

REPUBLIC OF KENYA
MACHAKOS COUNTY ASSEMBLY

OFFICIAL REPORT

Tuesday, 17th July, 2018

The House met at 10.18 a.m.

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

PRAYERS

Hon. Deputy Speaker: Good morning, Members.

PAPERS LAID

Hon. Deputy Speaker: Hon. Members, we have two Papers to be laid as listed in the appendix by Hon. Jeremiah and Hon. Musau. Hon. Jeremiah.

ANNUAL REPORT OF THE COUNTY PUBLIC SERVICE BOARD, 2017

Hon. Munguti: Thank you, Mr. Speaker. I wish to lay the following Paper on the Table of the Assembly today, 17th July, 2018; the report of the Committee on Labour, Public Service and ICT committee on the Annual Report of the County Public Service Board, 2017. Thank You.

Hon. Deputy Speaker: Thank you, Hon. Jeremiah. Hon. Musau.

FINANCIAL STATEMENTS OF MWALA WATER AND SEWERAGE COMPANY FOR THE YEAR
ENDED 30TH JUNE, 2016

Hon. Wambua: Thank you, Mr. Speaker. I beg to lay the following Paper on the Table of the House today, 17th July, 2018 the report of the Auditor General on the Financial Statement of Mwala Water and Sewerage Company for the year ended 30th June, 2016. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you, Hon. Musau.

NOTICES OF MOTION

Hon. Deputy Speaker: Hon. Members under this Order, we have two notices of motion by Hon. Jeremiah and Hon. Musau. Hon. Jeremiah.

ANNUAL REPORT OF THE COUNTY PUBLIC SERVICE BOARD, 2017

Hon. Munguti: Thank you Mr. Speaker. I wish to move the notice of motion on the Labour, Public Service and ICT Committee.

Mr. Speaker, that aware that Section 59(1)(d) of the County Governments Act provides that the County Public Service Board shall, on behalf of the County Government, prepare regular reports for submission to the County Assembly on the execution of the functions of the Board;

Further aware that part (f) of the same section indicates that the Board shall evaluate and report to the County Assembly on the extent to which the values and principles referred to in Articles 10 and 232 are complied with in the County public service;

Aware that it is in this spirit that on 29th January, 2018, the County Public Service Board submitted to the County Assembly the fifth annual report for the year ended 31st December, 2017;

Mr. Speaker, I wish give notice of the motion that the Assembly discusses and approves the report of the Committee on Labour, Public Service and ICT, on the Annual Report of the County Public Service Board, 2017.

Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you, Hon. Jeremiah. Hon. Musau.

FINANCIAL STATEMENTS OF MWALA WATER AND SEWERAGE COMPANY FOR THE YEAR ENDED 30TH JUNE, 2016

Hon. Wambua: Once again, thank you, Mr. Speaker.

Mr. Speaker, that aware that Article 229(7) of the Constitution states that “Audit Reports shall be submitted to Parliament or the relevant County Assembly”;

Further aware that pursuant to Article 229(8) of the Constitution, within three months after receiving an audit report, the Parliament or the County Assembly, shall debate and consider the report and take appropriate action;

Cognizant that the Committee on Public Accounts and Investments is established pursuant to Standing Order 185 and is mandated to examine reports, accounts and workings of the County Public Investments;

Remembering that in March, 2018, the Committee undertook interrogation exercise of the Audit Report on Financial Statements of Mwala Water and Sewerage Company for the year ended 30th June, 2016;

Mr. Speaker, I wish to give notice of the motion that this Hon. House discusses and approves the Report of Auditor General on the Financial Statements of Mwala Water and Sewerage Company for the year ended 30th June, 2016.

Thank you, Mr. Speaker.

(Applause)

Hon. Deputy Speaker: Thank you, Hon. Musau.

STATEMENT

BUSINESS FOR THE HOUSE FOR 17TH TO 18TH JULY, 2018

Hon. Deputy Speaker: Under this Order, we have a Statement which is going to be done by Hon. Francis Kioko Kalumu.

Hon. Kalumu: Hon. Speaker, I stand under Standing Order 41(2)(a) where during the statement hour where during the Statement Hour a Member of the House Business Committee designated by the Committee for that purpose shall for not more than ten minutes, present and lay on the Table, a statement informing the House of the business coming before the House. Hon. Speaker, the House Business Committee met on 16th July, 2018 and balloted business for this week pursuant to the provisions of the Standing Order 151 as follows:

Tuesday, 17th July, 2018
Morning at 10.00 a.m.

- Report of Labour, Public Service and ICT Committee on the Annual Report of the County Public Service Board (CPSB) by Hon. Jeremiah Munguti, Chair Labour committee.
- Report of Public Accounts and Investments Committee on Financial Reports for Mwala Water and Sewerage Company for the year ended 30 June 2016 by Hon. Joseph Musau, Chair PAIC.

Afternoon at 2.30 p.m.

- Motion that the House discusses and approves the motion that the Department of Lands does thorough search to establish all lands reserved for rural roads in Machakos County, marks the boundaries and declares those lands public utility in order to discourage further illegality of encroachment of public land in Machakos County by Hon. Agatha Mutunga.

Wednesday, 18th July, 2018
Morning at 10.00 a.m.

- Report of Education and Social Welfare Committee on Status of Youth Polytechnics in the County by Hon. Daniel Kiilu, Chair, Education committee.
- Report of Public Accounts and Investments Committee on Financial Reports for Mavoko Water and Sewerage Company for the year ended 30th June, 2016 by Hon. Joseph Musau, Chair PAIC.

Afternoon at 2.30 p.m.

- Report of Committee on Appointments on the Vetting of Nominees for Appointment to the position of County Executive Committee Members by Hon. Florence M. Mwangangi, Chairperson.

Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you, Hon Kalumu for that Statement.

MOTIONS

Hon. Deputy Speaker: Hon. Members under this Order, we have a motion by Hon. Munguti.

ANNUAL REPORT OF THE COUNTY PUBLIC SERVICE BOARD, 2017

Hon. Munguti: Thank you, Mr. Speaker.

Mr. Speaker, that aware that Section 59(1)(d) of the County Governments Act provides that the County Public Service Board shall, on behalf of the County Government prepare regular reports for submission to the County Assembly on the execution of the functions of the Board;

Further aware that part (f) of the same section indicates that the Board shall evaluate and report to the County Assembly on the extent to which the values and principles referred to in Articles 10 and 232 are complied with in the County public service;

Aware that it is in this spirit that on 29th January, 2018, the County Public Service Board submitted to the County Assembly the fifth annual report for the year ended 31st December, 2017;

Mr. Speaker, I wish to move the motion that the Assembly discusses and approves the report of the Committee on Labour, Public Service and ICT, on the Annual Report of the County Public Service Board, 2017.

