City County at Kshs.21.39 billion, Machakos at Kshs.793.97 million, Kisumu at Kshs.718.78 million, Nakuru at Kshs. 485.14, Kajiado at Kshs.392.37 million, Tana River at Kshs.374.42 million, and Homabay at Kshs.224.85 million.
135. The Office of the Auditor General reports also highlighted huge amounts of pending bills as a result of provision of legal services by private law firms, some of which were more than the County Executives' own source of revenue.
136. The OAG also noted cases of court awards against County Executives that had not been settled, which attracted further interest and penalties thereby compounding the already dire problem of high pending bills.
137. Nairobi City County was cited by both the Controller of Budget and the Auditor General for having the highest pending bills of more than **Kshs. 20 billion** due to expenditure on private law firms.

3.4 Lack of documentation to support Legal Expenses

138. The Office of the Auditor General and the Kenya National Commission on Human Rights highlighted the issue of inadequate documentation to support procurement of private legal services and lack of status report on the legal cases as a major audit finding. Audits revealed missing documents and information pertaining to: Fee notes; tender advertisement; evidence of competitive bidding from the list of prequalified legal firms; Contracts and other procurement documents with the law firms; Basis of charging legal fees; Documents to confirm the value of properties used to charge the legal fees; Evidence of the Court cases; and Status of the cases.
139. The lack of documentation raised doubt concerning the authenticity of legal expenses paid by the County Executives.

3.5 Consequences of restraining County Governments from outsourcing Legal Services

140. Private law firms have the right to equal treatment and non-discrimination in the provision of services as provided for under **Article 27** of the Constitution of Kenya 2010. Restraining county governments from hiring private firms could lead to indirect discrimination against these firms, affecting their right to compete fairly for legal service contracts.
141. County governments, like any other entity, have the right to a fair hearing in line with **Article 50** of the Constitution. This includes the right to choose the legal representation that they deem most suitable for their needs. KNCHR cautioned against imposing a blanket restraint just because the County has a County Government Attorney, considering this might prevent the County from seeking the best possible option to achieve justice.
142. **Article 227** of the Constitution provides that when State and public entities contracts for goods or services, they shall do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective. Further, the Public Procurement and Asset Disposal Act, Cap 412C gave effect to this provision. According to these provisions, there's no exception for procurement of legal services by county governments, on condition that they should adhere to principles of fairness, transparency and competitiveness.
143. The Law Society of Kenya stated that restraining county governments from hiring law firms conflicted with national values and violated the principles of governance, such as

inclusiveness, the rule of law, non-discrimination, human rights, equality, and equity. By limiting the choice of legal representation by county governments, the petition could impede inclusivity, denying these governments the ability to select the most qualified legal professionals to handle county cases effectively.

144. In addition, **Section 6** of the County Governments Act, 2017 acknowledges the need for flexibility in engaging external expertise to enhance capacity and improve service delivery. Prohibiting county governments from hiring law firms could hinder their ability to efficiently handle legal matters, thereby undermining their capacity to access specialized expertise and impeding their efficiency in resolving legal issues.

CHAPTER FOUR: COMMITTEE OBSERVATIONS

145. Following stakeholder engagements and an analysis of the submission, the joint Committee made the following observations;
- (i) The Office of the County Attorney was facing challenges that hindered its performance and effectiveness. These included;
 - a) County legal counsels lacked relevant skills and expertise to handle complex court cases;
 - b) Inadequate remuneration for county legal counsels and non-payment of allowances;
 - c) Insufficient budgetary allocation for the office; and
 - d) Inadequate staff hindering the smooth running of the office.
 - (ii) The Constitution of Kenya, the County Governments Act, the Office of the County Attorney Act, the Public Procurement and Asset Disposal Act and the Advocates and Remuneration Order regulate the outsourcing of legal services in counties by establishing the legal framework for accountability, transparency, and proper use of public resources. County governments fail to adhere to these laws thereby leading to misuse and loss of public funds.
 - (iii) The Controller of Budget reported that from FY 2013/2014 to FY 2023/2024, the gross legal fees billed by private legal firms, for thirty-six (36) counties was **Kshs. 30,612,420,704**. Out of this, the total amount of legal fees paid was **Kshs. 4,888,270,337** and the pending amount to be paid was **Kshs. 25,420,311,007**. The Office of the Auditor General reports also highlighted the significant accrual of pending bills due to the non-payment of legal fees, some of which were more than the County Executives' own source of revenue.
 - (iv) Expenditure on legal services was high, with irregularities in the expenditure reported by counties causing doubt on the accuracy of the legal fees. The Committee observed the need for counties to adhere to the Public Procurement and Asset Disposal Act, 2015 when outsourcing legal services and ensuring that the fees charged are in line with the provisions in the Advocates Remuneration Order and relevant statutes.
 - (v) County governments lack the necessary documentation to support expenditure on external legal services making it difficult to audit the funds.

- (vi) There was a variance in salaries and allowances payable to legal counsels at the national and county governments. Some county governments have been unable to implement payment of allowances to county legal counsel, thus perpetuating unfair labour practices and affecting their ability to retain county legal counsels.
- (vii) Restraining county governments fully, from outsourcing legal services may violate the provisions of the Constitution of Kenya 2010, the Public Procurement and Asset Disposal Act, and other relevant statutes. There is need to develop clear strategies outlining the circumstances under which legal services should be outsourced and the procedures to be followed.

CHAPTER FIVE: COMMITTEE RECOMMENDATIONS

146. Based on the findings and observations above, the Standing Committee on Devolution and Intergovernmental Relations and the Standing Committee on Justice, Legal Affairs and Human Rights recommend that –

- (i) The County Governments should prioritize capacity-building programs for legal counsels, ensure competitive remuneration and timely payment of allowances, allocate sufficient budgetary resources, and recruit adequate staff to enhance the performance and effectiveness of the Office of the County Attorney.
- (ii) County governments should strictly adhere to the legal framework governing the outsourcing of legal services and implement strong oversight and accountability measures. Counties should specifically enforce compliance with the Public Procurement and Asset Disposal Act, 2015, the Public Finance Management Act, 2012 and the Advocates Remuneration Order to manage the expenditure on legal fees.
- (iii) County governments are advised to seek representation from external legal firms, occasionally when handling complex or specialised legal services. In this case, the County Governments should procure external legal services through the office of the County Attorney and the costs should be in line with the relevant laws and regulations.
- (iv) The Office of the Auditor General should audit the County Governments' expenditure to identify the specific counties with exorbitant fees spent on legal services, as at the time of adoption of this report. These extreme cases should be subjected to a review to determine the legality of the fees charged and the current status of the Court Cases.
- (v) Noting that some counties, like Nairobi and Kitui counties, have established a County Pending Bills Review Committee to verify all bills owed by the county government and ascertain their real value, the Committee recommends that other counties emulate the practice as a step towards management and clearing of pending bills.
- (vi) The Salaries and Remuneration Commission (SRC) should provide clear guidelines and advisories on salaries and allowances for legal counsels across national and county governments to enhance the legal representation of counties.
- (vii) The Office of the Auditor General in collaboration with the Salaries and Remuneration Commission, the Controller of Budget and the Office of the County Attorney should develop a comprehensive audit framework to assess and regulate legal fees incurred by

county governments ensuring transparency, accountability, and prudent use of public funds.

ANNEXURES

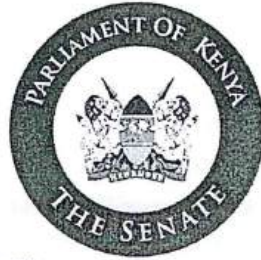
1. Petition
2. Minutes
3. Submissions from the Kenya National Commission on Human Rights (KNCHR)
4. Submissions from the Controller of Budget (COB)
5. Submissions from the Office of the Auditor General (OAG)
6. Submissions from the Law Society of Kenya (LSK)
7. Submissions from the Council of Governors (COG)
8. Submissions from the County Attorneys' Forum (CAfF)

LIST OF ANNEXTURES

<i>Annex 1</i>	Minutes of the joint sittings of the Standing Committee on Devolution and Intergovernmental Relations and the Standing Committee on Justice, Legal Affairs and Human Affairs
<i>Annex 2</i>	Petition on restraining county governments from hiring law firms from representing county governments in court cases
<i>Annex 3</i>	Submissions received from various stakeholders

Annex 1:

*Minutes of the joint sittings of the Standing
Committee on Devolution and
Intergovernmental Relations and the Standing
Committee on Justice, Legal Affairs and
Human Affairs*



13TH PARLIAMENT | 3RD SESSION

1ST JOINT MEETING OF THE STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS AND THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS

IN ATTENDANCE

Standing committee on Justice, Legal Affairs and Human rights.

PRESENT

- | | |
|--------------------------------------|---|
| 1. Sen. Raphael Chimera Mwinzagu, MP | - Vice Chairperson (<i>co-chairing</i>) |
| 2. Sen. Fatuma Adan Dullo, CBS, MP | - Member |
| 3. Sen. Catherine Muyeka Mumma, MP | - Member |
| 4. Sen. Andrew Omtatah Okoiti, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|---------------|
| 1. Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson |
| 2. Sen. William Cheptumo Kipkiror, CBS, MP | -Member |
| 3. Sen. Hamida Ali Kibwana, MP | -Member |
| 4. Sen. Veronica W. Maina, MP | - Member |
| 5. Sen. Karen Njeri Nyamu, MP | -Member |

Standing Committee On Devolution And Intergovernmental Relations.

PRESENT.

- | | |
|--|--------------------------------------|
| 1. Sen. Sheikh Mohamed Abass, MP | - Chairperson (<i>co-chairing</i>) |
| 2. Sen. Catherine Muyeka Mumma, MP | - Vice-Chairperson. |
| 3. Sen. (Dr.) Oburu Oginga, MGH, MP | - Member |
| 4. Sen. Richard Momoima Onyonka, EBS, MP | - Member |
| 5. Sen. Mohamed Said Chute, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|------------------------------------|----------|
| 1. Sen. Peris Pesi Tobiko, CBS, MP | -Member |
| 2. Sen. George Mungai Mbugua, MP | - Member |
| 3. Sen. Hezema M. Lemaletian, MP | - Member |
| 4. Sen. David Wafula Wakoli, MP | - Member |

SECRETARIAT

1. Mr. Charles Munyua - Senior Clerk Assistant
2. Ms. Sylvia Nasambu - Clerk Assistant I
3. Ms Lilian Waweru - Legal Counsel II
4. Mr. Walters Omondi - Legal Counsel II
5. Mr. Desmond Rasugu - Clerk Assistant III
6. Ms. Lynn Aseka - Clerk Assistant III
7. Ms. Angela Bonaya - Clerk Assistant III (*Taking Minutes*)
8. Mr. Jackson Matheshe - Researcher III
9. Ms. Mwanamisi Mwachasi -Researcher III
10. Mr. Josephat Ng'eno - Media Relations.
11. Ms. Celestine Jepkosgey - Public Communications officer III
12. Mr. Johnstone Simuyu -Audio Officer III
13. Ms. Judith Aoka - Assistant Audio Officer
14. Ms. Marion Kibet - Attachee
15. Ms. Amal Abdikadir -Attaché

MIN. NO. 01/2024 PRELIMINARIES

The Chairperson called the meeting to order twenty-two minutes past ten O'clock and opened with a word of prayer.

MIN. NO. 02/2024 ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Raphael Chimera Mwinzagu, MP and seconded by Sen. (Dr.) Oburu Oginga, MGH, MP.

MIN. NO. 03/2024 CONSIDERATION OF THE PETITION REGARDING RESTRICTING COUNTY GOVERNMENTS FROM HIRING EXTERNAL LAW FIRMS FOR LEGAL REPRESENTATION IN COURT CASES

The Committee was taken through a brief on the Petition which highlighted the key laws and cases touching on the matter. Members questioned the rationale for county governments in contracting external legal counsels despite having county attorneys.

Noting that counties have huge pending bills relating to legal fees, the Joint Committee agreed that a report be sought from the Controller of Budget, providing a breakdown of all legal related pending bills in each county.

Further, questions were raised as to the capacity of county attorneys in office. Thereafter, the Committee met with the petitioner who submitted the rationale behind his petition and made his prayers for consideration by the Joint Committee.

It was resolved that invitations to the following stakeholders be dispatched-

- i. The Attorney General;
- ii. The Council of Governors;

- iii. The Auditor General;
- iv. The Controller of Budget;
- v. The Kenya National Council of Law Reform;
- vi. The Law Society of Kenya (LSK);
- vii. Kenya National Commission on Human Rights (KNHRC);
- viii. Katiba Institute and Transparency International.

Owing to the ongoing Committee activities, the Committee resolved to request for an extension of time to consider and Table a report on the Petition.

MIN. NO. 04/2024 ANY OTHER BUSINESS

There was no any other business before the committees.

MIN. NO. 05/2024 ADJOURNMENT

The Chairperson adjourned the meeting at twenty-nine minutes past twelve O'clock. The date of the next meeting was to be communicated to the members.

SIGNED:.....

DATE: ...1/10/2024.....

SEN. SHEIKH MOHAMED ABASS, CBS, MP

SIGNED:.....

DATE: ...1/10/2024.....

SEN. WAKILI HILLARY SIGEI, CBS, MP



13TH PARLIAMENT | 3RD SESSION

2ND JOINT MEETING OF THE STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS AND THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON MONDAY, 1ST JULY, 2024 IN THE SENATE CHAMBER

IN ATTENDANCE

Standing committee on Justice, Legal Affairs and Human rights.

PRESENT

- | | |
|--|--------------------------------------|
| 1. Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson (<i>co-chairing</i>) |
| 2. Sen. Catherine Muyeka Mumma, MP | -Member |
| 3. Sen. Hamida Ali Kibwana, MP | -Member |
| 4. Sen. Veronica W. Maina, MP | - Member |
| 5. Sen. Karen Njeri Nyamu, MP | -Member |

ABSENT WITH APOLOGY

- | | |
|--|-------------------|
| 1. Sen. Raphael Chimera Mwinzagu, MP | -Vice Chairperson |
| 2. Sen. William Cheptumo Kipkiror, CBS, MP | -Member |
| 3. Sen. Fatuma Adan Dullo, CBS, MP | -Member |
| 4. Sen. Andrew Omtatah Okoiti, MP | - Member |

Standing Committee On Devolution And Intergovernmental Relations.

PRESENT.

- | | |
|--|--------------------------------------|
| 1. Sen. Sheikh Mohamed Abass, MP | - Chairperson (<i>co-chairing</i>) |
| 2. Sen. Catherine Muyeka Mumma, MP | - Vice-Chairperson. |
| 3. Sen. (Dr.) Oburu Oginga, MGH, MP | - Member |
| 4. Sen. Richard Momoima Onyonka, EBS, MP | - Member |
| 5. Sen. Peris Pesi Tobiko, CBS, MP | -Member |
| 6. Sen. Mohamed Said Chute, MP | - Member |
| 7. Sen. Hezena M. Lemaletian, MP | - Member |
| 8. Sen. David Wafula Wakoli, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|----------------------------------|----------|
| 1. Sen. George Mungai Mbugua, MP | - Member |
|----------------------------------|----------|

SECRETARIAT

1. Ms. Sylvia Nasambu - Clerk assistant I
2. Mr. Moses Kenyanchui -Legal Counsel II
3. Mr. Walters Omondi - Legal Counsel II
4. Mr. Desmond Rasugu - Clerk Assistant III
5. Ms. Lynn Aseka - Clerk Assistant III
6. Ms. Angela Bonaya - Clerk Assistant III (*Taking Minutes*)
7. Mr. Jackson Matheshe - Researcher III
8. Ms. Mwanamisi Mwachasi -Researcher III
9. Ms. Celestine Jepkosgey - Public Communications officer III
10. Mr. Johnstone Simuyu -Audio Officer III
11. Ms. Judith Aoka - Assistant Audio Officer
12. Ms. Marion Kibet - Attaché
13. Ms. Amal Abdikadir -Attaché

IN ATTENDANCE (see annex 1)

1. Office of the Auditor General.
2. Office of the Controller of Budget.
3. Law Society of Kenya.

MIN. NO. 06/2024 PRELIMINARIES

The Co-Chairperson Sen. Sheikh Mohamed Abass, MP called the meeting to order twenty-nine minutes past ten O'clock and invited Ms. Sylvia Nasambu to open the meeting with a word of prayer. This was followed by a self-introductory session by the Members, Secretariat and invited stakeholders.

MIN. NO. 07/2024 ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Catherine Muyeka Mumma, MP and seconded by Sen. (Dr.) Oburu Oginga, MGH, MP.

MIN. NO. 08/2024 MEETING WITH VARIOUS STAKEHOLDERS FOR CONSIDERATION OF THE PETITION BY MR. LABAN OMUSUNDI REGARDING RESTRAINING COUNTY GOVERNMENTS FROM HIRING LAW FIRMS TO REPRESENT COUNTIES IN COURT CASES

The Committee resumed the joint consideration of the petition by Mr. Laban Omusundi regarding restraining county governments from hiring law firms to represent counties in court cases. The Committee received a total of five (5) written submissions on the

petition and three (3) of the invited stakeholders appeared before the joint Committee. The Committee then proceeded to receive submissions from-

1. Office of the Controller of Budget;
2. Office of the Auditor-General; and
3. Law Society of Kenya

Upon invitation by the Chairperson, the Committee was taken through the response to the petition by –

1. Office of the Controller of Budget (OCOB)

Office of the Controller of Budget (OCOB) submitted that the information requested spans the last ten (10) years and would take time to retrieve and they would also need to seek confirmation from counties to corroborate with records to their office. They further informed the Committee that a circular had been sent to county governments requesting for a report on funds used by county governments to pay law firms as legal fees for the period 2013/2014 to date. The information to be provided by 5th July, 2024.

Thereafter the Committee was informed that the OCOB had received reports from Bomet County, Nyamira County, Embu County, Murang'a County, and West Pokot County however the income did not specify on the outstanding balance in terms of the legal fees.

Therefore, OCOB requested for more time to compile a comprehensive report of all counties showing the gross amount, amount paid and pending bills on legal fees to submit before the committee.

2. Office of the Auditor-General (OAG)

OAG submitted that petition brought to the Senate raises pertinent issues that go beyond restraining the County Executive from engaging private law firms. They went ahead and stated that candid discussions ought to be held with other stakeholders including the legal fraternity. This is because the biggest issue the OAG have noted from their audits concerns the authenticity of the legal expenses.

OAG informed the Committee that there I need to engage the Judiciary so as to assist in providing evidence of the court cases and assess the validity of the fees charged. They also recommended that it is time for counties to consider engaging more in Alternative Dispute Resolution Mechanisms instead of resorting to external legal services that lead to excesses in the usage of public resources.

3. Law Society of Kenya (LSK)

Law Society of Kenya submitted that the petition is ill advised, discriminatory, unconstitutional and unlawful. The petition potentially violates fundamental rights, undermines the principle of equality before the law and contradicts the statutory authority of county government. They went further and stated that section 22(2) of the Office of the County Attorney Act No. 14 of 2020 provides that the County Attorney may procure the services of such other persons as may be reasonable necessary for the purpose of assisting the County Attorney in the performance of the functions of the County Attorney. That this section allows the County Attorney to hire external lawyers recognizing the workload and the need for specialized services that may not be available within the Office of the County Attorney.

LSK further informed the Committee that the service of outside counsel are competitively procured individually by public institutions through an elaborate and detailed statutory mechanism set out under the Public Procurement and Disposal Act No. 33.

Further, LSK presented that advocates are entitled to fees for work done. The payment of legal fees is regulated by the Advocates Remuneration Order which prescribes the amount of fees payable for services rendered by the Advocates.

They further stated that prohibiting county governments from hiring external law firms could hinder their ability to efficiently handle legal matters, thereby undermining their capacity to access specialized expertise and impeding their efficiency in resolving legal issues.

Thereafter, LSK seeked request to submit a more comprehensive report before the Committee.

Interventions

Thereupon, Members made the following interventions and observations –

- a) Members observed that people may be syphoning money through legal fees;
- b) Members observed that there is need to employ more County Attorneys in order to reduce county governments from outsourcing lawyers;
- c) Members observed that county governments may hire external law firms when in need of specialized expertise but at a manageable level and manageable legal fees;
- d) Members observed the need of County Executive Committees to be guided on cases that would deserve specialized expertise;

- e) Members observed that payment of legal fees is regulated by the Advocate Remuneration Order;
- f) Members observed that in the Advocate Remuneration Order memorandum, Law Society of Kenya (LSK) may submit and lay out how different cases may be charged; and
- g) Members observed that there is need to come up with an audit tool that would audit exorbitant legal fees for county governments

Following deliberations, the Committee acceded to the request of the office of the Controller of Budget (COB) and Law Society of Kenya (LSK) for more time to compile and submit a more comprehensive report. The Committee resolved to receive the addendum submissions within seven (7) days so as to allow consideration of the submissions in the subsequent meeting.


The Committee noted that the Council of Governors (CoG) and the Office of the Attorney General (AG) did not submit their responses on the petition neither did they appear before the Committee. Consequently, the Committee resolved to re-invite the two stakeholders to appear before the Committee for a meeting scheduled to be held on Monday, 8th July, 2024.

MIN. NO. 09/2024 ANY OTHER BUSINESS

There was no any other business before the committees.

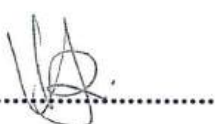
MIN. NO. 10/2024 ADJOURNMENT

The Chairperson adjourned the meeting at one minute past one O'clock. The date of the next meeting was to be communicated to the members.

SIGNED:.....

DATE:1/10/2024.....

SEN. SHEIKH MOHAMED ABASS, CBS, MP

SIGNED:.....

DATE:1/10/2024.....

SEN. WAKILI HILLARY SIGEI, CBS, MP



13TH PARLIAMENT | 3RD SESSION

3RD JOINT MEETING OF THE STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS AND THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON MONDAY, 8TH JULY, 2024 IN THE SENATE CHAMBER

Standing Committee on Justice, Legal Affairs and Human Rights.

PRESENT

- | | |
|--|--------------------------------------|
| 1. Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson (<i>co-chairing</i>) |
| 2. Sen. Raphael Chimera Mwinzagu, MP | - Vice Chairperson |
| 3. Sen. Fatuma Adan Dullo, CBS, MP | - Member |
| 4. Sen. Andrew Omtatah Okoiti, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|----------|
| 1. Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
| 2. Sen. Catherine Muyeka Mumma, MP | - Member |
| 3. Sen. Hamida Ali Kibwana, MP | - Member |
| 4. Sen. Veronica W. Maina, MP | - Member |
| 5. Sen. Karen Njeri Nyamu, MP | - Member |

Standing Committee On Devolution and Intergovernmental Relations.

PRESENT.

- | | |
|--|--------------------------------------|
| 1. Sen. Sheikh Mohamed Abass, MP | - Chairperson (<i>co-chairing</i>) |
| 2. Sen. (Dr.) Oburu Oginga, MGH, MP | - Member |
| 3. Sen. Richard Momoima Onyonka, EBS, MP | - Member |
| 4. Sen. Peris Pesi Tobiko, CBS, MP | - Member |
| 5. Sen. Mohamed Said Chute, MP | - Member |
| 6. Sen. Hezena M. Lemaletian, MP | - Member |
| 7. Sen. David Wafula Wakoli, MP | - Member |
| 8. Sen. George Mungai Mbugua, MP | - Member |

ABSENT WITH APOLOGY

1. Sen. Catherine Muyeka Mumma, MP - Vice-Chairperson.

SECRETARIAT

1. Ms. Sylvia Nasambu - Clerk Assistant I
2. Mr. Moses Kenyanchui - Legal Counsel II
3. Mr. Walters Omondi - Legal Counsel II
4. Mr. Desmond Rasugu - Clerk Assistant III
5. Ms. Lynn Aseka - Clerk Assistant III
6. Ms. Angela Bonaya - Clerk Assistant III (*Taking Minutes*)
7. Mr. Jackson Matheshe - Researcher III
8. Ms. Mwanamisi Mwachasi -Researcher III
9. Ms. Celestine Jepkosgey - Public Communications officer III
10. Mr. Johnstone Simuyu -Audio Officer III
11. Ms. Judith Aoka - Assistant Audio Officer
12. Ms. Marion Kibet - Attaché
13. Ms. Amal Abdikadir -Attaché

IN ATTENDANCE (see annex 1)

1. Council of Governors

MIN. NO. 11/2024

PRELIMINARIES

The Co-Chairperson Sen. Sheikh Mohamed Abass, MP called the meeting to order twenty-nine minutes past ten O'clock and invited Ms. Sylvia Nasambu to open the meeting with a word of prayer. This was followed by a self-introductory session by the Members, Secretariat and invited stakeholders.

MIN. NO. 12/2024

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Raphael Chimera Mwinzagu, MP and seconded by Sen. (Dr.) Oburu Oginga, MGH, MP.

MIN. NO. 13/2024

MEETING WITH THE ATTORNEY GENERAL AND THE COUNCIL OF GOVERNORS TO DELIBERATE ON THE PETITION BY MR. LABAN OMUSUNDI REGARDING RESTRAINING COUNTY GOVERNMENTS FROM HIRING LAW FIRMS TO REPRESENT COUNTIES IN COURT CASES

The Committee resumed the joint consideration of the petition by Mr. Laban Omusundi regarding restraining county governments from hiring law firms to represent counties in court cases. The Attorney General did not appear before the Committee due to other conflicting engagements. The Committee therefore proceeded to receive submissions from the Council of Governors which was represented by the CEO, Ms. Mary Mwiti and the Vice Chairperson, H.E. FCPA Ahmed Abdullahi, the Governor of Wajir County.

The Council of Governors opposed the petition in its entirety as they deemed that the engagement of external lawyers by counties they claimed it is a strategic and necessary practice aimed at ensuring the highest quality of legal representation and expertise. This approach is consistent with established practices at the international, national level and among other state institutions, reflecting a commitment to leveraging specialized expertise to address complex legal challenges. Further, they submitted that allowing counties to engage external legal expertise ultimately serves the best interests of the public by ensuring that counties can navigate the diverse legal landscape effectively and efficiently.

In deliberations, the Committee raised a number of issues with regard to legal related pending bills in counties such as the unprocedural practice by counties in procurement of legal services contrary to section 16 of the Office of the County Attorney Act, the inflation of legal related pending bills by some counties as flagged by the Office of the Auditor General, the lack of county attorneys in three counties, among others. Having noted the submissions made by the Council of Governors, the meeting was adjourned with the Committee scheduled to consider the written response by the Attorney General at a later date to be communicated in due course.

MIN. NO. 14/2024 **ANY OTHER BUSINESS**

There was no any other business before the committees.

MIN. NO. 15/2024 **ADJOURNMENT**

The Chairperson adjourned the meeting at one minute past one O'clock. The date of the next meeting was to be communicated to the members.

SIGNED:.....

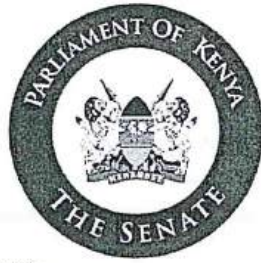
DATE:1/10/2024

SEN. SHEIKH MOHAMED ABASS, CBS, MP

SIGNED:.....

DATE:1/10/2024

SEN. WAKILI HILLARY SIGEI, CBS, MP



13TH PARLIAMENT | 3RD SESSION

4TH JOINT MEETING OF THE STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS AND THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON TUESDAY, 1ST OCTOBER, 2024 IN COMMITTEE ROOM 5, FIRST FLOOR, MAIN PARLIAMENT BUILDINGS.

Standing Committee on Justice, Legal Affairs and Human Rights.

PRESENT

- | | |
|--|-----------------------------------|
| 1. Sen. Wakili Hillary Kiprotich Sigei, MP | - Chairperson (<i>chairing</i>) |
| 2. Sen. Raphael Chimera Mwinzagu, MP | - Vice Chairperson |
| 3. Sen. Catherine Muyeka Mumma, MP | - Member |
| 4. Sen. Veronica W. Maina, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|----------|
| 1. Sen. Fatuma Adan Dullo, CBS, MP | - Member |
| 2. Sen. Andrew Omtatah Okoiti, MP | - Member |
| 3. Sen. William Cheptumo Kipkiror, CBS, MP | - Member |
| 4. Sen. Hamida Ali Kibwana, MP | - Member |
| 5. Sen. Karen Njeri Nyamu, MP | - Member |

Standing Committee On Devolution and Intergovernmental Relations.

PRESENT

- | | |
|-------------------------------------|-----------------------------------|
| 1. Sen. Sheikh Mohamed Abass, MP | - Chairperson (<i>chairing</i>) |
| 2. Sen. (Dr.) Oburu Oginga, MGH, MP | - Member |
| 3. Sen. Hezena M. Lemaletian, MP | - Member |
| 4. Sen. George Mungai Mbugua, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|---------------------|
| 1. Sen. Richard Momoima Onyonka, EBS, MP | - Member |
| 2. Sen. Mohamed Said Chute, MP | - Member |
| 3. Sen. Peris Pesi Tobiko, CBS, MP | - Member |
| 4. Sen. Catherine Muyeka Mumma, MP | - Vice-Chairperson. |
| 5. Sen. David Wafula Wakoli, MP | - Member |

SECRETARIAT

1. Ms. Sylvia Nasambu - Clerk Assistant I
2. Mr. Moses Kenyanchui - Legal Counsel II
3. Mr. Walters Omondi - Legal Counsel II
4. Mr. Desmond Rasugu - Clerk Assistant III
5. Ms. Lynn Aseka - Clerk Assistant III
6. Ms. Angela Bonaya - Clerk Assistant III (*Taking Minutes*)
7. Mr. Jackson Matheshe - Researcher III
8. Ms. Mwanamisi Mwachasi - Researcher III
9. Ms. Celestine Jepkosgey - Public Communications officer III
10. Mr. Johnstone Simuyu - Audio Officer III
11. Ms. Judith Aoka - Assistant Audio Officer
12. Ms. Marion Kibet - Attaché
13. Ms. Amal Abdikadir - Attaché

MIN. NO. 16/2024

PRELIMINARIES

The Co-Chairperson Sen. Sheikh Mohamed Abass, MP called the meeting to order twenty-eight minutes past nine O'clock and invited Ms. Sylvia Nasambu to open the meeting with a word of prayer.

MIN. NO. 17/2024

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Raphael Chimera Mwinzagu, MP and seconded by Sen. (Dr.) Oburu Oginga, MGH, MP as follows –

1. Prayer;
2. Adoption of the Agenda;
3. Confirmation of the minutes of the previous meetings (3 sets)
4. Consideration of matters arising from the Minutes
5. Consideration of the responses received from stakeholders regarding restraining county governments from hiring external law firms for legal representation in court cases;
6. Any other Business; and
7. Date of the Next Meeting and Adjournment.

MIN. NO. 18/2024

CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

The Minutes of the 1st Joint Sitting were confirmed as a true record of proceedings having been proposed by Sen. Catherine Muyeka Mumma, MP and seconded by Sen. Sheikh Mohamed Abass, MP.

The Minutes of the 2nd Joint Sitting were confirmed as a true record of proceedings having been proposed by Sen. Catherine Muyeka Mumma, MP and seconded by Sen. Sheikh Mohamed Abass, MP.

The Minutes of the 3rd Joint Sitting were confirmed as a true record of proceedings having been proposed by Sen. George Mungai Mbugua, MP and seconded by Sen. Sheikh Mohamed Abass, MP.

MIN. NO. 19/2024

**CONSIDERATION OF THE PETITION
REGARDING RESTRAINING COUNTY
GOVERNMENTS FROM HIRING EXTERNAL LAW
FIRMS FOR LEGAL REPRESENTATION IN
COURT CASES**

The committees resumed consideration of the petition by Mr. Laban Omusundi regarding restraining county governments from hiring external law firms for legal representation in court cases. The committee deliberated on the responses submitted by various stakeholders on the matter including from the Office of the Auditor General, the Controller of Budget, the Law Society of Kenya and the Council of Governors.

During the deliberations, the Committees observed that –

- (i) there was need to further engage the Office of the Controller of Budget on the status of pending bills relating to legal fees to external law firms for all the counties to enable the Committee to get the full picture of the monies spent incurred by each county;
- (ii) that the timeline for consideration of the Petition as per the Senate Standing Orders had since lapsed and there was need to expedite consideration of the Petition.
- (iii) the office of the Attorney General had not submitted any response on the matter neither made she made an appearance before the Committee despite invitations by the Committees to do so.

Thereupon, the Committee resolved to write to the Controller of Budget to request for a further comprehensive report to the Committees which –

- a) incorporates details of any additional information received from county governments on the monies paid or pending to law firms;
- b) distinguishes between the legal fees paid or owed by the County Executives and the County Assemblies;
- c) provides the Controller of Budget's opinion, if any, on whether the legal fees incurred were reasonable and justified in the circumstances;
- d) provides any policy and legislative interventions to address the high fees incurred by the County governments.

The Committee further resolved to write a follow-up letter to the office of the Attorney General requesting for her response on the matter.

MIN. NO. 20/2024

ANY OTHER BUSINESS

There was no any other business considered.

MIN. NO. 21/2024

ADJOURNMENT

The Chairperson adjourned the meeting at five minutes past ten O'clock. The date of the next meeting was to be communicated to the members.

SIGNED:.....

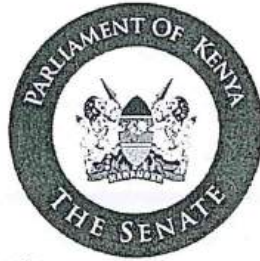
DATE:18/03/2025.....

SEN. SHEIKH MOHAMED ABASS, CBS, MP

SIGNED:.....

DATE:18/03/2025.....

SEN. WAKILI HILLARY SIGEI, CBS, MP



13TH PARLIAMENT | 4TH SESSION

5TH JOINT MEETING OF THE STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS AND THE STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN RIGHTS HELD ON TUESDAY, 18TH MARCH, 2025 IN COMMITTEE ROOM 9, FIRST FLOOR, MAIN PARLIAMENT BUILDINGS

Standing Committee on Justice, Legal Affairs and Human Rights.

