



COUNTY GOVERNMENT OF KITUI

THE KITUI COUNTY ASSEMBLY

FIFTH SESSION

**THE COMMITTEE ON TRADE, INDUSTRY, ICT AND CO-
OPERATIVES**

**REPORT ON THE KITUI COUNTY BUSINESS LICENSING
(AMENDMENT) BILL, 2016**

DATED: 15TH MARCH, 2017

**PRINTED BY;
THE CLERK'S OFFICE,
KITUI COUNTY ASSEMBLY.
MARCH 2017**

TABLE OF CONTENTS

INTRODUCTION	3
MANDATE OF THE COMMITTEE	4
OBJECTIVES OF THE COMMITTEE	4
MEMBERSHIP	5
ACKNOWLEDGEMENT	5
ADOPTION OF THE COMMITTEE’S REPORT ON CONSIDERATION OF THE KITUI COUNTY BUSINESS LICENSING (AMENDMENT) BILL 2016	6
OBJECTIVE OF THE KITUI COUNTY BUSINESS (AMENDMENT) BILL 2016	7
CONCLUSION	9

INTRODUCTION

Mr. Speaker Sir, the Kitui County Business Licensing (Amendment) Bill, 2016, was published in the Kitui County Gazette Supplement No. 7 (Bill No. 5) on 18th October, 2016, pursuant to section 23 of the County Government Act No. 17, of 2012.

The purpose of the Amendment Bill is to amend sections 2 and 17 of the Kitui County Business Licensing Act, 2014 (herein referred to as the Principal Act), which was passed by the Assembly on 31st July, 2014. The Principal Act was forwarded to the Governor for assent on 20th August 2014 in accordance with section 24 of the County Governments Act, 2012. The Governor however, in exercising his powers under Section 24 (2) (b) of the same Act, referred the Bill back to the Assembly on 6th October, 2014, with a memorandum outlining the reasons for his referral. The County Assembly however declined to consider the memorandum reason being that it was time barred as per the provisions of section 24(2) (b) of the County Government Act, 2012 and standing order No. 134 which states in part that ‘the Governor shall within fourteen days after receipt of a bill assent to the bill or refer the bill back to the county assembly with a memorandum outlining the reasons for the referral’.

Mr. Speaker Sir, Section 24(6) of the County Government’s Act stipulates that if the Governor does not refer the Bill back to the County Assembly within fourteen days after receiving it, the Bill is deemed to have been assented to on the expiry of that period and therefore becomes law. However, it is worthy to note Article 199 (1) of the Constitution provides that County legislation does not take effect unless published in the Gazette while Section 25 (1) (2) of the County Government Act stipulates that once a legislation is passed by the Assembly and assented to by the Governor, it shall only come into force once its published in the County Gazette and Kenya Gazette. This was however not done and therefore the Bill could not come into force.

Mr. Speaker Sir, upon numerous consultations between the County Assembly and the County Executive on the issues raised by the

Governor in his memorandum, the two organs resolved to enact an amendment Bill to counter the shortcomings of the Principal Act.

MANDATE OF THE COMMITTEE

Mr. Speaker Sir, the committee's mandate, functions and roles are as stipulated in the County Assembly Standing Orders No. 190 (4) and (5) and as contained in the second schedule of the same that outlines the subject areas for the sectoral committees. Standing order no. 190 (5) (c) and (g) specifically mandates the committee to study and review all county legislation referred to it and also make reports and recommendations to the County Assembly as often as possible, including recommendation of proposed legislation.

OBJECTIVES OF THE COMMITTEE

The main objectives of the Trade, Industry, ICT and Co-operatives committee is to provide mandatory oversight role of the assembly, policy and legislative formulation in support of the relevant Department's bid to render services to the residents of the County Government of Kitui.

The strategic objectives of the committee are as follows;

- To ensure that trade develops and prospers within the County Government of Kitui, ranging from villages, wards, sub counties and at the county government capital;
- To ensure that every form of trade within the county government is regulated and fairly conducted by putting in place legislation that is relevant and proper;
- To advocate for equitable provision of market infrastructure within the county;
- To increase resources and proper legislation in support of ICT in all institutions within the County;
- To provide leadership and support in the policy making of Co-operatives in the entire county;
- To capacity build the committee in order to actively play its oversight role and execute its mandate appropriately.

MEMBERSHIP

The Committee was constituted by the House on 23rd May, 2013. It is currently comprised of eleven members as follows:-

1. Hon. Daniel Kimanzi	Chairperson
2. Hon. Mary Mbandi	Vice Chairperson
3. Hon. Nzuki Wambua	Member
4. Hon. George Kililiku	”
5. Hon. Colletta Kimanzi	”
6. Hon. Peter Kilonzo	”
7. Hon. Angela Kanza	”
8. Hon. Rhoda Wambua	”
9. Hon. Mary Ndumbu	”
10. Hon. Patricia Kimanzi	”
11. Hon. Peter Mutemi	”

ACKNOWLEDGEMENT

The committee wishes to sincerely thank the Honorable Speaker for his tireless effort and undivided commitment to see this committee deliver up to its mandate through trainings. The committee would also wish to thank the Assembly Clerk, for enabling the committee perform its oversight mandate.

Finally, we thank all members who have journeyed with this committee so far.

On behalf of the Trade, Industry, ICT and Co-operatives committee, I have the honour and pleasure to present to the House the Committee’s report on the Kitui County Business Licensing (Amendment) Bill, 2016 for consideration and subsequent adoption.