I would like to call upon Hon. Kalumu to second the motion. Thank you, Mr. Speaker.

Hon. Kalumu: Thank you, Mr. Speaker. I wish to second. Thank you.

Hon. Deputy Speaker: Members, with the motion moved and seconded, allow me to propose the question.

(Question proposed)

Hon. Jeremiah, you may read the report

Hon. Munguti: Thank you, Mr. Speaker. The committee on Labour, Public Service and ICT has the following report to be discussed and approved by this House. Table of contents are listed in the appendix. I would like to start with introduction.

INTRODUCTION

Mr Speaker, Section 59(1)(d) of the County Governments Act provides that the County Public Service Board shall, on behalf of the County Government prepare regular reports for submission to the County Assembly on the execution of the functions of the Board. Further part (f) of the same section indicates that the Board shall evaluate and report to the County Assembly on the extent to which the values and principles referred to in Articles 10 and 232 are complied with in the county public service.

Mr Speaker, it is in this spirit that on 29th January, 2018, the County Public Service Board submitted to the County Assembly the fifth annual general report for the year ended 31st December, 2017.

COMPOSITION OF THE COMMITTEE ON LABOUR, PUBLIC SERVICE AND ICT

Mr. Speaker, the Committee on Labour, Public Service and ICT has the following membership;

- | | |
|---------------------------|------------------|
| 1. Hon. Jeremiah Munguti | Chairperson |
| 2. Hon. Agatha Mutunga | Vice Chairperson |
| 3. Hon. Constance Nzioki | Member |
| 4. Hon. Francis Kalumu | “ |
| 5. Hon. Irene Mbivya | “ |
| 6. Hon. Jacinta Luka | “ |
| 7. Hon. Alex Kamitu | “ |
| 8. Hon. Joshua Nzuki Muli | “ |
| 9. Hon. Justus Katumo | “ |
| 10. Hon. Nicholas Mutuku | “ |
| 11. Hon. Paul Nyanzi | “ |
| 12. Hon. Rozina Kanini | “ |
| 13. Hon. Christine Koki | “ |

MANDATE OF THE COMMITTEE

Mr. Speaker, pursuant to Standing Order 190, the Committee on Labour, Public Service and ICT is mandated to all matters relating to Labour; trade unions relations; manpower or human resource planning; information, communication and technology.

THE COUNTY PUBLIC SERVICE BOARD ANNUAL REPORT, 2017

COMPOSITION OF THE COUNTY PUBLIC SERVICE BOARD

Mr Speaker, the under listed is the Boards Composition as at the date the report was submitted at the Assembly on 29th January, 2018

POSITION	NAME	COMMITTEE HEADED
Chairperson	Ms. Scholasticah Mueni Mboi	Ag. Chair of the Board and head of recruitment and selection.
V. Chairperson	Mr. Andrew Kituku Metho HSC	V. Chair of the Board and head of career progression and compliment control
Member	Ms. Dorothy Mwanzia Ng'ang'a	Member of the Board and head of legal and discipline
Member	Mr. Fredrick Muli Kasoa	Member of the Board and head of audit, Assurance and compliance

Member	Mr. Philip Mulwa Nzioka	Member of the Board and head of Finance and Administration
Board Secretary	Ms. Irene Mwendu Musyoka	Ag. Secretary and Head of Secretariat

KEY ACTIVITIES AND ACHIEVEMENTS OF THE BOARD FOR 2017

Mr. Speaker, the Board enumerates its key activities as well as achievements during the period as follows;

- a) Recruitment and appointments.
- b) Renewal of contracts.
- c) Confirmations and promotions.
- d) Human resource audit.
- e) Handling staff disciplinary cases.
- f) Preparation of sectoral plan, County Integrated Development Plan (CIDP) for the years 2018/2022.

LEGAL FRAMEWORK

Mr. Speaker, the County Public Service Board's mandate is provided for under Section 59 of the County Governments Act, 2012. Further, the Board's mandate is governed by the following legal framework

- The Employment Act, Chapter 226, Laws of Kenya.
- The Regulation of Wages and Conditions of Employment Act, Chapter 229, Laws of Kenya.
- The Workmen's Compensation Act, Chapter 236 Laws of Kenya.
- The Rights of an Employee in Kenya, Oketch Owiti (1990).
- Minimum Wage Guidelines (per relevant industry).

COMMITTEE OBSERVATIONS

Constitutional requirement on appointments

Mr. Speaker, in reporting its adherence to the constitutional requirement of the 70/30 per cent employment ratio, the Board indicates that "...84 per cent of the public service are people from the dominant ethnic group, Kamba, hence slightly above the constitutional requirement of 70/30 rule.'

The County Governments Act 2012 proposes that 70 per cent of jobs be given to the dominant ethnic group of a County and 30 per cent reserved for experts from outside the County. Section 65(e) states that 'in selecting candidates for appointment, the County Public Service Board shall consider the need to ensure that at least thirty per cent of the vacant posts at entry level are filled by candidates who are not from the dominant ethnic community in the county.'

The committee appreciates the significance of complying with the law on this matter as it is aimed at enhancing equality of opportunity for all, reducing discrimination on the basis of ethnicity in the recruitment of staff and promoting affirmative action for excluded communities in employment. However, this needs to be clarified through an authentic staff audit report.

New Recruitment and Selections

Mr Speaker, the Committee noted an aspect of negligence in the Board by reporting misleading figures of newly-recruited staff and contractual officers. For example, it was

highlighted that a total number of 1,085 staff were engaged on contract basis. However, when the committee further scrutinizes the report, it observed that the County's actual number of contractual staff was 1,090.

Similarly, the number of newly-recruited staff was reported at 1,638 but the committee found the number to be 1,645 contrary to the Board's report. Members questioned why a Driver II in the Department of Tourism was engaged on permanent and pensionable terms while another driver in similar job group in the department of Transport was employed on contract basis.

Members reasoned that the reverse would have been ideal where a driver in Transport should be given a permanent and pensionable position rather than that in the Tourism Department whose job description could not be clearly defined. It was not clear what criterion was used to approve the different cadres.

Appointments in acting capacity

Under the Department of Finance and Revenue Collection, the committee was concerned that a high ranking officer of the cadre of senior level like the Head of Supply Chain Management was in office on acting terms for a short-term period of only three months. It could also not establish the criteria used to also award a one year acting terms to a junior officer like Commandant 1 while the Head of Supply Chain given only three month while this being a technical and sensitive profession.

The committee in addition questioned performance of work which can reasonably be expected to be completed within such a short duration.

Renewal of contracts

The Board reported that a total of six officers were contracted in the department of Machawood for a period of one and three years. The committee questioned the department's value addition to the residents of Machakos.

