

Bca/ EVT/15/01/2016/13

REPUBLIC OF KENYA



COUNTY GOVERNMENT OF BOMET

COUNTY ASSEMBLY

FIRST ASSEMBLY- FOURTH SESSION

THE COMMITTEE ON EDUCATION, VOCATIONAL TRAINING
INSTITUTIONS, YOUTH AFFAIRS AND SPORTS
REPORT ON
PETITION OF VOCATIONAL TRAINING INSTITUTIONS

MAY, 2016

To be discussed on
14/6/2016 at
2:30pm.

for Committee
17/5/2016.

Tabled on 17/5/2016.

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PREFACE

1.0 Introduction

The committee on Education, Youth and Sports is one of the Sectoral committees established under the Standing Orders 193(1) and the Second Schedule to the Standing Orders.

1.1 Committee Membership

The Committee on Education, Youth and Sports as currently constituted comprises of the following Honourable Members:-

1. Hon. Andrew Maritim – Chairperson
2. Hon. Wilson Keter – Vice Chairperson
3. Hon. Joyce Korir – Member
4. Hon. Bernard Ngeno – Member
5. Hon. Samwel Bor – Member
6. Hon. Robert Metet – Member
7. Hon. Leonard Kirui – Member

1.2 Mandate of the Committee

The Sectoral Committee on Education, Youth and Sports derives its mandate from provisions of Standing order 193(5) which defines functions of the Committee as being:

- a) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- b) To study the programme and policy objectives of ministries and departments and the effectiveness of their implementation;
- c) To study and review all legislation referred to it;

- d) To study, assess and analyze the relative success of the ministries and departments measured by the results obtained as compared with their stated objectives;
- e) To investigate and inquire into all matters relating to the assigned ministries and departments as may be deemed necessary, and as may be referred to it by the House or a minister;
- f) To vet and report on all appointments where the Constitution or any law requires the County Assembly to approve, except those under Standing Order 187 (Committee on appointments); and
- g) To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation.

1.3 Petition by the Vocational Training Instructors

Pursuant to the Standing Order No. 195(3) and as set out in the Second schedule, all matters relating to Vocational Training Institutions fall within the mandate of the Committee on Education, Youth and Sports.

The members of the public have a right to petition the County Assembly. **Section 15 (1)** of the County Governments Act, provides that a person has a right to petition a county Assembly to consider any matter within its authority, including enacting, amending or repealing any of its legislation.

On 30th September, 2015, the office of the clerk received a petition from Benson Lelgo on behalf of the Bomet County Youth Polytechnic Instructors (BCA/P/06/2015). The Committee on Education, Youth and Sports formally received the petition of the County Polytechnic Instructors on 30th September, 2015.

In dealing with the matter, the committee held a total of nine sittings to deliberate on the matters raised in the petition. The committee was

able to engage the three petitioners, who signed the petition on behalf of 69 others; Benson Lelgo, Alexander Komingoi and Nancy Jimmy. The Committee Executive Member for Education and the County Public Service Board submitted to the committee. Upon deliberation in the said sittings and interrogation of the documents submitted to it, the committee came up with a report in response to the petition as provided for under the Standing Order 201 (2)

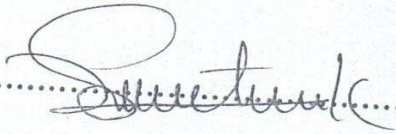
1.4 ACKNOWLEDGMENT

The committee is grateful to the Office of the Speaker and the office of the Clerk of the County Assembly for facilitating and providing technical support to the Committee during the period when the committee was working on the petition.

The committee wish to appreciate the members of the Committee on Education, Youths and Sports who worked tirelessly in discharging their duties in the committee in spite of several challenges encountered.

The committee also appreciates the Petitioners and all the respondents who made submissions during the committee sittings.

It is therefore my pleasant duty and privilege, on behalf of the Committee on Education, VTIs, Youth Affairs and Sports to table this report on the petition of the County Polytechnics for debate, consideration.

