

**REPUBLIC OF KENYA**



**COUNTY GOVERNMENT OF KITUI  
THE COUNTY ASSEMBLY**

**FIRST ASSEMBLY  
(THIRD SESSION)**

**COMMUNICATIONS FROM THE CHAIR**

**COMMUNICATION IN REGARD TO PROCEDURE IN CONSIDERING  
THE ADVISORY FROM THE KENYA LAW REFORM COMMISSION AS  
RELATES TO:-**

- I) THE KITUI COUNTY HEALTH FACILITIES MANAGEMENT  
COMMITTEES BILL, 2014**
- II) THE KITUI COUNTY BUSINESS LICENSING BILL, 2014  
UNDER S.O. NO. 1**

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**Honorable members**

As you are aware, the **Kitui County Health Facilities Management Committees Bill, 2014** (C/A Bill No. 6 of 2014) and the **Kitui County Business Licensing Bill, 2014** (C/A Bill No. 10 of 2014) were published as County Gazette Supplement Nos. 9 and 6 respectively on 10<sup>th</sup> March 2014. These two (2) bills were committed to the Assembly for legislative processing, passed, and subsequently forwarded for Governor's Assent on 19<sup>th</sup> August 2014.

## **Honorable members**

On 8<sup>th</sup> October 2014, the Assembly received Memorandums in respect of the two Bills from His Excellency the Governor, dated 6<sup>th</sup> October 2014, referring the Bills back to the Assembly and outlining the reasons for the said referral. Important to note is that the said memorandums were time barred in line with Standing Order No. 135(2) and my office declined to approve the same for discussion by the Assembly.

Standing Order No. 135(2) provides that:-

**The Governor shall within fourteen days after receipt of a Bill—**

**(a) Assent to the Bill; or**

**(b) Refer the bill back to the county assembly with a memorandum outlining reasons for the referral**

## **Honorable members,**

The memorandums had pointed out several constitutional issues and based on the said issues and in adherence to Section 5(3) of the County Government Act, the Assembly wrote to the Kenya Law Reform Commission on 13<sup>th</sup> November 2014, seeking advisory opinions on the same. The issues in question are as follows:-

i) Kitui County Health Facilities Management Committees Bill, 2014:

**THAT,** under **Clauses 4 & 5** the Principle of Separation of Powers as enshrined in the Constitution under Articles 174(i), 175(a), 183(2), and 185(2),(3) and Section 9(2) of the County Government Act has been contravened.

**and**

ii) Kitui County Business Licensing Bill, 2014:

**Clause 17** contravenes the Principle of Separation of Powers as enshrined in the Constitution under Articles 174(i), 175(a), 183(2), and 185(2),(3) and Section 9(2) of the County Government Act.

### **Honorable Members**

In a letter dated 25<sup>th</sup> November 2014, the Kenya Law Reform Commission advised that, the clauses were indeed unconstitutional and the Assembly needed to review the same.

### **Honorable Members**

I therefore wish to guide the Assembly as follows:

- i) **THAT**, the matter now stands committed to the Committee of the Whole County Assembly.
- ii) **THAT**, the Bill sponsors being the Chairpersons of:-
  - a. Committee on Health and Sanitation, and
  - b. Committee on Trade, Industry, ICT and Cooperatives,shall move amendments as guided by the Commission(KLRC).
- iii) **THAT**, the House Business Committee shall allocate time, for the Committee of the Whole Assembly to sit and deal with the matter.
- iv) **THAT**, Procedures outlined under S.O.s 126, 127, 128, and 129, shall apply.
- v) **THAT**, the matter shall stand concluded immediately the committee of the whole county assembly reports to the plenary upon a motion that, **"the house do agree with the committee in the said report"**

### **Honorable Members,**

I would wish to further refer you to the provisions of Article 2(4) of our Constitution 2010, which provides that;

**"Any law that is inconsistent with this constitution is void to the extent of the inconsistency, and any act or omission in contravention of this constitution is invalid."**

In light of this provision, I kindly urge you to reflect on the issues raised and deal with this matter appropriately. In this regard, I am directing the office of the Clerk of the Assembly to ensure that every Member receives a copy of the Commission's advisory opinion on the two Bills.

Please cooperate.

**THANK YOU!**

**THE HON. GEORGE M. NDOTTO**  
**SPEAKER OF THE KITUI COUNTY ASSEMBLY**  
**February 19, 2014**