Additionally, in the same department a Chief Executive Officer/Secretary had their contract renewed for a period of three years where the committee could not immediately establish the justification of the number of years awarded while his juniors were awarded a contract of one year each.

This is contrary to Section 5(3)(b) of the Employment Act 2012 which states that 'no employer shall discriminate directly or indirectly, against an employee or prospective employee or harass an employee or prospective employee in respect of recruitment, training, promotion, terms and conditions of employment, termination of employment or other matters arising out of the employment.'

It was observed that the Board renewed contracts for Accountants in the Department of Education, Youth and Social Welfare for a period of only one year. The committee therefore questioned the amount of work an accountant can comprehensively complete in such a short period of time. This translates to lack of proper institutional memory and cohesion of work.

Promotions and re-designation

It was noted that there was a discrepancy in the number of employees reported to have been promoted in the period ended 31st December, 2017 with the actuals as tabulated by the committee per department. For example, the Board reported that the total number of staff promoted was 182 while when the committee counterchecked the report in the seven departments where the employees were drawn from, getting a total of 187.

OTHER BOARD ACHIEVEMENTS

Wealth declaration

The committee noted laxity of the Board to properly advise its officers as it reported that employees were reluctant in filling wealth declaration forms and yet no evidence of any disciplinary action were taken against such staff. This is especially because the Board indicated in its report that one of the roles of the committee on Audit, Assurance and Compliance is to analyse wealth declaration reports and make appropriate recommendations.

The Board should have therefore taken measures to enhance staff awareness on the importance of wealth declaration.

Disciplinary cases

It was observed that the Board neglected its roles by not following the laid disciplinary tires. For instance, when Finance Department officers were dismissed in the late 2017, it was observed that the law was not observed. It was observed that the procedure used contravened Section 40 to 43 of the Employment Act.

Human Resource Audit

Mr. Speaker, the Board reported to undertake staff audit since December, 2016 and was intermittently done until November, 2017

The Board reported that the Human resource Audit was necessitated by the fact that the Board lacked a credible employee database that would be necessary in making management decisions, the apparent bloated Public service at the County level with huge wage bill estimated at 47 per cent and the need to improve efficiency and productivity in the County Public Service by matching the roles and responsibilities with staff competencies and skills.

Mr. Speaker, the Board reported that 6,492 staff were audited while 788 were not audited. These are employees in the payroll but they never showed up for audit. Mr. Speaker, the committee therefore raised concerns on the following;

- How the Board came up with details of the number of staff to employ, to promote and those to commit on acting capacity and identify training needs without a database.
- Whether the report submitted to the Assembly was authentic.
- What were the measures put in place to identify and discipline the employees who did not turn up for the audit.

The Committee also was unable to comprehend how the Board did not have a compiled list of all County employees if they were properly in charge of the labour force of the County yet it reported of a bloated public service estimated at 47 per cent.

Draft HR Audit Report

Mr. Speaker, the Board gave an extract from the staff audit conducted during the period ending 31st December, 2017 where the committee made the following observations:

1. That the Departments of Tourism, Culture and Cooperative Development and that of Water, Irrigation and Sanitation accounted for a total of 205 and 506 employees respectively

The Committee noted the numbers were slightly high compared to their mandate and the physical number of employees on site in the various Wards of the County.

- Members questioned whether need assessment was done in this department before employing.
2. That the Department of Trade, Economic Planning and Industrialization had a relatively small number of employees at 25 officers. It was noted that this was a crucial department mandated to establish a sustainable and vibrant business and investment environment, spearheading formulation and implementation of sound economic policies and carrying out periodic monitoring and evaluation as well as to stimulate industrial technological activities that will enhance product value addition and diversification to ensure product competitiveness and create enabling environment for investment.
 3. That there was no evidence of any disciplinary action taken against County employees that failed to turn up for the audit.
 4. That the Board appointed a desk officer to be the liaison officer between the Board and Persons with Disabilities whose terms of service were not clear
 5. That the figure highlighting ethnicity representation was not clear as it did not specify whether it was from the County as stipulated by the law or all over the Country.
 6. That the report audit revealed 84 per cent of the public service are people from the dominant ethnic group hence slightly above the Constitutional requirement.
 7. That the percentage of persons living with disabilities PLWD stands at 0.7 per cent far below the 5 per cent constitutional requirement.

MEETING WITH THE COUNTY PUBLIC SERVICE BOARD

Mr. Speaker, the following were the submissions of the County Public Service Board during a meeting between them and the Labour, Public Service and ICT Committee. It is worth noting that the submissions were relevant in the interrogation of the County Public Service Board Annual report, 2017

During the meeting, the Committee observed the following;

1. That the Executive and the Board lacked synergy. The Board informed the committee that they were not able to access the payroll register hence unable to compare the number of the employees audited and the ones on payroll.
2. The Acting Chair informed the committee that the report on staff audit was never tabled and approved at the Board level; the Committee noted that the annual report submitted to the Assembly was signed by the same Acting Chairperson. The Committee questioned whether the HR Audit figures presented in the report were authentic since the Chairperson could not own the audit report.
3. That the Board had not included the number of the contracted employees from the Department of Tourism in the annual report yet during the interrogations by the Labour Committee, the Board informed the House that the Department is said to have 140 contracted employees.
4. That the Government of Machakos has five categories of employees, that is permanent, contract, temporary, casuals and others. The Board informed the committee that the others were project officers whose terms of service were not clear or known.
5. During the interrogation, the Board admitted to have a Secretary who has not met the minimum requirements to be appointed for the same.

6. That there was variance in the total of employees per department in the report as compared with the submissions given during the interrogations as follows;

Department	Total employees as submitted in the Annual report	Total employees as submitted during interrogations
Department of public labour and ICT	68	46
Department of Decentralized Units, Urban areas and municipalities	1,244	1,234
Department of water, irrigation and sanitation	506	519
Agriculture and Fisheries	356	358
Transport	301	299
Lands, energy	75	65
Machakos County Law Office	34	33

7. That Committee observed that the Board was not united and never made unanimous decisions. It was reported that the Acting Chair was leading a team that was not cooperative and that it was difficult for the Board to make decisions. For instance, the Acting Chairperson had a Personal Assistant of job group Q who according to some Board members was not hired procedurally.
8. The Personal Assistant for the Acting Chairperson mentioned in 7 above was not reported under the employees under contract in the annual report submitted to the Assembly.
9. That there was no data base for all the employees in the County.
10. That one of the reasons of the County's ballooning wage bill was the Health Sector. It was noted that the Health Sector carries around 2,866 employees and the National Government has signed the CBA with the Doctor's Union hence leading to increment of salaries. It was noted that the CRA ceilings never improved and therefore affecting the recurrent allocations of the County.

