

COUNTY ASSEMBLY OF NAKURU

THE HANSARD

Third Assembly (Second Session)

Tuesday 11th April 2023

Assembly Building

The House met at 10:10 AM

[Speaker (Hon. Joel Karuri) In the Chair]

PRAYERS.

PETITION

UTILISATION OF BURSARY FUNDS IN NAKURU COUNTY

The Speaker (Hon. Joel Karuri): There is a Petition which is a Response, which is the Report of Early Childhood and Vocational Training on Utilisation of Bursary Funds in Nakuru County. It is going to be laid by the Honorable Peter Maina who is the Chairperson for the Committee on Early Childhood and Vocational Training.

Hon. Peter Maina: Honorable Speaker, I am here on behalf of the Committee on Early Childhood and Vocational Training in submitting a report on the Petition of Utilisation of Bursary Funds in Nakuru County. I take this opportunity to thank the Members of this Committee for their commitment and contributions during the process of interrogation of the aforementioned Petition. On behalf of the Committee, it is my pleasure and duty to present the report on the Findings on Public Petition on matter of Bursary Allocation to functions of National Government.

The background- Pursuant to the provision of Standing Orders 205(2), the Committee on Early Childhood Development and Vocational Training received a Petition from Grassroot Civilians Foundation on matters concerning Bursary Allocation to Secondary Schools, Colleges and Universities, the Petitioners had a prayer that-

1. The Assembly in its Constitutional Mandate should disapprove of any Funds in form bursaries intended to facilitate functions of National Government as stipulated in Schedule 4 of the Constitution.
2. That Funds of the County Government including Bursaries should only advance functions of the County Government as espoused in Schedule 4(2) of the Constitution of Kenya, 2010
3. That further deliberate violation of progressive Constitution on the above matter will inform us to seek redress gestures from the High Court.

Provision of Public Petitions- Public Petitions are provided for under Standing Order 198 of the County Assembly of Nakuru. Pursuant to Standing Order 205(2) of the Nakuru County Assembly, the Honorable Speaker committed the Petition the Committee on Early Childhood Education and Vocational Training for consideration on 15th November, 2022.

Submission by The Petitioners- Honorable Speaker, the Committee upon receipt of the Petition wrote to the Petitioner Laban Omusundi and Benson Oluande to ascertain the issues raised in the Petition. The petitioners were invited via a letter captioned vide CAN/CM/1/2(10) on 1st March, 2023 and appeared before the Committee on Wednesday 8th March, 2023. The Committee accorded the Petitioners a fair hearing as provided for in the Constitution of Kenya, 2010. Mr. Laban Omusundi stated that The Grassroot Civilians Foundation is a Human Rights group and their prayer is that the County Assembly to intervene and stop the County Executive from issuing Bursaries since Schedule 4 of the Constitution of Kenya 2010 mandates the issuance of Bursaries to be the National Government function. The Petitioner also cited that the aforementioned Petition was still pending at Nakuru County Executive which had not yet be acted upon and their prayer was the County Assembly of Nakuru intervenes. Lastly, he told the Committee that their above matter was not pending in any Court or any Constitutional body. Additionally, Mr. Benson Oluande stated that the County Governments are only allowed to issue Bursaries to Technical Institutions and ECDs. He further stated that the County Government funds including Bursaries should only advance functions of the County as espoused in Schedule 4 (1) of the Constitution of Kenya, 2010 and not use for facilitating Secondary, Universities, Colleges among other institutions of Higher Learning as the County Mandate clearly states that Bursaries should be given to Early Childhood and Vocational Centers only. He added that it has come to their attention that the County Executive has been overstepping its role in Education by offering Bursaries to facilitate functions of the National Government and their prayer was that the Assembly to bar the County Government from allocating Bursaries.

COMMITTEE OBSERVATIONS AND FINDINGS

Honourable Speaker, the Committee having considered the submissions before, it observed that bursary issuance is guided by the following;

1. The 2010 Constitution of Kenya

The 2010 Constitution of Kenya recognises that “every person has the right to education” (Article 43 (1) (f) and stipulates that “every child has the right to free and compulsory education” (Article 53 (1) (b).

2. The Nakuru County Bursaries Fund Act, 2019.

The object and purpose of the Act is to provide for;

- a) The establishment of a Fund to provide bursaries to financially disadvantaged or needy students in the County, including Persons With Disabilities, who deserve support to pursue their education in recognised schools and Educational Institutions;

- b) Providing education grants or bursaries to eligible students enrolled in primary schools, secondary schools, special primary schools, universities, colleges and polytechnics;
- c) To establish procedures and guidelines for efficient, verifiable allocation and disbursement of the Funds and other related scholarships by the County Government of Nakuru;
- d) Provide for the procedure for application of and requirements for access to the Fund;
- e) To ensure equitable distribution of the Bursary Fund;
- f) To foster, promote and advance the right to Education pursuant to Article 43(1)(f) of the Constitution;
- g) To reduce disparities and inequality in the provision of Education;
- h) Promote and increase enrollment, retention, completion and transition rates in schools; and
- i) Improve education standards and literacy levels and reduce poverty and inequality.

