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*21/11/23*

**COUNTY GOVERNMENT OF BUNGOMA**



RECORDS SECTION  
COUNTY ASSEMBLY OF BUNGOMA  
**21 NOV 2023**  
RECEIVED  
P. O. Box 1886 50200, BUNGOMA

**COUNTY ASSEMBLY OF BUNGOMA**  
**REPORT BY THE COMMITTEE ON**  
**LANDS, URBAN, PHYSICAL PLANNING AND HOUSING**

**ON**  
**THE PROTEST LETTER AGAINST THE TRANSFER OF THE MANAGER,**  
**BUNGOMA MUNICIPALITY**

**NOVEMBER, 2023**

COUNTY ASSEMBLY OF BUNGOMA  
(LPCS)  
**21 NOV 2023**  
**TABLED**  
By: *K. Kimani*

COUNTY ASSEMBLY OF BUNGOMA  
(LPCS)  
**26 NOV 2023**  
**NOTICE ISSUED**  
By: *K. Kimani*

Clerk's Chambers  
County Assembly of Bungoma  
P. O Box 1886-50200  
Bungoma, Kenya.

## TABLE OF CONTENTS

CHAPTER ONE.....	3
1.1 PREFACE.....	3
1.2 Establishment and the mandate of the Committee.....	3
1.3 Membership of the Committee.....	4
1.4. Acknowledgement.....	5
CHAPTER TWO.....	6
2.1 Background.....	6
2.2 Purpose and objective of the report.....	6
2.3 Legal Framework.....	6
CHAPTER THREE.....	8
3.1 The Ground for the protest.....	8
3.2 Appearance before the committee.....	9
3.2.1 The bungoma Municipality Board Members.....	9
3.2.2. Department of Lands, Urban, Physical Planning and housing.....	10
CHAPTER FOUR.....	13
COMMITTEE OBSERVATIONS AND CONCLUSION.....	13
ADOPTION SCHEDULE.....	20

## CHAPTER ONE

### 1.1 PREFACE

#### 1.2 Establishment and the mandate of the Committee

**Mr. Speaker Sir,**

The Sectoral Committee on Lands, Urban, Physical Planning and Housing is constituted pursuant to the provisions of Standing Order No. 217 of the Bungoma County Assembly Standing Orders and executes its mandate in accordance with Standing order No.217(5) which provides that the functions of a Sectoral committee shall be to-

- a) Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations, coordination, control and monitoring of budget;
- b) Consider quarterly reports of the assigned departments and report to the House within twenty-one (21) sitting days upon being laid;
- c) Study the programme and policy objectives of departments and the effectiveness of the implementation;
- d) study and review all county legislation referred to it;
- e) study, assess and analyze the relative success of the departments as measured by the results obtained as compared with their stated objectives;
- f) investigate and inquire into all matters relating to the assigned departments as they may deem necessary, and as may be referred to them by the County Assembly;
- g) to vet and report on all appointments where the constitution or any law requires the County Assembly to approve, except those under Standing order 208(Committee on Appointments); and
- h) make reports and recommendations to the County Assembly as often as possible, including recommendations of proposed legislation.

### **1.3 Membership of the Committee**

**Mr. Speaker Sir,**

The Committee on Lands, Urban Physical Planning, and Housing as currently constituted comprises the following members:-

- |                    |           |                  |
|--------------------|-----------|------------------|
| 1. Hon. Francis    | Chemion   | Chairperson      |
| 2. Hon. Linda      | Kharakha  | Vice-chairperson |
| 3. Hon. Ali        | Machani   | Member           |
| 4. Hon. James      | Mukhongo  | Member           |
| 5. Hon. Henry      | Nyongesa  | Member           |
| 6. Hon. Metrine    | Nangalama | Member           |
| 7. Hon. Busolo     | Sudi      | Member           |
| 8. Hon. Eunice     | Kirui     | Member           |
| 9. Hon. Johnston   | Ipara     | Member           |
| 10. Hon. Wafula    | Waiti     | Member           |
| 11. Hon. Edwin     | Opwora    | Member           |
| 12. Hon. Everlyne  | Anyango   | Member           |
| 13. Hon. Cornelius | Makhanu   | Member           |
| 14. Hon. Mildred   | Barasa    | Member           |
| 15. Hon. Jeremiah  | Kuloba    | Member           |

#### **1.4. Acknowledgement**

**Mr. Speaker Sir,**

The Committee is grateful to the offices of the Speaker and the Clerk to the County Assembly for the logistical support accorded to it during the report writing as it executed its mandate.

I wish to express my appreciation to the Honorable Members of the Committee for dedicating their time to sit and examine the report on protest letter on the transfer of the Municipal Manager, Bungoma from the Bungoma Municipality Board and for coming up with final report.

My sincere gratitude also goes to the members of the Secretariat for offering technical support and compiling this report.

It is therefore my pleasant duty and privilege, and on behalf of the Committee on Lands, Urban Physical Planning and Housing to table this report on protest letter on the transfer of the Municipal Manager, Bungoma from the Bungoma Municipality Board and its recommendations to this Assembly for deliberation and adoption.

Thank you.

Sign ..........Date.....3.11.2023.....

**HON. Francis Chemion,**

**Chairperson, Committee on Lands, Urban Physical Planning, Housing and Municipalities.**

## CHAPTER TWO

### 2.1 Background

#### Mr. Speaker Sir.

On 28<sup>th</sup> August, 2023, the committee received a protest letter against the transfer of the Manager, Bungoma Municipality from the Bungoma Municipality Board. The letter was addressed to His Excellency the Governor and copied to the chairperson of the committee.

