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COUNTY ASSEMBLY OF BUNGOMA
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COUNTY ASSEMBLY OF BUNGOMA

OFFICE OF THE CLERK

BUNGOMA COUNTY

**COMMITTEE ON JUSTICE, COHESION AND
LEGAL AFFAIRS**

REPORT

ON

**THE STATUS OF PENDING CASES BY THE COUNTY
GOVERNMENT OF BUNGOMA AS AT FEBRUARY 2023**

Clerk's Chambers
County Assembly Buildings
PO BOX 1886,
BUNGOMA, KENYA.

March, 2023

LIST OF ABBREVIATIONS

ADR-Alternative Dispute Resolution

BGM-Bungoma

CECM-County Executive Committee Member

CMCC-Chief Magistrate Civil Case

ELC- Environmental Land Court

ELRC-Employment Labour Relations Court

HC-High Court

HCC-High Court Case

HCCC-High Court Civil Case

PMCC-Principal Magistrate Civil Case

SPMCC-Senior Principal Magistrate Civil Case

SRMCC-Senior Resident Magistrate Civil Case

EXECUTIVE SUMMARY

Pursuant to section 7 of the Office of the County Attorney Act, 2020, the County Attorney shall, upon 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 and also advise County Executive departments on legislative and other legal matters. It is upon this background that the Committee on Justice, Cohesion and Legal Affairs initiated a process to pursue the Status of Pending cases by the County Government of Bungoma due to the upsurge of cases against the County. The Committee requested for a status report on all pending cases involving the County Government of Bungoma, any legal matter involving government officers, a list of all pending cases and legal fees charged, a list of all cases solved through Alternative dispute Resolution and a list of pre-qualified law firms offering legal services to Bungoma County Government. After an indepth consideration of the matters the Committee observed that there were 246 pending cases by the County Government of Bungoma and 49 pre-qualified Law firms. The Committee further observed that cases initially initiated through litigation have since been referred to be solved through Alternative Dispute Resolution.

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1.0 CHAPTER ONE

1.1 Preface

Mr. Speaker Sir, on behalf of the members of the Committee on Justice, Cohesion and Legal Affairs, it is my pleasure and duty to present to the House the Committee's report on the status of pending cases by the County Government of Bungoma.

1.2 The Mandate of the Committee

Mr. Speaker Sir, the Committee on Justice, Cohesion and Legal Affairs draws its mandate from the Standing Order No.213 (3) of the Bungoma County Assembly which states that:

The Committee shall:

- a) Carry out matters of Constitutional affairs, administration of Law and Justice, including ethics, integrity, elections and human rights; and all petitions save for Petitions under Standing Order 78(5);
- b) Monitor and promote measures relating to policy and program initiatives in pursuit of Peace and County cohesion.
- c) Investigate, inquire into and report on all matters relating to inter-community cohesion in the County.
- d) Monitor and promote measures designed to enhance the equalization of opportunities and improvement in the quality of life and status of all persons, including persons who are marginalized on the basis of gender, age, disability, health status, ethnic, racial, cultural or religious background or affiliation or any other such ground.
- e) Investigate, inquire into and report on all matters relating to discrimination or marginalization of persons referred to under sub-paragraph(d);
- f) Make proposals to County Assembly including Legislative proposals for the protection, equalization of opportunities and promotion of the welfare of the groups referred to under sub paragraph (d) and
- g) Examine the activities and administration of all County Departments and statutory bodies in so far as they relate to the rights and welfare of the persons referred to under subparagraph (d)

1.3 Committee Membership

Mr. Speaker Sir, the Committee on Justice, Cohesion and Legal Affairs as currently constituted comprises the following Members:-

- | | | |
|-----|------------------------|------------------|
| 1. | HON. METRINE WILSON | CHAIRPERSON |
| 2. | HON. EVERLYNE ANYANGO | VICE CHAIRPERSON |
| 3. | HON. GEORGE MAKARI | MEMBER |
| 4. | HON. FRANCIS CHEMION | MEMBER |
| 5. | HON. EVERLYNE MUTIEMBU | MEMBER |
| 6. | HON. EDWIN OPWORA | MEMBER |
| 7. | HON. BENJAMIN OTSIULA | MEMBER |
| 8. | HON. SHEILA SIFUMA | MEMBER |
| 9. | HON. IDD OWONGO | MEMBER |
| 10. | HON. JEREMIAH KULOBA | MEMBER |
| 11. | HON. TIMOTHY CHIKATI | MEMBER |

1.4 Acknowledgement

I wish to sincerely thank Office of the Speaker and the Clerk of the County Assembly for their support that enabled members execute their mandate. I also thank the Committee members for their hard work, patience and commitment despite their busy programs.

The Committee further thanks the Secretariat for taking time to collate and compile this report in good time. The Committee appreciates the Office of the County Attorney for furnishing the Committee with the required information.

Signed.....*Metrine Wilson*.....Date.....*28/07/2023*.....