3. Public Finance Management (Nakuru County Bursary Fund) Regulations 2015

The objective and purpose of these Regulations is to provide for the establishment of a Fund to provide education bursaries to financially disadvantaged or needy students in the County including Persons With Disabilities who deserve support to pursue their education in recognised schools and educational institutions and to provide for efficient allocation and disbursement of the funds.

The regulation also clearly states that;

Section 10 (1) state that, “Any student who wishes to benefit from the Fund shall make an application to the relevant Ward Bursary Committee in a form set out in the Schedule and the Ward Bursary Committee shall consider all applications submitted to it and may accordingly accept or reject any application for a bursary. Where it accepts any application, the Ward Committee shall recommend to the County Bursary Committee, the grant of a bursary to the qualifying student.”

4. International Human Rights Standards; Every Child has a Right to Education.

Education is a basic right enshrined in the United Nations Convention on the Rights of the Child (CRC).

International Human Rights Law makes it clear that all children have a right to free, compulsory primary education and free from discrimination.

State Parties also ensure different forms of secondary education are available and accessible to every child, and take appropriate measures, such as the progressive introduction of free education and offering financial assistance in case of need.

5. Progressive Realisation of the Right to Education (PRRE)

Education, an economic, social, and cultural right, entails state obligations of both an immediate and progressive kind. This set of rights is subject to progressive realisation, in recognition of the fact that states require sufficient resources and time to respect, protect, and fulfill these rights.

6. Global Education Efforts

In this regards the United Nations member States agreed to work together to “ensure inclusive and quality education for all and promote lifelong learning” by 2030 as part of the new Sustainable Development Goals (SDGs).

7. The Millennium Development Goals (MDGs), which aimed, among other things, to ensure all children complete primary education and that an equal number of girls and boys remain in school. On the same note the MDGs ensure that every child should be entitled to free basic and secondary Education.

8. Education law and policy framework

Kenya has ratified most International Treaties that protect the right to education, which form part of the Country’s laws. The Constitution of Kenya, in Article 53 (1) (b) state that every child has a right to free and Compulsory Basic Education and Article 55 (a) the State shall take measures, including Affirmative Action Programmes, to ensure that the youth access relevant education and training. Minorities and Marginalised Groups under Article 56 (b) have a right to be provided with special opportunities in the field of education.

9. The Basic Education Act (No. 14 of 2013) has been passed into law to regulate the provision of Basic Education and Adult Basic Education in the Country.

Hon. Peter Maina: The law guarantees the implementation of the right to education. In addition, Kenya adopted general and specific policies on education. The most recent are the Second Medium Plan Term or Vision 2030 and the Policy Framework for the Education and Training (2012).

10. The 2001 Child’s Act.

It requires the Government to undertake all the necessary steps to make available free education to every child. Article 7 recognizes as follows;

- I. Every child has been entitled to education, the provision of which shall be responsibility of the Government and the parents.
- II. Every child shall be entitled to free basic education which shall be compulsory in accordance to Article 28 of the United Nations’ Convention on the Rights of a Child.

RECOMMENDATION OF THE COMMITTEE.

Arising from the above observations and findings, the Petition is not merited and it is null and void. Thank you.

The Speaker (Hon. Joel Karuri): Thank you Chair for Education Committee and maybe we want to get it from you and to copy after you that we are going to deploy the ICT gadgets to our advantage so that our work can comply with the ICT standards in this County. That was huge.

That is the response of the Committee of Education and Vocational Training. We could have two Members comment about the response.

Hon. Njuguna from Elburgon Ward.

Hon. Njuguna Mwaura: Thank you Mr. Speaker sir. I have read the spirit of the Petition and what the petitioner was addressing. What I wanted to ignite was a discourse of law and when the petitioner looked at Schedule 4 he had an oversight as a member of the public. Were it not for the affirmative action that we have as a County to make sure that every child has a right to basic education, I am afraid to say that the petitioner has a case because the County Governments draw their functions from the Schedule 4. If you look at it critically, there are functions that the National Government cannot interfere with. Equally, there are functions where the County Government should not endeavor to indulge itself into.