Upon scrutiny, the committee acknowledged the matter addressed as weighty and worthy its attention considering the fact that the matter raised therein touched on the department of lands, Urban, Physical Planning and Housing.

The committee could however, not process the matter since it was not addressed directly to it. But on September 11, 2023, the committee received a letter dated 14<sup>th</sup> August, 2023 Ref: CG/BGM/BM/CHAIR/VOL.1/6 from the Bungoma Municipality Board on the same matter.

### 2.2 Purpose and objective of the report

#### Mr. Speaker Sir.

The committee undertook to investigate and inquire into the matter and establish the legal and procedural implication of the said transfers in relation to the grounds for the protest and the relevant guiding laws available.

### 2.3 Legal Framework

#### Mr. Speaker Sir.

In performing this noble duty, the committee was guided by the provisions of the Article 47 of the CoK on the fair administration action.

Articles 184 and 176(2) of the Constitution of Kenya, 2010, on establishment of Municipalities as decentralized units of service provision in Counties

Further, in the provisions of the Urban Areas and Cities Act, 2011 (Amended 2019), more specifically Sections 12, 13, 14, 20, 28 and 29 read together with Section 37, 44 and 48 of the County Governments Act, 2012.

Section 1.1.4 . 1.1.71, sub-section d, e & f of the Bungoma Municipality Charter.

The Bungoma Municipality Standing orders which provides for procedure for convening of a Board meeting.

The County Human Resource Manual, 2023 on the communication channels stipulated in section A. 9 and A. 11.

Pursuant to provisions of section 72 of the Interpretation and General provisions Act(Chapter 2) and all other enabling provisions of the law.

## CHAPTER THREE

### 3.1 The Ground for the protest

**Mr. Speaker Sir,**

The grounds upon which the matter was premised are as follows;

- 1) The Bungoma municipal Board was not consulted as per the municipal charter section 1.1.22.
- 2) That the timing of the transfer is suspect when the Agency was to begin implementation of the first budget with allocation of the projects from the County Government.
- 3) That the job title for the Municipal Manager has been changed or varied in the letter of transfer contrary to the appointment letter
- 4) That according to the charter, Section 1.1.71 and Sub-section d,e &f ,the Municipal Manager shall implement the decisions and functions of the Board of the Municipality and shall be answerable to the Board.

The committee in its wisdom decided to invite the CECM, lands, Urban, Physical Planning and Housing to shed light on the matter but upon his appearance before the committee, the CECM submitted that although he was aware of the letter and had in fact replied to the committee on the matter, he had done so against protocol since the letter was also only copied to him. The CECM further withdrew his response before the committee on the basis that His Excellency the Governor who was the recipient of the protest letter had not replied to it.

The committee agreed to invite the County Public Service Board, the County Secretary, The County Executive Committee Member Lands and the Bungoma Municipality Board Members for a candid engagement with a view to find an amicable and lasting solution to the stalemate and the growing acrimony due to the transfers.



### **3.2 Appearance before the committee**

#### **3.2.1 The bungoma Municipality Board Members**

The following appeared before the committee on September 25, 2023, at 2.00 p.m. and made their submissions:

The Bungoma Municipality Board members;

The board was represented by the following members;

1. Hon. John Barasa Munyasia -vice chairperson
2. Hon. Justus B. Mbinga -Board Member
3. Hon. Edith Shitandi -Board member
4. CS. John Ndombi -Manager
5. CPA Gabriel Kibiriti -Manager
6. Christine Simiyu -Board Member/representing CECM

#### **Oral submissions**

The board submitted to the committee that:

- 1) That the called for the special board meeting after receiving information of the transfer of the manager without their input yet the manager reports and is responsible to the board pursuant to section section 28 of revised Urban Areas and Cities Act, 2019.
- 2) That the board is responsible for administration(daily operations) and management of the municipality as a corporate body with its own seal and perpetual succession and relates with the County Government on a principal agency basis in accordance with the provisions of Section 12.1, 2 of the Municipal Charter.
- 3) That the Bungoma Municipality has a charter conferred to it in 2019 hence giving it the delegated powers to operate independently/semi-autonomous but in consultation with the county Executive Committee Member.

- 4) That the position of the Municipal manager was advertised and the Municipal manager Bungoma, applied for the position as manager Bungoma.
- 5) That the transfer in the opinion of the board therefore was irregular and that arising from the resolutions made through a special full Board meeting held on 14<sup>th</sup> August, 2023 on the Municipality Human Resource issues, it was resolved that the said transfer be with held pending further consultations with the Board.
- 6) That they visited the office of the County Secretary for an explanation and were informed that the County Secretary implemented orders from the CECM, lands, Urban, Physical Planning and Housing and had afterwards sought for a legal opinion from the County Attorney.
- 7) That in their opinion, there was nothing at stake to warrant the transfers and the eventual physical movement of the two managers from their respective offices by the CECM, lands, Urban, Physical Planning and Housing.
- 8) That up-to the time of the meeting, no formal handover had been done although the respective officers had reported and working in their respective new work stations.