PRESENT

- | | |
|--|---------------------------------------|
| 1. Sen. Veronica W. Maina, MP | -Vice Chairperson (<i>co-chair</i>) |
| 2. Sen. Raphael Chimera Mwinzagu, MP | -Member |
| 3. Sen. (Prof.) Tom Ojienda, SC, MP | -Member |
| 4. Sen. Crystal Kegehi Asige, MP | -Member |
| 5. Sen. Daniel Kitonga Maanzo, EBS, MP | -Member |

ABSENT WITH APOLOGY

- | | |
|---------------------------------------|---------|
| 1. Sen. Wakili Hillary Sigei, CBS, MP | -Member |
| 2. Sen. Andrew Omtatah Okoiti, MP | -Member |
| 3. Sen. Karen Njeri Nyamu, MP | -Member |

Standing Committee On Devolution and Intergovernmental Relations.

PRESENT.

- | | |
|--|----------------------------------|
| 1. Sen. Sheikh Mohamed Abass, CBS, MP | -Chairperson (<i>co-chair</i>) |
| 2. Sen. (Prof.) Margaret Kamar, EGH, MP | -Member |
| 3. Sen. Mohamed Said Chute, MP | -Member |
| 4. Sen. Karungo Thangwa, CBS, MP | -Member |
| 5. Sen. Richard Momoima Onyonka, EBS, MP | -Member |
| 6. Sen. Peris Pesi Tobiko, CBS, MP | -Member |
| 7. Sen. Hezena M. Lemaletian, MP | -Member |

ABSENT WITH APOLOGY

- | | |
|-------------------------------------|---------------------|
| 1. Sen. Catherine Muyeka Mumma, MP | - Vice-Chairperson. |
| 2. Sen. (Dr.) Oburu Oginga, MGH, MP | - Member |

SECRETARIAT

1. Ms. Sylvia Nasambu - Clerk Assistant I
2. Ms. Angela Kagunyi - Legal Counsel II
3. Ms. Faith Wangui - Legal Counsel II
4. Mr. Desmond Rasugu - Clerk Assistant III
5. Ms. Angela Bonaya - Clerk Assistant III (*Taking Minutes*)
6. Mr. Jackson Matheshe - Researcher III
7. Ms. Mwanamisi Mwachasi - Researcher III
8. Ms. Celestine Jepkosgey - Public Communications officer III
9. Ms. Julia Gachoka - Serjeant-At-Arms
10. Ms. Judith Aoka - Assistant Audio Officer
11. Ms. Gloria Anyango - Intern
12. Ms. Annette Kipsang - Attaché

MIN. NO. 22/2025

PRELIMINARIES

The Co-Chairperson Sen. Sheikh Mohamed Abass, MP called the meeting to order twenty-five minutes past nine O'clock and invited Ms. Sylvia Nasambu to open the meeting with a word of prayer.

MIN. NO. 23/2025

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted having been proposed by Sen. Daniel Kitonga Maanzo, EBS, MP and seconded by Sen. Mohamed Said Chute, MP.

MIN. NO. 24/2025

CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING

The Minutes of the 4th Joint Sitting were confirmed as a true record of proceedings having been proposed by Sen. Raphael Chimera Mwinzagu, MP and seconded by Sen. Mohamed Said Chute, MP.

MIN. NO. 25/2025

CONSIDERATION AND ADOPTION OF THE DRAFT REPORT ON THE PETITION REGARDING RESTRICTING COUNTY GOVERNMENTS FROM HIRING EXTERNAL LAW FIRMS FOR LEGAL REPRESENTATION IN COURT CASES

The committee considered the draft Report on the Petition by Mr. Laban Omusundi regarding restraining county governments from hiring external law firms for legal representation in court cases and thereafter resolved to adopt it with the following amendments-


- (i) on the proposed recommendation (iii) which provides for the “limitation” of expenditure of external legal services to complex or special cases there was need to use another term that is in line with the constitutional legal conditionalities;
- (ii) that an additional recommendation be made for the Office of the Auditor General to audit the County Governments’ expenditure to identify the specific counties with exorbitant fees spent on legal services.
- (iii) further, that noting that some counties, like Nairobi and Kitui counties, have established County Pending Bills Review Committees to verify all bills owed by the county government and ascertain their real value, the Committee recommended that other counties should emulate the practice as a step towards management and clearing of pending bills.

MIN. NO. 26/2025 ANY OTHER BUSINESS

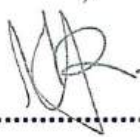
There was no any other business before the committees.

MIN. NO. 27/2025 ADJOURNMENT

The Chairperson adjourned the meeting at seventeen minutes past ten O’clock. The date of the next meeting was to be communicated to the members.

SIGNED:.......... DATE: 18/03/2025

SEN. SHEIKH MOHAMED ABASS, CBS, MP

SIGNED:.......... DATE: 18/03/2025

SEN. WAKILI HILLARY SIGEI, CBS, MP

Annex 2:

**Petition on restraining county governments
from hiring law firms from representing
county governments in court cases**



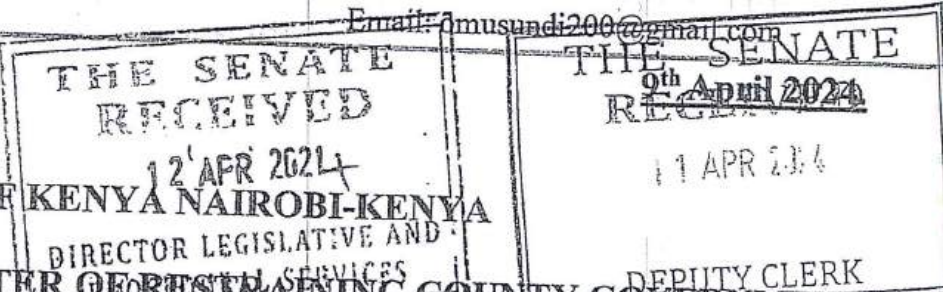
GRASSROOT CIVILIAN OVERSIGHT INITIATIVE



P.O Box 9759-20100 Nakuru,

Tel : +254723159625

Email: amusundi200@gmail.com



TO THE
SENATE
REPUBLIC OF KENYA NAIROBI-KENYA

IN THE MATTER OF RESTRAINING COUNTY GOVERNMENTS FROM
HIRING LAW FIRMS TO REPRESENT COUNTY GOVERNMENTS IN
COURT CASES AND YET THEY HAVE COUNTY GOVERNMENT
ATTORNEYS TO EXECUTE THAT MANDATE

Under the strength of article 119, 1 a resident of Nakuru County, a Citizen of the Republic of Kenya and the Executive Director of Grassroot Civilian Oversight Initiative, which focus on enhancing good Governance, transparency and accountability hereby draw your attention to the following fronts:

1. **THAT** according to the Controller of Budget yearly Reports on expenditures of County Governments, there are Billions of taxpayers money paid to Law Firms for Representing County Governments in Courts on various issues, yet we have County Government Attorneys established in line with County Government Act 2012 Section 43, well facilitated by tax payers money to execute that mandate of Representing County Governments in legal matters.
2. **THAT** some of these huge court cases are informed by deliberate Administrative decisions, well knowing that there will be no personal responsibility to that effect, and most likely these can become big enterprises for some skewed individuals in public sector to get money from these law firms as kick backs.
3. **THAT** this cause defeats the objective of devolution which was to bring services closer to Wanjiko, baring in mind that these huge junk of public funds have the capacity to transform health care services in County Governments which are now on death beds.

*Ms. Zahida
Kindly review and
facilitate. S. Chander
15/04/2024*

*Mr. Chanz (COP/OPS)
Facilitate.*

*DRPS
Please deal.*

**IN THE MATTER OF RESTRAINING COUNTY GOVERNMENTS
FROM HIRING LAW FIRMS TO REPRESENT COUNTY
GOVERNMENTS IN COURT CASES AND YET THEY HAVE
COUNTY GOVERNMENT ATTORNEYS TO EXECUTE THAT
MANDATE**

4. THAT my efforts to raise this matter for its justification with Controller of Budget and Attorney General of the Republic of Kenya bared no fruits for there was no respond to that effect.

5. THAT this matter is not pending in any Constitutional Court in the Republic of Kenya between the parties.

6. THEREFORE I SEEK THE FOLLOWING PRAYERS:

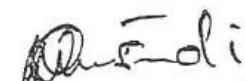
(A) To restrain County Governments from hiring law firms to represent County Governments in civil Court cases by coming up with a legal framework to that effect in order to protect huge junk of public funds directed to paying these law firms, which could have been used to enhance services to Wanjiko.

(B) To recall any law in the subject matter that fails to prioritize the interest of the public.

(C) To put up measures to deter deliberate erroneous Administrative decisions that will make sure that everybody is held responsible personally for his or her Administrative decisions she or he makes that may end in Courts.

(D) Any other relief(s) deems necessary in the subject matter.

Yours



Laban Omusundi

An Active citizen based in Nakuru County

Annex 3:

Submissions received from various stakeholders

OFFICE OF THE CONTROLLER OF BUDGET



REPUBLIC OF KENYA

Bima House, 12th Floor
Harambee Avenue
P.O Box 35616-00100
Nairobi, Kenya



Tel: 020 221 068/66/56/51, 0709910000,
0716274922, 0738466721
Website: www.cob.go.ke
Email: cob@cob.go.ke/Info@cob.go.ke

Ref: COB/SEN/002/VOL.V(65)

13th November 2024

J.M, Nyegenye, CBS
Clerk of the Senate
Clerk's Chambers
Parliament Buildings
NAIROBI



② HD-60000000
SEA-JLAHR
CBI-Disruption
Kindly deal
13/11/2024
14/11/24

Dear *Mr Nyegenye,*

RE: PETITION ON RESTRAINING COUNTY GOVERNMENTS FROM HIRING LAW FIRMS TO REPRESENT COUNTY GOVERNMENTS IN COURT CASES

Reference is made to your letter Ref: SEN/DGAC/DEVIR/JLAHRC/2024/013, dated 4 October 2024.

In this letter, you communicated the resolutions of the Standing Committee on Devolution and Intergovernmental Relations and the Standing Committee on Justice, Legal Affairs and Human Rights that my office submits a further Report on the legal fees; -

- i. Incorporating details of any additional reports received from county governments since July 2024.
- ii. Distinguishing between legal fees paid or owed by County executives and County assemblies.
- iii. Providing an opinion, if any, on whether the legal fees incurred were reasonable and justified in the circumstances, taking into account the overall budgets of the county governments and
- iv. Making proposals or recommendations for policy and legislative interventions to address the high legal fees incurred by the County

Governments, which have contributed to the significant pending bills in the Counties.

The purpose of this letter is to forward the report incorporating the Counties that have already submitted their returns as per the required template. To date we have received returns from 36 Counties as detailed in the attached report.

Yours *Sincerely,*



FCPA Dr Margaret N. Nyakang'o, CBS
CONTROLLER OF BUDGET

OFFICE OF THE CONTROLLER OF BUDGET



REPUBLIC OF KENYA

Bima House, 12th Floor
Harambee Avenue
P.O Box 35616-00100
Nairobi, Kenya



Tel: 020 2211068/66/56/51, 0709910000,
0716274922, 0738466721
Website: www.cob.go.ke
Email: cob@cob.go.ke/Info@cob.go.ke

**REVISED REPORT ON LEGAL FEES PAID BY COUNTIES
FROM THE FINANCIAL YEAR 2013/2014 TO FY 2023/24**

NOVEMBER 2024

***PRESENTED TO THE SENATE STANDING COMMITTEE ON
DEVOLUTION AND INTERGOVERNMENTAL RELATIONS AND THE
STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN
RIGHTS***

BY THE OFFICE OF THE CONTROLLER OF BUDGET

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III. Observations	4
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VI. RECOMMENDATIONS BY THE CONTROLLER OF BUDGET ON THE LEGAL FEES	6

I. INTRODUCTION

The Office of the Controller of Budget (OCoB) is established under Article 228 of the Constitution of Kenya 2010 to oversee the implementation of the budgets of the National and County Governments by authorising withdrawals from public funds under Articles 204, 206 and 207 of the Constitution. Article 228 (5) of the Constitution requires the Controller of Budget (CoB) only to approve withdrawals from public funds if satisfied that such withdrawals are authorised by law. Public finance principles further guide the CoB articulated under Article 201 of the Constitution and the PFM Act (2012), which requires public funds to be used prudently and responsibly.

This report is prepared in response to a letter Ref: SEN/DGAC/DEVIR/JLAHRC/2024/013, dated 4 October 2024, communicating the resolutions of the Standing Committee on Devolution and Intergovernmental Relations and the Standing Committee on Justice, Legal Affairs and Human Rights that the Controller of Budget submits a further report on county legal fees:-

- i. incorporating details of any additional reports received from County Governments since July 2024,
- ii. distinguishing between legal fees paid or owed by County executives and County Assemblies,
- iii. providing an opinion, if any, on whether the legal fees incurred were reasonable and justified in the circumstances, considering the overall budgets of the County Governments and
- iv. making proposals or recommendations for policy and legislative interventions to address the high legal fees incurred by the County

Governments, which have contributed to the significant pending bills in the Counties.

To prepare this revised report, this office wrote to County Governments to submit their reports on legal fees paid to private law firms from the financial year 2013/14 to the financial year 2023/24 and further as from July 2024 to date.

II. SUMMARY OF LEGAL FEES PAID BY COUNTY GOVERNMENTS

Annex 1 summarises the legal fees paid or owed by the County Governments that submitted their reports as of November 5, 2024 for financial years 2013/14 to FY 2023/24.

Annex 2 shows the specific County Government legal fees approved budget and the cumulative expenditure as per the Integrated Financial Management Information System (IFMIS) Vote Book Report for the financial years 2013/14 to FY 2023/24 for eight counties we sampled: Bomet, Bungoma, Embu, Isiolo, Kajiado, Kericho, Kisumu, and Makueni.

Annex 3 compares legal fee payments on IFMIS and the payments of the legal fees as reported by the Counties.

III. Observations

- i. Eleven County Governments still need to submit their reports on payment of legal fees during the period. These are Busia, Garissa, Kiambu, Kilifi, Kirinyaga, Kitui, Mombasa, Narok, Siaya, Vihiga and Wajir.
- ii. Eleven County Executives reported settling their entire legal fees as of 30th June 2024. They include Elgeyo Marakwet, Embu, Kericho, Lamu, Makueni, Murang'a, Nyandarua, Nyamira, Nyeri, Samburu and Trans Nzoia.

- iii. The County Governments with the highest outstanding legal fees included Nairobi City County, at Kshs.21.39 billion, Machakos, at Kshs.793.97 million, Kisumu, at Kshs.718.78 million, Nakuru, at Kshs. 485.14, Kajiado, at Kshs.392.37 million, Tana River, at Kshs.374.42 million, and Homabay, at Kshs.224.85 million.

IV. General Observations

- i. In many instances, County Governments have not been deducting withholding income tax on the legal fees, which is 5% of the fee note.
- ii. The IFMIS report on the budget and actual expenditure of legal fees from FY 2013/14 to FY 2023/24 varies significantly from the information submitted by the counties.

V. OPINION BY THE CONTROLLER OF BUDGET ON THE LEGAL FEES

From Annex 1, the County Governments cumulatively incurred a total of Kshs.30.61 billion on payment of legal fees from the financial year 2013/14 to the financial year 2023/24. This amount, however, excludes the eleven County Governments that did not submit their information.

It is noted that Nairobi City County had the highest legal fees, at Kshs 21.39 billion, accounting for 73 per cent of the total legal costs.

As of 30 June 2024, the outstanding legal fees due to private law firms were Kshs.25.42 billion, accounting for 4.5 per cent of the cumulative forty-seven County Government budgets in FY 2023/24 of Kshs.562.75 billion. This amount is significant, even excluding the eleven County Governments.

We could not assess the reasonableness and justification of the fees from the information provided.

VI. RECOMMENDATIONS BY THE CONTROLLER OF BUDGET ON THE LEGAL FEES

- The Senate should consider instituting measures for the County Governments to set up Alternative Dispute Resolution Mechanisms in accordance with Art.159 (2)(c) of the Constitution of Kenya, 2010, which provides that in exercising judicial authority, the courts and tribunals shall promote alternative forms of dispute resolution including reconciliation, mediation, arbitration and other dispute resolution mechanisms.
- The Senate should engage the Attorney General in the spirit of cooperation between levels of government as provided for under Art.189 (1) (c) to support the County Governments to enhance the capacity of the office of the County Attorneys to handle county legal matters.
- In the unlikely event of the need for complex or specialised legal services, the County Governments should procure external legal services through the office of the County Attorney, whose overall costs should be capped under the advice of the Attorney General or through policy legislation by the Senate.
- The Senate should consider seeking a specialised audit of the legal fees from the Office of the Auditor General to confirm whether or not public money has been applied lawfully and effectively.



FCPA Dr Margaret N. Nyakang'o, CBS
CONTROLLER OF BUDGET

Annex 1: Summary of legal fees owed and paid by County Governments (Amount in Kshs.) Financial Years 2013/14 to FY 2023/24

No	County Name	Entity	Gross Legal Fees billed by Private Legal Firms (Kshs)	Legal Fees paid Paid (Kshs)	Amount Pending to Private Legal Firms (Kshs.)	Remarks
1.	Baringo	County Executive County Assembly	128,839,009 -	51,544,071 -	77,294,938 -	No information about County Assembly legal fees was provided
2.	Bomet	County Executive County Assembly	76,991,106 -	62,460,804 -	14,530,302 -	No information about County Assembly legal fees was provided
3.	Bungoma	County Executive County Assembly	276,848,244 52,647,066	211,952,487 50,647,066	64,895,757 2,000,000	
4.	Busia	County Executive County Assembly				No information about County Executive legal fees was provided No information about County Assembly legal fees was provided
5.	Elgeyo-Marakwet	County Executive County Assembly	20,635,783 -	20,635,783 -	- -	No outstanding legal fees as of 30th June, 2024 No information about County Assembly legal fees was provided.
6.	Embu	County Executive County Assembly	327,091,408 -	327,091,408 -	- -	No outstanding legal fees as of 30th June, 2024 No information about County Assembly legal fees was provided.
7.	Garissa	County Executive County Assembly				No information about County Executive legal fees was provided No information about County Assembly legal fees was provided
8.	Homa-Bay	County Executive	259,513,748	51,861,564	207,752,184	

No	County Name	Entity	Gross Legal Fees billed by Private Legal Firms (Kshs)	Legal Fees paid Paid (Kshs)	Amount Pending to Private Legal Firms (Kshs.)	Remarks
		County Assembly	22,288,020	5,188,020	17,100,000	Relates to Legal fees for FY 2023/24 Only. Historical fees were not submitted.
	Isiolo	County Executive	75,953,080	33,967,680	41,985,400	This refers to only FY 2021/22 and FY 2022/23 legal fees.
9.		County Assembly	-	-	-	No information about County Assembly legal fees was provided
	Kajiado	County Executive	441,202,575	48,830,505	392,372,069	
10.		County Assembly	-	-	-	No information about County Assembly legal fees was provided.
	Kakamega	County Executive	148,842,579	148,842,579	-	
11.		County Assembly	-	-	-	No information about County Assembly legal fees was provided
	Kericho	County Executive	119,894,267	119,894,267	-	No outstanding legal fees as of 30th June, 2024
12.		County Assembly	-	-	-	No information about County Assembly legal fees was provided.
	Kiambu	County Executive	-	-	-	No information about County Executive legal fees was provided
13.		County Assembly	-	-	-	No information about County Assembly legal fees was provided
	Kilifi	County Executive	-	-	-	No information about County Executive legal fees was provided
14.		County Assembly	-	-	-	No information about County Assembly legal fees was provided
	Kirinyaga	County Executive	-	-	-	No information about County Executive legal fees was provided
15.		County Assembly	-	-	-	No information about County Assembly legal fees was provided
	Kisii	County Executive	278,091,405	103,202,564	174,888,841	
16.		County	10,514,908	-	10,514,908	

No.	County Name	Entity	Gross Legal Fees billed by Private Legal Firms (Kshs)	Legal Fees paid Paid (Kshs)	Amount Pending to Private Legal Firms (Kshs)	Remarks
		Assembly				
	Kisumu	County Executive	953,432,898	236,442,898	716,990,000	
17.		County Assembly	16,389,086	14,599,086	1,790,000	Relates to Legal fees for FY 2023/24 Only. Historical fees were not submitted.
	Kitui	County Executive				No information about County Executive legal fees was provided
18.		County Assembly				No information about County Assembly legal fees was provided
	Kwale	County Executive	299,946,785	226,759,147	73,187,637	No information about County Assembly legal fees was provided.
19.		County Assembly				
	Laikipia	County Executive	207,714,756	190,190,832	17,523,924	
20.		County Assembly				No information about County Assembly legal fees was provided.
	Lamu	County Executive	6,095,428	6,095,428	-	No outstanding legal fees as of 30th June, 2024
21.		County Assembly				No information about County Assembly legal fees was provided
	Machakos	County Executive	1,495,963,969	750,614,707	745,349,262	
22.		County Assembly	48,628,032	-	48,628,032	Relates to Legal fees for FY 2023/24 Only. Historical fees were not submitted.
	Makueni	County Executive	226,850,079	226,850,079	-	No outstanding legal fees as of 30th June, 2024
23.		County Assembly	144,181,183	129,239,183	14,942,000	
	Mandera	County Executive	303,934,462			No information about County Executive legal fees was provided
24.		County Assembly				No information about County Assembly legal fees was provided

No	County Name	Entity	Gross Legal Fees billed by Private Legal Firms (Kshs)	Legal Fees paid Paid (Kshs)	Amount Pending to Private Legal Firms (Kshs)	Remarks
25.	Marsabit	County Executive County Assembly	57,727,437 -	39,733,437 -	17,994,000 -	No information about County Assembly legal fees was provided
26.	Meru	County Executive County Assembly	- 29,348,000	- 16,390,001	- 12,958,000	No information about County Executive legal fees was provided
27.	Migori	County Executive County Assembly	212,114,974 -	- -	212,109,974 -	Relates to Legal fees for FY 2023/24 Only. Historical fees were not submitted. No information about County Assembly legal fees was provided
28.	Mombasa	County Executive County Assembly	- -	- -	- -	No information about County Executive legal fees was provided No information about County Assembly legal fees was provided
29.	Murang'a	County Executive County Assembly	343,902,445 68,328,117	343,902,445 46,063,533	- 22,264,584	No outstanding legal fees as of 30th June, 2024
30.	Nairobi City	County Executive County Assembly	21,393,412,063 -	- -	21,393,412,063 -	No information about County Assembly legal fees was provided
31.	Nakuru	County Executive County Assembly	485,141,787 18,311,470	- 8,262,000	485,141,787 10,049,470	Includes decretal sums

No	County Name	Entity	Gross Legal Fees billed by Private Legal Firms (Kshs)	Legal Fees paid (Kshs)	Amount Pending to Private Legal Firms (Kshs)	Remarks
32.	Nandi	County Executive County Assembly	197,146,778 -	34,710,157 -	162,436,621 -	No information about County Assembly legal fees was provided.
33.	Narok	County Executive County Assembly	37,654,895 -	37,654,895 -	- -	No information about County Executive legal fees was provided No information about County Assembly legal fees was provided
34.	Nyamira	County Executive County Assembly	161,413,093 -	161,413,093 -	- -	No outstanding legal fees as of 30th June, 2024 No information about County Assembly legal fees was provided.
35.	Nyandarua	County Executive County Assembly	151,431,566 -	151,431,566 -	- -	No outstanding legal fees as of 30th June, 2024 No information about County Assembly legal fees was provided.
36.	Nyeri	County Executive County Assembly	97,016,537 -	97,016,537 -	- -	No outstanding legal fees as of 30th June, 2024 No information about County Assembly legal fees was provided
37.	Samburu	County Executive County Assembly	108,762,918 -	106,636,726 -	2,126,192 -	No information about County Executive legal fees was provided No information about County Assembly legal fees was provided
38.	Siaya	County Executive County Assembly				
39.	Taita-Taveta	County				

No	County Name	Entity	Gross Legal Fees billed by Private Legal Firms (Kshs)	Legal Fees paid Paid (Kshs)	Amount Pending to Private Legal Firms (Kshs.)	Remarks
		Executive				
		County Assembly	5,318,000	4,970,000	348,000	
	Tana-River	County Executive	498,707,299	124,289,210	374,418,089	
40.		County Assembly	-	-	-	No information about County Assembly legal fees was provided
	Tharaka-Nithi	County Executive	159,555,045	137,041,737	22,513,308	
41.		County Assembly	-	-	-	No information about County Assembly legal fees was provided
	Trans-Nzoia	County Executive	93,577,363	93,577,363	-	No outstanding legal fees as of 30th June, 2024
42.		County Assembly	-	-	-	No information about County Assembly legal fees was provided.
	Turkana	County Executive	367,505,546	337,217,132	30,288,414	
43.		County Assembly	-	-	-	No information about County Assembly legal fees was provided.
	Uasin-Gishu	County Executive	223,052,781	190,228,991	32,823,790	
44.		County Assembly	-	-	-	No information about County Assembly legal fees was provided
	Vihiga	County Executive	-	-	-	No information about County Executive legal fees was provided
45.		County Assembly	-	-	-	No information about County Assembly legal fees was provided
	Wajir	County Executive	-	-	-	No information about County Executive legal fees was provided
46.		County Assembly	-	-	-	No information about County Assembly legal fees was provided
	West-Pokot	County Executive	104,683,897	70,060,539	34,623,461	
47.		County Executive	-	-	-	No information about County Executive legal fees was provided

No	County Name	Entity	Gross Legal Fees billed by Private Legal Firms (Kshs)	Legal Fees paid (Kshs)	Amount Pending to Private Legal Firms (Kshs)	Remarks
		County Assembly				No information about County Assembly legal fees was provided
		Total	30,612,420,704	4,888,270,337	25,420,311,007	

Annex 2: Summary of Gross Amounts of legal fees, IFMIS approved budget and cumulative expenditure of legal fees for sampled County Governments for the Financial Years 2013/14 to FY 2023/24

No	County Name	IFMIS Legal Fees Approved Budget Estimate (Kshs)	Gross Legal Fees billed by Private Legal Firms (Kshs)	Variance	Remarks
1	Bomet	147,613,617	76,991,106	70,622,511	
2	Bungoma	349,187,869	329,495,310	19,692,559	
3	Embu	381,570,491	327,091,408	54,479,083	
4	Isiolo	305,591,204	75,953,080	229,638,124	
5	Kajiado	917,185,615	441,202,575	475,983,040	
6	Kericho	251,267,147	119,894,267	131,372,880	
7	Kisumu	534,047,621	969,821,984	(435,774,363)	The gross amount of legal fees exceeds the budgeted amount by Kshs. 435,774,363, casting doubt on the accuracy of the figures reported by the county or otherwise charging legal fees on wrong economic lines in IFMIS.
8	Makueni	459,585,190	371,031,262	88,553,928	
	Total	2,711,480,992	3,346,048,754	2,561,814,858	

Note: The Government Finance Statistics (GFS) Chart of Accounts classifies legal fees in IFMIS as "Legal Dues/Fees, Arbitration and

Compensation" under economic item 2211308. This cumulative data was thus pulled from eight (8) randomly selected County Government's

IFMIS Vote Book under economic line 2211308.

Annex 3: Comparison of legal fees paid as per IFMIS reports and as reported by the County Governments (CG) for the Financial Years 2013/14 to FY 2023/24

No.	County Name	Legal Fees paid as per IFMIS reports (Kshs)	Legal Fees paid as per CG reports (Kshs.)	Variance (Kshs.)	Remarks
1	Bomet	85,920,208	62,460,804	23,459,404	The County Assembly did not provide information on legal fees
2	Bungoma	297,029,623	262,599,553	34,430,070	
3	Embu	340,464,997	327,091,408	13,373,589	No information about County Assembly legal fees was provided
4	Isiolo	254,361,924	33,967,680	220,394,244	The county executive provided only legal fee information for FY 2021/22 and FY 2022/23, whereas the County Assembly did not provide information on legal fees.
5	Kajiado	629,228,137	48,830,505	580,397,632	The County Assembly did not provide information on legal fees
6	Kericho	168,723,422	119,894,267	48,829,155	No information about County Assembly legal fees was provided
7	Kisumu	352,884,497	251,041,984	101,842,513	The County Assembly provided Legal fees for FY 2023/24 Only.
8	Makueni	433,202,050	356,089,262	77,112,788	
	Total	2,561,814,858	1,461,975,463	1,099,839,395	The cumulative variance for the sampled counties is significant

② HOD-Governance
Lead Clerk-Devolution

Kindly deal

25/07/2024

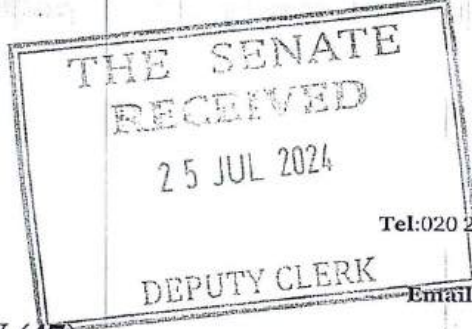


OFFICE OF THE CONTROLLER OF BUDGET



REPUBLIC OF KENYA

Bima House, 12th Floor
Harambee Avenue
P.O Box 35616-00100
Nairobi, Kenya



Tel: 020 2211068/66/56/51, 0709910000,
0716274922, 0738466721
Website: www.cob.go.ke
Email: cob@cob.go.ke/Info@cob.go.ke

OCOB/SEN/002/VOL IV (47)

19th July 2024

Mr. Jeremiah M. Nyegenye,
Clerk of the Senate
The Senate
NAIROBI



DGAC ①

Kindly deal

Ep
25/07/2024

Dear Mr. Nyegenye,

**RE: PETITION ON RESTRAINING COUNTY GOVERNMENTS FROM
HIRING LAW FIRMS TO REPRESENT COUNTY GOVERNMENTS
IN COURT CASES**

Reference is made to your letter Ref: SEN/DGAC/DEVIR/JLAHRC/2024/01 dated 12th June 2024 in which you;

1. Requested for a comprehensive report providing a breakdown of the amount paid to law firms as legal fees by all the 47 County governments since the financial year 2013/2014 to date on or before Monday 24th June 2024; and
2. Invited the Controller of Budget to appear in person before a joint sitting of the two Committees on 1st July 2024 at 10.00am to discuss the issues raised in the said petition.

Following your request, a letter Ref: COB/CIR/002/VOL.11(41) dated 24th June 2024 was sent to all counties seeking a breakdown of the legal fees paid to law firms between 2013/14 and June 2023/24. Another letter Ref: COB/CIR/002/VOL.11(42) requesting for additional information on pending legal fees was sent to the counties after the Controller of Budget's appearance before the joint sitting of the two committees, on 1st July, 2024.

Accordingly, the purpose of this letter is to provide an update on the breakdown of the legal fees paid by the counties. So far, 22 County Governments have provided

data as tabulated in table 1 (enclosed). We are awaiting responses from the remaining 25 County governments (see table 2) and will furnish you with the same upon receipt.

Yours *Sincerely,*



FCPA Stephen Masha EBS
FOR: CONTROLLER OF BUDGET

Encls. (2)

Table 1: Summary of Counties that have provided reports on Amounts paid to law firm from 2013/2014 to 2023/2024

S/No	COUNTY GOVERNMENT	Gross Legal Fee (Kshs)	Legal Fees Paid (Kshs)	Amount Pending (Kshs)
1	Kwale	299,946,785.00	226,759,147.05	73,187,637.95
2	Taita-Taveta	106,636,726.40	106,636,726.40	-
3	Embu	327,091,408.00	327,091,408.00	-
4	Machakos	1,495,963,968.59	681,744,183.85	814,219,784.74
5	Makueni	226,850,079.35	226,850,079.35	-
6	Nyandarua	161,413,093.40	161,413,093.40	-
7	Nyeri	151,431,565.95	151,431,565.95	-
8	Murang'a CE	343,902,445.00	343,902,445.00	-
	Murang'a CA	68,328,117.00	46,063,533.00	22,264,584.00
9	Turkana	337,307,546.68	337,217,132.88	90,413.80
10	West Pokot	104,683,897.15	70,060,539.35	34,623,357.80
11	Trans-Nzoia	93,577,363.25	93,577,363.25	-
12	Elgeyo-Marakwet	20,635,783.00	20,635,783.00	-
13	Nandi	34,710,157.30	34,710,157.30	-
14	Laikipia	207,714,756.00	190,190,832.00	17,523,924.00
15	Kajiado	441,202,575.28	48,830,505.65	392,372,069.63
16	Kericho	119,894,267.54	119,894,267.54	-
17	Bomet	72,424,105.65	60,001,670.65	12,422,435.00
18	Bungoma	420,900,920.50	373,770,323.90	47,130,596.60
19	Kisumu	937,043,812.35	221,843,812.35	715,200,000.00
20	Homa-Bay	80,872,946.86	41,326,057.00	39,546,889.86
21	Kisii	110,470,399.26	97,555,491.26	12,914,908.00
22	Nyamira	37,654,895.85	37,654,895.85	-
	TOTAL	6,200,657,615.36	4,019,161,013.98	2,181,496,601.38

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Table 2: Summary of Counties that have not provided reports on Amounts paid to law firm from 2013/2014 to 2023/2024

Non-Submission of Reports on Payments of law firms from FY 2013/14 to FY 2023/24

1. Mombasa
2. Kilifi
3. Tana River
4. Lamu
5. Garissa
6. Wajir
7. Mandera
8. Marsabit
9. Isiolo
10. Meru
11. Tharaka-Nithi
12. Kitui
13. Kirinyaga
14. Kiambu
15. Samburu
16. Uasin Gishu
17. Baringo
18. Nakuru
19. Narok
20. Kakamega
21. Vihiga
22. Busia
23. Siaya
24. Migori
25. Nairobi City

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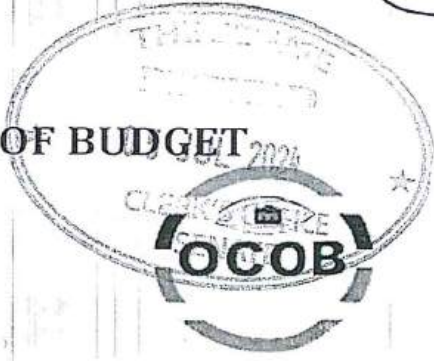
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THE SENATE RECEIVED
05 JUL 2024
OFFICE OF THE CONTROLLER OF BUDGET
DIRECTOR COMMITTEE SERVICES



REPUBLIC OF KENYA
Bima House, 12th Floor
Harambee Avenue
P.O Box 35616-00100
Nairobi, Kenya

THE SENATE RECEIVED
05 JUL 2024
DEPUTY CLERK

Tel: 020 221 1068/66/56/51, 0709910000,
0716274922, 0738466721
Website: www.cob.go.ke
Email: cob@cob.go.ke/Info@cob.go.ke

HOD - Governance
Lead - Devolution
15 JUL 2024
Kindly Deal
05/07/2024
① DGAC

Ref: COB/CIR/002/VOL.II(42)

COB CIRCULAR NO 9 OF 2024

To all County Executive Committee Members for Finance

RE: REQUEST FOR PROVISION OF ADDITIONAL INFORMATION ON AMOUNTS DUE TO LAW FIRMS FOR THE FY 2013/14 TO 2023/24

Eg

The Office of the Controller of Budget (COB) is established under Article 228 of the Constitution, to oversee the implementation of the budgets of the National and County governments by authorizing withdrawals from public funds and to report on the implementation of budgets of the National and County governments every four months. This mandate is amplified by the Controller of Budget (COB) Act, 2016.