However, I wanted to amend the recommendation of the Committee and request the Committee to further interrogate the recommendation that they gave because there is no Petition that is not merited to arrive to this House. However, the response that should go to the petitioner should be advisory recommendation because this recommendation is deterrent in terms of response and therefore, what I would wish in future is that whenever the Committee is coming up with recommendations, it should be cognisant that power belongs to the people and the sovereignty of this Country belongs to the people and whenever such response comes fourth, let it advise the members of the public and perhaps, the recommendation that ought to be there was to advise them further; to tell them that that the County has embarked on affirmative action because even the National Government cannot be able to hold the number of students that we have so that we can provide such observations that have been provided here.

However, I know what the bursary does. It is very essential and supportive to the students but also, I would wish to say that these people wanted us to dwell further onto our functions of making sure that Early Childhood Education has been given enough attention by this County.

If you go to Kasarani in Elburgon Ward, you will find a child who cannot afford to find herself or himself into an ECD. That was the spirit of this Petition. Anytime now, when I meet the Chairperson along the corridors, we are going to discuss this because in future, our Act will be caveated so that we can endeavor into our own routes and in our own lines as enshrined by our Constitution.

The Speaker (Hon. Joel Karuri): Thank you the Hon. Chairperson for Health. Maybe Chairperson let us allow one more Member then have an opportunity to respond. Hon. Wathiai from Shaabab Ward.

Hon. David Wathiai: *Mr. Spika nashukuru sana kwa kunipa hii nafasi ili niweze kuchangia kwa hii Ripoti ambayo imekuja kutoka Kamati ya Education. Mwenyekiti na Wanakamati mmefanya kazi nzuri sana na tunawashukuru sana kwa hiyo kazi mmefanya. Nimepitia hii Ripoti na nimeshangaa kama huyu Mwombaji hana watoto ama watoto wanasoma kwa familia yake ama anaishi mahali pale milimani ama pesa anazo kila wakati na watoto wanasoma. Yeye haoni shida ambazo hao watoto wanapitia. Sisi wenyewe kama viongozi tukiwa pale mashinani tunaona watoto wakiumia. Kama ningekuwa huyu mwombaji, singewahi sema Kaunti isilipie watoto bursary kwa sababu hii bursary...*

The Speaker (Hon. Joel Karuri): The Honorable Member kindly confine yourself to the report and not the petitioner.

Hon. David Wathiai: *I stand guided Mr. Speaker. Hii Ripoti tumepatiwa na ndugu yetu iko sawa kabisa. Hayo matakwa ya Mwombaji kuleta mambo ya kusema Kaunti isilipe bursary naomba sisi kama Waheshimiwa wa hii Nyumba tupitishie hii Ripoti. Tuseme iko sawa na tufungie Mwombaji huko nje kwa sababu ameshinda akitusumbua. Anataka watoto wetu wasisome. Ninashukuru kwa hii nafasi umenipa na ninaomba sisi kama hii Nyumba tuseme kuwa mambo ya huyu Petitioner aende alete lalamiko lingine lakini isiwe ya kusema watoto wetu wasisiomeshwe katika Kaunti hii yetu ya Nakuru.*

The Speaker (Hon. Joel Karuri): The Chairperson... Now issues of precedence. The Hon. Minority Leader then the Hon. Chair.

Hon. Philip Wanjohi: Thank you Mr. Speaker. I want to agree fully with the Report that has been presented by our Chairman the Hon. Peter Maina. Before we came up with this Report, when the Petition came up to the Education Committee where we are 18 Members, the Chairman mandated each one of us to go to our Wards and do public participation just to get the feel and a feeling of what the members would want and we gave back a Report to the Chair. We were in agreement that the 18 Wards that were representing the Education Committee did a public participation and the people that voted for us were in agreement and they said that they wanted bursary.

Therefore, the views that have been read here are not our personal views; these are views that have come from various respective Wards. It is true like the Hon. Njuguna has said that the mandate is to take care of the ECDs and the Vocational Training Centres but however, if you look at the Report that has been presented here we have quoted other laws that are of superior than the County laws. We have international Laws on Education. We have our own Constitution of Kenya. The Constitution of Kenya and the International Law supersede the County laws and that is why we have quoted all those laws that deal with education.

We also have a Bursary Regulation that was passed in this Assembly and therefore what we are doing is not outside the mandate of this County. There is a policy that mandates that. That policy came in 2018 and was passed in this Assembly and therefore if that law was invalid then somebody should have gone to challenge the court of law. It came up in this House, it was passed and that is exactly what we are following.

Looking at all that we have said today, it is true that the International and National law supersedes the County law because that is where we borrow the laws of this County. If somebody wants to challenge us we can actually go to court and quote the International law and say which one comes before which. Therefore my thinking is the Bursary Law should be there and what we are saying is that our Vision 2030 which we have not reached, one of the pillars of Vision 2030 is Education.

