

REPUBLIC OF KENYA
MACHAKOS COUNTY ASSEMBLY

OFFICIAL REPORT

Tuesday, 14th May, 2019

The House met at 10.23 a.m.

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

PRAYERS

Hon. Speaker: Serjeant-at-Arms, please ring the bell. I am told there is no quorum.

(Quorum Bell was rung)

So, I am told we are doing a manual bell because we have a temporary disconnection of power because there are some repairs that are going on. I just hope that the Members will hear the bell wherever they are.

(Quorum Bell was rung)

Serjeant-at-Arms, I am told we have quorum so the bell can be stopped. Good morning Hon. Members. We start our sitting today and I will call the clerk to proceed.

COMMUNICATIONS FROM THE CHAIR
HOUSE ATTENDANCE

Hon. Speaker: Hon. Members, on this Order, I have two communications; the first communication is to ask Members to pay the deserved attention to the business of the House. I am noting that there are very many empty seats and it is not right that the public who elected this Assembly, if they were to see what is happening in the Assembly that even at long past, actually 10 minutes to 11.00 a.m. we are still ringing the bell to look for quorum. It is not right. The only worry is that I am talking to those who are here. I should be talking to those who are not here but they are not here.

So, I want to send Majority Leader on your Majority side of the House, impress upon the membership to be in the Assembly every other time unless for very good reason one is prevented from coming. Unfortunately the Minority Leader is not even here but I can see the Deputy Whip for the Minority, Hon. Ikusya. Pass that message as well to the Minority side of this House because very soon, the office of the Speaker will be forced to take action against members who seem to be perpetually missing attendance of this plenary. Please take note and inform your colleagues accordingly.

BUNGE MASHINANI AT NDITHINI

Number two, I am communicating on the Bunge Mashinani. Hon. Members, you are aware that tomorrow, the 15th day of May, 2019, Wednesday, this House will have its sittings in Ndithini Ward, Masinga Sub-County at Kiatineni Grounds. Hon. Members, this follows the successful inauguration of the Bunge Mashinani project which you had in Kithimani on 17th October 2018 and there is also the desire of the Assembly to continue reaching the public in the spirit of devolution and taking the services of the Assembly closest to the people.

You know well that Ndithini Ward is one of the furthest areas of this County. As a matter of fact, in the Constitution it can be described as a marginalized area; it is an area of special interest and so I must thank the Assembly for finding it fit to go and reach that section of the County which in the Constitution is deserving of special attention.

Hon. Members, the sitting tomorrow will give the public an opportunity to see the Assembly articulating their needs and of course also the needs of the whole County and then this is in the discharge of your duty as stated in Article 185 of the Constitution and Section 8(1) of the County Governments Act.

So, I urge all of you Members and now those whom we addressed earlier who were not here, I urge all of you in the Assembly to be present at Kiatineni market tomorrow by 10.00 a.m. because the gazette notice that gazetted the sitting clearly indicates that you seat at 10.00 a.m. and you should demonstrate to the public that you are people who honor time because you want to give them the services that they deserve and so I just want to give you an idea of the distance.

I know many of you know; they may have already talked to the Hon. Kituku. I am told that Kiatineni Market is about 150 km from this Assembly but some of the roads are not in good state of repair so you are advised to use the Thika-Nyeri Highway and then you branch off at Kitini-Kayole-Manyanja junction and then the journey will take you about three to four hours depending on the speed you are driving from here. So, it is always wise Members, even if you are told three to four hours, have it in your mind it may be five hours because you do not know what you will encounter on the road.

So, it is advisable that each Member leaves wherever they are at least before 6:00 a.m. so that you can be there by 9 o'clock. Hon. Constance Mbula, yes you can do it, yes you can and yes you will and you must. So be at that premise, leave your tea in the homes, the Assembly will serve you some little tea on the ground by 9 o'clock so that you can also have time to interact with the public on the ground as you prepare for 10.00 a.m. So, wake up early and be there on time.

What I also want to communicate is that, the Executive Arm of the Government, in conjunction with the Assembly, has tried to repair bits and parts of the roads which were very bad and so we just hope that at least it will be manageable. So, please keep time and be there on the ground. Further communication will be done as you go on. Thank you, Hon. Members. Mr. Clerk, proceed.

PAPERS LAID

Hon. Speaker: Hon. Members, under this order we have two businesses as listed on the appendix. The first one is by the Hon. Stephen Mwanthi. All these reports Hon. Members have been uploaded on your iPads. Proceed, Hon. Mwanthi.

IMPLEMENTATION OF THE MACHAKOS COUNTY FINANCE ACT, 2019

Hon. Mwanthi: Thank you, Madam Speaker. Hon. Speaker, I beg to lay the following paper on the table of the House today Tuesday, the 14th day of May, 2019; the Report of Finance and Revenue Collection Committee on the Implementation of the Machakos County Finance Act, 2019. Thank you, Madam Speaker.

Hon. Speaker: Hon. Stephen Mwanthi, the next business on the same order is by Hon. Patrick Kituku.

CONSIDERATION OF BURSARY FUND REGULATIONS, 2019

Hon. Kituku: Thank you, Madam Speaker. Hon. Speaker, I beg to lay the following paper on the table of the House today Tuesday, the 14th day of May, 2019; the Joint Committee Report of Education and Delegated County Legislation on Consideration of the Public Finance Management (Machakos County Bursary Fund) Regulations, 2019. Thank you.

Hon. Speaker: Thank you, Hon. Kituku. Mr. Clerk, proceed.

NOTICES OF MOTIONS

Hon. Speaker: Hon. Members, under this order we have two businesses and the first one is by Hon. Stephen Mwanthi.

IMPLEMENTATION OF THE MACHAKOS COUNTY FINANCE ACT, 2019

Hon. Mwanthi: Thank you, Madam Speaker.

Hon. Speaker, that aware that Section 132(2) of the Public Finance Management Act provides that the County Executive Committee Member for Finance shall, with the approval of the County Executive Committee, submit to the County Assembly, Finance Bill setting out revenue raising measures taken to finance the County Budget for that year;

Further aware that section 133 of the same Act provides that the County Assembly shall approve the Finance Bill not later than ninety days after approving the Appropriation Act;

Acknowledging that the Assembly approved the Machakos County Finance Bill, 2018 on 17th December, 2018 and aware that the Bill was assented to on 14th January, 2019;

Aware that several complaints have been received in the Assembly concerning the Act;

Further aware that the Finance and Revenue Collection Committee has investigated on the complaints and aware that the Committee has prepared a report;

Hon. Speaker, I beg to give notice of the motion that this Hon. House discusses and approves the report of Finance and Revenue Collection Committee on Implementation of the Machakos County Finance Act, 2019.

Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Stephen Mwanthi. The next business under the same order is by the Hon. Patrick Kituku.

CONSIDERATION OF BURSARY FUND REGULATIONS, 2019

Hon. Kituku: Thank you, Madam Speaker.

Madam Speaker, that aware that the Constitution of Kenya, 2010, Article 43(1)(f) provides that every person has the right to education and aware that Section 116(1) of the Public Finance Management Act 2012 provides that the County Executive Committee Member for Finance may establish other Public Funds with the approval of the County Executive Committee and the County Assembly;

Further, aware that the County Assembly of Machakos enacted the Machakos County (Bursary Fund) Regulations, 2014 whereby the elected member of the County Assembly from the ward had a role to play in section 11(1) which is contrary to section 9(2) of the County Government Act, 2012;

Noting that the Regulations were operational since enactment until 25th January 2018 when the Executive Committee Member for Finance and Economic Planning received a letter from the Office of the Controller of Budget directing the regulations to be reviewed in order to limit the role of Members of the County Assembly to Oversight, Representation and Legislation;

Aware that Article 228(5) of the Constitution of Kenya provides that the Controller of Budget shall not approve any withdrawals from public funds unless satisfied that the withdrawal is authorized by law;

I wish to give notice of motion that this Hon. House discusses and approves the Joint Committee Report on Education and Delegated County Legislation on Consideration of the Public Finance Management (Machakos County Bursary Fund) Regulations, 2019.

Thank you.

Hon. Speaker: Thank you, Hon. Kituku. Mr. Clerk, proceed.

MOTIONS

STATUS OF IKALAASA DAM

Hon. Speaker: Hon. Members, under this Order, we have one business by Hon. Robert Kisini. Hon. Members, if you remember, this matter was before you on the 8th day of May, 2019 and you stopped at a point where the question had been proposed. So, what that means is, it is time to debate the Motion. The question had been proposed.

That is the information that I have. I see the Members looking at me like they have forgotten what it was about. So, the Members want to be reminded. Hon. Kisini please, do the necessary so that Members can comfortably debate. Point of Order from Hon. Majority Leader.

