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for tabling
Eg 18/10/2023



REPUBLIC OF KENYA

13TH PARLIAMENT | 4TH SENATE | 2ND SESSION

Rt. Hon. Speaker
You may approve for tabling
J. M. Nyegenye, C.B.S.,
Clerk of the senate/secretary, PSC
Date: 18/10/23



18/10/23

**STANDING COMMITTEE ON DEVOLUTION AND
INTERGOVERNMENTAL RELATIONS**

**REPORT ON A PETITION CONCERNING LACK OF IMPLEMENTATION
OF A RESOLUTION TO ABSORB THE CONTRACTED INSTRUCTORS
UNDER THE ECONOMIC STIMULUS PROGRAMME(ESP) BY THE
COUNTY GOVERNMENT OF NYERI**

IS LAID	
DATE	31/10/2023
TABLED BY	Chair
COMMITTEE	Devolution
CLERK AT THE TABLE	Karaya m.

Clerk's Chambers,
The Senate,
Parliament Buildings,
NAIROBI.

October, 2023

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LIST OF ABBREVIATIONS/ACRONYMS

CGN	County Government of Nyeri
COG	Council of Governors
CPSB	County Public Service Board
ESP	Economic Stimulus Programme
E&LRC	Employment and Labour Relations Court
MoEST	Ministry of Education, Science and Technology
PSC	Public Service Commission
TA	Transition Authority

Mr. Speaker Sir,

The petitioners' prayers were that the Senate intervenes in this matter to recommend to the County Government of Nyeri to implement the resolution as required and compensates the Petitioner for the period between 30th June 2015 to date. The Committee proceeded to consider the petition and to seek stakeholder submissions.

The committee sent out a letter seeking submissions from the County Government of Nyeri and inviting the governor to appear before the committee to deliberate on the issues in the petition. Following invitations to appear before the committee, the Governor of Nyeri county, Mwalimu Mutahi Kahiga, and the petitioners appeared before the committee at a sitting held on 31st July 2023 and gave their submissions regarding the petition. Upon deliberations on the submissions, the committee resolved that they would give twenty one (21) days for the County Government to attempt to resolve the matter at the county level and report back their decision to the committee. The committee received the response from the County Government of Nyeri on 24th August, 2023. Upon consideration of the response, the Committee made various observations and recommendations which are set out in Chapter Four and Chapter Five of this report respectively.

Hon Speaker,

May I take this opportunity to commend the members of the Committee for their devotion and commitment to duty, which made the consideration of the Petition successful. The Committee also wishes to thank the Offices of the Speaker and Clerk of the Senate for the support extended to the Committee in the execution of its mandate. Lastly, the Committee also extends its gratitude to stakeholders who appeared before the Committee to present their submissions on the Petition. I wish to thank the Governor of Nyeri County who appeared before the Committee on this matter.

Hon Speaker,

It is now my pleasant duty, pursuant to Standing Order 228 (4) (a), to present the report of the Standing Committee on Devolution and Intergovernmental Relations on its consideration of a petition concerning the lack of implementation of a resolution to absorb the contracted instructors under the Economic Stimulus Programme (ESP) by the County Government of Nyeri.

Signed

Date.....12-10-23

SEN. SHEIKH MOHAMED ABASS, MP
CHAIRPERSON,
STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL
RELATIONS

**ADOPTION OF THE REPORT OF THE STANDING COMMITTEE ON DEVOLUTION
AND INTERGOVERNMENTAL RELATIONS ON THE PETITION CONCERNING
LACK OF IMPLEMENTATION OF A RESOLUTION TO ABSORB THE
CONTRACTED INSTRUCTORS UNDER THE ECONOMIC STIMULUS
PROGRAMME(ESP) BY THE COUNTY GOVERNMENT OF NYERI**

We, the undersigned Members of the Standing Committee on Devolution and Intergovernmental Relations, do hereby append our signatures to adopt this Report-

Sen. Sheikh Mohamed Abass	- Chairperson	
Sen. Catherine Muyeka Mumma	-Vice-Chairperson	
Sen. (Dr.) Oburu Oginga, MGH, MP	-Member	
Sen. Richard Momoima Onyonka, EBS, MP	-Member	
Sen. Peris Pesi Tobiko, CBS, MP	-Member	
Sen. Mohamed Said Chute, MP	-Member	
Sen. George Mungai Mbugua, MP	-Member	
Sen. Hezena M. Lemaletian, MP	-Member	
Sen. David Wafula Wakoli, MP	-Member	

CHAPTER ONE: INTRODUCTION

1.1 The Right to Petition

1. The right of every person to present petitions to public authorities is provided for under Article 37 of the Constitution. Further, Article 119(1) provides that 'Every person has a right to petition Parliament to consider any matter within its authority, including to enact, amend or repeal any legislation.'
2. Parliament enacted the Petition to Parliament (Procedure) Act (No. 12 of 2012) to make provision for the procedure for the exercise of this right. Further, Part XXVII of the Senate Standing Orders also makes provision for how this right may be exercised.

1.2 Background of the Petition

3. On 11th May 2023, the Senate received a Petition from Mr. Julius Wairiuko Wanjohi concerning the lack of implementation of a resolution to absorb the contracted instructors under the Economic Stimulus Programme (ESP) by the County Government of Nyeri.
4. The Petition was presented in the Senate on Wednesday, 24th May 2023, by the Deputy Speaker, Sen. Kathuri Murungi pursuant to Standing Order 236(2)(a) of the Senate Standing Orders. Consequently, the Petition stood committed to the Committee pursuant to Standing Order 238(1) of the Senate Standing Orders.
5. Pursuant to Standing Order 238(2) the Committee is required in not more than sixty calendar days from the time of reading the prayer to respond to the Petitioner by way of a report addressed to the Petitioner and laid on the Table of the Senate.
6. The Petitioners drew the attention of the Senate to the following:
 - (i) That, in July 1989 the Petitioner was employed by the Ministry of Education as a Carpentry Instructor II and posted to Kiaguthu Youth Polytechnic in Nyeri;
 - (ii) That, following the promulgation of the 2010 Constitution and the advent of devolution, the Youth Polytechnic Training function was subsequently transferred to the County Governments through Legal Notice No.16 of February 2013 and Gazette Notice No.116 of 9th August 2013 pursuant to the Fourth Schedule to the Constitution of Kenya 2010. As a result, all the staff who were in the Counties and performing devolved functions were deemed seconded to continue providing services;

CHAPTER TWO: CONSIDERATION OF THE PETITION

2.1 Conduct of inquiry into the petition

11. Pursuant to the Senate Standing Orders and the Petition to Parliament (Procedure) Act, 2012 the Committee proceeded to consider the petition and to seek stakeholder submissions.
12. At a sitting of the Committee to deliberate on the petition, the Committee resolved to write to the County Government of Nyeri to obtain an official response on the matters raised in the petition. A letter was sent out on 6th July 2023 to invite the Governor of Nyeri County to appear before the Committee to discuss the Petition; and to request him to submit responses/submissions on the issues contained in the petition. In response, the County Government of Nyeri provided submissions in a letter dated 13th July 2023. The committee further resolved to invite the petitioners to appear before the Committee and provide their submissions.
13. Following invitations to appear before the Committee, the Governor and the petitioners attended a committee sitting held on 31st July 2023 and gave their submissions regarding the petition. The Governor in his submissions highlighted that the petitioners had never engaged the County Government in seeking a solution to the matter. Upon deliberations on the submissions by both the petitioners and the Governor, the Committee resolved that they would give time to the County Government to attempt to resolve the matter at the county level. Therefore, the committee directed that the two Petitioners submit all their relevant documentation on their employment to the County Government within seven (7) days. The County Public Service Board shall then consider the petitioners' eligibility to be employed on permanent and pensionable terms and report their decision back to the committee within fourteen (14) days. After the meeting, the petitioners submitted hard copies of the submissions and documentation that they had presented before the committee.
14. Following the committee resolution to allow twenty-one (21) days for the county to resolve the issues, the petitioners submitted their documents to the County Public Service Board through the office of the County Attorney. The Board reviewed the documents and provided their response to the Governor of Nyeri County who submitted the final decision to the Committee by a letter dated 24th August, 2023.
15. The submissions by the various stakeholders and the responses received are analysed and presented in the next chapter, that is Chapter Three of this report.