25/07/2024

Please refer to my circular Ref: COB/CIR/002/VOL.II(41) dated 24 June 2024.

Following the meeting held with the Senate Standing Committee on Devolution and Intergovernmental Relations and the Standing Committee on Justice, Legal Affairs and Human Rights, the members resolved to have a more comprehensive report on legal fees.

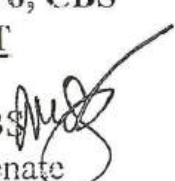
It has been observed that Counties are only submitting the paid legal fees contrary to the initial request whereby they had been asked to show the pending legal fees payables. It was therefore, concluded that the Counties should include the pending bills for legal fees as from 2013 to date. To enable this office prepare the report, you are requested to include a comprehensive report on the amount owing to law firms as legal fees from Financial Year 2013/2014 to Financial Year 2023/2024. The information should be presented in the format prescribed below

Financial Year	XXXXXXXXXXXX			
S/NO:	Name of the Law Firm	Gross amount for the legal services (Kshs.)	Amount Paid (Kshs.)	Balance Due (Kshs.)
1.				
2.				
3.				
4.				

Please submit certified electronic copies to cheboitk@cob.go.ke on or before **Friday, 5th July, 2024**. Do note that this request is based on Section 16 of the COB Act, 2016 which mandates all public officers to cooperate with the COB and provide any information requested in such prescribed format and within such time as the COB may direct.

In the event of any difficulties, please contact the undersigned at your earliest.

FCPA Dr. Margaret Nyakang'o, CBS
CONTROLLER OF BUDGET

Copy to: ✓ J. M. Nyegenye CBS 
The Clerk of the Senate
NAIROBI



REPUBLIC OF KENYA
Bima House, 12th Floor
Harambee Avenue
P.O Box 35616-00100
Nairobi, Kenya

OFFICE OF THE CONTROLLER OF BUDGET



Tel: 020 2211068/66/56/51, 0709910000,
0716274922, 0738466721
Website: www.cob.go.ke
Email: cob@cob.go.ke/Info@cob.go.ke

Ref: COB/SEN/002/Vol.V(46)

Mr. Jeremiah M. Nyegenye, CBS
Clerk of the Senate
P.O Box 41842-00100
Parliament Building
NAIROBI



24th June, 2024

① DGAC

② HOD - Governance
LAW CLERK - DEPUTY CLERK
- JUSTICE

Kindly deal

Ep 25/06/2024

Kindly deal
21/07/2024

Dear Mr Nyegenye,

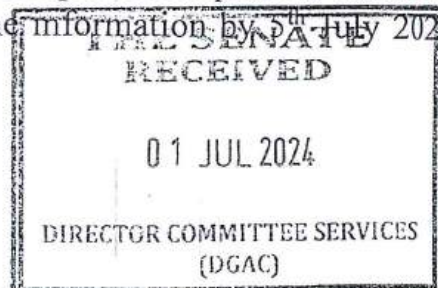
RE: PETITION ON RESTRICTING COUNTY GOVERNMENTS FROM
HIRING LAW FIRMS TO REPRESENT COUNTY GOVERNMENTS
IN COURT CASES

Reference is made to your letter Ref: SEN/DGAC/DEVIR/2024/01 dated 12th June 2024 in which you communicated the decision of the Senate Standing Committee on Devolution and Intergovernmental Relations and the Standing Committee on Justice, Legal Affairs and Human Rights to request the Controller of Budget to submit a report on payment of legal fees by County governments.

Specifically, the Controller of Budget was requested to submit a comprehensive report providing a breakdown of the amount of money paid to law firms as legal fees for all the forty-seven county governments from FY 2013/14 to date. You have indicated that the information should be provided by 24th June 2024.

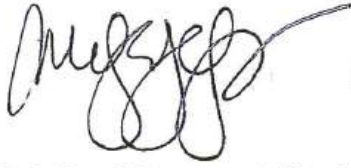
The information requested spans the last ten years and would take time to retrieve. Further, we need to seek confirmation from Counties to corroborate with records in this office.

This is, therefore, to request for more time to compile the report. A Circular has been sent to County governments to provide the information by 5th July 2024 (A copy of the circular is attached).



We will then strive to provide the information by 12th July 2024.

Yours *Sincerely,*



FCPA Dr. Margaret Nyakang'o, CBS
CONTROLLER OF BUDGET

Copy to: Sen. Haji Abdul Mohamed, MP
Senator
Garissa County
Parliament Buildings
NAIROBI

OFFICE OF THE CONTROLLER OF BUDGET



REPUBLIC OF KENYA

Bima House, 12th Floor
Harambee Avenue
P.O Box 35616-00100
Nairobi, Kenya



Tel: 020 2211068/66/56/51, 0709910000,
0716274922, 0738466721
Website: www.cob.go.ke
Email: cob@cob.go.ke/Info@cob.go.ke

Ref: COB/CIR/002/VOL.II(41)

24th June, 2024

OCOB CIRCULAR NO. 8 OF 2024

To all County Executive Committee Members for Finance

**RE: REQUEST FOR PROVISION OF INFORMATION ON AMOUNTS
PAID TO LAW FIRMS FOR THE FY 2013/14 TO 2023/24**

The Office of the Controller of Budget (OCOB) is established under Article 228 of the Constitution, to oversee the implementation of the budgets of the National and County governments by authorizing withdrawals from public funds and to report on the implementation of budgets of the National and County governments every four months. This mandate is amplified by the Controller of Budget (COB) Act, 2016.

The office is in receipt of a letter from the Senate Ref: SEN/DGAC/DEVIR/2024/01 dated 12th June 2024 requesting for a report on funds used by County governments to pay law firms as legal fees for the period 2013/2014 to date. To enable this office, prepare the report, you are requested to submit a comprehensive report on the amount of money paid to law firms as legal fees from Financial Year 2013/2014 to Financial Year 2023/2024. *The information should be presented in the annexed format.*

Please submit certified electronic copies to Mr. Thomas Cheboi on cheboitk@cob.go.ke so as to reach this office on or before **Friday, 5th July, 2024**. This request is based on section 16 of the COB Act, 2016 which mandates all public officers to cooperate with the COB and provide any information requested in such prescribed format and within such time as the COB may direct.

**FCPA Dr. Margaret Nyakang'o CBS
CONTROLLER OF BUDGET**

**Copy to: Mr. J. M. Nyegenye, CBS
The Clerk of the Senate
NAIROBI**

Annexure

Financial Year	XXXXXXXXXXXXXXXXXX	Name of the Law Firm	Gross amount for the legal services (Kshs.)	Amount Paid (Kshs.)	Purpose	Balance Due (Kshs.)
S/NO:						
1.						
2.						
3.						
4.						

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Enhancing Accountability

**PRESENTATION TO THE SENATE STANDING COMMITTEE ON
DEVOLUTION AND INTERGOVERNMENTAL RELATIONS AND THE
STANDING COMMITTEE ON JUSTICE, LEGAL AFFAIRS AND HUMAN
RIGHTS ON RESTRAINING COUNTY GOVERNMENTS FROM HIRING
LAW FIRMS TO REPRESENT COUNTY GOVERNMENTS IN COURT
CASES AT A JOINT SITTING OF THE COMMITTEES**

1 JULY, 2024

The Chairperson – Senate Standing Committee on Devolution and Intergovernmental Relations, Hon- Senator Mohamed Abbas

The Chairperson – Senate Standing Committee on Justice, Legal Affairs and Human Rights, Hon- Senator Wakili Hillary Kiprotich Sigei

Honorable Members of the Joint Committee

A. Appreciation Note

1. I thank the Joint Committee for according the Office of the Auditor-General this opportunity to add our voice to a matter that pertains to prudent use of financial resources.
2. Parliament and the Office of the Auditor-General are important and strategic players in the national integrity and accountability system for holding Governments accountable for focused sustainable development of the country and sustainable delivery of services to the citizens. We are at the core of promoting good governance, transparency and accountability and sustainable economic growth.
3. This means that we have to pay attention to issues that matter to the public including those brought through public petitions. Indeed, public petitions to public authorities and Parliament are guaranteed in Article 37 and Article 119(1) of the Constitution of Kenya. Additionally, Article 252(1)(a) of the Constitution empowers Constitutional Commissions and Independent Offices to conduct investigations on their own initiative or on a complaint made by a member of the public.
4. Our auditing standards also encourage us to keep abreast of relevant matters being debated in domestic and international forums and participate where appropriate. We are also expected to contribute to the debate on improvements in the public sector without compromising our independence.

B. Mandate of the Office

Honourable Chairs

Honourable Members

5. As the Supreme Audit Institution, we provide assurance to the citizens that the Executive, Parliament and the Judiciary manage and use public resources legally and

responsibly, for the purposes intended, economically, efficiently and effectively and for the benefit of the citizens.

6. My Office is mandated by Article 229(4) of the Constitution of Kenya, to audit the accounts of the **National and County Governments, the Parliament and County Assemblies, all Funds and Authorities of National and County Governments, accounts of all Courts, Public debt and all institutions, programmes or projects funded by public funds.** Article 229(6) further mandates the Auditor-General to confirm whether or not public money has been applied lawfully and in an effective way.
7. Further, Section 7 Sub-section (1(a-g)) of the Public Audit Act, 2015, gives additional functions and responsibilities to the Auditor-General, which include **confirming whether collection of revenue and expenditure of public money has been used and applied to the purposes intended and the authority** for such expenditure.
8. Article 229(7) of the Constitution requires the Auditor-General to submit the audit reports to Parliament and the relevant County Assembly within six (6) months after the end of each financial year.
9. Our audit reports go beyond the traditional auditing as they provide broader good governance issues. They provide:
 - hindsight - horizontal and systemic view of how government is performing
 - insight - how policies affect outcomes in the present
 - foresight – how policies can translate into better lives in the future
10. Ultimately, the mandate of the Office of the Auditor-General is not only to contribute to improvements in the public sector but also **to influence the direction of economic growth and development of our nation** and the delivery of quality and sustainable services to the people by overseeing the use and management of public resources.

C. Management of Legal Expenses in the County Governments

Honourable Chair

Honourable Members

11. In a 2017 study by the Intergovernmental Relations Technical Committee on Cost of Litigation in Inter/Intragovernmental Litigation in Kenya, the Committee noted that the costs of litigation are high and a major constraint to development, particularly in the

county governments. The Committee also noted that one of the major challenges in litigation for the counties is the reliance on external counsel.

12. In 2020, Parliament enacted the Office of the County Attorney Act, 2020. The Act provides mechanisms for management of legal affairs in the County Governments. Section 4 of the Act provides for establishment of the Office of County Attorney in each county which is an office in the county public service. The office comprises of;

- the County Attorney;
- the County Solicitor; and
- such other number of County Legal Counsel as the County Attorney may, in consultation with the county public service board, consider necessary

13. Section 7 of the Act recognizes the County Attorney as the principal legal adviser to the county government who performs the following additional functions among others:

- Under 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;
- advises departments in the county executive on legislative and other legal matters
- negotiates, drafts, vets and interprets documents and agreements for and on behalf of the county executive and its agencies;

14. Section 16 of the Act also provides that a county department or public entity established within a county executive shall not engage the services of a consultant to render any legal services relating to the functions of the County Attorney without the approval of the County Executive Committee in writing.

15. Further, Section 43 of the **County Government Act No. 17 of 2012** provides that a *county government may, pursuant to Article 156(4) of the Constitution request the Attorney-General to represent the county government in court or in any other legal proceedings to which the county government is a party other than in criminal*

proceedings. Section 7(g) of the Act empowers the County Attorney to liaise with the Office of the Attorney-General when need arises.

Honourable Chairs

Honourable Members

16. My Office has over the years included the audit of legal fees or expenditure as one of the focus areas when conducting our audits. This has been driven by public concerns, signals from parliament, new developments in devolved units and stakeholder engagements and communications, prior year audit matters and matters reported in the media.
17. Our audit results indicate that three (3) counties have not established the Office of the County Attorney. These are Tana River, Lamu and Elgeyo Marakwet Counties. In the last three (3) years, the counties of Tana River and Bomet had audit queries relating to legal fees. The details of the counties which have established the Offices of the County Attorney are in **Appendix 1**.
18. I have further analyzed the legal services provided to County Executives between the financial year 2020/2021 and 2022/2023 and identified the following issues:
 - (i) **Outsourcing Legal Services to Private Law Firms**
Honourable Chairs
Honourable Members
19. We have noted that counties have continued to engage private law firms to offer legal services despite establishing the Offices of County Attorney. We have also noted that counties do not adhere to the requirements of Section 16 of the Office of the County Attorney Act, 2020 which requires a county department or public entity established within a county executive to seek for written approval from the County Attorney when engaging the services of a consultant to render any legal services to the County.

20. During our audit review over the three years, thirty-one (31) county executives had audit findings related to outsourcing legal services to private law firms. Out of the thirty-one county executives, only Tana River County Executive had not established the Office of the County Attorney.

21. In addition, the amount queried in relation to provision of legal expenses is as follows:

Financial Year	Total Amount Queried (Kshs.)
2020/2021	2,177,579,014
2021/2022	23,843,180,292
2022/2023	1,456,819,087

(i) Procurement of Legal Services

22. The outsourcing of legal services is expected to adhere to the requirements of the Public Procurement and Asset Disposal Act, 2015 and the attendant Regulations, and Section 16 of the Office of the County Attorney Act, 2020.

23. County Executives use restricted tendering or direct appointment methods of procurement without meeting the conditions specified in the procurement law. For instance, in the financial year 2022/2023, the Kitui County Executive incurred legal expenses amounting to Kshs. 25,342,454 to hire various legal firms without the approval of the County Executive Committee as required by Section 16(1) of the County Attorney Act, 2020.

24. In the same financial year, the Nakuru County Executive directly procured legal services worth Kshs. 116,085,352 to various external law firms. Similarly, Mandera County Executive invited only five (5) firms to submit bids instead of seven (7) contrary

to Section 95(3) of the Public Procurement and Asset Disposal Act, 2015 and Regulation 102 of the Public Procurement and Assets Disposal Regulations, 2020.

(ii) Inadequate Supporting Documentation for the Legal Expenses

Honourable Chairs

Honourable Members

25. This was the most frequently raised audit finding in relation to provision of legal services. The payments made in relation to the provision of legal services were inadequately supported. There were missing documents and information pertaining to:

- Fee notes
- Contracts and other procurement documents with the law firms
- Basis of charging legal fees
- Documents to confirm the value of properties used to charge the legal fees
- Evidence of the Court cases that the law firms represented the County Executives
- Status of the cases

26. This raises doubt concerning the authenticity of legal expenses paid by the County Executives.

(iii) Pending Bills

27. Our audits have revealed huge amounts of pending bills as a result of provision of legal services by private law firms. Some of the pending bills are more than the County Executives own source of revenue. Nairobi City County has the highest level of pending bills with more than Kshs. 20B.

28. We have noted cases of duplicated fee notes being included in the list of pending bills. For instance, in the financial year 2022/2023, Taita Taveta County Executive included in its list of pending bills, an amount of Kshs.3,260,018 which had already been paid during the year under review.

29. We have also noted cases of court awards against County Executives which have not been settled, which attracts further interest and penalties thereby compounding the already dire problem of high pending bills.

30. I have summarized these matters in **Appendix II** of this submission.

D. Conclusion

Honorable Chair

Honorable Members

31. As I conclude, the petition brought to the Senate raises pertinent issues that go beyond restraining the County Executives from engaging private law firms. We must have candid discussions with other stakeholders including the legal fraternity. I say this because the biggest issue we have noted from our audits concerns the authenticity of the legal expenses. We must engage the Judiciary to assist in providing evidence of the court cases and assessing the validity of the fees charged. It is also time for Counties to consider engaging more in Alternative Dispute Resolution Mechanisms instead of resorting to external legal services that lead to excesses in the usage of public resources.

32. I once again thank the Joint Committee for the opportunity to discuss matters of prudent financial management. I also thank the Senate for its continued support to the Office. We hope to have other meetings with the joint Committees and other Committees of the Senate as we have Performance Audits that can help the Committees in their deliberations and ultimately enhance transparency and accountability in the public sector.

I thank you.


FCPA Nancy Gathungu, CBS

Auditor-General

1 July, 2024

Appendix I: Counties that Have Established the Office of the County Attorney

S/No.	County
1.	Mombasa
2.	Kwale
3.	Kilifi
4.	Taita-Taveta
5.	Garissa
6.	Wajir
7.	Mandera
8.	Marsabit
9.	Isiolo
10.	Meru
11.	Tharaka Nithi
12.	Embu
13.	Kitui
14.	Machakos
15.	Makueni
16.	Nyandarua
17.	Nyeri
18.	Kirinyaga
19.	Murang'a
20.	Kiambu
21.	Turkana
22.	West Pokot
23.	Samburu
24.	Trans-Nzoia
25.	Uasin Gishu

S/No.	County
26.	Nandi
27.	Baringo
28.	Laikipia
29.	Nakuru
30.	Narok
31.	Kajiado
32.	Kericho
33.	Bomet
34.	Kakamega
35.	Vihiga
36.	Bungoma
37.	Busia
38.	Siaya
39.	Kisumu
40.	Homa Bay
41.	Migori
42.	Kisii
43.	Nyamira
44.	Nairobi

Appendix II: Summary of Issues Raised on Legal Services Expenses (FY 2020/2021 to 2022/2023)

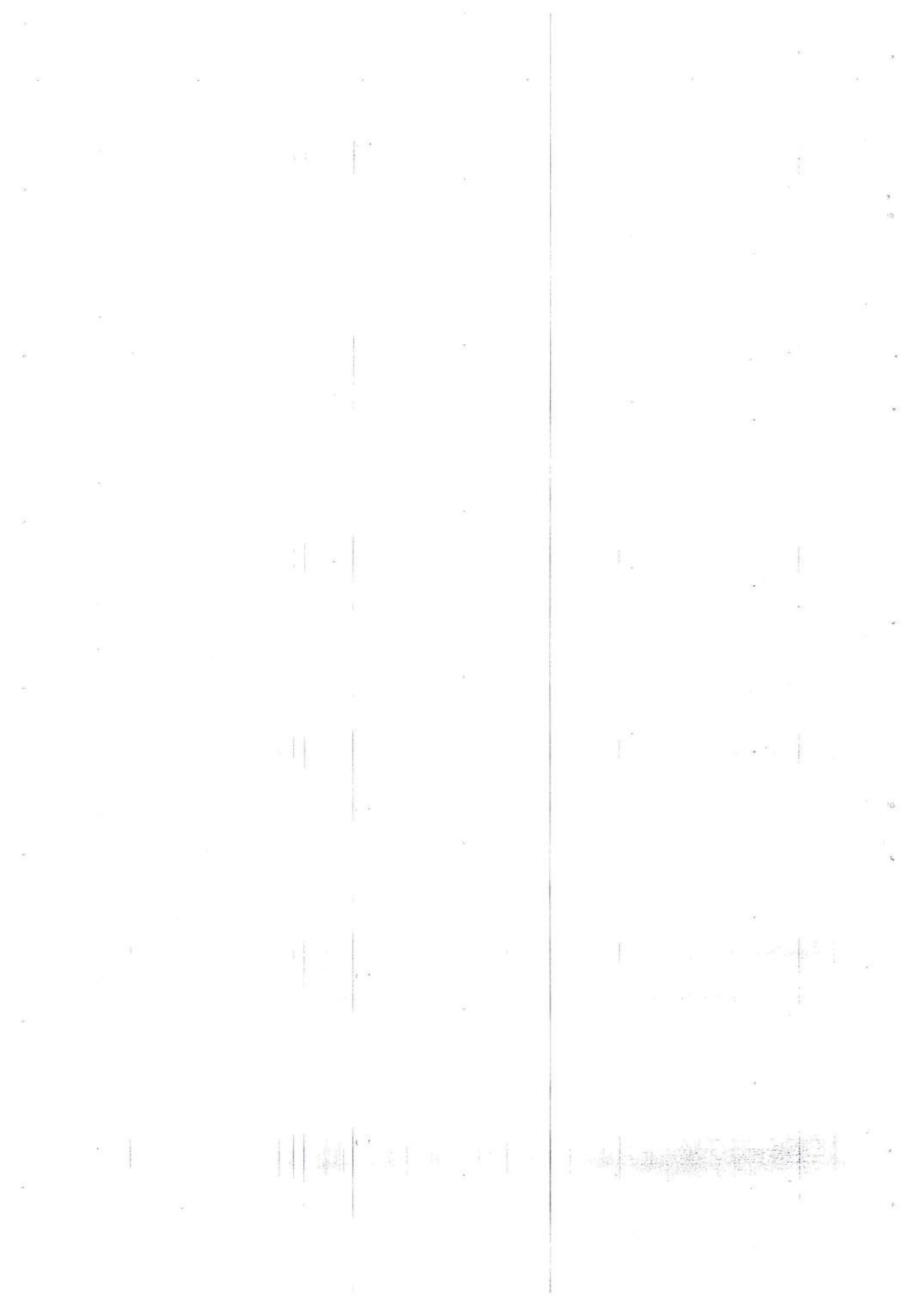
S/No.	County	FY 2020/2021		FY 2021/2022		FY 2022/2023	
		Issue	Amount Queried (Kshs.)	Issue	Amount Queried (Kshs.)	Issue	Amount Queried (Kshs.)
1.	Kilifi			(i) Unsupported Legal Expenses (ii) Irregular Procurement of Legal Services	47,173,909 1,010,600,700		
2.	Tana River	Unapproved and Unaccounted for Legal Fees	72,013,793			Unsupported Legal Expenses	529,271,552
3.	Taita-Taveta			Unsupported Legal Expenses	110,782,070	(i) Unsupported Legal Expenses (ii) Pending Bills for legal costs	3,260,017 3,260,018
4.	Wajir			Unsupported Legal Expenses	37,420,000		
5.	Mandera	Unsupported Legal Expenses	33,447,500	(i) Unsupported Legal Expenses (ii) Irregular Procurement of Legal Services - Non-competitive practices	6,748,000 27,786,021	Irregular Procurement of Legal Services - Breach of Sec 95 of PPAD, 2015 and Reg 102 of PPAD Reg, 2015	29,663,793

S/No.	County	FY 2020/2021		FY 2021/2022		FY 2022/2023	
		Issue	Amount Queried (Kshs.)	Issue	Amount Queried (Kshs.)	Issue	Amount Queried (Kshs.)
6.	Isiolo	Irregular Procurement of Legal Services	24,668,500	(iii) Pending Bills for legal costs	82,308,279		
7.	Meru			Unsupported Legal Expenses	38,822,518	Unsupported Legal Expenses	1,233,000
8.	Embu			Unsupported Legal Expenses	37,586,994	Unsupported Legal Expenses	5,870,200
9.	Kitui	Lack of Status Report on County Legal Cases	18,291,584	Irregular Legal Expenses	36,051,103	Irregularities in Legal Expenses(breach of Section 16(1))- No approval of CEC	25,342,454
10.	Machakos	Legal costs	175,768,131	Legal Expenditure Incurred Irregularly including unbudgeted costs	54,978,456		
11.	Machakos	Pending Bills for legal costs	607,769,485	Pending Bills for legal costs	607,769,485		

S/No.	County	FY 2020/2021		FY 2021/2022		FY 2022/2023	
		Issue	Amount Queried (Kshs.)	Issue	Amount Queried (Kshs.)	Issue	Amount Queried (Kshs.)
12.	Makueni			Unconfirmed Validity and Regularity of Legal Fees/Dues	23,544,816		
13.	Murang'a			Irregular Procurement of Legal Services and irregular charging to other votes	71,516,523		
14.	Kiambu	Unsupported Legal Expenses	1,718,865			Unsupported Legal Expenses	7,367,133
15.	Uasin Gishu	Unsupported Legal Expenses	27,741,965	Irregular Award of Legal Dues or Fees, Arbitration and Compensation Payments	40,526,089	Unsupported Legal Expenses	6,220,000
16.	Baringo			Legal Fees	12,150,049	Irregularities in Procurement of Private Law Firms	11,604,259
17.	Laikipia			Doubtful Payment of Legal Fees	23,815,918		

S/No.	County	FY 2020/2021		FY 2021/2022		FY 2022/2023	
		Issue	Amount Queried (Kshs.)	Issue	Amount Queried (Kshs.)	Issue	Amount Queried (Kshs.)
18.	Nakuru	Unsupported Legal Expenses	98,353,889	Legal Expenses	12,049,000	Irregular Legal Expenses	116,085,352
19.	Narok			Unsupported Legal Expenses	149,894,917		
20.	Kajiado	Unsupported Legal Expenses	142,117,092			Inadequacies in Legal Expenses Management and Contract	106,748,456
21.	Kericho			Over Charged legal expenses	12,893,100		
22.	Bomet			Unsupported Legal Expenses	5,980,400		
23.	Vihiga					Huge Bills on Legal Cases	71,937,256
24.	Bungoma	Unsupported Legal Expenses	30,668,046	Unsupported Legal Expenses	8,942,765	Irregular Payment of Legal Fees	17,073,558
25.	Siaya			Unsupported Legal Expenses	9,766,800		
26.	Kisumu	Unsupported Legal Expenses	46,572,175			Unsupported Legal Expenses	44,600,165

S/No.	County	FY 2020/2021		FY 2021/2022		FY 2022/2023	
		Issue	Amount Queried (Kshs.)	Issue	Amount Queried (Kshs.)	Issue	Amount Queried (Kshs.)
27.	Kisumu					Avoidable Legal Expenditure	17,461,066
28.	Homa Bay			Unsupported Legal Expenses	12,277,900	Unsupported Legal Expenses	38,886,000
29.	Migori	Unsupported Legal Expenses	61,820,329	Unsupported Legal Expenses	149,907,119	Avoidable Payment of Legal Fees	44,993,654
30.	Nyamira			Unsupported Legal Expenses	1,885,000		
31.	Nairobi	Unsupported Legal Expenses	836,627,660	Undisclosed Legal Expenses	21,210,002,361	(i) Anomalies in Provision of Legal Services - Unsupported payments including calculation of legal fees, current status of cases	375,941,154
						(ii) Pending Bills for legal costs	20,957,981,457
Total			2,177,579,014		23,843,180,292		22,414,800,544





LAW SOCIETY OF KENYA
Lavington, Opposite Valley Arcade
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Tel. +254 111 045 300

**MEMORANDUM
TO
THE SENATE**

ON

**THE PETITION TO THE SENATE BY MR. LABAN OMUSUNDI ON RESTRICTING
COUNTY GOVERNMENTS FROM HIRING LAW FIRMS FOR LEGAL
REPRESENTATION IN COURT CASES**

JUNE, 2024

**Faith Mony Odhiambo, President Law Society of Kenya
Lavington, opp Valley Arcade,
Gitanga Road P.O Box 72219 - 00200 Nairobi | Kenya
Tel: +254 111 045 300
Email: president@lsk.or.ke
Website: www.lsk.or.ke**

Introduction

The Law Society of Kenya is a professional statutory body established under the Law Society of Kenya Act, No. 21 of 2014 with a mandatory membership of all Advocates in Kenya. The organs of the Society are the General Membership, the Council, the Branches and the Secretariat. The Council is the governing body of the Law Society of Kenya. It comprises a President, a Vice- President and eleven other members, all of whom must be members of the Law Society of Kenya. Council members are elected every two years by the members of the Society by means of a secret ballot conducted in accordance with the Law Society of Kenya Act.

Currently, the Council is comprised of The President, The Vice-president and 11 Council members namely:

- o President, Faith Mony Odhiambo
- o Vice President, Mwaura Kabata
- o General Membership Representatives, Tom K'opere, Teresia Wavinya, Hosea Manwa
- o Nairobi Representatives, Gloria Kimani, Irene Otto, Stephen Mbugua
- o Up-country Representatives, Vincent Githaiga, Lindah Kiome, Hezekiah Aceso, Zulfa Roble
- o Coast Representative, Elizabeth Wanjeri
- o Secretary/CEO, Florence W. Muturi

One of the Law Society of Kenya statutory objects as provided in section 4(a) of the Act is to assist the Government and the courts in all matters affecting legislation and the administration and practice of law in Kenya. Pursuant to the statutory mandate, the Law Society of Kenya makes presentations on the Petition to the Senate by Mr. Laban Omusundi on restricting county governments from hiring law firms for legal representation in court cases.

GENERAL COMMENTS

Our attention has been drawn to a petition that was submitted to the Senate, dated 9th April 2024, by Mr. Laban Omusundi, an active citizen based in Nakuru County. The petitioner seeks, among other things, to restrain county governments from hiring law firms to represent them in civil court cases. He proposes the establishment of a legal framework to this effect, which he claims should be aimed at safeguarding what he believes to be a significant portion of public funds currently directed towards paying these law firms. He argues that these funds could instead be utilized to enhance services for "Wanjiko" (the people).

The Law Society of Kenya challenges the averments by the petitioner who has stated in his petition that the Controller of Budget yearly reports on expenditure of the County Governments alleging that there are billions of taxpayers' monies paid to law firms for

Faith Odhiambo (President), Mwaura Kabata (Vice-President)
Tom K'opere, Teresia Wavinya, Hosea Manwa, (General Membership Representatives)
Gloria Kimani, Irene Otto, Stephen Mbugua (Nairobi Representatives)
Vincent Githaiga, Lindah Kiome, Hezekiah Aceso, Zulfa Roble (Upcountry Representatives)
Elizabeth Wanjeri (Coast Representative)

representing county governments in court yet there are County Attorneys. Further he continues to suggest that monies paid to law firms are a waste of public fund which could be directed to other services he considers most important. We would like to vehemently oppose this inuendo and state that indeed legal services are essential services and have been recognized as such by the courts with the Covid 19 Pandemic period as a case in point.

Section 22(2) of the **Office of the County Attorney Act No. 14 of 2020** provides that the County Attorney may procure the services of such other persons as may be reasonably necessary for the purposes of assisting the County Attorney in the performance of the functions of the County Attorney. This section expressly allows the County Attorney to hire external lawyers recognizing the workload and the need for specialized services that may not be available within the office of the County Attorney.

The petitioner purports that some of the huge court cases are informed by deliberate administrative decisions, well knowing that there will be no personal responsibility to that effect and have the likelihood of becoming big enterprises for some skewed individuals from public sector to get money from these law firms as kickbacks. We wish to state that that this assertion is unfounded. Ordinarily, the services of outside counsel are competitively procured individually by public institutions through an elaborate and detailed statutory mechanism set out under the **Public Procurement and Disposal Act No. 33**. In the event that there are irregularities in the procurement process, the Public Procurement Administrative Review Board has been established to handle such disputes.

Further, noting that advocates are entitled to fees for work done, we bring to the attention of the Senate that payment of legal fees is regulated by the **Advocates Remuneration Order** which prescribes the amount of fees payable for services rendered by the Advocates. It specifically prohibits advocates from agreeing or accepting their remuneration at less amount than what is provided for by the Order.

This petition potentially conflicts with national values and principles of governance, such as inclusiveness, the rule of law, non-discrimination, human rights, equality, and equity. By limiting the choice of legal representation by county governments, the petition may impede inclusivity, denying these governments the ability to select the most qualified legal professionals to handle county cases effectively. Therefore, restraining county governments from hiring law firms violates these principles.

As earlier alluded, county governments may contract any person, company, firm or other body for the delivery of a particular service or carrying on a particular function to ensure efficiency in the delivery of service or carrying out of a function for which the

Faith Odhiambo (President), Mwaura Kabata (Vice-President)
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Elizabeth Wanjeri (Coast Representative)

county government is responsible. This provision acknowledges the need for flexibility in engaging external expertise to enhance capacity and improve service delivery. Prohibiting county governments from hiring law firms could hinder their ability to efficiently handle legal matters, thereby undermining their capacity to access specialized expertise and impeding their efficiency in resolving legal issues.

Conclusion

Based on the foregoing, LSK concludes that the petition is ill advised, discriminatory, unconstitutional, and unlawful. It potentially violates fundamental rights, undermines the principle of equality before the law, and contradicts the statutory authority of county governments.