Hon. Muendo: Thank you, Hon. Speaker. The report was read partly so maybe it could be read completely. It is just the recommendations that were done that day because we were to go somewhere. Therefore, I request the Chair maybe, to allow the Chairman to read the report and then we can participate. Thank you, Madam Speaker.

Hon. Speaker: So, what I am hearing from the Majority Leader is that the report had not been completed?

Hon. Muendo: Yes.

Hon. Speaker: So, the Clerk at the table gave me information a little different from that but it is for the convenience of the House. So, can we have the report read from the beginning? Hon. Matei you are going to hold brief?

Hon. (Ms.) Ndeti: Yes.

Hon. Speaker: Please go ahead.

(Consultations)

Under what Order are there concerns?

(Laughter)

Hon. Ndawa.

Hon. Ndawa: I am concerned about the report, Madam Chair. I am requesting if we can have it as she reads, we can go through. We do not have that report with us.

Hon. Speaker: Is that so, Table Clerk?

Hon. Ndawa: We do not have.

Hon. (Ms.) Ndeti: Chair, with your permission maybe I can just say that since this report was read, it was in the Order Paper and you could read it from the tablet but I do not know whether it is in the tablets.

Hon. Speaker: Usually after the sitting, they are pulled.

Hon. (Ms.) Ndeti: Yes. So, maybe I can just read the whole report and they listen.

Hon. Speaker: I want to get the consensus of the Members. Do you want the report to be able to read. Point of Information by Hon. Majority Leader.

Hon. Muendo: Thank you, Hon. Speaker. As a procedure---

Hon. Speaker: Hon. Matee, just a moment.

Hon. Muendo: As a procedure Hon. Speaker, the Chairman cannot read the report when we do not have a report on our table or in our tablets. Actually, most of the time we note so as form the debate. Thank you, Madam Speaker.

Hon. Speaker: Hon. Nziva.

Hon. (Ms.) Nziva: Thank you, Madam Speaker, I think the report is in our iPads.

Hon. Speaker: The report is still there?

Hon. (Ms.) Nziva: Yes.

Hon. Speaker: Find out, check if it is there.

Hon. Members: Yes.

Hon. Speaker: It is there?

Hon. Members: Yes.

Hon. Speaker: Alright, then we can proceed and read it.

Hon. (Ms.) Ndeti: Thank you, Madam Speaker. I start reading the report get your tabs open.

Hon. Speaker, the Constitution of Kenya 2010 Article 43(1)(d) stipulates that every person has the right to clean and safe water in adequate quantities. Further, Madam Speaker the Fourth Schedule of the Constitution of Kenya mandates both the Counties and the National Government with matters of water.

The National Government is responsible for water protection, securing sufficient residual water, hydraulic engineering and the safety of dams whereas the County Governments are bestowed with the responsibility of storm water management systems in built- up areas and water and sanitation services.

Hon. Speaker, in the month of March, 2019, a Statement was sought by Hon. Annastaciah Mutuku on what measures the County Government is putting in place to protect contractors working on the Kibauni/Ikalaasa dam who have been threatened by private individuals and also protecting over 3000 metric tons of sand being desilted from the dam.

The Statement was directed to the committee on Environment, Lands, Energy and Natural Resources for investigation and tabling of a report. The committee managed to have a site visit at Kibauni in the month of March, 2019 whereby they had an opportunity to meet some residents of Mumbuni dam/Ikalaasa location in Kibauni Ward and the surrounding. The committee also had an opportunity to get some information from the Chief Officer in the department of Water on the matter at hand and later they retreated for report writing.

Madam Speaker, the Committee on Environment, Lands, Energy and Natural resources is a Sectorial Committee established under Standing Order no. 190 and the Second Schedule with specific mandate to all matters related to the implementation of specific national government policies on natural resources and environmental conservation, including soil and water

conservation and forestry and control of air pollution, noise pollution, other public nuisances and outdoor advertising; land survey and mapping; boundaries and fencing; electricity and gas reticulation; energy regulation; water management systems in built up areas and water sanitation services.

Madam Speaker, the membership of the aforementioned committee is as follows:-

| | | |
|---------------------------|---|---------------|
| 1. Hon. Robert Kisini | - | Chairperson |
| 2. Hon. Christine Koki | - | V/Chairperson |
| 3. Hon. Alex Kamitu | - | Member |
| 4. Hon. Brian Kisila | “ | |
| 5. Hon. Cosmas Kieti Muia | “ | |
| 6. Hon. Jeremiah Munguti | “ | |
| 7. Hon. George King’ori | “ | |
| 8. Hon. Hellen Ndeti | “ | |
| 9. Hon. Jacqueline Nziva | “ | |
| 10. Hon. Jane Nyawira | “ | |
| 11. Hon. Joseph Musau | “ | |
| 12. Hon. Mark Muendo | “ | |
| 13. Hon. Michael Mutiso | “ | |

Legal Framework In Relation To Sand Harvesting and Security

Constitution of Kenya

1. The preamble of the Constitution provides that the people of Kenya are committed to nurturing and protecting the well-being of the individual, the family, communities and the nation. National and County Governments though distinct and inter-dependent must conduct their mutual relation on the basis of consultation and cooperation.
2. Article 25(a) of the Constitution provides that freedom from torture and cruel, inhuman or degrading treatment or punishment is one of the fundamental freedoms that cannot be derogated. Further, every person has the right to freedom and security of the person, which includes the right not to be subjected to torture in any manner, any form of violence from either public or private sources or treated or punished in a cruel, inhuman or degrading manner based on Article 29(c),(d) and (f) of the Constitution.
3. Article 43(1)(d) of the Constitution entitles everyone to a clean and safe water in adequate quantities. Article 69(2) of the Constitution imposes a duty on every person to cooperate with state organs and others persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources.
4. Article 174(e) of the Constitution provides that one of the objects of devolution is to foster national unity by recognising diversity.
5. Section 7 of part 1 of the fourth schedule provides that police services is a function of the national government. Further Section 22 of Part 1(c) of the Fourth Schedule provides that protection of the environment and natural resources with a view to establishing a durable and sustainable system of development including water protection,

securing residual water and safety of dams is a function of the national government. Section 11 of Part 2 of the Fourth Schedule provides that county public works and services including water and sanitation services is a function of the County Governments.

Environmental Management and Co-ordination Act No. 8 of 1999

Section 29(1) of the Environmental Management and Co-ordination Act establishes the County Environment Committee for each county which shall be responsible for the proper management of the environment within the county for which it is provided and development of a county strategic environmental action plan every five years according to the provisions of section 30(a) and (b) of the Act.

National Police Service Act, No. 11A of 2011

1. Section 41(1) of the National Police Service Act establishes a County Policing Authority in respect of each county whose functions is to develop proposal on priorities, for police performance in the County, monitor trends and patterns of crime in the county including those with a specific impact on women and children, provide a platform through which the public participates on the all aspects relating to county policing according to Section 41(9)(a)(b) and (g) of the Act. Further, Section 97(1) of the Act provides that the County Policing Authority shall establish structures to implement community policing in all parts of the County so far as it is appropriate
2. Section 96(1) (f) of the National Police Service Act provides that the National Police Service must liaise with Communities through community policing initiatives with a view to (f) promoting policing problem identification and policing problem-solving by the Service and the community.

Machakos County Sand Harvesting Act, 2014

The provisions of the Machakos County Sand Harvesting Act seeks to regulate sand harvesting and related activities and ensure sustainable exploitation and utilization of sand, provide for equitable sharing of accruing benefits. Further one of the objects and purpose of the Act is to enable communities to participate in the management of sand harvesting based on Section 3(f) of the Act.

Meeting with Residents of Mumbuni/Ikalaasa at Kibauni Ward

Madam Speaker, following a statement sought by Hon. Anastacia Mutuku on the status of Mumbuni/Ikalaasa Dam Construction, Members of the Environment Committee visited the Ward on 22nd March, 2019 and these were their findings:

1. There was public participation before the project started which involved the public, the engineer, Minister, and officials from the Executive. The committee got to know that there was a committee in place which was put in place by the

public with full representation from nine sub-locations in Kibauni Ward to monitor the project. The project was launched by His Excellency the Governor.

2. Land was provided for by the public free of charge and an agreement on the same was signed.
3. Members found that the dam has been constructed but the sand was still at the scene.
4. A few members of the public were interviewed by the Committee and found out that there was conflict by some interested parties who were interested on the sand; their identity did not come out clearly.
5. The project was fully supported by the residents since after completion of the same there shall be great economic benefits.

Report from the Chief Officer, Department of Water

Hon. Speaker, the Committee also had an opportunity to hear from the Chief Officer in the Department of Water and the following was highlighted.