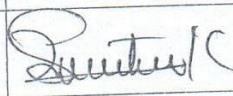
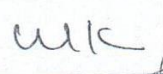
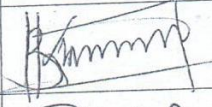



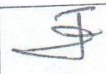
SIGNED  Date 17/5/2016

Hon. Andrew Maritim

Chairperson, Committee on Education, Vocational Training Institutions,
Youth Affairs and Sports

1.4 OWNERSHIP OF THE REPORT

We, Honourable members of Committee on Education, Vocational Training, Youth Affairs and Sports, do hereby append our signatures to this report to affirm our approval and confirm its accuracy, validity and authenticity:-

No.	Name	Position	Signature
1.	Hon. Andrew Maritim	Chairperson	
2.	Hon. Wilson Keter	Vice Chairperson	
3.	Hon. Bernard Ngeno	Member	
4.	Hon. Leonard Kirui	Member	
5.	Hon. Samwel Bor	Member	
6.	Hon. Robert Metet	Member	
7.	Hon. Joyce Korir	Member	

INTRODUCTION AND BACKGROUND

2.0 BACKGROUND

Following the tabling of the petition, the Committee on Education, Vocational Training Institutions, Youth Affairs and Sports formally received the petition of the Vocational Training Instructors through their Secretary Mr. Benson Lelgo, Identification Number 20066104 dated **30th September, 2015**. In his petition, Mr. Benson Lelgo on behalf of the Vocational Training Instructors state the reasons underlying the request for intervention of the County Assembly by outlining the grievances by summarizing facts which the petitioners wish the County Assembly to consider;

1. The outstanding salaries from December, 2014 to September, 2015
2. Confirmation of contracted staff both 2011 and 2012
3. Recruitment of the top up grants instructors and the B.O.M instructors totalling to 200.
4. Subsidized Youth Polytechnics, Tuition fees and Infrastructure allocation which have not been received in the institution.
5. Permanent and pensionable instructors who received their pay less by Kshs. 5000 as compared to their same Job Group colleagues in the County.

2.1 Prayers of the petitioner

The prayers raised in the petition specifically were that the County Assembly take necessary action to ensure;

- a) That the county government pay the outstanding salaries of VTI instructors in the County.

- b) That the contracted instructors be confirmed on permanent and pensionable terms without any conditions whatsoever as per Transition Authority letter dated 15th December, 2014.
- c) Recruitment of experienced and long serving Top up Grants and Board of Management instructors who served the youth polytechnics since initiation.
- d) The county continue of subsidized tuition fee, tools and equipment and infrastructural development allocation which have not been received since the inception of devolution.
- e) Permanent and pensionable instructors to be paid their dues according to their Job Groups without any undue deduction.

2.2 THE LEGAL FRAMEWORK

The legal framework for petitioning public bodies and institutions is well defined in Kenya. This includes the Constitution, the County Governments Act and the County Assembly Standing Orders.

The Constitution

The right of citizens to petition public authorities is enshrined in the Constitution, 2010. **Article 37** provides that;

“Every person has a right, peaceably and unarmed, to assemble, to demonstrate, to picket and to present petitions to public authorities”

The County Governments Act

Section 15 (1), County Governments Act, provides that a person has a right to petition a county Assembly to consider any matter within its authority, including enacting, amending or repealing any of its legislation.

Further, the County Governments Act under **Section 88** makes provision for citizens' right to petition and challenge. The said section provides that;

- (1) Citizens have a right to petition the county government on any matter under the responsibility of the county government*
- (2) Citizens petitions shall be made in writing to the county government*
- (3) County legislation shall give further effect to section 88 (1).*

The Act in **Section 89** further obligates the county government authorities, agencies and agents to respond expeditiously to petitions and challenges from citizens.

The Standing Orders

The **Standing Orders No. 201(1)** provides that every Petition presented or reported pursuant to this Part, shall stand committed to the relevant Sectoral Committee.

Standing Order 201(2) further provides that whenever a Petition is committed to a Sectoral Committee, the Committee shall, in not more than sixty calendar days from the time of reading the prayer, respond to the petitioner by way of a report addressed to the petitioner or petitioners and laid on the Table of the County Assembly and no debate on or in relation to the report shall be allowed, but the Speaker may, in exceptional circumstances, allow comments or observations in relation to the Petitions for not more than twenty minutes.

