

REPUBLIC OF KENYA



COUNTY GOVERNMENT OF KITUI

THE COUNTY ASSEMBLY

SECOND ASSEMBLY- THIRD SESSION (2019)

THE JOINT COMMITTEE ON HEALTH AND SANITATION & LABOUR AND SOCIAL WELFARE

REPORT BY THE JOINT COMMITTEE ON THE CLOSURE OF KYUSO LEVEL IV HOSPITAL

The Clerk's Chamber,
County Assembly of Kitui,
Assembly Buildings,
Kitui, Kenya

NOVEMBER, 2019

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ABBREVIATIONS

Med sup	Medical Superintendent
C.O	Chief Officer
SCCIO	Sub County Criminal Investigation Officer
DCIO	Director of Criminal Investigations
NGO	Non-Governmental Organization
SCA	Sub County Administrator

ANNEXURES

Annex 1-	Signed list of Members
Annex 2-	Letter closing Kyuso Level IV Hospital
Annex 3-	Threat leaflets
Annex 4-	OB No. 04/09/2019 reporting the incident at Kyuso Police Station
Annex 5-	Letter by DCIO Kyuso on security assurance in the facility

1.0 PREFACE

Mr. Speaker,

It is my pleasure to present the Report by the Joint Committee on Health and Sanitation & Labour and Social Welfare on the Closure of Kyuso Level IV Hospital.

1.0.1 Legal Basis and Background information

Mr. Speaker,

County health services, including County health facilities are devolved functions under the Fourth Schedule of Constitution.

Article 43(1) (a) of the Constitution further provides that every person has the right to the highest attainable standards of health, which includes the right to health care services.

Further, Article 41 of the Constitution provides that every person has the right to fair labour practices which includes the right to reasonable working conditions.

On the evening of 3rd September, 2019, a letter signed by the Dr. Daniel Misiani the Medical Superintendent Kyuso Sub County Hospital and dated 3rd September, 2019 purported to close Kyuso Level IV Hospital on the basis that there were insecurity threats and impending unrest at the hospital, and the closure was meant to ensure security of all employees working there (Annex 2). All officers working at the facility were released to resume duties upon communication.

The security threats emanated from threat leaflets circulated outside and inside the hospital compound which notified casuals from other Sub- Counties to vacate Kyuso hospital within three (3) days otherwise they would be forcefully evicted (Annex 3).

In exercise of the County Assembly's oversight role as enshrined under Article 185(3) of the Constitution the County Assembly Committees on Health and Sanitation, & Labour and Social Welfare noted that based on this letter, the right to health care and the rights of health workers were being infringed on and needed to be protected and therefore resolved to take up the matter. On 4th September, 2019, the Speaker approved the two Committees' request to jointly consider the matters arising in line with Standing Order No. 182 (1).

1.0.2 Mandate of Sectoral Committees

Mr. Speaker,

Sectoral Committees mandate, functions and roles are as stipulated in the County Assembly Standing Orders No. 190(5) and as contained in the second schedule of that outlines the subject areas for the sectoral committees. The limitation of the committee mandate is as outlined in Standing Order No. 192 (1).

Standing Order No. 190(5) outlines the functions of the Sectoral Committee which are:

- i) To make reports and recommendations to the County Assembly as often as possible, including recommendation of proposed legislation.
- ii) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned departments;
- iii) To investigate and inquire into all matters relating to the assigned departments as they may deem necessary, and as may be referred to them by the County Assembly;
- iv) To study and review all county legislation referred to it.
- v) To study, assess and analyze the relative success of the departments as measured by the results obtained as compared with their stated objectives.

1.0.3 Membership to the Joint Committee

Mr. Speaker,

The Joint Committee was comprised of the following members:

- | | |
|--------------------------------------|------------------|
| 1. Hon. Anthony Ndooh Mwanzia | Chairperson |
| 2. Hon Munyoki Mwinzi | Vice Chairperson |
| 3. Hon. Geoffrey Muli Mwalimu | Member |
| 4. Hon. Elizabeth Ndunge Peter | Member |
| 5. Hon. Regina Mueni Ishmail Musyoki | Member |
| 6. Hon. Grace Mwikali Sammy | Member |
| 7. Hon. Eliud Muteti Nding'uri | Member |
| 8. Hon. Josphine Kavivi Mutie | Member |
| 9. Hon. Charles Muthui Maema | Member |
| 10. Hon. Mary Kanini Philip | Member |
| 11. Hon Anthony Mbiti | Member |

12.Hon David Masaku	Member
13.Hon Boniface Kasina	Member
14.Hon Nicholus Mwalali	Member
15.Hon Stephen Katana	Member

Committee Terms of Reference

Mr. Speaker,

As per the provisions of standing order No. 182(1), the joint committee was mandated to:

1. Inquire into the circumstances which lead to the closure of Kyuso Level IV hospital;
2. Ascertain the welfare of staff noting the security threats and termination of casuals' contracts;
3. Collect evidence from various witnesses and stakeholders in the health sector regarding the closure of the hospital;
4. Compile a report with recommendations for tabling and consideration by the Assembly.