1. That there has not been any serious challenges faced by the contractor that would hinder the contractor from completing the project, and any issues arising from the community have been amicably dealt with. This has been achieved with the help of an existing community committee.
2. The sand in the reservoir is an economic resource, which has economic value and as such belongs to the community. Through a variation order request dated 19th December, 2018, and moreover, from a design perspective, the sand was found to lie within the dead storage reserve, and thus was deemed unnecessary to excavate it. Instead, the resources for excavating the sand were re-routed to excavating other soil materials and this led to an increase of the storage volume from the previous approximated 60,000m³ of storage to over 120,000m³ of storage. It is worth noting that on account of this change, there was an over-excavation which has been for the good of the community.
3. Currently, the contractor is still on site and working to complete the project in the stipulated time.

Project Outcome after Completion

Madam Speaker, it is expected that potential positive impacts shall be realized i.e.

- Growth of secondary businesses i.e. hotels in Mumbuni at Kibauni Ward
- Improved water supply, sanitation and Health within project area
- Improved well-being of women and children
- Enhanced growth of business in neighboring towns
- Improved infrastructure i.e. roads, electricity etc.

Committee Observations

Madam Speaker, the main objective of the project is to improve reliability, accessibility of enough quantity of water for domestic and commercial use for Kibauni Ward residents and its environs and these are the key observations made by the committee.

1. There was a firm by the name Dannex Investments & Engineering Works Ltd which was given the contract to construct Mumbuni/Ikalaasa dam in Kibauni Ward.
2. The committee was not given or shown any evidence of sand selling around the project area.
3. The contractor is in his final stages to complete the contract having done the following:-
 - Construction of a makeshift structure for the workers
 - General clearance of open bushes, thickets and trees
 - Striping of top soil and disposal of the same as directed by the site engineer
 - General excavation for disposal (for reservoir) for material other than top soil
 - General excavation to remove silt/sand along the stream channel and around the dam wall
 - General filling and compaction of the silt trap with suitable material
 - Cut spillway channel to the right shape, slope and size
 - There are other activities as stipulated in the BQ (See copy of the Bill of Quantities)
4. The roads are not in good condition thus denying many people access especially during rainy season.
5. The dam has very big capacities of approx. 120,000cubic meters which is a big amount of water and if well utilized can positively change lives of residents.
6. Mumbuni/Ikalaasa and its environs do not get access to clean adequate and affordable water for their consumption as envisaged under water act 2016 and the constitution of Kenya 2010.
7. The residents unanimously supported the upcoming project stating that their livelihood and economy would improve drastically.
8. That the department of water is aware of the Mumbuni/Ikalaasa dam and they are following up to ensure that the project is brought to completion in the right time for the benefit of Mumbuni residents and environs.

Committee Recommendations

Madam Speaker, the committee recommends as follows:-

1. That Mumbuni dam is a huge water project which can result to great loss of economy if left unattended and therefore the County Government needs to ensure that the projects is completed to ensure smooth supply of water to Mumbuni/Ikalaasa residents and the Environs.
2. The county government should through collaboration with County Policing Authority ensure there is enough security for the completion of the construction of Mumbuni Dam.
3. The County Government through the department of Roads needs to rehabilitate the roads leading to the project for easy accessibility.
4. The County executive needs to plan in advance on the projects to be undertaken during a specific financial year and contractors be issued with timelines to ensure that the projects serve the purpose they are intended.
5. The County Executive need to implement on the Sand Act and there is also need to come up with provision on how to handle excavated sand during construction of dams to avoid unwarranted loss and also accrue benefits to the community. This is because there shall be construction of dams in different wards in the future and such conflicts need to be curbed in advance.

6. Sand harvesting or any related activities of distilled sand from the Dam should be undertaken in compliance with the Machakos County Sand Harvesting Act, 2014.
7. The County Executive needs to ensure that each ward has one Mega dam to curb the problem of water shortage during dry seasons and encourage irrigation to the public.
8. Pursuant to the Fourth Schedule of the Constitution of Kenya on the functions of National and County Governments, storm water management is a function of County Government. In line with this, the County Government of Machakos should ensure implementation of all ongoing and stalled water projects like Mumbuni dam during the current financial year. This will reduce shortage of water and also enable the community get clean and adequate water as stipulated in the Constitution.

Conclusion and Acknowledgement

Hon Speaker, it is important that every Kenyan gets access to clean and safe water in adequate quantities. Further, Hon Speaker, dams play a major role of storing rain water instead of going to waste which is a great source of economic development only when it is well utilized and Mumbuni dam is not in isolation.

Madam Speaker, the Environment, Lands, Energy and Natural Resources Committee is grateful to the office of the Speaker and that of the Clerk to the County Assembly for the support accorded during the committee sittings and visitations. I wish to express my appreciation to the Honorable Members of the Committee who sacrificed their time to participate in the activities of the Committee and in preparation of this report.

Hon. Speaker, it is therefore my privilege, on behalf of the Environment, Lands, Energy and Natural Resources Committee to table this report and recommend it to this Honorable House for consideration and adoption. Thank you, Hon. Speaker.

Hon. Speaker: Thank you Hon Matei, there is something...Hon members I'm trying to clarify something before---

(Consultations)

---alright so Hon. members I will propose the question a second time because we have read the report just now so that members can remember what the report is all about.

(Question proposed)

Hon. Members, those who are whispering please do it softly. Hon Anastaciah, this should be of great interest to you, alright so Hon members the motion and the report is open for debate. Hon. Stephen Mwanthi.

Hon. Mwanthi: Thank you Madam Speaker, I have stood maybe to seek some clarification on the same because at some point you find that this report is talking about completion of a dam and the contractor is on the ground and working. At some point you will find some story of sand harvesting that we don't know whether it is happening or not, so it is good somebody elaborates. The findings are good but now what exactly did the member want to know? If it's about the dam, I think they have said the contractor is doing whatever he is

supposed to do and on time. So there is something to me maybe that I can get some clarification on exactly what was the motive of the same statement. Thank you, Madam Speaker.

Hon. Speaker: I can see Hon. Kisini who is the chair of the committee putting up his hand. Maybe he is the better person or better placed to clarify what Hon. Steve Mwanthi is asking. But for me I have no problem because the report speaks for itself. Everything is in the four corners of the report. But Hon. Kisini may have the advantage of more information he can share.

Hon. Kisini: Thank you Madam Speaker for giving me this opportunity to respond to the question of that member. To clarify further, the issue here at hand is that yes, the project is ongoing, it's almost completed. While still getting on, the contractor was threatened because of that issue of sand. While he was continuing with his work, there arose some sand inside, that excavation and then there were complaints that, that sand wants to be sold without the benefit of those people but the report has said that there was no evidence so when the contractor was threatened somehow, he stopped doing the job because of that threat and that is why the Hon.

Member came to seek the protection of the House so that the work can continue and that is why in the recommendation you saw that we recommended that the County Government provides the security. So the issue here is the contractor was threatened to stop because there was that issue of sand selling which was not witnessed by the committee. Thank you, Madam Speaker.

Hon. Speaker: Hon. Members, I advise that you discuss the report as tabled because if there was any information to the contrary, then it should have gone to the committee. If the House debates on this matter and is still not satisfied, then whichever member is affected will look at it in a different manner having in mind the rule on bringing back a motion after it is debated in this House. We proceed with the debate on the motion; you contribute on the debate on the motion, Hon. Members. Hon. Ndawa.

Hon. Ndawa: Thank you, Madam Speaker. I will start by appreciating the committee for the good work that they have come up with. Madam Speaker, I want to agree with the Hon. Member for Kibauni. If you see a member bringing a motion into this House, it means there is a gap somewhere which needs to be either sealed or to be solved.

According to the report Madam Speaker, the only item which is bringing the whole issue is sand harvesting. The essence of the work was to have the soil in the dam removed, that is what we call desilting, but it is evident according to the report the soil which was in the dam, there is what we call muddy and there is what we call river sand and river sand is a precious resource in our county.

So, according to me, Madam Speaker, the issue which is not clear even to the members of the public who were trying to stop the contractor is, 'this sand which is going to be removed from this dam is ours, why is it that the contractor or whoever is colluding with the contractor is trying to remove the soil and take it elsewhere?'

Madam Speaker, the Kenyan policy is very clear; it says feed the nation then export, what does that mean? It means where resources or where crops are grown, we cannot export when we are not satisfied. So Madam Speaker according to me, the residents of Kibauni had a genuine reason to argue that your work as a contractor is to remove the soil but not to fetch it and take it

elsewhere so if the contractor was wise enough, he would have accepted to go by the wish of the locals that you remove the mud, you can put it on this side, the river sand put it on that side depending on the locals of that area, they will sit down and agree how to use the sand in building their own ward.