COMMITTEE RECOMMENDATIONS

1. The Committee recommends that the Board be reconstituted as it was unable to oversee and manage all HR Sections in the larger County Departments as is expected of them.
2. The Board should harmonize their employment systems to ensure that one person is able to do more than one job in a bid to reduce the ballooning wage bill.
3. That the Board engages a certified professional body to conduct a proper audit of all County employees, install a bio-metric system to manage the audited staff and identify and wipe out ghost workers.
4. That there should be a detailed data base for all the employees in the County to help in succession, selecting, employing and promoting employees based on the need assessment.
5. That the Human Resource Audit pegged on the County Public Service Annual Report should have been attached with payroll report to confirm its authenticity.

6. That the Board lacks autonomy and should be given an opportunity to exercise its mandate. Section 57 of the County Governments Act, 2012 provides the establishment of the a County Public Service Board in each County, which shall be, (a) a body corporate with perpetual succession and a seal; and (b) capable of suing and being sued in its corporate name..
7. That the County Government through the Council of Governors engages the National Government for more monetary allocations to cater for the new terms in the health sector.
8. That the Board adheres with Article 54(2) of the Constitutional requirement with regard to Persons Living with Disabilities, which provides that, the State shall ensure the progressive implementation of the principle that at least five percent of the members of the public in elective and appointive bodies are Persons with Disabilities.

ACKNOWLEDGEMENT

Mr. Speaker, the 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. I wish to express my appreciation to the Hon. Members of the Labour, Public Service and ICT Committee who sacrificed their time to participate in the activities of the Committee and in preparation of this report

Mr. Speaker, it is therefore my pleasant duty and privilege, on behalf of the Labour, Public Service and ICT committee to table this report of the Annual report of the County Public Service Board, 2017 in this Hon. House for consideration and adoption. Thank you, Mr. Speaker.

(Applause)

Hon. Deputy Speaker: Thank you, Hon. Jeremiah for presentation of that report. Members, since i had already proposed the question on the report we may go ahead and debate the report. Anybody with issues on the report may go ahead and raise them now please. Hon. Helen.

Hon. (Ms.) Ndeti: Thank you, Mr. Speaker. I think I missed a point; are we discussing the report or are we discussing any anomalies in the report or are we discussing the contents of the report?

Hon. Speaker: The report has been tabled before the House.

Hon. (Ms.) Ndeti: So, now we can debate it?

Hon. Deputy Speaker: Exactly, we are debating on the report.

Hon. (Ms.) Ndeti: Thank you. Mine is to say that I have gone through the report and is a very unfortunate thing that even though we brought the service board, they do not seem to be very up to date with their records, there are so many anomalies, discrepancies that I do not understand why they should be there. I want to pick on the recommendation by the committee, recommendation number 3; ‘that the Board engages a certified professional body to conduct a proper audit of all County employees, install a biometric system to manage the audited staff, identify and wipe out ghost workers.’

I tend to disagree with that recommendation in the sense that going height and buying a biometric system to be able to give you a proper record of your staff is to me garbage in, garbage out. A biometric system is human controlled and i have seen that applying in various even in private companies and they never end up working because there is someone who controls it; it will not give you a proper record of your staff.

I feel that there is a payroll; through the payroll, manual auditing of the staff employed can work better and so there is no need of extra expenditure in employing an auditing firm or a biometric system. Otherwise, the I thin k the rest of the recommendations are okay and it is the high time that as the county ensures that we got a service board that is operating above board. Thank you.

Hon. Deputy Speaker: Hon. Katumo.

Hon. Katumo: Thank you Mr. Speaker, Sir. I want to start by congratulating the committee labor, public service and ICT, first of all the chairman for laboring so much to make sure that we have a report, This kind of a report before this Hon. House.

Mr. Speaker, you must understand we have had issues with the County Public Service Board Machakos County way back from the First Assembly. The problems in Machakos concerning labor, ballonning wage bill must be stretched back to the inefficiency of this board. Mr. Speaker, Hon. Members, we must understand in any county or institution where we have in effective HR department, always will have issues like what we have before us in this House.

You know, of course, in Machakos we are not very much aware how many workers we are dealing with; this is a question that has gone back several years the formation of this county. Why; because we do not have substantive board in place. You remember when we call the board to appear before this Hon. House in full House, I think there were so much that we learned there was a lot to be desired from the members who came to represent the board before us and therefore Mr. Speaker, I do not know what we can do as County Assembly of Machakos because we are the watchdog of this County of Machakos because we will not allow, I do not think it is proper for us just to let the *status quo* continue. For how long?

Most of the chairs, the CEOs of that institution has been in acting capacity and therefore it is not very, it cannot be prudent for us as a House to let such a very important institution in our county to continue. While congratulating this committee going to depth to try to investigate, analyze and present a report before this House, there are very important recommendations. I am part of this committee and I have been member of this committee since the First Assembly so I know a lot concerning the issues of labor the issues of human resource in this county.

Of most importance is when in recommendation No. 8 that a board should adhere to Article 54(2) of our great Constitution.

You know, when in the First Assembly, when we were vetting, approving this members who have been quarrelling for so long, I raised the point of order; why is this board having no PWD with them, then the Speaker then told me that there was somebody who was seen walking in crutches. I have not seen that person even now and therefore when a Board like this continues to breach the constitution especially for the people in the 41st County Assembly ward, it is not proper.

As a representative of that constituency, I want really to declare this Board not properly constituted because we always, the Constitution says that with regard to this section that Persons Living with Disability must be part and parcel of such. Actually, Hon. Members, I happened to

have the opportunity to meet several of these County Assemblies, we had a forum some place in Naivasha and it is only Machakos even they were not represented.

There was nobody who came they gave excuses but most of them who came we had one from Turkana who was blind, we had one from Nakuru who had a physical disability and others and therefore you find in Machakos we really do not understand what happens, nothing is proper, nothing works per the constitution and therefore Mr. Speaker and Hon. Members, although the chairman did not give this recommendation, I would wish that we amend and we give a recommendation number 9 that we should of course suspend this County Public Service Board and constitute it afresh well constituted as per the law because we cannot continue.

I have been complaining in this House; the first person to seek a Statement in this House was I 'the Voice' seeking the statement to know how many persons with disabilities have been employed in this county including this County Assembly and the Statement, I have not gotten any report and therefore it is not possible to get a report. I have been waiting that report now close to a year, it is not possible to come because we have no representative, people have no interest here and therefore I would wish to add that recommendation this board should be declared null and void and a fresh one should be put in place.