### **3.2.2. Department of Lands, Urban, Physical Planning and housing**

The department was represented in the meeting by the following members;;

1. Monica Fedha -County Secretary
2. Douglas Sasita -County The County Executive Committee Member
3. Denson Barasa -C.O Housing, Urban Areas and Municipalities
4. Sheila Nalianya -Finance Officer Lands

### **Departmental submissions**

1. The department protested the short notice of the special full board meeting which was given on 10<sup>th</sup> of August, 2023 yet the meeting was to take place on 14<sup>th</sup> of August, 2023 at 10.00 a.m.

2. The CECM, lands, Urban, Physical Planning and Housing decried the lack of quorum at the meeting sighting the fact that two of its members, the Chief officer and himself were absent.
3. He stated that nothing has been lost and nobody has been fired since the transfers were effected within the department.
4. He submitted that the transfers were part of his role of policy execution in the department and were done in accordance with the provisions of section 37 of the County Government Act No. 17 of 2012 and section A.9 of the County Human Resource Manual.
5. That close to two weeks after the transfers, the two managers had not reported to their new stations neither did he know their whereabouts.
6. He stressed that the two managers looked for him to effect the transfers on 22<sup>nd</sup> August, 2023 and not as alleged by the Municipality board.
7. On the change of job descriptions, the CECM said that that was not his work but of the County Public Service Board and that he did not change any.
8. The CECM also submitted that Municipalities have now been given more projects(including CEF projects), and re-current expenditure.
9. He said managers are secretaries to the Municipality board paid salary by the County Public Service Board and as any public officer, they are due for transfer after 3 years of service.
10. He also added that the County treasury has since transferred accounting functions to the Municipalities.

## **Response from the Municipality board**

The Municipality board responded by stating that;

1. On the issue of lack of quorum: they are currently 6 members on the board and have been transacting business with a majority quorum of four or three with an apology.
2. That actually, the notice through SMS for the special full board meeting was issued on 10<sup>th</sup> and the meeting was on 14<sup>th</sup> of August, 2023, but a hard copy was put in members files as is required by law. The special full-board meeting does not required a (7) day notice.
3. That the CECM lands has physically interfered with the operations of the Board whereby the former manager had declined to sign some procurement documents but they were signed immediately the new manger from Kimilili Municipality Board reported and that before the boards sat to consider projects for the financial year, a team from the department has already been released for evaluation in Busia County.

## **CHAPTER FOUR**

### **COMMITTEE OBSERVATIONS AND CONCLUSION**

#### **COMMITTEE OBSERVATIONS**

The committee observes that while acknowledging that Municipality managers are public officers under the Public service board as per the provisions of section 59(1)(b) of County Government Act No. 17 of 2012, the case of a Municipality is unique in its own sense. This is by the fact that a municipality has its own charter and management is by a board where the municipality manager is answerable to. The procedure for discipline, transfers and operations of the municipality is provided for in the said charter and drawn from other relevant laws like the County Government Act and the Urban Areas Cities and Municipality Act, 2019.

The committee in consideration of the aforementioned, listened to the parties involved and analyzed the documents presented and the relevant applicable laws and notes with concern as follows:

- 1) There is relatively a breakdown in communication in the department of lands, Urban, Physical Planning and Housing. The office of the County Executive Committee Member (CECM) is seen to be over-reaching its mandate by communicating information supposed to be communicated as a resolution of the County Executive Committee (Cabinet). Which is in contradiction with the provisions of communication channels stipulated in section A. 9 and A. 11 of the County Human Resource Manual, 2023.
- 2) The Chief Officer Housing and Municipalities, in his submission stated that he has not been involved in Municipality matters, particularly concerning this case, yet municipalities are domiciled under his docket. In the current administrative set up, the Chief Officer could have advised accordingly as provided for under Section 46 of the County Government Act, No. 17 of 2012 had he been involved from the onset.
- 3) There are laid down procedures to be followed by the County Secretary in receiving and conveying the decision of the County Executive Committee to the appropriate persons or authorities as directed by the County Executive Committee pursuant to section 44 (3) of County Government Act, 2012 and

section A. 10, 12, 13 of the County Human Resource Manual, 2023. In this case, the Ag. County Secretary received and effected direct orders from the CECM lands to transfer the two managers. The County Secretary failed to consult with the County Public Service Board which is mandated to effect re-designation nor the department Chief officer who is responsible for deployment of officers under them in accordance with the provisions of section 69 and 72 of County Government Act No. 17 of 2012.

- 4) In May, 2018, the County Governor of Bungoma granted the two municipalities Charters which were later gazetted in Nov,2018, giving both agencies the required legal framework to carry out their own operations.
- 5) The two Municipalities are thus decentralized units of service provision in Bungoma County established pursuant to the provisions of Articles 184 and 176(2) of the Constitution of Kenya, 2010, and the Urban Areas and Cities Act,2011(Amended in 2019, read together with section 48 of the County Governments Act, 2012. Pursuant to the above provisions of law and as complemented by section 72 of the Interpretation and General provisions Act(Chapter 2) and all other enabling provisions of the law.
- 6) The meaning of delegation by the County Public Service Board(CHRM A. 14) and the conferment of a charter to a Municipality,should be explained clearly to avoid conflict of interest between the roles of the Municipality boards, the office of the County Secretary and the department of lands on the other hand.
- 7) As agents of the County Government, the two Municipalities are body corporate pursuant to Section 12 of the Urban Areas and Cities Act, read together with their respective Charters, governed by non-executive Boards with the County Executive Committee Member and the Chief Officer as members and the Municipal Managers appointed pursuant to Sections 28 & 29 of the Urban Areas and Cities Act and CHRM B.3, as secretary and Ex-officio members to the Board, and head of administration and accounting officers. The CECM lands (even through his representatives), and the Chief officer are hence bound by the decision(s) of the Municipality board.