Methodology

Mr. Speaker,

In executing her mandate, the Committee adopted the following methodology:

1. Invitations and interrogation of witnesses and stakeholders;
2. Site visits to interrogate witnesses;
3. Request for information;

Challenges faced by the Committee

In execution of her mandate the Committee faced the following challenges:

1. Uncooperative witnesses. For instance, the Med Sup and the Chief Officer were initially unwilling to appear before the Committee;
2. Political tension in Kyuso during the Committee's preliminary visit due to leaflets and the closure of the hospital.

Notwithstanding these challenges, the Committee was able to execute her mandate to the best of her ability and come up with this report.

Committee proceedings

Mr. Speaker,

The Committee held preliminary meetings in September 2019 within the County Assembly precincts and thereafter visited Kyuso Level IV Hospital on 5th September, 2019. The Committee also met several witnesses and stakeholders to interrogate them on the matter under consideration.

The Committee proceeded to Mwingi Summer Springs Hotel from 29th – 1st December, 2019 to compile this report. The outcome of the Committee proceedings is as outlined in this Report.

Acknowledgement

Mr. Speaker,

On behalf of the Joint Committee on Health and Sanitation & Labour and Social Welfare, I extend my gratitude to the Speaker of Kitui County Assembly, Members of the Special Committee, Office of the Clerk and the staff attached to the Committee for their continuous support, assistance, and commitment in executing their duties.

It is therefore my pleasant duty, on behalf of the Joint Committee on the Closure of Kyuso Level IV Hospital to present this Report and recommend it for consideration and adoption by the House.

SIGNATURE: DATE:

**HON. ANTONY NDOOH- M.C.A.,
CHAIRPERSON,
JOINT COMMITTEE ON THE CLOSURE OF KYUSO LEVEL IV
HOSPITAL.**

SIGNATURE: DATE:

**HON. MUNYOKI MWINZI- M.C.A.,
VICE- CHAIRPERSON,
JOINT COMMITTEE ON THE CLOSURE OF KYUSO LEVEL IV
HOSPITAL.**

2.0 EVIDENCE AND SUBMISSIONS BY WITNESSES AND STAKEHOLDERS

The Committee received evidence from the following stakeholders:

1. Dr. Asiego Misiani, Med- Sup Kyuso Level IV Hospital;
2. Mr. Henry Kinyua, The Sub County Criminal Investigations Officer (SCCIO)- Mwingi North Sub County;
3. Hon Stephen Musili, MCA- Kyuso Ward;
4. Members of the public in Kyuso Ward;
5. Mr. Stephen Matie, The Sub County Administrator - Mwingi North Sub County;
6. Dr. Richard Muthoka, The Chief Officer- County Ministry of Health and Sanitation;

2.0.1 Submissions by Dr. Asiego Misiani, Med- Sup Kyuso Level IV Hospital

He appeared before the Committee on 23rd September, 2019, in the County Assembly Committee Room 2.

He submitted as follows: THAT:

1. Regarding the letter closing the hospital dated 3rd September, 2019, he is the author of the letter in question to close the hospital. The letter was written three (3) days after the threat leaflets were found in the hospital. On whether the matter was reported to security agencies, he delegated the matter to be reported by the casual who was in the hospital since he was away.
2. It was realized that the same casual did not report neither did he record a statement as instructed.

The hospital administration did not involve or find it necessary to contact the security agencies but handled the matter with the Chief Officer through a phone call.

3. On the authenticity of the threat leaflets, they were first seen in the facility on 31st August, 2019, some outside and others inside the compound of the hospital.
4. The threat leaflets were seen by the watchman who called the Med- Sup to inform him of the same since he was away. The Nursing Officer- In Charge took a photograph of one of the leaflets and shared it with the Med- Sup via WhatsApp.