We will not continue talking about the same thing, the same thing every other year, every other time; the year is almost over. we are in another financial year, we are giving them money to do what? You see, if they cannot do one of the least of the things they are supposed to do to make sure they have a person with disability and that the issues of disability mainstreaming are done in this great county of Machakos, then I think for me they do not deserve to continue serving. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you Hon. Member. Just to point out on that point, I think we look at recommendation number 1, in very first recommendation by the committee is that the Committee recommends that the Board be reconstituted as it was unable to oversee and manage all HR Sections in the larger County Departments as is expected of them. Continue. Hon. Dominic.

Hon. Ndambuki: Thank you Hon. Speaker, I want to start by congratulating the committee on Labour, Public Service and ICT for the good job. Hon. Speaker, we are the voice of our people, the people of Machakos county and it is my believe that as legislators we wish the very best for this county and if we wish the very best for this county, then we should start with wishing that we deliver the best services to our people ever.

Best services to our people will start by having the right people at the right place and the right numbers. It is appalling to note from the report that we have over 700 people who are purported to be employees of this county who cannot be accounted for in the sense that they failed to turn up during the audit period. Hon. Speaker, if we want to do the very best, we need to look at where we can increase the amount of money that is meant for development. You remember that it is just the other day that we passed the annual budget for this county and from that report; it was evident that monies meant for development were lower than the monies meant for recurrent expenditure.

If we can cut on these employees who were unaccounted for, then we will be wishing the very best for this county. It is my desire and prayer that as legislators, we look into the issue of these employees who were unaccounted for, who never turned out during the audit sessions so that we can try to reduce the recurrent budget that is ballooning in the county so that one day we

can overturn things and see development budget being higher than the recurrent budget. Thank you, Hon. Speaker.

(Applause)

Hon. Deputy Speaker: Thank you, Hon. Dominic. Hon. Kalumu.

Hon. Kalumu: Thank you, Mr. Speaker. I do not know whether I will start by congratulating myself first because I am a part and parcel of that Committee but I think we did a good report to this House. I will start by saying that, the first sin was committed by the first parents of this earth, that was Adam and Eve and always most of us and according to the word of God, it says that, God created us in his own image and looking at the Constitution and at all the blame of this Board, the first mistake was conducted by the Constitution which said that, the pointing hand should be where it is now because the constitution of this Board should be competitive according to me and if it competitive, this much problems we have today, we may not even have them.

One thing, Mr. Speaker, I will tell you, I can never give birth or sire a child who is not like me. You always get what you want. According to me, the Board looks like the appointing authority who appointed them because they carry the interest of the appointing authority. The Board is a corporate body which means they have a mandate to do their work without control from any quarters because if you are appointed, you are appointed to serve Machakos County but not a person like Francis Kioko.

If today this Board was free from control we could have the best Board in this County but what do we have today? A Board which is not able to know the number of people or employees in the payroll yet they are the ones who interview and employees on behalf of the County. So, a good question mark; how come that the Board does not know, according to observation number one that we observed that even the Board cannot even reach the register.

They conducted an audit which finally and all those reports which have been coming to the floor of this House have never shown any name of any employee, any identity number which can identify any employee, anything which is brought into this House is just mere numbers. We do not know whether they count trees in Machakos County and then bring them to this House; we do not know because there are no names yet we can say this is a report presented from a body which is paid by the taxpayer's money.

They counted employees yet those who never presented themselves for the audit were not even expunged from the payroll because the payroll in this House has never been brought and relatively, it should be that, whoever is not in the payroll should not be paid.

Mr. Speaker, according to the recommendation, they should be followed if we want to rescue this County, if we want to rescue the ballooning wage bill of this County; we need to put stress or to stress our point that, this Board must be reconstituted again.

(Applause)

This Second Assembly, what we are doing Mr. Speaker, is when we try to rectify a certain problem in this House which is the eyes of people who elected us to represent them here in this House, we start saying, we are doing this to that, to the executive, yet we are doing our

work. If I cannot be able to stand here and present myself and present my views without being victimized, then this House will have the best performing Members ever.

What do I say? I say, if we are able as Hon. Members to work without control, we will produce the best job for this County. Mr. Speaker, if you go to observation number 4, you will find that, there are several categories of employees and you find it is permanent, contractual, temporary casuals and others. Who are these others?

If a project and they say, others are project officers whose terms and services were not clear and are not unknown.....they are known. If you are given a project, if you are given a contract, are we again going as County pay your employees? Which are these contracts? Were these contracts being presented into the floor of this House, were they presented in the report?

It being said, these employees were calling others are doing this and this yet we are being told we have project employees and officers. I think as a County on matters of employees and labor, we have failed and it is better we have known it at the earliest point possible and rectification is good and we can do it, we are able.

These Members of this Assembly are able to rectify any problem in Machakos County. So, I call upon my fellow Members to be up to the task and do work the way we were sent by those who sent us. I do not have much to say for today but I think whatever I have noted out for the House is well noted. Thank you, Mr. Speaker.

(Applause)

Hon. Deputy Speaker: Thank you. Hon. Cosmus.

Hon. Masesi: Thank you, Mr. Speaker. Mr. Speaker, I would like to start by appreciating the Committee of Labor, Public Service and ICT led by the Hon. Chairman, Jeremiah Munguti. Mr. Speaker, I would start by concern maybe by being notified the tenure of the Board because what I can see from the report is that, they came on Board on August, 2013.

Mr. Speaker, if it five years or six years, we need to work by the time and be ready Mr. Speaker to put nice and good people in the Board. Mr. Speaker again, how I wish this House could push for the independence of Boards or what I can say, as an Assembly we need to be dependent and so as the Boards for them to be able to do their work in the right way Mr. Speaker.

Mr. Speaker, it is very unfortunate that, according to the report, the County Public Service Board audited 6,492 employees with 788 not being audited. As per the report Mr. Speaker, the total number of employees is 7,280 bearing in mind that Mr. Speaker, the Service Board up to the time of this report had not even had any access to the payroll register whereby they could compare the number of employees they have and the ones on the payroll register, Mr. Speaker.

Mr. Speaker, I will be eager to say that we are not able up to now to know the number of employees we have within our County, Mr. Speaker. Again I did not know whether the Constitutional requirement even comes up to this County to the locals. I have seen that we should have only 70 percent of employees whereby are as per the report, we have 84 percent. Mr. Speaker, you need to put some more energy although we have not been told the ceiling of employees as per the SRC which the County Government should have.

Finally, Mr. Speaker, I have seen that we are very much below in terms of the persons living with disabilities; as per the report it says that we only have 0.7 percent. We need to put

more emphasis and make sure that we attain the legal requirements of five percent, Mr. Speaker. I wish to rest my case. Thank you.

Hon. Deputy Speaker: Hon. Peter Mutiso.