SUBMISSIONS TO THE COMMITTEE

3.0 SUBMISSIONS

In addressing itself to the issues raised by the petitioner, the committee resolved to invite the following;

1. The three petitioners on behalf of the Vocational Training Instructors in Bomet County.
2. Director Human Resource, Bomet County Government.
3. Bomet County Public Service Board secretary
4. The County Executive Committee Member for Education

3.1 SUBMISSION FROM THE PETITIONERS;

The three petitioners appeared before the Committee on **22nd March, 2016**. Upon appearing before the committee, the petitioners informed the committee as follows;

That the list of affected employees who have either been constantly harassed, transferred, suspended, interdicted or removed from the payroll unprocedurally were (Seventy nine) 79 officers.

The three petitioners therefore presented their cases as follows:

Submission by Mrs. Nancy Jimmy- Petitioner

Upon appearing before the committee the petitioner submitted that;

1. The instructors have not received grants for polytechnics from the year 2013 to date
2. The employment of VTIs instructors was not done procedurally by the County Government
3. The County Government of Bomet had promised that the instructors in the polytechnics and who worked previously for the National Government were to be absorbed.

4. The National Government formerly supported students in the polytechnics by subsidising school fees. Each student was supported to a tune of Ksh 15, 000 per year.
5. Fee support (Subsidies) for the polytechnic students from the County Government to VT institutions does not exist
6. The fate of Seanin polytechnic chairperson that was replaced should be considered for reappointment.

Submission by Mrs. Alexander Komingoi- Petitioner

Upon appearing before the committee the petitioner submitted that;

1. The Youth Polytechnic Tuition support fund that was phased out be restored
2. There is poor infrastructure challenge of the institutions that in some instances you find 1st and 2nd years in the same class.
3. Meetings held with the governor by the VTI appointees to present to him memorandum on VTI challenges and their recommendations
4. Meeting at the Assembly by the VTIs with MCAs and was informed to address some of their grievances.
5. The 1 million per Ward for VTI infrastructure FYs 2014/2015 and 2015/16 they were promised but to date haven't got anything since the inception of the County Government.
6. In effect of the above; Vocal members of the VTI Board were replaced yet no handing over was done, Salaries for the month October, 2015 were slashed by half with allegation that KRA was responsible and their pay slips withheld.

Submission by Mr. Benson Lelgo

Upon appearing before the committee the petitioner submitted that;

1. Policies were developed in the sector but no implementation has been done.
2. Efforts to have dialogue with the relevant officers to address their problems were thwarted.
3. Permanent and pensionable colleagues in other departments on the same Job Group with those of VTIs had their salaries with Kshs. 5,000 higher.
4. The staff who were interdicted for getting overpaid, an incident which affected all the VTIs in the country but their counterparts in other Counties were sorted out save for them, instead the County Government went to court to have the affected employees interdicted.
5. The meeting by the Transitional Authority with the Ministry of Education, Science and Technology that sought to address the issues that were affecting the VTIs, had their resolutions copied to the Council of Governors' chairperson then Hon. Isaac Ruto, Bomet Governor for implementation but the same were not effected.
6. There are VTI employees who did not pass through the County Public Service Board and some of the VTI managers were replaced without formal communication by the relevant offices.
7. Currently, employment of instructors is done contrary to the duly set procedure and those who have served for long in the institutions were neglected questioning their 'loyalty' to the County Government.
8. There was an allocation of Ksh. 10 m that was projected in the FY 2015/16 in the County institutions.
9. The instructors were not consulted in the budget making process and as a results affected their sports competition to an extent of using PTA funds in the said events.

10. The Kshs 15,000 per student that was allocated for tuition were not disbursed
11. There were cases of victimization whereby the managers were replaced informally and irregularly.