Madam Speaker, if a contractor is given work, there is what we call consideration or the payment that they are going to be given for the work they do and I believe they are not supposed to be paid twice. There is money for the scope of work and they are now trying to carry the sand; that is double payment. So Madam Speaker, I want to agree with the residents of Kibauni that the sand is theirs. The only thing which is not captured in---

Hon. Speaker: Point of Information by Hon. Annastaciah.

Hon. (Ms.) Mutuku: Thank you, Hon. Speaker. I want to inform the member that there was no deal to sell the sand or to scoop to bring somewhere, but the issue was under political people who have ambitions for 2022 criticizing the dam and inciting the community about the sand but there was no one who was planning to excavate the sand and sell. Thank you Hon. Speaker.

Hon. Speaker: In ordinary circumstances, I would rule both of you out of order. Let me tell you why. Hon. Ndawa, you mentioned that the contractor would have been paid twice, what you call consideration and then carrying away the sand, but the report does not have any information to the effect that the contractor wanted to carry away the sand, so that is why you are out of order. And for Hon. Annastaciah, she is also out of order because the report has not talked of politics in 2022 and so on so both of you are out of order. Please stick to the issues within the four corners of the report.

(Laughter)

Hon. Ndawa is still to finalize. Please proceed and finalize.

Hon. Ndawa: Thank you Madam Speaker for the good advice and guidance and also the information received from the mover of the motion that we are debating.

Hon. Speaker: I have ruled him out of order so there is no information.

Hon. Ndawa: Okay, thank you, Madam Speaker. The other thing that I will say, and this is going to be the last thing, the report talks about sand harvesting, and when we talk about sand harvesting Madam Speaker, I think this is contravening or its contradicting what we passed here on the issue of sand harvesting. The motion was tabled in this House, we all deliberated and we banned sand harvesting.

So when the report talks about sand harvesting, we are not clear because sand harvesting to my understanding is either removing the sand from the streams or from wherever it is. So it is not clear, when the contractor is scooping and maybe separating both products the one which is useful and the other one which is not useful, do we call that also sand harvesting? That is a point that we need to be very clear. Thank you, Madam Speaker.

Hon. Speaker: Hon. Ikusya.

Hon. Kaloki: I stand to support this report. I think it is a job well done by the committee. It can speak for itself. What I can pick clearly from this report is the issue of threats to the contractor which the committee has said that there was no much evidence. The issue of sand harvesting to me as per the report is mere suspicion.

What I want to say as a Member of this House is, every one of us has a duty, whenever we have projects in our wards, to conduct public participation, sensitize the members of the public on how to own the project, how to protect the contractors; there have been a number of issues and if it is not said and executed, we are going to have issues where projects start, there is interference from the members of the public and the projects end up not being completed.

This is very normal; sometimes you find the members of public feel their community members have not been recruited as casual laborers. When it comes to desilting a dam, there is no way you can stop the contractor from removing any material inside the dam whether it is mud or sand and that does not amount to sand harvesting. It is only that the community requires some sensitization and that is why before the project starts, there has to be a serious public participation; tell the community the intention of the project or how the project will be conducted, when it will start and end and what it entails.

For example, if it is a road, tell the community we are doing a 20 kilometer road, murrum or grading so that they can understand what is being done. They might think you are doing a tarmac when the contractor has been sent to do grading and murraming. The issue of protection should have been referred to the Executive who were the instructing authority to the contractor to conduct a *baraza* to talk to the community and ensure that there is protection---

Hon. Speaker: Point of information from Hon. Koki. Hon. Ikusya, resume your seat briefly.

Hon. (Ms.) C. Koki: Thank you, Madam Speaker. I would like to inform the Hon. Member that according to the report that we have with us here, it is evident that a public participation was conducted before the contractor was given the job.

Hon. Speaker: They say there is a committee that was formed on the construction from the report; that is what I am reading.

Hon. (Ms.) C. Koki: Yes.

Hon. Speaker: I think she is emphasizing on a point and all of you need---

Hon. (Ms.) C. Koki: ---and also Madam Speaker, we were informed by the public when we went for site visit that they conducted public participation and that is also the information the Chief Officer has.

Hon. Speaker: Alright. Hon. Ikusya is saying public participation should be more effectively done.

Hon. Kaloki: Thank you, Madam Speaker. That is exactly what I was trying to emphasize on the importance of public participation.

Hon. Speaker: You can move to another point.

Hon. Kaloki: I think I am done, that is all what I wanted to emphasize on; public participation and key issues need to be highlighted in those meetings so that the contractors can feel protected and safe while executing their projects. Thank you, Madam Speaker.

Hon. Speaker: Thank you Hon. Member. Hon. Winfred.

Hon. (Ms.) Mutua: Thank you, Madam Speaker. I want applaud the committee for the good work they did on the report and I would echo the sentiments of Hon. Kaloki. I think the threats that were faced in that area is because there are so many youths who are jobless and when the contractor tries to bring people outside to do the job, I think it exposes the youth to a lot of problems.

I have been a contractor in Nairobi and some time I was doing work and I never involved the youth who are jobless in the area; then I was exposed to a lot of threats. So it is good when public participation is being done, we also try to give employment to our youth. Thank you, Madam Speaker.

Hon. Speaker: Thank you Hon. Winfred. Hon. Cosmus Masesi.

Hon. Masesi: Thank you, Madam Speaker. I would like to appreciate the report by the Environment Committee. I intend to be brief, the only concern which could have arisen is the contractor using the sand to do his works whereas he has been contracted to finance the materials from his own pocket or from the budget meant from the construction of the dam.

On that fact, I would like to emphasize fully on recommendation five which says there has to be a way on how to handle the excavated sand during construction of dams to avoid unwarranted loss and accrued benefits to the community. Besides it being community land, I would like to believe that if in any case we find some sand on the site, automatically that should benefit the community if it has to be disposed.

On recommendation number seven whereby the County Executive needs to ensure that each ward has one mega dam to curb the problem of water shortage during dry seasons. Otherwise I do support the report fully.

Hon. Speaker: Thank you Hon. Masesi. Hon. Johana.

Hon. Munyao: Thank you, Madam Speaker. I applaud the committee for the good work. As per the background of this report, the statement sought was to clarify on two issues: what measures the government of Machakos is putting to protect the contractor and who was under some threat and also protecting over 3000 metric tonnes of sand which was being desilted from the dam. We have seen the committee visited the area, interacted with the locals and also met with the Chief Officer of the relevant department and from the committee's observations, Madam Speaker, we are able to see that the committee was not given or shown any evidence of sand selling around the project area.

At the same time, it is evident that the contractor was in the final stages of completing the project meaning that again there is no report of any issues which may have slowed down its operations and I tend to believe that the committee did its inquiry and proved the allegations otherwise. Therefore, I tend to believe that we may not have many issues to do with the report but just to agree that it is a nice report and we are sure there are no issues and the project is almost ready to serve our people. Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Johana. Hon. Nziva.

Hon. (Ms.) Nziva: Thank you, Madam Speaker. I wish to applaud the committee where I am a Member through our chairman, Hon. Kisini. Article 43(1)(d) of the Constitution of Kenya stipulates that every person has the right to clean and safe water in adequate quantities and also, cleanliness is next to Godliness. Madam Speaker, when the report came to the attention of the committee, we went on the ground to seek information on the same and when we met the community, the report is in black and white, we did not hear anything concerning sand harvesting; the scope of work was only to desilt the dam.

So, I tend to believe that going forward, when we have such threats the Hon. Members are supposed to see to it that our projects are done immediately and on time to avoid back and forth processes of delay. Since the project is long overdue, I urge the House to support this report so that the contractor can be given time to complete the project and I believe that rains went on last month and I don't think there are any side effects done on the dam. So if the contractor can be given time to complete the project, then the people of Ikalaasa ward can benefit. Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Nziva. Hon. Anastacia, your hand was up and you are the Member of the area, so let us hear you.

Hon. (Ms.) Mutuku: Thank you Hon. Speaker. First I want to thank the chairman and his Committee for their job well done. The report is very comprehensive and I want to thank all the committees and Hon. Members who are supporting my statement and have brought the report today. I want to comment on some issues as per the report; I want to present my interests. On the issue of sand, I want to tell Hon. Members that there is a problem of storage reservoir---

Hon. Speaker: Just a moment Hon. Anastasia. Hon. Matee, I am about to call you to reply, you were the mover of the motion and you appear to be walking out.

Hon. (Ms.) Ndeti: Madam Speaker, I sent somebody to go and get my income tax return and they are asking me information which is now causing me to go mad.

Hon. Speaker: Let us first finish the business of the House. Hon. Annastacia, please proceed.

