

REPUBLIC OF KENYA
MACHAKOS COUNTY ASSEMBLY

OFFICIAL REPORT

Monday, 28th May, 2018

Special Sitting

*(Convened via Kenya Gazette Notice
No. 5083 of 25th of May, 2018)*

The House met at 11.06 a.m.

[The Deputy Speaker (Hon. Museku) in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

CIRCUMSTANCES OCCASIONING THE SPECIAL SITTING OF THE ASSEMBLY ON MONDAY
28TH MAY, 2018

Hon. Deputy Speaker: Good morning, Members. It is good to see you here all today after the recess we have been having. Mine on the communication from the chair is just to advise you on the reason why we have this special sitting. Welcome to today's special sitting. This special sitting is informed by the County Assembly of Machakos Standing Order 26(1) and (2) which state that:

(1) "Whenever during a Session of the House stands adjourned, whether or not a day has been appointed for the next meeting, the Speaker may appoint a day for a special sitting of the House –

(a) On request of the Leader of the Majority Party or the Leader of the Minority Party, appoint a day for a special sitting of the House;

(b) On the signed request of Members not less than a third of the Membership of the Assembly, such a request shall be addressed to the Speaker.

(2) The Speaker may allow a request under paragraph (1) if the Speaker is satisfied that the business proposed to be transacted is urgent or exceptional"

On 21st May, 2018, the House held a special sitting to consider the Governor's Memorandum on the Machakos County Supplementary Appropriation Bill, 2018; the Machakos County Annual Development Plan 2018/2019 and the Machakos County Fiscal Strategy Paper, 2018.

The House considered the first business completely but was unable to finalize other two matters due to time constraint. As a result Members requested if another special sitting can be called to finalize on the business since it was crucial for budget making.

During the special sitting after conclusion of Business on the Governors Memorandum, I did indicate that I will give a considered opinion on 5th June, 2018 on the implication of failing to approve the Governor's Memorandum as well as failing to get two-thirds to veto it.

However, Hon. Members, requested me to consider giving a considered opinion at an earlier date since the County was in dire need of funds and 5th June, 2018 was too far. Members you did indicate, if possible, the House can also meet on 28th May, 2018 for a special sitting.

Having considered these aspects and in consultation with the Leaders of the Majority Party and Minority Party pursuant to Standing Order 26(1)(a), the Speaker have convened a special sitting today, Monday, the 28th day of May, 2018.

Standing Order 26(3) requires the Speaker, by notice in the Gazette, to notify the Members of the place, date and time appointed for the special sitting of the House. Accordingly, this special sitting has been convened vide Gazette Notice No. 5083 dated 23rd May, 2018.

Further, Standing Order 26(4) provides that whenever the House meets for a special sitting under paragraph (1), the Speaker shall specify the business to be transacted on the day or days appointed and the business so specified shall be the only business before the House during the special sitting, following which the House shall stand adjourned until the day appointed in the Assembly calendar.

Consequently therefore, the business to be transacted shall be:-

- (a) Consideration of the Machakos County Annual Development Plan 2018/2019;
- (b) Consideration of Machakos County Fiscal Strategy Paper, 2018.
- (c) Consideration of the Governor's Memorandum on the Machakos County Supplementary Appropriation Bill, 2018;

I am sitting in for the Speaker at this moment; the Speaker will be joining us a bit later in the sitting and therefore, Members welcome.

MOTION

REPORT ON THE MACHAKOS COUNTY ANNUAL DEVELOPMENT PLAN FOR 2018-2019

(Hon. Kieti on 21.05.2018)

(Resumption of Debate on the Motion tabled on 21.05.2018)

Hon. Deputy Speaker: Hon. Members, under this Order, we have two businesses to transact. The first one is a motion by the Hon. Cosmas Kieti, chairperson trade economic planning and industrialization committee and the next one will be a motion by the hon. Dominic Ndambuki, chairperson Budget and Appropriation committee. Hon. Cosmas.

Hon. Kieti: Thank you, Mr. Chairman. Hon. Speaker---

Hon. Deputy Speaker: Point of order, Hon. Ngunga.

Hon. Ngunga: Thank you, Mr. Speaker. Good morning, members. I am surprised Mr. Speaker that the Hon. Member is addressing you as the chairman and I wonder whether we are in committee of the whole House or whether we are in plenary. Thank you, Mr. Speaker.

(Applause)

Hon. Deputy Speaker: Hon. Kieti, be guided accordingly.

Hon. Kieti: I am sorry Hon. Speaker. I presented a motion on the ADP for 2018/2019, in the last special sitting and today I want to take members through the report on the Annual Development Plan 2018/2019. So, it is my humble request that Hon. Members take their report so that I may take them through.

Hon. Speaker, Section 104(1) of the County Governments Act, 2012 provides that a County Government shall plan for the County and no public funds shall be appropriated outside a planning framework developed by the County Executive Committee and approved by the County Assembly.

Additionally, Section 106(2) of the same Act stipulates that County plans shall be based on the functions of the County governments as specified in the Fourth Schedule of the Constitution and on relevant national policies. Section 107 (2) of the County Governments Act further stipulates that the County plans shall be the basis for all budgeting and spending in a County.

Hon. Speaker, the ADP is done by the department in charge of planning every year and it is required to be submitted to the County Assembly by 1st September. It is one of the budget policy documents in the budget cycle and deals with county annual planning and it borrows from the County Integrated Development Plan (CIDP) which is a five year development plan. It should include location of the project and budgetary allocations and requires public participation as per Section 106(4) of the County Governments Act, and the incorporation of non-state actors in the planning process as provided for in the same Act, Section 104(4).

Hon. Speaker, the County Fiscal Strategic Plan (CFSP) borrows heavily from the ADP as it informs the departmental budget ceilings. Further, it gives plans for the fiscal year as provided for in Article 220 of the Constitution and Section 126 of the Public Finance Management Act, 2012.

Hon. Speaker, the Annual Development Plan (ADP) for 2018/2019 was prepared and submitted as per Section 126 (2) Public Finance Management (PFM) Act, 2012 which requires the ADP reflect County government's priorities and plans and describes how the County government is responding to changes in financial and economic environment.

The ADP should include programmes to be delivered and each programme should have details such as:-

- The strategic priorities to which the programme will contribute.
- The services or goods to be provided.
- Measurable indicators of performance where feasible.
- The budget allocated to the programme.

Hon. Speaker, section 126(2) of the PFM Act also requires that the ADP spells out payments to be made on behalf of the County government, including details of any grants, benefits and subsidies that are to be paid and to give a description of any significant capital development.

Further, detailed description of proposals with respect to the development of physical, intellectual, human and other resources of the County including measurable indicators where

feasible and a summary budget in the format required by regulations and any other matter required by the constitution should be included.

Hon. Speaker, the PFM Act section 126(3) requires the County Executive Committee member responsible for planning to submit the development plan to the County Assembly for its approval and send a copy to the Commission on Revenue Allocation and the National Treasury. Further, Section 126(4) of the PFM Act requires the County Executive Committee member responsible for planning to publish and publicize the ADP within seven days after its submission to the County Assembly.

Hon. Speaker, the Annual Development Plan ADP 2018/2019 was submitted to the County Assembly by the Department of Trade, Economic Planning and Industrialization on 19th October, 2017 and committed to the Committee on Trade, Economic Planning, Investment and Industrialization on 8th November, 2017. It was then resubmitted to the Executive and later submitted to the Assembly on 20th February, 2018

MANDATE OF THE COMMITTEE

Hon. Speaker, the Committee on Trade, Planning and Industrialization was established pursuant to the second schedule of the Machakos County Assembly Standing Orders with specific mandate on to all matters related to economic planning, tourism, trade development, regulation including markets; and outdoor advertising; trade licenses (excluding regulation of professions); fair trading practices and statistics; and all matters relating to the delineation and management of decentralized units, urban areas and municipalities.

COMMITTEE COMPOSITION

Hon. Speaker, the committee has 13 members as listed:-

- | | |
|----------------------------|------------------|
| 1. Hon. Cosmas Kieti | Chairperson |
| 2. Hon. Judas Ndawa | Vice-chairperson |
| 3. Hon. Annastaciah Mutuku | Member |
| 4. Hon. Anthony Mulu | “ |
| 5. Hon. Betty Nzioki | “ |
| 6. Hon. Christine Koki | “ |
| 7. Hon. Brian Kisila | “ |
| 8. Hon. Josephat Kasyoki | “ |
| 9. Hon. Justus Katumo | “ |
| 10. Hon. Mark Muendo | “ |
| 11. Hon. Mohammed Ali | “ |
| 12. Hon. Peter Mutiso | “ |
| 13. Hon. Winfred Mutua | “ |

Hon. Deputy Speaker: Point of order.

Hon. Mitaa: I think it is good for our chairman of planning and development to read the names on the composition of the membership, because we need HANSARD to capture what is contained.

Hon. Speaker: Thank you, Hon. Member and stand guided accordingly. Please read the members because they need to be captured by the HANSARD.

Hon. Kieti: Thank you, Hon. Speaker. I stand advised. Hon. Speaker, the committee has 13 members as follows:-

1. Hon. Cosmas Kieti	Chairperson
2. Hon. Judas Ndawa	Vice-chairperson
3. Hon. Anastaciah Mutuku	Member
4. Hon. Anthony Mulu	“
5. Hon. Betty Nzioki	“
6. Hon. Christine Koki	“
7. Hon. Brian Kisila	“
8. Hon. Josephat Kasyoki	“
9. Hon. Justus Katumo	“
10. Hon. Mark Muendo	“
11. Hon. Mohammed Ali	“
12. Hon. Peter Mutiso	“
13. Hon. Winfred Mutua	“

COMMITTEE OBSERVATIONS

Hon. Speaker, the Committee discussed and interrogated the ADP 2018/2019 and observed that it had been classified into eight sectors as follows;

AGRICULTURE AND COOPERATIVE DEVELOPMENT SECTOR

Hon. Speaker, the Sector is composed of the Directorates of Agriculture, Livestock, Veterinary services Fisheries, and Cooperative Development.

The Sector plans to ensure food security and a wealthy County anchored in innovative and competitive production, processing and marketing of crops, livestock and fisheries products.

Hon. Speaker, the Sector plans to implement the following programmes:-

Administration Planning and Support Services

Under this programme, the sector's plans will involve; constructing and furnishing eight office blocks, improving officers' mobility through procurement of three vehicles and 20 motorcycles for extension services at an estimated cost of 38 Million. The sector will also modernize 24 offices with ICT equipment at a cost of Ksh. 2 Million and recruit 131 officers due to natural attrition at a cost of Ksh. 139 Million.

Policy, Strategy and Management of Agriculture

In this programme, the sector plans to develop and review three Agricultural laws, policies and regulations. As well as develop one modern management information system at a cost of Ksh. 11.5 Million.

Crop Development and Management

Here the sector plans to increase cultivated land in the County through the subsidized tractor program at a cost of Ksh. 20 Million, distribute free seeds and fruit tree seedlings at a cost of 41 Million, deliver subsidized fertilizers at a cost of Ksh. 32 Million.

Provide extension services through training of farmers at a cost of Ksh. 2 Million, introduce post-harvest management by procuring 30 moisture meters and training 40, 000

farmers at a cost of Ksh. 1.4 Million, promote agro-processing by procuring land and constructing one fruit processing plant at a cost of Ksh. 64.5 Million.