CHAPTER THREE: ANALYSIS OF THE SUBMISSIONS

3.1 Employment of Youth Polytechnic Instructors

16. In the petition, the petitioner Mr. Julius Wairiuko Wanjohi stated that, in July 1989 he was employed by the then Ministry of Education as a Carpentry Instructor II and posted to Kiaguthu Youth Polytechnic in Nyeri. He provided his letter of posting as proof of employment, which confirmed that he (Mr. Julius Wairiuko Wanjohi) had been posted to Kiaguthu Youth Polytechnic in Nyeri District as Carpentry Instructor II with effect from 1st July, 1989. The 2nd petitioner Mr. Peter Maina Mugo also provided his letter from the then Ministry of Technical Training and Applied Technology stating that he (Mr. Peter Maina) was posted to Stanley Mathenge Youth Polytechnic as Motor Vehicle Mechanics Instructor II with effect from 1st May 1990. (These letters are attached under the annexures together with other submissions from petitioners)

3.2 Transition of the Youth Polytechnic Training Function

17. The petitioners stated that, following the promulgation of the 2010 Constitution and the advent of devolution, the Youth Polytechnic Training function was subsequently transferred to the County Governments through Legal Notice No.16 of February 2013 and Gazette Notice No.116 of 9th August 2013 pursuant to the Fourth Schedule to the Constitution of Kenya 2010. As a result, all the staff who were in the Counties and performing devolved functions were deemed seconded to continue providing services.
18. Further, the petitioner highlighted that on 2nd December 2014, a consultative meeting was held between the Ministry of Devolution and Planning, the Ministry of Education, Science and Technology (MoEST), the Council of Governors (COG), the Transition Authority (TA), the Directorate of Public Service Management (DPSM), the County Public Service Board Forum and the Public Service Commission (PSC) to address numerous issues that were facing the transition of Youth Polytechnics staff. The Transition Authority (TA) communicated the resolution in the form of a letter dated 15th December 2014, to all the County Secretaries for implementation.
19. A copy of this letter which highlights the issues and the resolutions made from the meeting was submitted to the committee (*Annexed*). These issues include non-payment of salaries, expiry of contracts, contract extension and payment of service gratuities among others. From

the consultative meeting, it was agreed that:

- i. The County government makes arrangements to pay the permanent and pensionable Youth Polytechnic staff totalling 590 across the counties with effect from September 2014 as per the Integrated Personnel and Payroll Database (IPPD) data forwarded by the Ministry of Education Science and Technology (MoEST) since the budget for their personnel emoluments was transferred to the counties as part of County Allocation of Revenue Act, 2013 after verification of their details.
 - ii. The Ministry of Education Science and Technology (MoEST) in consultation with the Public Service Commission (PSC) and the National Treasury extended the contracts for 1274 instructors whose contracts expired in November 2014 up to 30th June to bridge the shortfall of qualified teaching staff in youth polytechnics.
 - iii. The County governments were to make budgetary provisions to absorb the Economic Stimulus Programme (ESP) staff in their County establishments on permanent and pensionable terms in the next financial year on the expiry of the ESP programme.
 - iv. The Ministry of Education Science and Technology (MoEST) was to expedite the payment of service gratuity for the 1274 whose contracts have expired.
 - v. The Ministry of Education Science and Technology (MoEST) was to release to the counties, funds for capitation for Youth Polytechnic trainees and Youth Polytechnic Board of Governors employed instructors as conditional grants to the counties.
20. The petitioners claimed that several Counties implemented this resolution but the County Government of Nyeri had not implemented the same to date.
21. The County Government of Nyeri in their response stated that during the advent of devolution, the County government found employment structures in place, which included that of youth polytechnic instructors. The Nyeri County Public Service Board derived authority to translate the terms of the instructors as guided by Section 138 of the County Governments Act and further implemented the resolution communicated by the Transition Authority.

3.3 Categories of Youth Polytechnic Instructors

22. The County Government of Nyeri in their first response stated that during the advent of devolution, the County government found employment structures in place, which included that of youth polytechnic instructors. These instructors were divided into several categories which

include:

- i. Instructors on permanent and pensionable terms of employment who, after devolution were automatically confirmed by the County as permanent and pensionable employees;
 - ii. Contract (Economic Stimulus Programme) instructors who, vide Nyeri Employment & Labour Relations Court Cause 221 of 2015, *Shadrack Waigwa Ndung'u & 64 others V County Government of Nyeri and Nyeri County Public Service Boards (CPSB) (2017) eKLR*, were employed as permanent and pensionable employees of the County;
 - iii. Grant/ salary top-up employees who would receive grants from the National Government as a top up to the salaries that were being paid by the Boards of Management at specific polytechnics;
 - iv. Board of Management instructors who, like the grant/salary top-up employees highlighted in (iii) above were employed by the specific polytechnics but would not receive grants from the National Government; and
 - v. Voluntary instructors.
23. The County's response mainly referred to the instructors highlighted in (ii) and (iii) above, whose terms of engagement had been in dispute and were resolved through the Court process.

3.4 Economic Stimulus Program (ESP) Instructors

24. The County Government highlighted that in 2011, the Public Service Commission employed youth polytechnic instructors on three (3) years contract terms. These contracts were extended severally upon expiry by the latter until 2015 when the Nyeri County Public Service Board (CPSB) decided to conduct suitability interviews for the existing officers and subsequently to recruit for the positions in which some applicants were not successful during the suitability interviews.
25. This decision prompted the officers to file E&LRC Cause 221 of 2015, *Shadrack Waigwa Ndung'u & 64 others V CGN and Nyeri CPSB (2017) eKLR*, to seek orders among others for absorption of the petitioners into the County government's permanent and pensionable establishment. The claims were based on directives by the Ministry of Education (MoEST), the Ministry of Devolution and Planning, the Transition Authority (TA), the Directorate of Public Service Management (DPSM), the County Public Service Board Forum and the Public Service Commission. These directives included the transition of staff from the National

Government to respective County governments, to include personnel emoluments, in the spirit of upholding devolution. The judgement in the matter was issued in favour of the petitioners, where the court held that they were entitled to be absorbed into permanent and pensionable service (*Annexed*).

26. In addition, the County Government noted that the County Public Service Board effected the court's decision and placed the officers at Job Group 'H' and directed that the claimants be paid salaries for the period from 1st July 2015 to 4th December 2015 as ordered by the court. The matter was considered closed by the Board and the officers deployed across the Vocational Training Centres.

3.5 Grant Instructors

27. The County government also noted that, as far as the transition to County governments was concerned, no arrangements were made in respect of the 'grant instructors'. There was also no documentation to validate their claim on employment by the National Government; what was evident was that the National Government would send grants to the respective Boards of Management as a supplement to the salaries paid by the latter. The County Government therefore did not consider them bona fide employees.
28. In the response, it was noted that the instructors filed E&LRC Cause 264 of 2017, *Joseph Gitonga Wachira & 41 others V CGN & 2 others (2020) eKLR (Annexed)*. The court found that there were different categories of youth polytechnic instructors and differentiated specifically, those on permanent and pensionable terms and those considered 'grant instructors'. Ultimately, the suit was dismissed as it did not meet the requirements of Section 90 of the Employment Act, which provides for a 'continuing injury'. Based on this judgement and the categorization mentioned above, the Board did not take any action to confirm their employment or otherwise.

3.6 The Category of Youth Polytechnic Instructors where the Petitioners fall

29. In their first response, the County Government of Nyeri stated that the County Public Service Board derived authority to translate the terms of the 65 ESP Instructors with regard to Section 138 of the County Governments Act as well as the judgment in E&LRC Cause 221 of 2015. Section 138 of the County Governments Act (arrangements for public servants) provides for

the transition of staff from the National Government to respective County governments. The judgement in E&LRC Cause 221 of 2015 was that the instructors were entitled to be absorbed into permanent and pensionable service. The County Government therefore concluded that the petitioners in this case do not appear in the list of ESP Instructors affected by the judgement in E&LRC Cause 221 of 2015. (*Annexed*)

30. After further review of the petitioners' documents and submissions, the County Public Service Board similarly noted that the Nyeri E&LRC No. 221 of 2015 was instituted by the Economic Stimulus Programme Youth Polytechnic Instructors, seeking among other prayers, absorption into permanent and pensionable terms of employment. The judgement was delivered in favour of the claimants and the Board implemented the decision of the Court. The Board further stated that Mr. Julius Wariuko and Peter Mugo Maina were not among the claimants and therefore could not be reinstated.
31. The Governor, in his submissions before the committee mentioned that if the petitioners form part of the claimants in E&LRC Cause 264 of 2017, it is apparent that the court recognized them only as 'grant instructors'. Following the judgement in this matter, the claimants filed a Notice of Appeal on 8th June 2020 but did not pursue the matter further.
32. Upon receipt and scrutiny of the petitioners' documents and submissions, the County Public Service Board confirmed this response and stated that the two were among 40 other claimants against the County Government in Nyeri ELRC No. 264 of 2017. They sought absorption of all of them into permanent and pensionable terms of service, in which it was confirmed that they were grant instructors. The suit was later dismissed.
33. In conclusion, the Board confirmed that the two petitioners (Mr. Julius Wairiuko Wanjohi and Mr. Peter Mugo Maina) were grant instructors who were engaged by respective Youth Polytechnics Boards of Management. The Board provided proof of this resolution by attaching a copy of a letter dated 17th March 2000, by the PS Ministry of Labour intervening in the payment of grant salary to Peter Mugo Maina.
34. The Board further stated that Petitioners' claim for employment is therefore not warranted as Claimants were employed by various Youth Polytechnics and not the Ministry of Education, Science and Technology or the Ministry of Housing and Social Services. Neither were they employed by the Boards of Management on behalf of the Ministry. Their employment could therefore not have been devolved to the County Government. Additionally, the Board

recommended that the Department of Education should shed more information on the management and state of the said officers.