Upon their submissions the committee required the petitioners to submit the following documents supporting their submissions;

1. Copy of the memorandum given by instructors to the Governor
2. Budgetary allocations to the sub sector
3. Copy of the pay slips to proving that their salaries were halved
4. Copy of the list of the overpaid staff and a letter written to the County Executive to notify them on the overpayment of staff
5. The prayers in the court's letter on VTIs
6. Letter by the Transitional Authority to the Council of Governors
7. Case scenarios of instances that the County Executive acted to oppress, harass, intimidate the staff of VTIs
8. Copy of the minutes of meetings held
9. Names of officers replaced and their stations
10. Copy of resignation letter of the staff who resigned
11. Establishment of new institutions without instructors and students and the funding that such school get
12. All the sample of facts on promotion, demotion or dismissal of VTI staff

3.2 SUBMISSION BY THE DIRECTOR HUMAN RESOURCE- MRS. ANN TURGUT.

The Committee, through the office of the Clerk of the Assembly, vide letter dated **29th March, 2015** invited the Director HR to appear before the committee on **7th April, 2015** to shed light on some of the issues

raised in the petition. However, the director did not turn up and neither did she respond.

3.3 SUBMISSIONS BY THE COUNTY PUBLIC SERVICE BOARD SECRETARY- MR. PHILIP TONU

On the issue of employment of polytechnic instructors, the office of the County Public Service Board submitted as follows;

- i. That the Polytechnic instructors were employees who before the inception of the County Governments were contracted by the National Government through the Ministry of Education, Science and Technology.
- ii. That the National Government ended the contract of the said instructors thus paving way for them to be absorbed by county governments as their department is devolved.
- iii. That the Public Service Board did validate all the contracted workers on 30th September, 2015 at Kaplong Polytechnic of whom Mr. Benson Lelgo was among them.
- iv. That before the exercise took off, the CPSB deliberated on the requirements which were given by the user department. The exercise was done by the CPSB, The Human Resource representative and the user department.
- v. That all the employees who were previously contracted had the chance to go through the panel where the fifty six (56) of them met the requirements as given by the user department.
- vi. That the staff who met all the requirements were absorbed by the Public Service Board.
- vii. That the Secretary of the Board communicated the decision of the Board to the Executive for issuance of the appointment letters.

On the issue of employment of one of the petitioners, Mr. Benson Lelgo, the office of the County Public Service Board submitted as follows;

- a. That Mr. Benson Lelgo PF. NO. 20066104 passed through the panel on 30th September, 2015 at an exercise that was done at Kaplong Polytechnic. It was found out that Mr. Lelgo had helped resuscitate an institution that had collapsed back to life. Mr. Lelgo met all the requirements and was among those appointed. He was number thirty (30) among the list of fifty six (56) who qualified.
- b. That Mr. Lelgo reported to the County Public Service Board both verbally and in writing that he had since not received the appointment letter.
- c. That upon receiving the complaint from Mr. Lelgo, the Board called the Chief Officer who was then in charge- Mr. Kurgat to explain, but he reported that Mr. Lelgo led the others to air their views and grievances through a petition to the County Assembly.
- d. The Board further reported that since November, 2015 to date, Mr. Lelgo hasn't received his salaries.
- e. That upon the receipt of complaint letter from Mr. Lelgo, the Board wrote to the County Secretary demanding to know why the decision of the Board has not been fully implemented but no response has been given to the Board.
- f. That the Board considers Mr. Lelgo as an employee of the County Government of Bomet as he was qualified and that he has undergone all the necessary processes of recruitment.

3.4 SUBMISSION BY CEC MEMBER FOR EDUCATION- MR. SAMWEL BARCHOK

Upon appearing before the Committee the CEC for Education Mr. Samwel Barchok submitted as follows;

- a. On the outstanding salaries from December 2014 to September, 2015, the CEC and his team submitted that the period was transition time and the County Government had not yet taken over from the National government which was obligated to pay the instructors.
- b. That from the time the County Government took over from the National Government there had been no salary arrears owed to the VTI employees.
- c. On claims that the Salaries of the instructors were reduced by half, the CEC submitted that his office was not aware.
- d. That there are 38 Vocational Training Centres in the County and that 25 are operational.
- e. That the number of staff members is estimated to be about 54- 56 in number and some employees are employed by Board of Management.
- f. That payment of salaries of the instructors was consistent since they were regularized on September, 2015 and even had their salary payment backdated to July, 2015.
- g. That he was not aware of any VTI staff who was having problems with his/ her salaries and neither was he aware that one Mr. Lelgo who presented a petition on behalf of 79 other VTI staff had any issue regarding his salaries nor the same employee facing any kind of disciplinary action.
- h. The CEC also briefed the committee that all the contracted staff have been employed on Permanent and pensionable terms, Mr. Lelgo being one of them because he has a pay slip with the County Government of Bomet and was in the Public Service Board list of staff to be absorbed
- i. As for the VTI staff receiving the cheque from the National Government to clear outstanding salaries, the Executive team informed the committee that Mr. Langat, Director County office