Install an early warning and strategic pests and diseases control project at a cost of Ksh. 11 Million, revamp the coffee enterprise at a cost of Ksh. 15 Million. Promote sustainable natural resource use by training farmers on conservation measures at a cost of Ksh. 6.5 Million, train 30 inspectors on quality assurance aimed at reducing counterfeit products at a cost Ksh. 500,000, promote irrigation by excavating earth earth dams, establishing two irrigation schemes and distribution of 240 greenhouses at a cost of Ksh. 61 Million. Under this programme the sector also plans to modernize the Agricultural Training Center (ATC) at a cost of Ksh.6.5 Million, engage in Small holder horticulture empowerment and promotion (SHEP-PLUS) program training to farmers at a cost of Ksh. 1 Million, increase smallholder productivity and profitability through project funding by USAID at a cost of Ksh. 140 Million, initiate the Kenya climate smart agriculture project at a cost of Ksh. 117 Million, develop 15 micro irrigation schemes, 15 micro dams and water pans, 20 water harvesting and storage infrastructures, erect 75 gabions, upgrade 27 km of access roads and develop one livestock sale yard all through the Small-scale Irrigation and Value Addition Project (SIVAP) at a cost of Ksh. 40 Million, develop support programs for the agricultural sector through environmental resilient value chain addition skills at a cost of Ksh. 8 Million and finally under the programme, build sector coordination structures, policies and regulations at a cost of Ksh. 5.5 Million.

Animal Genetic Resources Management and Conservation

This programme under the livestock development sub-sector plans to enhance livestock breeding and productivity through distribution of 100,000 chicks, registration of 200 livestock, artificial insemination for 20,000 livestock species, distribution of breeding stock for 2,000 goats, cattle, sheep, rabbits, bees and chicken and finally acquire 40 breeding equipment including, incubators, artificial insemination tanks and deep freezers all at a cost of Ksh. 64 Million.

Livestock Feed and Nutrition

Sub-programmes planned under this programme are livestock feed and nutrition information system aimed at increased livestock productivity through surveys and farmers training at a cost of Ksh. 4 Million, pasture and fodder production and seed distribution at a cost of Ksh. 8 Million, pasture and fodder preservation and conservation through acquisition of feed harvesting and storage facilities at a cost of Ksh. 13 Million, fodder seed and seedlings production at a cost of Ksh. 1 Million and finally the training of 16 livestock feed inspectors and 400 quality surveillance and testing kits at a cost of Ksh. 2 Million.

Livestock and Livestock Products Marketing, Trade and Extension

Sub-programmes planned here will be construction or rehabilitation of two livestock sale yards at a cost of 18 Million, operationalization of a livestock marketing information system through local vernacular radio stations and the dissemination of 250 market surveys at a cost of Ksh. 1.5 Million.

Value addition through procurement of 10 acres of land and establishment of two processing plants at a cost of Ksh. 38 Million and finally under the programme, extension services to farmers at a cost Ksh. 4 Million.

Livestock Diseases Control

This programme under the veterinary services sub-sector plans to enhance disease surveillance, establish strategic vaccine stocks and roll out regular compulsory mass vaccination for 100,000 animals at a cost of Ksh. 11 Million.

Slaughter House Quality Control

This programme plans to enforce public health standards through inspections and supervision of animal products and rehabilitation of public slaughter houses at a cost of Ksh. 16.4 Million.

Animal Welfare

Under this programme aimed at reducing incidences of animal abuse, the sector plans to hold three sensitization meetings and two surveillance field visits at a cost Ksh. 300, 000.

Animal Health Services and Inputs

Here the sector plans to carry out veterinary extension services aimed at enhancing quality and safety of livestock products and inputs through inspection at a cost of Ksh. 5 Million.

Fisheries Development

This programme under the fisheries development sub-sector plans to engage in management of fisheries and dam production through the restocking of 200,000 fish fingerlings and carrying out of baseline surveys at a cost of Ksh. 3.6 Million, enhance aquaculture production at a cost of Ksh. 6 Million, ensure quality assurance, values addition and extension service delivery to fish farmers at a cost of Ksh. 6.2 Million.

Cooperative Development Sub-sector

Hon. Speaker, this sub-sector under the agriculture and cooperative development sector plans to conduct capacity building to the cooperative movement through training of cooperative society members at a cost of Ksh. 10 Million, provide co-operative extension and support services at a cost of Ksh. 10 Million, promote co-operative marketing and value chain at a cost of Ksh. 10 Million, provide co-operative financial services aimed at savings mobilization and investment by Saccos at a cost of Ksh. 4 Million, promote and grow co-operative societies through registration of new societies at a cost of Ksh. 3 Million, the digitization and creation of societies data base at a cost of Ksh. 4 Million, promote ICT utilization in cooperatives at a cost of Ksh. 40 Million, improvement of good corporate governance in the co-operative movement and promotion of women and youth in co-operatives at a cost of Ksh. 8 Million, development of housing units through co-operatives at a cost of Ksh. 400,000.

Hon. Speaker, the total projected budget estimates for the Sector of Agriculture and Cooperative Development as indicated in the 2018/2019 ADP is Ksh. 1,075,380,000.

Committee Recommendations under that sector

Hon. Speaker, under this Sector, the Committee recommends the following;

1. That Sub-programme 1.3 on personnel services where the outcome will be recruitment of officers due to natural attrition is suspended until proper Human Resource Audit is done in the County Government.

2. That Sub-programme 2.1 on Agricultural policy, legal and regulatory frameworks, planning and support is omitted and the department utilizes the existing ones.
3. In sub-programme 3.1 on subsidized tractor programme, the committee recommends the following;
 - That each ward be assigned a tractor.
 - That ploughing during the rainy/planting season be done and then after, the tractor be used to do the following;
 - a. Collecting garbage in towns and markets.
 - b. Be connected with water bowsers to distribute water in areas without.
 - c. Transport manure.
 - d. Transport sand and murram in schools and churches.
4. That the Budget allocated to 240 greenhouses and irrigation schemes on Sub Sector 3:11: irrigation promotion, be taken to the construction and rehabilitation of earth dams and the greenhouse projects be scrapped. Once water is made sufficient all over the County, then the greenhouse project can be considered in the following financial years.
5. That the department clarifies on how it will identify the beneficiaries for trainings and forums held under Sub-Sector 3.13 Small holder Horticulture Empowerment and Promotion (SHEP-Plus) programme.
6. That the Department clarifies on how it will identify the group/organization to benefit under the Sub-Programme 3.18 on Kenya climate smart agriculture project at an estimated cost of Ksh. 117 Million.
7. Under Sub-programme 3:19 small scale irrigation and value addition project (SIVAP). Performance indicators on 15 micro dams and water pans be scrapped and the budget allocated moved to major dams and weirs under sub-programme 3.11. Further, the committee recommends the omission of development of one livestock yard under this sub-programme.
8. That the department makes use of the existing Agricultural sector structures and the budget of Ksh. 5.5 Million be moved to sub-programme 3.11 on earth dams.
9. That the department omits the programme on distribution of 100,000 chicks under sub-programme 4.1 on Livestock breeding sub-sector livestock development, and an audit of whether the programme has benefited the farmers be done.
 - After the audit, farmers be trained on best practices of rearing chicks.
 - A hatchery in every ward be provided to benefit farmers.
10. In programme 5 on livestock feed and nutrition, the department omits the sub-programmes on distribution of pasture and fodder seeds.
11. That the department omits Sub-programme 5.3 on pasture and fodder preservation and conservation and part of the Ksh. 13 Million allocated be moved to sub-programme 3.12 on Agricultural training centre and the rest to earth dams on sub-programme 3.11.
12. That the department omits sub-programme 6.2 on livestock marketing information system under programme 6, livestock and livestock products marketing, trade and extension since the information is available in local radio stations and the Ksh. 1.5 Million allocated funds be moved to construction of dams.

13. That Sub-programme 10.1 on veterinary extension services can be merged with Sub-programme 6.4, on extension services under programme on livestock and livestock products marketing, trade and extension.
14. That Sub-Programmes 11.1 on management of capture fisheries, 11.2 on aquaculture production, 11.3 on Quality assurance, value addition and marketing, 11.4 on extension service delivery all under sub-sector on fisheries development be scrapped and allocate the monies on provision of adequate water to the people of Machakos County.
15. That sub-programme 13.1 on co-operative extension services under co-operative development sub-sector in which the sector plans to employ 10 co-operative officers be scrapped and the department utilizes the existing staff and deploy from other departments.
16. That sub-program 14.1 on development of value added products and reports on promotion of co-operative marketing and value chain be scrapped.
17. Transfer sub-programme 15.1 on savings mobilization/investment by Saccos to the Department on trade, planning and industrialization.
18. In sub-programme 16.1, on registration of new cooperative societies, the committee recommends that the department should plan to do a survey before increasing membership in cooperatives.
19. That the allocation of Ksh. 40 Million allocated to Sub-programme 17.2 on ICT Utilization in co-operatives be reduced to Ksh. 20 Million and the Chief Officer to clarify on this matter.

ENERGY, INFRASTRUCTURE AND ICT SECTOR

Hon. Speaker, This sector has the following sub-sectors; energy, roads, public works, and ICT all aimed at expanding economic opportunities, employment and competitiveness within the County. The energy sub-sector plans to implement the following programmes;

Energy Distribution and Regulation

Under this programme the sector plans to enhance electricity distribution and increase connectivity to 52 per cent through the installation of transformers, lighting of markets, roads and public institutions at a cost of Ksh. 310 Million.

Administration Planning and Support Services

Here the sector plans to enhance service delivery and customer satisfaction as well train staff at a cost of Ksh. 19.5 Million

Alternative Energy Technologies

Under this programme, the sector plans to improve access to renewable energy by installing 15 solar and wind hybrid water pumping systems and ensure utilization in at least 10 households at a cost of Ksh. 380 Million.

Hon. Speaker, the transport and roads sub-sector within this sector will implement the following programmes;

Administration, Personnel and Support Services

This programme will see the training of 20 staff and the formulation of one policy to enhance service delivery and build human resource capacity at a cost of Ksh. 10 Million.

Infrastructure Development and Maintenance

Under this programme within the transport and roads sub-sector, maintenance of existing roads and road-related infrastructure including construction of new 15 kilometers of bituminous

roads will be done at a cost of Ksh. 400 Million, 25 kilometers of roads marked and installed with signage and 750 kilometers of road graded at accost of Ksh. 180 Million. Installation of drainage system will also be done at a cost of Ksh. 200 Million.

County Transport and Fleet Management

Within this programme, the sector plans to maintain 500 county machinery, plant and vehicles and insure 800 equipment at a cost of Ksh. 176 Million, monitor fleet through installation of vehicle tracking systems at a cost of Ksh. 5 Million and finally improve bus parks to bituminous standards at a cost of Ksh. 30 Million.

Hon. Speaker, the public works and housing sub-sector under the energy, infrastructure and ICT sector will undertake the following programmes;

Administration, Planning and Support Services

The sub-sector here plans to develop policy documents at a cost of Ksh. 3 Million, train personnel at a cost of Ksh. 4 Million and maintain assets and equipment at a cost of Ksh. 68 Million.