Hon. P.J. Mutiso: Thank you, Mr. Speaker. Mr. Speaker, my concern is on page 5 whereby the Committee did a great job. The Board had given a number of employees and contractual as 1,085 staff and people who are contracted but when they scrutinized the report and they found that it was 1,090, Mr. Speaker. So, my worry is; why did the Board give the wrong number or what were they afraid of because there must be a concern on this. Why; bBecause they know there mandate and yet they do not adhere to it. I concur with the other Members who have spoken before.

Now my worry is why are they in the office if they cannot adhere to their mandate, if they cannot do their work? As in exactly what is supposed to be done to them? It means that, I concur with the Hon. Member for Matungulu, he said that this Committee, we cannot know the exact number of the staff who are supposed to be in this County and because of that, it means that there are other Members or other staff who were not disclosed here and we cannot know them in the name of contract.

It means that, as we know what is happening now like in Machakos Level V hospital, there are people who are employed or given contracts and now they have been chased away as we are talking now and they have been there for eight years and there are other new members who were brought in now as we are talking and the old members were chased away and they were not paid their money yet there is a case whereby a staff was chased away and was admitted in Bishop Kioko Hospital and the colleagues came up with some money to pay for that staff and remember they pay money for NHIF and he could not be treated in any hospital with that card.

My concern is why is this happening? Why is it that the County Government of Machakos is not remitting the money to the relevant organizations like NHIF and NSSF? So, Mr. Speaker, I think as Hon. Members, we must be serious on this and do our work without fear because I think what we should do is, we must be serious on this in order to make this County work well.

So, Mr. Speaker, in the disciplinary case, I would like to know what the Board did when the Governor intentionally laid off persons contrary to the law? The Board is not given independence to their work and so Mr. Speaker, I do not think whether there is any need for us to have such a Board. So, Mr. Speaker, let us get a new Board which can work well as it is required by the law. Thank you, Mr. Speaker.

(Applause)

Hon. Deputy Speaker: Thank you. Hon. Steve.

Hon. Mwanthi: Thank you, Mr. Speaker. Let me start by commending the good job especially in the part of recommendations from the Committee that has recommended that we need the Board to be reconstituted and new commissioners appointed by the Government and approved by this Hon. House. Mr. Speaker, it is very wrong when this Hon. House or the County Government---

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

Hon. Masesi: Yes, Mr. Speaker, there is a Hon. Member---

Hon. Deputy Speaker: Hon. Steve, just have your seat please.

Hon. Masesi: Mr. Speaker, we have a Hon. Member in the House on phone. That was my point of order.

Hon. Deputy Speaker: Could you point out to me who is the Hon. Member on phone in the House please?

Hon. Masesi: Sorry to say it is the Hon. Member behind me, Mr. Speaker. He was on phone when the Hon. Member was on the---

Hon. Deputy Speaker: Name the Hon. Member please.

Hon. Masesi: Hon. Benedette Mueni, Mr. Speaker.

Hon. Deputy Speaker: Thank you. Hon. Benedette Mueni, I think you know the House rules properly so make sure you do not speak on the phone again. Take this as a final warning please. Proceed, Hon. Member.

Hon. Mwanthi: Thank you, Mr. Speaker. Mr. Speaker, it is my kind request for this Hon. House to take action as at now bearing in mind that on 28th of February the person whom they are calling the Chairperson or acting Chairperson was here in this House and she could not present the actual number of employees contracted and in all departments; she could not produce that. I think up to now she has never produced that document because we have not seen it.

I want to believe that, the same person or the same acting person who is office illegally as per Section 58(a) of County Government Act that requires the Chairperson of the Board to be appointed by the County Governor with the approval of the County Assembly. So, I think the same person should not be working as the Chairperson of that Board and that is why possibly she could not furnish the House with such documents.

In the report we still have some contradictions whereby you will find that the total employees as submitted in the annual report was 2,509 and the same Board gives the total employees as submitted by the same in the day of interrogations as 2,489. I think these are supposed to be the permanent ones but I was expecting that we could have been furnished with the report which I want to believe she has been hiding.

With me is the report; I am talking of where we have the temporary, contracted, permanent and casual employees of this County of Machakos which when she was here, she disputed the same report. Can she kindly be requested either furnish the House with the same or she stops working for the County and necessary act should be taken on the same because I want to understand that as we are speaking now we only have her as acting and two other commissioners.

As per the County Governments Act, we still should have a County Secretary for the Board appointed and also approved by the County Assembly. The one who was approved has

been suspended and somebody else has been appointed by the same acting Chair in that office who is still working illegally in that office.

So, Mr. Speaker, I do request that, these recommendations be taken seriously and those documents still as a House we need them. We want to see how many employees we have in Machakos County, how many are on payroll and all the payments that are being done by the same people. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Hon. Mueni.

Hon. (Ms.) Mueni: Thank you, Mr. Speaker. I apologize but I was sitting here because I wanted to talk. Mr. Speaker, in Machakos County, we do not have a County Public Service Board because they work under instructions; unless you follow the line, you are not there. We went to KMTC and the employee, who is there, when she told us the truth, I think she was transferred, it is only that she could not be sacked because she is employed by the National Government.

So, what I mean, when that lady was here, who is the Chair, I think you heard the way she was talking. We have so many workers who are walking around in the whole County and they do not do anything; they are just ghost workers because they do the politics but not the work.

So, I think in this Assembly, we need to pull up our socks because even in the other regime, it was the same and because we are paying people who are not working and even those who are employed do not know their mandate because you are not free to do your work. You are instructed to do what you are not supposed to do.

Even the Minister for Finance, you can see the way she is treating us; she is doing what she wants but not what she is supposed to do. So, Mr. Speaker, I think we have.....and the Chair for Labor has done a good job. The other Chair for Labor who was removed was being compromised every time and we were not getting the number of the employees.

(Applause)

So, I think he is trying because you know to decline money is not easy. So, I think he also has to pull up his socks and bring us the number for the employees even if it means we go to every Sub-County or Wards and know the employees by ourselves but not to tell the executive to bring the right number because you will never get it. Thank you, Mr. Speaker.

(Applause)

Hon. Deputy Speaker: Hon. Judas Ndawa.

Hon. Ndawa: Thank you, Mr. Speaker, Sir. I want to give my input on the report which is before this House. First of all, I will commend the Committee because they sacrificed a lot of time and their energy to compile this report and because of that we must congratulate them for coming up with this report. Mr. Speaker, the report is good but it is not complete; there are some issues which are very critical and they are missing in this report.

According to the report Mr. Speaker, I will refer you to page 9, item number 2; it is evident responding to this report, it says the Acting Chair informed the Committee that, the report on staff audit was never tabled and approved at the Board level.