35. Upon deliberations of the matter at the county level as per the direction from the committee, the County Government of Nyeri made a decision based on the advice of the Board, which determined that the petitioners fall in the category of "grant instructors", who were engaged by the respective Boards of Management of various Youth Polytechnics. The Board further declared that they were not employees of the National Government and could not therefore be absorbed into the establishment of the County Government of Nyeri, following the advent of devolution.

CHAPTER FOUR: COMMITTEE OBSERVATIONS

36. Having engaged with various stakeholders and analysing their submissions, the Committee observed that,

- 1) The petitioners Mr. Julius Wairiuko Wanjohi and Mr. Peter Maina Mugo were employed as youth polytechnic instructors in Nyeri County in the years 1989 and 1990 respectively.
- 2) Following a consultative meeting on 2nd December 2014, between the Ministry of Devolution and Planning, the Ministry of Education, Science and Technology (MoEST) and the Transition Authority (TA) it was resolved among others that the contracts of the instructors under the Economic Stimulus Programme (ESP) be extended up to 30th June 2015 and thereafter, upon the expiry of the ESP programme, the instructors be absorbed by the County Governments on permanent and pensionable terms. The County Governments were required to make budgetary provisions to pay the staff following the passage of the County Allocation of Revenue Act in the next Financial Year.
- 3) On 15th December 2014, the Transition Authority communicated the resolution to the County Governments for implementation. The ESP instructors in Nyeri filed in the Nyeri Employment & Labour Relations Court Cause 221 of 2015, *Shadrack Waigwa Ndung'u & 64 others V County Government of Nyeri and Nyeri County Public Service Boards (CPSB) (2017) eKLR*,
- 4) Judgement was issued in favour of the claimants, where the court held that they were entitled to be absorbed into permanent and pensionable service. The County Government of Nyeri implemented the resolution communicated by the Transition Authority. In addition, the Board effected the court's decision and placed the officers at Job Group 'H' and directed that the claimants be paid salaries for the period from 1st July 2015 to 4th December 2015 as directed by Court.
- 5) The two petitioners (Mr. Julius Wairiuko Wanjohi and Mr. Peter Mugo Maina) do not appear in the list of ESP instructors affected by the court judgement in E&LRC Cause 221 of 2015. The Committee established that the two are grant instructors who were engaged by respective Youth Polytechnics Boards of Management and not ESP instructors as per the petitioners' assertions in the petition. This was a misrepresentation on the part of the petitioners.
- 6) The two petitioners were among 40 other claimants against the County Government in

Nyeri Employment and Labour Relations Court, Cause No. 264 of 2017. They sought absorption of all of them into permanent and pensionable terms of service. The suit was later dismissed as it did not meet the requirements of Section 90 of the Employment Act, which provides for a 'continuing injury'. Based on this judgement the County Public Service Board did not take any action to confirm the employment of the grant instructors or otherwise.

CHAPTER FIVE: COMMITTEE RECOMMENDATIONS

37. Based on the observations above, the Standing Committee on Devolution and Intergovernmental Relations recommends that:

- 1) The subject matter in the petition was canvassed in court where the suit was dismissed. The Petitioners failed to follow through with the appeal. Further, prior to the hearing of the case- E&LRC Cause 264 of 2017, *Joseph Gitonga Wachira & 41 others V CGN & 2 others (2020) eKLR*, mediation efforts between the parties who included the petitioners, Nyeri County Government and the Nyeri County Public Service Board had failed. The Committee therefore finds that the Petitioners had not exhausted the court process to address their grievances. The committee therefore finds prayers of the Petitioners to the Senate not merited. However, the petitioners may consider further engaging with the Nyeri County Government and the Nyeri County Public Service Board through Alternative Dispute Resolutions Mechanisms to conclusively deal with the matter.
- 2) The Inter-Governmental Relations Technical Committee (IGRTC) who took over the functions of the Transition Authority (TA), Council of Governors (COG) and the County Public Service Board National Consultative Forum should engage with a view of determining and resolving issues of the status of the grant instructors. A report on the resolutions should be submitted to the Senate within ninety (90) days upon the adoption of this report by the House.
- 3) The Inter-Governmental Relations Technical Committee (IGRTC) and the Council of Governors (COG) should submit a report to the Senate on the employment status of other employees seconded to the County Governments at the onset of devolution among them Early Childhood Development Education (ECDE) teachers, Technical and Vocational Education and Training teachers, Community Health Volunteers (CHV) among other National Government employees.
- 4) The Inter-Governmental Relations Technical Committee (IGRTC) should conduct an audit on the status of the transfer of functions under the Fourth Schedule of the Constitution and submit a report to the committee. This should highlight the status of the Youth Polytechnic function, which is the main issue in the petition, hence guiding on the measures to be taken to resolve this and other related issues.

ANNEXURES

1. Minutes
2. Petition
3. Submissions

LIST OF ANNEXTURES

<i>Annex 1</i>	Minutes of the Standing Committee on Devolution and Intergovernmental Relations
<i>Annex 2</i>	Petition on the Lack of Implementation of a Resolution to Absorb the Contracted Instructors under the Economic Stimulus Programme (ESP) by the County Government of Nyeri
<i>Annex 3</i>	Submissions made by the Petitioner
<i>Annex 4</i>	Submissions made by the County Government of Nyeri

Annex 1:

***Minutes of the Standing
Committee on Devolution and
Intergovernmental Relations***



MINUTES OF THE EIGHTY FIRST SITTING OF THE SENATE STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS HELD ON THURSDAY 12TH OCTOBER, 2023 IN BILATERAL ROOM 3, FIRST FLOOR, KICC, AT 10.15 AM

PRESENT

- | | |
|--|--------------------|
| 1. Sen. Sheikh Mohamed Abass, MP | - Chairperson |
| 2. Sen. Catherine Muyeka Mumma, MP | - Vice-Chairperson |
| 3. Sen. (Dr) Oburu Oginga, MGH, MP | - Member |
| 4. Sen. Richard Momoima Onyonka, EBS, MP | - Member |
| 5. Sen. Peris Pesi Tobiko, CBS, MP | - Member |
| 6. Sen. Mohamed Chute, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|----------------------------------|----------|
| 1. Sen. George Mungai Mbugua, MP | - Member |
| 2. Sen. Hezena Lemaletian, MP | - Member |
| 3. Sen. David Wafula Wakoli, MP | - Member |

SECRETARIAT

- | | |
|----------------------------|--------------------------------------|
| 1. Ms. Sylvia Nasambu | - Clerk Assistant I (taking minutes) |
| 2. Ms. Lucianne Limo | - Ag. Chief Media Relations Officer |
| 3. Ms. Amran Yunis | - Fiscal Analyst I |
| 4. Mr. Walters Omondi | - Legal Counsel II |
| 5. Ms. Mwanaamisi mwachasi | - Research Officer III |
| 6. Mr. Johnstone Simiyu | - Audio Officer III |
| 7. Mr. John Lekampule | - Serjeant-at-Arms |
| 8. Ms. Celestine Jepkosgey | - Public Communications Officer III |

MIN/SEN/DEVIR/402/2023

PRAYER

The meeting was called to order by the Chairperson at 10:15 am followed by a word of prayer by Ms. Sylvia Nasambu.

MIN/SEN/DEVIR/403/2023:

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after being proposed by the Vice Chairperson, Sen. Catherine Mumma, MP and seconded by Sen. George Mbugua, MP as follows:

1. Prayer;
2. Adoption of the Agenda;
3. Consideration of:
 - a) Consideration of Committee Paper 47: A Brief on the Report of the Controller of Budget for the Financial Year 2022/2023; and
 - b) Consideration of Committee Paper 44: The Report on the Implementation of a Resolution to Absorb the contracted Instructions Under the Economic Stimulus Programme (ESP) by the County Government of Nyeri.
4. Any Other Business; and
5. Date of the Next Meeting and Adjournment.

MIN/SEN/DEVIR/404/2023: CONSIDERATION OF PAPER NO. 47

The Committee considered paper number 47 and noted its contents thereof. From the foregoing, the Committee identified six key issues of which the Senate ought to consider and develop mechanisms of oversight. They are:

- a) Additional Allocations;
- b) Loans and grants;
- c) Own Source Revenue;
- d) Pending Bills;
- e) Parallel Payroll Systems; and
- f) Remittances.