Building and Civil Works

Under this programme the sector will construct government buildings and houses at a cost of Ksh. 482 Million.

Information Communication Technology

Programmes planned under this sub-sector will be general administration at a cost of Ksh. 10 Million and improvement of ICT infrastructure through offices inter - connectivity at a cost of Ksh. 50 Million.

Hon. Speaker, the total projected budget estimates for the sector on energy, infrastructure and ICT in the 2018/2019 ADP is Ksh. 2.3 billion.

Committee Recommendations

1. That the Sector on energy, infrastructure and ICT emphasizes on renewable energy for *Mulika Mwizi* projects.
2. That the allocation of Ksh. 380 Million on Sub-programme 3.1 on alternative energy technologies be reduced to Ksh. 200 Million. The department should identify location of the 10 households to benefit from the programme and report during programme-based budget.
3. That on sub-programme 2.1 design and construction of new bituminous roads, the department should specify the roads to be tarmacked during the programme-based budget.
4. That the sector emphasizes on murraming of roads across all the wards since tarmacking is expensive.
5. That the sector should move Ksh. 200 Million from sub-programme 2.1 on design and construction of new bituminous roads to 2.2 for maintenance of the existing roads and road-related infrastructure by grading.
6. That budgetary allocation to development of policy documents be scrapped within this sector and existing policies utilized.
7. That under programme 2 on information communication services and ICT infrastructure Development, the committee recommends that the allocation of Ksh. 50 Million be reduced to Ksh.20 Million and the Executive to specify on this.

HEALTH SECTOR

Hon. Speaker, the sector plans to improve accessibility to health care services with key emphasis being laid on promotive and preventative health through disease control services and family health services. Hon. Speaker, the programmes for the sector of health are as follows:-

Promotive and Preventive Services

Under this programme the sector plans to enhance disease prevention and control services at a cost of Ksh. 2.6 Million, promote environmental and community health services at a cost of Ksh. 47 Million, spend Ksh. 53 Million in reproductive, maternal, newborn, child, and adolescent health services.

Enhance nutrition services at a cost of Ksh. 163 Million, promote health services through distribution of IEC materials at a cost of Ksh. 1 Million, put in place disease control measures at a cost of Ksh. 5 Million and finally promote health information systems monitoring and evaluation and quality assurance at a cost of Ksh. 124 million.

Curative and Rehabilitative Health Services

Within this programme the sector plans to improve County pharmaceutical services through purchase of health products at a cost of Ksh. 53 Million, enhance clinical and nursing services at Ksh. 174 Million, improve specialized medical services and community hospital services by constructing four hospitals and training 80 clinicians at a cost of Ksh. 7 Million, construct rehabilitation centres for drug and substance abusers at Ksh. 195 Million, establish county diagnostic services to cost Ksh. 222 Million, provide ambulance services at a cost Ksh. 25 Million, acquire eight ambulances at a cost Ksh. 11.5 Million, provide firefighting and rescue services at Ksh. 17 Million, construct 4 modern fire stations at a cost of Ksh. 32 Million, procure four foam fire fighting vehicles to cost Ksh. 45 Million, enhance disaster management at Ksh. 15 Million and finally construct 4 trauma care centers along major highways at a cost of Ksh. 4.8 Million.

Hon. Speaker, the total projected budget estimates for the Sector of Health, as indicated in the 2018/2019 ADP is Ksh. 1,510,900,000.

Committee Recommendations

The committee recommends that sub-programme 2.12 on construction of four trauma care centres along the major highways be omitted and allocate the money to other programmes within the sector. That was the only recommendation under the health sector.

PUBLIC ADMINISTRATION SECTOR

Hon. Speaker, the Public Administration Sector is comprised of Office of the Governor, County Executive, County Assembly, County Treasury, Decentralized Units, and County Image. County Public Service Board, Legal Office and County Economic Planning sub sectors.

Office of the Governor

The main programme planned within the office of the Governor will be leadership, supervisory and coordination of the County Government activities, public participation, policy formulation and administration support services to cost Ksh. 631 Million.

County Executive

Planned programmes here will be advisory services and cabinet services through County Executive Committee meetings which are projected to cost Ksh. 60 Million.

County Treasury

Programmes here will include Budget management, resource mobilization and revenue, accounting services, procurement and supply chain management, internal audit and county debt management which will cost Ksh. 79 Million.

Decentralized units

Under this sub-sector programmes will include, Administrative and field services through barazas and dissemination of policy documents, hygiene and sanitation through construction of public toilets, and finally Inspectorate services to cost of Ksh. 1.031 Billion.

County Image

The planned program here is signage and branding through county beautification, development of recreational and rest areas and bush clearing in highways within the county to cost Ksh. 20 Million.

County Public Service Board

Programmes identified here will include human resource audit, research and training and public awareness at an estimated cost of Ksh. 16.5 Million.

Public service

Under this sub-sector, programmes planned will include human resources management through payroll services, capacity development and performance contracting to cost Ksh. 4. 935 Million.

Forensic

Planned programmes under this sector will be remuneration management under administration and support services to cost Ksh. 20 Million, forensic research and analysis through infrastructure development, communication awareness and lab analysis to cost Ksh. 20 Million.

Legal Office

This sub-sector plans to improve administrative services and enhance legal services through improved access to rule of law, justice and dispute handling at a cost of Ksh. 90 Million.

Economic Planning

Under this sub-sector the planned programme here is economic planning and statistical services through research surveys, monitoring and evaluation and development planning to cost Ksh. 45 Million.

County Assembly

Planned programmes within the County Assembly include general administration and planning to cost Ksh. 358 Million and legislation and oversight to cost Ksh. 729 Milion. Hon. Speaker, The total projected budget estimates for the sector on public administration is Ksh. 8,136,500,000.

Committee Recommendations

1. That sub-programme 1.4 under office of the Governor on policy formulation, be scrapped and the existing policies be amended or enhanced.
2. That the allocation of Ksh. 544 Million for administrative and field services under the decentralized units sub-sector whose target is holding barazas and disseminating policy documents be reduced to Ksh. 10 Million.
3. That sub-programme 1.1 on County beautification under sub-sector on County Image, the Department utilizes Ksh. 20 million on planting of trees along the roads, all over the County instead of planting grass.

4. That sub-program 1.1 on Human Resource audit under the County Public Service Board sub-sector be halted awaiting staff audit to be done by the Labor, public service and ICT department. The Committee further recommends that that a professional audit be hired to carry out the exercise.
5. That the sub-sector on forensics with an allocation of Ksh. 41 Million be scrapped since it is a National function and not a priority within the County.
6. That under the sub-sector on Legal Office, the Ksh. 90 Million allocated under sub-programme 2.1 on legal services be reduced to Ksh. 20 Million.

EDUCATION, YOUTH AND SOCIAL WELFARE SECTOR

Hon. Speaker, This sector is composed of five sub sectors, namely; education, youth, social welfare, Culture and sports. Programmes for this sector as indicated in the ADP are as follows:-

General Administration, Planning and Support Services

Under this programme, the sector plans to enhance efficiency in service delivery and increase enrolment and retention in ECDE centres and primary school at a cost Ksh. 170 Million.

Early Childhood Development

Planned programmes here include construction of 10 ECDE classes to cost Ksh. 16 Million, ECDE staffing and capacity building for care givers at a cost of Ksh. 60 Million, ECDE advocacy to cost Ksh. 5 Million, extra-curriculum activities and participation of ECDE children in sports and games to cost Ksh. 10 Million,

Education Scholarship Fund

Under this programme, the sector plans to increase access to higher education through scholarship and secondary school bursaries at a cost of Ksh. 120 Million.

Promotion of basic education

The sector plans to engage in school feeding programmes to cost Ksh. 90 Million, provide teaching and learning materials at a cost of Ksh. 30 Million, initiate a motivation fund for teachers and student and establish library services totaling to Ksh. 10 Million.

Technical and vocational Training

This programme under the youth sub-sector plans to construct of three youth polytechnics to cost Ksh. 46 Million, employ 30 instructors at a cost of Ksh. 90 Million, establish one youth innovation centre at Ksh. 6 Million, one youth sports center at Ksh. 6 Million and finally put in place a Machakos youth fund at a cost of Ksh. 40 Million.

Gender and Social Development

Under the gender and social development sub-sector the planned sub-programmes economic empowerment and capacity building of vulnerable persons to cost Ksh. 1.6 Million, social protection and support for orphans and vulnerable children, establishment of gender based violence rescue centers, improved livelihood for persons living with disabilities at a cost of Ksh. 73 Million, HIV AIDS sensitization at Ksh. 1 Million and establishment of a religious organizations fund at a cost of Ksh. 20 Million.

Unemployment benefit

Under this programme the sub-sector on gender and social welfare plans to put in place a feeding programme for homeless and destitute persons at a cost of Ksh. 36 Million and establish a bridging facility fund for men and other heads of families at a cost of Ksh. 36 Million.

Promotion and Marketing of the Akamba Culture

This programme under the Culture sub-sector plans to develop Akamba cultural centre and attain 10 per cent completion rate at a cost of Ksh. 5 Million and hold cultural festivals to cost Ksh. 5 Million.

Sports Development

Under this programme that falls within the sports sub-sector, the Education, youth and social welfare sector plans to develop sports policy documents at a cost of Ksh. 1 Million, equip 50 sports teams at a cost of Ksh. 160 Million and finally improve sports infrastructure through establishment of one social hall and one stadium to cost of Ksh. 200 Million..

Hon. Speaker, The total projected budget estimates for this sector as indicated in the 2018/2019 ADP is Ksh. 1.2 Billion.

Committee Recommendations

1. Under Sub programme 2.1, on ECDE infrastructure development, the planned target of 10 classes be increased to 20.
2. Under sub programme 3.1 on higher education scholarship fund, tertiary education is included to benefit youth polytechnics and the estimated budget allocation be increased from Ksh. 40 Million to Ksh. 80 Million.
3. That the Secondary school bursary Fund be increased from Ksh. 80 Million to Ksh. 160 Million.
4. That Sub-programme 4.2, on teaching and learning materials and 4.3 on motivation of teachers and students be scrapped since national function.
5. Under Sub-programme 5.1 on youth polytechnic establishment, the planned target of construction of three youth polytechnics is increased to 10.
6. On Sub programme 6.2, the estimated budget allocation of Ksh. 73 Million is increased to Ksh. 150 Million to cater for the establishment of Persons with Disabilities Board and fund to operationalize the Machakos County Persons with Disabilities, Act 2016.
7. That the establishment of religious organization fund in Sub-programme 6.9 be scrapped.
8. That the entire Programme on unemployment benefit and sub-programmes 7.1 and 7.2 on feeding programme for the homeless and a bridging facility fund for men and other heads of families be scrapped.
9. That Sub-programme 8.1 on development of Akamba Cultural centre is amalgamated with Sub-programme 5.1 on tourism promotion and marketing under the tourism sector.
10. That Sub-programmes 9.1 and 9.2 on support services and sports infrastructure under the sports development sub-sector where sports teams will be equipped and one social hall and sports stadia established at a total cost of Ksh. 360 Million be scrapped since they not priority projects in the County.

LAND, ENVIRONMENT AND NATURAL RESOURCES SECTOR

Hon. Speaker, this sector is composed of two sub-sectors; lands (physical and urban development) and environment and natural resources.