5. The watchman said he did not see the person who dropped these leaflets. On the authenticity of the leaflets, he did not know how authentic they were and could not confirm the same.
6. The matter was taken seriously and it decided to go for the lesser harm which was to close the hospital.
7. On why the matter was not reported immediately, he was away but delegated the reporting to the person available, that is one of the casuals. He also did not do a follow up on whether the reporting was done, as he was busy doing some other work. However, once he came back, he personally reported the matter on 4th September, 2019 at the DCIOs office. This was after the hospital was closed on 3rd September, 2019.
8. On the three (3) days' notice indicated in the threat leaflets, there were no unusual occurrences noticed within the three days as indicated in the leaflets and things were running as usual. The decision to close the hospital was made before the expiry of the three days' notice, reason being that they found this as a lesser harm.
9. All staff, including those on locum basis, volunteers, those employed by NGOs and casuals were released. This decision was arrived upon consultation with the Chief Officer through a phone call.
10. None of the staff reported any threat to the Med- Sup nor to the security agencies.
11. On the Closure letter, it was written by the Med- Sup upon instructions by the Chief Officer, Ministry of Health and Sanitation and the Director- Health was equally informed of the release of the staff.
12. The mortuary attendant was left to continue offering mortuary services.
13. A meeting was held between the Med- Sup, the Nursing Officer and the Hospital Manager and arrived at the decision to close the hospital.
14. There is no Hospital Management Committee as the one that was there had expired a long time ago. The National Cohesion team visited Kyuso Hospital on 7th September, 2019 but did not meet with the Med- Sup as he was not available.
15. Regarding the re-opening of the hospital, the hospital was re- opened 9th September, 2019 upon assurance by the DCIO that the matter of insecurity was being addressed and there was no reason to have the hospital continue

being closed. There was no letter issued by either the Med- Sup or the Chief Officer to instruct the opening of the hospital.

16. On opening the hospital, the med sup communicated to the Director- Health at the headquarters and not the Chief Officer as was the case during the closure of the hospital.

17. New contracts of the casuals were being signed with new terms of service after the Hospital was opened.

2.0.2 Submissions by Mr Henry Kinyua, The Sub County Criminal Investigations Officer (SCCIO)- Mwingi North Sub County

The Committee visited the office of the SCCIO on 5th September, 2019. He submitted as follows: THAT:

1. The matter was first reported on 4th September, 2019 by Dr. Asiego Misiani.
2. The DCIO was not involved in the process of arriving at the decision to close the hospital. Instead, the matter was reported when the hospital as already closed.
3. Two armed security officers were deployed to man the facility to offer security during the day and at night.
4. The Sub County Security Committee- Kyuso Sub County was not involved in the process of addressing the insecurity which was the main reason for the closure of the hospital.
5. In his opinion, the purported insecurity as contained in the threat leaflets did not warrant the closure of the hospital if the matter was not reported before the hospital closed.
6. Investigations were underway to unearth the people behind the threat leaflets and those found culpable would be dealt with as per the law.

2.0.3 Submissions by the Area M.C.A.- Hon. Stephen M. Musili

Mr. Speaker,

The joint Committee sought the views of the area M.C.A Hon. Stephen Musili who submitted as follows: THAT:

1. He was aware Kyuso level IV hospital was closed on 3rd September, 2019 as per the details of the letter written by the Med-Sup which was circulating in the social media.
2. The hospital authorities had not conducted him in his capacity as the area elected M.C.A before closing down the facility.

3. He was not aware of any insecurity threats in his Ward nor in the entire Sub County.
4. He is convinced that the security agencies in Kyuso had the capacity to deal with any security matters within the Sub County.
5. The closure of this hospital had brought a lot of suffering to the people in his ward and the larger Mwingi North as this is the only level IV hospital in the region.
6. He was not aware of any form of conflict between the locals and the non-locals in relation to the recruitment of casual workers in Kyuso level IV Hospital.
7. In his view there were no justifiable reasons to close the hospital and was of the opinion that the hospital should be opened immediately as the continued closure was denying his people their rights to healthcare

2.0.4 Views of the Members of Public

Mr. Speaker,

The joint Committee interacted with the residents of Kyuso on 5th September, 2019 and collected the following views: THAT:

1. Indeed the community was suffering as a result of the closure of the hospital as it is the only public health facility in their proximity.
2. They were not aware of any insecurity threats in that area and life was going on as usual.
3. In their opinion the closure of the hospital was politically engineered and it was their wish to have the hospital opened immediately.

2.0.5 Submissions by Mr Stephen Matie, the Sub County Administrator - Mwingi North Sub County

The Committee met the SCA on 6th September, 2019 at Mwingi Cottage Hotel. He submitted as follows: THAT:

1. As per his Job Description, he is in charge of all the Departments, in the Sub County.
2. He occasionally holds meetings with the Heads of Departments, to discuss matters on their Departments.
3. He is aware that Kyuso Hospital was closed on 3rd September, 2019, however, he was not involved in the process of arriving at the decision to close the facility. It was an unusual decision which under normal circumstances required his attention as the Head of all Departments in the Sub County. He is not aware of any insecurity threats within the Sub County.