8) The Removal of the Municipal Manager from office is clearly provided in section 1.1.2 of the Municipal Charter of Bungoma, which provides that the Municipal Manager may be removed from office by-

- a) the County Governor;
- b) a resolution of the Board of the Municipality supported by at least two-thirds of the members of the Board of the municipality; or
- c) a petition by the residents of the municipality.
- d) In removing the municipal manager, the requirements of the County Public Service Board in doing so shall be adhered to.

In relation to section 1.1.3 of the said Municipal Charter, the Municipal Manager shall cease to hold office upon the lapse of the employment term or if he/she;

- a. is unable to perform the functions of the office by reason of mental or physical infirmity;
  - b. is declared or becomes bankrupt or insolvent;
  - c. is convicted of a criminal offence and sentenced to a term of imprisonment of six months or more;
  - d. resigns in writing to the County Governor;
  - e. without reasonable cause, the member is absent from three consecutive meetings of the Board or committee of the Board of the Municipality;
  - f. is found guilty of professional misconduct by the relevant professional body;
  - g. is disqualified from holding a public office under the Constitution;
  - h. engages in any gross misconduct; or
  - i. dies.
- 9) The County Public Service Board through a letter addressed to the Clerk of the County Assembly dated 22<sup>nd</sup> Sept, 2023 submitted that the Board was not involved in the matter of the transfer of the two municipality managers.

## COMMITTEE CONCLUSION

### The committee hereby concludes as follows:

1. By the provisions of the Urban Areas and Cities Act No.13 of [2011]Revised Edition 2019, a municipality board is appointed by the Governor and not the CECM lands.
2. A Municipality is a body corporate and an agency of the County Government with a seal (Section 11, 12(1,2) UACA 13 of [2011]Revised Edition 2019, Municipality Charter, sect 1.17) with a clear demarcation of responsibilities and **is NOT** an office created by the Public Service Board.
3. A charter once conferred, grants the authority to a municipality (in this case the two municipalities of Bungoma and Kimilili) to undertake their operations and it also means:
  - Principles of the governance by each board for and on behalf of the County Government as per Section 11, of the Urban Areas and Cities Act 13 of [2011]Revised Edition 2019) should be adhered to.
  - a board (section 13 or 14, UACA 13 of [2011]Revised Edition 2019), a manager (28) and such other officer(s) as the County Public Service Board may determine administers the municipality on behalf of the County Government according to the Structures and management of municipalities(sec 12)
  - The board in its corporate name, is capable of—
    - (a) suing and being sued;
    - (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property;
    - (c) borrowing money or making investments;
    - (d) entering into contracts; and
    - (e) doing or performing all other acts or things for the proper performance of its functions in accordance with this Act or any other



written law which may lawfully be done or performed by a body corporate.

4. The CECM (be it through his representative), and the Chief Officer lands by virtue of their office, are members of the boards of respective municipalities, and therefore, **bound** by the decision(s) of the boards (sec 14 of UACA, 13 of [2011] Revised Edition 2019).
5. The municipality Board directs its own operations and the municipality manager implements the decision(s) of the board and is answerable to the board. Any action for or against the manager should therefore, be through the relevant municipality board (section 28 of Urban Areas and Cities Act 13 of 2011). It is the considered view of the committee that a Manager, together with the CECM representative should **relay** the **decision(s)** of the Board through the Chief officer, to the CECM who in turn escalates the same to the County Executive Committee (cabinet).
6. According to section 36 and 37(1,a) of the County Government Act No. 17 of 2012, it is the County Executive Committee (cabinet) which is mandated to supervise the administration and delivery of services in the County and all decentralized units and agencies in the County; This means that the CECM Lands, being a member of the Cabinet, (County Executive Committee), cannot **unilaterally** make and implement any decision other than that made by the County Executive Committee (cabinet) as transmitted by the County Secretary.
7. The County Public Service Board should work in collaboration with Municipality boards to help execute matters of human resource under section 63, 65(2) 69(d) of the County Government Act, 2012. As much as staff under municipalities are under the County Government, the law has provided clear channels of promotion and disciplinary processes. In the case of Municipalities, the municipality boards should initiate the process.
8. On the management and financial provisions to the Municipalities, a board (sec 20 of UACA 13 of [2011] Revised Edition 2019); shall among others; oversee the affairs of the municipality; administer and regulate its internal affairs; prepare and submit its annual budget estimates to the relevant County Treasury for consideration and submission to the County Assembly for approval as part of the






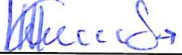








annual County Appropriation Bill; The County Executive Committee Member Finance, shall in accordance with section 148(1) (2), 172 and 173 of the Public Finance Management Act, 2012, appoint an administrative head (Manager), as the accounting officer.