Programmes under the lands (physical and urban development) sector include;

Administrative and Support Services

The planned sub-programme under this programme will be improvement of service delivery and other administrative activities to cost Ksh. 58 Million.

Machakos County Development Framework

During 2018/2019, the sector under this programme plans to develop County spatial framework at a cost of Ksh. 114 Million, establish urban and municipal boards to cost Ksh. 40 Million, prepare and adoption County physical planning laws and policies at a cost of Ksh. 3 Million, undertake capacity building on the lands and urban development department at a cost of Ksh. 40 Million, Implement the new Machakos city through survey, installing beacons and allocation of plots at a cost Ksh. 20 Million, under take valuation at a cost of Ksh. 10 Million, and finally secure public land in the County to cost Ksh. 20 Million.

Title Deeds Partnership

Under this programme the sector plans to issue title deeds in partnership with the National Land Commission at a cost of Ksh. 20 Million. Hon. Speaker, the environment and national resources sub-sector within this sector has the following programmes;

Administration, Strategy and Management of Environment and Natural Resources

Under this programme the sub-sector plans to procure three vehicles for garbage collection, three for supervision activities and recruit four officers to cost Ksh. 38 Million.

Environment Management and Protection

This programme within the sub-sector plans to engage in County environmental monitoring and management at cost of Ksh. 21 Million, protect, rehabilitate and conserve water catchment areas by planting 3.5 Million tree seedlings at a cost of Ksh. 30 Million, develop renewable energy at a cost of Ksh. 100 Million and finally engage in solid waste management through procurement of cleaning tools, wheel loaders and two garbage collection tractors at a cost of Ksh. 70.5 Million.

Hon. Speaker, the total projected budget estimates for the lands, environment and natural resources sector as indicated in the 2018/2019 ADP is Ksh. 584.5 Million.

Committee Recommendations

1. That the sub-programme 2.1 on spatial development frameworks in the County is scrapped and the department accounts for budgetary allocations in the previous budgets.
2. That Sub-programme 2.5 on implementation of Machakos new city is scrapped and previous budgetary allocations accounted for.
3. That programme 4.1 on administrative services where the sector plans to procure 2 garbage collection vehicles and sub-programme 5.4 on solid waste management where the sector plans to procure two garbage collection tractors be scrapped and the department makes use of the 40 operational tractors in sub-programme 3.1 on subsidized tractor program be used in garbage collection and also makes use the existing supervision vehicles instead of procuring others.
4. That Sub programme 5.2 on water catchment area protection, rehabilitation and conservation by planting tree seedlings be roll out to all the 40 wards.
5. That programme 5.3 on development of renewable energy is scrapped as it is identified under the programme on alternative energy technologies under the energy, infrastructure and ICT sector.

WATER AND IRRIGATION SECTOR

Hon. Speaker, the sector comprises of three sub-sectors, namely; water, irrigation and sanitation. Programmes planned in this sector as indicated in the ADP are as follows:-

Water Resource and Management and Water Storage

Under this programme the sector plans to purchase 400 water tanks at a cost of Ksh. 324 Million, construct 100 earth dams and 200 boreholes to cost Ksh. 150 Million, and finally undertake water analysis in 200 boreholes for Ksh. 236 Million.

Development and Promotion of Irrigation

Within this programme, the sector plans to rehabilitate existing irrigation schemes at a cost of Ksh. 10 Million and develop 15 new irrigation schemes to cost Ksh. 10 Million.

Water Supply and Sewerage Infrastructure

Under this programme, the sector plans to rehabilitation old sewer systems at a cost of Ksh. 100 Million and connect households to water supplies at a cost of Ksh. 110 Million.

Administration and Support Services

Here, the sector plans to construct and rehabilitate two office blocks and one water analysis laboratory to cost Ksh. 40 Million. Hon. Speaker, the total projected budget estimates for the water and irrigation sector as indicated in the 2018/2019 ADP is Ksh. 980 Million.

Committee Recommendations

1. In Sub-programme 1.1 on water harvesting, the Department strictly procures 400 tanks with a capacity of 10,000 litres each.
2. In Sub-programme 1.2 on management of water sources, the sector engages in construction of major dams in all the wards to be done in phases, and the allocation of Ksh. 150 Million be increased to 500 Million. Additionally construction of boreholes and water quality analysis to cost Ksh. 236 Million be scrapped and the funds allocated to construction of major dams.

COMMERCIAL, TOURISM AND LABOR AFFAIRS SECTOR

Hon. Speaker, this sector is comprised of the trade, industrialization, investment, tourism, liquor and labor affairs sub-sectors. Programmes within the sector as indicated in the ADP are as follows;

Trade Development

This programme under the trade sector plans to establish micro-small and medium size enterprises (SMEs) at a cost of Ksh. 20 Million, promote employment for youth at a cost of Ksh. 10 Million, engage in fair trade and consumer protection through weighing and measuring equipment verification to cost Ksh. 10 Million, set up market and market linkages through organizing for exhibitions at a cost of Ksh. 10 Million, conduct research, marketing and image building to cost Ksh. 6 Million, facilitation investor after-care services at a cost of Ksh. 8 Million, construct of 10 toilets blocks in market centers to cost Ksh. 16 Million, issue trade development joint loans to cost Ksh. 10 million, establish investment one stop shops for Ksh. 2 Million and finally engage in capacity building for youth and women groups in entrepreneurship at a cost of Ksh. 2 Million.

Administrative and Support Services

Under this programme the sector plans to improve service delivery, customer satisfaction and complete the construction of office blocks in Mavoko at a cost of Ksh. 21 Million

Investment and Industrial Development

This programme plans for industrial development through construction of two industrial parks, one fruit processing factory, purchase of one stone crusher and construction of 5 *Jua kali* sheds to cost Ksh. 384 Million.

Promote Inclusive and Sustainable Industrialization and Foster Innovation

Under this programme the sector plans to promote inclusive and sustainable industrialization by increasing manufacturing value addition at a cost of Ksh. 6 Million

Tourism Development Promotion

This programme under the tourism sub-sector plans to promote and market tourism at a cost of Ksh. 239 Million, develop tourism infrastructure by putting up one museum to cost Ksh. 276 Million, and finally engage in tourism training and capacity building to cost Ksh. 14.5 million

Administration and Support Services

Here, the sub-sector plans to purchase computers, scanners, laptops and cameras for the tourism sub-sector at a cost of Ksh. 3 Million.

Liquor Licensing

Under this programme, the sector plans to enhance compliance and enforcement of liquor regulations at a cost of Ksh. 8 Million, automate liquor licensing to cost Ksh. 3.5 Million and finally engage in liquor education and advocacy at a cost of Ksh. 1 Million.

Hon. Speaker, The total projected budget estimates for the sector on commercial, tourism and labour affairs as indicated in the 2018/2019 ADP is Ksh. 968 Million.

Committee Recommendations

1. That sub-programme 1.2 on employment promotion for the youth be scrapped and the allocation of Ksh. 10 Million be reallocated.
2. That sub-programme 1.7 on construction of toilet blocks at a cost of Ksh. 16 Million is scrapped since it has been captured under hygiene and sanitation within the decentralized unit sub-sector with an allocation of Ksh. 100 Million.
3. That Sub-progeamme 1.8 on trade development joint loans be scrapped since an analysis of the previous beneficiaries, if any, has not been brought forth.
4. That under sub-programme 3.1, on industrial development, purchase of one stone crusher at Ksh. 40 Million. Under the same sub-programme, the construction of one fruit processing factory be scrapped as it is captured under sub-programme 3.6 on promotion of agro-and value addition within sub-sector on crop development with an allocation of Ksh. 64.5 Million.
5. That construction of *jua kali* sheds in sub-programme 3.1 be scrapped and the Department accounts for the previous budgetary allocations for the same.
6. Under Sub-programme 5.1 on tourism promotion and marketing, that the programme be amalgamated with programme 8 on promotion and marketing of Akamba Culture, and the Ksh. 239 Million allocated for the same be reallocated.

GENERAL RECOMMENDATIONS

1. The Committee recommends that the Ksh. 16 Billion ADP Budget be reduced to approximately Ksh. 12 Billion as per the approved Budget Policy Statement (BPS) and the expected local revenue collection of Ksh. 1.5 Billion.
2. The Committee recommends that the attached projects proposals from the 40 Wards be considered in the 2018/2019 Budget implementation.

CONCLUSION

Hon. Speaker, an ADP is a crucial working tool for the County Government and is a requirement for funds to be released by the National Government. The Machakos Annual Development Plan 2018/2019 will sufficiently guide this County towards the path of success if implemented exactly the way it is on paper.

Hon. Speaker, the committee on Trade, Planning, Investment and Industrialization will in the financial year 2018/2019, unlike previous years and in collaboration with the Budget and Appropriations committee, follow through the budget making process to monitor and ascertain that programmes and projects identified during the Annual Development planning stage are included in subsequent budget policy papers such as the County fiscal strategy paper and on the Budget itself.

Likewise, I call upon all committees to study their respective sections and try to match the programmes with the budget they shall be interrogating soon.

Hon. Speaker, it is therefore my privilege, on behalf of the Trade, Planning, Investment and Industrialization Committee, to table the report on Annual Development Plan 2018/2019 financial year to this Honorable House and recommend for its approval.

Hon. Speaker, before I sit, there is some clarification because there is an annex of projects from the 40 wards I want you to concentrate on.....there is a table at the centre of your document, of the big document, that is what I want you to concentrate on; it does not have a page, there is a table somewhere and in that table it is somewhere at the center.

It ought to have been placed somewhere where members can access it. Yes, it is that one; so in that table, that is what I want you Hon. Members, to concentrate on. Hon. Speaker, if you allow me, I just want to highlight on a few issues on that table so that members may understand it better.

Hon. Deputy Speaker: You may proceed.

Hon. Kieti: Yes, we have six columns with the items; the first column gives the sectors that I have enumerated within the report. The second column is giving the projects, we have another column for units, that is the number to be done, we have another column indicating cost, we have another column for wards and a column for the total.

So, I want to pick the first example on roads; for murrum, we are requesting the budget committee, because we are supposed to spend Ksh. 4 billion, we are requesting the budget committee to allocate 30 kilometres for murrum in every ward. You can see we have 30 stands for kilometres at a cost of Ksh. 1 million for the 40 wards that will cost Ksh. 1.2 billion.

The next one is on tarmac; the tarmac, that one we have left at the discretion of the Governor and within the budget of Ksh. 4 billion, we have allocated Ksh. 480 million for the murrum, Ksh. 240 million may be used for tarmac and Ksh. 240 million may be used for purchase of equipment.

The Ksh. 500 million remaining for the Ksh. 1 billion that we have given to the Governor, he may use it in executive projects because there are those projects that he promised wananchi and they will cost him about Ksh. 520 million.

Under the sector of water, you can see we have boreholes so we are requesting to have three boreholes in every ward at a cost of Ksh. 3 billion and that will cost Ksh. 360 million (??).

We have tanks and we are requesting that each ward to gets about 10 tanks with each tank costing about Ksh. 10,000 and you can see the cost.

Then we have dams; we are requesting that three dams to be done in every ward at a cost of Ksh. 1.5 million and in every ward so that we have a total of Ksh. 180 million. Then for environment, we have areas where we need weirs within our rivers and gullies where we need to tap water so we are requesting two to be done in every ward at a cost of Ksh. 1 million each and that will cost Ksh. 80 million.

