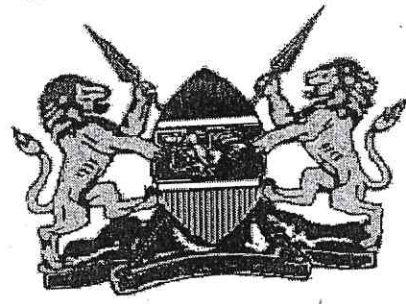


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COUNTY GOVERNMENT OF BOMET

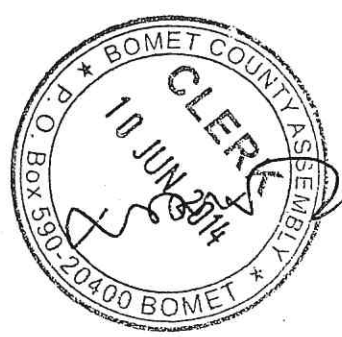


THE COUNTY ASSEMBLY



REPORT OF THE COMMITTEE ON APPOINTMENTS

A report on the Public Appointments (Bomet County Assembly Approval) Bill, 2014



JUNE, 2014



Table of Contents

PREFACE.....	3
Committee Membership	3
APPRECIATION.....	4
Terms of Reference for the Committee on Appointment.....	5
PUBLIC REACTIONS, RECOMMENDATIONS AND COMMITTEE RESPONSE.....	5
REVIEW OF THE BILL	6
RECOMMENDATIONS	10
Appendix 1.....	11
MINUTES FOR THE COMMITTEE ON APPOINTMENT HELD IN TEA RESEARCH FOUNDATION IN KERICHO ON 24 TH MAY 2014	11
Appendix 2.....	14
REPORT ON PUBLIC PARTICIPATION ON THE PUBLIC APPOINTMENTS (BOMET COUNTY ASSEMBLY APPROVAL) BILL, 2014.....	14
Appendix 3.....	15

PREFACE

On behalf of the Committee on Appointments and pursuant to Standing order No.181 (1), the Committee is pleased to report on its findings on the Public Appointments (Bomet County Assembly Approval) Bill, 2014. This Committee on appointments is one of the standing Committees established under Standing Order 186(1) and Second Schedule to the Standing Orders which provides for the Committee to deal with matters related to appointments that require Assembly approval.

Committee Membership

Mr. Speaker Sir, the Committee on Appointments as currently constituted comprise the following Honorable Members:

- | | |
|------------------------------|-------------|
| 1. Hon. G.K Kipngetich - | Chairperson |
| 2. Hon. Josphat Kirui - | Member |
| 3. Hon. Joyce Korir - | Member |
| 4. Hon. John Chepkwony - | Member |
| 5. Hon. David Rotich - | Member |
| 6. Hon. Christopher Ng'eno - | Member |

APPRECIATION

The Committee would like to thank the members of staff who assisted in compiling this report for their Commitment and devotion to duty that has made the work of the Committee and production of this report successful;

Mr. Speaker Sir,

On behalf of the Committee, I now wish to table the report and urge the House to adopt it and the recommendations therein.

HON. JOSPHAT KIRUI

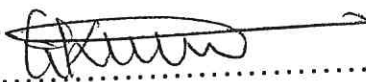
SIGNED

MEMBER

DATE10/6/2014.....

We Members of the Committee on Appointments do hereby affix our signatures to this report to affirm the correctness of the contents and support for the report:-

1. Hon. G.K Kipngetich

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2. Hon. Josphat Kirui

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3. Hon. Joyce Korir

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4. Hon. John Chepkwony

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5. Hon. David Rotich

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6. Hon. Christopher Ngeno

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Terms of Reference for the Committee on Appointment

During the Committee retreat held at the Tea Research Foundation on the 23rd of May 2014 the Committee set out to review the Public Appointments (Bomet County Assembly Approval) Bill, 2014 that was tabled on the 6th of May 2014. The Committee in scrutinizing the Bill sought to take into account the sentiments expressed by the public during the public participation session on the contents of the Bill. To achieve its mandate the Committee outlined its Terms of Reference which were to:

1. Comprehensively review the Bill;
2. Consider and review all the sentiments of the public regarding the Bill;
3. Make recommendations to the Assembly on amendments if any to the Bill taking into account public sentiments;

To enable the committee get the views of the public on the bill, the Committee held one public participation forum at Bomet Green Stadium on the 22nd of May 2014.