As much as they want to say that probably the County Assembly was not following, we are following the International Law, and the laws that are required in regards to the bursaries of this Committee. I want to thank my Chair for the nice homework that he gave us and I think all the Members of this House are in agreement that we need the bursary to proceed with education in this County. Thank you Mr. Speaker.

The Speaker (Hon. Joel Karuri): Chairperson

Hon. Peter Maina: Mr. Speaker allow me through you to respond to my very good friend Hon. Njuguna from Elburgon. In Elburgon there are 17 young boys and girls who did very well in their KCSE examination. They each scored above 350 marks but they had not reported to school because they come from very needy homes and they are disadvantaged financially.

Through the bursaries and through the Office of the Governor, all the 17 students have been sponsored to join secondary schools. Now the question is Hon. Njuguna from Elburgon insists that we should limit ourselves to ECDs and Vocational Trainings but when needy cases arise from his area he supports. That shows double standards.

The Speaker (Hon. Joel Karuri): The Hon. Chair kindly have your seat. The Hon. Njuguna was just presenting his views that into the future that the petitioner was looking at the discourse of the law and the Schedule 4 of the Constitution about the Devolved functions. At no given time did he say that he does not want the members of public from Elburgon to access the bursaries. So, unless I did not get that right Mr. Chair, maybe you could summarise your submission.

Hon. Peter Maina: From what I understood, his conclusion was that we should not have dumped the Petition or even demerited it as null and void therefore my argument was, or my understanding was that he supports the petitioners that we should only limit ourselves to the ECDs and the Technical Training Colleges.

Mr. Speaker the other point that I needed to make 6 years ago...

Hon. Njuguna Mwaura: Allow me Mr. Speaker because I have been mentioned Mr. Speaker it is true and Hon. Chair is introducing a discourse on top of a discourse. There is nothing short of what you said. I have not talked against the findings of the Committee; they are true and they hold water.

However, what I just alluded was the issue of the recommendations of the Committee and that is what the Chair is avoiding. This is because I said whenever Petitions arrive here, because of Article 1 of the Constitution of Kenya which is a Supreme Law, other subsidiary laws including International Laws they take the precedence of the Constitution of the Republic of Kenya and also, what I was saying and I was requesting is that whenever the Committees are coming up with

recommendations they should not deter the members of the public from questioning or coming to seek refuge in this House.

I did not in fact say that I do not support bursary; even all the County funds can come to Elburgon in terms of bursary. What I actually wanted is that the petitioner had seen a certain window of supporting our mandate first and giving it the proper support. For instance, we have only one ECDE teacher per each ECDE School; we do not actually give our students meals, we do not have enough ECDE classrooms and I can quote Her Excellency the Governor said that some of the washrooms for our schools are in dilapidated status. Some of our schools or polytechnics do not meet the standards.

However, it is true that funds ought to be given and in my conclusion, that it is an affirmative action that the County Government of Nakuru is undertaking to making sure that they support the National Government. Remember Mr. Speaker, that affirmative action is caveated by certain periods and limits of time so that they can support the members of the public and they look like Government subsidies. Thank you Mr. Speaker and I hope that the Chair is well informed. Thank you.

The Speaker (Hon. Joel Karuri): The Chairperson.

Hon. Peter Maina: Mr. Speaker I am well informed, thank you.

PAPER(s)

THE REPORT OF HEALTH COMMITTEE SERVICES ON THE VISIT TO LANGA LANGA SUB-COUNTY HOSPITAL

The Speaker (Hon. Joel Karuri): There is a Paper to be laid by the Hon. Chairperson of the Health Services Committee.

Hon. Njuguna Mwaura: Thank you, Mr. Speaker, I arise to lay a Paper, which is the Report of Health Committee Services on the visit to Langa Langa Sub-County Hospital. I beg to lay

The Speaker (Hon. Joel Karuri): Thank you the Hon. Njuguna.

NOTICE(s) OF MOTION

HOUSE ADOPTS THE REPORT OF THE COMMITTEE ON HEALTH SERVICES ON THE VISIT TO LANGA LANGA SUB-COUNTY

There is a Notice of Motion by the Chairperson Committee on Health Services.

Hon. Njuguna Mwaura: Thank you Mr. Speaker I arise to give a Notice of Motion that this House adopts the Report of the Committee on Health Services on the visit to Langa Langa Sub-County Hospital on 28th February 2023. I beg to give a Notice of Motion.

The Speaker (Hon. Joel Karuri): Thank you, the Notice is properly given,

ADJOURNMENT

Honourable Members, this House is adjourned to today 2.30pm

The House rose at 10.45am