9. The Ag. County Secretary erred in law by acting on the transfers by orders from the CECM department of lands, Urban, Physical Planning, Housing and Municipalities and thus usurped the powers of the County Public Service Board envisaged in the County Government Act No. 17 of 2012; Sections 60 on Criteria for establishment of public offices, section 61 on Criteria for abolition of public offices, section 62 on powers of the County Public Service Board to establish or abolish office, section 63. on powers of the County Public Service Board to make appointments, section 69. on re-designation of officers, section 72. on the power to deploy public officers, and section 86. on the delegation by conferment of a Charter by the County Public Service Board.
10. The procedure to hold a special full board meeting was not followed by the Bungoma Municipality Board when it called its meeting which resulted in the writing of the protest letter to the County Assembly. The board should always adhere to the provisions of section 1.1.40 and 1.1.44 of the Charter; As for a special full Board meeting, the members are obligated to petition the chair to convene one. This was not the case. Further, a member interested in a matter under discussion participated in the discussion and decision making by the board.
11. The department should expedite to review the Municipality Charters to incorporate the changes on the appointment and composition of the Municipality board members in accordance with the revised Urban Areas and Cities Act, 13 of 2019.
12. The Bungoma County Executive Committee (cabinet) with the provisions of sections 36, 37, 39 and more specifically 46, should expedite in aligning and assigning clear functions to Municipalities as stipulated in the Urban Areas and Cities Act No. 13 of 2011(revised 2019) through the Governor's Executive order.

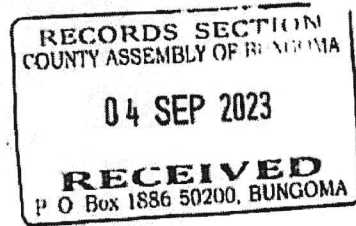
13. Cognizant of the foregoing, and based on relevant Constitutional and statutory provisions mentioned herein, a Municipal manager can and shall only be removed or shall cease to hold office through the process provided under Sections 1.1.2 and 1.1.3 of the Municipal Charter of Bungoma but not through any other means whatsoever. The import of this is therefore, that the manner in which the transfer process of the said managers of the Municipality Boards was initiated and executed was flawed. The County Secretary violated the law.

## ADOPTION SCHEDULE

We the undersigned members of the Sectoral Committee on Lands, Urban, Physical Planning, Housing and Municipalities affix our signatures adopting this report with the recommendations therein.

	NAME	DESIGNATION	SIGNATURE
1.	Hon. Francis Chemion	Chairperson	
2.	Hon. Linda Kharakha	Vice/Chairperson	
3.	Hon. Ali Machani	Member	
4.	Hon. James Barasa	Member	
5.	Hon. Metrine Nangalama	Member	
6.	Hon. Sudi Busolo	Member	
7.	Hon. Hentry Nyongesa	Member	
8.	Hon. Eunice Kirui	Member	
9.	Hon. Edwin Opwora	Member	
10.	Hon. Wafula Waiti	Member	
11.	Hon. Mildred Barasa	Member	
12.	Hon. Everlyne Anyango	Member	
13.	Hon. Cornelius Makhanu	Member	
14.	Hon. Jeremiah Kuloba	Member	
15.	Hon. Johnston Ipara	Member	

COUNTY GOVERNMENT OF BUNGOMA



BUNGOMA MUNICIPALITY

Telephone:

County Works Offices  
P O BOX 437  
BUNGOMA

Cell +254-0725200005

DATE 14<sup>TH</sup> AUGUST 2023

E-mail [bungomamunicipality@bungoma.go.ke](mailto:bungomamunicipality@bungoma.go.ke) or  
[Bungomamunicipality039@gmail.com](mailto:Bungomamunicipality039@gmail.com)

Ref No.CG/ BGM/BM/CHAIR/VOL.1/6

THE CLERK  
BUNGOMA COUNTY ASSEMBLY  
BUNGOMA

**RE PROTEST AGAINST TRANSFER OF THE MANAGER -  
BUNGOMA MUNICIPALITY**

The above matter refers;

Arising from the resolution made through the special full Board Meeting held on 14<sup>th</sup> August 2023 on the Municipality Human Resources issues, The Municipal Board Bungoma hereby protest the transfer on the basis of the following grounds:

- 1 That on the transfer of the Municipal Manager of Bungoma, the Board was not consulted as per the Municipal Charter Section 1.1.22.

*Del  
9.11.23*  
*11/9/23*  
*CG-Lands*  
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*Dcl*  
*2.11.23*  
*13/9/23*  
*Noted*  
*12/9/23*  
*Not*

COUNTY GOVERNMENT OF BUNGOMA



COUNTY ASSEMBLY OF BUNGOMA  
**CLERK ..**  
13 SEP 2023  
**RECEIVED**  
P.O. Box 437-50200 BUNGOMA

**OFFICE OF THE COUNTY SECRETARY & HEAD OF PUBLIC SERVICE**

Telephone: 0725 393939  
E-mail: [countysecretary@bungoma.go.ke](mailto:countysecretary@bungoma.go.ke)

Municipal Building  
P.O Box 437- 50200  
**BUNGOMA**

OUR REF: CG/BGM/CS/CA./VOL.I/1

DATE: 12<sup>th</sup> September, 2023

Clerk to County Assembly,  
BUNGOMA COUNTY.

**RE: CONSULTATIVE MEETING WITH COMMITTEE**

The above subject refers;

Herein please find the response on the issue of protest on recent transfer of Municipal Managers of Bungoma and Kimilili; vide your letter Ref: BCA/CC/SECT/8 VOL.II/ (95).