PUBLIC REACTIONS, RECOMMENDATIONS AND COMMITTEE RESPONSE

On the whole the public generally appreciated the Bill acknowledging that it was well prepared. The Committee, however received a few oral submissions from members of the public as to what could be incorporated into the Bill. These comprised of the following;

- There was a suggestion to include a Clause that provides for the Assembly to withdraw its approval. It was observed by some members of the public that a nominee may secure the approval of the Assembly only for the Assembly to discover

later on that its approval may have been based on incorrect or false information by a candidate.

- There was an argument by member a public that the use of **must** in **schedule 6 (f)** which states that ***"The Nominee must answer all the questions"*** was not proper citing that it could be used to deny a person an approval should the person fail to answer all the questions.
- There was also a concern that the Bill did not have any provisions regulating the recruitment of relatives.
- The participants also recommended that a Swahiliversion of the Bill should be prepared for ease of understanding by the public. The participants further recommended that Bills should also be printed in braille so as to cater for People With Disabilities PWDs (vision)
- There was an argument against the provision in clause 6(7) that a committee could conduct vetting *in camera*. The concern was that the provision may deny the public their constitutional right to scrutinize the approval process.
- The public enquired to know whether the proposed Bill shall be applicable to the current office holders.

REVIEW OF THE BILL

The Committee was of the general view that the Bill in its current form was adequate. The Honorable members of the Committee felt that the Bill captured the objectives and purpose it set out to achieve. A review of all individual Clauses was made from Clause one to twelve.

No issue was raised regarding **Clauses 1 to 5.**

Clause 6 had raised some issues during the public participation. There were sentiments from the public that the **Clause 6(3)** provision that the ***"Committee shall determine the time and***

place for the holding of the approval hearing and shall inform the clerk" made it possible for the approval hearings to be held somewhere outside the precincts of Bomet County. Some members of the public had argued that the provision could have a possible effect of locking out the county's locals in the vetting process.

The Committee noted, however, that upon close scrutiny it was evident that the Clause was intended to cover the circumstances where a nominee may not be able to be at the County during the prescribed period of consideration. Moreover, the Committee observed that some candidates may more adequately be vetted in certain places where a committee could easily access information on a candidate and that such places may be outside Bomet County. The Honourable members of the Committee therefore resolved that the Clause 6(3) remain in its current form.

Clause 6(7) which states; "***Despite subsection (5), a Committee may, on its own motion or on the application of a candidate or any other concerned person, determine that the whole or part of its sittings shall be held in camera***" had elicited observations from the public. There was public concern that holding sessions in camera as stated in the Clause may lock out the public from participating in the vetting process and thus undermine the transparency of the process

The Committee however noted that there were circumstances such as where a committee may want to inquire from a candidate on issues touching on national security that would necessitate such sessions be held *in camera*. The Committee was of the considered opinion that the Clause provided for such a scenario which was indeed foreseeable and thus resolved that the Clause remain in its current form.

Issues were also raised by some members of the public regarding the statement on oath provided for under **Clause 6(10)** which states

that, ***“Any person may, prior to the approval hearing, and by written statement on oath provide the Clerk with evidence contesting the suitability of a candidate to hold office to which the candidate has been nominated”*** The public was concerned as to why there had to be such a provision regarding a statement on oath.

The Committee observed that it was necessary to prescribe such a statement on oath so that a person giving information contesting the suitability of a nominee may be liable for the consequences of giving false information. During the Committee deliberations regarding the statement on oath, the Chairman suggested that a standard form be prescribed in an additional schedule in the Bill to enable the public to easily file a statement on oath challenging the suitability of a candidate.