Yours faithfully,

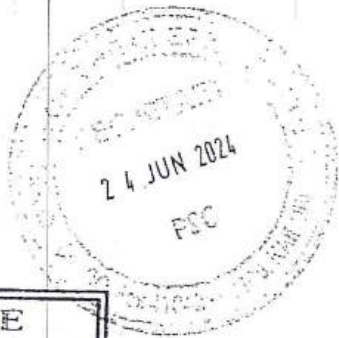


Faith Odhiambo
President Law Society of Kenya

Faith Odhiambo (President), Mwaura Kabata (Vice-President)
Tom K'opere, Teresia Wavinya, Hosea Manwa, (General Membership Representatives)
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Elizabeth Wanjeri (Coast Representative)

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KENYA LAW REFORM COMMISSION



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KENYA LAW REFORM COMMISSION
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NAIROBI, KENYA

THE SENATE
RECEIVED
24 JUN 2024
DIRECTOR COMMITTEE SERVICES
Mr. J. M. Nyegenye, CBS (CAJ)

THE SENATE
RECEIVED
24 JUN 2024
DEPUTY CLERK

*When replying please quote

Ref. No. KLRC/8/86/1(37) and Date 24 JUN 2024

Mr. J. M. Nyegenye, CBS (CAJ)
Clerk of the Senate
The Senate
Clerk's Chambers
Parliament Buildings
P. O. Box 41842 - 00100
NAIROBI

② HOD-Governance
Lead Clere-Devolution
Kindly deal
① DGAC
Kindly deal
24/06/2024
24/06/2024

Dear *Bw' Clerk,*

RE: PETITION ON RESTRAINING COUNTY GOVERNMENTS FROM HIRING LAW FIRMS TO REPRESENT COUNTY GOVERNMENTS IN COURT CASES

Please refer to the above matter and your letter Ref. SEN/DGAC/DEVIR/JLAHRC/2024/07 dated 12th June, 2024.

Section 6(c) of the Kenya Law Reform Commission Act, CAP 3 Laws of Kenya, mandates Kenya Law Reform Commission (KLRC) to provide advice technical assistance and information to the national and county governments with regard to the reform or amendment of a branch of the law. In light of this, KLRC hereby forwards the following comments in consideration of the aforementioned petition.

I. MANAGEMENT OF PUBLIC FINANCE

The petition is anchored on the spending of public funds by County Governments, and therefore it is prudent to start by considering what the Constitution says about the management of public finance.

Article 201 (d) of the Constitution provides that public money shall be used in a prudent and responsible way. This provision is backed by Section 3(h) of the Public Procurement and Asset Disposal Act which provides that one of the principles governing procurement by

public entities is maximization of the value of money.

In this regard it will be necessary to consider whether:

- a. The hiring of law firms by County Governments is permissible in law. If it is not, then the hiring is not only illegal, but it is imprudent use of public money and therefore unconstitutional; and
- b. The hiring of law firms is permissible by law, then it would be important to establish whether there are cheaper alternatives, such as the utilization of the Office of the County Attorney. If the utilization of the Office of the County Attorney is a cheaper alternative, then the hiring of law firms is imprudent and therefore unconstitutional.
- c. Whether there is need for law reform.

II. OFFICE OF THE COUNTY ATTORNEY

Section 7 of the Office of the County Attorney Act mandates the County to Attorney to amongst other functions:

- (i) Represent the County Executive in legal proceedings
- (ii) Advise departments in the County Executive on legislative and legal matters
- (iii) Negotiate, draft, vet and interpret documents and agreements for and on behalf of the County Executive and its Agencies

These are functions that are ordinarily performed by law firms within the private sector. The engagement of private legal practitioners by Counties is however not excluded by the law. Section 16 of the Office of the County Attorney Act permits departments or public entities within the County Executive to perform functions reserved for the County Attorney if they request the County Executive Committee in writing, and if the County Executive Committee approves in writing.

The Office of the Attorney General Act, CAP 6A Laws of Kenya, has a similar provision (Section 17) but with two differences:

- a. The Office of the Attorney General Act grants the power to approve private consultants to the Attorney General, not the Cabinet;
- b. The Office of the Attorney General Act provides that the Attorney General may direct a State Counsel to participate in the work of a consultant "for the purpose of observing standards, maintaining quality or capacity building". There is no such provision in the Office of the County Attorney Act.

On the face of it, the provision that allows Counties to hire private legal consultants makes the Act self-defeating, as it beats the very reason why the Office of the County Attorney was established. It would be imprudent use of public resources to hire officers in the Office

of the County Attorney and allow them to be idle while their work is conducted by private firms.

The County Attorney is not expected to handle the workload alone as section 4(2)(c) of the Act provides that the Office of the County Attorney may have such number of Legal Counsel as the County Attorney may, in consultation with the County Public Service Board, consider necessary.

Private firms are driven by profit. Over and above payment of their salaries and other obligations, the firms are in business. This is reflected in their fees. It is only logical then that the Office of the County Attorney would be a cheaper option for the County Executive for routine legal work within the County.

Nevertheless, it is not improbable that a department or public entity with the County Executive may be confronted by a legal situation which the County Attorney has no capacity to handle. In that case it would make sense to hire a private legal consultant to undertake the function.

In view of the foregoing, the Kenya Law Reform Commission would recommend an amendment of the Office of the County Attorney's Act as follows:

- a. Sub-section 16 (2) amended to read: "A request by a department or public entity to the county executive committee to engage the services of a consultant for the provision of legal services, shall be in writing explaining why the services for which the department or public entity seeks to hire a consultant cannot be performed by the County Attorney".
- b. An insertion of a new sub-section 16 (4) that reads: "Before approving the request under subsection (3) the County Executive Committee shall seek confirmation from the County Attorney that his office lacks the capacity to render the services for which a consultant is sought. The County Executive Committee may require the County Attorney to second a County Legal Counsel to participate in the work of the consultant so hired for the purposes of capacity building."

The Senate has the Constitutional authority to make these amendments under Articles 96 (2) and 110 (1) of the Constitution. We conclude by stating that KLRC is committed to ensuring that legislation is drafted to the highest standards possible to promote effective governance.

As always, we thank you for your continued cooperation.

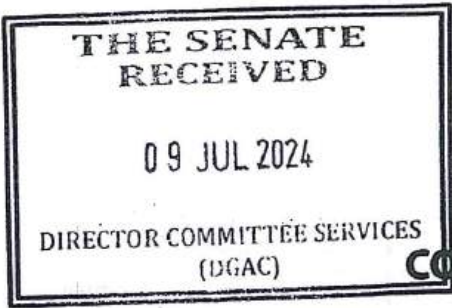
Yours


Joash Dache, MBS
SECRETARY/ CEO

Copy to:

Ms. Christine A. Agimba
Chairperson, KLRC

- To see file copy



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COUNCIL OF GOVERNORS

Westlands Delta House 2nd Floor, Waiyaki Way.
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Nairobi.

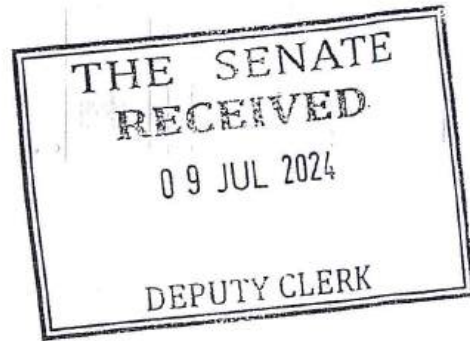
Tel: (020) 2403314, 2403313
E-mail: info@cog.go.ke

Our Ref: COG/ 6/12 Vol.13 (9)

9th July 2024

Mr. J.M Nyegenye, CBS
Clerk of the Senate
Main Parliament Buildings,
Nairobi.

Dear Mr. Nyegenye,



FORWARDING LETTER ON THE PETITION TO RESTRAIN COUNTY GOVERNMENTS FROM HIRING LAW FIRMS TO REPRESENT THEM IN COURT CASES

Greetings from the Council of Governors.

Reference is made to the above matter and your letter dated 12th June 2024 under Ref. **SEN/DGAC/DEVIR/JLAHRC/2024/02** and our appearance before the joint committee on 8th July 2024.

The Council hereby forwards the final copy of the duly signed submissions as requested for your consideration.

Please accept the assurance of our highest esteem and consideration.

Yours sincerely,

Mary Mwiti
Chief Executive Officer

① DGAC

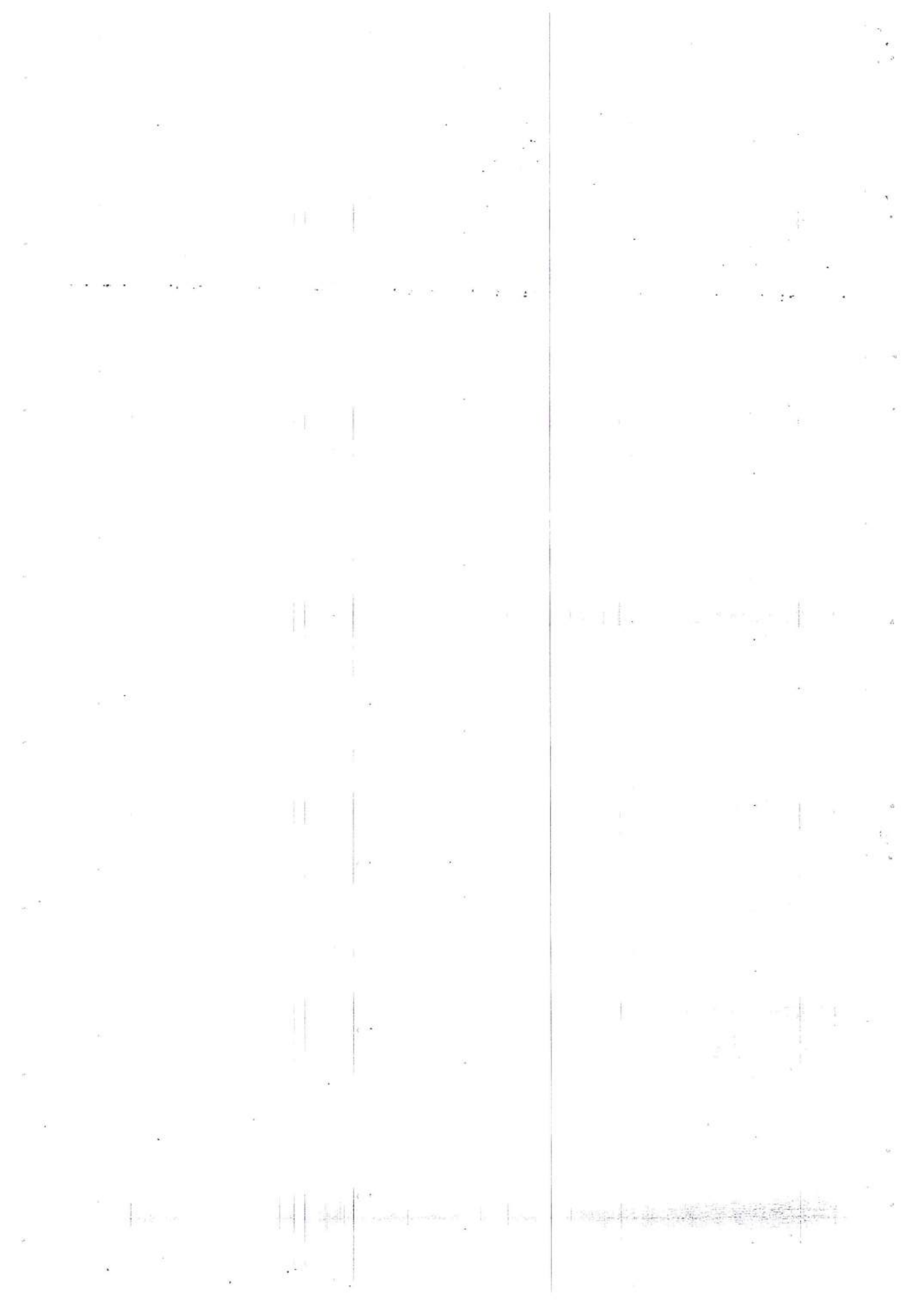
Kindly deal

Ep 09/07/2024

② HOD - Governance & Lead Clerks - LASSR
" " ✓ Desobista

Kindly deal

09/07/2024





SUBMISSIONS TO THE SENATE ON THE PETITION TO RESTRAIN COUNTY GOVERNMENTS FROM HIRING LAW FIRMS TO REPRESENT THEM IN COURT CASES

We refer to the above matter and the letter dated 12th June 2024 under Ref. SEN/DGAC/DEVIR/JLAHRC/2024/02 requesting for our written response to the above petition.

Having perused the same, the Council notes that the object of the petition is to prevent County Governments from seeking the services of external law firms. We wish to oppose the petition in its entirety and herewith provide a comprehensive explanation on why this practice is both necessary and beneficial for the effective functioning of County Governments.

Background and Context

The Office of the County Attorneys Act was enacted in July 2020 ushering a new era in the management of Legal Affairs in the County Governments. Before commencement of this legislation, Counties did not have a standard way of managing their legal affairs. The outstanding legal fees bills in the County Governments can be categorized into three;

1. **Bills that were accrued by the defunct local authorities.**

These were bills that were inherited by the Counties from the defunct local authorities which the Counties had no control.

2. **Bills accrued before the enactment of the Office of the County Attorneys Act.**

The bills accrued from 2013 during coming into effect of the devolved units. A lot of the matters in court involved the interpretation of the powers and functions of the County Governments. Counties were faced with a plethora of matters in court and as such had to appoint law firms for representation.

3. **Bills accrued after the enactment of the Office of the County Attorneys Act.**

With the enactment of the act and the Counties setting up the offices, Counties have significantly reduced the bills in light of the significant role the County Attorneys play.

1. County Attorneys' Role and Expertise

County Attorneys perform a critical role in representing the counties in court and advising on various legal matters. The legal matters affecting the County Governments are diverse and continuously evolving, touching on different areas of legal practice. As such, the diversity and complexity thereof often requires technical expertise and specialization.

In light of the above, engaging external lawyers allows counties to access specialized knowledge and skills that are essential for effectively addressing specific legal challenges. This ensures that counties are represented by experts who possess in-depth understanding and experience in the particular area of law relevant to each case. Consequently, this practice enhances the quality of legal representation and promotes better outcomes for the counties and their constituents.

Further to note, the legal counsels within the County Governments are remunerated way below their counterparts at the Office of the Attorney General's office and the Office of the Director of Public Prosecutions (ODPP) despite being in the same job group.

There is therefore need for the Salaries and Remuneration Commission (SRC) to address the disparity in pay across similar job groups with a view to encourage and attract quality officers with the required skills set. This will minimise outsourcing for legal expertise by County Governments.

2. Precedent at the National Level: Office of the Attorney General

From time immemorial, the Office of the Attorney General (AG) has sought expertise of external lawyers in legal matters; this is despite being a fully constituted office with state counsel. Further, this is a practice all over the world and is premised on an appreciation that an office may not possess all the specialized knowledge and technical expertise.

By drawing on external expertise, the AG's office, in Kenya and other jurisdictions are able to effectively handle complex and multifaceted legal issues that arise, thereby safeguarding the interests of the nation. It is in the same vein that the Office of the County Attorney, as an integral unit of County governments, seeks specialized standards of legal representation for matters affecting County Governments.

3. Practices by other Institutions; state corporations and constitutional commissions

In addition to that, other state institutions including; Independent Electoral and Boundaries Commission (IEBC), Kenya Human Rights Commission (KHRC) the National Transport and Safety Authority (NTSA), Kenya Revenue Authority (KRA) among others, also engage the expertise of external lawyers who specialize in the various areas of law. This practice enables these institutions to benefit from specialized legal insights, ensuring robust legal frameworks are in place to support their mandate. The counties' practice of engaging external lawyers aligns with this approach, demonstrating a commitment to leveraging specialized expertise for the benefit of public administration.

The courts have indeed affirmed the right of constitutional commissions, state corporations, and independent offices to independently appoint external counsels. This was canvassed in the case of *Republic V Attorney General, Law Society of Kenya Ex-parte Francis Moriasi, Judicial review Application No. 364 of 2018 In the High Court of Kenya at Nairobi* whereby the court quashed the 'guidelines on provision of legal services by the office of the Attorney General and department of justice' which sought to control the engagement of external lawyers by state corporations and constitutional commissions by requiring the written approval and concurrence by the Attorney General. This would be tantamount to interfering with the independence of constitutional commissions and independent bodies contrary to article 249 of the constitution.

4. Inadequate budgetary allocations/ infrastructure for the office of the County Attorney

County governments generally struggle with inadequate resources, leading to substantial wage bills and limited budgets for operations and maintenance. In response to these constraints, county governments prioritize key sectors such as health, agriculture and education, often at the expense of the legal office due to budget constraints.

This budget rigidity means the legal office receives insufficient resources, making it challenging to hire lawyers or provide the necessary training and development opportunities. Without adequate funding, county legal offices struggle to handle the complex and diverse legal challenges they face. As a result, outsourcing legal services is often more efficient and ensures the best legal representation for the county, rather than relying on the underfunded in-house legal office.

By engaging external legal experts, counties can access specialized knowledge and skills that their underfunded legal offices cannot provide.

5. Procedure for hiring of Law firms and payments of Legal fees Regulated by the Provisions of the Law

The current legislative framework permits the Counties to engage the services of external Counsel, the provisions of the Office of the County Attorneys Act as well as the Public Procurement Assets and Disposal Act provide for the procedure to be followed. Any payments made thereto are regulated by the Advocates Remuneration Order.

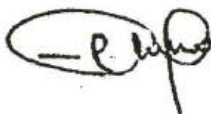
Conclusion

From the foregoing, the engagement of external lawyers by counties is a strategic and necessary practice aimed at ensuring the highest quality of legal representation and expertise. This approach is consistent with established practices at the international, national level and among other state institutions, reflecting a commitment to leveraging specialized expertise to address complex legal challenges.

Allowing counties to engage external legal expertise ultimately serves the best interests of the public by ensuring that counties can navigate the diverse legal landscape effectively and efficiently.

In view of the foregoing, we urge the Senate to dismiss the petition as it seeks to infringe upon the practical and necessary measures that County Governments take to ensure effective legal representation in the interests of Counties. We further assure the Senate that the engagement of external lawyers will be undertaken professionally and within the law.

Please accept the assurance of our highest esteem and consideration.



Mary Mwit
Chief Executive Officer

178



COUNTY ASSEMBLY OF MAKUENI

P.O. Box 57290300 WOTE, MAKUENI

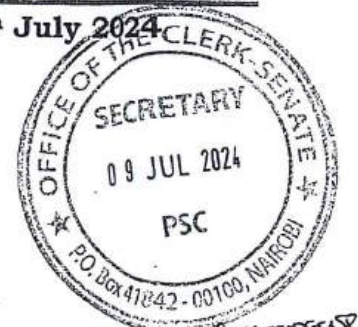
Email: info@makueniassembly.go.ke Website: www.makueniassembly.go.ke



Office of the Clerk

Ref: MKN/CA/ADM/2024 VOL.II (155)

Date: 8th July 2024



**FCPA DR. Margret Nyakang'o, CBS,
Controller of Budget,
Bima House 12th Floor,
Harambee Avenue,
P.O Box 35616-00100,
NAIROBI.**

① DGAC
Kindly deal
EG
09/07/2024

② HOD-
Lead Clerk - JASSIE
✓ - JASSIE
Kindly deal
09/07/2024

Dear Madam,

RE: INFORMATION ON THE AMOUNT PAID TO LAW FIRMS FOR THE FINANCIAL YEAR 2013/14 TO 2023/24.

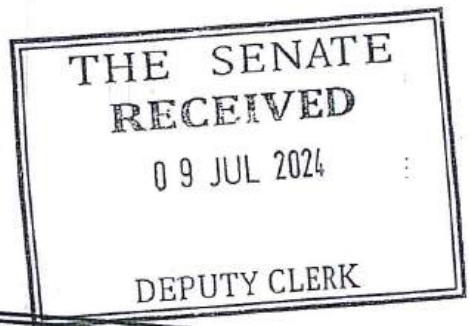
Reference is made to your letter Ref: COB/CIR/002/VOL.II (41) dated 24th June 2024 requesting for provision of all payments made to law firms for the Financial Year 2013/2014 to 2023/2024.

Kindly find the attached schedule showing all the payments processed and paid to the law firms for the period under consideration for your information.

Yours sincerely,

Kevin Mutuku P.O. Box 572-90300,
CLERK OF THE COUNTY ASSEMBLY

CC: Mr. J.M. Nyegenye, CBS,
The Clerk of the Senate,
NAIROBI.



Financial Year	2013/2014			
	Name of the Law Firm	Gross amount for the legal services (Kshs.)	Amount Paid (Kshs.)	Balance Due (Kshs.)
S/NO:				
1.	MWENDWA AND COMPANY	450,000.00	450,000.00	0
2.	JOSEPHINE KUSINYI	450,000.00	450,000.00	0
3.	O.N MAKAU & MULEI	800,000.00	800,000.00	0
4.	JOSEPHINE KUSINYI	400,000.00	400,000.00	0
	MWENDWA AND COMPANY	467,500.00	467,500.00	0
	O.N MAKAU & MULEI	4,310,000.00	4,310,000.00	0

Financial Year	2014/2015			
	Name of the Law Firm	Gross amount for the legal services (Kshs.)	Amount Paid (Kshs.)	Balance Due (Kshs.)
S/NO:				
1.	O.N Makau & Mulei advocates	3,486,400.00	3,486,400.00	0
2.	Robert muthama & assoc.	2,543,600.00	2,543,600.00	0
3.	Valerie Mwangi	420,000.00	420,000.00	0
4.	Robert muthama & assoc.	206,400.00	206,400.00	0
3.	O.N Makau & Mulei advocates	2,600,000.00	2,600,000.00	0
4.	Nyamu and nyamu co.	3,000,000.00	3,000,000.00	0

Financial Year	2015/2016			
	Name of the Law Firm	Gross amount for the legal services (Kshs.)	Amount Paid (Kshs.)	Balance Due (Kshs.)
S/NO:				
1.	O.N MAKAU AND MULEI ADVOCATES	22,500,000.00	22,500,000.00	0
2.	O.N MAKAU AND MULEI ADVOCATES	12,500,000.00	12,500,000.00	0
3.	O.N MAKAU AND MULEI ADVOCATES	10,000,000.00	10,000,000.00	0

OFFICE OF THE CLERK
COUNTY ASSEMBLY OF MAKUENI

08 JUL 2024

P.O. Box 572-90300,
MAKUENI.

Financial Year	2016/2017			
S/NO:	Name of the Law Firm	Gross amount for the legal services (Kshs.)	Amount Paid (Kshs.)	Balance Due (Kshs.)
1	O.N MAKAU & MULEI	5,000,000.00	5,000,000.00	0
2	O.N MAKAU & MULEI	9,457,033.00	9,457,033.00	0

Financial Year	2017/2018			
S/NO:	Name of the Law Firm	Gross amount for the legal services (Kshs.)	Amount Paid (Kshs.)	Balance Due (Kshs.)
1	mulondo,oundo& co.			
2	O.N MAKAU \$ MULEI AD	2,844,880.00	2,844,880.00	0
3	Otieno Ogolla & c0. adv	2,500,000.00	2,500,000.00	0
4	NK MUGO CO. & Advocates	2,000,000.00	2,000,000.00	0
5	Otieno Ogolla & c0. adv	2,250,000.00	2,250,000.00	0
6	NK MUGO CO. & Advocates	2,000,000.00	2,000,000.00	0
7	O.N MAKAU \$ MULEI AD	2,250,000.00	2,250,000.00	0
8	O.N MAKAU \$ MULEI AD	1,450,000.00	1,450,000.00	0
		1,250,000.00	1,250,000.00	0

Financial Year	2018/2019			
S/NO:	Name of the Law Firm	Gross amount for the legal services (Kshs.)	Amount Paid (Kshs.)	Balance Due (Kshs.)
1	ON. Makau & Mulei			
2	ON. Makau & Mulei	3,426,000.00	3,426,000.00	0
3	Mulondo	1,977,000.00	1,977,000.00	0
4	Mulondo	1,500,000.00	1,500,000.00	0
5	ON. Makau & Mulei	1,500,000.00	1,500,000.00	0
		2,000,000.00	2,000,000.00	0

OFFICE OF THE CLERK
COUNTY ASSEMBLY OF MAKUENI
08 JUL 2024
P.O. Box 572-90300.

Financial Year	2019/2020			
S/NO:	Name of the Law Firm	Gross amount for the legal services	Amount Paid	Balance Due
		(Kshs.)	(Kshs.)	(Kshs.)
1	MULUNDO OUNDO MURIUKI AND CO. ADVOC	2,567,320.00	2,567,320.00	0
2	NYAMU AND NYAMU CO. ADVOCATES	2,800,000.00	2,800,000.00	0
3	O.N Makau & Mulei	5,500,000.00	5,500,000.00	0

Financial Year	2020/2021			
S/NO:	Name of the Law Firm	Gross amount for the legal services	Amount Paid	Balance Due
		(Kshs.)	(Kshs.)	(Kshs.)
1	ON Makau & Mulei Advocate	2,223,000.00	2,223,000.00	2,223,000
2	Mutuku Wambua and Associate	2,250,000.00	2,250,000.00	0
3	Ngugi and company Advocate	3,944,000.00	3,944,000.00	3,944,000
4	ON Makau & Mulei Advocate	1,250,000.00	1,250,000.00	0
5	Caroline Oduor and Associate	998,000.00	998,000.00	0
6	Stanley Nthiwa and Advocate	58,000.00	58,000.00	0
7	Stanley Nthiwa and Advocate	2,050,000.00	2,050,000.00	0

Financial Year	2021/2022			
S/NO:	Name of the Law Firm	Gross amount for the legal services	Amount Paid	Balance Due
		(Kshs.)	(Kshs.)	(Kshs.)
1	Stanley Nthiwa and CO. Advocates	2,000,050.00	2,000,050.00	0

OFFICE OF THE CLERK
COUNTY ASSEMBLY OF MAKUENI

08 JUL 2024

P.O. Box 572-90300,
MAKUENI.

Financial Year	2022/2023			
	Name of the Law Firm	Gross amount for the legal services (Kshs.)	Amount Paid (Kshs.)	Balance Due (Kshs.)
S/NO:				
1	JUDAH KIOKO AND COMPANY ADVOCATES	4,400,000.00	4,400,000.00	4,400,000
2	Mutuku Wambua & Associates	2,250,000.00	2,250,000.00	0
3	O.N Makau and Mulei Advocates	1,977,000.00	1,977,000.00	0

Financial Year	2023/2024			
	Name of the Law Firm	Gross amount for the legal services (Kshs.)	Amount Paid (Kshs.)	Balance Due (Kshs.)
S/NO:				
1	O.N Makau and Mulei Advocates	2,500,000.00	2,500,000.00	2,500,000
2	O.N Makau and Mulei Advocates	1,875,000.00	1,875,000.00	1,875,000

OFFICE OF THE CLERK
COUNTY ASSEMBLY OF MAKUENI

08 JUL 2024

P.O. Box 572-90300,
MAKUENI.

122-

COUNTY GOVERNMENT OF NYERI

Handwritten notes: HSD - G...
L... - D...
Kindly Seal
15/10/2024



Town Hall - 1st Floor Along Kenyatta Road
PO Box 1112-10100
Telephone 0161 2030700
NYERI.
Email: nyericountyattorney@gmail.com

OFFICE OF THE COUNTY ATTORNEY

REF: CGN/LEGAL/IV/GENERAL/VIII/88

12TH OCTOBER 2024

To:
✓ J.M. Nyegenye, CBS.
Clerk of the Senate
Parliament Buildings
NAIROBI



Advance copy via e-mail

RE: PETITION ON RESTRAINING COUNTY GOVERNMENTS FROM HIRING LAW FIRMS TO REPRESENT COUNTY GOVERNMENTS IN COURT CASES

The above subject, your letter dated 4th October 2024 (RE: SEN/DGAC/DEVIR/JLAHRC/2024/014) and other correspondences referenced in the same refer.

Further reference is made to the fact, as submitted by the Council of Governors, that there is a discrepancy in the remuneration of Counsel working in the county governments vi-a-vis their counterparts in the national government, hence the challenge in retaining in house legal counsel as a result of a more competitive job market.

Brief

In its letter dated 17th September 2012 (REF:SRC/AG/VOL.1), the SRC rejected a request for harmonisation of terms and conditions of service for legal personnel in the public service, citing fiscal sustainability as a challenge to harmonisation. However, the Commission made considerations for legal counsel in the State Law Office and the Office of the Director of Public Prosecutions, to be paid State Counsel and Prosecutorial Allowances at rates ranging from Kes. 20,000/= to Kes. 50,000/=. (A copy of the **Circular from the SRC** is enclosed herewith as **Annexure 1**).

The Salaries and Remuneration Commission conducted the second phase Job Evaluation at National and County levels and issued recommendations; the same is effective 1st July 2024. A general view of the Circulars shows a general discrepancy in salaries payable to public officers at both levels of government. Enclosed herewith is a circular issued by the State Department for Public Service for the Third Remuneration Cycle dated 6th June 2024 (REF: MPSP&DM/9/1) and a Circular by the Salaries and Remuneration Commission on the Third Remuneration Cycle for County Government employees dated 12th September 2024 (SRC/TS/29 Vol. II (29) marked as **Annexure 2** and **3** respectively.

Enclosed also are advertisements for positions in the National and County governments at similar job groups but which show the former earning the following allowances:

- i. Non-practicing allowance;



- ii. Prosecutorial allowance;
- iii. Special legal allowance;
- iv. Salary Market Adjustment;
- v. Responsibility allowance (where applicable).

The advertisements are enclosed to this response as **Annexures 4-6** for the following positions:

- i. Internal advertisement for vacant posts in the Office of the Attorney General dated 9th June 2023;
- ii. Advertisement for vacant posts in the Office of the Attorney General with a closing date of 20th March 2024;
- iii. Advertisement for vacant positions in the County Government of Kiambu dated March 2024

A comparison of the same will show that no additional professional allowances are available to County Legal Counsel, despite them being advocates in the public service

Finally, reference is made to Nairobi **ELRC no 547 of 2018, Erastus Gitonga & 4 others v NEMA** where employees of the Respondent, who are Advocates of the High Court and were at the time serving as its Legal Officers, moved to the Employment and Labour Relations Court seeking payment of various outstanding sums of non-practising and prosecutorial allowance. They relied on the SRC Circular above-referenced and alleged infringement of their rights and unfair discrimination by the Respondent contrary to the principles of fair labour practices and equality. The court found that the actions by the Respondent in not paying the allowances was unlawful, wrongful and unfair; further that subjecting the claimants to unequal treatment amounted to discrimination and unfair labour practices by denying them the subject matter allowances. Few, if any, of the county governments have been unable to implement payment of allowances to county legal counsel, thus perpetuating unfair labour practices and affecting their ability to retain county legal counsel no thanks to a more competitive job market. (Enclosed herewith is the judgement marked as **Annexure 7**).

Enclosed as **Annexure 8** is an extract from the IPPD providing a list of job designations for officers in the Office of the County Attorney. Noteworthy, the same provides for a Deputy County Attorney at Job Group 'Q', which designation does not exist in the Act. The Act provides for a County Solicitor, who under Section 17 (3), shall be the principal assistant of the County Attorney in the execution of the functions of the County Attorney under the OCA Act and any other written law. By virtue of this mandate, the County Solicitor position should be at Job Group 'S', equivalent to a County Chief Officer; the justification being that the latter shall be responsible to the respective county executive committee member for the administration of a county department as provided under Section 45 (3) of the County Governments Act.

We opine that the actions by the SRC amount to promoting discrimination against County Legal Counsel by authorising different remuneration to the latter despite them performing similar tasks at similar job groups as their peers at the Office of Attorney General and the Office of the Director of Public Prosecutions. We note that this scenario does not exist for professionals such as doctors or engineers who earn similar remuneration at each job grade whether they work at National or county government(s).

Recommendations

Based on the foregoing, we opine that the above form the basis for consideration of improving terms and conditions of employment for county legal counsel to enable them provide better service


delivery and to achieve the SRC pillars on equal remuneration to persons for work of equal value and the need to ensure that public services are able to attract and retain the skills required to execute their functions.

It is therefore recommended that the Salaries and Remuneration Commission do hereby:

1. Approve payment of all allowances payable to Counsel at the Office of the Attorney General to County Legal Counsel, dependant on their job group(s);
2. Include a salary market adjustment for County Legal Counsel based on the just concluded Job Evaluation;
3. Introduce a County Legal Counsel Allowance similar to State Counsel Allowance and Prosecutorial Allowance.

It is our informed belief that the above measures will greatly assist county governments in reducing loss of talent to other state agencies hence leading to the over-reliance on outsourced legal counsel across the counties.