Upon deliberation on these six key issues, the Committee resolved to make a statement under 56(1)(a) on this report, with a view to informing all committees on the aforementioned issues and recommending interventions that the committees may undertake to ultimately strengthen Devolution.

MIN/SEN/DEVIR/405 /2023: CONSIDERATION OF PAPER NO. 44

The committee reconsidered the Report on the Implementation of a Resolution to Absorb the contracted Instructions Under the Economic Stimulus Programme (ESP) by the County Government of Nyeri, which had the previously recommended changes.

Upon deliberation, the Committee adopted the report, having been proposed by Sen. Richard Onyonka, EGH, MP and seconded by Sen. Catherine Mumma, MP.

MIN/SEN/DEVIR/406/2023

ANY OTHER BUSINESS

There was no other business.

The Chairperson adjourned the meeting at 11:10 am. The next meeting to be held on notice.

SIGNED.....



DATE.....

17/10/23

**SEN. SHEIKH MOHAMED ABASS, M.P
CHAIRPERSON, STANDING COMMITTEE ON DEVOLUTION AND
INTERGOVERNMENTAL RELATIONS.**



**MINUTES OF THE SEVENTY NINTH SITTING OF THE SENATE
STANDING COMMITTEE ON DEVOLUTION AND
INTERGOVERNMENTAL RELATIONS HELD ON THURSDAY 5TH
OCTOBER, 2023 IN BILATERAL ROOM 3, FIRST FLOOR, KICC, AT 10.00
AM (HYBRID SITTING)**

PRESENT

- | | |
|------------------------------------|--------------------|
| 1. Sen. Catherine Muyeka Mumma, MP | - Vice-Chairperson |
| 2. Sen. (Dr) Oburu Oginga, MGH, MP | - Member |
| 3. Sen. Peris Pesi Tobiko, CBS, MP | - Member |
| 4. Sen. George Mungai Mbugua, MP | - Member |
| 5. Sen. Mohamed Chute, MP | - Member |
| 6. Sen. Hezena Lemaletian, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|--|---------------|
| 1. Sen. Sheikh Mohamed Abass, MP | - Chairperson |
| 2. Sen. Richard Momoima Onyonka, EBS, MP | - Member |
| 3. Sen. David Wafula Wakoli, MP | - Member |

SECRETARIAT

- | | |
|----------------------------|--------------------------------------|
| 1. Ms. Sylvia Nasambu | - Clerk Assistant I (taking minutes) |
| 2. Ms. Lucianne Limo | - Ag. Chief Media Relations Officer |
| 3. Ms. Anne Kigoro | - Research Officer I |
| 4. Mr. Walters Omondi | - Legal Counsel II |
| 5. Ms. Mwanaamisi mwachasi | - Research Officer III |
| 6. Mr. Johnstone Simiyu | - Audio Officer III |
| 7. Mr. John Lekampule | - Serjeant-at-Arms |
| 8. Ms. Celestine Jepkosgey | - Public Communications Officer III |

MIN/SEN/DEVIR/391/2023

PRAYER

The meeting was called to order by the Chairperson at 10:05 am followed by a word of prayer by Ms. Sylvia Nasambu.

MIN/SEN/DEVIR/392/2023:

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted after being proposed by the Vice Chairperson, Sen. Catherine Mumma, MP and seconded by Sen. George Mbugua, MP as follows:

1. Prayer;
2. Adoption of the Agenda;
3. Consideration of
 - a) Committee Paper 44: The report on the Petition on the lack of implementation of a resolution to absorb the Contracted Instructors under the Economic Stimulus Programme (ESP) by the County Government of Nyeri; and
 - b) Committee Paper 45: Brief on the Amendment of the County Governments (Amendment) Bill, 2023, on the Role of the Committee during Committee Stage Amendments.) Bill, 2023 (Senate Bills No. 25 of 2023).
4. Any Other Business; and
5. Date of the Next Meeting and Adjournment.

MIN/SEN/DEVIR/393/2023: CONSIDERATION OF PAPER NO. 44

The Committee considered the report on the Petition on the lack of implementation of a resolution to absorb the Contracted Instructors under the Economic Stimulus Programme (ESP) by the County Government of Nyeri and recommendations.

Upon considering the entire report, the Committee observed that the Petitioners were not ESP instructors who were absorbed into the counties, but rather grant instructors, who were not absorbed and who's court case challenging their non-absorption was dismissed on a point of technicality.

The Committee also observed that the grant instructors appealed and lost their case. Because they did not disclose full information and misrepresented their position, and further failed to get redress from the Governor of Nyeri or the Court, **the Committee resolved to conclude the matter, since there was no other point of recourse for the Petitioners, and to amend the report to clearly reflect this position and have the report adopted for tabling next week.**

MIN/SEN/DEVIR/394/2023: CONSIDERATION OF PAPER NO. 45

The committee was presented with a comprehensive brief expounding on the possibility of amending a Bill once it has undergone public participation and is at the point of second reading. This arose in consideration of the County Government's (Amendment) Bill, 2023, which seeks to amend the threshold of impeachment of a County Executive Member from one- third to two- thirds. The Chairperson had recommended after public participation that Counsel should look into including amendment of the threshold for removal of Speakers and Clerks of County Assemblies.

Members were advised that Standing order 152(2) clearly prescribes the parameters for which an amendment shall be moved to any part of a Bill. Case law was cited supporting this position.

Upon deliberation, the Committee resolved to apply the advise rendered by Counsel and not amend the Bill. The Bill shall therefore proceed as is.

MIN/SEN/DEVIR/395/2023

ANY OTHER BUSINESS

There was no other business.

MIN/SEN/DEVIR/396/2023

ADJOURNMENT AND DATE OF NEXT MEETING.

The Chairperson adjourned the meeting at 10:50 am. The next meeting to be held on notice.

SIGNED.....

DATE.....17.10.23

SEN. SHEIKH MOHAMED ABASS, M.P
CHAIRPERSON, STANDING COMMITTEE ON DEVOLUTION AND
INTERGOVERNMENTAL RELATIONS.



MINUTES OF THE SIXTY SEVENTH SITTING OF THE SENATE STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL RELATIONS HELD ON MONDAY, 31ST JULY, 2023 AT COMMITTEE ROOM 5 AT 10.00 AM.

PRESENT

- | | |
|--|--------------------|
| 1. Sen. Sheikh Mohamed Abass, MP | - Chairperson |
| 2. Sen. Catherine Muyeka Mumma, MP | - Vice-Chairperson |
| 3. Sen. (Dr) Oburu Oginga, MGH, MP | - Member |
| 4. Sen. Richard Momoima Onyonka, EBS, MP | - Member |
| 5. Sen. Mohamed Chute, MP | - Member |
| 6. Sen. George Mungai Mbugua, MP | - Member |
| 7. Sen. David Wafula Wakoli, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|------------------------------------|----------|
| 1. Sen. Peris Pesi Tobiko, CBS, MP | - Member |
| 2. Sen. Hezena Lemaletian, MP | - Member |

IN ATTENDANCE

- | | |
|-----------------------------------|-------------------------------------|
| 1. Hon. Edward Mutahi Kahiga, EGH | - Governor, Nyeri County |
| 2. Mr. Diana Kendi Tarichia | - CEC, Education, Trade and Tourism |
| 3. Mr. James Gichuki | - Chief Officer, Education |
| 4. Mr. Paul Wambugu | - Chief of Staff |
| 5. Mr. Kmani Rucuiya | - County Attorney |
| 6. Mr. Elphas Mbae | - PEO VTC |
| 7. Mr. Peter Kihara | - Manager, Karatina VTC |
| 8. Mr. Julias Wanjohi | - Instructor, Othaya Polytechnic |
| 9. Mr. Peter Mugo | - Instructor, Othaya Polytechnic |

SECRETARIAT

- | | |
|----------------------------|--|
| 1. Mr. Ahmed Odhwa | - Principal Clerk Assistant II |
| 2. Ms. Lucianne Limo | - Media Relations Officer I |
| 3. Ms. Sylvia Nasambu | - Clerk Assistant II |
| 4. Mr. Walters Omondi | - Legal Counsel II |
| 5. Mr. Desmond Rasugu | - Clerk Assistant III (taking minutes) |
| 6. Ms. Mwanaamisi mwachasi | - Research Officer III |
| 7. Ms. Lucy Mwaniki | - Serjeant-at-Arms |
| 8. Mr. Johnstone Simiyu | - Audio Officer III |

MIN/SEN/DEVIR/335/2023:

PRAYER

The meeting was called to order by the Chairperson at 10:18am followed by a word of prayer by Ms. Sylvia Nasamb.