So, it means whatever this Committee relied on is something which is not owned by the Board. It was just individual sentiments because the Board ought to have come together and agree on what to table before the Committee. So, the report we have here, we may not rely on it or we may not agree with it in totality because this information is not coming from the Board. On the same page number 4---

Hon. Deputy Speaker: Point of information, Hon. Cosmus.

Hon. Masesi: Yes, Mr. Speaker. I just want to inform the Hon. Member that on the back page we have the full report from the Service Board which is signed by all the Members of the Service Board which I want to believe the Committee relied on.

Hon. Deputy Speaker: Let me just give you guidance on this Hon. Member. We do have a report here which has been signed is on page 21; the report has been signed by one Scholastica M. Mboi, Acting Chairperson, Machakos County Public Service Board and it is the same person whom you are purporting said the report was not presented before the full Board.

So, if we do have a report signed by her and she is the same person purporting the report was not presented to the Board, yet she has signed the report, then the Committee was in its rightful position in dealing with the report as it was. We may proceed.

Hon. Ndawa: Much obliged, Mr. Speaker. In fact, the statement contradicts what is on the other side.

Hon. Deputy Speaker: Point of information? Yes.

Hon. Mwanthi: Thank you, Mr. Speaker. Just responding to what Mheshimiwa is trying to say, I think the acting chairperson just disowned this document; it was tabled here by some commissioners but she disowned that one. So, the report that we have from the committee is what now she owned. Whatever we have here from the committee is what she owned, so the report which is here is from the acting chair but she said the audit report which I have here was not tabled at board level. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you. You may proceed.

Hon. Ndawa: Well advised, Mr. Speaker. Number four, let me not go back to that because it is captured in the report.

(Laughter)

Mr. Speaker, on recommendation number 7 which was recommended by the committee that is the recommendation that we should follow to the letter so that we have the National Government giving us more funds to assist in the issue of wage bill because according to the

report, the ballooning wage bill is caused by the CBAs or the Collective Bargaining Agreement between the health staff and the government.

So, in other words, the national government also has a hand in what we are suffering from because it is the one that agreed to be paying these people a lot of money. So, we need to pursue that to get more allocation.

The other issue number 8 recommendation number 8; we can go back there if you have your report. Recommendation number 8 is about adherence to constitution. Mr. Speaker, every Kenyan has a duty to follow the constitution. If the constitution says we follow or we employ or we include people with disabilities in all sectors whether elective or appointive positions, nobody is supposed to go against that constitution. So, that recommendation is proper.

Recommendation number 2 is talking about what we call in human resource flexibility; that recommendation is also good. We need to have people who can work in this department and also can work in this other department. We can have a person who can be a driver and at the same time can do another job. If we have such kind of people in our system, we can even be able to reduce the number of workers because one person can do several tasks and that is good recommendation; I agree with that committee.

The other issue is recommendation number 4, the issue of data base even in our own personal businesses, you need have a data base of employees and in fact it is an offense if you do not keep records of your employees you can be jailed for that offense.

(Applause)

So, if the service board is not able to say we have these people in this department, we have people in this department, that is a failure and this is the high time we should correct the anomaly because we cannot sit on mistakes.

The other issue Mr. Chairman is recommendation number 1 which says that we should reconstruct or we should reconstitute---

Hon. Deputy Speaker: Point of order?

Hon. Mwanthi: Yes, I think the Hon. Member should address you as the Speaker not Mr. Chairman.

Hon. Ndawa: Thank you, Mr. Chairman---

(Laughter)

Mr. Speaker, I am sorry to say so but there is what is making me to address as the Chair. There is a ruling which was made by the High Court which said we do not have Deputy Speakers in all the County---

Hon. Deputy Speaker: Hon. Judas.

Hon. Ndawa: So, we are left to confirm---

Hon. Deputy Speaker: Hon. Judas, can I guide you on that please?

Hon. Ndawa: Thank you, Sir. Yes

Hon. Deputy Speaker: Hon. Judas, the person sitting on the seat is addressed as Mr. Speaker regardless of whether it is one member who has been elected from here, the minute they seat on the seat they are addressed as the Speaker and that is the title you are addressing to; you are addressing to the title you are not addressing to the person seated there. I hope you are guided accordingly, Sir.

(Applause)

Hon. Ndawa: Well advised Mr. Speaker, Sir. I am now making my final remark. Recommendation number 1 is talking about reconstituting the board and we know the term of the board was six years. It is now five years, there is a year which is remaining; if we say now that we reconstitute it we might end up in other court battles because the commissioners can also go to court and say these people are in breach of contract. We also need to be careful.

The other issue, Mr. Speaker that should be noted is that we have matters pending in court which was also taken by the same commission---

Hon. Deputy Speaker: Point of information from Hon. Cosmus?

Hon. Masesi: Thank you, Mr. Speaker. I am wondering why the Hon. Member doubts the powers of this House, Mr. Speaker. Mr. Speaker, if we are well informed and this House recommends for the removal of those commissioners, I want to believe we have all the powers against their tenure. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Okay. Hon. Judas, you are being informed; could you please conclude on your submissions please?

Hon. Ndawa: Thank you, Mr. Speaker, for the protection. I do not know why this Hon. Members are raising so many point of orders and points of information.

Hon. Deputy Speaker: Please just go ahead and complete your submissions.

Hon. Ndawa: So, the final submission is that there are those matters in court and there is this saying that is said by the wise men; if what is yours rot, you dry it, you do not throw it away. If we have problem with service board, we need to advise them accordingly, we need to show them the way and we should also guide them so that they can be able to discharge their mandate. Thank you, Mr. Speaker, Sir.

Hon. Deputy Speaker: Thank you. Hon. King'ori.

Hon. King'ori: Thank you, Mr. Speaker. I have read the report, it is good but it has some omission on all departments' remuneration because I fail to understand why the committee did not ask how they pay people when they engage them on contract. For one, we should not break

the law by making a scapegoat like the one on education. Where education has been devolved we should also defend to the maximum.

The teachers on the ground are underpaid even below the recommended government salaries. Meaning what? The board has failed to help those teachers who help our kids on daily basis in order for them to become the future leaders of this country. I wonder how come, we have a board that can pay their teachers their salaries below the recommended wage by the national government where we follow from the national government then we do it in the county. I wonder which laws they use so that they can pay them below the recommended government wages.

I think they should have come with a good contract that is why I am saying that this report should also recommend that all people employed in Machakos, their remuneration should be recorded here and mentioned so that we can know each and every department how much does it get? How much do we have? So that when we talk about wage bill and others, we can know who has been paid more or who is not being paid.