Yours faithfully,



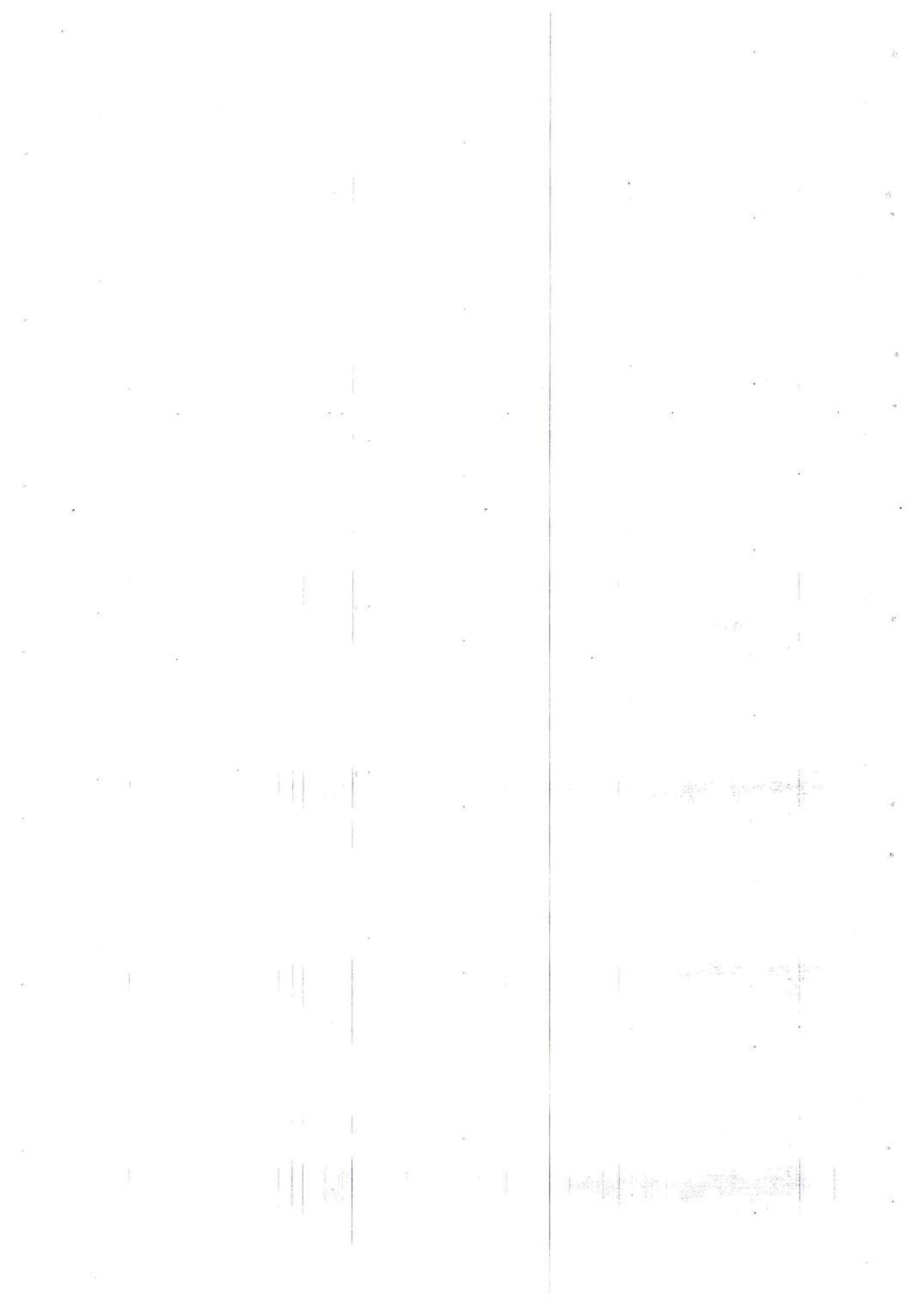
Kimani Rucuiya, ACI Arb
County Attorney – Nyeri County
CHAIRPERSON, COUNTY ATTORNEYS' FORUM

CC:

The Council of Governors,
Delta Corner, 2nd Floor, Opp PWC Chiromo Road, off Waiyaki Way,
Westlands
Nairobi County
P.O Box 40401-00100
NAIROBI

The Law Society of Kenya
Lavington, Opposite Valley Arcade,
Gitanga Road,
P.O Box 72219-00200
NAIROBI

The Salaries and Remuneration Commission,
Kilimani 4th Ngong Avenue Williamson House.
P.O Box 43126-00100
NAIROBI



SRC 001/ 09/2012

74

Salaries & Remuneration
Commission

Ref. No: SRC/AG/VOL.1

17th September, 2012 211

Mr Titus Ndambuki, CBS
Permanent Secretary
Ministry of State for Public Service
NAIROBI

Dear

HARMONIZATION OF TERMS AND CONDITIONS OF SERVICE FOR LEGAL PERSONNEL IN THE PUBLIC SERVICE

Reference is made to your letter Ref No. MSPS 10/5A Vol. III/(8) dated 13th June, 2012, subsequent letters and stakeholders consultative meetings, on the above subject.

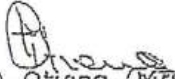
The request for Harmonization of Terms and Conditions of Service for Legal Personnel in the Public Service was presented to the Salaries and Remuneration Commission during the 28th meeting held on 6th September, 2012. The Commission deliberated on the matter and decided and advise that it is not currently fiscally sustainable to harmonize remuneration package of the legal personnel in the Public Service. The Commission however advise that, as an interim measure, the legal personnel in State Law Office and the Office of the Director of Public Prosecution be paid State Counsel and Prosecutorial Allowance, respectively, at equivalent rates to Magistrates Allowances currently paid to the Magistrates cadres in the Judicial Service Commission, at positions equivalent to Job Groups K to T, awaiting Job Evaluation results. The rates of allowances to range between Kshs. 30,000 and Kshs. 50,000 per month, as shown in Table 1 below.

Table 1: State Counsel/Prosecutorial Allowance

Grades	JG	State Counsel Allowance	Prosecutorial Allowance	
SL	DPP	Equiv. (kshs P.m.)	(kshs P.m.)	
SLG1	DPP10	K	30,000	30,000
SLG2	DPP9	L	30,000	30,000
SLG3	DPP8	M	30,000	30,000
SLG4	DPP7	N	30,000	30,000
SLG5	DPP6	P	30,000	30,000
SLG6	DPP5	O	30,000	30,000
SLG7	DPP4	R	40,000	40,000
SLG8	DPP3	S	40,000	40,000
SLG9	DPP2	T	50,000	50,000

The purpose of this letter therefore, is to convey the decision and advice of the Salaries and Remuneration Commission on the request for Harmonization of Terms and Conditions of Service for Legal Personnel in the Public Service, for your further necessary action.

Yours sincerely,


G. A. Otieno, (Mrs.) MBS,
COMMISSION SECRETARY

C.C:

Mr. Wanjuki Muchemi, CBS
Solicitor General
State Law Office
NAIROBI

✓ Mr. Keriako Tobiko
Director of Public Prosecutions
NAIROBI



REPUBLIC OF KENYA

**MINISTRY OF PUBLIC SERVICE, PERFORMANCE
AND DELIVERY MANAGEMENT**

STATE DEPARTMENT FOR PUBLIC SERVICE

**Implementation of Phase II Remuneration and
Benefits for the Civil Service in the National
Government for the Third Remuneration Review
Cycle 2021/2022 – 2024/2025**

Effective date: 1st July, 2024



**Implementation of Phase II Remuneration and
Benefits for the Civil Service in the National
Government for the Third Remuneration Review
Cycle 2021/2022 – 2024/2025**

Effective date: 1st July, 2024



REPUBLIC OF KENYA

MINISTRY OF PUBLIC SERVICE, PERFORMANCE AND DELIVERY MANAGEMENT
STATE DEPARTMENT FOR PUBLIC SERVICE
OFFICE OF THE PRINCIPAL SECRETARY

Telegraphic address: "Personnel", Nairobi
Telephone: Nairobi 2227411
Telex: 23125
Fax: 243620
When Replying Please quote

P.O. Box 30050-00100
NAIROBI

Ref. No. MPSP&DM/9/1

6th June, 2024

All Principal Secretaries / Accounting Officers

The Auditor General

The Controller of Budget

All County Commissioners (*with sufficient copies for Deputy County Commissioners*)

Implementation of Phase II Remuneration and Benefits for the Civil Service in the National Government for the Third Remuneration Review Cycle 2021/2022 – 2024/2025

1. The Salaries and Remuneration Commission (SRC) has advised on Implementation of the Remuneration and Benefits for the Civil Service in the National Government for the Third Remuneration Review Cycle 2021/2022 – 2024/2025. The review has been implemented in two phases taking cognizance of the overall affordability within a sustainable Fiscal Framework.
2. The Government implemented Phase I of the review in the 2023/2024 Financial Year with effect from **1st July, 2023**.
3. Phase II of the New Basic Salaries and Salary Scales, which form **Appendix I and II** to this Circular, will be implemented for Civil Servants in CSG17 to CSG4 with effect from **1st July, 2024**.
4. Phase II of the reviewed House Allowance which form **Appendix III** to this Circular, will be implemented for Civil Servants in CSG17 to CSG4 with effect from **1st July, 2024**.
5. All employees being paid House Allowance for cluster 4 category will adopt Cluster 3 rates.



6. House Allowance for cluster 4 category will cease to apply with effect from **1st July, 2024.**

To whom Applicable

7. The new Basic Salaries and House Allowance will apply to Civil Servants in the National Government in CSG17 to CSG4, who will be in the Service on or after **1st July, 2024.**

Conversion of Salaries

8. Conversion of basic salaries and house allowance will be processed automatically through the Integrated Payroll and Personnel Database (IPPD) System. Heads of Human Resource Management and Development Units in Ministries/Departments should verify the conversions immediately in order to ensure that any detected errors are corrected promptly.

Incremental dates

9. Officers will retain their current incremental dates. Where the incremental date falls on 1st July, 2024, officers will be granted their annual increment on the existing salary scales before their salaries are converted to the new basic salary points with effect from the same date, i.e. 1st July, 2024. In case, the review has provided for additional salary point(s) beyond the current maximum salary point, officers currently serving on the maximum salary point and whose incremental date fall on 1st July, 2024 will be granted an annual increment after conversion.
10. Other existing terms and conditions of service will continue to apply.


Anfos N. Gathecha, EBS, 'ndc'(K)
PRINCIPAL SECRETARY

Copy to:

The Chief of Staff and Head of the Public Service
Executive Office of the President
NAIROBI



The Cabinet Secretary
Ministry of Public Service, Performance and Delivery Management
NAIROBI

The Principal Secretary
The National Treasury
NAIROBI

The Secretary/CEO
Public Service Commission
NAIROBI

The Secretary/CEO
Salaries and Remuneration Commission
NAIROBI

The Pensions Secretary
Pensions Department
The National Treasury
NAIROBI



APPENDIX I

LIST OF CIVIL SERVICE GRADES (CSG) AND NEW SALARY SCALES FOR THE CIVIL SERVICE

CSG17:

Ksh.16,920 x 250 - 17,170 x 300 - 17,470 x 320 - 17,790 x 460 - 18,250 x 510 - 18,760 x 580 - 19,340 x 580 - 19,920 p.m.

CSG16:

Ksh.18,250 x 510 - 18,760 x 580 - 19,340 x 580 - 19,920 x 640 - 20,560 x 680 - 21,240 x 700 - 21,940 x 780 - 22,720 p.m.

CSG15:

Ksh.19,340 x 580 - 19,920 x 640 - 20,560 x 680 - 21,240 x 700 - 21,940 x 780 - 22,720 x 800 - 23,520 x 950 - 24,470 p.m.

CSG14:

Ksh.20,560 x 680 - 21,240 x 700 - 21,940 x 780 - 22,720 x 800 - 23,520 x 950 - 24,470 x 950 - 25,420 x 1,040 - 26,460 p.m.

CSG13:

Ksh.25,420 x 1,040 - 26,460 x 1,070 - 27,530 x 1,090 - 28,620 x 1,110 - 29,730 x 1,120 - 30,850 x 1,150 - 32,000 x 1,170 - 33,170 p.m.

CSG12:

Ksh.28,620 x 1,110 - 29,730 x 1,120 - 30,850 x 1,150 - 32,000 x 1,170 - 33,170 x 1,250 - 34,420 x 1,300 - 35,720 x 1,380 - 37,100 p.m.

CSG11:

Ksh.34,420 x 1,300 - 35,720 x 1,380 - 37,100 x 1,390 - 38,490 x 1,460 - 39,950 x 1,470 - 41,420 x 1,470 - 42,890 x 1,520 - 44,410 x 1,710 - 46,120 p.m.

CSG10:

Ksh.41,420 x 1,470 - 42,890 x 1,520 - 44,410 x 1,710 - 46,120 x 1,920 - 48,040 x 2,000 - 50,040 x 2,290 - 52,330 x 2,350 - 54,680 x 2,550 - 57,230 p.m.



CSG9:

Ksh.46,120 x 1,920 - 48,040 x 2,000 - 50,040 x 2,290 - 52,330 x 2,350 - 54,680 x 2,550 - 57,230 x 2,850 - 60,080 x 2,850 - 62,930 x 2,930 - 65,860 p.m.

CSG8:

Ksh.52,330 x 2,350 - 54,680 x 2,550 - 57,230 x 2,850 - 60,080 x 2,850 - 62,930 x 2,930 - 65,860 x 3,080 - 68,940 x 3,540 - 72,480 x 3,690 - 76,170 x 3,890 - 80,060 x 3,900 - 83,960 x 4,010 - 87,970 x 4,060 - 92,030 x 4,100 - 96,130 p.m.

CSG7:

Ksh.92,030 x 4,100 - 96,130 x 4,520 - 100,650 x 4,920 - 105,570 x 5,070 - 110,640 x 5,300 - 115,940 x 5,560 - 121,500 x 5,840 - 127,340 x 6,070 - 133,410 p.m.

CSG6:

Ksh.105,570 x 5,070 - 110,640 x 5,300 - 115,940 x 5,560 - 121,500 x 5,840 - 127,340 x 6,070 - 133,410 x 6,380 - 139,790 x 6,570 - 146,360 x 6,770 - 153,130 x 6,960 - 160,090 x 7,160 - 167,250 x 7,820 - 175,070 x 7,820 - 182,890 p.m.

CSG5:

Ksh.146,360 x 6,770 - 153,130 x 6,960 - 160,090 x 7,160 - 167,250 x 7,820 - 175,070 x 7,820 - 182,890 x 13,680 - 196,570 x 14,980 - 211,550 x 15,260 - 226,810 x 18,190 - 245,000 x 21,750 - 266,750 p.m.

CSG4:

Ksh.182,890 x 13,680 - 196,570 x 14,980 - 211,550 x 15,260 - 226,810 x 18,190 - 245,000 x 21,750 - 266,750 x 21,940 - 288,690 x 24,990 - 313,680 x 26,100 - 339,780 x 26,100 - 365,880 p.m.



APPENDIX II

CONVERSION TABLE NO. 1

CSG17

Current Salary Scale: Ksh.15,580 x 250 – 15,830 x 300 – 16,130 x 320 – 16,450 x 460 – 16,910 x 510 – 17,420 p.m.

New Salary Scale: Ksh.16,920 x 250 - 17,170 x 300 - 17,470 x 320 - 17,790 x 460 - 18,250 x 510 - 18,760 x 580 - 19,340 x 580 - 19,920 p.m.

Current Salary Ksh. p.m.	New Salary Ksh. p.m.
15,580	16,920
15,830	17,170
16,130	17,470
16,450	17,790
16,910	18,250
17,420	18,760
-	19,340
-	19,920



CONVERSION TABLE NO. 2

CSG16

Current Salary Scale: Ksh.16,910 x 510 – 17,420 x 580 – 18,000 x 580 – 18,580 x 640 – 19,220 p.m.

New Salary Scale: Ksh.18,250 x 510 - 18,760 x 580 - 19,340 x 580 - 19,920 x 640 - 20,560 x 680 - 21,240 x 700 - 21,940 x 780 - 22,720 p.m.

Current Salary Ksh. p.m.	New Salary Ksh. p.m.
16,910	18,250
17,420	18,760
18,000	19,340
18,580	19,920
19,220	20,560
-	21,240
-	21,940
-	22,720



CONVERSION TABLE NO. 3

CSG15

Current Salary Scale: Ksh.18,000 x 580 – 18,580 x 640 – 19,220 x 680 – 19,900 p.m.

New Salary Scale: Ksh.19,340 x 580 - 19,920 x 640 - 20,560 x 680 - 21,240 x 700 - 21,940 x 780 - 22,720 x 800 - 23,520 x 950 - 24,470 p.m.

Current Salary Ksh. p.m.	New Salary Ksh. p.m.
18,000	19,340
18,580	19,920
19,220	20,560
19,900	21,240
-	21,940
-	22,720
-	23,520
-	24,470



CONVERSION TABLE NO. 4

CSG14

Current Salary Scale: Ksh.19,220 x 680 – 19,900 x 700 – 20,600 x 780 – 21,380 x 800 – 22,180 x 950 – 23,130 p.m.

New Salary Scale: Ksh.20,560 x 680 - 21,240 x 700 - 21,940 x 780 - 22,720 x 800 - 23,520 x 950 - 24,470 x 950 - 25,420 x 1,040 - 26,460 p.m.

Current Salary Ksh. p.m.	New Salary Ksh. p.m.
19,220	20,560
19,900	21,240
20,600	21,940
21,380	22,720
22,180	23,520
23,130	24,470
	25,420
	26,460



CONVERSION TABLE NO. 5

CSG13

Current Salary Scale: Ksh.23,700 x 1,040 – 24,740 x 1,070 – 25,810 x 1,090 – 26,900 x 1,110 – 28,010 x 1,120 – 29,130 x 1,150 – 30,280 x 1,170 – 31,450 p.m.

New Salary Scale: Ksh.25,420 x 1,040 - 26,460 x 1,070 - 27,530 x 1,090 - 28,620 x 1,110 - 29,730 x 1,120 - 30,850 x 1,150 - 32,000 x 1,170 - 33,170 p.m.

Current Salary Ksh. p.m.	New Salary Ksh. p.m.
23,700	25,420
24,740	26,460
25,810	27,530
26,900	28,620
28,010	29,730
29,130	30,850
30,280	32,000
31,450	33,170



CONVERSION TABLE NO. 6

CSG12

Current Salary Scale: Ksh.26,900 x 1,110 - 28,010 x 1,120 - 29,130 x 1,150 - 30,280 x 1,170 - 31,450 x 1,250 - 32,700 x 1,300 - 34,000 x 1,380 - 35,380 p.m.

New Salary Scale: Ksh.28,620 x 1,110 - 29,730 x 1,120 - 30,850 x 1,150 - 32,000 x 1,170 - 33,170 x 1,250 - 34,420 x 1,300 - 35,720 x 1,380 - 37,100 p.m.

Current Salary Ksh. p.m.	New Salary Ksh. p.m.
26,900	28,620
28,010	29,730
29,130	30,850
30,280	32,000
31,450	33,170
32,700	34,420
34,000	35,720
35,380	37,100



CONVERSION TABLE NO. 7

CSG11

Current Salary Scale: Ksh.32,700 x 1,300 – 34,000 x 1,380 – 35,380 x 1,390 – 36,770 x 1,460 – 38,230 x 1,470 – 39,700 x 1,470 – 41,170 x 1,520 – 42,690 p.m.

New Salary Scale: Ksh.34,420 x 1,300 - 35,720 x 1,380 - 37,100 x 1,390 - 38,490 x 1,460 - 39,950 x 1,470 - 41,420 x 1,470 - 42,890 x 1,520 - 44,410 x 1,710 - 46,120 p.m.

Current Salary Ksh. p.m.	New Salary Ksh. p.m.
32,700	34,420
34,000	35,720
35,380	37,100
36,770	38,490
38,230	39,950
39,700	41,420
41,170	42,890
42,690	44,410
-	46,120



CONVERSION TABLE NO. 8

CSG10

Current Salary Scale:

Ksh.39,700 x 1,470 – 41,170 x 1,520 – 42,690 x 1,710 –
44,400 x 1,920 – 46,320 x 2,000 – 48,320 x 2,290 – 50,610
x 2,350 – 52,960 p.m.

New Salary Scale:

**Ksh.41,420 x 1,470 - 42,890 x 1,520 - 44,410 x 1,710
- 46,120 x 1,920 - 48,040 x 2,000 - 50,040 x 2,290 -
52,330 x 2,350 - 54,680 x 2,550 - 57,230 p.m.**

Current Salary Ksh. p.m.	New Salary Ksh. p.m.
39,700	41,420
41,170	42,890
42,690	44,410
44,400	46,120
46,320	48,040
48,320	50,040
50,610	52,330
52,960	54,680
-	57,230



CONVERSION TABLE NO. 9

CSG9

Current Salary Scale: Ksh.44,400 x 1,920 – 46,320 x 2,000 – 48,320 x 2,290 – 50,610 x 2,350 – 52,960 x 2,550 – 55,510 x 2,850 – 58,360 x 2,750 – 61,110 p.m.

New Salary Scale: Ksh.46,120 x 1,920 - 48,040 x 2,000 - 50,040 x 2,290 - 52,330 x 2,350 - 54,680 x 2,550 - 57,230 x 2,850 - 60,080 x 2,850 - 62,930 x 2,930 - 65,860 p.m.

Current Salary Ksh. p.m.	New Salary Ksh. p.m.
44,400	46,120
46,320	48,040
48,320	50,040
50,610	52,330
52,960	54,680
55,510	57,230
58,360	60,080
61,110	62,930
	65,860



CONVERSION TABLE NO. 10

CSG8

Current Salary Scale: Ksh. 50,610 x 2,350 – 52,960 x 2,550 – 55,510 x 2,850 – 58,360 x 2,750 – 61,110 x 2,920 – 64,030 x 3,080 – 67,110 x 3,540 – 70,650 x 3,690 – 74,340 x 3,890 – 78,230 x 3,900 – 82,130 x 4,010 – 86,140 x 4,060 – 90,200 p.m.

New Salary Scale: Ksh. 52,330 x 2,350 - 54,680 x 2,550 - 57,230 x 2,850 - 60,080 x 2,850 - 62,930 x 2,930 - 65,860 x 3,080 - 68,940 x 3,540 - 72,480 x 3,690 - 76,170 x 3,890 - 80,060 x 3,900 - 83,960 x 4,010 - 87,970 x 4,060 - 92,030 x 4,100 - 96,130 p.m.

Current Salary Ksh. p.m.	New Salary Ksh. p.m.
50,610	52,330
52,960	54,680
55,510	57,230
58,360	60,080
61,110	62,930
64,030	65,860
67,110	68,940
70,650	72,480
74,340	76,170
78,230	80,060
82,130	83,960
86,140	87,970
90,200	92,030
-	96,130



CONVERSION TABLE NO. 11

CSG7

Current Salary Scale: Ksh.90,200 x 3,220 – 93,420 x 4,520 – 97,940 x 4,920 – 102,860 x 5,070 – 107,930 x 5,300 – 113,230 x 5,560 – 118,790 x 5,840 – 124,630 p.m.

New Salary Scale: Ksh.92,030 x 4,100 - 96,130 x 4,520 - 100,650 x 4,920 - 105,570 x 5,070 - 110,640 x 5,300 - 115,940 x 5,560 - 121,500 x 5,840 - 127,340 x 6,070 - 133,410 p.m.

Current Salary Ksh. p.m.	New Salary Ksh. p.m.
90,200	92,030
93,420	96,130
97,940	100,650
102,860	105,570
107,930	110,640
113,230	115,940
118,790	121,500
124,630	127,340
-	133,410



CONVERSION TABLE NO. 12

CSG6

Current Salary Scale: Ksh.102,860 x 5,070 – 107,930 x 5,300 – 113,230 x 5,560 – 118,790 x 5,840 – 124,630 x 6,070 – 130,700 x 6,370 – 137,070 x 6,570 – 143,640 x 6,770 – 150,410 x 6,960 – 157,370 x 7,160 – 164,530 x 7,820 – 172,350 p.m.

New Salary Scale: Ksh.105,570 x 5,070 - 110,640 x 5,300 - 115,940 x 5,560 - 121,500 x 5,840 - 127,340 x 6,070 - 133,410 x 6,380 - 139,790 x 6,570 - 146,360 x 6,770 - 153,130 x 6,960 - 160,090 x 7,160 - 167,250 x 7,820 - 175,070 x 7,820 - 182,890 p.m.

Current Salary Ksh. p.m.	New Salary Ksh. p.m.
102,860	105,570
107,930	110,640
113,230	115,940
118,790	121,500
124,630	127,340
130,700	133,410
137,070	139,790
143,640	146,360
150,410	153,130
157,370	160,090
164,530	167,250
172,350	175,070
-	182,890



CONVERSION TABLE NO. 13

CSG5

Current Salary Scale: Ksh.143,640 x 6,770 – 150,410 x 6,960 – 157,370 x 7,160 –
164,530 x 7,820 – 172,350 x 7,810 – 180,160 x 13,680 –
193,840 x 14,980 – 208,820 x 15,260 – 224,080 x 18,190 –
242,270 x 20,150 – 262,420 p.m.

**New Salary Scale: Ksh.146,360 x 6,770 - 153,130 x 6,960 - 160,090 x 7,160
- 167,250 x 7,820 - 175,070 x 7,820 - 182,890 x 13,680 -
196,570 x 14,980 - 211,550 x 15,260 - 226,810 x 18,190
- 245,000 x 21,750 - 266,750 p.m.**

Current Salary Ksh. p.m.	New Salary Ksh. p.m.
143,640	146,360
150,410	153,130
157,370	160,090
164,530	167,250
172,350	175,070
180,160	182,890
193,840	196,570
208,820	211,550
224,080	226,810
242,270	245,000
262,420	266,750



CONVERSION TABLE NO. 14

CSG4

Current Salary Scale: Ksh.180,160 x 13,680 – 193,840 x 14,980 – 208,820 x 15,260 – 224,080 x 18,190 – 242,270 x 20,150 – 262,420 x 21,940 – 284,360 x 24,990 – 309,350 x 26,100 – 335,450 p.m.

New Salary Scale: Ksh.182,890 x 13,680 - 196,570 x 14,980 - 211,550 x 15,260 - 226,810 x 18,190 - 245,000 x 21,750 - 266,750 x 21,940 - 288,690 x 24,990 - 313,680 x 26,100 - 339,780 x 26,100 - 365,880 p.m.

Current Salary Ksh. p.m.	New Salary Ksh. p.m.
180,160	182,890
193,840	196,570
208,820	211,550
224,080	226,810
242,270	245,000
262,420	266,750
284,360	288,690
309,350	313,680
335,450	339,780
-	365,880



APPENDIX III

REVIEWED HOUSE ALLOWANCE FOR CIVIL SERVICE IN THE NATIONAL GOVERNMENT

CSG	Job Group Equivalent	Cluster 1	Cluster 2	Cluster 3	Cluster 4
CSG 4	T	80,000	80,000	80,000	80,000
CSG 5	S	60,000	56,000	52,000	52,000
CSG 6	R	50,000	35,000	25,000	25,000
CSG 7	P	45,000	28,000	21,000	21,000
CSG 8	N	35,000	25,500	18,000	18,000
CSG 9	L	28,000	22,000	16,500	16,500
CSG 10	K	16,500	12,800	9,600	9,600
CSG 11	J	10,000	7,500	5,800	5,800
CSG 12	H	6,750	4,500	3,850	3,850
CSG 13	G	6,750	4,500	3,850	3,850
CSG 14	F	4,500	3,730	3,000	3,000
CSG 15	E	4,500	3,730	2,960	2,960
CSG 16	D	4,125	3,375	2,750	2,750
CSG 17	C	3,750	3,125	2,500	2,500

Note:

Cluster 1: Nairobi City.

Cluster 2: Mombasa, Kisumu and Nakuru cities, Nyeri, Eldoret, Thika, Kisii, Malindi and Kitale municipalities.

Cluster 3: Other Former municipalities.

Cluster 4: All other areas.



Salaries & Remuneration
Commission
Rewarding productivity

Ref. No: SRC/TS/29 Vol. II (29)

12th September, 2024

All County Governors

All County Secretaries

All Secretaries County Public Service Boards

REMUNERATION AND BENEFITS FOR THE COUNTY GOVERNMENT EMPLOYEES AT THE EXECUTIVE FOR THE THIRD REMUNERATION REVIEW CYCLE 2021/2022 – 2024/2025

Reference is made to the Salaries and Remuneration Commission (SRC) letters Ref. No. SRC/TS/29 (81) dated 10th August, 2023 on the above subject and Ref. No. SRC/TS/24 (61) dated 16th July, 2024 on remuneration and benefits review for 2021/2022 – 2024/2025 for all other public officers.

The SRC in its 638th meeting held on 9th September, 2024 deliberated on remuneration and benefits for public officers in the County Executive for the FY 2024/2025 and hereby advises on the review of remuneration structure for public officers (non-State Officers) in the County Government as shown in the Table.

The remuneration structure advised herein takes into account the principle of equity and fairness and is to be implemented by county governments with effect from 1st July 2024, **subject to affordability and fiscal sustainability of the resultant cost implication.**

Table: Approved Remuneration Structure for County Government to be implemented w.e.f. 1st July, 2024

County Grades			Basic Salary		Monthly Allowances					Gross Salary (Nairobi)	
Rem. Grade	Salary Grade	JG Equiv.	Min.	Max.	House: Nairobi	House: Cluster 2	House: Cluster 3	House: Cluster 4	Com muter	Min.	Max.
E1	CPSB 02	S	139,790	211,550	60,000	56,000	52,000	52,000	20,000	219,790	291,550
D4	CPSB 03	R	127,340	182,890	50,000	35,000	25,000	25,000	16,000	193,340	248,890
D3	CPSB 04	Q	105,570	139,790	45,000	28,000	21,000	21,000	14,000	164,570	198,790
D2	CPSB 05	P	92,030	133,410	45,000	28,000	21,000	21,000	12,000	149,030	190,410
C5	CPSB 06	N	60,080	96,130	35,000	25,500	18,000	18,000	8,000	103,080	139,130
C4	CPSB 07	M	52,330	68,940	28,000	22,000	16,500	16,500	8,000	88,330	104,940
C3	CPSB 08	L	46,120	65,860	28,000	22,000	16,500	16,500	6,000	80,120	99,860
C2	CPSB 09	K	41,420	57,230	16,500	12,800	9,600	9,600	5,000	62,920	78,730
C1	CPSB 10	J	34,420	46,120	10,000	7,500	5,800	5,800	4,000	48,420	60,120
B5	CPSB 11	H	28,620	37,100	6,750	4,500	3,850	3,850	4,000	39,370	47,850
B4	CPSB 12	G	25,420	33,170	6,750	4,500	3,850	3,850	4,000	36,170	43,920
B3	CPSB 13	F	20,560	26,460	4,500	3,730	3,000	3,000	3,000	28,060	33,960
B2	CPSB 14	E	19,340	24,470	4,500	3,730	2,960	2,960	3,000	26,840	31,970
B1	CPSB 15	D	18,250	22,720	4,125	3,375	2,750	2,750	3,000	25,375	29,845
A3	CPSB 16	C	16,920	19,920	3,750	3,125	2,500	2,500	3,000	23,670	26,670
A3	CPSB 17	B	16,620	17,470	3,750	3,125	2,500	2,500	3,000	23,370	24,220

Note: Cluster 1: Nairobi City. **Cluster 2:** Mombasa, Kisumu and Nakuru cities, Nyeri, Eldoret, Thika, Kisii, Malindi and Kitale municipalities. **Cluster 3:** Other Former municipalities. **Cluster 4:** All other areas.

Implementation Notes:

1. Place County Executive jobs in the rightful job evaluation grades, salary structure and annual basic salary progression notches.
2. The House allowance provided in the **Table** is to be paid to public officers in the County Executive serving in the respective clusters.
3. Commuter Allowance to be retained at current rates as shown in the **Table**.
4. The salary structure for unionizable staff to be implemented through the Collective Bargaining Negotiations process.
5. The job group CPSB 17 and CPSB 18 have been merged into CPSB 17 since their relative worth as determined through job evaluation is equal.
6. Early Childhood Development Education (ECDE) teachers to be placed within the remuneration structure advised herein.
7. A County employee from the defunct Local Authorities may voluntarily opt to be placed on the remuneration structure advised herein that is applicable to the employees absorbed from the National Government and those recruited by the County Government. Such an employee who opts to adopt the remuneration structure under reference, shall do so voluntarily and in so doing forfeit all remuneration and benefits obtaining in the defunct Local Authority.
8. This letter supersedes any other advice on remuneration structure for County Executive on the remunerative items provided herein that are currently in use.

The purpose of this letter, therefore, is to convey the Commission's advice for your necessary action.

Yours


Mrs. Anne R. Gitau, EBS
COMMISSION SECRETARY/CEO

Copy to: Mr. Amos N. Gathecha, EBS, ndc (K)
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State Department for Public Service
P.O. Box 30050-00100
Harambe House
NAIROBI

Dr. Chris K. Kiptoo, CBS
Principal Secretary
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FCPA Nancy Gathungu
Auditor General
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Controller of Budget
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Bima House, Harambee Avenue
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CPA James Katule
Commission Secretary/ CEO
Commission on Revenue Allocation
14 Riverside Drive, Grosvenor Suite, 2nd Floor.
P.O. Box 1310 - 00200
NAIROBI

Ms. Mary Mwiti
Chief Executive Officer
Council of Governors
P.O. Box 40401-00100
NAIROBI



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY GENERAL
AND
DEPARTMENT OF JUSTICE

VACANT POSTS

The Office of the Attorney General is established under Article 156 of the Constitution and governed by the Office of the Attorney General Act No. 49 of 2012.

Pursuant to Article 156 of the Constitution, Sections 3&4 of the Office of the Attorney General Act No. 49 of 2012, applications are invited from suitably qualified serving officers in the Public Service for the following vacant posts in the Office of the Attorney General and Department of Justice.

Designation	Reference Number	J/G	CSG	No. of Posts
Senior Deputy Solicitor General	Advert No. 1 of 2023	U	CSG3	3
Deputy Solicitor General	Advert No. 2 of 2023	T	CSG4	12
Chief State Counsel	Advert No. 3 of 2023	S	CSG5	8
Deputy Chief State Counsel	Advert No. 4 of 2023	R	CSG4	83

Interested and qualified persons are requested to make their applications by completing ONE application form PSC 2 (Revised 2016). The form may be downloaded from Public Service Commission website www.publicservice.go.ke.

Detailed job descriptions and other requirements to be obtained at the Office of the Attorney General and Department of Justice website: statelaw.go.ke

Applications should be scanned (PDF) and emailed to recruit2023@ag.go.ke or hand delivery or sent to the postal address below on or before the 30th June 2023 to be received by 5.00 p.m.