Then on tree seedlings, we are requesting that 2,500 tree seedlings be allocated for every ward each seeding costing Ksh. 30 and that will costs Ksh. 3 million.

On health dispensaries, we are requesting that in every ward where they need construction of a new dispensary, we have one dispensary per ward at a cost of Ksh. 3 million and that will cost Ksh. 120 million.

On equipping of dispensaries, we are requesting that one dispensary be equipped in every ward at a cost of Ksh. 1 million and that will cost Ksh. 40 million. Before, I leave the area of health, in the case you do not to construct a new dispensary within your ward, that money can be used for renovation or upgrading of the existing wards, the Ksh. 3 million.

On educational facilities, we are requesting that we have one polytechnic and one ECDE in this financial year in every ward so we have two and each one of them, the polytechnic and the ECDE to be built at a cost of Ksh. 2 million or Ksh. 4 million and that will cost the county Ksh. 320 million.

For bursary, we are requesting that we allocate Ksh. 4 million per ward and that will cost Ksh. 160 million. Then we have MSWEB for empowerment; we are requesting that we get 10 beneficiaries per ward and that is at Ksh. 500,000 and that will cost the county Ksh. 200 million.

Subsidized Fertilizers

That is under agriculture we are requesting that we get 300 bags within our wards at a cost of Ksh. 3,000 each that will cost the county Ksh. 36 million.

Revolving Fund

We are looking at or we want one beneficiary to be considered per ward at a cost of Ksh. 3 million and that will cost Ksh. 120 million.

Seeds

We are requesting that we have Ksh. 300 at cost of Ksh. 1,000, that will cost Ksh. 12 million.

Energy

On street lights, we are requesting that we get five per ward at a cost of Ksh. 50,000 and that will cost the county Ksh. 10 million.

Trade

On toilets, we are requesting that we get at least two toilets per ward at a cost of Ksh. 1 million and that will cost the county Ksh. 40 million.

Market development

We are requesting that we get two per ward at a cost of Ksh. 1 million and that will also cost Ksh. 40 million.

Public Service and ICT

On Resource Optimization Audit, we are requesting that an allocation of Ksh. 50 million be allocated.

Tourism and culture

On promotion of historical sites, we are proposing that to cost Ksh. 20 million. So, total for that will be, including the money for the tarmacking for the Governor that is Ksh. 3.5 billion, then you add the Ksh. 520 million that we have also allocated for executive projects under the Governor and it will cost Ksh. 4 billion.

Then on the next table, you can see the tabulation of the Ward Development Fund per ward and the like. So, Hon. Speaker, I would like to call Hon. Koki to second the report.

Hon. (Ms.) C. Koki: Thank you, Mr. Speaker. I boldly stand to second the motion. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you Hon. Chair for trade committee for the well-read report.

(Question proposed)

You may debate on this, Hon. Members. Hon. Steve.

Hon. Mwanthi: Thank you, Mr. Speaker. I appreciate that the committee did a commendable job but I would request amendment in some areas because if you go through the document you will find that the annexed document has only the projects that we had already allocated in our supplementary budget so we still have the same projects showing a duplication of projects. I thought they would have asked from Members all the....I understand the Executive has the projects that they got from wananchi.

I am worried that we have indicated the same same projects on this draft and again if you go through the document you will also find that some of the projects on the table we have already been shown here, you will find a class here is indicated at Ksh. 2 Million yet we know the value of a class should be around Ksh. 800,000.

If you go through the same document you will find the Executive in education puts a class at a cost Ksh. 1.6 Million so you find the document is somehow contradicting itself because we expect a class to cost Ksh. 800,000 to Ksh. 900,000 a classroom.

There are several mistakes that I have noted on the document especially from the side of Executive, page 14 on health. If you sum up the money which is there, you will find it is around Ksh. 995 Million but the total indicated down there is Ksh. 1.5109 Billion. So, you can't tell where the difference will be coming in.

If you go to public administration, you will find they have indicated Ksh. 8.3 Billion should be spend on public administration but the real figure is around Ksh. 3.1 Billion, if you sum up the money and the projects indicated there.

If you go to education, they have indicated they are supposed to spend Ksh. 1.2 Billion but in reality if you sum up you find its Ksh. 1,060,000,000. Those are just some of the highlights and I think the committee should have gone through all of the figures and make sure they rhyme with the projects because the overall total, if you sum up you will find the projects are supposed to spend like around Ksh. 12 Billion but if you sum all these you will find it is Ksh. 15 point something Billion.

I think this is something that would have been noted by the committee. So, in that aspect possibly we are supposed to amend the document with Hon. Members to give out their priority projects for the year 2018/2019 budget rather than using the same one that we had allocated in the supplementary budget. Thank you, Mr. Speaker.

Hon. Deputy Speaker: To point on that before we continue; if you look at their general recommendations number one, they are noting that the ADP figures given were Ksh. 16 billion and they are requesting that this be reduced to Ksh. 12 billion as their initial recommendation.

So, I think from what I am noticing, it's like the committee had noted there was a discrepancy between the Ksh. 16 billion in the ADP and what they should be.....(inaudible). That is just for guidance. We may continue. Hon. Katumo.

Hon. Katumo: Thank you, Mr. Speaker, Sir. I want applaud this committees especially the chairman because I am part of the committee; for the great work they have done over the months, days on end to make sure this document finds its way in to the Assembly. When you go through this document, you find the committee tried very hard to align these estimates to the laws that we have passed to the priorities and aspirations of Machakos county residents and to the needs of every other day.

I want to congratulate the Hon. Members in this committee for this good work they have done but specifically, I really want to go straight to this document, where we have sector of youth page 17 and this is where my constituency falls and were we have persons with disabilities in this County.

Members, we must understand that this constituency spreads in every other ward, therefore my constituency is part of your responsibility and we must come together to ensure our people don't suffer more like previously. I am happy with the recommendation on page 19, number six where the committee has recommended that the allocation that was done by the Executive of Ksh. 73 million to be increased to Ksh. 150 million to cater for the establishment of Persons with Disabilities Board and Fund as we align it to that Act that was passed in 2016, The Machakos County Persons with disabilities Act.

This is a law that is working in Machakos County and we want to operationalize it and make sure these great people that I represent in this House become part and parcel of the mainstream development in Machakos County. When I come to that summary that the chairman read us through---

Hon. Deputy Speaker: Point of order from Hon. Judas.

Hon. Ndawa: Thank you, Mr. Chairman. I stand under Standing Order 27 which says that the Gazette Notice 5083 said the morning sitting will be from 10 a.m. to 12.30 p.m. Aware that the business is crucial, I propose that the House resolves to extend its sittings for this

sitting until this business ongoing is completed. Thank you, Mr. Speaker. I call upon the Majority Leader to second me.

Hon. Ngunga: Thank you, Mr. Speaker. Thank you, Hon. Ndawa for your attention to the fact that business shall be specific on the day that this special sitting seats and therefore the motion that we proceed until this business is concluded. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you Hon. Judas and Hon. Majority Leader. The House stands guided we will extend it accordingly. Thank you.

Hon. Katumo: Thank you. I am not done but I like that extension, this is a very serious business but I am concluding. I am saying, when you look at that concluding chart the chairman gave us and especially if you go to the department of education you find the programmes under that especially the MSWEB; previously restructured the MSWEB because it was clumsy, it was amalgamated and it was not very clear and here this recommendation is not reflected and I wish to move that amendment to make sure that this particular PWD Fund and Account will total to Ksh. 150 Million be indicated and shown here and should not be part of MSWEB.

Thank you, Mr. Speaker, Sir.

Hon. Deputy Speaker: Hon. Francis.

Hon. Ngunga: Thank you, Mr. Speaker. Let me stand to air my views on this very crucial document and I want to start by appreciating the good work that was done by our colleague Hon. Kieti; I think the committee was very thorough in what they did. Although, Mr. Speaker I would like to raise a few concerns about this report and one is concur with Hon. Steve Mwanthi when he says that the projects that are captured here---

(Hon. Deputy Speaker left the Chair)

[The Speaker (Hon. (Mrs.) Mwangangi) took the Chair]

Hon. Ngunga: Thank you, Madam Speaker. As you walked in, I was on the floor, I don't know whether continuity is guaranteed or what happens in this situation; we are in a crisis.

Hon. Speaker: Good morning, Hon. Members; yes it is afternoon. Thank you. Continue; let us go on.

Hon. Ngunga: Thank you, Madam Speaker, good afternoon. So, Madam Speaker, I was contributing on the ADP and I wanted to add my voice on what Hon. Steve Mwanthi had indicated that the projects that are captured or annexed are the projects that we brought forward for the supplementary budget but I believe that there are projects somewhere that the Executive has that we collected during public participation that are supposed to be captured and I think this is what is supposed to be annexed here as proposals that are supposed to be there for this ADP. So, I think this is a correction that can be done.

Then again, Madam Speaker, to air my contributions to the views that were brought by the committee, I think my concern is on the allocation that is there on public administration

sector where proposals are there and one of the most important things I would want this House to note is the fact that we are lacking a very important link in our administration and I would have wished a situation where the Executive came with a structure that ensures that ward administrators are in place.

Hon. Speaker: What page are you in?

Hon. Ngunga: I am on page 115, Madam Speaker, public administration sector where they are making proposals on what they want to do in this ADP. One of the proposals that I think is very pertinent here, when we were in Mombasa for the Legislative Summit, those of us who took time to go round the displays, one very prominent display was from Samburu County Assembly.

One of the things that caught my eye was the fact that Samburu have been able to come up with a structure of the ward administration down to the village elder and this is what should be captured in our public administration sector which is lacking here. So, it would be my proposal to the committee to think about that and see whether the Executive can allocate money so that we have ward administrators in the wards. Madam Speaker this is a link that is lacking in our wards and administration has really become challenge because now we are using project managers that do not have the capacity that is required for this role.

The other thing, as the MCA Mua ward, that has caught my eye is on page 22 on the liquor license and the committee of implementation, if Hon. Muendo was here, he would note that we have been raising concerns on the Liquor Licensing Board. This is a board for the last five years that has not been in existence and I think the traders in town have been able to take the county Executive to court, they have procured orders. This is my humble request, that the Committee comes up with proposals to ensure that we have a Liquor Licensing Board that is in place to ensure that there is fairness.

Madam Speaker, as I address you today, in my ward, we have markets which due to influential people, liquor licenses have been denied. I have one particular case in Vota Market where we have very influential men that call shots in government and through their influence they have been able to compromise the Executive so much such that we have a market that is divisional headquarter that does not have a single license to operate this liquor.

I believe this is so because we don't have a Liquor Licensing Board in place and therefore it is my humble request to ensure that we have a Liquor Licensing Board that is in place to ensure that there is equity and fairness in awarding these licenses. Thank you, Madam Speaker and I think this was a good report. Thank you.

Hon. Speaker: Thank you, Hon. Majority Leader Francis Ngunga. Where is the Deputy Speaker? He walked away the minute I came in and he did not hand over; he was on this side. Hon. Mueni.