HON. METRINE WILSON

CHAIRPERSON JUSTICE , COHESION AND LEGAL AFFAIRS

	Wangila Advocates								
10.	Makokha, Wattanga & Luyali Associates	9	8	1		1	9		28
11.	J.O Makali & Company Advocates	6	4			3	2		15
12	Office of the County Attorney	27	4	8	2	8	2	8	68
	Total								246

Committee Observations

1. That The Office of the County Attorney has the highest number of pending cases followed by Ocharo Kebira & CO. Advocates.
2. That 8 cases were referred to Insurance Companies
3. The County Government has a total of 246 cases pending before different courts on different matters in the County.
4. Some of the pending cases date back as far as 2002 through to 2023 and in some cases, the plaintiff is deceased like in Bgm HC ELC case No. 154 of 2016, the plaintiff, Salome Nekesa Mwanikha is deceased.
5. Majority of the pending cases dating back to 2002 involve land and environment disputes where the plaintiffs sought for injunctions against the County Government.
6. The Office of the County Attorney is currently handing majority of the cases, though still pending before courts. The Office has a total of 68 pending cases on different matters and in different courts.
7. Reason for pending cases included:
 - ✓ Awaiting hearing date
 - ✓ Parties directed to conduct an out of court settlement and the matter is not yet settled.
 - ✓ Judgement delivered in favour of the petitioner, county directed to pay costs and they are not yet paid.
 - ✓ Pending on a proposal to have the matter arbitrated
 - ✓ Judgement entered but plaintiff has filed a notice of appeal against the trial court's decision.

2.2 LEGAL FEES CHARGED ON DIFFERENT CASES AGAINST THE COUNTY GOVERNMENT OF BUNGOMA AS AT FEBRUARY 2023

Mr. Speaker Sir.

In most of the administrative issues court cases are bound to occur and this helps both parties to come to terms and work in harmony, these cases when resolved in time helps to avoid wastage on fees charges for court appearances.

The Office of the County Attorney submitted that there has been an upsurge of cases in the recent past against the County Government of Bungoma touching on various issues including: Land and Environment, Employment and Labour Relations, Contractual matters, Motor vehicle Accidents forwarded to the Insurance Companies, Constitutional petitions, Procurement matters filed at the Public Procurement Administrative Review Board among others.

Further, that there are quite a number of cases, some dormant that have been against both the defunct Municipal Council and the County Government.

A look at the list of the pending cases provided by the department and herein attached, the Committee came up with the following summary:

NO.	ADVOCATE INVOLVED	NUMBER OF CASES	TOTAL FEES (Kshs.)	TOTAL FEES PAID(Kshs.)	BALANCE (Kshs.)
1	Ocharo Kebira & Co. advocates	40	35,704,554	9,981,995	25,722,559
2.	Annet Mumalasi & Co. Advocates	20	32,452,404	17,053,630	15,298,774
3	A.W Kituyi & Co. Advocates	28	59,832,429	22,303,429	37,529,000
4.	Gumbo & Associates	3	6,218,000	2,350,000	3,868,000
5.	Wekesa & Simiyu Advocates	21	23,993,300	18,851,500	5,141,800
6.	Manyonge, Wanyama & Associates Advocates	2	Fees note not received	-	-

Committee Observations

1. The County Government has several pending cases involving its staff, which date back to 2014.
2. Among the pending cases by the County Government are cases involving the County Government both current and former employees against the County Government and those involving the public against employees of the County Government.
3. Several ministries are enjoined in the cases by the fact that the defendants are employees in the ministries.
4. Most of the pending cases against the County Government are those involving road accidents, employment and negligence by County Government employees.
5. The Ministry of Health is leading in pending cases (10) involving staff/drivers in having cases on road accidents followed by the Ministry of Roads, Infrastructure, Transport & Public works with 4 cases and the Deputy Governor's Office with 3 pending cases.
6. The Ministry of Human Resource and Management and Finance have the highest number of cases on employment (5 each), followed by the Governor's Office with 4 cases on Employment.
7. The Ministry of Health has a record of 10 pending cases on matters negligence of its staff on various issues especially those involving medical staff.

2.5 CASES SOLVED THROUGH ALTERNATIVE DISPUTE RESOLUTION

Mr. Speaker Sir.

The legal framework for Alternative Dispute Resolution Mechanism is provided for in Article 159 of the Constitution of Kenya 2010. The Alternative Dispute Resolution Bill, 2021 defines 'alternative dispute resolution' as reference to constitutionally compliant mechanisms, processes and methods of dispute resolution other than judicial determination. This therefore means that alternative dispute resolution refers to all those decision-making processes other than litigation including negotiation, conciliation, and arbitration among others.