The Solicitor General
Office of The Attorney General
and
Department of Justice
Sheria House, 8th Floor Room 802
Harambee Avenue
P.O. Box 40112,00100
NAIROBI

The Office of the Attorney General and Department of Justice is an equal employer committed to diversity and gender equality within the organization and therefore encourages persons with disability, women, youth and those from marginalized areas to apply.

Any form of canvassing shall lead to automatic disqualification



REPUBLIC OF KENYA
OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

AG/CONF/4/159/30/VOL II

9th June 2023

All Principal Secretaries / Authorized Officers
The Secretary / Chief Executive Officer, PSC (K)
CEOs of State Corporations / State Agencies
The Comptroller of State House
The Inspector General of the National Police Service
The Director of Public Prosecutions
The Auditor General
The Controller of Budget
The County Secretaries

RE: INTERNAL ADVERTISEMENT OF VACANT POSTS

Pursuant to Article 156 of the Constitution of Kenya 2010, section 3 & 4 of the Office of the Attorney General (OAG) Act No. 49 of 2012, applications are invited from suitably qualified serving officers in the Public Service for the following vacant posts in the Office of the Attorney General and Department of Justice.

Designation	J/G	CSG	No. of Posts	Advert No
Senior Deputy Solicitor General	U	CSG3	3	No. 1/2023
Deputy Solicitor General	T	CSG4	12	No. 2/2023
Chief State Counsel	S	CSG5	8	No. 3/2023
Deputy Chief State Counsel	R	CSG6	83	No. 4/2023

Interested and qualified persons are requested to make their applications by completing ONE application form PSC 2 (Revised 2016). The form may be downloaded from Public Service Commission website www.publicservice.go.ke.

Please Note

- THE OFFICE OF THE ATTORNEY GENERAL AND DEPARTMENT OF JUSTICE IS COMMITTED TO AVAILING EQUAL EMPLOYMENT OPPORTUNITIES TO ALL KENYANS. PEOPLE WITH DISABILITIES, THE MARGINALIZED AND THE MINORITIES ARE ENCOURAGED TO APPLY.

- Candidates should not attach any documents to the application form. ALL the details requested in the advertisement should be filled on the form.
- Only shortlisted and successful candidates will be contacted.
- Canvassing in any form will lead to automatic disqualification.
- Shortlisted candidates shall be required to produce originals of their National Identity card, academic and professional certificates and transcripts during interviews.
- Serving officers shall be required to produce the original letter of appointment to their current substantive post during the interview and Head of Department Recommendation form (PSC 2A).

The Completed application form should reach:

THE SOLICITOR GENERAL

OFFICE OF THE ATTORNEY GENERAL AND DEPARTMENT OF JUSTICE

SHERIA HOUSE, HARAMBEE AVENUE

P. O Box 40112 - 00100

GPO, NAIROBI

OR

Hand delivered to Sheria House, Harambee Avenue, Nairobi - 8th floor, Room 808 (HRM Registry), on or before the 30th June 2023.

ADVERT No. 1/ 2023

SENIOR DEPUTY SOLICITOR GENERAL, JOB GROUP 'U' (CSG3) – 3 POSTS

Terms of Service – Permanent and Pensionable/Local Contract

Basic Salary Scale: Kshs. 292,765 X 19,320 - 312,085 X 21,055 - 333,140 X 22,950-335,690 X 25,015 - 406,120 X 30,000 - 436,120 X 35,000 - 576,120 p.m.

Allowances:

- Non-Practicing Allowance - Kshs. 40,000 p.m.
- Commuter Allowance - Kshs. 24,000 p.m. if not provided with office to house transport
- Special Legal Allowance - Kshs. 50,000 p.m.
- Entertainment Allowance - Kshs. 65,000 p.m.
- Leave Allowance - Kshs. 10,000 p.a.
- Leave Entitlement - 30 working days p.a.
- House Allowance - Kshs. 80,000 p.m.
- Extraneous Allowance - Kshs. 60,000 p.m.
- Domestic Servant Allowance - Kshs. 15,600 p.m.
- Robe Allowance - Kshs. 5,000 p.a.
- Medical Cover - As per National Government Medical Policy Cover for Civil Servants.

Requirements for Appointment:-

- 1) Must have served for a minimum period of Three (3) years in the grade of Deputy Solicitor General or a comparable and relevant grade in the Public Service
- OR
- Served for an accumulative period of Eighteen (18) years in the Public/Private Sector, three of which should be at the grade of Chief State Counsel or a comparable and relevant grade
- 2) Bachelor of Laws degree (LLB) from a recognized institution,
- 3) Post graduate Diploma in Law from the Kenya School of Law
- 4) A Postgraduate Certificate in Legislative Drafting where applicable
- 5) Qualified as an advocate of the High Court of Kenya
- 6) Certificate in Management/Leadership Course from a recognized institution
- 7) Member of the Law Society of Kenya
- 8) Proficiency in computer applications.

NOTE: Possession of a Masters of Laws degree or a Master's degree in a relevant Social Science from a university recognized in Kenya will be considered an added advantage.

Duties and Responsibilities

An officer at this level will be deployed as the Head of a Division at the headquarters. She / He will be responsible to the Attorney-General and the Solicitor-General for ensuring that the Division executes the constitutional, statutory and treaty mandates and functions of the Office. This will be done through representing the government in national, foreign and international courts; drafting of legislative proposals; registration of marriages, societies, books and newspapers; administration of estates of deceased persons and trusts; advising the Government on the regulation of the legal profession; advising Ministries, Departments and Agencies on all legal matters relating to the Constitution, international law, human rights, legislation, consumer protection and legal aid; negotiating, drafting, vetting and interpreting local and international documents, agreements and treaties; and coordinating Kenya's reporting obligations to regional and international human rights and anti-corruption treaty bodies.

A Senior Deputy Solicitor General is responsible for providing strategic leadership and direction in the implementation and coordination of the function in the respective Division. The Officer may be deployed to any of the following technical divisions; Civil Litigation, Legislative Drafting, Public Legal Service (consisting of Public Trustee and Registrar General Departments), Government Legal Services (consisting of International Law Division, Government Transactions and Legal Advisory & Research Division)

ADVERT No. 2/2023

DEPUTY SOLICITOR GENERAL, JOB GROUP 'T' (CSG4) – 12 Posts

Terms of Service – Permanent and Pensionable/Local Contract

Basic Salary: Kshs. 169,140 x 13,680 – 182,820 x 14,980 – 197,800 x 15,260 – 213,060 x 18,190 – 231,250 x 20,150 – 251,400 x 21,940 – 273,340 x 24,990 – 298,330 x 26,100 – 324,430 p.m.

Allowances:

- House Allowance - Kshs. 80,000 p.m.
- Commuter Allowance - Kshs. 24,000 p.m. if not provided with office to house transport
- Special legal allowance - Kshs 50,000 p.m.
- Non-Practicing Allowance - Kshs. 40,000 p.m.
- Entertainment allowance - Kshs. 65,000 p.m.
- Extraneous Allowance - Kshs. 60,000 p.m.
- Leave Allowance - Kshs. 10,000 p.a.
- Leave Entitlement - 30 working days p.a.
- Domestic Servant Allowance - Kshs. 15,600 p.m.
- Robe Allowance - Kshs. 5,000 p.a.
- Medical Cover - As per the National Government Medical Policy. for Civil Servants

Requirements for Appointment:-

- 1) Must have served for a minimum period of Three (3) years in the grade of Chief State Counsel or a comparable and relevant grade in the Public Service
OR
Served for accumulative period of Fifteen (15) years in the Public/Private Sector, three of which should be at the grade of Deputy Chief State Counsel or a comparable and relevant grade;
- 2) Bachelor of Laws degree (LLB) from a recognized institution,
- 3) Post graduate Diploma in Law from the Kenya School of Law
- 4) A Postgraduate Certificate in Legislative Drafting where appropriate
- 5) Qualified as an advocate of the High Court of Kenya
- 6) Certificate in Management/Leadership Course from a recognized institution
- 7) Member of the Law Society of Kenya
- 8) Proficiency in computer applications.

NOTE: Possession of a Masters of Laws degree or a Master's degree in a relevant Social Science from a university recognized in Kenya will be considered an added advantage.

JOB DESCRIPTION AND APPOINTMENT SPECIFICATIONS

An officer at this level will be deployed as a Head of a Department responsible to the Senior Deputy Solicitor-General. She / He will ensure that the Department executes the constitutional, statutory and treaty mandates and functions of the Office of the Attorney General and Department of Justice through representing the government in national, foreign and international courts; drafting of legislative proposals; registration of marriages, societies, books and newspapers; administration of estates of deceased persons and trusts; promotion of discipline among advocates and advising the Government on the regulation of the legal profession; Formulating policies on matters relating to human rights, good governance and anti- corruption, GJLOs Reform coordination: advising Ministries, Departments and Agencies on all legal matters relating to the Constitution, international law, human rights, legislation, consumer protection and legal aid; negotiating, drafting, vetting and interpreting local and international documents, agreements and treaties; and coordinating Kenya's reporting obligations to regional and international human rights and anti-corruption treaty bodies.

ADVERT No. 3/2023

CHIEF STATE COUNSEL, JOB GROUP 'S' (CSG5) – 8 POSTS

Terms of Service – Permanent and Pensionable

Basic Salary Scale – Kshs. 133,870 x 6,570 – 140,440 x 6,770 – 147,210 x 6,960 – 154,170 x 7,160 – 161,330 x 7,810 – 169,140 x 13,680 – 182,820 x 14,980 — 197,800 p.m.

Allowances:

- House Allowance - Kshs. 60,000 p.m.
- Special Legal Allowance - Kshs. 55,000 p.m.
- Non-Practicing Allowance - Kshs. 40,000 p.m.
- Commuter Allowance - Kshs. 20,000p.m.
- Responsibility Allowance - Kshs. 12,000 p.m.
- Entertainment Allowance - Kshs. 7,500 p.m.
- Leave Allowance - Kshs. 10,000 p.a.
- Leave Entitlement - 30 working days p.a.
- Salary Market Adjustment - Ksh. 18,400
- Medical Cover - As per the National Government Medical Policy for Civil Servants

Requirements for Appointment: -

- 1) Must have served for a minimum period of Three (3) years in the grade of Deputy Chief State Counsel or a comparable and relevant grade in the Public Service
OR
Served for accumulative period of Twelve (12) years in the Public Sector, three (3) of which should have been at the grade of Deputy Chief State Counsel or a comparable and relevant grade in the Public Service.
- 2) Bachelor of Laws degree (LLB) from a recognized institution,
- 3) Post graduate Diploma in Law from the Kenya School of Law
- 4) A Postgraduate Certificate in Legislative Drafting where appropriate
- 5) Qualified as an advocate of the High Court of Kenya
- 6) Certificate in Management/Leadership Course from a recognized institution
- 7) Member of the Law Society of Kenya
- 8) Proficiency in computer applications.

NOTE: Possession of a Masters of Laws degree or a Master's degree in a relevant Social Science from a university recognized in Kenya will be considered an added advantage.

Job Description and Appointment Specifications

An officer at this level will be deployed as a Head of Section responsible to Deputy Solicitor General for ensuring that the section executes the constitutional, statutory and treaty mandates and functions of the Office of the Attorney General and Department of Justice through representing the Government in national, foreign and international courts; drafting of legislative proposals; registration of marriages, societies, books and newspapers; administration of estates of deceased persons and trusts; promotion of discipline among advocates and advising the Government on the regulation of the legal profession; advising Ministries, Divisions and Agencies on all legal matters relating to the Constitution, international law, human rights, legislation, consumer protection and legal aid; negotiating, drafting, vetting and interpreting local and international documents, agreements and treaties; and coordinating Kenya's reporting obligations to international human rights and good governance treaty bodies

ADVERT No. 4/2023

DEPUTY CHIEF STATE COUNSEL, JOB GROUP 'R' (CSG6) – 83 POSTS

Terms of Service – Permanent and Pensionable

Basic Salary Scale – Kshs. 99,900 x 5,010 – 104,910 x 5,240 – 110,150 x 5,500 – 115,650 x 5,780 – 121,430 x 6,070 – 127,500 x 6,370 – 133,870 x 6,570 – 140,440 X 6,770 – 147,210 X 6,960 – 154,170 X 7,160 – 161,330 X 7,810 – 169,140 p.m.

Allowances:


- Special Legal Allowance - Kshs. 45,000 p.m.
- Non-Practicing Allowance - Kshs. 20,000 p.m.
- Commuter Allowance - Kshs. 16,000p.m.
- Responsibility Allowance - Kshs. 10,000 p.m.
- Entertainment Allowance - Kshs. 7,200 p.m.
- Leave Allowance - Kshs. 10,000 p.a.
- Leave Entitlement - 30 working days p.a.
- House Allowance - Depends with region deployed up to a maximum of Kshs. 50,000 p.m.
- Salary Market Adjustment - Ksh. 35,860
- Medical Cover - As per the National Government Medical Policy. for Civil Servants

Requirements for Appointment: -

- 1) Must have served for a minimum period of Three (3) years in the grade of Principal State Counsel or a comparable and relevant grade in the Public Service.
OR
Served for accumulative period of Nine (9) years in the Public Sector, three (3) of which should have been at the grade of Principal State Counsel or a comparable and relevant grade in the Public Service.
- 2) Bachelor of Laws Degree (LLB) from a recognized institution,
- 3) Post graduate Diploma in Law
- 4) A Postgraduate Certificate in Legislative Drafting where appropriate
- 5) Qualified as Advocate of the High Court of Kenya
- 6) Certificate in Management Course lasting not less than four (4) weeks from a recognized institution
- 7) Member of the Law Society of Kenya
- 8) Proficiency in computer applications.

Job Description and Appointment Specifications

Officers at this level will be deployed as the Heads of a Regional field Offices/Units in the headquarters and the regional/county offices. She/He will be responsible to the Chief State Counsel for ensuring that the Field Offices/Units execute the constitutional, statutory and treaty mandates and functions of the Office of the Attorney General and Division of Justice through representing the Government in national, foreign and international courts; drafting of legislative proposals; registration of marriages, societies, books and newspapers; administration of estates of deceased persons and trusts; promotion of discipline among advocates and advising the Government on the regulation of the legal profession; advising Ministries, Divisions and Agencies on all legal matters relating to the Constitution, international law, human rights, legislation, consumer protection and legal aid; negotiating, drafting, vetting and interpreting local and international documents, agreements and treaties; and coordinating Kenya's reporting obligations to international human rights and good governance treaty bodies.


Hon. J.B.N. Muturi, EGH
ATTORNEY GENERAL

SHERIA HOUSE, HARAMBEE AVENUE
P.O. Box 40112-00100, NAIROBI, KENYA TEL: +254 20 2227461/2251355/0700072929/0732529995
EMAIL: info@ag.go.ke WEBSITE: www.attorney-general.go.ke

DEPARTMENT OF JUSTICE
CO-OPERATIVE BANK HOUSE, HAILE SELASSIE AVENUE, P.O. Box 56057 - 00100, Nairobi - Kenya TEL: Nairobi 2224029/2240337
EMAIL: legal@justice.go.ke

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/ The Office Of The Attorney General And Department Of Justice Hiring : Deputy Solicitor General, Chief State Counsel And Deputy Chief State Counsel

The Office Of The Attorney General And Department Of Justice Hiring : Deputy Solicitor General, Chief State Counsel And Deputy Chief State Counsel

 OYK Team National Government



PUBLIC SERVICE COMMISSION

Our Vision

"A citizen-centric public service"

Our Mission

"To reform and transform the public service for efficient and effective service delivery"

VACANT POSITIONS IN THE OFFICE OF THE ATTORNEY GENERAL AND DEPARTMENT OF JUSTICE

Applications are invited from qualified persons for the positions shown below:

V/NO	POST	GRADE	NO. OF VACANCIES
134/2024	Deputy Solicitor General	CSG 4/JG 'T'	4
135/2024	Chief State Counsel	CSG 5 /JG 'S'	8
136/2024	Deputy Chief State Counsel	CSG 6/JG 'R'	50

The details of the posts and mode of application can be accessed on the Commission's website.

Interested and qualified persons are required to make their applications **ONLINE** through the Commission website: www.publicservice.go.ke or jobs portal: www.psckjobs.go.ke so as to reach the Commission on or **before 20th March 2024 (Latest 5 pm East African Time).**

Interested and qualified persons are requested to make their applications **ONLINE** through the Commission website: www.publicservice.go.ke or jobs portal: www.pscjobs.go.ke

Please Note:

- (i) Applicants should provide all the details requested for in the advertisement. It is an offence to include incorrect information in the application. Details of academic and professional certificates not obtained by closure of the advert should not be included.
- (ii) Only shortlisted and successful applicants will be contacted.
- (iii) Canvassing in any form will lead to automatic disqualification.
- (iv) The Public Service Commission is committed to implementing the provisions of the Constitution - Chapter 232 (1) on fair competition and merit, representation of Kenya's diverse communities and affording equal employment opportunities to men and women, members of all ethnic groups and persons with disabilities. **THEREFORE, PEOPLE WITH DISABILITIES, THE MARGINALIZED AND THE MINORITIES ARE ENCOURAGED TO APPLY.**
- (v) Shortlisted candidates shall be required to produce **originals** of their National Identity Card, academic and professional certificates and transcripts during interviews.
- (vi) It is a criminal offence to present fake certificates/documents.
- (vii) Serving officers shall be required to avail original letters of appointment to the current substantive posts during the interviews.

Applications should reach the Commission on or **before 20th March 2024 (Latest 5 pm East African Time)**.

1

DEPUTY SOLICITOR GENERAL - FOUR (4) POSTS

V/No. 134/2024

Basic Salary Scale: Ksh.180,160 - Ksh.335,450 p.m. (CSG 4/Job Group 'T')

House Allowance:	Ksh.80,000 p.m.
Commuter Allowance:	Ksh.24,000 p.m. (if not provided with office to house transport)
Special Legal Allowance:	Ksh.50,000 p.m.
Non-Practicing Allowance:	Ksh.40,000 p.m.
Entertainment Allowance:	Ksh.65,000 p.m.
Extraneous Allowance:	Ksh.60,000 p.m.
Leave Allowance:	KSh.10,000 p.a
Domestic Servants Allowance:	Ksh.15,600 p.m.
Robe Allowance:	Ksh. 5,000 p.a.
Annual Leave:	30 working days per financial year
Medical Cover:	As provided by the Government
Terms of Service:	Permanent or Local Agreement

For appointment to this grade, a candidate have:

- (i) a minimum service period of three (3) years in the grade of Chief State Counsel, CSG 5, or in a comparable and relevant position in the public service;
or
served for a minimum period of fifteen (15) years, three (3) of which should have been in the grade of Deputy Chief State Counsel, CSG 6 and above or in a comparable and relevant position in the wider public service or private sector.
- (ii) a Bachelor of Laws (LLB) degree from a recognized university;
- (iii) post graduate Diploma in Law from the Kenya School of Law;
- (iv) a post graduate certificate in Legislative Drafting, where applicable
- (v) a certificate of admission into the role of advocates of the high court of Kenya.
- (vi) be a member of the Law Society of Kenya;
- (vii) demonstrated a in high degree of administrative competence and professional competence in work performance at that level; and

NOTE: Possession of a Masters Degree in Law or any other relevant Social Science from a university recognized in Kenya will be an added advantage.

Department of Justice through representing the government in national, foreign and international courts. Specific duties and responsibilities include:

- (i) drafting legislative proposals
- (ii) registration of marriages, societies, books and newspapers
- (iii) administration of estates of deceased persons and trusts;
- (iv) promotion of discipline among advocates and advising government on the regulations of the legal profession;
- (v) formulating policies on matters relating to human rights, good governance, and anti-corruption.
- (vi) GLJOs Reform coordination;
- (vii) advising MDAs on all legal matters relating to the Constitution, international law, human rights, legislation, consumer protection and legal aid;
- (viii) negotiating, drafting, vetting and interpreting local and international documents, agreements and treaties; and
- (ix) coordinating Kenya's reporting obligations to regional and international human rights and anti-corruption treaty bodies.

CHIEF STATE COUNSEL - EIGHT (8) POSTS

V/No. 135/2024

Basic Salary Scale:	Ksh.143,640 - Ksh.262,420 p.m.	(CSG 5/Job Group 'S')
House Allowance:	Ksh.60,000 p.m.	
Special Legal Allowance:	Ksh.55,000 p.m.	
Non-Practicing Allowance:	Ksh.40,000 p.m.	
Commuter Allowance:	Ksh.20,000 p.m.	
Responsibility Allowance:	Ksh.12,000 p.m.	
Entertainment Allowance:	Ksh.7,500 p.m.	
Leave Allowance:	Ksh.10,000 p.a	
Salary Market Adjustment:	Ksh.18,400 p.m	
Annual Leave:	30 working days	
Medical Cover:	As provided by the Government	
Terms of Service:	Permanent/Local Agreement	

For appointment to this grade, a candidate must:

- (i) have served for a minimum period of three (3) years in the grade of Deputy Chief State Counsel, CSG 6, or in a comparable and relevant position in the public service;
or
have served for a minimum period of twelve (12) years, three (3) of which should have been at the grade of Principal State Counsel CSG 7 and above, or in a comparable and relevant position in the wider public service or private sector;
- (ii) have a Bachelor of Law Degree (LL.B) from a university recognized in Kenya;
- (iii) have a Post Graduate Diploma in law from the Kenya School of Law;
- (iv) a post graduate certificate in Legislative Drafting, where applicable
- (v) Admission as an Advocate of the High Court of Kenya;
- (vi) be a member of the Law Society of Kenya;

NOTE: Possession of a Masters Degree in Law or any other relevant Social Science from a university recognized in Kenya will be an added advantage.

Duties and Responsibilities

An officer at this level will be deployed as a head of Section responsible to Deputy Solicitor General for ensuring that the section executes the constitutional, statutory and treaty mandates and functions of the Office of the Attorney General and Department of Justice. Specific duties and responsibilities include:

- (i) representing the Government in national, foreign and international courts;
- (ii) drafting of legislative proposals;
- (iii) registration of marriages, societies, books and newspapers;
- (iv) administration of estates of deceased persons and trusts;
- (v) promotion of discipline among advocates and advising the Government on the regulation of the legal profession;
- (vi) advising Ministries, Departments and Agencies on all legal matters relating to the Constitution, international law, human rights, legislation, consumer protection and legal aid;
- (vii) negotiating, drafting, vetting and interpreting local and international documents, agreements and treaties; and
- (viii) coordinating Kenya's reporting obligations to international human rights and good governance treaty bodies.

DEPUTY CHIEF STATE COUNSEL - FIFTY (50) POSTS

V/No. 136/2024

Responsibility Allowance:	KSh.10,000 p.m.
Entertainment Allowance:	Ksh.7,200 p.m.
Leave Allowance:	Ksh.10,000 p.a
House Allowance:	Depends on region deployed up to a maximum of Ksh.30,000 p.m.
Salary Market Adjustment:	Ksh.35,860 p.m
Annual Leave:	30 working days per financial year
Medical Cover:	As provided by the Government
Terms of Service	Permanent or Local Agreement

For appointment to this grade, a candidate must:

- (i) have served for a minimum period of three (3) years at the grade of Principal State Counsel CSG 7 or in a comparable and relevant position in the wider public service;
- (ii) have a Bachelor of Law Degree (LLB) from a university recognized in Kenya;
- (iii) have a Post Graduate Diploma in law from the Kenya School of Law;
- (iv) a post graduate certificate in Legislative Drafting, where applicable;
- (v) Admission as an Advocate of the High Court of Kenya;
- (vi) be a member of the Law Society of Kenya;
- (vii) have demonstrated professional and administrative competence at that level;

Duties and Responsibilities

An officer at this level may be deployed as the head of a regional field office/unit in the headquarters and the regional /county offices. He/she will be responsible to the Chief State Counsel for ensuring the Field Office/Units execute the Constitutional, statutory and treaty mandates of the Office of the Attorney General and Department of Justice.

Specific duties and responsibilities for an officer at this level include: -

- (i) Administration of civil registry, allocation of case files, legal advice to and undertaking litigation on behalf of National and County governments, undertaking arbitrations, asset-tracing and recovery/debt collection;
- (ii) Supervision of staff;
- (iii) drafting and reviewing complex documents, contracts and international agreements;
- (iv) providing legal advice and opinions to Ministries/State Departments and State Corporations;
- (v) Drafting of complex bills and subsidiary legislation;
- (vi) advising Government Ministries/State Departments and State Corporations on complex legislative matters;
- (vii) preparation of statutes for revision and publication of the annual supplement to the Laws of Kenya;
- (viii) Oversee and co-ordinate administration of Estates and Trusts in Head Office as well as Regional offices;
- (ix) oversee and co-ordinate legal functions, property management and conveyance and co-ordinate Ex-Officio Agents;
- (x) Ensuring proper handling of disciplinary processes; carrying out in house settlement of disputes; prosecuting matters before the Disciplinary Tribunal and handling alternative dispute resolution; compilation of Statistical Reports;
- (xi) Undertaking duties of an Official Receiver or Deputy Registrar; supervision of registries including companies, business names, societies, coat of arms, marriages, divorce and adoptions; handling of disputes; signing of statutory documents and issuing gazette notices;
- (xii) Initiating research on emerging legal issues, preparing legal opinions and briefs and
- (xiii) Initiating policy research, formulation and reform;
- (xiv) advising Ministries/State Departments on legal policy issues;
- (xv) preparing periodic/country reports and ensuring compliance with regional and international instruments, ensuring compliance with principles and values of good governance, human rights, transparency, accountability, ethics and integrity.

SECRETARY/CEO
PUBLIC SERVICE COMMISSION

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COUNTY GOVERNMENT OF KIAMBU



COUNTY PUBLIC SERVICE BOARD

P.O BOX 2362-00900

KIAMBU

ADVERTISEMENT OF VACANCIES

Kiambu County Public Service Board is a body corporate established under Section 57 of the County Governments Act, 2012 pursuant to Article 235 of the Constitution of Kenya 2010. Section 59 of the County Governments Act 2012 outlines the functions of the CPSB among them being *"appoint persons to hold or act in offices of the county public service including in the Boards of cities and urban areas within the County and to confirm appointments."*

Pursuant to the above constitutional and legal provision, the Board invites applications from suitably qualified persons who wish to be considered for the positions listed below;

1. DIRECTOR TRANSPORT POSITION, JOB GROUP 03 (R) – (1 POST)

This position is responsible for the overall direction, coordination and human resources management of the Transport Directorate.

Duties and Responsibilities

- Planning, management and regulation of the public transport sector in accordance with the provisions of County and National Traffic and road safety laws;
- Planning and development of sustainable urban transport system;
- Promote none motorized transport system through construction of footpaths and public sensitization of walking and cycle riding;
- Prepare and control the Directorate's budget and recommend needed improvements in Capital Projects;

- Prepare and develop the Directorate's annual procurement plan;
- Prepare and develop the Directorate's strategic plan;
- Prepare and develop the Directorate's annual performance contract;
- Secure and manage financial support for development plans;
- Supervise construction works, project management and contract administration;
- Formulate and recommend County Transport policies for adoption by management;
- Overall supervision, training and Developing of the Directorate's staff;
- Establish systems and procedures for, and oversee the training, testing and licensing of County drivers;
- Coordinate the activities of persons and organizations dealing in matters relating to road safety;
- Ensuring smooth traffic Control and safety in urban and County roads;
- Collect, maintain and update traffic data for future planning;
- Control Axle load on County roads;
- Responsible for project Administration and Contract management;
- Facilitate the education of members of the public on road safety.

Requirement for Appointment

- Must be a Kenyan citizen;
- Master degree in Engineering (Civil or Electrical) or a related field from a recognized University.
- Bachelor's degree in Engineering (Civil or Electrical) or a related field from a recognized University;
- Registration with the relevant professional body;
- Minimum of ten (10) years relevant experience;
- Demonstrate a thorough understanding and commitment to values and principles; as outlined in Articles 10 and 232 of the Constitution;
- Ability to work in a multi-ethnic environment and sensitivity and respect for diversity;
- Must have good inter-personal and communication skills;
- Proficiency in computer applications;

- Satisfies the requirements of Chapter Six of the Constitution of Kenya 2010.

Terms of Service: Contract

Salary: As set by the Salaries and Remuneration Commission (SRC).

2. DEPUTY DIRECTOR UTILITIES POSITION, JOB GROUP CPSB 04 (Q) - (1 POST)

This position is responsible for deputizing the Director Utilities in the overall direction, coordination and human resources management of the directorate.

Duties and Responsibilities

- Offer support in the supervision of the implementation of power supply systems in the county;
- Participate in the development, implementation and monitoring of the energy consumption reduction policies and strategies in the county;
- Participate in the preparation and control of the Directorate's budget;
- Participate in the preparation and development of the Directorate's annual performance contract;
- Participate in the preparation of the annual Directorate's procurement plan;
- Participate in the preparation of the Directorate's strategic plan;
- Supervise employees or subcontractors to ensure quality of work or adherence to safety regulations or policies;
- Assist in coordinating the risk and regulatory services of the County including fire and rescue and emergency planning;
- Ensure the Fire and Rescue Unit fulfils its statutory responsibilities and meets the county needs;
- Assist in the direction and management of the operations of the Fire and Safety Service to ensure it realizing the highest operations standards and delivers efficiency;
- Take part in the development of the Fire and Rescue Service emergency preparedness plans;
- Offer support in the development and delivery of fire preventive, legislative protection, and response strategies;

- Support the development and implementation of year on year rolling energy reduction plans;
- Participate in the development of energy-conscious design, maintenance, and operation policies;
- Offer support in the development and maintenance of strategic partnership relationship with key stakeholders to support delivery of the fire and rescue services;
- Ensure that realistic care is taken at all times for the health, safety and welfare for all staff and other persons during delivery of services;
- Coordinate employee safety and accident prevention programs, and preliminary investigation of employees' accidents at the work place.

Requirements for Appointment

- Must be a Kenyan citizen;
- Bachelor's Degree in Electrical and Electronics Engineering or Equivalent from a university recognized in Kenya;
- Master Degree in Electrical and Electronics Engineering or Equivalent from a university recognized in Kenya will be an added advantage;
- Registered with Engineers Registration Board of Kenya;
- Registration with the relevant professional body;
- Minimum of eight (8) years relevant experience;
- Ability to work in a multi-ethnic environment and sensitivity and respect for diversity;
- Must have good inter-personal and communication skills;
- Proficiency in computer applications;
- Satisfy the requirement of Chapter Six of the Constitution.

Terms of Service: Contract

Salary: As set by the Salaries and Remuneration Commission (SRC).

3. DIRECTOR LEGAL SERVICES, JOB GROUP CPSB 03 (R) – (1 POST)

Reports to the County Attorney.

DUTIES AND RESPONSIBILITIES

The officer will be responsible to the County Attorney in the day to day management of staff and for overall administration of legal, regulatory and compliance matters.

Specific duties and responsibilities include:

- Ensure compliance with the law in the operations of all departments;
- Perform legal and regulatory risk analysis as required for decisions making, enforcement actions and statutory interventions;
- Ensure legal and regulatory policy reform;
- Enhance day to day administrative duties in the legal department;
- Advise and ensure compliance with legal and regulatory requirements;
- Oversee the departments overall filing, records and document managements;
- Oversee day to day overall correspondences to departments;
- Offer legal opinions to internal departments and
- Any other lawful duties as may be assigned from time to time.

Requirement For Appointment

- Must be a Kenyan citizen;
- Bachelor of Laws degree (LLB) from a recognized university;
- Master of Laws degree (LLM) or any other relevant social science from a recognized university will be an added advantage;
- Postgraduate Diploma in Legal Studies from the Council of Legal Education and be admitted as an advocate of the High Court of Kenya with a current practicing certificate;
- Be a member of Law Society of Kenya (LSK);
- Have post admission experience of seven (7) years with a minimum of five (5) years' experience in a managerial position;

- Attended Strategic Leadership Development Course not lasting less than six (6) weeks from a recognized institution;
- Demonstrated administrative and professional competence in work performance;
- Have proficiency in basic computer applications; and
- Meet the requirements of Chapter 6 of the constitution.

Terms of Service: Contract

Salary: As set by the Salaries and Remuneration Commission (SRC).

4. DIRECTOR LEGISLATIVE DRAFTING, JOB GROUP CPSB 03 (R) – (1 POST)

Reports to the County Attorney.

DUTIES AND RESPONSIBILITIES

The officer will be responsible to the County Attorney in the day-to-day management of staff and for the overall coordination of, formulation of county policies and laws.

Specific duties and responsibilities include:

- Review guidelines on legislative services;
- Preparing legal opinions and undertaking law reviews;
- Preparing Legislative plan for Bills;
- Drafting Bills;
- Advising on proposals for legislation and statutory interpretation;
- Carryout constitutional, policy and legal analysis;
- Analyse input from stakeholders; and
- Any other lawful duties as may be assigned from time to time.

REQUIREMENTS FOR APPOINTMENT

- Must be a Kenyan citizen;
- Bachelor of Laws degree (LLB) from a recognized university;
- Master of Laws degree (LLM) or any other relevant social science from a recognized university will be an added advantage;
- Have a Postgraduate Diploma in Legal Studies from the Council of Legal Education and be admitted as an advocate of the High Court of Kenya with a current practicing certificate;
- Be a member of Law Society of Kenya (LSK);
- Have post admission experience of seven (7) years with a minimum of five (5) years' experience in a managerial position;
- Attended Strategic Leadership Development Course not lasting less than six (6) weeks from a recognized institution;
- Must have experience in drafting;
- Demonstrated administrative and professional competence in work performance;
- Have proficiency in basic computer applications; and
- Meet the requirements of Chapter 6 of the constitution.

Terms of Service: Contract

Salary: As set by the Salaries and Remuneration Commission (SRC).

5. DEPUTY DIRECTOR LITIGATION AND PROSECUTION, JOB GROUP CPSB 04 (Q) – (1 POST)

Reports to the County Attorney.