Thank You.

**HONOURABLE DANIEL NGOIMA KIMANZI,
CHAIRPERSON, COMMITTEE ON TRADE, INDUSTRY, ICT AND
CO-OPERATIVES
COUNTY ASSEMBLY OF KITUI**

ADOPTION OF THE COMMITTEE’S REPORT ON CONSIDERATION OF THE KITUI
COUNTY BUSINESS LICENSING (AMENDMENT) BILL 2016

We, the members of the Trade, Industry, ICT and Co-Operatives Committee, hereby affix our signatures confirming our approval and authenticity of this report.

<u>NAME</u>	<u>DESIGNATION</u>	<u>SIGNATURE</u>
1. Hon. Daniel Kimanzi	Chairperson	.....
2. Hon. Mary Mbandi	Vice Chairperson	.....
3. Hon. Nzuki Wambua	Member	.....
4. Hon. George Kililiku	”	.....
5. Hon. Colletta Kimanzi	”	.....
6. Hon. Peter Kilonzo	”	.....
7. Hon. Angela Kanza	”	.....
8. Hon. Rhoda Wambua	”	.....
9. Hon. Mary Ndumbu	”	.....
10. Hon. Patricia Kimanzi	”	.....
11. Hon. Peter Mutemi	”	.....

This report was prepared by Esther Mwele Musyoka (Second Clerk Assistant)

Sign.....

Date.....

OBJECTIVE OF THE KITUI COUNTY BUSINESS (AMENDMENT) BILL 2016

Mr. Speaker Sir, the Kitui County Business Licensing (Amendment) Bill, 2016 was introduced to the Assembly on 13th December, 2016, through first reading and committed to the Trade, Industry, ICT and Cooperatives Committee in line with the County Assembly Standing Orders Nos. 120 (1).

Mr. Speaker Sir, in adherence to the provisions of Article 174(c) and Article 196 (1) (b) of the Constitution, the committee conducted a public participation exercise for the Bill on 14th February 2017. However, members of the public did not show up for the exercise despite the Assembly having advertised the same in the local dailies and the county radio stations.

Mr. Speaker Sir, The Amendment Bill seeks to amend section 2 and 17 (3) (a) of the Principal Act. The Governor declined to assent to the Principal Act and returned the same with a memorandum citing reasons for his decline. In the memorandum, the Governor raised a constitutional concern in that the members of the county assembly had included themselves in the membership of the Appeals Advisory Committee stipulated under section 17 of the Principal Act. The Governor was of the opinion that this inclusion amounted to a breach of the Principle of Separation of powers as enshrined in the Constitution under Article 175 of the Constitution.

Mr. Speaker Sir, Section 17 of the Principal Act provided that any person aggrieved by the action of a business licensing officer may appeal to the County Executive Committee member responsible for Trade, Industry, ICT and Co-operatives. The CEC member may not dismiss an appeal under the said section unless he refers it to the Appeals Advisory Committee. The problem arises from the fact that the Appeals Advisory Committee consists of the members of the County Assembly. Their inclusion in the membership of the Appeals Advisory committee is contrary to the principle of separation of powers since members of assembly cannot participate in the enactment of the law and also in its enforcement/implementation. Therefore, the members of Assembly cannot be members of the Appeals advisory committee. Article 183 of the constitution

empowers the power of implementation of county legislations on the County Executive Committee member and not the County Assembly.

Mr. Speaker Sir, Section 9 (2) of the County Government Act, 2012 expressly provides that;

“a member of the County Assembly shall not be directly involved in the executive functions of the County Government and its administration.”

Mr. Speaker Sir, Article 185 of the Constitution vests the legislative authority of a county in the County Assembly. The same provision also mandates the County Assembly to exercise oversight over the County Executive Committee and any other county executive organs as long as they observe the principle of separation of powers. The Assembly therefore can exercise this powers by ensuring that the persons appointed to the Appeals Advisory Committee are qualified persons and people with integrity.

Mr. Speaker Sir, the Kenya Law reform Commission advised the County Assembly through a legal opinion, to replace the three members of the county assembly proposed to be members of the Appeals Advisory Committee with three members of the County Executive Committee as the section was unconstitutional. This will serve to ensure that the County Assembly of Kitui is not directly involved with the functioning of the executive arm of the County Government.

The amendment Bill therefore proposes the deletion of section 17 (3a) in its entirety and substituting therefore with;

“Three members of the County Budget and Economic Forum, that is;

- i. The County Executive Committee Member for Finance and Economic Planning;
- ii. The County Executive Committee Member for Trade, Industry, ICT and Co-operatives, and
- iii. One person appointed by the Governor under Section 137 (2) (c) of the Public Finance Management Act no. 17 of 2012”

The committee fully agrees with the proposed amendment.

Mr. Speaker Sir, the amendment bill also proposes to amend section 2 of the Principal Act by introducing and defining the term “County Budget and Economic Forum”. The County Budget and Economic Forum means the County Budget and Economic Forum established pursuant to section 137 of the Public Finance Management Act, 2012. The committee is in total agreement with the amendment proposed.

CONCLUSION

Mr. Speaker Sir, the committee hopes that the proposed amendments as contained in the Bill will address the issues raised by His Excellency the Governor in his memorandum. Also, the committee urges the members of the Assembly to consider and pass the amendment Bill as it will finally provide a means to the residents to ensure that licenses are given fairly, procedurally and for the correct prescribed fees as well as providing an avenue for resolving disputes arising during the licensing process.