Thus an amendment was proposed to **Clause 6(9)** which states that, ***“The criteria specified in the schedule shall be used by a Committee during an approval hearing for the purpose of vetting a candidate”*** so that the words ***“as prescribed in the second schedule”*** be inserted immediately after the words ***“statement on oath.”***

The Committee also considered the sentiments that a provision for withdrawal of approval to be included in **Clause 10**. The Committee while cognizant of the circumstances behind that suggestion and aware that there were situations in the country where certain officials were found to have misled some assemblies on their credentials and thus fraudulently getting their approval did propose any changes to **Clause 10**.

The Committee was of the considered view that there were other avenues to resolve such malpractices and that the general practice across the commonwealth is that the approving authority usually ceases to have jurisdiction on the matter once it has given its

decision on the approval. The Committee in this regard noted that there were avenues such as censure motions and court action which could be used to remedy such situations. As a result, the Committee resolved to leave **Clause 10** as it is.

The Committee also considered the fine of 200,000 Kenya shillings prescribed in **Clause 12(3)b** against any for refusing to be examined before or refusing to answer any lawful and relevant question put by a Committee. The fine was found adequate by the Committee.

The Committee also considered an argument by a member of the public that the use of **must** with regard to the provision that a nominee must answer all questions was not proper. It was noted that the use of "must" was to ensure that a nominee answers all questions in order to aid the relevant Committee in evaluating that nominee's suitability for office. It was further noted that in the absence of the word "must," a nominee could evade answering critical questions. Consequently, the Committee resolved the use of the word must was proper in the circumstances

The Committee also deliberated on the public sentiment that the Bill be published in Swahili. The Committee acknowledged that it was indeed a constitutional requirement that public documents be availed in English, Kiswahili and Braille. However, the Committee observed that the Assembly being an emerging legislative house was still in the process of building its capacity on translation and braille services and as such these services could not be realized in the immediate period.

The Chairperson noted, though, that while the Assembly was trying to build its capacity on provision of Kiswahili translation and braille, it will endeavor to use the people within its staff complement to translate subsequent Bills in Kiswahili in the interim.

RECOMMENDATIONS

The Committee was of the general view that the Bill was adequate in its current form save for the amendment in **Clause 6** where it recommends that a second schedule be created to create a standardized form for contesting the suitability of a candidate. The Committee thus propose that the Bill be passed with the following two amendments;

1. **THAT Clause 6(9)** be amended by inserting the word "**first**" immediately before the word "**schedule**"
2. **THAT Clause 6(10)** be amended by inserting the words "**as prescribed in the second schedule**" immediately after the words "**on oath**".

Appendix 1

MINUTES FOR THE COMMITTEE ON APPOINTMENT HELD IN TEA RESEARCH FOUNDATION IN KERICHO ON 24TH MAY 2014

MEMBERS PRESENT

1. Hon. G.K. Kipngetich
2. Hon. Josphat Kirui
3. Hon. Joyce Korir
4. Hon. David Rotich
5. Hon. Christopher Ngeno

MIN 1/24/2014: PRELIMINARIES

The chair called the meeting on order at exactly 9:30am and requested Hon. Joyce Korir to open the meeting with a word of prayer

MIN 2/24/2014 AGENDA

The chair briefed the members on the purpose and importance of the meeting and highlighted to the members the main reasons why the meeting/retreat was called on. The chair highlighted the following to the members;

1. That the main purpose for convening the meeting was to discuss and deliberate more on The Public Appointments (Bomet County Assembly Approval) Bill, 2014 before being tabled in Bomet County Assembly
2. That the Committee had received an oral submission from the members of the public through public participation held on 22nd May 2014
3. That the Committee had noted all the suggestions made by the Public during the public participation held on 22nd May 2014 at Bomet stadium

4. That one of the members of the public had noted the amendment of Section 10 subsection (2) of the Bill which states that; ***An appointing authority shall not resubmit the name of a candidate whose nomination has been rejected by the assembly for a similar appointment within the term of the Assembly***”

5. That a full report will be written that will incorporate all the Views of the public and all the amendments made by the Committee before being tabled in the Assembly.