DUTIES AND RESPONSIBILITIES

Specific duties and responsibilities include:

- Offer counsel on arising legal matters;

- Proof read documents prepared by junior officers to ensure accuracy;
- Serve as liaison between departments and other legal staff members;
- Oversee and maintain organized filing procedures, legal materials and other documentation;
- Prepare court pleadings and attend to court matters;
- Prepare and submit monthly monitoring reports and other periodic or special legal reports; and
- Any other lawful duties as may be assigned from time to time.

REQUIREMENT FOR APPOINTMENTS

- Must be a Kenyan citizen;
- Bachelor of Laws degree (LLB) from a recognized university;
- Master of Laws degree (LLM) or any other relevant social science from a recognized university will be an added advantage;
- Have a Postgraduate Diploma in Legal Studies from the Council of Legal Education and be admitted as an advocate of the High Court of Kenya with a current practicing certificate;
- Be a member of Law Society of Kenya (LSK);
- Have post admission experience of seven (7) years with a minimum of five (5) years' experience in Litigation;
- Attended Strategic Leadership Development Course not lasting less than six (6) weeks from a recognized institution;
- Demonstrated administrative and professional competence in work performance;
- Have proficiency in basic computer applications;
- Meet the requirements of Chapter 6 of the constitution.

Terms of Service: Contract

Salary: As set by the Salaries and Remuneration Commission (SRC).

6. CHIEF SUPPLY CHAIN MANAGEMENT OFFICER, JOB GROUP CPSB 07 (M) – (10 POSTS)

This position is responsible for the coordination, supervision and provision technical support in the implementation of procurement and disposal of assets function for the county government.

DUTIES AND RESPONSIBILITIES

- Provide administrative guidelines on implementation and interpretation of Public Procurement and Disposal Act 2005 and supporting Regulations;
- Approve contract prepared and Inventory costing and valuation;
- Prepare notifications and execution of contracts;
- Participate in the tender evaluation process;
- Maintain accuracy of procurement records to prevent fraud and theft of county goods;
- Compile procurement status reports to submit to relevant authorities;
- Liaison with suppliers and other stakeholders to ensure timely delivery of goods and services;
- Prepare local purchase order (LPO) and local service order (LSO).
- Conduct market survey for current market price trends to inform decision making in regards to procurement matters;
- Conduct regular stock takings and inventory audits to ensure the county has the right amount of inventory.

REQUIREMENTS FOR APPOINTMENT

- Must be a Kenyan citizen;
- Bachelor's degree in Purchasing and Supplies Management, Logistics and Supply Chain Management, Supplies Management from a recognized university.

- Member of Kenya Institute of Supplies Management (KISM) OR Chartered Institute of Purchasing and Supplies Management (CIPS);
- Five (5) years of service from a reputable organization.
- Training in IFMIS System will be an added advantage;
- Certificate in Supervisory Skills Course lasting not less than two (2) weeks from recognized institution;
- Computer literate;
- Familiarity with Public Procurement and Disposal Act 2005;
- Demonstrable knowledge and experience of working with the use of ICT equipment in processing Procurement transaction;

Terms of Service: Permanent & Pensionable

Salary: As set by the Salaries and Remuneration Commission (SRC).

7. SENIOR SUPPLY CHAIN MANAGEMENT OFFICER, JOB GROUP CPSB 08 (L) – (14 POSTS)

This position is responsible for coordination of supply chain management activities such as procurement, warehousing, distribution, disposal of stores and assets, market survey and research.

DUTIES AND RESPONSIBILITIES

- Advise the department on procurement processes to ensure compliance to the rules and regulations;
- Preparation of departmental correspondences to facilitate effective communication from the department to the other departments;
- Preparation of notifications and execution of contracts to ensure the contracts are signed off as agreed;
- Maintain of accuracy of procurement records to prevent loss and misappropriation of county stock;
- Compilation of procurement status reports to reconcile with the procurement plan and report on any deviation;

- Participate in the tender evaluations committee to ensure compliance to the procurement rules and regulations;
- Preparation of local purchase order (LPO) and local service order (LSO) for the department to source out the required good and services for the county;
- Participate in preparation of budgets for the departments;

REQUIREMENTS FOR APPOINTMENT

- Must be a Kenyan citizen;
- Bachelor's Degree in Logistics and Supply Chain Management, Supplies Management, Purchasing and Supplies Management;
- Member of Kenya Institute of Supplies Management (KISM) OR Chartered Institute of Purchasing and Supplies Management (CIPS);
- Five (5) years' working experience in public or private sector;
- Familiarity with public procurement and disposal Act 2005;
- Proficiency in computer applications;
- Satisfies the requirements of Chapter Six of the Constitution.

Terms of Service: Permanent & Pensionable

Salary: As set by the Salaries and Remuneration Commission (SRC).

8. SUPPLY CHAIN MANAGEMENT OFFICER I, JOB GROUP CPSB 09 (K) – (5 POSTS)

This position is responsible for providing assistance in the procurement of goods, works and services for the County, and ensuring procurement processes are carried out efficiently and effectively to achieve the County's objectives.

DUTIES AND RESPONSIBILITIES

- Prepare tender documents, agenda and minutes to provide secretariat services to the county tender procurement committee, inspection and acceptance committee as appropriate;

- Pre-qualify suppliers annually and maintain and update pre-qualification list and quotation register;
- Keep records of procurement inventories;
- Market survey and research on prices of items to ensure the county buys supplies and services at the affordable prices;
- Issuing administrative guidance to suppliers and users on implementation and interpretation of the Public;
- Familiarity with procurement and Disposal Act, 2006, regulations and other statutes;
- Reference, verify and manage procurement documents to ensure they contain the right quality and quantity of goods and services as required by the county;
- Participate in procurement planning and consolidation of annual procurement plan within the county;
- Control Inventory and stock to ensures proper inventory control of stock within the county.

REQUIREMENTS FOR APPOINTMENT

- Must be a Kenyan citizen;
- Bachelor's degree in Purchasing and Supplies Management, logistics and supply chain management, Supplies Management;
- Member of Kenya Institute of Supplies Management (KISM) OR Chartered Institute of Purchasing and Supplies Management (CIPS);
- Three (3) years of service in a similar role from a reputable organisation;
- Computer literate;
- Familiarity with public procurement and disposal Act 2005;
- Proficiency in computer applications;
- Satisfies the requirements of Chapter Six of the Constitution.

Terms of Service: Contract

Salary: As set by the Salaries and Remuneration Commission (SRC).

9. SUPPLY CHAIN MANAGEMENT OFFICER II, JOB GROUP CPSB 10 (J) – (5 POSTS)

This position is responsible for assisting the procurement officer in the acquisition of goods and services within the county.

DUTIES AND RESPONSIBILITIES

- Maintain and update pre-qualification list and quotation register to facilitate the procurement process;
- Prepare quotations, issue to supplier, opening and assist in evaluation of the quotation;
- Ensure products movement from suppliers to user department;
- Prepare local purchase order (LPO) and local service order (LSO);
- Take inventory and analyze all documentation such as invoices, bills and other supply documents;
- Register all documents and handle customers and suppliers' databases;
- Ensure compliance with supply chain activities standards and regulations;
- Establish and maintain collaborating relationships with customers, suppliers and supply chain staff;
- Prepare periodic reports concerning supply chain operations as per the guidelines;
- Assist the Supply Chain Management Officer in preparation of annual procurement plans and supply chain management reports;
- Implement inventory management information system.

REQUIREMENTS FOR APPOINTMENT

- Must be a Kenyan citizen;
- Bachelor's degree in Purchasing and Supplies Management, logistics and supply chain management, Supplies Management;
- Member of Kenya Institute of Supplies Management (KISM) OR Chartered Institute of Purchasing and Supplies Management (CIPS);
- Two (2) years of service in a similar role from a reputable organisation;
- Computer literate;
- IFMIS Knowledge will be an added advantage;

- Familiarity with public procurement & disposal Act;
- Demonstrable knowledge and experience in procurement management.

Terms of Service: Permanent and pensionable

Salary: As set by the Salaries and Remuneration Commission (SRC).

10. ASSISTANT DIRECTOR INTERNAL AUDIT, JOB GROUP CPSB 05 (P) - (1 POST)

This position is responsible to perform, plan and execute assigned compliance, financial and operational audits within the audit programs.

DUTIES AND RESPONSIBILITIES

- Plan and execute regulatory, financial, and operational audits allocated by the director;
- Manage the office of internal audit in the absence of the director;
- Coordinate work plans with audit staff and ensure that audit assignments are completed within reasonable time;
- Regularly monitor implementation on proper use of regulations and policies;
- Evaluate management controls by assessing the adequacy and effectiveness and draft recommendations for improvement;
- Discuss issues of preliminary nature with heads of sections being audited and give them advisory service and assurance on the audit process;
- Identify and document process and control in order to evaluate risk;
- Ensure that necessary controls are in place that provide for adequate and effective achievement of the department's goals;
- Assist the director in reviewing policies, procedures and systems in accordance with specified terms of reference, report audit findings and assist in the preparation of audit programs;
- Perform departmental audit routines to ensure that proper records are kept of work done according to audit manual and other internal audit standards;
- Perform audit work which is supervised and reviewed by the director;
- Ensure that audit plans are adhered to at all times while conducting the audit.

REQUIREMENT FOR APPOINTMENT

- Must be a Kenyan Citizen;
- Bachelor of Commerce Degree (Finance or Accounting option) or equivalent;
- Master's in Business Administration (Accounting, Auditing, Finance, Commerce) or related will be an added advantage;
- Certified Public Accountant (CPA K)/ Certified Information Systems Auditor
- Eight (8) years of working experience, three (3) years of which as Principal Internal Auditor or a comparable position in the public or private sector
- Member of Institute of Certified Public Accountants of Kenya (ICPAK);
- Member of Institute of Internal Auditors of Kenya (IIAK) or Information Systems Audit and Control Association (ISACA) OR Association of Certified Fraud Examiners (ACFE);
- Satisfies the requirements of Chapter Six of the Constitution of Kenya 2010;

Terms of Service: Contract

Salary: As set by the Salaries and Remuneration Commission (SRC).

11. PRINCIPAL INTERNAL AUDITOR, JOB GROUP CPSB 06 (N) – (2 POSTS)

This position is responsible for performance, evaluation of adequacy and effectiveness of County Government risk management and internal controls.

DUTIES AND RESPONSIBILITIES

- Evaluate risk exposure relating to achievement of County Government strategic objectives;
- Communicates issues identified with internal senior management to ensure any potential concerns are addressed in a timely and effective manner;
- Prepare audit report to management and make a follow up on action taken;
- Evaluate reliability and integrity of information;
- Evaluate the means to safe guard assets;
- Identify activities subject to audit coverage;
- Involved in determining adequacy and effectiveness of internal control system;
- Carry out investigations in the irregularities identified or reported in audit reports and safeguarding of county assets;
- Report on County's compliance with statutory obligations;
- Involved in section budget preparation.

REQUIREMENTS FOR APPOINTMENT

- Must be a Kenyan Citizen;
- Bachelor's Degree in any of the following fields: Commerce, Business Administration, Finance, Accounting, Business Management, or its equivalent from a recognized institution;
- Demonstrated merit and ability as reflected in work performance and results;
- Certified Public Accountant(K), Certified Internal Auditor (CIA) III / or Certified Information Systems Auditor or Certificate in Certified Fraud Examiner, Forensic Auditing;
- Seven (7) years working experience in a field of Finance or a related field, three (3) years of which have been at the grade of Chief Internal Auditor or in a comparable position in the public or private sector .
- Member of Institute of Certified Public Accountants of Kenya (ICPAK) or member of Institute of Internal Auditors of Kenya (IIAK) or Information Systems Audit and Control Association (ISACA) OR Association of Certified Fraud Examiners (ACFE);
- Satisfies the requirements of Chapter Six of the Constitution of Kenya 2010;

Terms of Service: Permanent and pensionable

Salary: As set by the Salaries and Remuneration Commission (SRC).

12. INTERNAL AUDIT OFFICER [I], JOB GROUP CPSB 09 (K) – (8 POSTS)

This position is responsible for provision of competent independent and objective feedback on adequacy and effectiveness of internal controls and other risks management activities in their sectors.

DUTIES AND RESPONSIBILITIES

- Manage a variety of stakeholders and their expectations through regular communications;
- Audit projects in the county and report on the same;
- Establish the risk-based audit plans consistent with the Board's objectives;
- Communicate plans of engagement and resource requirements for the internal audit function;
- Play a key role in maintaining a strong control environment and supporting initiatives that improve performance;

- Perform financial, operational and information systems audit;
- Attend meetings with auditees to develop an understanding of business processes;
- Travel to different sites to meet relevant staff and obtain documents and information;

REQUIREMENT FOR APPOINTMENTS

- Must be a Kenyan Citizen;
- Bachelor's Degree in Commerce (Finance or Accounting), Economics, Statistics, Mathematics or its equivalent from a recognized university;
- Certified Public Accountant(CPA(K) or Certified Information Systems Auditor
- Knowledge of relevant legislation;
- Knowledge of internal auditing standards;
- Knowledge of principles, methods and practices of Governmental accounting and budgeting;
- Satisfies the requirements of Chapter Six of the Constitution of Kenya 2010;

Terms of Service: Permanent and pensionable

Salary: As set by the Salaries and Remuneration Commission (SRC).

13. MUNICIPAL MANAGER, JOB GROUP CPSB 04 (Q) - (1 POST)

DUTIES AND RESPONSIBILITIES

- Overseeing affairs of the Municipality;
- Developing and adopting Short, Medium- and Long-term policies, plans, strategies and programs, and may set targets for delivery of services;
- Formulating and implementing the Municipal Integrated Annual Development Plan (MIADP);
- Developing and managing schemes, including site development in collaboration with the relevant national and county agencies;
- Monitoring and where appropriate, regulate city and municipal services where those services are provided by service providers other than the board of the City or Municipality;
- Establishing, implementing and monitoring performance management systems;
- Monitoring the impact and effectiveness of any services, policies as delegated by the county government;

- Implementing applicable National and County Government legislations;
- Promoting a safe and healthy environment within the Municipality;
- Administering and regulating Municipal internal affairs;
- Preparing and submitting Municipal Annual Budget Estimates to the county Treasury for consideration and submission to the County Assembly for approval, as part of the annual County appropriation Bill;
- Preparing and submitting Annual and Quarterly Municipality Financial Statements to the County Treasury and Office of the Auditor General;
- Manage internal and external Audit processes within the Municipality;
- Performing such other function as may be delegated to it by the County Executive;
- Promotion of National Values and Principles of Good Governance as outlined in the Constitution of Kenya.

REQUIREMENTS FOR APPOINTMENT

- Must be a Kenyan Citizen;
- Holder of a degree from a University Recognized in Kenya;
- Has a proven experience of not less than five years in administration or management either in the public or private sector and;
- Satisfies the requirements of Chapter six (6) of the Constitution of Kenya.

Terms of Service: Contract

Salary: As set by the Salaries and Remuneration Commission (SRC).

How to Apply

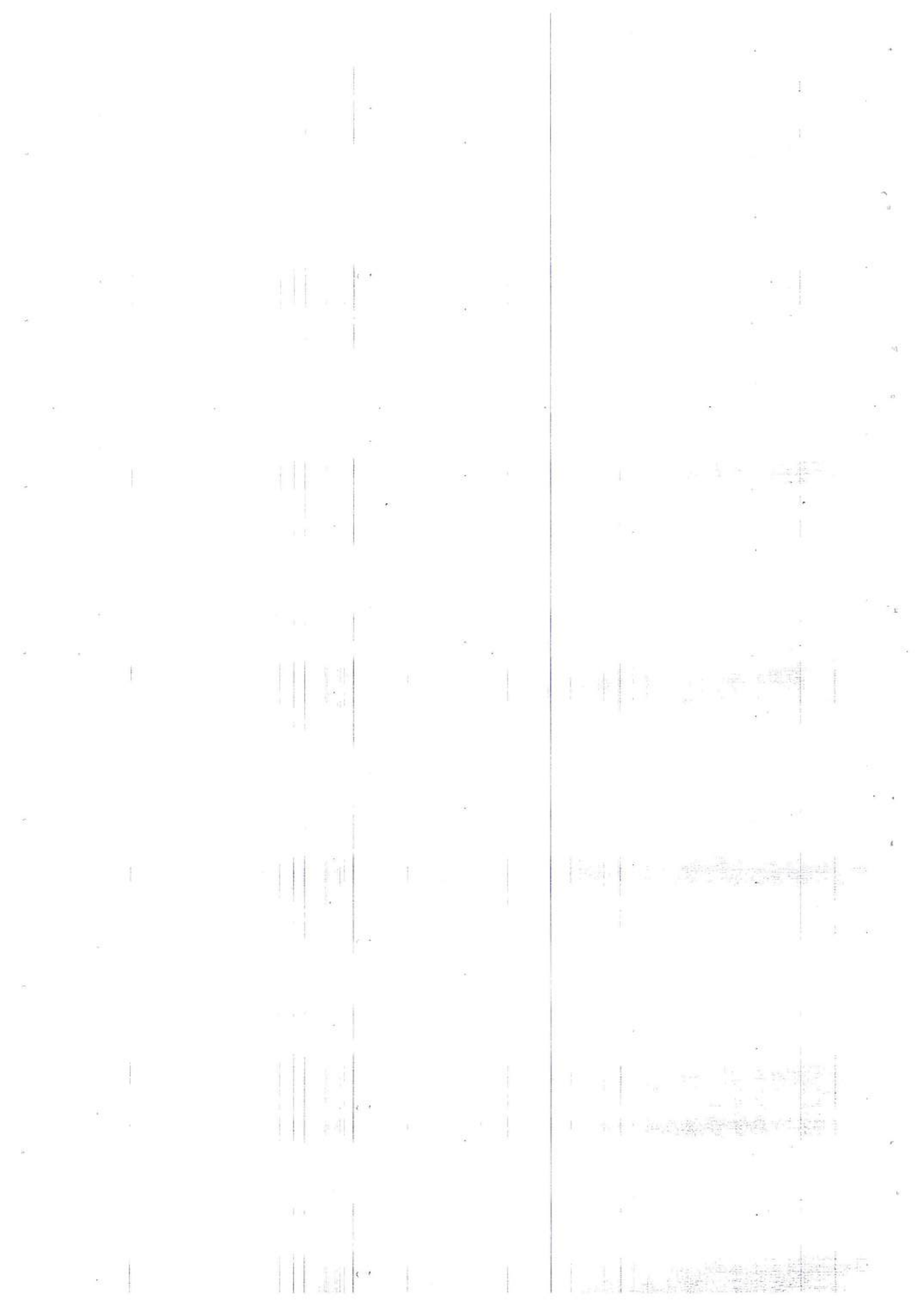
All applicants should submit their applications cover letter together with copies of their detailed curriculum vitae with names, address and telephone contacts of three referees. academic and professional certificates, testimonials, national identity card or passport and any other supporting documents.

Applications should be addressed to:

**Secretary/CEO
County Public Service Board
County Government of Kiambu
P O Box 2362 - 00900
KIAMBU**

NOTE:

1. ALL applications should be hand delivered in a sealed envelope, **clearly marking on top of the envelope the position applied for**, and dropped in the specific box provided at County Public Service Board offices, Room 103, first floor at Thika Sub-County offices between 8.00 a.m. and 5.00 p.m. on weekdays.
2. Applications should reach the Board on or before **Thursday, 28th March, 2024.**
3. Shortlisted candidates will be required to produce their **original** identity card, academic and professional certificates and submit clearance from the following institutions:
 - **Kenya Revenue Authority (KRA)**
 - **Ethics and Anti-Corruption Commission (EACC)**
 - **Directorate of Criminal Investigations (DCI)**
 - **Higher Education Loans Board (HELB)**
 - **Credit Reference Bureau (CRB)**
4. County Government of Kiambu is an equal opportunity employer, women, youth and people living with disability are encouraged to apply.
5. The Board and the County Government of Kiambu is a corruption free zone. We caution candidates not to fall victim of fraudsters and impersonators who solicit for money with a promise to secure them jobs in the County. The Board shall bear no responsibility for any personal loss arising from such unlawful dealings. Report any of such cases to the Police.



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

OF KENYA AT NAIROBI

CAUSE NO. 547 OF 2018

ERASTUS K. GITONGA.....1ST CLAIMANT
 EDWARD K. WABWOTO.....2ND CLAIMANT
 CICILIA W. GITHAIGA.....3RD CLAIMANT
 JUDITH N. KITHINJI.....4TH CLAIMANT
 SIMON NGARA.....5TH CLAIMANT

- VERSUS -

NATIONAL ENVIRONMENTAL MANAGEMENT
 AUTHORITY.....RESPONDENT

- AND -

LAW SOCIETY OF KENYA.....INTERESTED PARTY

(Before Hon. Justice Byram Ongaya on Wednesday 10th April, 2019)

JUDGMENT

The claimants filed the statement of claim on 16.04.2018 through Gathara Mahinda & Company Advocates. The claimants prayed for judgment against the respondent for:

- a) A declaration that the respondent's action of not paying the 1st to

- 5th claimants a non-practice allowance is unlawful, wrongful and unfair.
- b) A declaration that the respondent's action of not paying the 1st to 5th claimants a prosecutorial allowance is unlawful, wrongful and unfair.
- c) A declaration that the respondent subjected the claimants to discriminatory and unlawful labour practice by denying them the subject allowances.
- d) In regard to non-practice allowance the claimants are entitled thus 1st claimant Kshs.2, 060, 000.00; 2nd claimant Kshs. 1, 760, 000.00; 3rd claimant Kshs.1, 900, 000.00; 4th claimant Kshs.860, 000.00; and 5th claimant Kshs. 540, 000.00.
- e) The respondent to pay non practice allowance accruing to the claimants from the date of filing this claim and for the duration of service of the claimants. The rate of practice allowance shall be as issued by applicable government circulars or otherwise as may be set by a lawful competent authority.
- f) In regard to prosecutorial allowance the 1st to 4th claimants pray that they are entitled thus the 1st claimant Kshs.1, 830, 000.00; the 2nd claimant Kshs.1, 470, 000.00; the 3rd claimant 1, 470, 000.00; 4th claimant Kshs. 1, 440, 000.00.

- g) The respondent to pay prosecutorial allowances accruing to the 1st to 3rd claimants from the date of filing the claim and for the duration of their service. The rate of prosecutorial allowance shall be as issued by applicable government circulars or otherwise as may be set by a lawful competent authority.
- h) The above sums to earn interest at court rates.
- i) Costs of the cause to be awarded.
- j) Any other order that the court may deem fit and just to issue.

The claimants are at all material times employed by the respondent as legal officers on full time basis on permanent and pensionable terms of service. The 1st claimant was employed 01.10.2009, the 2nd claimant on 20.12.2010, the 3rd claimant on 02.06.2010, the 4th claimant on 01.08.2013 and she resigned from the respondent's service effective 01.04.2018, and the 5th claimant on 04.01.2016. The respondent is a government agency established as an Authority under section 7 of the Environmental Management and Coordination Act (EMCA) and it operates under the management of a Board of Directors. The respondent is a body corporate with powers to recruit, appoint, discipline, and manage its own employees.

The claimants were each recruited by the respondent from the private sector where they worked as private practitioners. Each claimant is a duly qualified legal practitioner as an advocate of the High Court of

Kenya. It is the claimants' case that the respondent is a public body as defined under section 3 of the Interpretation and General Provisions Act and Article 259 of the Constitution of Kenya. Thus the respondent is bound by the Public Service Code of Conduct (2006) as currently revised and known as the Public Service Commission Human Resource Policy, 2016. The claimants are public officers under Article 259 of the Constitution, section 2 of the Public Officer Ethics Act and are within the meaning of public service in Article 259 of the Constitution. Accordingly the claimants' case is that Public Service Commission Human Resource Policy, 2016, the Public Service circulars of 11.06.2010 and 09.10.2012 and other prevailing public service practice applicable to the legal professionals in the public service apply to their service in the respondent's establishment.

The 1st to 4th claimants are also serving as public prosecutors duly gazetted by the Director of Public Prosecutions under section 85 of the Criminal Procedure Code and the Office of the Director of Public Prosecutions Act (ODPP Act) as per gazette notice No.2181 of 04.04.2014 and effective 18.03.2014. By that notice, the Director of Public Prosecutions appointed the 4 claimants to be Public Prosecutors for purposes of cases arising under the Environmental Management and Co-ordination Act (No.8 of 1999) and the same was in exercise of the powers conferred by section 85 (1) of the Criminal Procedure Code as vested in the Director of Public Prosecutions. The parties are silent but it

appears that the gazette notice must have been issued following a request by the respondent to the Director of Public Prosecutions in that regard.

The circular No. MSPS.10/145A VOL. VII/40 dated 11.06.2010 was addressed to the Solicitor General and issued by Titus M. Ndambuki, CBS, Permanent Secretary in the Office of the Prime Minister and Ministry of State for Public Service. The circular was titled thus, rationalization and harmonization of the public service legal subsector remuneration. The circular conveyed that the Permanent Public Service Remuneration Review Board had agreed to the enhancement of Non-Practice Allowance as follows, SL1 – SL4 Kshs. 15, 000.00 per month; SL5 – SL7 Kshs. 20, 000.00; SL 8 Kshs. 40, 000.00. The new rates would be applicable from 1st July, 2010 and necessary action was to be taken.

The circular No. MSPS.10/5A VOL.III/(78) dated 09.10.2012 was addressed to the Solicitor General, the Director of Public Prosecutions, and the Acting Permanent Secretary, Ministry of Justice, National Cohesion and Constitutional Affairs. The circular was issued by Titus M. Ndambuki, CBS Permanent Secretary - Ministry of State for Public Service. The circular conveyed that following the recommendation of the Salaries and Remuneration Commission, approval was thereby granted for legal personnel in State Law Office, Office of the Director of Public Prosecutions and Ministry of Justice, National Cohesion and Constitutional Affairs to be paid State Counsel / Prosecutorial

Allowance with effect from 01.10.2012 at the following rates, SLG1 – SLG 6 Kshs. 30, 000.00; SLG7 – SLG 8 Kshs.40, 000.00; SLG 9 Kshs.50, 000.00.

The claimant's case is that the grading by the respondent is equivalent to State Law grading thus E5 to SL7 OR SLG7; E6 to SL6 and SLG6; and E7 to SL5 or SLG5 and to the civil service grading thus, E5 to Job Group P; E6 to Job Group N; and E7 to Job Group M.

The claimants' case is that the respondent has acted unlawfully and contrary to the principles of fair labour practices and equality in denying the claimants their lawful entitlements as prayed for. The claimant's case is that despite their presenting the grievances to the respondent since 2011, the respondent has failed to purge the grievances.

The respondent filed the statement of response on 10.07.2013 through Mwaura & Wachira Advocates.

The respondent prayed that the claimants' suit be dismissed with costs.

The respondent's case is to the following effect:

- a) There is no dispute that the claimant employed the claimants in its establishment to perform professional legal services and grades as pleaded for the claimants.
- b) The respondent is bound by Public Service Code of Conduct (2006) as currently revised and known as the Public Service

Commission Human Resource Policy, 2016 but, only as far as the regulations are consistent with the respondent's Human Resource Policy and Procedures Manual.

- c) The salaries and benefits of public officers are regulated by the Salaries and Remuneration Commission. The claimants are indeed public officers under Article 259 of the Constitution and the Commission is instrumental in determining the salaries and remuneration applicable to the claimants.
- d) The respondent denies that the circulars in issue and as referred to by the claimants bind the respondent because they were never addressed to the respondent.
- e) The Public Service Code of Conduct (2006) as currently revised and known as the Public Service Commission Human Resource Policy, 2016 does not provide for the allowances now claimed for by the claimants.
- f) The claimants are not prosecutors employed under the Office of the Director of Public Prosecutions but admittedly, the Director of Public Prosecutions has duly gazetted them to prosecute offences under the Environmental Management and Co-ordination Act No.8 of 1999.
- g) The circular Ref. No. OP.CAB.2/23A of 2011 by Amb. Francis K. Muthaura, EGH , Permanent Secretary, Secretary to the Cabinet

and Head of the Public Service stopped review of salaries in public service to pave way for the constitutionally and newly established Salaries Remuneration Commission to perform its constitutional mandate in that regard.

- h) The claimants have not sought and obtained the advice of the Public Service Commission about the allowances in issue and their respective claims. Thus the suit is premature.
- i) The equivalent of job groups as urged for the claimants is unfounded. The job grading is unique to the respondent and cannot be equated to the state law grading.
- j) The respondent denies that it has acted unlawfully and contrary to the principles of fair labour practices as envisaged in Article 41 of the Constitution.
- k) The allowances are not due to the claimants as prayed for.
- l) The claimants are seeking to be unjustly enriched yet they have notoriously been practising as legal practitioners outside their duties and functions as the respondent's legal personnel and prosecutors.

The claimants filed on 23.08.2018 the reply to the statement of response and urged as follows:

- a) The respondent's Human Resource Manuals provide for payment

of Non-practicing allowance and they are entitled as claimed.

- b) The legal subsector in the circular of 11.06.2010 clearly covers the claimants' employment as is not exclusive to State Law establishment.
- c) The circular by the Head of Public Service issued in 2011 only operated to put a caveat on review of existing salaries and allowances and not implementation of the existing ones. The circular on non-practicing allowance had been in place since 2009.
- d) Denial of the non-practice allowance and prosecutorial allowances was discriminatory, malicious and an infringement and violation of their constitutional rights.
- e) It was the obligation of the respondent and not the claimants to seek and obtain the advice of the Public Service Commission and the claimant's could not bypass the respondent's management to do so.
- f) The job structure exhibited by the respondent was a mere recommendation and which had never been implemented. The claimants' job groups are as per their exhibited pay slips.
- g) Despite request by the claimants the respondent's management and Board have deliberately refused the approval of the payment of the allowances.

- h) The claimants are exclusively offering legal services in the public service as employed by the respondent.

The interested party, the Law Society of Kenya (LSK), in applying to be enjoined filed the supporting affidavit of its Secretary and Chief Executive Officer one Mercy Wambua and stated as follows:

- a) The claimants are active members of the LSK.
- b) The membership of LSK comprises advocates both in private and public practice. The claimants are part of the class of advocates who have opted out of private practice to work in public service.
- c) By statute the LSK is empowered to represent, protect and assist members of the legal profession in Kenya in matters relating to conditions of practice and welfare per section 4 of the Law Society of Kenya Act No.21 of 2014. The LSK is also mandated to promote and uphold the Constitution and render legal services to the public in general as well as assist the courts in administration of justice.
- d) The LSK would therefore participate in the suit by filing submissions to aid the Court in rendering a decision that will be used in all institutions that are in a similar situation with the respondent. The matters raised by the claimants affect other members of the LSK in public service with similar predicaments as the claimants in the instant case.

The application by the interested party to be enjoined as filed on 09.11.2018 through Macharia – Mwangi & Njeru Advocates was allowed by consent of the parties on 03.12.2018. Parties further agreed that the suit be determined on the basis of the pleadings and documents filed for the parties. The parties filed their respective submissions.

The Court has considered the material on record. The Court makes findings on the issues in dispute as follows:

The **1st issue** for determination is whether the respondent was bound by the Public Service Code of Conduct (2006) as currently revised and known as the Public Service Commission Human Resource Policy, 2016, and the two circulars providing for the prosecutorial allowance and the non-practising allowance. As urged for the claimants, the respondent has admitted that the Public Service Code of Conduct (2006) as currently revised and known as the Public Service Commission Human Resource Policy, 2016 are binding upon the respondent. The only caveat by the respondent is that the application is subject to the decisions by the respondent's Board.

The Public Service Commission is established under Article 233 of the Constitution of Kenya 2010. The Commission's functions and powers are provided for in Article 234 of the Constitution. Article 233 (3) of the Constitution provides that the constitutional functions and powers of the Commission shall not apply to:

- a) State offices;
- b) An office of high commissioner, ambassador, or other diplomatic or consular representative of the Republic;
- c) An office or position subject to the Parliamentary Service Commission; the Judicial Service Commission; the Teachers Service Commission; the National Police Service Commission; or an office in the service of a county government, except as contemplated in clause (2) (i) – on hearing and determining appeals in respect of county governments’ public service.

The Court holds that the respondent is not one of the entities excluded from the Commission’s constitutional functions and powers. The Court further holds that whereas the respondent is a body corporate as established under the Environmental Management and Co-ordination Act No.8 of 1999, in exercise of its statutory functions and powers particularly by recruiting, appointing, promoting, disciplining, removing public officers and any other human resource function, it is strictly bound to comply with the law, regulations, and policies as may be in force and as issued or promulgated by the Commission in the exercise of its constitutional public service functions and powers.

Section 16 of the Environmental Management and Co-ordination Act No.8 of 1999 on the staff of the respondent provides thus, “ **The Authority may appoint such officers or other staff of the Authority**

as are necessary for the proper discharge of its functions under this Act or any other written law, upon such terms and conditions of service as the authority may determine.” The section was enacted long before the Constitution of Kenya, 2010. Section 7(1) of the 6th Schedule on Transitional and Consequential Provisions to the Constitution of Kenya 2010 provides, “All law in force immediately before the effective date continues in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with the Constitution.” Thus the Court holds that the respondent’s exercise of human resource or employment functions and powers as envisaged in section 16 and other provisions of the Environmental Management and Co-ordination Act No.8 of 1999 must be construed and brought to conformity with the constitutional functions and powers of the Public Service Commission and as amplified in the provisions of the Public Service Commission Act, 2017. The Court further holds that the respondent and other public bodies or authorities falling under the Commission’s constitutional authority are bound to undertake their human resource functions in accordance with the provisions of the Public Service Commission Act, 2017 and the public service regulations and policies as may be put in place by the Commission from time to time.