Hon. (Ms.) Mutuku: Thank you, Hon. Speaker. My point is I brought this statement before the rainy season started. Although the report has come and it's good, there is a problem of storage reservoir which according to the BoQ, the contractor was to remove that soil so that the spillway can be up but the contractor was not able to do it because of those issues. As you have

heard, there was some violence because the *bodaboda* people were paid to demonstrate because of the sand issue and propaganda that the contractor wanted to sell the sand but it was not the case.

Hon. Speaker: Point of information from Hon. Angela to Hon. Anastaciah and the House as a whole.

Hon. (Ms.) Munyasya: Madam Speaker, I would ask the Member for Kibauni to elaborate on where *bodaboda* come in because it is not in the report either.

Hon. Speaker: Hon. Annastaciah, please avoid what is not in the report because it will save time.

Hon. (Ms.) Mutuku: Thank you Hon. Angela for that guidance. I think the report is very clear that the contractor needs to come back to finish the work and if it is the issue of the Youth as one of the Members said; the youth was employed by that contractor, there was no one brought from outside ; all the employees were coming from the area. So there was no issue of youth but how the contractor can work freely without any threats. I thank the committee they have done well and what I can request is the county government to call the contractor to come back and finish because the dam is not yet complete.

Hon. (Ms.) Mutua: Point of correction.

Hon. Speaker: It is coming from Hon. Winnie?

Hon. (Ms.) Mutua: Yes. I think Hon. Anastaciah is trying to side track from what we are discussing so please, can you stick to the motion we are discussing.

Hon. Speaker: Now, Hon. Winnie you are not taking the seat of the Speaker, but it is not bad to aspire to the seat. Hon. Annastaciah please, proceed.

Hon. (Ms.) Mutuku: Thank you, Hon. Speaker. I want to call the Members to support the report so that the contractor can come back and finish the work so that my people can get enough water.

Hon. Speaker: Is the contractor not on site?

Hon. (Ms.) Mutuku: He is not on site as we are talking.

Hon. Speaker: What does the report say?

Hon. (Ms.) Mutuku: Currently he is not but I request if---

Hon. Speaker: Hon. Annastaciah, have you finished?

Hon. (Ms.) Mutuku: Not yet, protect me Hon. Speaker because I want to---

Hon. Speaker: I protect you from the Minority Leader? Actually he is the first person to protect you. Hon. Minority what do you want to inform the House?

Hon. Kamitu: I happen to be a Member of the same committee. I wanted to help my sister in regard that even when we were making the report we went to the ground and there were short rains and the contractor shortly because of the rains, otherwise the works are still on and for the purpose of information, the right evidence is that the contractor is still on and we have contacted the chief officer water and he said there was no challenge the work will be completed and that is why on the report we are saying the contractor was on his final stages to complete the work.

Hon. Speaker: Thank you, Hon. Minority Leader; it is noted. Hon. Annastaciah, please finalize your submission.

Hon. (Ms.) Mutuku: Thank you, Hon. Speaker. I stand guided. I want to thank Hon. Members and the committee of Environment for a well done job.

Hon. Speaker: Thank you very much, Hon. Anastaciah. Hon. Kiteng'u.

Hon. Kiteng'u: Thank you, Hon. Speaker. I support the motion citing the recommendations, whereby the Mumbuni dam is a huge water project which can be a great source of economy if left unattended and therefore the County government needs to ensure that the project is completed to ensure smooth supply of water to Mumbuni-Ikalaasa residents and its environs.

In Machakos, all the dams which are over ten years old have been filled up with silt and I support de-silting all the dams including this one of Kibauni but on sand harvesting, because it has been mentioned on number six, sand harvesting or any related activities of de-silted sand from the dam should be undertaken in compliance with Machakos County Sand Harvesting Act.

I would like to add a recommendation on the same. Citing the report, I can see where the problem is that the County Government sets aside a dumping site for the silt because I have seen the commotion of some members of the community not agreeing on de-silting the dam because of the interest of the sand.

Number six states that if it is about sand harvesting or de-silting, then the 2014 Act should be used and you know this House has banned sand harvesting and if we allow the sand business to continue in the same dam, then we will be going against the law which was passed in this House. Hon. Speaker that is why I am trying to add a recommendation that the County Government sets a dumping site where the contractor can dump the sand until this House approves the business of sand harvesting.

Hon. Speaker: Thank you Hon. Kiteng'u. The mover of the motion, please reply.

Hon. (Ms.) Ndeti: Thank you, Madam Speaker, thank you all Members for contributions to this motion. We appreciate your contributions and our prayers are that the County Government through the Executive avoid all these side shows and ensure that the construction of this dam is completed within the timelines it was meant. Thank you.

Hon. Speaker: Thank you, Hon. Matee.

(Question put and agreed to)

Hon. Members, you have approved the report as prepared with the discussion as reflected on the Hansard and the resolution of the Assembly as well as the Hansard should be forwarded immediately to the CEC Member for Environment Land, Energy and Natural Resources to implement the recommendations of this House and to report back to the House in 60 days as provided for under the House Standing Order 181.

Hon. Members, sometimes the comment of the Speaker comes after you have made a decision because you know the Speaker is not one to vote, but the Speaker should also guide the House. I want to applaud the committee; it has come up with what can be called a Solomonic wisdom. A decision which for the time being resolves the problem in a Solomonic wisdom way and that is the one where the committee recommended that whatever was to be desilted, let it remain and the resources be used to expand the dam.

For the time being it solves the problem because from the contributions on the floor, you can see there are other interests that are not coming out clearly. But then the House cannot bury its head in the same sand you are talking about; you must make decisions that are going to solve these problems, if possible for as long as is possible. How long is that sand going to remain buried there? Is it not a resource the community needs to benefit from?

Are we going not to have other areas where dams need de-silting and clearly only that area is available, you have to scoop that sand? Shouldn't you be talking about what to do with that sand? So what I have noted is that contributions have come that you banned sand harvesting; yes you did, but remember you have a law on sand harvesting and then you banned the sand harvesting by a resolution of the House.

You need to sit down and re-look into your law; whether it is effectively serving the purpose and review it where necessary so that then sand harvesting in the county is regulated as opposed to banning it because it is a resource that should be used by the area members; if you ban it what are we going to use to construct?

If you ban, how is the youth in the area going to benefit and bring bread on the table of the families. If you ban it, it's like saying, we have our gold but we leave it where it is. So who will finally enjoy it? Who will benefit from it? All you need to do is to look for ways of regulating sand harvesting so that it is regulated in a manner that benefits the people but at the same time protects the environment.

But the Office of the Speaker has noted that problem and there is a process that is being put in place to review that Act and provide the gaps which exist so that it can now be implemented for the benefit of the people in the county. I will ask you to grow interest in that and participate fully so that when matters of this nature come, you will not just say let the sand remain there for years to come, it should benefit this generation and the generations to come. Thank you, Hon. Members.

DEATH OF BABY ETHAN JUNIOR MUENDO AT THE SHALOM HOSPITAL

Hon. Speaker: Hon. Members, we have business by Hon. Cosmus Masesi. Just a moment; you notice Hon. Members, we may need to have a motion to extend sitting unless Hon.

Masesi promises to finalize his business within the short time remaining. Hon. Ndawa, you have a Point of Information?

Hon. Ndawa: Madam Speaker, the time for moving the motion is---

Hon. Speaker: I have used my discretion under Standing Order 1. Hon. Ndawa, I know where you are heading under Standing Orders. Remember the time came when the Speaker was addressing the House. There was no way you could interrupt that so it is okay. Point of Order by Hon. Kiteng'u.

PROCEDURAL MOTION
EXTENSION OF SITTING TIME

Hon. Kiteng'u: Thank you, Madam Speaker.

Hon. Speaker, I stand on a point of order that aware that Standing Order 27(2) provides that the Speaker shall interrupt business at 12.30 p.m. for the morning sitting;

Aware that Standing Order 27(3) provides that the House may resolve to extend its sitting time; Aware that Standing Order 27(4) requires a motion to extend sitting time to be moved at least 30 minutes before the time of adjournment, Hon. Speaker, I beg to move the motion that the House resolves to extend its sitting time until the business ends.

Thank you, Hon. Speaker. I now call upon Hon. Kamitu to second my motion.

Hon. Speaker: Thank you, Hon. Kiteng'u. Hon. Kamitu, Minority Leader.

Hon. Kamitu: Thank you, Madam Speaker. I stand to second the motion. Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Kamitu. Hon. Members, do we have any member who is opposed to extension of time? Hon. Irene do you have an objection?

Hon. (Ms.) Mwende: Thank you, Madam Speaker. I wish to support the motion that we proceed with the business of the day.

Hon. Speaker: Thank you, Hon. Irene. So we extend time on agreement of the whole House. Hon. Masesi, please proceed.

(The House proceeded with business as per the Order Paper)

Hon. Masesi: Yes, thank you.