MIN/SEN/DEVIR/336/2023:

ADOPTION OF THE AGENDA

The agenda of the meeting was adopted as presented after being proposed by Sen. Oburu Oginga, MGH, MP and seconded by Sen. David Wakoli, MP as follows;

1. Prayer;
2. Adoption of the Agenda;
3. Meeting with the Petitioner and the Governor of the County Government of Nyeri to consider the Petition concerning the non-absorbed instructors by the County Government of Nyeri;
4. Any Other Business; and
5. Date of the Next Meeting and Adjournment

MIN/SEN/DEVIR337/2023:

MEETING WITH THE PETITIONER AND THE GOVERNOR OF THE COUNTY GOVERNMENT OF NYERI TO CONSIDER THE PETITION CONCERNING THE NON-ABSORBED INSTRUCTORS BY THE COUNTY GOVERNMENT OF NYERI.

The meeting began by a round of introductions by all those who were present. The Chairperson in his opening remarks stated that the Committee had resolved to invite both the Governor and the petitioners to the meeting so as to effectively deliberate on the issues raised in the petition before resolving them.

Submission by the Petitioners;

1. They stated that they were employed in 1989 by the Ministry of Education working as carpentry instructors stationed in Kiaguthu Youth Polytechnic in Nyeri but

following the Promulgation of the 2010 Constitution and the advent of Devolution, the Youth Polytechnic Training function was transferred to the County Governments. As result, all the staff performing the function were deemed seconded to the County Government;

2. That a consultative meeting held between the Ministry of Devolution and Planning, the Ministry of Education, Science and Technology and the Transitional Authority on 2nd December 2014, resolved that instructors on contract under the Economic Stimulus Programme (ESP) be absorbed by the County on permanent and pensionable terms. On 15th December, 2014, the Transition Authority communicated the resolution to County Governments for implementation;
3. That Several County Governments implemented the resolution except Nyeri County Government; and
4. That they had made every effort to have this matter addressed by the relevant authorities, all of which failed to address the concerns.

Submissions by the Governor

1. He stated that at the advent of devolution, the County Government found the employment structures of youth polytechnic instructors divided into several categories including instructors on permanent and pensionable terms and those on contract under the Economic Stimulus Program;
2. That in 2011, the Public Service Commission employed youth instructors on a three -year contract term that expired in 2015. The Nyeri County Public Service Board decided to conduct suitability interviews for the existing officers and subsequently to recruit for the positions in which applicants were not successful during the suitability interviews;
3. The decision prompted sixty-five of the officers who were not absorbed to file a case in court in to seek orders for their absorption as permanent and pensionable employees. The judgement was issued by the court in favour of the petitioners where the court held that they be absorbed on permanent and pensionable terms;
4. Reported that the two petitioners were not part of the list of the sixty-five instructors that the court ruled in favour of, and therefore it is the position of the county government that the two petitioners have no bona fide claim of employment against the county government; and
5. Concluded that the County Government only became aware of the petitioners concerns through the petition and no such claim had come to the Governor's attention from the petitioners until then.

Resolution:

After deliberations of the submissions by both the petitioners and the Governor, and in view of the Governor's revelation that the Petitioners had never engaged the County Government in seeking a solution of the matter, the Committee directed the two Petitioners submit all their relevant documentation over their employment to the County Government within (seven) 7 days, where upon receipt of the documents, the Governor shall consider the petitioners eligibility to be employed on permanent and pensionable terms and report the County Government's position to the Committee within (fourteen) 14 days.

MIN/SEN/DEVIR/338/2023**ANY OTHER BUSSINESS****Planning of the Devolution Conference**

The members deliberated over the involvement of the Committee in the planning of the Devolution Conference scheduled to take place from 15th – 19th August 2023. They raised concern that the Senate was not actively been involved in the planning of the high-level event despite being a key stakeholder in the Devolution space.

They were informed that the Conference is usually planned and convened by the Council of Governors which established a special Steering Committee that includes four members of the Senate for planning of the Conference.

MIN/SEN/DEVIR/339/2023**ADJOURNMENT AND DATE OF NEXT MEETING.**

The acting Chairperson adjourned the meeting at 11:50 am. The next meeting to be held on Thursday, 3rd August, 2023 at 10.00 am.

SIGNED..........

DATE.....18/09/2023.....

SEN. SHEIKH MOHAMED ABASS, M.P
CHAIRPERSON, STANDING COMMITTEE ON DEVOLUTION AND
INTERGOVERNMENTAL RELATIONS.

Annex 2:

**Petition on the Lack of
Implementation of a Resolution
to Absorb the Contracted
Instructors under the Economic
Stimulus Programme (ESP) by
the County Government of Nyeri**

The Clerk of the Senate
Parliament Buildings
P.O. Box 41842 - 00100
NAIROBI
Email: senate.petitions@parliament.go.ke

RECEIVED

12 MAY 2023

DIRECTOR LEGISLATIVE AND
PROCEDURAL SERVICES

RECEIVED

11 MAY 2023

Please do

201
12.05.23

RE: PETITION TO THE SENATE CONCERNING NON-ABSORBED INSTRUCTORS
BY NYERI COUNTY GOVT

I/We, the undersigned,

JULIUS WAIRUKA WANJITH

Citizens of the Republic of Kenya, and residents of [NYERI COUNTY];
DRAW the attention of the Senate to the following:

1. Employed on 01/7/89 by the Nyeri County.
XX
- 1.1 THAT, After 2010 Constitution Poly. were dissolved
to County Govts.
XX
- 1.2 THAT, In 2014 Council of Governors met and
passed a resolution to absorb the instructors
XX
- 1.3 THAT, 15th Dec 2014 Transition Authority
wrote to the Counties on the same issue
XX
2. All Counties implemented the Resolution
except here in Nyeri County.
XX
- 2.1 THAT, Instructors who were employed by the
National Govt from 1980s-1990s were
left hanging.
XX
- 2.2 THAT, XXX
- 2.3 THAT, XXX
3. XXX
- 3.1 THAT, XXX
- 3.2 THAT, XXX
- 3.3 THAT, XXX
4. THAT, I/we have made the best efforts to have these matters addressed by the
relevant authorities all of which have failed to give a satisfactory response.

Ms. Macharia
Please review
and let us
know
D. Chandra
17/05/2023

Petition to the Senate by [JULIUS WAIRUKA WANJITH] concerning
NON-ABSORBED INSTRUCTORS

③ Ms. Mwangi

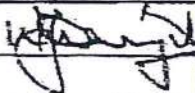
Please process
the petition &
come with the documents

5. THAT, none of these issues raised in this Petition is pending in any court of Law, Constitutional or any other legal body.

WHEREFORE, your humble petitioners pray that the Senate-

1. ~~xxxxxx~~ Nye County Govt. to about me,
2. ~~xxxxxx~~ be under permanent and pensionable terms
3. ~~xxxxxx~~ To pay me my salary and other benefits backdated from 2015.

Dated this... 2nd ... day of ... May ... 2015. 2023

No	NAME	ADDRESS	LD No	SIGNATURE
	Julius Wainiko Wainio	10106-117 DTHAYA	8979656	

If presented by a Senator:

Counter signed by Senator xxxxxxxxxxxxxxxxx, Senator for xxxxxxxxxxxxxxxxx County.

Sen. ~~xxxxxx~~,
Senator for ~~xxxxxx~~ County

Annex 3:

**Submissions made by the
Petitioner**

MINISTRY OF TECHNICAL TRAINING AND APPLIED TECHNOLOGY

Telegrams: 'TECHNICAL', NAIROBI
Telephone: Nairobi 27553/338818
When replying please quote



YOUTH DEVELOPMENT PROGRAMME
ELECTRICITY HOUSE
HARAMBEE AVENUE
P.O. BOX 42966
NAIROBI

Ref. No. YDE/3/52/1..Vol. VI/(349)..
and date

2th May,

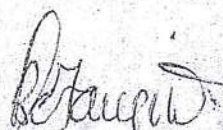
19 90

The District Youth Training Officer,
Nyeri District,
P.O. Box 32,
NYERI.

POSTING - PETER MAINA MUGG

The above named Instructor is posted to Stanley Mathenge
Youth Polytechnic as Motor Vehicle Mechanics II with effect
from 1st May, 1990.

His salary will be K2972 p.m.


(BENJAMIN P. MUNGU)
For: PRINCIPAL YOUTH OFFICER.

cc.

P.M. Maina,
P.O. Box 98,
KINJA-INT.

The Manager,
Stanley Mathenge Youth Polytechnic,
P.O. Box 447,
OTHAYA.

The Provincial Youth Training Officer,
Central Province,
P.O. Box 341,
NYERI.

Telephone: Nairobi
27553/338818

Youth Development Program
Electricity House,
Harambee Avenue,
P.O. Box 42966,
NAIROBI.