Hon. (Ms.) Mueni: Thank you, Madam Speaker. The committee has done a good work and if the Executive, even if they are expensive, they can do the work which has been done by the committee. We could be doing something, going to every ward and doing what they have been told but not to be working in one ward but all over the 40 wards for every Member of this Assembly because sometimes they go to one ward, they work and work and the following

day the Governor goes there to open one thing and the other wards have not been doing anything.

If it is about the ECDE classes, can we have two in every ward, can we have the roads been done in every ward because it is very unfair to be doing something to one Member as if that Member was elected was elected in a special way by the people; every Member in this Assembly is elected by people who elected the Governor.

So, I think the Executive has to be fair to work in every ward and to make sure in every ward everything is done fairly. It is not that when we say they are expensive about the road you go and pay the road when it is done by the contractor who was doing that; your work Members is to watch and comment the person who was working on that road if the road is going to be paid the way it has been done. Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Mueni. Hon. Mitaa.

Hon. Mitaa: Thank you, Madam Speaker for granting me this opportunity to contribute towards the report by Trade, Economic Planning and Industrialization Committee. My observations are limited but before I go to that I wish to thank the committee for the good job they have done. I think we are improving day by day and the progress is welcome.

Mine is on agriculture, page 10, item four, they have talked about greenhouses and my request is if we can have these greenhouses set up at areas where there is availability of water because it is not every place where we have water like where they have sunk the boreholes and there is land, I think we can commence with the issue of greenhouses.

The other issue is on health sector, page 14, I think some wards we are privileged to host some important facilities in the county like my ward, I have Kangundo Level IV hospital, here in Machakos we have Level V, Mwala there is something else and under the category of health, I didn't see any where they have captured improvement of such facilities.

My facility in Kangundo Level IV lacks so much, the health Committee has visited the place, Implementation Committee too and I would have loved at least to see something being done in this coming financial year. I don't know whether it is too late to factor in improvements on such facilities.

The other issue is on sports, under Education page 17; they have talked about improving infrastructure through establishment one social hall and one stadium at a cost of Ksh. 200 Million. I don't know it's at what level, ward level or sub-county level, I think I would love to get a clarification on that. Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Mitaa.

COMMUNICATION FROM THE CHAIR

CONSIDERED OPINION ON THE MACHAKOS COUNTY SUPPLEMENTARY APPROPRIATION BILL 2018

Hon. Speaker: Hon. Members, I am seeking your indulgence. Firstly, we started late because my program was interrupted by some communication that I received from the executive which required me to input in a communication that I was going to give you. My communication was ready but there was no way I could leave out the contents of the communication that I got from the Governor in the morning at 9 o'clock.

Secondly, that communication which I am to give you is on the Supplementary Bill and I seek that we interrupt the debate at is on the floor at this moment so that I can do the communication because it may require you to be here up to midnight tonight because there is a lot of work that you need to do.

I appreciate the ADP, the CFSP are equally important but you notice that priority needs to be given to the Supplementary Bill. So, if you allow me let me give you the communication now because it will call you into taking some action in one way or the other. We shall continue from where we stopped just a few seconds ago on the ADP.

Alright, Members. I have explained why the communication I am going to give you is coming at this time and it is my considered communication on the Machakos County Supplementary Appropriation Bill 2018. It is relatively long Hon. Members, it calls all your attention I would kindly ask you to pay much attention to it and then across also the patience noting that it is shortly after 1 o'clock.

Hon. Members, this communication arises from the outcome of the voting of the Assembly on the County's Supplementary Appropriation Bill, 2018 in the Assembly's Special Sitting of 21st May, 2018. The details of the outcome of the voting which are already in the minds of the Hon. Members, will however be reiterated in this communication for clarity purposes on the communication.

Hon. Members, following the voting, I indicated that I would give my considered communication on the same to the Assembly in the first sitting of the Assembly on 5th June, 2018 after the current recess. However, in view of the very great importance of the matter of the Bill, the urgency with which it demands to be dealt with and the pressing great need to put the matter to rest, I decided, under the Assembly Standing Order 1, to bring the date of the communication forward by including it in my communication in today's Special Sitting and this is in the great hope that the matter of the Bill will be settled sooner than later.

Hon. Members, I wish to inform you that this morning, the 28th day of May, 2018, at about 9.00 a.m. I received a letter of the same date from the Governor on the matter of the Bill; that letter is attached to this communication.

I had prepared this communication without the benefit of the contents of that letter and so when it came, I had to re-do my communication so that I can accommodate the contents of that letter. I will therefore make reference to the letter in this communication at the appropriate time.

Hon. Members, as you are aware, pursuant to the provisions of Section 21 of the County Governments Act, 2012, on 2nd of May, 2018 the Assembly passed the Machakos County Supplementary Appropriation Bill, 2018 with amendments and subsequently forwarded the same to the Governor for assent under Section 24 of the Act.

In a letter dated 9th of May, 2018 and received in the Assembly on 10th May, 2018 the Governor referred the Bill back to the Assembly with a Memorandum raising issues which I summarized as follows:

- i. That the Bill contravenes Regulation 37 (1) of the Public Finance Management (County Governments) Regulations, 2015 which "enjoins a County Assembly, in exercising its budget making duties under, Section 131 of the Public Finance Management Act, 2012, to amend the proposals by the Executive by a variation not exceeding one percent, either upwards or downwards."
- ii. With regard to this first issue, Hon. Members, the Governor in his letter indicated that he had attached a detailed analysis of instances where a vote was totally

abolished and or varied beyond the allowable percentage “hence occasioning a contravention of the law.”

- iii. By listing projects within the Bill and by changing a policy proposition (by the Executive) and replacing it with the Assembly’s version of the same the Assembly “will be intruding into the arena of implementation...” hence a breach of the doctrine of separation of powers as enshrined in Article 183 of the Constitution, 2010, Section 104(1) of the Public Finance Management Act, 2012 and Sections 8 and 36 of the County Governments Act, 2012, as “...it is the role of the Executive to propose and implement policies...” and that “The County Assembly has the sacred role of legislation, oversight and representation...” Hon. Members, I am referring to quotes and closed quotes because I am referring to the words of the Governor in the letter where I am given my own version of the words there are no quotes.
- iv. That there are “...specific instances where proposals to pay pending bills were rejected and or mutilated...” whereas the a circular by the Controller of Budget Ref. COB/CIR/002/Vol. 1 dated 16th February, 2018 advised that pending bills should form the first charge during expenditure. Those are the concerns of the Governor.

Hon. Members, you may wish to be informed that as the matter of the Governor’s Memorandum was under consideration in the Committee of the Whole on 21st of May, 2018, an undated document titled “Brief on Revised Supplementary Budget” was served on the Clerk by the Executive at 2.43 p.m. albeit without a forwarding letter and I have been unable to put a meaning to it. I have attached that document to this communication as appendix B.

Hon. Members, you will note that the Governor’s Memorandum as enumerated above did not give specific clauses of the Bill which the Governor was unhappy with and hence he did not make any specific recommendations on any clauses of the Bill.

Hon. Members, Section 24(3) of the County Governments Act, 2012, provides that if the Governor refers a Bill back to the County Assembly, the County Assembly may, using the appropriate procedure under the section–

- (a) Amend the Bill taking into account the issues raised by the Governor; or
- (b) Pass the Bill without amendment.

Hon. Members, the appropriate procedure that this Assembly used is as follows:

- i. The Memorandum stood committed to the Budget and Appropriations Committee for consideration and tabling of a report before the Assembly;
- ii. The Committee subsequently tabled its report in the Assembly on 21st May, 2018 in a Special Sitting of the House because the Assembly at that time was on a recess. The report of the committee is also attached to my communication.
- iii. The House went into a Committee of the Whole House which considered the report of the Committee which in essence did not agree with any of the issues raised by the Governor.
- iv. Following the consideration of the Memorandum the House in the Committee of the Whole voted on each of the issues raised in the Memorandum.

Hon. Members, you are aware of the following provisions of law which guided the voting:

- i. On the manner of voting Section (20)(1) of the County Governments Act, 2012 and Standing Order 65(1) states the following “Unless otherwise provided ...let us have little noise from some quarter there, unless otherwise provided under the Constitution or any other law, a question arising in the Assembly shall be decided by a majority of the members in the Assembly, present and voting;”
- ii. Section 24 (5) of the County Governments Act, 2012 which is replicated in the Assembly Standing Order 134(5) provides that to pass the Bill a second time without amendment or with amendment which do not accommodate the Governor’s concerns and hence in line with the report of the Budget and Appropriation Committee on the Memorandum a vote of two-thirds of the members present and voting is required;
- iii. Under Section 24(3) of the County Governments Act, 2012, to amend the Bill taking into account all the issues raised by the Governor in the Memorandum or to pass the without amendment a majority vote of the members present and voting is required. It is very important Hon. Members that you distinguish between the two.
- iv. Hon. Members, Standing Order 69 provides for a roll call when a specific threshold of votes is required so the voting was done by way of a roll call.

Hon. Members, the record of the Assembly shows that at the time of the voting there were 57 Members present and voting in the House and they voted as follows:-

Issue as Identified by the Budget and Appropriation Committee	Votes cast to override the Memorandum (two-thirds vote requirement)	Votes cast in support of the Memorandum (majority vote)	Absent Members	Members Abstaining	Total Assembly members
Issue (i)	34	22	2	1	59
Issue (ii)	33	23	2	1	59
Issue (iii)	34	22	2	1	59
Issue (iv)	33	23	2	1	59

Can I have less whispering, Members. Hon. Members, it is clear from those results as I have read out and as you already are aware of the, the following arises;

- i. That the Assembly did not garner the two-thirds votes required under Section 24(5) of the County Governments Act, 2012 to pass the Bill a second time without amendment or with amendment which did not accommodate fully the concerns of the Governor as set out in his Memorandum, hence a rejection of the Memorandum as contained in the report of the Budget and Appropriation Committee. This is because out of the 57 members present and voting a two-thirds vote would be 38 votes but the total votes garnered in that respect whether on average or even the highest was 34 so that vote was short of four members.

- ii. Similarly, the Assembly did not garner the majority votes required under Section 24(3) of the County Governments Act, 2012 to pass the Bill with amendment which agreed with the Governor's Memorandum or to pass it without any amendment the reason being that out of the 57 members present and voting the majority vote needed was 29 members whereas the vote garnered the highest on average 23 members so it was short of six members.

Hon. Members, in this finding I find useful guide and support in the considered communication of the Hon. Speaker of the National Assembly given on 28th July, 2015, copy attached in this communication, in which, while the Speaker, addressed the issue of "CONSIDERATION AND SCOPE OF PRESIDENTIAL RESERVATIONS PURSUANT TO ARTICLE 115 OF THE CONSTITUTION on REFERRAL OF BILLS TO PARLIAMENT FOR RECONSIDERATION" he communicated on the following issues:-

- i. Whether, in expressing his reservations and sending a Bill back to Parliament for reconsideration upon refusal to assent under Article 115 of the Constitution, the President can make specific proposals for amendment to the particular Bill;
- ii. Whether the specific proposals for amendment made by the President should go through the entire law-making process of consideration by the relevant committee, including pre-publication, scrutiny, public hearings, and First, Second and Third Readings;
- iii. Whether accepting (sic) of the text proposed by the President and which has not been subjected to the ordinary law-making process as outlined in (b) above should require a two-thirds majority (sic);
- iv. Whether, the House would be properly constituted if, at the time of putting the question on the President's reservations or recommendations, there are less than two-thirds of all the members present in the House.