Thank you

Monicah S. Fedha  
**AG. COUNTY SECRETARY & HEAD OF PUBLIC SERVICE**

CC:  
❖ Hon. Speaker  
County Assembly of Bungoma



**COUNTY GOVERNMENT OF BUNGOMA**  
**COUNTY PUBLIC SERVICE BOARD**

Moi Avenue next to Governor's Office; P.O. Box 2489 – 50200 Bungoma  
 email: [cpsb.bungoma50200@gmail.com](mailto:cpsb.bungoma50200@gmail.com)

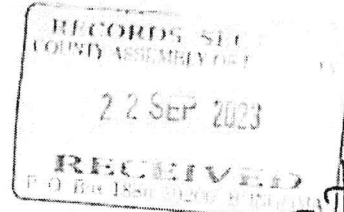


COMMITMENT TO SERVE WITH INTEGRITY

Your ref: .....  
 Our ref: CPSBB/C.A.B/VOL.IV/84

Date: 22<sup>nd</sup> September, 2023

Clerk of the County Assembly  
 County Government of Bungoma  
 P.O Box 1886-50200  
BUNGOMA



*Handwritten signatures and initials: DSD, 7/11, 22/9/23*

Dear Sir,

**RE: CONSULTATIVE MEETING ON THE PROTEST LETTER BY THE  
MUNICIPALITY BOARD OF BUNGOMA**

Your letter Ref No. BCA/CC/SECT/8/VOL.II (100) OF 19<sup>th</sup> September, 2023 on the above mentioned subject is referred.

Kindly be informed that the County Public Service Board of Bungoma was not involved in the transfers of the two Municipallty Managers mentioned in the above referenced letter. Alongside, the Board is performing official activities away from office and will not be able to appear before the Committee on Monday the 25th September, 2023.

Yours Faithfully,

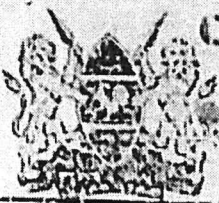
*Handwritten signature of CS. Joseph S. Makata*

CS. Joseph S. Makata  
SECRETARY/CEO

CC: The Hon. Speaker  
 County Assembly of Bungoma

*Handwritten notes: (11) CC - Lands & Urban, DCS 22/9/23, noted 22/9/23*

*All correspondences should be addressed to the Secretary, County Public Service Board*



# COUNTY GOVERNMENT OF BUNGOMA

## COUNTY PUBLIC SERVICE BOARD

Moi Avenue Next to Governor's Office, P.O. Box 2409-50200 Bungoma  
email: [cpsb.bungoma50200@gmail.com](mailto:cpsb.bungoma50200@gmail.com)



TEL: 0112 200 0000

Your ref: .....

Date: 29<sup>th</sup> November, 2018

Our ref: CPSB/MUNICIPAL OFFICERS, APPT/VOL.II/2

**GABRIEL WEKESA KIHIRIPI**

**RE: APPOINTMENT AS MUNICIPAL MANAGER, BUNGOMA MUNICIPALITY**

Following your application for the above position and subsequent successful interview, the County Public Service Board is pleased to offer you appointment as **Municipal Manager, Bungoma Municipality, Job Group 'Q'** with effect from the date you assume the duties of your post.

The following terms and conditions will apply:

**1. Position**

You will be engaged as **County Municipal Manager, Bungoma Municipality.**

**2. Reporting**

You will be answerable to the **County Executive Committee Member, Lands, Urban & Physical Planning** for the following duties and responsibilities:

- a) Overseeing the affairs of the Municipality; **County Executive Committee Member, Lands, Urban & Physical Planning**
- b) Implement an integrated Development Plan;
- c) Maintaining a comprehensive Data Base and Information System of the Municipality;
- d) Administering and regulating its internal affairs;
- e) Implementing applicable County and National Policies and Legislations;
- f) Monitoring and where appropriate regulating Municipal services where those services are provided by other providers other than the Board of the Municipality;
- g) Promoting a safe and healthy environment and;
- h) Performing any other functions as delegated by the **County Executive Committee Member**

**4. Performance measures**

In addition to the duties and responsibilities which will be presented to you when you report, detailed key tasks and targets will be agreed between you and the **Municipal Board**. Your performance will be reviewed and appraised regularly and documented accordingly.

**5. Terms of Service**

This appointment will be on permanent and reasonable terms.

**6. Remuneration**

The position is pegged to salary scale, **KSh. 77,320 - KShs. 130,420 per month**. Your basic salary entry point will be **KSh. 77,320 per month** and your incremental date and other remunerative allowances will be determined according to the current **County Public Service Regulations** and


All correspondence should be addressed to the secretary, County Public Service Board



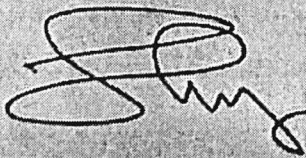
**OATH/AFFIRMATION OF THE OFFICE OF MUNICIPAL MANAGER;**  
**MUNICIPALITY OF BUNGOMA**

I, GABRIEL WEKESA KUBIRITI of Bungoma County, being called on to exercise the functions of **Municipal Manager of the Municipality of Bungoma**, do swear/solemnly affirm that I will at all times be faithful to the Republic of Kenya; that I will obey, respect and uphold this Constitution of Kenya and all other laws of the Republic, that except with the authority of the Board, I will not directly or indirectly reveal the nature or contents of any business, proceedings or document of the Municipality committed to my secrecy, except as may be required for the due discharge of my duties as Municipal Manager or otherwise under the law.

(SO HELP ME GOD).

Sworn/declared by the said 

Before me this day 4th of January 2019.





**MAGISTRATE/COMMISSIONER FOR OATHS**

referring to the Board for consent. Ordinarily, the Board should be the one to raise alarm if the Manager is not serving well.