Hon. Speaker: Sorry, Hon. Masesi. Hon. Members, the Paper was laid on 8th of May and the Notice of Motion was also laid on the same day so now we are reading the report. Proceed, Hon. Masesi.

Hon. Masesi: Hon. Speaker, Article 43(1)(a) of the Constitution of Kenya, 2010, states that “every person has the right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care.”

The Medical Professional and Practitioners Board received complaints of alleged negligence of medical practitioners at the Shalom Hospital, Machakos, whereby a seven month old baby Ethan Junior Muendo died on 5th May, 2019. Pursuant to Rule 4A of the Medical Practitioners and Dentists (Disciplinary Proceeding Procedure) Amendment Rules, 2013, a Committee of the medical practitioners and dentist Board visited the hospital to carry out an inquiry.

The Committee is mandate to Conduct inquiries into the complaints within such counties as the Board may specify and make appropriate recommendations to the Board, ensure that the necessary administrative and evidential arrangements have been met so as to facilitate the Board to effectively undertake an inquiry, Convene sittings in respective counties to determine complaints, Promote arbitration between the parties and refer matters to such arbitrator as the parties may in writing agree.

Hon. Speaker, His Excellency the Governor, Dr. Alfred Mutua, the Committee on Health and Emergency Services accompanied by the Acting CECM, Health and Emergency Services, Dr. Ancent Kituku Nzioka, received the sad news and joined the Medical Practitioners Committee at Shalom Hospital for the inquiry on 6th May 2019.

Hon. Speaker, the Health and Emergency Committee is established as per Standing Order 190 under the Second Schedule that underlines the functions of the Committee to include “all matters related to County Health services including in particular, county health facilities and pharmacies, ambulance services, promotion of primary health care, licensing and control of undertakings that sell food to the public, cemeteries, funeral parlors and crematoria and refuse dumps and solid waste disposal; fire- fighting services and disaster management.

Honorable Speaker, one of the functions of sectoral committees pursuant to Standing Order 190(5)(e) shall be to investigate and inquire into all matters relating to the assigned departments as they may deem necessary and as may be referred to them by the Assembly.

Hon. Speaker, the Committee on Health and Emergency Services is comprised of the following members;

- | | |
|---------------------------|-------------------|
| 1. Hon. Cosmus Masesi | -Chairperson |
| 2. Hon. Pauline Munguti | -Vice Chairperson |
| 3. Hon. Daniel Mbevi | -Member |
| 4. Hon. Daniel Kiilu | “ |
| 5. Hon. Annastacia Mutuku | “ |
| 6. Hon. Patrick Kituku | “ |
| 7. Hon. Jacqueline Nziva | “ |
| 8. Hon. Ikusya Kaloki | “ |
| 9. Hon. Jeremiah Munguti | “ |
| 10. Hon. Johana Munyao | “ |
| 11. Hon. Paul Museku | “ |
| 12. Hon. Jacinta Luka | “ |
| 13. Hon. Peter Mutiso | “ |

Composition of the panel that undertook the inquiry at the Shalom Hospital on 6th May, 2019

1. Daniel Yumbya - CEO, Kenya Medical Practitioners and Dentists Board (KMPDB)
2. Prof. Fredrick Were - Member of the KMPDB
3. Dr. Ancent Kituku Nzioka - Governor's Advisory, acting CECM Health and Emergency Services
4. Dr. Sharon Mueni - Sub County Medical of Health
5. Rahab Maina - Representing the CEO, Nursing Council
6. Member of the Pharmacy and Poisons Board
7. Dr. Charles Kandie - Ministry of Health
8. Esther Mutheu - Legal Officer, KM PDB.
9. Dr. Mwova - Chief Officer, Medical Health
10. Mr. Kaminda - Director, Administration
11. Lukas Mwova - Chief Officer, Public Health
12. Dr. Ndusi
13. Edna Talam

The complainant, Mr. Jonathan Musau, Baby Ethan Muendo's Father, was also present and was accompanied by his uncle. Hon. Speaker, during the inquiry, which was chaired by Mr. Daniel Yumbya, the following emerged:

Submissions from Mr. Jonathan Musau (father of the baby)

Hon. Speaker, the father to the deceased, Mr. Jonathan Musau, explained that Baby Ethan Muendo passed on barely two hours after the nurse administered an injection apparently to relieve pain.

On Saturday 4th May, 2019, the boy's left hand was slightly scalded by hot water from a dispenser. The boy had crawled to it and accidentally turned on the knob of the dispenser hence scalding him on the top of the wrist. Since the burn was not serious, they decided to take him to Shalom Hospital on Sunday morning for dressing so as to avoid infection.

On Sunday, 5th May, 2019, Ms. Juliana Mutheu, the mother, took the baby to the hospital at 10.00 a.m. where they paid a fee of Ksh. 900 and got a receipt of the payment. The Clinical Officer on duty attended to the baby and prescribed some drugs behind the receipt. One drug, morphine 2ml, was to be administered orally to the child to relieve pain before getting dressed while other three drugs were to be administered at home. Instead of administering the morphine orally, the nurse injected the baby and then dressed his wound.

They then went home which is just 500 metres from the hospital. At around 12:00 p.m., the mother-in-law realized that the baby was snoring and was not responding to the drugs. The mother also noticed that the baby was very drowsy and called the hospital to report. At 12:15 p.m., the mother took the baby back to the hospital and on arrival, the baby was received by the doctors and admitted to a special unit, according to the mother. The mother got out of the room and began crying.

The doctors called the father who arrived at 12:30 p.m. and went straight to the room only to find that his son had passed on. No one was willing to explain to him what had happened and therefore he called the DCIO who sent his officers and the CID. Following investigations by the officers, they gathered that the mother had brought the baby to the hospital four other times for regular checkups and the baby had never shown any complications.

This could only mean that whatever had been administered to him may have killed him. The nurse was summoned by the police officers and confirmed on record that she had administered an injection of morphine 2ml to the baby.

The panel sought to know why the baby was injected yet the prescription was written morphine syrup. The father said that the oral prescription had been cancelled and written IM meaning injection.

Submissions from the Medical Officer who was on duty Jael Malaba of Registration No. A10805

Hon. Speaker, the medical officer graduated in 2015. She began working at the Shalom Hospital in January 2008. She is holder of a practicing certificate which was to be handed over to the panel later.

When asked the happenings of that fateful day, she said that she was covering at the main surgical, male and female wards that day. At around midday, she was called to receive a baby who was not responsive. The baby was placed in the acute room. She then examined him and found that his pupils were dilated and that he was not breathing. She then concluded that the baby had passed on. She further informed the panel that the grandmother and the mother were crying hence they were not in a position to talk.

Asked whether there was any clear protocol of handling a patient once he or she got into the ICU, she confirmed that there was, but the baby had succumbed before they could follow the procedures and call the pediatrician. Asked whether there was a list of doctors pinned on the wards, who would see patients in cases of emergencies, she said that the list was there but not pinned.

Submissions from the covering Nurse (Simon Waroru Mahogu)

Hon. Speaker, the nurse, Simon Waroru Mahogu graduated as a registered nurse from Kenya Medical Training College, Nyeri, in 2011. He worked in Kitengela Hospital in 2011, Nairobi Women's Hospital in 2014 and joined the Shalom Hospital in April, 2011 (???)

Asked to describe the happenings of that day, he said that he reported to work at 7.00 a.m. and did his rounds to ensure enough staffing. Baby Ethan was then brought in the acute room at around noon. He was by then doing his rounds when he was called to get there since it was an emergency.

He found the Clinical Officer resuscitating the baby. He then called the Medical Officer who got in there immediately. After 30 minutes of examinations and resuscitation, the baby was pronounced dead. There was a lot of commotion and therefore it was not easy to break the news immediately to the family.

Submissions from the Covering Registered Clinical Officer (Vincent Njau Ng'anga')

Hon. Speaker, Mr. Vincent, a registered Clinical Officer, was on duty that day. He confirmed that he was the one who saw baby Ethan first. He explained to the mother that the baby needed a pain killer to reduce the pain and then get dressed.

Asked how he did the prescription, he confirmed that he wrote behind the payment receipt morphine 2mls to be administered orally before dressing the wound and then other three drugs to be used at home. Asked whether prescriptions are done behind receipts at Shalom Hospitals, he responded that they were not done so. Asked why he wrote on a receipt if that was not the procedure, he did not respond.

Madam Speaker, Mr. Vincent continued to explain that the mother took the receipt to the nurse who in turn took it to the pharmacy for the drug. The pharmacist told the nurse that the oral one was not available but the IV one was. The nurse reported back to the Clinical Officer who in turn cancelled the oral prescription and replaced it with the injectable one.