6. That the Legal department was mandated to analyze all the views made by public and that of the Committee before tabling it in Bomet County Assembly, and that the report must entail the views of the public and that of the Committee.

The chair then gave a chance to the members to deliberate more on the Bill at hand.

Hon Joyce Korir was of the general view that the Bill in its current form was adequate. She added that the views made by the public were very important and need to be captured before being tabled in the Assembly. She mentioned that Clause 6 had raised some issues during the public participation. There were sentiments that Clause 6(3) provisions that the ***“Committee shall determine the time and place for the holding of the approval hearing and shall inform the clerk”*** made it possible for the hearings of nominees to be held somewhere outside the precincts of Bomet County.

Hon. David Rotich was concerned about Clause 6(8) ***‘an approval hearing shall focus on a candidate’s academic credentials, professional training and experience, personal integrity background’*** and Oscar Sang the director of Legal Services gave a legal opinion Hon. David Rotich was satisfied

However Hon. Joyce Korir also had a concern with on oath **Clause 6(10)** which states that, ***"Any person may, prior to the approval hearing, and by written statement on oath provide the Clerk with evidence contesting the suitability of a candidate to hold office to which the candidate has been nominated"***. The Committee discussed about the Clause and the chair resolved that it was necessary so that a person giving information may be held for any consequences of giving false information.

MIN 3/24/2014 A.O.B

The Committee resolved that the Legal Department and the staff involved comes up with a draft of the report for preview before the final copy is prepared.

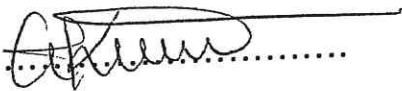
And there be no other business the meeting was adjourned at exactly 2.30pm with a closing prayer from Hon. David Rotich.

Approval

That the meeting took place and this represent the discussion of the Committee on 24th May 2014

Chairperson

Signature



Secretary

Signature.....

For Secretary
Timothy Korir

Appendix 2

REPORT ON PUBLIC PARTICIPATION ON THE PUBLIC APPOINTMENTS (BOMET COUNTY ASSEMBLY APPROVAL) BILL, 2014

PRELIMINARIES

Hon. Speaker, after prayers, introduced the agenda of the event. He acknowledged the presence of Committee members, Hon. Joyce Korir (sponsor), Hon. Josphat Kirui, Hon. Christopher Ngeno, Hon. David Rotich and the members of staff. He then debriefed the members of the public on the importance of public participation while acknowledging that it was a constitutional requirement.

He informed the participants that there were categories of Bills that had to go through public participation. He urged the members of the public to take advantage of such opportunities to participate, give their views and opinions.

THE PUBLIC APPOINTMENTS (BOMET COUNTY ASSEMBLY APPROVAL) BILL, 2014

The Chair reported that the Bill does not cover all public appointments but only constitutional and statutory appointments. This included the County executive Committee members, Chief Officers and members of the public service board.

He thereafter took the members of the public on the various Clauses of the Bill and the schedule outlining the criteria for vetting/approval of nominees for appointments.

DEPUTY SPEAKER'S CLOSING REMARKS

The Deputy Speaker thanked the participants for finding time to attend the event. She advise that there was need to support the local experts so that they can participate in the development of the Bills even at the drafting stages

Appendix 3

SECOND SCHEDULE

(SECTION 6 (10))

IN THE MATTER OF THE PUBLIC APPOINTMENTS (BOMET COUNTY ASSEMBLY APPROVAL) ACT

STATEMENT CONTESTING THE SUITABILITY OF A CANDIDATE

I *(insert name of the person writing the statement)* of *(insert address of person writing the statement)* in the Republic of Kenya wish to contest the suitability of (name of nominee) to hold the office *(name of office to which a nominee has been nominated to)* on the following grounds- THAT (the allegations and evidence upon which the person giving the statement rely on must be concisely set out, in consecutively numbered paragraphs. Annexure may be provided)

THAT what is deposed hereto is true to the best of my knowledge and belief.

SWORN by the said

.....this.....

Day.....of....., 20.....

Before me.....

A Commissioner of Oaths/Magistrate.