Reference should also be made to **chapter 6** of the constitution and the leadership and integrity **act no. 19 of 2012**. Where values and principles of leadership are

emphasized. It says leadership "Vests in the state Officer the responsibility to serve the people rather than the power to rule them".

What we are asking up to now is that it will be revealed what motive led to the unlawful order to the County Secretary to transfer the Manager? Was it so urgent the Officer Making the order would not wait to inform and discuss such action with the Board? Was it sheerly a demonstration of power by the Minister over the Manager and the Board?



for

MS. JACKIE MALOMBA  
CHAIRPERSON  
BUNGOMA MUNICIPAL BOARD

**MIN01/CGB/SP.FBM/BM/14<sup>TH</sup>, SEPTEMBER 2023: PRELIMINARIES:**

The chairperson called the meeting to order at 10.30a. Opening prayer was said by Hon. Edith Shitandi.

Members adopted the agenda items for discussion.

**MIN02/CGB/SP.FBM/BM/14<sup>TH</sup>, SEPTEMBER 2023: DECLARATION OF CONFLICT OF INTEREST.**

There was no conflict of interest registered by Members.

**MIN03/CGB/SP.FBM/BM/14<sup>TH</sup>, SEPTEMBER 2023: MUNICIPAL HUMAN RESOURCES ISSUES.**

Members were informed that the Municipal Manager C.P.A Gabriel Kibiriti was transferred to Kimilili Municipality. Moreover, CS Hohn Ndombi was transferred to Bungoma Municipality.

The Members deliberated on the matter at length. However, they made reservations, expressed a contrary opinion and resolved as follows:-

- That the Board was not consulted on transfer of the Municipal Manager who is also the Board secretary. This is as per Sec. 1.1.22 and Sec. 1.171, Sec.d, e & f of the Municipal charter.
- The timing of the transfer was suspect since the implementation of the budget cycle of the County Government was starting.
- That the title of the Municipal Manager has been changed or varied contrary to the appointment letter.
- That the Board therefore, faults the process of transfer and writes a protest letter to H.E Governor and the County Assembly and other relevant County Offices.

**MIN04/CGB/SP.FBM/BM/14<sup>TH</sup>, SEPTEMBER 2023: ADJOURNMENT:**

There being no Other Business, the meeting ended at 11:30am. Closing prayer was said by Ms. Jacky Malomba

Minutes Compiled by;

C.P.A Gabriel Kibiriti----- Manager/Board Secretary.

Sign *G.Kibiriti*-----Date 15/08/2023-----

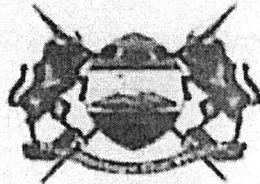
Minutes Approved for circulation by;

for Jacqueline Malomba ----- Board Chairperson.

Sign *J.Malomba*-----Date -----

**BUNGOMA MUNICIPAL BOARD.**

# COUNTY GOVERNMENT OF BUNGOMA



## OFFICE OF THE COUNTY SECRETARY/HEAD OF PUBLIC SERVICE

Telephone: 0725-393939

E-mail: [countysecretary@bungoma.go.ke](mailto:countysecretary@bungoma.go.ke)

Municipal Building  
P.O BOX 437  
**BUNGOMA.**

Our Ref: P/NO. 20180095765/12

Date: 3<sup>rd</sup> August, 2023

✓ Gabriel Wekesa Kibiriti  
P/NO. 20180095765

Thro'

**County Executive Committee Member**

Lands, Physical Planning, Housing, Urban Areas and Municipalities

### **RE: TRANSFER.**


It has been decided that you be and you are hereby transferred from the **Department of Lands, Physical Planning, Housing, Urban Areas and Municipalities, Bungoma Municipality** to **Kimilili Municipality** as a County Municipal Manager.

You are expected to report to the CECM – Lands, Physical Planning, Housing, Urban Areas and Municipalities.

Make sure that a comprehensive handing over takes place before you move to your new work station.

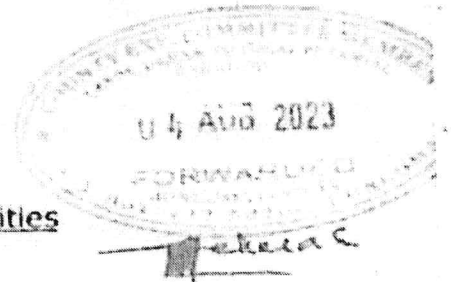
By copy of this letter the Office of the CECM – Lands, Physical Planning, Housing, Urban Areas and Municipalities to inform this office the exact date you report for duty assignment.

I wish you well in your new station

  
Monicah Salario Fedha  
Ag. County Secretary and Head of Public Service

**Bungoma County**

Copy to: CECM - Finance and Economic Planning  
Chief Officer – Housing, Urban Areas and Municipalities  
The Director – Human Resource Management  
Personal File.



3. As per section 173 of PFM Act 2012 on the criteria for allocating funds to urban areas or cities by County Government, We have a memorandum of understanding with Kenya National Bureau of Statistics (KNBS) to have a County Statistics Unit which will enable as collect the necessary data to assist in actualizing the criteria for allocating resources.

Sorry for the delay and we are committed for compliance.