Submissions from Irene Mutinda (the purported nurse)

Hon. Speaker, asked to state her profession, Irene Mutinda said that she was a patient attendant. She attained a certificate in Community Health from the Thika School of Medical Sciences and Technology in 2016.

Asked to describe the duties of a patient attendant, she stated as follows;

- a. Feeding bed-ridden patients.
- b. Bed-bathing.
- c. Bed making.
- d. Vital signs.

Asked to describe the events of 5th May, 2019, she said that a woman with a baby came to her with receipt from the Clinical Officer. The receipt had a prescription at the back. The following was written at the back of the receipt:

- a. Clean the wound.
- b. Give morphine syrup 2 ml before dressing the wound.
- c. Three more drugs to carry home including dermazin cream and brufen.

She then took the receipt to the pharmacist, Mr. Kennedy Odhiambo, who told her that the syrup was not available at the pharmacy, but the IM (injectable) was available. The Clinical Officer was informed this and cancelled the oral prescription and wrote IM. The pharmacist then gave the IM to the nurse who in turn injected the baby.

Asked whether she had tackled any other patients that day, she stated that she had only attended to one admission.

Submissions from the Pharmacist, Mr. Kennedy Odhiambo

Hon. Speaker, asked to describe the happenings of the day, Mr. Odhiambo said that Sister Irene approached him for an oral drug Morphine 2mls which had been prescribed behind a receipt. He told her that the drug was not available but the IM was. Sister Irene took the receipt to the Clinical Officer who in turn cancelled the oral drug and replaced it with the injectable one. He then gave it to Sister Irene and told her to make sure that the drug was calculated against the body weight of the baby.

Asked why he gave a controlled drug to an unqualified person (patient attendant), and why he gave out the drug knowing well it was a controlled drug, he did not give a convincing response.

Asked to outline what to consider in a prescription from a doctor, he was able to outline that first one checks the name of the drug, secondly, the prescriber of the drug, thirdly, signature of the prescriber and lastly the validity date. Asked whether the Clinical Officer's prescription had all the components, he said that it didn't have.

Submissions from Catherine Mutiso (Matron)

Asked to describe her main duty in the hospital, she stated that her main duty on that day, 5th May, 2019, was to ensure there was enough staffing, supervision and allocation of duties of which she had done the day prior.

She told the committee that the said Irene Mutheu, on that particular day, was in charge of the acute room which is secondary health care where a patient receives active but short-term treatment for a severe injury or episode of illness, an urgent medical condition, or during recovery from surgery.

Panel Findings and Observations

1. The Clinical Officer confirmed that the dose that was administered through IM to the baby was the one that he had prescribed, that is 2ml of morphine. The 2ml drug should have been administered orally.
2. The exchange of the drug from oral to intramuscular (IM), or an injection, was done by an unqualified person; the child should have received 1 mg but instead he received 20mg, hence 20 times of what he should have actually received.
3. The person who administered the drug to the baby was not qualified and was actually a patient attendant who had done a certificate in community health.
4. That the pharmacist gave out the drug knowing very well that Morphine is a medication of the opiate family which acts directly on the central nervous system to decrease pain and therefore it is a controlled drug and should not have been administered to the baby since the burn was minor.
5. The Hospital was not in good condition in terms of infrastructure. The public hospitals within the county were way better and clean.

Governor's Address Regarding the Incident

Hon. Speaker, H.E. the Governor, Dr. Alfred Mutua acknowledged the presence of the Committee on Health, the CEC Health and Emergency Services, who were part of the panel that carried out the inquiry.

He pointed out that Shalom Hospital has failed to have proper systems and qualified staff. He alluded that public hospitals like the Level 5 and other county Level 4 hospitals had proper systems and urged members to try these hospitals. He however challenged the public sector to up its standards and stop malpractices and negligence since they were a risk to human lives.

He expressed his concern on how a controlled drug, morphine, would be administered to a baby with minor burns, and that this only meant that the hospital had a habit of other malpractices which went unnoticed.

Following the inquiry and investigation done by the panel that consisted of the Ministry of Health Officers, Officers of the Medical Practitioners Board, Nursing Council of Kenya, Clinical Officers Council, The Assembly Committee on Health and Emergency Services accompanied by the Acting CECM the following conclusion was made:-

That baby Ethan Junior Muendo died as a result of an overdose of morphine medicine which was administered through intramuscular mode. The morphine administered was 2ml instead of 1 mg. This was extreme negligence where by the hospital management would allow a patient attendant to administer drugs to patient.

In view of the above, the following decisions were arrived at:

1. The following employees of the Hospital to be arrested and charged at once:
 - a. The proprietors/directors of the Hospital
 - b. The Hospital Administrator
 - c. The Doctor in Charge
 - d. The Pharmacist in charge

- e. The Clinical officer concerned
- f. The patient attendant who administered the drug
2. Immediate closure of the Hospital. The Governor ordered that the outpatients be cleared with on the same day 6th May, 2019 by 6.00 p.m. while the inpatients be moved to other Hospitals including Level 5 hospital free of charge in 48 hours.
3. The County Government of Machakos to revoke the operating license of Shalom Hospital until further notice.
4. The Medical Practitioners and Dentists Board to revoke the operating license till further notice.

The Governor gave his condolences to Mr. Jonathan Musau and his wife and the entire family members for their loss and promised that justice will be pursued to the latter. He then urged members of the public to first visit the free Machakos County Hospitals that have been revamped and in good condition before heading to private hospitals.

Conclusion

Madam Speaker, cases of reported and unreported incidents of negligence have been on the rise in the private hospitals. It's barely a month since Athi River Shalom Hospital had a case of neglecting a woman on labour who gave birth on the floor of the hospital reception unassisted. A team of officials from the Kenya Medical Practitioners and Dentists Board and Nurses Council, who visited the hospital, said their findings confirmed there was negligence in how the woman was treated. It has also been witnessed that the infrastructure and general hygiene of the Shalom Hospital in Machakos is wanting.

In view of the above, the management of Shalom should sort out the mess and hire qualified staff for reconsideration to reopen prior to inspection by both parties. The Committee will work together with His Excellency the Governor, to execute its mandate and ensure that the residents of Machakos receive proper medical services from all the public and private Hospitals within the County. The committee will further carry out periodic checks into the private hospitals within Machakos County to ensure compliance with the set health standards and proper service delivery to the people of Machakos.

Acknowledgement

Hon. Speaker, the Committee on Health and Emergency Services, extends its appreciation to the H.E. The Governor, Machakos County, the acting CECM for Health and Emergency Services Mr. Daniel Yumbya, the CEO, Kenya Medical Practitioners and Dentist Board (KMPDB), Professor Were, member of the KMPDB, Officers of the Kenya Medical Practitioners Board, Nursing Council of Kenya, Clinical Officers Council and members of the Kenya Pharmacy and Poisons Board for heeding to the emergency call of Mr. Jonathan Musau and his family and the call of the public in general.

On behalf of the Committee of Health and Emergency Services, I hereby table this report on the floor of this House and recommend it for adoption. Thank you, Hon. Speaker.

(Applause)

Hon. Speaker: Thank you, Hon. Masesi.

(Question proposed)

Hon. Members, the report is ready for debate. Hon. Constance Mbula.

Hon. (Ms.) C. Nzioki: Thank you, Madam Speaker. I want to applaud the committee that did that report. It has actually come out as it was. I may not have been there, Madam Speaker, but we saw in papers, we saw the Governor doing his duties on TV and it was very sad that a baby had to lose his or her life under those circumstances. Madam Speaker, it is high time people get serious with what they are doing; the staff in that hospital are just joking because when you hear it and look into the things, the whole system was asleep. We cannot have, Madam Speaker, three people making mistakes continuously, from this one to the second one to the third one.

Someone needed to confirm and know this is a baby who is supposed to take 2mls and somebody proceeds and gives that baby 20. How is that supposed to be, Madam Speaker? I think it is high time people wake up and do their work; the head of that hospital may be doing his best but the staffs under him are just failing. I want to say sorry and the committee has done a good job, we continue that way not only in hospitals but any other thing that is happening, things need to be streamlined. Thank you, Madam Speaker.

Hon. Speaker: Thank you Hon. Constance. Hon Rosina.

Hon. (Ms.) Kanini: Thank you, Madam Speaker. First, I want to thank the committee for moving with speed especially when the alarm of this incident was raised. Madam Speaker, everybody will agree with me that death is so painful especially when it arises due to negligence. Madam Speaker, let this report act as an eye opener to all private institutions in the whole country. Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Rozina. Hon. Kalumu.