The County Government of Bungoma indicated that it does not have any cases that have been determined through Alternative Dispute Resolution *per-se* however, a

number of cases that were initially initiated through litigation have since been referred to be solved through Alternative Dispute Resolution by the Courts. The said cases are listed in annex 2 herein attached but the summary is in the table below:

NO.	NATURE OF CASE	DEPARTMENT	NO. OF CASES
1	Land and Environment, land disputes	Lands, Urban and Physical Planning	3
2	Contractual, employment	Public Administration	2
3	Contractual	Agriculture & irrigation	2
4	Negligence	Health, Public Administration, Governor's Office and Sanitation	1
5	Constitutional Petition	Governor's Office	1
6.	Employment	Finance & Economic Planning	1
7.	Contractual	Health and Sanitation	1
Total			11

Committee Observations

- 1) All the cases referred to be solved through Alternative Dispute Resolution had initially been initiated through litigation.
- 2) Despite there being a legal framework for Alternative Dispute Resolution Mechanism as provided for in Article 159 of the Constitution of Kenya 2010, the County Government of Bungoma has not explored this as a means to resolve cases involving the County.

2.6 PENDING CASES BY THE COUNTY GOVERNMENT OF BUNGOMA AS SPREAD IN DIFFERENT COURTS

Mr. Speaker Sir.

The pending cases are spread in different Courts across the Country as outlined in the table below:

NO	LOCATION	TOTAL
1.	Bungoma	158
2.	Webuye	11
3.	Kimilili	16
4.	Eldoret	5
5.	Kitale	1
6.	Kisumu	9
7.	Nairobi	9
8.	Sirisia	3
9.	Kakamega	2
10.	Mombasa	1
11.	TOTAL	214

Committee Observations

- 1) That Bungoma has the highest number of cases at 158
- 2) The office of the County Attorney cited some of the cases as pending yet they had been heard and determined in court. The example is case No. 164/2003, Bgm CMCC which was also appearing on the list of matters referred to Alternative Dispute resolution.

2.7 LOCATION OF LAW FIRMS REGISTERED BY THE COUNTY GOVERNMENT OF BUNGOMA

Mr. Speaker Sir.

The table below shows the location of law firms registered to provide legal services to the County Government of Bungoma:

No	Location	Number of law firms
1.	Nairobi	34
2.	Kitale	3
3.	Nakuru	2
4.	Eldoret	2
5.	Bungoma	8
Total		49

Committee Observations

- 1) That majority of the law firms registered are located in Nairobi followed by Bungoma, Kitale, Nakuru and Eldoret .
- 2) Ocharo Kebira and Annet Mumalasi are currently serving as judges yet they are legal service providers to the County Government of Bungoma.

3.0 CHAPTER THREE

3.1 Committee General Recommendations

1. **THAT** the County Attorney should come up with strategies to fast track hearing and determination of the pending cases especially ADR mechanism such as Mediation and Arbitration and share with the Committee within 60 days.
2. **THAT** the County Attorney should ensure compliance with the court orders, settlement of decrees and payment of external lawyer's fees to avoid incidences of contempt of court, execution and taxation of advocate-client bills.
3. **THAT** the department should make it a practice in getting legal opinion on all matters before they proceed to hearing and explore possibilities of out of court settlement to save on costs and legal fees incurred.
4. **THAT** the department should ensure that all files in which Judgement has been delivered and/or out of court settlement reached are marked as closed in the sense that there is settlement of all issues including costs.
5. **THAT** going forward the office of the County Attorney should handle fresh matters as per the County Attorney Act, 2020 except matters in which there is a likelihood of conflict of interest or where the prevailing circumstances are such that in-house Counsel cannot properly prosecute or defend.
6. **THAT** with regard to Eldoret ELC case No. 325 of 2017, land parcel No. Ndivisi/Muchi/6924 and 6925, which parcels of land are squarely within the local limits of the Environment and Land Court of Bungoma. The case ought to be heard in Bungoma and not Eldoret. The counsels should either raise an objection or have the matter transferred to ELC Bungoma unless if the same is at the court of Appeal of which the proper citation ought to be given.
7. **THAT** there should be a standard system of paying legal fees.
8. **THAT** the Committee on Implementation to ensure compliance of the recommendations of this Committee within 60 days of adoption of this report.
9. **THAT** the County Attorney should ensure compliance with lawful court orders to avoid lawful sanctions case no Bgm HC Petition No. 2 of 2020 between Fredrick Musebe and 14 others Vs County Assembly Service Board on office operation funds.

ANNEXURES

- Annexure 1 Adoption Schedule
- Annexure 2 Status of Pending Cases handled by the County Government of Bungoma as at February, 2023
- Annexure 3 Matters referred to Alternative Dispute Resolution as at February, 2023
- Annexure 4 Registered Law firms
- Annexure 5 Forwarding Letter

ADOPTION SCHEDULE

We the undersigned members of Justice, Cohesion and Legal Affairs append our signatures adopting this report with the contents therein.

NAME	DESIGNATION	SIGNATURE
1. Hon. Metrine Wilson	Chairperson	
2. Hon. Everlyne Anyango	Vice chair	
3. Hon. Everlyne Mutiembu	Member	
4. Hon. George Makari	Member	
5. Hon. Benjamin Otsiula	Member	
6. Hon. Timothy Chikati	Member	
7. Hon. Francis Chemion	Member	
8. Hon. Sheila Sifuma	Member	
9. Hon. Edwin Opwora	Member	
10. Hon. Idd Owongo	Member	
11. Hon. Jeremiah Kuloba	Member	