Hon. Members, it is important you pay attention to this communication by the Speaker, of the National Assembly because as I will tell you later in the letter I received this morning from the Governor, a reference is made to that communication. Hon. Members it is important to note that at this juncture that Section 24 of the County Governments Act which is applicable in the case of legislation in the County is mirrored or mirrors Article 115 which now the Speaker of the National Assembly was addressing. That is the connection between the communication of the National Assembly Speaker, and the County Assembly Bill that is at hand.

Hon. Members, the Hon. Speaker, in the communication made the following observations on the issues he had drawn.

- i. "That, in submitting his reservations on a Bill to the House, the President is not prohibited from including his preferred text of that particular clause, section, subsection or paragraph of the Bill";
- ii. "That, just like amendments to Bills, the text proposed by the President on a Bill need NOT be subjected to the other stages applicable in the making of a bill – that is, publication, First Reading, Second Reading and Third Reading";

- iii. “That, any committee or member of the House is free to propose further amendments to the Presidential communication. So long as such amendments have the effect of fully accommodating the President’s reservations, the threshold for the passage of such enactment or, indeed the proposals made by the President, is a simple by deed of Article 121 of the constitution.

Any other proposed amendment Hon. Members, that does not fully accommodate the reservations, including the proposed text, would require two-third majority vote.

ii. On this particular aspect Hon. Members, of two-thirds vote requirement, the Hon. Speaker went on to remark on page 9 of his report that “...Article 115(4)(a) on its part provides that for the House to override or amend reservations by the President, a vote to that effect must be supported by at least two-thirds of the Members. However, on the flipside, and in the absence of a similar provision giving threshold, the House requires a simple majority to concur with the reservations of the President.”

iii. That, pursuant to the provisions of Standing Order 1(2), the determination of whether a proposed amendment by a Member or Committee to the President’s reservations would have the effect of “fully accommodating” those reservations shall be made by the Speaker on case by case basis.” Hon. Members, finally,

iv. “That, the absence of at least two-thirds majority at the time of putting the question does not in any way imply that the House is improperly constituted”

Hon. Members, you will note that this communication of the Hon. Speaker is replicated in the advisory on the letter of the Governor which I indicated I received this morning and I have attached that letter and the advisory to this communication.

However, I noted that on paragraph 5 of the advice at page 2 reference is made of a ruling delivered on 23rd July, 2015.....but that must be a mistake because the ruling that the Speaker delivered and which I believe is what he was referring in his advisory note, is dated 28th July, 2015 and I have attached a copy of it for you to look at.

However, Hon. Members, it is enough to state for me that I have taken into consideration the contents of that advisory and I am with all due respect unable to agree with it, and for very good reasons, which I will give as I go on in this communication.

Hon. Members, One writer called Elliot Bulmer acting on Presidential veto powers in treatise on “International IDEA – Constitution making Primer”. Remember, we always base our opinions on other jurisdictions, residence on the law and any treatises or writings that are relevant. This is one writing that is relevant.

I have given where you get it, the citation on the internet and what he says is that.....he explains that, a super majority vote is the two-thirds vote which he compares with the simple majority vote or which is called an ordinary vote and he states that, if the President supports a Bill, an ordinary vote is sufficient but if he opposes a Bill, through a veto, then a super majority vote is required. That is what Section 24(5) of the County Governments Act is saying.

So, that is supporting the position that is explained in the law. Now, this view is in agreement with that which is expressed by Speaker of the National Assembly when he talked of the flipside of the two-thirds vote.

Hon. Members, on the matter of the Bill before this House I do not need to make a determination as to whether or not the report of the Budget and Appropriation Committee fully

agreed with the reservations of the Governor because on the phase of it, the report rejected the reservations.

Hon. Members, the effect of the voting outcome which I have detailed in the foregoing, is that the Bill is in limbo. Being in limbo means in common language as defined in the Oxford and Cambridge Dictionaries as an uncertain situation where there is no progress until a decision or resolution is made. In medical terms, the Bill is in a coma and it will 'die' unless the necessary medical procedure is urgently taken to revive it.

Hon. Members, no amount of persuasion, argument, opinion or advice contrary to what I have just stated will change that fact.

Hon. Members, further, no amount of persuasion, argument, opinion or any advice can mean that since the Assembly did not garner the two-thirds vote contemplated under Section 24(5) of the County Governments Act to pass the Bill a second time without amendment or with amendment which did not accommodate fully the Governor's concerns as set out in his Memorandum, the Bill should be considered as having been passed with the Governor's recommendations having been incorporated, whether in the Bill as originally presented to the Assembly by the Governor or as returned to the Governor for assent following the Assembly's debate and resolution on the original Bill. It can never be, by that by implication, that the Bill passed.

Hon. Members, I am asserting this on the following basis having done a consideration of the matter at hand and being guided by the law, precedence and other practices.

The law applicable namely, Section 20(1) of the County Governments Act which talks of voting in a County Assembly and 24 of the Act, which talks of Assenting a Bill and the Assembly Standing Order 65 which talks of Voting in the Assembly and still Standing Order 69 which talks of Roll Call and voting and Standing Order 134 which talks of Assenting to Bills is very clear on the issue of the Bill.

Section 24 of the Act and the Assembly's Standing Orders, echo Article 115 of the Constitution which I indicated earlier is important because the Hon. Speaker of the National Assembly said to have given an opinion on this matter and at the same time I am also relying on his communication which he also said he is relying to give his opinion.

Secondly, in addressing the issue as to whether or not failure by the Assembly to garner a two-thirds vote to override the Governor's Memorandum meant that the Memorandum 'won' and hence as to whether the Assembly should re-submit to the Governor for assent the Machakos County Supplementary Appropriation Bill, 2018 in its original form, that is to say without any amendment by the Assembly as expressed in the Governor's Memorandum, we must consider whether or not, in the circumstances of the voting out-come which I outlined there is any Bill which was passed by the Assembly.

Remember, the Assembly is the only body which has the legislative authority of the County under Article 185 and Section 8 of the County Governments Act, Section 185 of the Constitution to pass law. There is no other body that has that authority but the Assembly.

Now, the answer to (ii) above as to whether the failure to garner the two-thirds meant that the Bill, the memorandum succeeded, that answer is that, the failure of the Assembly to pass the Bill by overriding the Governor's Memorandum with a two-thirds majority did not mean that, *ipso facto*, the Governor's recommendations had been incorporated in the Bill. The result being that the Bill was not passed and hence as matters stand now, there is no Bill which the Assembly can submit to the Governor for assent.

Hon. Members, the passage of a Bill by a County Assembly is not a negative act but a positive one. As stated above in Section 24(5) of the County Governments Act, 2012, it requires a two-thirds majority vote for the Assembly to override the Governor's Memorandum. However, if that vote fails, the Bill is not passed and it ends up in a stalemate.

There is plenty of authority on this position Hon. Members, both locally and internationally a. In a Communication from the Hon. Speaker of the Senate dated 1st of October, 2015 where he was addressing the issue of "THE PROCEDURE FOR DISPOSAL OF PRESIDENTIAL MEMORANDUM ON THE PUBLIC AUDIT BILL AND THE PUBLIC PROCUREMENT AND ASSETS DISPOSAL BILL" which is reported on the Senate HANSARD as "SENATE DEBATES" of 1st of October, 2015 and I have annexed a copy of that report.

(External noise outside the Chamber)

That is not here, is it not? I thought it was somebody's ringtone.

(Laughter)

Alright, I hope you will be hearing me. I guess they are passing-by. So, this communication by the Speaker of the Senate, is in the Senate HANSARD, titled "Senate Debates" of 1st of October, 2015 as I had indicated I have annexed it here, the Hon. Speaker while addressing the issue of proceedings of a joint committee of the Senate and the National Assembly on the President's reservations on the two Bills under Article 115(2) of the Constitution which deals with Parliament amending the Bill in light of the President's reservations or passing the Bill a second time without amendment and Article 115 (4) of the Constitution which deals with Parliament passing the Bill a second time without amendment or with amendment that do not fully accommodate the President's reservations.

He remarked as follows on page 3,542, this is very critical. "There are, however, two questions that arise from this: First, what would be the fate of the President's reservations where the Senate does not obtain the 24 delegations, the Senators in the Assembly in the Senator core delegations and note, 24 delegations is the majority vote which is required to accept the President's reservations?"

Secondly, what would be the fate of the President's reservations where the Senate does not obtain the 31 delegations which is the two-thirds vote required to reject the President's reservations? He said emphatically, in either case, is it possible to deem an acceptance or a rejection by the Senate by dint of failing to obtain the requisite numbers? He answered; the answer is in the negative.

He went on to say, there is no room for deeming of either acceptance or rejection. A Specific resolution must be made by the Senate. Consequently, the only action that would take the agenda forward is either an acceptance or a rejection of the President's reservations by the requisite numbers.

It would appear that any action that does not result in an outright acceptance or rejection of the President's reservations, would put the Bill in a constitutional purgatory requiring some new action that will reignite and bring the legislative process to a close. Remember, Hon. Members, I talked about the outcome of the voting that you undertook on 21st of May where

there was neither majority vote garnered nor minority vote garnered. There was neither a two-thirds majority nor simple majority.

Hon. Members, still the Speaker of the National Assembly in the communication that I referred to earlier and which I also attached to this communication and which indeed interestingly is expressed to be the basis of the advisory given to the Governor in the letter that I referred to this morning, he renders support in view that I have expressed above that if two-thirds vote is not garnered to override a veto on a Bill, the Bill is not regarded as having passed but rather that further or fresh efforts of voting are called for to address the veto.

I say this on the basis that on page 10 of the communication of the Speaker, the Speaker stated that, if the number of those present and voting to negate the President's recommendation result in a majority which is however less than two-thirds, while those voting to agree with the President number less than a third of all the Members of the House, the Speaker is at liberty to direct that another vote be taken on another day under Standing Order 62(2) of the National Assembly.

It is however for us to note when we are here that when we talk of "two-thirds" and "a third" vote we are referring to the members present and voting and not all Members of the Assembly. There is no voting by proxy and that is clearly spelt out in Standing Order 65(1) of the House Orders and Section 20(1) of the County Governments Act.

Hon. Members, thinking that a Bill can be passed by deeming or implication when two-thirds majority vote is not realized to override a veto on the Bill arose, albeit respectfully wrongly, out of the then National Assembly Standing Order 155(5) which provided for a "deeming" of approval of the President's reservations on a Bill where a joint committee of the National Assembly and the Senate formed to consider a Bill whose passage requires the consideration of the Senate under Article 115 of the Constitution, fails to submit a report on the consideration of the Bill by the joint committee within 14 days of the referral of the Bill to the committee by the National Assembly.

Standing Order 158(5) of the Senate also had more or less similar provisions. This is the origin of the deeming thinking, the passing of law by deeming; that is the origin.

However, if you look at today as at matters stand, that deeming thinking cannot apply in our case for the following reasons; there are no provisions in the Constitution, the County Governments Act, or any other law applicable to County Assemblies that provides that where a two-thirds vote is not raised to defeat a veto on a Bill, the Bill is deemed to have passed; there is also no such provision in this Assembly's Standing Orders.