2.0.6 Submissions by Dr. Richard Muthoka, The Chief Officer- County Ministry of Health and Sanitation

He appeared before the Committee on 12th November in the County Assembly Committee Room 2 upon a third invitation by the Committee. He was accompanied by the Director of Public Participation- Officer of the Governor, Mr. Peter Mutemi. He submitted as follows: THAT:

1. He was aware that Kyuso Hospital was closed as per the details of the letter written by the Med- Sup dated 3rd September, 2019 upon notification by the Med- Sup. The hospital was closed owing to the security threats to the Members of staff in the facility.
2. The matter was reported to Kyuso Security agencies on 1st September, 2019 through a phone call but officially the matter was reported on 4th September, 2019 after the closure of the facility by the Med- Sup.
3. The Ministry did not involve the Security Agencies in the process of the arriving at the decision to close the facility. The hospital was opened after the security agencies assured the workers of their security through a letter dated 9th September, 2019 from the Office of the Sub County Criminal Investigations Officer (SCCIO) Mr Henry Kinyua.
4. The Ministry was in the process of constituting new hospital Management Boards in line with the Health Facilities Management Act. Management Committees were in place.

3.0 COMMITTEE OBSERVATIONS

Mr Speaker,

Based on the evidence and submissions by witnesses, the Committee made the following observations: THAT:

1. The Med- Sup Dr. Asiego Misiani acted ultra vires (beyond his powers) by closing the hospital without formal (written) authority from the Chief Officer.
2. The decision to close down the hospital was done in haste and without following the due process where in case of a matter touching on security issues, it is the Sub County Security Committee which should have given the right advice upon making several considerations.
3. Mitigation measures were not exhaustively explored before arriving at the decision to close the hospital as the last option.

4. The Committee was further informed that the Sub County Administrator, Mwingi North was not involved in the said decision to close the facility nor were there any resolution from the Hospital Management Board.
5. The Sub County Security Committee which is charged with the responsibility of security matters was not brought on board before the decision to close the facility was arrived at.
6. The insecurity threats contained in the circulated leaflets were not duly addressed by the security agencies in Kyuso Sub County.
7. The residents of Kyuso town are living and coexisting in peace and harmony and business is being carried out as usual with no signs of unusual activity.
8. Since the purported insecurity was touching on the casuals only, the other staff including those funded by the NGOs, staff on locum basis and volunteers should have been left to continue serving in the facility.
9. Kyuso level IV Hospital has no functional management board and thus crucial decisions are only made by the Hospital management team resulting to a management gap.
10. By closing the hospital, the Committee observes that the fundamental rights on access to healthcare for the residents of Kyuso were violated contrary to the provisions of Article 42 of the Constitution.

4.0 RECOMMENDATIONS

Mr Speaker,

Based on the above evidence, submissions and observations, the Committee makes the following recommendations: THAT:

1. The Committee attributes the hasty and unprocedural closure of Kyuso Level IV hospital to the fact that it running without a Hospital Management Board and therefore recommends that a new Hospital Management Board should be constituted within 21 days of adoption of this Report by the Assembly. This should also be replicated in all other health facilities across the County.
2. In future, mitigation measures should be explored and wide consultations with all stakeholders exhausted before reaching at such decisions which have far reaching effects. In addition, going forward, closure of any County health facility should never arise noting that the constitutional right to health care has to be protected and upheld.

3. Kyuso Level IV hospital should be properly fenced with a perimeter wall and gated to increase security. Security should also be beefed up in the facility and security guards deployed to man the hospital both day and night. These security measures should also be replicated in all health facilities in the County to prevent recurrence of similar incidents in the future.
4. The County Public Service Board should take disciplinary action against Dr. Asiego Misiani for acting beyond his powers by closing Kyuso Level IV hospital and breaching the right to health care of the residents which is contrary to Article 42 of the Constitution.
5. The County Public Service Board should take disciplinary action against Dr Richard Muthoka, the Chief Officer- County Ministry of Health and Sanitation for failing to act on the closure of Kyuso Level IV hospital without authority and failing execute his duties.
6. The disciplinary proceedings against these two officers should be commenced with immediate effect and concluded within 6 months of commencement in line with the Kitui County Public Service Board Human Resource Policy and Regulations for Public Service (2013) Section G. 32(8). The Board should also report to the County Assembly on the outcome of the proceedings within 21 days of conclusion.
7. The County Government Departments should embrace the provisions of Article 189 of the Constitution which provides for consultations and inter-governmental approach when dealing with matters that are not devolved such as security.
8. The DCI and the National Cohesion Commission should expedite investigations on the circulated leaflets and the culprits be brought to book.

5.0 CONCLUSION

In conclusion, the Committee notes that Dr. Richard Muthoka, the Chief Officer- County Ministry of Health and Dr. Asiego Misiani- The Med- Sup Kyuso Level IV hospital breached the right to health care as enshrined in Article 42 of the Constitution and urges the County Public Service Board to expedite disciplinary proceedings against them. In addition, should similar incidents recur in the future, due process should be followed to avoid infringement on the right to health care.

THANK YOU.