Hon. Kalumu: Thank you Madam Speaker for granting me the chance to contribute on this report. First I would like to condole with the family of baby Muendo for such a loss due to negligence of the staff of Shalom Hospital. Madam Speaker, what has happened is something which is regrettable and should be dealt with to the latter. The death of baby Muendo shows failure of how a certain or such an installation or an investment staffed their workers with incompetence because there is no way you can inject a child, a small baby, with 20mls while the stipulated is 2ml. How well, when you are competent, can you inject such a huge number of millilitres to a child? That is highest order of negligence and incompetence.

Madam Speaker, the happenings at Shalom Hospital have been occasioned by failure of procedures. It has been reported that continuously from the first person who was giving the medicine or who wrote the medicine for the kid made a mistake and no one noticed. This shows that from the clinical officer to the person who gave administered the medicine, no one who had clear information on how many millilitres should be given to that kid. The report indicates very well that some of the jobs or some of the competences of the workers who were in the line of offering services to the baby were not well qualified or they were doing wrong jobs.

You find somebody is a community worker and is in the hospital injecting patients. That is something which needs to be looked at, but I would wish to challenge the final decision which was made on the hospital. Yes it was done, the hospital was closed due to negligence and incompetence and poor management, but the hospital, Madam Speaker was helping in the

overflow of Level V Hospital. So I would suggest, two wrongs because these kind of things are there in the Republic of Kenya, what needs to be done is not closing the hospital, what needs to be dealt with is the person who injected or those people who were on duty on that particular day because those people were not objective in doing their work.

Those people didn't know what to do on that particular day. It could be those people were overworked but I don't know, so my suggestion would be, we were yesterday at Kangundo and we found that, I was with Mheshimiwa Kamulu and received some messages that all those patients who were at Shalom Hospital were transferred to Kangundo Hospital which is having a lot of patients.

So mine is to request the board which closed the hospital to reconsider its decision and come up with a way of at least re-looking or checking up on the standards of the hospital and then look for compliance and the standards and then return the licenses back and put the management on notice and then the case be followed to the latter. Thank you, Madam Speaker.

Hon. Speaker: Thank you, Kalumu. Hon Kamitu.

Hon. Kamitu: Thank you very much, Madam Speaker. It is important that we applaud our committee for health for the quick response that they did and accompanied his Excellency the Governor Machakos and other board members and practitioners of the body which is concerned with medical services in Kenya. Madam Speaker, going through the report, it is very comprehensive. It has given us from day one that the investigation, the inquiry that was carried out was up to the task.

Madam Speaker, just standing here, aware that there are many types of Shaloms, there are many medical institutions within Machakos county, within the country now and our committee for health really played its mandate, I would also request the same committee, Madam Speaker, seriously, as a preventive measure, to prevent such situations arising again, if it can also be given time to go checking up within the county so that we may also find out other institutions which are rendering or giving out medical practices and they don't have qualified staffs.

My view and my observation is that there are so many institutions that have no qualified staff and if we are going to take long, other incidents of this nature may happen, so I stand here Madam Speaker, to really praise the board and those people who took part and again as an Assembly, we stand here to console the family of Musau due to the loss of their child and move forward to prevent such a situation happening again. Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Kamitu. Hon. Anastacia.

Hon. (Ms.) Mutuku: Thank you, Hon. Speaker. I am representing the great people from Kibauni. First I want to appreciate the chair for a well done report and also the committee, although I am a member, and also I want to thank His Excellency the Governor for taking measures immediately when the issue was raised and being able to close the hospital. I want also to request the County Government to regulate some policy and appoint the board to visit all private hospitals so that we can make sure we have the qualified doctors from the private clinics and the private hospital, because losing the life of a person is very sad.

I want to say sorry to Mr. Musau and his wife for losing their beloved baby. It is very sad as a parent. As a leader, it is very sad, and I want also, Hon. Speaker, to request the committee if,

through your authority, we can get mandate from you to visit also those clinics to see how operational they are within their clinics and private hospitals.

I want to say these private hospitals have employed unqualified people because they don't want to pay the qualified people huge salaries and sometimes you find that even their services, it is not clear what they are really serving, what the patients require, so Hon. Speaker as I stand here, I want to say thank you and I support the report and request you as the Chair of this Assembly, to also request the Executive to come up with regulations or the board within this county to appoint some people to do some requirements. Thank you Hon. Speaker.

Hon. Speaker: Thank you, Hon Anastacia. Hon Pauline.

Hon. (Ms.) Mene: Thank you Madam Speaker for granting me this opportunity to contribute. Madam Speaker, I wish to give my sincere condolences to the family of baby Ethan. Madam Speaker, as we discussed this report, the question which is coming to my mind is where is the gap because Madam Speaker, we very well know that there is universal health coverage and members of Machakos County should be going to public hospitals because it is free of charge. So why are they going to this private hospital to pay?

It means there is a gap, Madam Speaker; it means probably they are not getting proper medical care in the public hospitals and therefore I would wish to request our Governor that probably he needs to set a private wing in the Level 5 facility so that we can keep this revenue within the county, Madam Speaker.

Madam Speaker, while we were at Shalom Hospital, I was among the members who went to visit on that day and one of the thing I noted from the hospital is that our doctors in Level 5 do rounds in the private hospital, that is Shalom, and Madam Speaker, I was asking myself when our doctors in Level V are going to do rounds in the private hospitals, who do they leave our patients with, Madam Speaker?

Madam Speaker, if we set a private facility in our Level 5 hospitals or other private facilities within the county, maybe our health workers can be doing locum and therefore we can keep them within our hospitals. Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon Pauline. The mover of the motion, please reply.

Hon. Masesi: Thank you, Madam Speaker. Allow me to appreciate the members for the contribution and also Madam Speaker, as the chair, Health, also allow me to register condolences on behalf of the whole assembly, to the entire family and pray to God that He may grant them strength and resilience during this hard time, Madam Speaker.

Madam Speaker, indeed it is a sad story. I want to believe no amount of words can heal the wounds of the parents. Madam Speaker, I want to say that re-inspection needs to be done periodically; the Board, Executive and the Health Committee to ensure that there is full compliance of the health standards which will always pave way for quality services to the residents of Machakos.

Madam Speaker, we know that the facility that is Shalom Hospital has been of great help to the community besides these major challenges, Madam Speaker. That is why the committee found it fit for the management to comply with the health standards and call for re-inspection by both the County and the Board for reopening, Madam Speaker, of the same. Madam Speaker, I would like the County Public Service Board when it comes to issues of employing health staff to

our public hospitals, Madam Speaker, let the Board be led by the laws and the requirements of the medics for that case, Madam Speaker.

Madam Speaker, we all know that what we have in our public hospitals again is good but is not the good we ought to have as a county, bearing in mind that we have been having budgets for health and also we have the Universal Healthcare funds, so Madam Speaker, I want to believe it is the duty of this House to always keep the Executive on toes to make sure that we deliver good services to our people. Otherwise Madam Speaker, if there is a way this House can support the family or go and offer some condolences in presence, Madam Speaker, I will appreciate a lot. Thank you.

Hon. Speaker: Thank you, Hon. Cosmus Masesi.

(Question put and agreed to)

Hon. Members, the Office of the Speaker and the Assembly in general, also condoles with the family of baby Ethan. Secondly, Hon. Members, when you are making your reports, this is directed to the chairman Health, make that sure you do the reports in the set formula. Always in acknowledgement, you acknowledge the Office of the Speaker and that of the Clerk for facilitating their investigation and report writing. In this one, you have acknowledged strangers to the Assembly in totality and were it not for the nature of the report, this is a report that would not have seen the light of the day in this House as prepared so, please, every one of you take a lesson from that.

(Applause)

Thirdly, Hon. Pauline pointed out that what we have that would result to this kind of report is a system failure and you are equally to blame as a House. You know very well that health is devolved but then apparently, you have also slept on your duty. You don't need permission from anybody to go and inspect such institutions because they are in this County.

The patients who are in private and the patients who are in public hospitals belong to this county and they must be given the proper services because of your oversight. You have to up your game and you must do what you must do as an Assembly, and you must oversight each segment of the County Government so that the public gets what it deserves and you don't do things after the event; you are doing it now because baby Ethan has unfortunately passed on. How many other baby Ethans passed on without you knowing because you are not inspecting those institutions? Let us not do things after a death has occurred; let us pre-empt but not to do it after the event.

There is another member who has proposed the appointment of a board that is going to be inspecting hospitals but we already have the committee for this. For purposes of the Assembly, you have the committee on Health, so please do your duty and do it to the best and look at the prayer that you say every morning that you must deal with each matter in a just and fair manner, to the glory of God, and so may the soul of baby Ethan rest in eternal peace as do other souls of departed beloved. Thank you.

ADJOURNMENT

Hon. Speaker: Hon. Members, at this point the sitting of the House is going to adjourn. It will continue at 2.30 p.m. on 14th May, 2019. Thank you.

The House rose at 12.44 p.m.