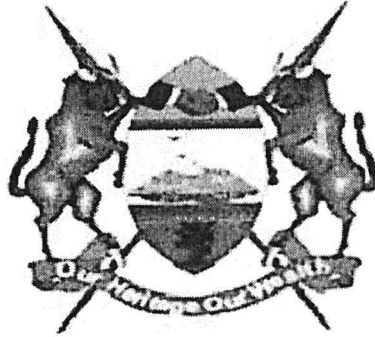
**CPA CHRISPINUS BARASA**  
**CECM FINANCE AND ECONOMIC PLANNING**



Copy to: H. E the Governor  
Speaker of County Assembly  
County Secretary

7

# COUNTY GOVERNMENT OF BUNGOMA



## MUNICIPAL BOARD OF BUNGOMA

### STANDING ORDERS FOR BOARD MEETINGS

shall be prepared in advance, approved by the Liaison Committee and circulated to the members at the beginning of every Financial Year in order to facilitate proper planning for the meetings

D. Consent Agenda

To ensure that sufficient time is allocated to essential business, Agenda items deemed by the Executive Committee of the Board to be of a routine and uncontroversial nature shall be listed on the Agenda under the heading of "Consent Agenda", and shall be voted as a single item without much discussion. Members who have a question should contact the Secretary in advance of the meeting for clarification. Items listed on the Consent Agenda shall be moved to the main agenda for discussion and separate vote at the request of any member.

E. Rules of Order

The purpose of these rules is to ensure that the meetings of the Board are purposeful and efficient and are carried out with fairness, reasonableness and good faith toward all who participate. In the case of a challenge to a ruling of the Chair on a particular procedural question, the will of the Board, as determined by a majority vote, shall decide the issue.

1) The Chair

The Chair of the Board presides at all meetings of the Board. In the absence of the Chair, the position will be filled by a Vice-Chair. In the absence of the latter, the members present at the meeting will decide who shall carry out the functions of the Chair.

Control of the meeting is the responsibility of the person presiding.

2) Quorum

The Municipal Charter provide for a majority of the Members of Board to be the quorum to conduct business but a small number may meet and compel attendance of absent members as prescribed by the Board of the Municipality rules.

For the Board Standing Committees, the quorum is the majority of members.

3) Meetings and Notices

### *Acquiescence*

When it is obvious to the Chair that a great majority of members has arrived at a common conclusion he or she may declare "the motion is passed (or defeated) by common consent". The recorded Minutes of this resolution will constitute prima facie evidence of the Board's decision.

Any Board member may, following the declaration of the Chair, request a vote. The Chair must grant this request unless a majority of members present decide against it.

### *Show of Hands*

The Chair may decide to obtain a decision by a show of hands. The calls will be made in this order: 1) All in favour; 2) All opposed. Both calls must be made. If there is a significant majority in favour, the Secretary may so inform the Chair without a formal count.

Abstention is taken to mean, "I do not wish to express an opinion", and will be construed as a non-vote, not a vote in opposition. For resolutions which require a simple majority to pass, abstentions do not affect the outcome of the vote and are not factored in the tallying of the vote.

### *Balloting*

A vote by ballot may be desired in some circumstances. The decision to use a written ballot may be made by the Chair, or at the request of a member, in which case a vote by ballot can be ordered, without debate, by a majority vote of the members. The Secretary will distribute ballots and the Chair will arrange to have them scrutinized after the vote.

### Attention of the Chair / Recognition

Apart from discussion of a motion on the floor, members may call the attention of the Chair by making one of the following "demands": (a) point of information; (b) point of order; (c) question of privilege.

### Main Motions

The subject matter of a motion is called "the question". The Secretary will provide provisional wording for motions (insofar as they are known beforehand) on distinctive yellow paper. A motion, when duly passed, becomes a "resolution".

A motion must be moved and seconded before the subject matter of the motion is open for debate. The following motions may be considered without a seconder: to raise a point of privilege, points of order, objection to the consideration of a question, leave to withdraw a motion, and inquiries of any kind.

### 1) Withdrawal of a Motion



#### *Motion to Rescind a Resolution*

A motion to rescind must meet any requirements for notice that were applicable to the original resolution, may be passed at a subsequent meeting, and requires a simple majority of those voting for or against.

#### 13) Point of Order

Only on a point of order or privilege can a member interrupt another member who is speaking (except that, with the consent of the speaker, questions may be asked). If a member feels that improper language has been used, irrelevant arguments introduced or a rule or procedure broken, the member is entitled to *rise to a point of order* interrupting the speaker. The point of order must be stated definitely and concisely. The Chair shall decide, without debate, though s/he may ask opinions. The Chair should state opinions authoritatively.

This ruling may be appealed by any two members (one making the appeal and the other seconding it). If appealed, the Chair states his/her decision and the point of the appeal and then puts the question which is not debatable: "Shall the decision of the Chair stand as the judgment of this meeting?" A simple majority determines the issue. This process settles a point of procedure and is not a vote of confidence in the Chair.

#### 14) Point/Question of Privilege

A point of privilege (or *personal privilege*) is a request or motion relating to the rights and privileges of the Board or its member(s). For example, if a member feels that a statement reflects on his/her reputation or that of the Board, a committee, or the Municipality, the member is entitled to raise a *question of privilege*. It may also include such things as: noise, ventilation, etc., or may relate to the conduct of a person(s) at the meeting.

#### 15) Resolutions

Resolutions whether special or otherwise shall be passed by a simple majority.

#### 16) Adjournment

The meeting adjourns either by declaration of the Chair or by vote of the meeting.

#### 17) Attendance of Board Meetings

Subject to the provisions of the Charter, Board and Committee meetings shall be attended by bona fide members and any officer or person invited or appointed in writing