Ref. No. 22157

20th June 19 89

JULIUS W. WANJOHI

LETTER OF POSTING

1. I am pleased to inform you that you have been posted to KIAGUTHU Youth Polytechnic in NYERI District as a CARPENTRY INSTRUCTOR II w.e.f. 1.7.89 and not later than 15.7.89
2. Your salary will be KSh. 972 p.a. on the scale KSh 972x36-1044x42-1254x48-1446
3. The date you start working will be the effective date of your appointment and also your incremental date.
4. You will be an employee of KIAGUTHU youth polytechnic Management Committee who will issue you with letter of appointment after six (6) months from the date you start working.
5. Your personal number is 22157 which you should quote in your future correspondence to this office.
6. By copy of this letter, The Manager KIAGUTHU Y.P. should let us know when you report for duty.


H. W. OTSIULAH

for: PRINCIPAL YOUTH OFFICER

c.c. The Provincial Youth Training Officer,
CENTRAL Province.
P.O. Box 341

NYERI

The District Youth Training Officer,
NYERI District,

P.O. Box 32

NYERI

The Project Manager,

KIAGUTHU Youth Polytechnic

P.O. Box 748 othaya

MINISTRY OF EDUCATION

State Department of Vocational and Technical Training Office of the Principal Secretary

Telephone: +254-2240089
Email: psvt@education.go.ke
Website: www.education.go.ke

When replying please quote

JOGOO HOUSE 'B'
HARMBEE AVENUE
P.O. BOX 9585 00200
NAIROBI

Ref. No.: MOEST/VTI/2/15(5)

27th January, 2016

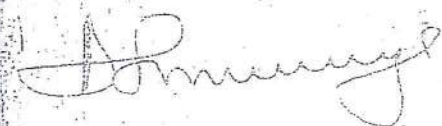
To: All County Secretaries

STATUS OF YOUTH POLYTECHNIC INSTRUCTORS

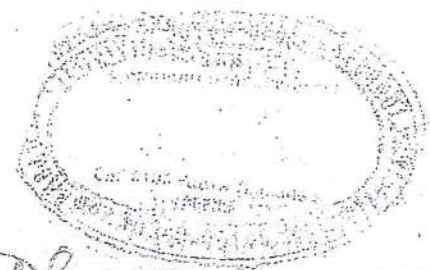
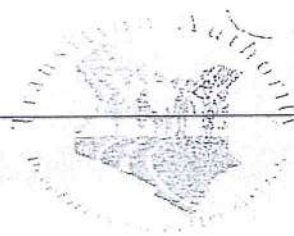
Reference is made to Public Service Commission letter Ref. No. PSC/ADM/91/XI dated 7th December 2015 on *Status of Youth Polytechnic Instructors* and Transition Authority letter Ref. TIA/HRM/15 dated 15th December 2014 on *Issues Affecting the Transfer of Youth Polytechnic (YP) Staff*.

Following deliberations of a consultative meeting held on 2nd December 2014 between the Council of Governors (CoG), Ministry of Education Science and Technology (MoEST), Ministry of Devolution and Planning, Transition Authority (TA), Directorate of Public Service Management (DPSM), the County Public Service Board Forum and the Public Service Commission (PSC), parties to the meeting agreed on County Governments to employ on Permanent and Pensionable terms of service with effect from 1st July 2014, all Contract Instructors who had competitively been recruited under the Economic Stimulus Programme (ESP) and payment of salaries of instructors on Permanent and Pensionable terms from September 2014. Absorption of this cadre of staff was imperative to ensure continuity and sustainability of vocational training in the country.

The purpose of this letter is to request you to provide information using the attached format confirming status of contract Instructors in your County on whether they were employed on permanent and pensionable terms or not. In case of non-absorption in employment of contract instructors, please provide reasons for their non-absorption to enable me prepare a comprehensive report for submission to PSC for further necessary action(s).



Dr. Dinah J.C. Mwinzi, MBS
PRINCIPAL SECRETARY



Handwritten signature and initials
TNA

Handwritten date
20/12/2015

OFFICE OF THE CHAIRMAN

Telephone: +254-0710287080
E-mail: www.transauthority.go.ke
www.transauthority.go.ke

P.O Box 10736-00100
8th Floor Extelcoms House
Nairobi

Ref: TA/HRM/15

15th December 2014

to: Collette Suda, Ph.D. FKNAS, EBS
Principal Secretary, State Department for Science & Technology
Ministry of Education, Science & Technology (MOEST)
Jogoo House
Nairobi

Dr. Kamau Thugge, EBS
Principal Secretary
The National Treasury
Nairobi

Mrs. Alike Otwalla, EBS
Secretary/CEO
Public Service Commission
Nairobi

All County Secretaries

Dear

Handwritten signature: AS prof. Suda,

RE: ISSUES AFFECTING TRANSFER OF YOUTH POLYTECHNICS STAFF

Following numerous issues and challenges facing the transition of youth polytechnics staff, a consultative meeting was held on Tuesday, 2nd December, 2014. The parties

Page 11

included the Council of Governors (CoG), Ministry of Education, Science and Technology (MoEST), Ministry of Devolution and Planning, Transition Authority (TA), Directorate of Public Service Management (DPSM), the County Public Service Boards Forum and Public Service Commission (PSC).

These issues include non-payment of salaries, expiry of contracts, contracts extension and payment of service gratuities among others.

Consequently, it was agreed that:

- i. The county governments make arrangements to pay the permanent and pensionable YP staff totaling 590 across the counties w. e. f September 2014 as per IPPD data forwarded by the MOEST since the budget for their personnel emolument was transferred to the counties as part of County Allocation of Revenue Act 2013 after verification of their details.
- ii. The MOEST in consultation with PSC and the National Treasury extend the contracts for 12/4 instructors whose contracts expired in November 2014 up to 30th June in order to bridge the shortfall of qualified teaching staff in youth polytechnics.
- iii. The county governments to make budgetary provisions to absorb the ESP staff in their County establishments on permanent and pensionable terms in the next financial year on expiry of the ESP Programme.
- iv. The MOEST to expedite the payment of service gratuity for the 1,74 whose contracts have expired.
- v. The MOEST to release to the counties funds for capitation for YP trainees and for YP Board of Governors employed instructors as conditional grant to the counties.

MINISTRY OF LABOUR AND HUMAN RESOURCE DEVELOPMENT

Telegrams: "LABCOM" Nairobi

Telephone: Nairobi 729800

If calling or telephoning ask for



SOCIAL SECURITY HOUSE

BISHOPS ROAD

P.O. Box 40326

NAIROBI

When replying please quote

Ref No. DTT/YDP/3/XVIII/159
and date

Date 16th March 2000

The Manager
Othaya Youth Polytechnic
P O Box 117
OTHAYA

RE: TRANSFER OF INSTRUCTORS
PETER MUGO MAINA - 300754

It has been decided to transfer the above Instructor
Peter Mugo Maina, from Kangui Youth Polytechnic to
Othaya Youth Polytechnic.

Please let us know when ~~she~~/he has reported to your
station to facilitate our placing him/~~her~~ in the Payroll.


M. W. NUOROGE (Mrs)
For: PERMANENT SECRETARY

C.C.

The Manager
Kangui Youth Polytechnic
P O Box 352
OL-JORO-OROK

The D.Y.T.O.
P O Box 1131
NYERI

Mugo's Copy.

MINISTRY OF TECHNICAL TRAINING AND APPLIED TECHNOLOGY

Telegrams: 'TECHNICAL', NAIROBI
Telephone: Nairobi 27553/338818
When replying please quote



YOUTH DEVELOPMENT PROGRAMME
ELECTRICITY HOUSE
HARAMBEE AVENUE
P.O. BOX 42966
NAIROBI

R/f. No. YDE/3/52/1. Vol. VI/(349)...
and date

24th May, 1990

The District Youth Training Officer,
Nyeri District,
P.O. Box 32,
NYERI.

POSTING - PETER MAINA MUGO

The above named Instructor is posted to Stanley Mathenge
Youth Polytechnic as Motor Vehicle Mechanics II with effect
from 1st May, 1990.

His salary will be KES 72 p.a.

Peter Maina Mugo
(Signature)
For: PRINCIPAL YOUTH OFFICER.

cc.

P.M. Maina,
P.O. Box 96,
KIRIA-IMI.

The Manager,
Stanley Mathenge Youth Polytechnic,
P.O. Box 447,
OTWAYA.

The Provincial Youth Training Officer,
Central Province,
P.O. Box 341,
NYERI.