Further, the Standing Orders 155 of the National Assembly and 158 of the Senate have since been changed. To start with, the Speaker of the National Assembly in a communication which he issued on 16th of June, 2015, expressed reservations that, some of the provisions in the Standing Order 155 of his Assembly, are not in tandem with the expectations of the Constitution and for that reason he used Standing Order 1 of the Assembly Standing Orders to suspend the operations of that Standing Order.

Similarly, the Speaker of the Senate, in a communication he issued on 23rd June, 2015, observed that, although Standing Order 158 of the senate, was aiming at ensuring expeditious disposal of a Presidential Memorandum, it is not in tandem with the Constitution and he further noted that there is no room for deeming of either acceptance or rejection of the President's reservations and that any other action that would not result in an outright acceptance or rejection of the President's reservations would put the Bill, as stated above, in a "Constitutional Purgatory" and it required new action that so that it is moved forward.

Indeed, as matters stand now Hon. Members, it is important, as matters stand now the National Assembly deleted that Standing Order 155 and now has Standing Order 154 which has no 'deeming' clause, and for the Senate, it has provided clearly in Standing Order 158 of its Orders that, in case where the two-thirds majority vote is not garnered on a veto of a Bill and a simple majority vote is not garnered in support of the veto, then if the Speaker does not direct a further vote on the veto, or if on such further vote, the requisite majority vote is still not obtained then Speaker shall declare that the motion is negative. It has died.

An example from the United States of America, a writer called Elizabeth Ribic, writing on 19th July, 2010 on Congressional Research Service, veto override procedure in the House and Senate, I have also given where this is available on the internet.

She states on page four that according to Article 1(7) of the USA's Constitution, when the president veto's a Bill it is returned to the chamber that originated it to reconsider the Bill and that if a Bill or joint resolution vetoed by the President becomes law, if two thirds of the members voting in each chamber of the House and the Senate, acting sequentially agree by recorded vote and a quorum being present to re-pass the bill and thereby override the veto of the President but if two thirds of the members of the chamber of origin do not agree to override the veto, then the measure dies, the measure of the Bill dies and the other chamber does not have the opportunity to vote on the question of re-passing the bill.

Still another experience we may need to watch or to note is that of the state of Michigan on a document titled 'how does a bill become law;' is also available in the citation I have given in my report. It is stated that on legislative veto response that if the Governor veto's a Bill the legislature may override the veto by a two thirds vote of the members elected and serving in each House, then the Bill becomes law or the Bill may not receive the necessary two thirds vote and thus the attempt to override the veto fails and the Bill may be re-referred to a committee.

Hon. Members, I referred to Elizabeth Ribic, on Congressional Research Service on a consideration of a vetoed Bill. She said that it is a matter of high privilege and indeed great importance. You will notice in many jurisdictions, it is exercised very sparingly for the reason that the executive should not get into the realm of legislation which is left for the legislature.

Giving examples, in Australia where there is the 1901 Federal Commonwealth Constitution, it enumerates the powers of parliament in the same manner that is enumerated for the congress in the US. Section 61 to 64 of that constitution establishes the executive government and parliament. The executive power is given to the monarch, that is the Queen, but it is exercised through the Governor General.

The Governor General is given a lot of powers over parliament that is even given in the constitution an absolute veto on a Bill but out of practice, that one is never exercised because of the recognition of the role of parliament in legislation and members you will note that since 1901 only 14 Bills have been returned to parliament of Australia and since 1948 only three have been done. You can see the small numbers. You can find the citation. I have also given it where that material is written.

In India, there is no veto which is allowed on a money Bill, remember we are dealing with money Bill, you will find that in Article 111 of the Indian constitution. Coming closer home in South Africa, and I have given the citation, the 1996 constitution which greatly informs our constitution, allows a veto only on constitutional issues and in that case the matter goes to the constitutional courts and once the constitutional courts makes a decision as to whether the matter is constitutional or not, then the President is bound by that decision.

In the United Kingdom, Hon. Members, just like in India, the parliamentary act of 1911 and 1949 restricts the power to veto a Bill only to Bills that are not money Bills.

Coming home now, in the communication of the Speaker of the Senate which I have referred to, pages 35 to 45, several Hon. Senators asked the Speaker to declare the constitutional position of the extent of President's reservation on Bills, the concern being that they felt that the President was legislating through the backdoor, in other words taking the role of legislation. So, you can see the concern is not just out there but it is also here.

On the letter that I received this morning from the Governor, as I indicated, Hon. Members, on the basis of the extensive considered view which I have enumerated, I am unable to agree with the advisory opinion given to the Governor by the Speaker of the National Assembly. I have no problem, however, Hon. Members, you will look at that advisory, I have no problem with the narratives in paragraphs one to 11 of the advisory because it just reinstates what the law is.

However, unfortunately, the advice which is on the last paragraph of that communication, in my respectful and considered view, is neither anchored in the narrative which I agree with, or the constitution, or the laws or the practices and procedure applicable to legislation in county assemblies. Even in the national parliament and in other jurisdictions.

Hon. Members, what then is the way forward? I make the following observations;

1. The law making process is a constitutional, statutory and political process and a solution to the current, impasse on the Bill must apply all those three elements.
2. The Bill at hand, being a money Bill and hence a matter of great importance to the county and the Governor's memorandum of veto on the Bill having raised issues which have been disputed by a section of the House membership, there is need to forge a consensus between the Assembly, and the executive in search of a way out of the deadlock to avoid a situation where the county grinds to a halt.

(Applause)

The issues raised in the memorandum and which are disputed by a sizeable number of the members of the Assembly only for quick consensus as follows:-

- The matter of the one percent variations *vis-a-vis* a clear reading of the provisions of regulation 37(1) of the Public Finance Management (County Governments) Regulations 2015 and Section 131 of the Public Finance Management Act. You must read that law because you cannot be guided by anything else but the law.
- The matter of listing projects in the supplementary budget *vis-a-vis* the clear provision of regulation 12(1) of the Second Schedule to the Public Finance Management Act 2012 on the implementation of programme budgeting in the county governments starting financial year 2014-2015 and then be guided by the law. Nothing else will guide you
- The matter of the pending bills for the Governor's office *vis-a-vis* the applicable ceilings set by the Commission on Revenue Allocation.
- Any other matter, upon which both assembly and the executive may, by a consensus agree on, with regard to the Bill and which can be included in the Bill as an amendment which is not totally new and not outside the scope of what the Assembly had passed and submitted to the Governor for assent.

Hon. Members, there is a non-urgent need for the Assembly and the executive to explore the following; building consensus on the Bill within the law and the budget-making process. The consensus should be geared towards ensuring that the concerns of the Governor in the memorandum are addressed within the law and the Bill be settled either way by the required vote.

Reintroducing the Bill in the assembly for a fresh voting; this can be achieved through Standing Order number 46 which provides that:-

1. No motion may be moved which is the same in substance as any question which has been resolved either in the affirmative or in the negative during the preceding six months in the same session.
2. Despite the above, a motion to rescind the decision on such a question may be moved with the permission of the Speaker and a motion to rescind the decision on a question on a special motion shall not be allowed.

Hon. Members, please note that a special motion is defined under, Standing Order 43(2) as a motion which seeks a resolution of the house to approve an appointment or re-appointment in accordance with Part XI (Approval of public appointments) or the resolution of which requires a threshold of 75 percent of members of the Assembly of seeking the removal of the Speaker of the Assembly and so any motion in relation to this Bill is not a special motion or purposes of rescinding a decision.

Hon. Members, I have referred to clear cases above, to clarify the Bill in issue was not passed the Assembly, that currently there is no Supplementary Appropriation Bill 2018 which the Assembly can re-submit to the Governor for assent and there is an urgent need for both the Assembly and the executive to chart a way forward to address the veto on the Bill.

Simply put, there is need to restart the voting process on the Bill to resolve the issue of the Governor's memorandum since the two thirds vote was not garnered to override it and at the same time the Bill cannot be regarded as having passed more so when the simple majority vote required pass it, with the concerns of Governor was not garnered.

Hon. Members, as I near the end of my communication, Elizabeth Ribic and I have referred to her again, on the Congressional Research Service on veto override procedure in the House and senate cited in the foregoing provides more guidance on the way forward in this matter and she says "a motion to reconsider the vote on the question of overriding a veto is in order only if, the senate fails to override the veto." In this case the assembly failed to override the veto.

In other words if the two-thirds of the Senators agree to override the veto, then a motion to reconsider the vote is not in order. Here you did not garner the two-thirds to override the veto.

Hon. Members, you will find more light shed on the way forward on this Bill from the views of the Hon. Speaker of the Senate on page 3,542 and 3543 of the Senate Debate of 1st October, 2015, which I have referred to he says the following:-

1. The legislative process comes to an end when there is an agreement between the legislature and the executive and having found none, this may provide the occasion for further consultations between the legislature and the executive on the President's reservations. Such consultations may result in a re-submission of the motion at an appropriate time in accordance with the Standing Orders.
2. It is also possible that the situation could mark the end of life of the Bill as published and instead result in the introduction of a new Bill which could either exclude the contested provisions or include the provisions in a negotiated format.

3. The failure to accept or reject the President's reservation may also be an indicator the parliament does not intend to enact a new legislation on the matter covered and that it would rather retain the existing legislative framework.

The legislative process would therefore come to an end. Hon. Members, this last point may raise the question, does the county government wish to continue running on the existing Appropriation Act for financial year 2017/2018? And is it viable to do so? It may not be viable hence the need for a Supplementary Act.

Hon. Members, in conclusion, in the totality of what I have stated it is of great importance that every member of this House and the executive takes it upon themselves to forthwith genuinely work towards settling the issue of the present Bill so that the people of Machakos County can be given the services that they so much require.

It has come to my notice that both sides of the House leadership have been holding negotiations over the stalemate of the Bill and that concessions have been arrived at variously the last one being on 24th of May, 2018 in a meeting of the House leadership on the sidelines of the third annual Legislative Summit in Mombasa.

It is however, only this morning that I got a formal communication through the letter that I received from the Governor and which I have referred to and which talks of the possibility of negotiations but also with the rider of an advisory from the Speaker of the National Assembly. To me that is an off white smoke coming from the room but I am hoping that after this, I will see a clear white smoke coming from the room.

Hon. Members, having stated the foregoing, I wind up by restating that I must and always will offer guidance to the House with all due fidelity to the constitution and the laws governing the operations of the Assembly and that similarly each one of you must equally act in full obedience to your oath of office and not in pursuit of any other interest.

Hon. Members, you must respond to the issue of this Bill but not to react to it. Consequently, I am directing that the matter of the Machakos County Budget and Appropriation Bill 2018 be placed on the Order Paper of the sitting of the Assembly on 28th May, 2018 that is today, at 2.30 p.m. for giving notices of and moving the necessary motions or taking such other actions on the bill in the manner that I have guided in this communication. I thank you, Hon. Members.

(Applause)

I notice that it is lunch time, Hon. Members and Mr. Clerk; we may need to take a brief adjournment, or are you strong enough to continue?

Hon. Members: No.

Hon. Speaker: You are not. I also appreciate that you need also to digest this communication, it is being photocopied and their annexures are also being photocopied and so that you can look at it and then we will carry on from there.

ADJOURNMENT

Hon. Speaker: The House adjourns up to 28th May, 2018 at 3 p.m. Thank you, Hon. Members.

The House rose at 2.01 p.m.