In so far as the Public Service Code of Conduct (2006) as currently revised and known as the Public Service Commission Human Resource

Policy, 2016 was issued by the Commission in exercise of its constitutional public service functions and powers, its provisions were binding upon the respondent and it was misconceived for the respondent to take the position that the Commission's policies and regulations were subject to its Board's human resource decisions. The Court holds that in undertaking its human resource functions, the respondent's Board must ensure that its decisions are aligned to the general policies and regulations and the general law governing the public service and as per the general public service regulations, policies, decisions and directives as issued by the Commission from time to time. The Court holds that where in specific cases the respondent may experience difficulties in implementing such general public service regulations, policies, decisions and directives as may have been issued by the Commission, it is the respondent's obligation to seek and obtain from the Commission such specific variation or clarifications and alterations as may be appropriate.

The Court has specifically considered the provisions of the Public Service Commission Act No.10 of 2017 and returns that under section 3 of the Act, the Act applies to all public bodies and persons holding office in the public service and subject to Articles 155(3) (a), 158(3), 234(2) (a), 234(3) and 252 (1) of the Constitution and subject to section 28 of the Kenya Defence Forces Act No. 25 of 2017. Thus the Court returns that the respondent is bound accordingly and it must at all times align its human resource functions, powers, policies, and decisions to the

general public service provisions as provided for in the Constitution, the Public Service Commission Act, 2017 and the regulations and policies issued by the Commission from time to time.

Turning to the circulars, it was submitted for the respondent that the Salaries and Remuneration Commission established under Article 230 of the Constitution of Kenya, and as per Article 230(4) (b) advises the national and county governments on the remuneration and benefits of all other public officers. It was submitted that the circulars having not been addressed to the respondent directly, they were therefore not binding. For the claimants it was submitted that the circular of 11.06.2010 on payment of non-practicing allowance to employees in the legal subsector of the public service applied because the respondent was clearly (and it was undisputed) a public body under Article 259 of the Constitution. Further the respondent's Human Resources and Procedures Manual at clause 8.25 provides that the respondent shall pay non-practicing allowance to those who are eligible as per government circulars. It was submitted for the claimants that the Court follows the holding in **Hezekiah Oira T/A Oira Advocates –Versus- Kenya Broadcasting Corporation [2015]eKLR**, where Aburili J held that public officers are paid a non practicing allowance to cover what they would have earned had they been in active practice, which allowance, if the advocate was not paid, nothing prevented him from claiming. It was also submitted for the claimants that as was held by the Supreme Court of India in **State of**

M.P & Ors –Versus-yogendra Shivastava Civil Appeal No. 3156 of 2007 that if appointment letters provided for payment of non practicing allowance which was not in consonance with the rules, then the Court could correct or set aside the anomaly.

As for the circular dated 09.10.2012 the claimants submitted that it applied for 1st to 4th claimants who had been gazetted as prosecutors.

The Court has considered the submissions and returns that the circular of 11.06.2010 on payment of non-practicing allowance to employees in the legal subsector of the public service applied to the claimants' service because it clearly applied to the entire public service. As for the circular dated 09.10.2012 it states that it applies to prosecutors and the 1st to 4th claimants were gazetted as prosecutors and there is no established and lawful reason why the circular would not apply. The Court considers that the circular of 09.10.2012 appears to apply to all lawyers in the public service and for so long as the claimants established that they were in public service with similar professional legal duties, it is the Court's opinion that they would be entitled to the allowance even without their being gazetted as prosecutors. The Court has carefully revisited the circular and the wide ranging categories of the officers it applies to and returns that use of "**prosecutorial allowance**" was meant to simply designate the allowance and not to have it paid exclusively to those involved in criminal prosecutions. The Court finds that the circulars were binding upon the respondent and if the respondent failed to

specifically provide for the terms of the circulars in the claimants' contracts of service, then as per the holding by the Indian Supreme Court in the cited case, the Court had jurisdiction to correct the unjustified omission.

It was submitted for the respondent that the Salaries and Remuneration Commission had to specifically write to the respondent for the two allowances to apply. The Court finds that the Salaries and Remuneration Commission's role in the matter was already spent. The Court notes that the circular of 11.06.2010 on non practicing allowance was issued with approval of the Permanent Public Remuneration Review Board (which was the predecessor of the Salaries and Remuneration Commission) and the circular of 09.10.2012 was issued upon recommendation of the Salaries and Remuneration Commission. In any event, and as relates to the circular of 11.06.2010, section 6 of the 6th Schedule on Transitional and Consequential Provisions to the Constitution of Kenya 2010 provides, **"6. Except to the extent that this Constitution expressly provides to the contrary, all rights and obligations, however arising, of the Government or the Republic and subsisting immediately before the effective date shall continue as rights and obligations of the national government or the Republic under this Constitution."** Accordingly, the rights conferred upon persons serving in the legal subsector of the public service like the claimants cannot have lost the accrued rights under the circular of 11.06.2010 and consequential to the

coming into operation of the Constitution of Kenya, 2010 which established the Salaries and Remuneration Commission - so that the Court returns that the government's obligations thereunder subsisted and the respondent was bound accordingly.

Further the Court has considered the respondent's Human Resources and Procedures Manual and clause 8.25 provides that the respondent shall pay non-practicing allowance to those who are eligible as per government circulars. The Court returns that the two circulars are clearly contemplated under that provision and they must apply accordingly.

The Court further returns that clause C.23 at page 55 of the Public Service Commission Human Resource Policy, 2016 states, "**The Government may pay other allowances to different categories of public officers in various circumstances. Such allowances shall be determined and communicated from time to time.**" The Court finds that the provision provides a clear position that the government will determine other allowances from time to time and as had been done in the two circulars in issue. Thus the Court finds that there is nothing in deficiency that the respondent has established to make the two circulars not applicable to the claimants' service in the respondent's establishment.

The 2nd issue for determination is whether the claimants are entitled to grading equivalents as urged for them in their computations for the

claimed non -practicing and prosecutorial allowances. The respondents say that their job groups are unique and cannot be equivalent to the SL and SLG ranking or grading as claimed. The claimants urge that the equivalency applies.

Under section 10(1) of the Employment Act, 2007 particulars of a written contract of service include job description and remuneration applicable. The Court finds that ranks, grades or job groups are clearly part of the job description and applicable remuneration like in the instant case where the allowances were pegged on the grading by the circulars. Section 10 (7) of the Employment Act, 2007 provides that if in any legal proceedings an employer fails to produce a written contract or the written particulars prescribed in subsection (1) the burden of proving or disproving an alleged term of employment stipulated in the contract shall be on the employer. The Court returns that the respondent has failed to discharge that statutory burden to disprove the equivalency of the job groups or ranks as urged for the claimants. The Court has found that the allowances as claimed applied and the respondent failed to include the equivalency of its grading structure to be in consonance with the grading in the circulars so as to confer the claimants the two allowances in issue. The Court returns that in absence of any other material before the Court on the equivalency of the grades, the claimants' have established that on a balance of probability, the equivalency of grades as urged for them applied.

While making that finding the Court has taken into account its jurisdiction or powers under section 16 (3) and(4) of the Employment Act, 2007 to determine and confirm particulars which ought to have been included in the claimants' respective contracts of service and the respondent cannot defeat the claimants' prayers by simply urging that despite the applicable circulars and allowances, the same cannot be conferred by reason of the respondent's own failure to include the particulars in the individual contracts of service as envisaged in the circulars. The Court considers that in any event the circulars were of general application across the public service and the failure by the respondent to specifically include the allowances in the individual contracts did not defeat the claimants' case because the allowances were automatically part of their terms and conditions of service.

Further, the Court has considered that the function of creating and abolishing offices in the public service such as in the respondent's establishment is constitutionally vested in the Public Service Commission and section 25 of the Public Service Commission Act, 2017 clearly required the respondent to move the Commission towards establishing the levels of grading and designation of the offices the claimants held, if there was any doubt in that regard. The Court returns that the respondent failed to move the Commission accordingly even after the claimants reported their grievances per the correspondence on record and the demand letter. The respondent cannot therefore be

allowed to turn around and benefit from its own failure or shift to the claimants its clear statutory duty to move the Commission in that regard.

The Court cannot fault the claimants because in section 98 of the Public Service Commission Act, 2017 it is provided that the Commission may, by notice in the gazette assign the job groups referred to in the Act to public officers in public bodies which do not use such job groups for the proper application of the Act to those offices. The issue had arisen as per the correspondence the claimants had addressed to the respondent but the respondent had failed to act and to move the Commission if it was in any doubt on the grading and grading equivalency issue. In any event the Court has considered that a board paper on the subject had been tabled to the respondent's Board as per endorsement on the exhibited internal memo of 26.04.2011. The endorsement shows that the only reason the Board failed to approve the paper was because the Board considered that the circular by the Head of Public Service stopped review of salaries and allowances until the coming into operation of the Salaries and Remuneration Commission as had been established under the Constitution of Kenya, 2010 and that the allowances had equally been affected by that circular. Thus the Court returns that the Board, on a balance of probability, had no issue about the equivalency of the grading and the claimants are entitled as prayed for.

Accordingly, the Court returns that the claimants are entitled to the equivalency in grading with further directions by the Court that this

judgment shall be served upon the Public Service Commission towards the Commission's consideration of issuing the relevant gazette notice under section 98 of the Public Service Commission Act, 2017 to harmonize and provide for equivalency of job groups, grades, and ranks applicable in the public bodies under its constitutional and statutory functions and powers, and in view of the serious issues which have emerged in the present case to consider issuing the gazette notice not later than 01.02.2020.

The **3rd issue** for determination is whether the denial of the two allowances by the respondent as claimed for by the claimants amounted to discrimination and unfair labour practices.

The evidence is that the claimants are duly qualified advocates of the High Court of Kenya. They are duly employed to perform legal services in the public service. Their service is regulated by the general public service laws, regulations and policies and more specifically as provided for in the Constitution, the Public Service Commission Act, 2017, the regulations and policies issued by the Public Service Commission and as implemented by the respondent and its Board in accordance with the respondent's enabling statute, the Environmental Management and Co-ordination Act No.8 of 1999.

As submitted for the interested party, every person has the right to fair labour practices as per Article 41 (1) of the Constitution. Article 41 (2)

enumerates the rights of every worker which include inter alia the right to fair remuneration. Further as submitted for the interested party, Article 27 (1) and (2) provides that every person is equal before the law and has the right to equal protection and equal benefit of the law; and equality includes the full and equal enjoyment of all rights and fundamental freedoms. Articles 27(4) and (5) prohibit discrimination by the state or by any person. It was further submitted that section 5 (2) and (3) of the Employment Act, 2007 provides, **“(2) An employer shall promote equal opportunity in employment and strive to eliminate discrimination in any employment policy or practice. (3) No employer shall discriminate directly or indirectly, against an employee or prospective employee or harass an employee or prospective employee.... (5) An employer shall pay his employee equal remuneration for work of equal value.”**

Further the interested party submitted that clause B. 22 (1) of the Public Service Commission Human Resource Policy, 2016 provides for non discrimination in employment and that the Government shall promote equality of opportunity in employment and will not discriminate directly or indirectly against an employee on any grounds including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth. Clause A.2 thereof lists the values of public service as per Article 232 of the Constitution and which bind public bodies like the

respondent.

The interested party submitted that International Labour Organisation (ILO) conventions as ratified by Kenya apply by reason of Article 2(6) of the Constitution which provides that any treaty or convention ratified by Kenya forms part of the law of Kenya. Thus Kenya ratified on 07.05.2001 the ILO Equal Remuneration Convention, 1951 (No.100) and Article 2 provides thus, **“Each Member shall, by means appropriate to the methods in operation for determining rates of remuneration, promote and, in so far as is consistent with such methods, ensure the application to all workers of the principle of equal remuneration for men and women workers for work of equal value.”** Further the ILO Discrimination (Employment and Occupation) Convention, 1958 (No.111) Article 2 provides, **“Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.”**

The interested party submitted that the Court should enforce the well settled policy on equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.

The Court returns that the claimants have not established discrimination on any of the grounds listed in Article 27 of the Constitution or section 5 of the Employment Act, 2007. However, the claimants have established that they have been denied equality of treatment as envisaged in section 5 of the Employment Act, 2007 and as per the cited ILO conventions. They have established that the failure to pay them the two allowances amounted to adverse or disadvantageous treatment that was not equal to the other public officers holding similar offices as held by the claimants and for whom the two circulars providing for the two allowances applied to and had been implemented accordingly. In particular the claimants have established that the respondent has subjected them to unequal pay by denial of the two allowances because persons holding similar positions in the public service have continued to enjoy the allowances. The Court finds accordingly.

The Court follows Louw –Versus- Golden Arrow Bus Services (Pty) Ltd [1999]ZALC 166 thus, “The principle “equal work should receive equal pay” in its true form may be extended to analogous situation namely that work of equal value should receive equal pay. These premises have not been enshrined as principles of law in the unfair labour practice definition. They are principles of justice, equity and logic which may be taken into account in considering whether an unfair labour practice has been committed, e.g. the payment of unequal pay for equal work or work of equal value in

the context of unfair discrimination. In other words it is not an unfair labour practice to pay different wages for equal work or for work of equal value. It is however an unfair labour practice to pay different wages for equal work or work of equal value if the reason or motive, being the cause for so doing, is direct or indirect discrimination on arbitrary grounds or the listed grounds e.g race or ethnic origin.” The Court returns that the respondent denied the claimants the two allowances that were payable to others in public service performing similar work or work of equal value as was performed by the claimants. Further the Court holds that the denial of the two allowances amounted to unequal treatment and therefore unfair discrimination that was founded upon arbitrary or unreasonable grounds namely, that the circular by the Head of Public Service had the effect of denying the already existing allowances and, as submitted in Court, that the circulars had not been directly addressed to the respondent.

The Court further follows Ol Pejeta Ranching Limited –Versus- David Wanjau Muhoro [2017]eKLR where Rika J quoted with approval Copper Pass Ltd –Versus- Lawton [1977] Q.B 852 thus, “Once it is determined that work is of a broadly similar nature it shall be regarded as like work unless the differences are plainly of a level which the industrial tribunal in its experience would expect to find reflected in the terms and conditions of employment.”

In the instant case the Court returns that the claimants are clearly

advocates employed in the public service to perform the duties by public officers whom the circulars in issue applied to and they are entitled to the allowances like the other legal practitioners in the public service for whom the circulars have been implemented. The Court finds that the claimants performed duties of equal value like those public officers referred to in the circulars and further finds that the circulars directly applied to the claimants because the circulars applied to all such officers serving in the legal subsector of the public service. The respondent failed to show that the circulars had not been intended to apply to the claimants and the Court finds that the intention in the circulars was that the allowances applied to all in the subsector towards harmonisation of their terms of service. The Court further returns that while the respondent urged that it had unique terms of service applicable to the claimants, the respondent did not suggest or show that such terms of service included or provided for the element of the two allowances as had been introduced by the two circulars or the allowances had been taken into account one way or the other. Thus it was not the respondent's case, for example, that it had paid the claimants a consolidated salary that included the two allowances. The claimants will therefore succeed in their respective claims.

The Court commends the parties including the interested party for the useful submissions made towards the ends of justice and the effectual determination of the matters in dispute.

The Court has considered the government budgetary cycle which applies to the respondent and finds that the amount due to the claimants will be paid by the respondent not later than 01.08.2019 failing, interest at Court rates will apply until full payment.

In conclusion judgment is hereby entered for the claimants against the respondent for:

- a) The declaration that the respondent's action of not paying the 1st to 5th claimants a non-practice allowance is unlawful, wrongful and unfair.
- b) The declaration that the respondent's action of not paying the 1st to 5th claimants a prosecutorial allowance is unlawful, wrongful and unfair.
- c) The declaration that the respondent subjected the claimants to unequal treatment amounting to discriminatory and unlawful labour practice by denying them the subject allowances.
- d) In regard to non-practice allowance the respondent to pay the claimants thus 1st claimant **Kshs.2, 060, 000.00**; 2nd claimant Kshs. 1, 760, 000.00; 3rd claimant **Kshs.1, 900, 000.00**; 4th claimant **Kshs.860, 000.00**; and 5th claimant **Kshs. 540, 000.00**.
- e) The respondent to pay non practice allowance accruing to the claimants from the date of filing this claim and for the duration of

service of the claimants. The rate of practice allowance shall be as issued by applicable government circulars or otherwise as may be set by a lawful competent authority.

- f) In regard to prosecutorial allowance the respondent to pay the 1st to 4th claimants thus the 1st claimant **Kshs.1, 830, 000.00**; the 2nd claimant **Kshs.1, 470, 000.00**; the 3rd claimant **Kshs.1, 470, 000.00**; and 4th claimant **Kshs. 1, 440, 000.00**.
- g) The respondent to pay prosecutorial allowances accruing to the 1st to 3rd claimants from the date of filing the claim and for the duration of their service. The rate of prosecutorial allowance shall be as issued by applicable government circulars or otherwise as may be set by a lawful competent authority.
- h) The amount already due to the claimants will be paid by the respondent to the claimants not later than 01.08.2019 failing, interest at Court rates will apply thereon from the date of this judgment until full payment.
- i) The claimants shall serve this judgment upon the Public Service Commission, within 7 days from the date of this judgment, towards the Commission's consideration of issuing the relevant gazette notice under section 98 of the Public Service Commission Act, 2017 to harmonize prevailing grading levels and to provide for equivalency of job groups, grades, and ranks applicable in the

public service or bodies under its constitutional and statutory functions and powers - and in view of the serious issues which have emerged in the present case, the Commission to consider publishing the gazette notice not later than 01.02.2020.

j) The respondent to pay the claimants' costs of the suit.

Signed, dated and delivered in court at Nairobi this Wednesday 10th April, 2019.

BYRAM ONGAYA

JUDGE

IPPD - List of Job Designations

Pay-Group	Desig-Code	Job-Exempt	Job-Grade	Sub-Grade	Job-Group	Extra-Code	Desig-Name
1 BA	ED1BL	E	1	A	L	HAMO2	Legal Officer[2]
2 BA	ED1BM	E	1	A	M	HAMO2	Legal Officer[1]
3 BA	ED1BN	E	1	A	N	HAMO2	Senior Legal Officer
4 BA	ED1BP	E	1	A	P	HAMO2	Principal Legal Officer
5 BA	ED1BQ	E	1	A	Q	HAMO2	Deputy County Attorney
6 BA	ED1BT	E	1	A	T	HAMO2	County Attorney
7 BA	ED3BH	E	5	A	H	HAMO2	*Legal Clerk Assistant[3]
8 BA	ED3BJ	E	5	A	J	HAMO2	*Legal Clerk Assistant[2]
9 BA	ED3BK	E	5	A	K	HAMO2	*Legal Clerk Assistant[1]



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DIDACUS OSWAGO BWANA,
ID NUMBER: 1491224,
KODUOGO SECONDARY SCHOOL,
P.O BOX 38-40302,
NDHIWA – HOMABAY COUNTY.
TELEPHONE NUMBER: 0711473248
OCTOBER, 14TH 2024.

FORWARDED
ON 14TH MAY 2024
J. MURGOR

THE CHAIRPERSON – SENATE COMMITTEE FOR LABOUR AND SOCIAL
PROTECTION,
PARLIAMENT BUILDINGS – PARLIAMENT ROAD,
P.O BOX 41842 – 00100, GPO, NAIROBI.

**RE: REQUEST TO YOUR COMMITTEE TO SUMMON THE COUNTY SECRETARY
AND HOMABAY COUNTY GOVERNOR OVER DELIBERATE FAILURE TO PAY MY
RETIREMENT BENEFITS.**

**ATTENTION: TO HONOURABLE SENATOR JULIUS MURGOR SENATOR WEST
POKOT COUNTY.**

The above underlined captioned subject matter, kindly refers, kindly receive warmest compliments from NDHIWA SUB-COUNTY in HOMABAY COUNTY. As a former employee (security guard), at Ndhiwa Sub County Hospital, where I worked from January 2013 to December 2019, (when I retired). I have been noting with a lot of concern, the manner which the management of Ndhiwa Sub County Hospital, has been soliciting information with a view of refusing to pay my Retirement Benefits. On 8th August 2023. I reported this matter to the COMMISSION ON ADMINISTRATIVE JUSTICE (CAJ) “Office of the Ombudsman” and the CAJ, vide its letters dated 10th August 2023, 13th September 2023, 18th January 2024, 6th March 2024, 25th March 2024 and 13th May 2024, respectively (copies enclosed), tried to reach the County Secretary, in Homabay County professor Benard Muok, but in vain. I worked for the County Government of Homabay, industriously, meritoriously and as well with a clean record, and I should therefore like to think why I cannot be paid my retirement benefits, which is totaling to Five Hundred and Thirty Thousand (Ksh. 530, 000) only.

Needless to say, vide its letter, dated 31st March 2015, THE KENYA UNION OF DOMESTIC HOTELS EDUCATIONAL INSTITUTIONS AND HOSPITAL (KUDHEIHA) WORKERS, HOMABAY BRANCH, booked an appointment with the management of Ndhiwa Sub County Hospital, so as to discuss our (Hospital Workers’) grievances such as;




1. Prolonged probation
2. Prolonged salary increment
3. Failure by the management to provide the workers with uniforms
4. Issuance of appointment letters, among others and officials of the same union namely, DANIEL OTIENO ATANG'A – 0729651678 and SILVENUS OUMA NYAMWANI – 0724304624 visited

NDHIWA SUB COUNTY HOSPITAL on April 14th 2015, at 1030HRS and the workers' employment welfare matters, were discussed at length. I worked for this public health facility for seven (7) years and I should therefore remain firm against its management which is hell-bent on defrauding me of my hard-earned money.

In view of the foregoing, I am humbly pleading with your able committee, to come to my immediate defense and protect me DIDACUS OSWAGO BWANA, as the weak in the society against this loot-hungry County Government of Homa Bay, by summoning the Homa Bay County Secretary Professor BENARD MUOK, and Her Excellency, Governor GLADYS ATIENO NYASUNA WANGA, so as to shade light, regarding the refusal by the County Government of Homa Bay to pay my Retirement Benefits, totaling to Ksh. 530, 000 only.

Thanking you in advance.

Yours sincerely, 

DIDACUS OSWAGO BWANA,
Affected Employee

NDHIWA SUB COUNTY,

HOMA BAY COUNTY.



Chairperson: Hon. Florence Kajju, MBS
Vice-Chairperson: Mr. Washington Sati, MBS
Commissioner: Mrs. Lucy Ndung'u, EBS, HSC



THE
COMMISSION ON ADMINISTRATIVE JUSTICE
"Office of the Ombudsman"

OUR REF: CAJ/NSSF/012/640/23-JMM

10th August 2023

The County Secretary
Homabay County
P.O Box 469 - 40300,
HOMABAY

Dear Sir/Madam

RE: COMPLAINT BY DIDACUS OSWAGO BWANA AGAINST HOMABAY COUNTY

Kindly receive warmest compliments from the Commission on Administrative Justice (Office of the Ombudsman).

The Commission has received a complaint from Didacus Oswago Bwana who alleges follows:

- i. He worked in Ndiwa Sub County Hospital as a security guard from 2013 to 2019.
- ii. He has never been paid his gratuity despite several follow ups with the County Government.

The complainants now seek to have the matter looked into with a view of ensuring that the gratuity is paid to him.

This is, therefore, to request you to respond to the above within 14 days from the date hereof; clearly indicating your position with regard to the aforesaid concerns.

We look forward to your prompt response and assure you of our highest regards.

Yours Sincerely,

SARAH MUTHIGA, HSC
FOR: COMMISSION SECRETARY/CEO

CC: Didacus Oswago Bwana
P.O Box 38-40302

✓ **NDHIWA**

Chairperson: Hon. Florence Kajju, MBS
Vice-Chairperson: Mr. Washington Sati, MBS
Commissioner: Mrs. Lucy Ndungu, EBS, HSC



THE
COMMISSION ON ADMINISTRATIVE JUSTICE
"Office of the Ombudsman"

OUR REF: CAJ/NSSF/012/640/23-JMM

18th January 2024

The County Secretary
Homabay County
P.O Box 469 - 40300,
HOMABAY

Dear Sir/Madam

FINAL REMINDER

RE: COMPLAINT BY DIDACUS OSWAGO BWANA AGAINST HOMABAY COUNTY

Kindly receive warmest compliments from the Commission on Administrative Justice (Office of the Ombudsman).

We refer to our letters dated 10th August 2023, 13th September 2023, and 4th October 2023 on the above subject matter. We note, regrettably, that we are yet to receive your substantive response on this matter.

By means of this letter, which serves as the **FINAL REMINDER**, we humbly but firmly request that you consider the complaint made and revert to this office **WITHIN 14 DAYS** hereof; clearly indicating your position on the same; steps taken if any ; or intended actions and time-frames for resolution of the complaint.

We thank you for your continued cooperation and assure you of our highest regards.

Yours Sincerely,


JACOB MALELU
FOR: COMMISSION SECRETARY/CEO

CC: Didacus Oswago Bwana
P.O Box 38-40302
NDHIWA



Chairperson: Hon. Florence Kajuju, MBS
Vice-Chairperson: Mr. Washington Sati, MBS
Commissioner: Mrs. Lucy Nidungu, EBS, HSC



THE
COMMISSION ON ADMINISTRATIVE JUSTICE
"Office of the Ombudsman"

OUR REF: CAJ/NSSF/012/640/23-JMM
YOUR REF: 43CG/OCA/65/VOL.1/62

6th March 2024

George Illah
Office of the County Attorney
Homabay County
P.O Box 469 - 40300,
HOMABAY

Dear Sir/Madam

RE: COMPLAINT BY DIDACUS OSWAGO BWANA AGAINST HOMABAY COUNTY


The above matter refers.

We acknowledge receipt of your letter dated 22nd March 2024 whose contents we have duly noted.

Attached herein are the requested documents.

We look forward to your prompt response and assure you of our highest regards.

Yours Sincerely,


JACOB MALELU
FOR: COMMISSION SECRETARY/CEO

CC: Didacus Oswago Bwana
P.O Box 38-40302
NDHIWA



Chairperson: Hon. Florence Kajuju, MBS
Vice-Chairperson: Mr. Washington Sati, MBS
Commissioner: Mrs. Lucy Ndungu, EBS, HSC



THE
COMMISSION ON ADMINISTRATIVE JUSTICE
"Office of the Ombudsman"

OUR REF: CAJ/NSSF/012/640/23-JMM

25th March 2024

The County Secretary
Homabay County
P.O Box 469 - 40300,
HOMABAY

Dear Sir/Madam

FINAL REMINDER

RE: COMPLAINT BY DIDACUS OSWAGO BWANA AGAINST HOMABAY COUNTY

Reference is made to our letters dated 10th August 2023, 13th September 2023, 4th October 2023 and 18th January 2024.

Please note that the Commission is yet to hear from you regarding the subject matter and requests that you address the same within 14 days failure of which the Commission shall be compelled to invoke its powers and issue summons under Section 26 (a) and 27 of the Commission on Administrative Justice Act and Regulation 17(4) of the Commission on Administrative Justice Regulations.

We look forward to your cooperation

Yours Sincerely,

JACOB MALELU
FOR: COMMISSION SECRETARY/CEO

CC: Didacus Oswago Bwana
P.O Box 38-40302
NDHIWA





KENYA NATIONAL COMMISSION ON HUMAN RIGHTS

**ADVISORY ON PETITION ON RESTRAINING COUNTY GOVERNMENTS FROM
HIRING LAW FIRMS TO REPRESENT COUNTY GOVERNMENTS IN COURT
CASES**

PRESENTED TO THE SENATE

DATED: 24TH JUNE 2024

Kenya National Commission on Human Rights
1st Floor, CVS Plaza, Lenana Road
P.O. Box 74359-00200
NAIROBI, KENYA
Tel: 254-20-2717908 /2717256/2712664
Fax: 254-20-2716160
Website: www.knchr.org
Email: haki@knchr.org

A. INTRODUCTION

1. The Kenya National Commission on Human Rights (“KNCHR” or “National Commission”) is an independent National Human Rights Institution established under Article 59 of the Constitution with a broad mandate to promote a culture of respect for human rights in the Republic of Kenya. The operations of the National Human Rights Commission are guided by the United Nations Paris Principles on the establishment and functioning of Independent National Human Rights Institutions commonly referred to as the Paris Principles and is accredited as an ‘A’ status institution for its compliance with the Paris Principles by the Global Alliance of National Human Rights Institutions (GANHRI). The Commission also enjoys Affiliate Status before the African Commission on Human and Peoples’ Rights.
2. The Commission wishes to respond to the petition on restraining county governments from hiring law firms to represent county governments in court cases as follows:

B. RELEVANT CONSTITUTIONAL AND LEGAL PROVISIONS TO THE PETITION

3. In addressing the subject matter, the Commission will rely on the provisions of Articles 27, 50 and 227, of the Constitution. **Article 27** of the Constitution provides for the right to equality and non-discrimination, private law firms have the right to equal treatment and non-discrimination in the provision of services. Restraining county governments from hiring private firms may lead to indirect discrimination against these firms, affecting their right to compete fairly for legal service contracts.
4. **Article 50** of the Constitution provides for the right to a fair hearing. In this case, county governments like any other entity, have the right to a fair hearing. This includes the right to choose the legal representation that they deem most suitable for their needs. Imposing a blanket restraint just because the County has a County Government Attorney may limit the County from exploring the best option for them to acquire justice.

5. **Article 277** of the Constitution provides that when State and public entities contracts for goods or services, they shall do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective. It is worth noting that the **Public Procurement and Asset Disposal Act, Cap 412C** gave effect to this constitutional provision whereby section 33 of the Act designates the County Treasury as the organ responsible for the implementation of public procurement and asset disposal policy in the county. This essentially mean that the there is no exception for procurement of legal services by county governments which should adhere to principles of fairness, transparency and competitiveness.

6. **The County Government Act, Cap 265** at Section 43 provides that a county government may, pursuant to Article 156(4) of the Constitution request the Attorney-General to represent the county government in court or in any other legal proceedings to which the county government is a party other than in criminal proceedings. Further, Section 7 (e) of the Office of the County Attorney Act, Cap 265E provides among others that the County Attorney 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.

7. Section 16 of the **Office of the County Attorney Act, Cap 265E** provides a safeguard on instances that a County Government can engage or outsource legal services and states that this should be with the approval of the County Executive Committee.

8. Although there exists legislative framework that stipulate the circumstances under which good and services are to be procured by public entities including county governments, the Commission observes that there has been a lull in adherence and compliance to the laid down frameworks. Section C below highlights excerpts for the Auditor General's report on County Executives and Assemblies.

C. ISSUES RAISED BY THE AUDITOR GENERAL ON PROCUREMENT OF PRIVATE LEGAL SERVICES

9. In the Auditor General's report on county government executives for the FY 2022/2023¹ revealed some irregularities in the procurement of private legal services. For instance, the report at paragraph 619.4 provides the following regarding the County Executive of Baringo:

“The County Executive incurred an expenditure of Kshs.11,604,259 on legal fees. However, tender advertisement, evaluation and award, signed service level agreements, evidence of court attendance, invoices indicating the services offered and certificates of appointment in respect of each case or transaction were not provided for audit. In addition, the procurement for the legal services was not approved by the County Executive Committee. This was contrary to Section 16(1) of the Office of the County Attorney Act, 2020 which states that a department or public entity established within a County Executive shall not engage the services of a consultant to render any legal services relating to the functions of the County Attorney without the approval of the County Executive Committee”

10. Paragraph 744.2 of the Auditor General's report further revealed that the County Executive of Bomet incurred legal fees, arbitration and compensation payments. However, the payments were not supported with payment vouchers demand fee notes and court proceeding statements.

11. In another related example on the report by the Auditor General on County Assemblies, the County Assembly of Turkana paid three (3) law firms legal expenses amounting about Kshs.27 million. It was the Auditor General's opinion that the payments were not supported with user requisitions, evidence of competitive bidding from the list of prequalified legal

¹ Auditor General's Report on County Government Executives for the FY 2022/2023 available at <https://www.oagkenya.go.ke/wp-content/uploads/2024/04/GREEN-BOOK-COUNTY-EXECUTIVES-VOL-1-2022-2023-1.pdf>

firms, professional opinions from the head of procurement unit, notification of awards and acceptance letters, the itemized instructions made to the lawyers on the services required, copies of judgement summaries where applicable, and certificates of costs on which the legal fee notes were based. In addition, there was no opinion and letter of no objection for engagement of private legal firms by either the designated principal legal advisor to the County Assembly or the county attorney who is indicated in the annual report and financial statements as the principal legal advisor.²

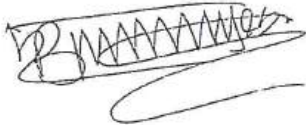
D. CONCLUSION

12. Based on the above illustrations, the Commission takes the view that the gamut of the issue is not the hiring of the private firms but rather the process and procedure of issuing contracts to the private law firms and whether arriving at legal fees is done as per the Advocates Remuneration (Amendment) Order, 2014.
13. The Commission invites the Standing Committee to interrogate whether the “instructions of the county government” contemplated under section 7 (c) of the **Office of the County Attorney Act, Cap 265E** has played a role in County Attorneys acting or not for respective County Governments, and whether there has been a deliberate attempt to bypass the provisions of Section 16 of the **Office of the County Attorney Act, Cap 265E** so as to establish levels of responsibility and accountability.
14. The report of the Auditor General points to audit queries hence those found pilfering public funds in dubious contracts for goods and services should be take personal responsibly and get sanctioned accordingly.

² Auditor General's Report on County Assemblies for the FY 2022/2023 available at <https://www.oagkenya.go.ke/wp-content/uploads/2024/04/GREEN-BOOK-COUNTY-ASSEMBLIES-VOL.-2-2022-2023.pdf> para 231

15. The Commission submits that procurement for goods and services, including engagement of private legal firms by county entities must be done in a fair, equitable, transparent, competitive and cost-effective manner with value for public money. Therefore, restraining the hiring of private law firms should be considered in light of these principles, ensuring that any restrictions do not contravene established procurement laws.

SIGNED BY:



Dr. Bernard Mogesa, PhD, CPM

Commission Secretary/CEO

.....THE END.....