MINISTRY OF RESEARCH, TECHNICAL TRAINING AND TECHNOLOGY

Telephone: Nairobi 334720
When replying please quote

Ref. No. DTT/YDP/3/52/1/VOL.XVIII/
and date 214




DIRECTORATE OF TECHNICAL TRAINING
JOGOO HOUSE "B"
HARAMBEE AVENUE
P.O. Box 60209
NAIROBI

.....10th.....July....., 19.....96

Miss Juliet Nyaguthii Theuri.

Thro'

The District Youth Training Officer,
Laikipia District,
Box 1191,
NANYUKI.


DISTRICT YOUTH TRAINING OFFICER
LAIKIPIA DISTRICT
P. O. Box.....Tel.....
NANYUKI

T R A N S F E R

15/7/96

It has been decided to transfer you from Doldol Youth Polytechnic to Othaya Youth Polytechnic to teach Garment Making with effect from 1st August, 1996.

Please ensure that you hand over properly before moving to your new station.

By copy of this letter, the Project Manager, Othaya Youth Polytechnic is asked to let us know when you report for duty.

for:

(J.D. NYAEMA)
DIRECTOR TECHNICAL TRAINING

C.C.

The Provincial Tech. Tr. Officer,
Box 15880,
NAKURU.

The Provincial Techn. Tr. Officer,
Box 1960,
NYERI.

The District Youth Tr. Officer,
Box 1131,
NYERI.

The Project Manager,
Box 117,
OTHAYA.



MINISTRY OF YOUTH AFFAIRS AND SPORTS
DEPARTMENT OF YOUTH TRAINING

P.O. Box 34303-00100
Nairobi, Kenya

Tel: +254-020-216798

Fax: +254-020-312351

When replying please quote:

17th March 2009

Mrs. Juliet W. Thewri
.....
..... Youth Polytechnic
P.O. Box
.....


Thro'

The District Youth Officer,
Nyeri..... District,
P.O. Box
.....

RE: PEDAGOGICAL SKILLS TRAINING FOR YOUTH POLYTECHNICS

INSTRUCTORS/MANAGERS IN THE LARGER NYERI REGION

You have been nominated to attend the above training which is scheduled to take place in Nyeri Technical Training Institute between 24th and 27th March 2009. The activity starts at 8.00 a.m on Tuesday 24th March 2009 and is non residential. The 10.00 a.m tea, lunch and 4.00 p.m tea shall be provided during the four days of the training. Reimbursement of the travelling expenses will be done at the venue upon production of valid and accurate bus tickets.


George Mbogo

For: Director Youth Training

CC. PDYA, Central Province

Manager..... Youth Polytechnic



Ministry of Youth Affairs & Sports Certificate of Participation

This is to certify that

JULIET NYAGUTHI THEURI

*Participated in an induction course on pedagogical skills for Youth
Polytechnic Instructors held at Nyeri Technical Training Institute from 24th to 27th March 2009.*

TOPICS COVERED:-

1. Teaching methods
2. Psychology of the learner
3. Schemes of work and lesson plans
4. Communication skills
5. Tests and measurements
6. Cross cutting issues

[Signature]

District Youth Officer
Nyeri Central District

Ministry of
Youth
Affairs
Sports
The Fresh Ministers

[Signature]

Ag. Deputy Director
Youth Training

COUNTY GOVERNMENT OF NYERI



OFFICE OF THE CHIEF OFFICER

DEPARTMENT OF EDUCATION, SPORTS, SCIENCE & TECHNOLOGY

W.A. CAMPUS/STATION/IN

Date: 7th November, 2018

TO WHOM IT MAY CONCERN

RE: RECOMMENDATION - PETER GITHALGA MURUKI ID. NO. 70/28617

I, the undersigned, do hereby recommend the above named person for the post of Teacher in the Department of Education, Sports, Science & Technology, Nyeri County Government.

I am satisfied that the above named person is a person of good character and has the necessary qualifications and experience to undertake the duties of the post.


SIMON WACHIRA

CHIEF OFFICER

DEPARTMENT OF EDUCATION, SPORTS, SCIENCE & TECHNOLOGY

Annex 4:

Submissions made by the
County Government of Nyeri

COUNTY GOVERNMENT OF NYERI



P.O. BOX 1112 - 10100
Telephone 061 2030700
NYERI

Director Committee Services
Email: governorsoffice@nyeri.go.ke

19 JUL 2023

OFFICE OF THE GOVERNOR

Our Ref: CGN/GVN/SEN/1/94/53

18th July, 2023

J.M. Nyegenye, CBS
Clerk of the Senate
Parliament Buildings
NAIROBI



RE: PETITION CONCERNING INSTRUCTORS

The above matter and your letter dated ~~6th~~ **19th July 2023** (RE: **SEN/DGAC/DGC/DEVIR/2023/059**) and our subsequent response to the aforesaid letter dated **13th July, 2023** refer.

Your aforementioned letter, indicated that the Senate Standing Committee on Devolution and Intergovernmental Relations is scheduled to receive stakeholder submissions on the Petition on the non-absorbed instructors by the County Government of Nyeri, at its sitting scheduled to be held on **Thursday, 20th July 2023 at 10.00 am**. I was invited to appear before the Committee at the said sitting to discuss the Petition. Due to the current uncertain and volatile political climate, I hereby kindly seek your indulgence to postpone the said meeting, in the interest of security and safety and humbly request that you set a new date.

Kindly consider the aforementioned request.


H.E. MWALIMU MUTAHI KAHIGA, EGH
GOVERNOR – NYERI COUTY

DDGAC

kindly deal

② HOD - Governance
CAI - Devolution

kindly deal

19/07/2023

19/07/23
1/1 Page

Copy to:

Sen. Wahome Wamatinga,MP,
Senator, Nyeri County,
Parliament Buildings,
NAIROBI.

COUNTY GOVERNMENT OF NYERI



P.O. BOX 1112 - 10100
Telephone 061 2030700
NYERI

Email: governor@nyeri.go.ke

OFFICE OF THE GOVERNOR

Ref: CGN/GVN/SEN/1/94/55

24th August, 2023

J.M. Nyegenye, CBS.
Clerk of the Senate
Parliament Buildings
NAIROBI

RE: JULIUS WARIUKO WANJOHI AND PETER MUGO MAINA (YOUTH POLYTECHNIC INSTRUCTORS)

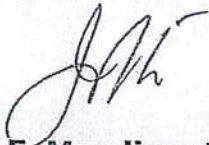
The above subject, your letter dated 6th July 2023 (RE: SEN/DGAC/DGC/DEVIR/2023/059), the extract of the Hansard for 24th May 2023 (Lack of Absorption of the Contracted Instructors Under the ESP by Nyeri County) and a subsequent meeting held on 31st July 2023 with the Senate Committee on Devolution, where I had been invited to appear and respond to queries raised in the aforementioned refer.

Following the resolutions made during the Senate Committee hearing, the petitioners submitted documentation in support of their claim to employment by the County Government of Nyeri through the Office of the County Attorney. Said documentation to the County Public Service Board, where the OCA requested that the Board review the documents and address the issues arising, specifically:

- i. Which category of instructors do the petitioners fall?
- ii. Whether the petitioners claim to employment is warranted and if so, what benefits, if any, they are entitled to.

We enclose herewith a response from the County Public Service Board, which has determined that the petitioners fall in the category of "grant instructors", who were engaged by the respective Boards of Management of various Youth Polytechnics. The Board therefore opines that they were not employees of the National Government and could not therefore be absorbed into the establishment of the County Government of Nyeri, following the advent of devolution.

The purpose of this letter therefore is to convey the decision by the County Government of Nyeri, based on the advice of the Board. We enclose herewith, the response by the Board, together with attachments for reference.



H.E. Mwalimu Mutāhi Kahiga, EGH
GOVERNOR – NYERI COUNTY

Copy to:

Sen. Wahome Wamatinga, MP,
Senator, Nyeri County,
Parliament Buildings,
NAIROBI.
Nyeri County



COUNTY GOVERNMENT OF NYERI
COUNTY PUBLIC SERVICE BOARD

P.O. BOX 90- 10100 Nyeri
Telephone 061 2030700

Our Ref: CGN/ATTORNEY/VOL.1/23

Date: 14th August 2023

County Attorney

County Government of Nyeri

RE: JULIUS WARIUKO WANJOHI AND PETER MUGO MAINA

The above matter refers.

Further reference is made to your letter dated 10th August 2023, reference no. CGN/LEGAL/IV/CP5B/530.

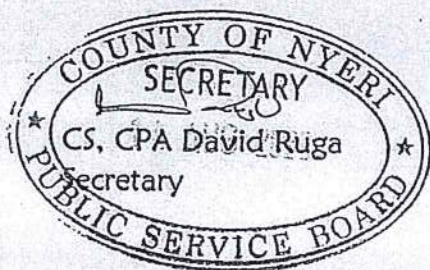
Nyeri ELRC No. 221 of 2015 was instituted by the Economic Stimulus Programme Youth Polytechnic Instructors, seeking among other prayers, absorption into permanent and pensionable terms of employment. The judgement was delivered in favour of the claimants and the Board implemented the decision of the Court. It is unfortunate that Mr. Julius Wariuko and Peter Mugo Maina were not among the claimants and therefore could not be reinstated. (Copy of judgement attached.)