- (National Government) was privy to the information and that no cheque had been received.
- j. On the challenges facing the VTI, the CEC submitted that the officers are going round the County to collect information on the needs of different VTIs and they expect to conclude the exercise very soon.
 - k. That new managers have been appointed in some VTI institutions on acting capacity.
 - l. On the Permanent and pensionable instructors receiving their pay less by Kshs. 5000, the CEC informed the committee that when the staff went through the County Public Service Board to ascertain their qualification, some were found to be having less qualification which were not commensurate with their salary scales, and when the same was regularized they had their Job Groups lowered and thus the reason reduction.
 - m. On the reasons why irregular replacement of managers in some VTI institutions including Ndanai Polytechnic, the CEC indicated that he was not aware.
 - n. Kaptebeng'wet, Mugango and Kapkimolwo where there are no structures and students but they have a managers; the Executive team responded that the managers are in office to mobilize the students to the institution as a process of establishing the institution.

4.0 COMMITTEE'S OBSERVATION AND FINDINGS

Upon interrogations, the submission and documents availed to it, the committee found that the issues that needed to be addressed included the following;

- a. Payment of salary arrears of the VTI staff for the period within December, 2014 to September, 2015, variation of salaries of some of the VTI instructors by the County Government and Irregular transfers of VTI staff by the County Government
- b. Recruitment of experienced and long serving Board of Management instructors who have served youth Polytechnics since their inception.
- c. Confirmation of employees who have been in contract to be on permanent and pensionable terms
- d. Addressing the myriad of challenges facing the VTIs within the county including subsidizing tuition fees and improving infrastructure.

Having agreed on the issues to be looked into, the committee made the following observations and findings;

- 1. Payment of salary arrears and variation of salaries in the same job cadre.**

Payment of Salary arrears

The committee observed that the salary arrears alleged by the petitioners involved employees who worked under the Economic Stimulus Programme which was undertaken by the National Government. The salary arrears for period between December, 2014 and September, 2015 claimed for was for the period before the County Government took over the payment of remuneration. The committee therefore finds that there is need by the County Government to liaise with the National Government to ensure that the issue of the said arrears is sorted out expeditiously.

Variation of salary on the same Job Group

On claims that permanent and pensionable instructors who were taken in by the County Government received their salaries less by Kshs.

5000 as compared to their same Job Group colleagues in the County, the committee observes that the County Public Service Board has a role in matters of remuneration as provided for under section 59 (1) (j). The committee also notes that salaries of individuals in the same job group does not necessarily have to be the same as an employee who has served for a longer period receives a salary increment in each year served.

Irregular and unprocedural deployment of VTI staff

It was noted that there were claims that there are VTI staff who did not pass through the County Public Service Board and some of the VTI managers were replaced without formal communication by the relevant offices.

The committee finds that all matters to do with recruitment is a preserve of the County Public Service Board and that proper communication should be done when transferring staff to ensure that management of the VTIs is not disrupted.

2. Addressing challenges facing Vocational Training Institutions

Vocational Training Institutes in the county

That vocational training, polytechnics and home craft centres have been devolved to the County Government as provided for under the constitution. The polytechnics play a critical role in youth empowerment in terms of skills imparted and subsequent job creation through self-employment among others.

It was noted that the County has a total of 38 youth polytechnics of which 25 are currently operational.

Funding of the VTIs in the County

Initially, most of the VTIs in the County were funded by the Constituency Development Fund (CDF) and LATF until the County Government took over. The County Assembly in the previous financial years has allocated funds for the County Vocational Training Institutes.

Major Challenges facing the VTIs (polytechnics) in the County

The committee observed that the VTIs within the County face a lot of challenges which include the following;

- Inadequate number of staff to cater for the training programmes that should be offered by the polytechnics.
- Fee payment by the trainees is a challenge since most do not afford yet support by the County Government on the same does not exist.
- Inadequate infrastructural facilities such as Dormitories, latrines, classroom and chairs.

3. Recruitment of the VTI staff in the county.

Regarding employment of Staff for the Vocational Training Institutions, the County Public Service Board absorbed fifty six (56) and directed the County Secretary to implement the board's decision. However, of the fifty six (56) only the petitioner, Mr. Benson Lelgo, who was number 30 in the list was left out as he was not issued with an absorption letter and neither was he paid salary for the month of November, 2015. In fact the pay slip issued by the County Government for the said month strangely indicated the total earnings of the employee as Ksh 00.00.

It is the committee's observation that the law has specifically and in no uncertain terms mandated the County Public Service Board to deal with matters of employment; recruitment, appointment, exercise of

disciplinary control over and where necessary remove persons holding or acting in offices within county public service.

Therefore, a part from the Petitioner, Mr. Lelgo, the issue of confirmation of the staff who were on contract terms has been dispensed with through the County Public Service Board's decision to absorb the fifty six (56) employees vide a letter date 16th November, 2015 directing the County Secretary to implement the Board's decision.

4. Withdrawal of the petition and intimidation

Vide a letter dated 1st December, 2015, one of the three petitioners, Mr. Benson Lelgo, forwarded a letter to the Assembly a letter indicating that he wished to withdraw the petition since his grievances had been addressed.

In another letter dated 1st December, 2016, the same petitioner, wrote to the Assembly indicating that he wished to withdraw the petition for two reason; because firstly he had been advised to do so and because he was suffering as his salary payment for November, 2015 had been withheld.

The committee therefore observes that the issue of withdrawal of the petition was not voluntary since the actions of the said petitioner portrayed instances of coercion and intimidation. Further, the committee observes that the right to petition a public institution is a right well defined under the Constitution 2010, the County Governments Act and the County Assembly Standing Orders. It is therefore, the position of the committee that it is wrong for any person to purport to curtail the exercise of the right to petition the Assembly to address grievances falling within the mandate of the County Assembly. All these provisions therefore mean that a person cannot be victimized or coerced for the simple reason that he or she has

submitted a petition to the assembly for his grievances to be addressed

The committee thus finds that it is wrong for any officer of the County Government to coerce or intimidate the petitioner to withdraw the petition before being absorbed into the County Public service.

5.0 COMMITTEE'S RECOMMENDATION

Upon interrogating and considering all facts concerning the petition, the committee made the following recommendations;

- a. All the VTI Staff who were recommended by the County Public Service Board to be employed in the County Public service be absorbed with immediate effect and without any form of discrimination. For clarity, Mr. Benson Jelgo must be paid all his dues for the period running from November, 2015 to April, 2016.
- b. That the County Public Service Board as provided for under Section 59 of the County Governments Act is the only body mandated by law to recruit, hire, discipline and/or remove persons serving in the county public service and therefore the county executive must accord it the independence it requires to discharge its mandate as provided by law
- c. The County Government should liaise with the National Government to resolve the issue of unpaid salaries of the VTI staff during the period before the County Government took over the management of the VTIs.
- d. That the County Government in all its actions including dealing with employment matters act within the provisions of the law. The office of the County Secretary must not at any time intimidate, punish or coerce any employee for exercising his or her rights as the same will amount to abuse of power which is contrary to the law.
- e. The County Government should prioritize improving the existing polytechnics in terms of infrastructure and human resource before embarking on establishing new ones.
- f. That there is need for the county government to increase funding to cater for proper facilities required so that county polytechnics can offer quality training. Specific Budgetary Allocation should be

made for the Vocational Training sub-sector and the relevant department should implement programmes once funds are allocated.

- g. There is urgent need for the county to develop a clear policy and legal framework to guide the operations of the county vocational training institutes so that management of such institutes can be improved to serve the needs of the County.