In Nyeri ELRC No. 264 of 2017, the two were among 40 other claimants against the County the County Government. They sought absorption of all of them into permanent and pensionable terms of service, in which it was confirmed that they were grant instructors. The suit was later dismissed. (Copy of judgement attached.)

In addressing your question as to which category of instructors they fall under, the Board confirms that they were grant instructors who were engaged by respective Youth Polytechnics Boards of Management. This is also confirmed by a letter dated 17th March 2000, by the PS Ministry of Labour intervening on payment of grant salary to Peter Mugo Maina. (Copy attached).

The Petitioners' claim for employment is therefore not warranted as Claimants were employed by various Youth Polytechnics and not the Ministry of Education, Science and Technology or the Ministry of Housing and Social Services. Neither were they employed by the BOMs on behalf of the Ministry. Their employment could therefore not have been devolved to the County Government.

The Department of Education can shed more information on the management and state of the said officers.





REPUBLIC OF KENYA

IN THE EMPLOYMENT & LABOUR RELATIONS

COURT OF KENYA AT NYERI

CASE NO. 264 OF 2017

JOSEPH GITONGA WACHIRA & 41 OTHERS.....CLAIMANTS

VERSUS

NYERI COUNTY GOVERNMENT.....1ST RESPONDENT

NYERI PUBLIC SERVICE BOARD.....2ND RESPONDENT

MINISTRY OF EDUCATION,
SCIENCE & TECHNOLOGY.....3RD RESPONDENT

JUDGMENT

1. The Claimants sued the Respondents asserting that they were all youth polytechnic instructors in the establishment of the 1st Respondent. The Claimants averred that they were engaged by the National Government on diverse dates and others by the Boards of Management of the

respective Youth Polytechnic institutions in Nyeri County under instructions of the National Government otherwise known as Grant Instructors and were receiving a grant of Kshs. 2,790/- each month. The Claimants averred that they no longer received the grant payment by the National Government since the advent of devolution as Youth Polytechnic Training was placed under County Governments under the Constitution of Kenya 2010. The Claimants averred that following a consultative meeting of stakeholders on 2nd December 2014 being the Ministry of Education Science and Technology, Public Service Commission, Council of Governors, County Public Service Forum and Transition Authority, it was agreed that the payroll of the Claimants be transferred to County Governments and the Counties should make arrangements to pay the permanent and pensionable youth staff totalling 590 across the Counties with effect from September 2014 as per IPPD data forwarded by the Ministry of Education, Science and Technology as the budget for the personal emolument was transferred to the Counties as part of the County Allocation of Revenue Act 2013 after verification of details. The Claimants contend that the 1st Respondent failed to implement the aforesaid terms of the agreement voluntarily entered into on 2nd December 2014 which agreement is binding on the 1st Respondent.

The Claimants averred that they continued to render services to the 1st Respondent without any payment whatsoever. The Claimants averred that the 1st Respondent had refused to absorb them into its payroll and harmonise their salaries and allowances with those of the Youth Polytechnic Economic Stimulus Programme Staff rendering services in the same institutions as the Claimants. The Claimants averred that the 1st Respondent continues to discriminate and treat them as lesser employees compared to their colleagues who serve in the same Youth Polytechnic institutions in the 1st Respondent's establishments. The Claimants thus sought absorption of all of them into permanent and pensionable terms of service, salaries and allowances arrears from 1st July 2015 to the date of filing suit, costs of the suit and interest on the salary arrears as well as any further order as the court may deem fit and just.

2. The 3rd Respondent filed a preliminary objection to the suit asserting that it offended the mandatory provisions of Section 13A of the Government Proceedings Act (Cap 40 Laws of Kenya) and that the suit did not disclose any cause of action against the 3rd Respondent and the Claimants have not sought any remedies against the 3rd Respondent. The 3rd Respondent also filed a memorandum of response in which it

admitted that there was a consultative forum held on 2nd December 2014 and that it transferred the payroll details to the Counties as agreed whereupon the 1st Respondent was to make budgetary provisions to absorb the Claimants on permanent and pensionable terms with effect from 1st July 2015. The 3rd Respondent averred that it had contracted the Claimants for 3 years under the Economic Stimulus Programme and upon expiry agreed to extend the contracts to 30th June 2015. The 3rd Respondent averred that the Claimants had not established any cause of action as against the 3rd Respondent and averred it would seek to be struck out from the proceedings.

3. The 1st and 2nd Respondents defence was that the transfer of the functions of the youth polytechnics to the County Governments did not obligate the County Governments to continue paying the top up grant to the grant instructors. The 1st and 2nd Respondents admitted that the Claimants upon being employed by the boards of management of the Youth Polytechnics were to be paid by the said boards of management save for the top up grants and that the Ministry of Education, Science and Technology was to release funds for capitation which was to be a conditional grant to the Counties. The 1st and 2nd Respondents averred

that the averments in the claim regarding the permanent and pensionable staff did not apply to the Claimants who were grant instructors. The 1st and 2nd Respondents denied the averments by the Claimants and averred that they have not in any way failed to honour the agreement entered into on 2nd December 2014 by the relevant stakeholders. The 1st and 2nd Respondents averred that there is no discrimination against the Claimants as there are different categories of youth polytechnic instructors and the Claimants voluntarily agreed to serve as grant instructors which category has its distinct terms and conditions.

4. Before the hearing of the main suit, the 3rd Respondent successfully raised a preliminary objection on its joinder and was struck out of the suit vide a ruling on 29th April 2018. That left the 1st and 2nd Respondents in the suit and the parties attempted unsuccessfully to settle the suit and ultimately the Claimants witness Mr. George Gitonga was heard. He testified that he was an instructor at Thangathi Youth Polytechnic. He testified that he had been an instructor from the 1980's to date and that he was familiar with the issues of instructors. He stated some are permanent and pensionable, the other is salaried by the National

Government. He testified that there are those employed by the respective Boards of Management and that the BOMs do it on behalf of the National Government. He stated that the BOMs work for the Ministry of Education and that they are given the salary from the National Government by the BOM. He was referred to the documents in the bundle and stated that the contracts were entered into with the respective youth polytechnics on behalf of the National Government and that there were different terms for BOM and the other employees but the work is the same. He testified that the resolution in the meeting with the Transition Authority related to BOM employees and there were resolutions in respect of the other cadres. He stated that the ones for National Government were employed by the Ministry of Education, Science and Technology and the Ministry of Housing and Social Services. He stated that the ones from BOM were paid top up grants which was stopped by the National Government after July 2015. He testified that it was stopped by the National Government and it was to be paid by the County Governments which failed to honour the letter. He stated that the County Government was to pay from July 2015 after County Allocation Revenue Act 2015 which is where the funds were to come from.

5. It was apparent that the Claimants were employed by the National Government initially and received a top up grant while some of the Claimants were employed by the respective BOMs of the various Youth Polytechnics as evidenced by their documents. The fact that their services were to be devolved meant that the National Government stepped out of the picture and the County Governments took over. From the Claimants' witness testimony, the Claimants were employed by various Youth Polytechnics and not the Ministry of Education, Science and Technology or the Ministry of Housing and Social Services. Neither were they employed by the BOMs on behalf of the Ministry. This would run counter to the very idea of devolution. Devolution under the 2010 Constitution did not envision retention of control by the National Government and no single shred of evidence was led to suggest that the National Government was to continue paying the top up through the BOMs. In any event, the Claimants' remuneration was varied as there were those who were permanent and pensionable and those who were grant instructors. They enjoyed different schemes and could not be on the same footing. The Claimants thus were misplaced in seeking redress on the wages issue in 2017 as the wages paid were a continuing injury in

terms of Section 90 of the Employment Act and ought to have been raised in 2016. Their acquiescence to the payment by the County Government at the rate they detest is not one for which they can seek redress due to limitation. The Claimants' suit is thus dismissed but I make no order as to costs.

6. As the decision is rendered during the Covid 19 pandemic, in keeping with the directives of the Chief Justice and the National Council on the Administration of Justice and the guidelines issued by the Chief Justice in the Gazette Notice scaling down court operations, the decision will be automatically stayed for 14 days so as to permit parties who may otherwise be in quarantine to take any requisite action prior to any adverse action being taken such as commencement of execution and the like.

It is so ordered.

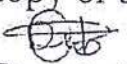
Dated and delivered at Nyeri this 27th day of May 2020

Nzioki wa Makau

JUDGE



I certify that this is a true
copy of the Original

 28/5/2020
Deputy Registrar