Like the teachers I am talking about I know almost all of them they get less than ksh. 12,000 and they are also deducted some money so you wonder even how they live and they are the people we are trusting with our children, they are the people we expect high discipline in dealing with our children and we want to mend our children and now this report I do not see anywhere whereby we have a formula of lowering our wage bill.

We must also have a formula on maintaining human dignity in our people. Meaning what? Our teachers should be paid well so that we can have future great leaders.

Our security team should also not be left behind because the people who are working outside the field are also underpaid and this one I think it is not good for this county and even not good for this country. When you pay beyond what you have recommended by the government, I think there is something wrong. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you, Hon. Member.

(Question put and agreed to)

Hon. Members, now that the report has been adopted, I would like to make a few highlights on the same. The first one is, first and foremost as a House, the public service board is the backbone of employing people in the county. Human resource is the one most important factor which we have as a county. The biggest or the greatest expense we have in the recurrent expenditure is pertaining to human resource and pertaining to salaries and wages which are being paid.

When I look at the report which has been tabled here, I have seen and one Hon. Member pointed out that pout the report has given us numbers in departments as they were presented by the board and as they were reported in a report of the audit but we have not seen the numbers of the recommended positions by the Commission on Revenue Allocation (CRA).

Every single department has an approved recommended ceiling; we need to move with urgency and make sure we get the recommended ceilings for each department and ensure that each department is living within the recommended CRA ceilings. If the positions in one department are supposed to be 300, then we need to maintain 300 as a county. We cannot maintain 500 when the ceiling is 300.

So, it is important for us to ensure the committee to ensure they get those CRA recommended ceilings and provide to this House the variance which we have between the CRA recommended ceilings and actuals as we have them.

The other thing which I have seen is that issues to do with the constitution of the service board itself. If a service board is not properly constituted then it is not going to perform its mandate as it should and there is a risk that whatever it does or implements is against the law. The law provides very well mechanisms within which a County Assembly which is the approving authority for a County Public Service Board can be able to utilize in ensuring they correct as anomalies which they see in these boards.

I would recommend the committee to look at those and when you are giving your recommendations, it is important for you to be able to say as per article this of the constitution or as per section this of this act, it provides for one, two, three, four, five in as far as rectifying the anomaly of having a not properly constituted Public Service Board. We cannot continue having a Public Service Board and a report being brought before the House from a Public Service Board which is not properly constituted; that is an issue which needs to be corrected.

This report is to be forwarded to the department of labor for implementation and I request the implementation committee to follow up keenly and ensure the recommendations which have been made by this report are implemented to the letter. Mr. Clerk, proceed.

FINANCIAL STATEMENTS OF MWALA WATER AND SEWERAGE COMPANY FOR THE YEAR ENDED 30TH JUNE, 2016

Hon. Deputy Speaker: Under this Order, we have one motion by the Hon. Joseph Musau Chairperson Public Accounts and Investments Committee. Hon. Joseph Musau.

Hon. Wambua: Thank you, Mr. Speaker.

Mr. Speaker, that aware that Article 229(7) of the Constitution states that an audit report shall be submitted to parliament or the relevant County Assembly; Further aware that pursuant to Article 229(8) of the Constitution, within three months after receiving an audit report, the parliament or the County Assembly shall debate and consider the report and take appropriate action; Cognizant that the committee on public accounts and investments is established pursuant to Standing Order 185 and is mandated to examine reports accounts and workings of the County Public Investments; Remembering that in March, 2018 the committee undertook interrogation exercise of audit report of financial statements of Mwala water and Sewer Company for the year ended 30th June, 2016;

Mr. Speaker, I wish to move the motion that this Hon. House discusses and approves the report of the Auditor General on the financial statements of Mwala water and Sewer Company for the year ended 30th June, 2016.

I implore the member for Machakos Central Ward who happens to be the incoming MP for the same Sub-County Mr. Mutiso to second this motion. Thank you

Hon. P.J. Mutiso: Thank you, Mr. Speaker. I second.

Hon. Deputy Speaker: Thank you, Hon. Mutiso. Hon. Musau, you may proceed. Point of Order.

Hon. Ndawa: Mr. Speaker, looking at the time and the time we have sat here since morning, we may not have sufficient time to go through this report or we are requesting if we can be given time since we have the reports with us to go and read and maybe we refer the same to the House Business Committee for allocation another time. That is a humble request I am making, Mr. Speaker, Sir.

Hon. Deputy Speaker: You are proposing that the Hon. Members be given time to go through the report before he reads it before the House and then you will be able to discuss it to be balloted. Can I propose the question?

(Question proposed)

Hon. Cosmus?

Hon. Masesi: Yes, thank you, Mr. Speaker. I stand to oppose the request bearing in mind that if you check the Order Paper Mr. Speaker, this House has got a lot of work which is pending before the House. Mr. Speaker, with your guidance we would like to know what is the timelines for the morning session because I can see we are just past noon so that we can be given at least half an hour, Mr. Speaker, to look at the report. My wish is that Mr. Speaker, as a House we work on doing away with the reports we have at hand to pave way for new reports. Thank you.

Hon. Deputy Speaker: I think we supposed to continue up to 12.30 p.m. in the morning; we do have about 20 minutes to go before that time and I would request that looking at the report as it is it is a report which has about 14 pages and I believe the Hon. Member can be able to go through the report within the remaining period so that we do not have to extend the time beyond 12.30 p.m. and then from there we can be able to allow members to maybe go and have a look at the report after it has already being read before the House. So, proceed, Hon. Musau.

Hon. Wambua: Thank you, Mr. Speaker, for believing in my ability. Mr. Speaker, before the House is a report of the Auditor General on the Financial Statements of Mwala Water and Sewer Company for the year ended 30th June, 2016, Mr. Speaker.

INTRODUCTION

Mr. Speaker, on 25th January, 2018, the report of Auditor General on the Financial Statements of Mwala Water and Sewerage Company for the year ended 30th June, 2016 was received in the office of the Clerk pursuant to Article 229(7) of the Constitution that states that Audit Reports shall be submitted to Parliament or the relevant County Assembly.

The report was committed to Public Accounts and Investments committee pursuant to Standing Order 185(2)(b) and (c) that states that “the Public Accounts and Investments Committee shall be responsible for examination of reports, accounts and workings of the County Public Investments and whether the affairs of the public investments are being managed in accordance with sound financial or business principles and prudent commercial practices.”

COMMITTEE MANDATE

Mr. Speaker, the Public Accounts and Investments Committee is established pursuant to Standing Order 185(1) and (2), that states that; there shall be a select committee to be designated the County Public Accounts and Investment Committee which shall be responsible for:-

- a) The examination of the accounts showing the appropriations of the sum voted by the County Assembly to meet the public expenditure and of such other accounts laid before the County Assembly as the Committee may think fit.
- b) The examination of the reports, accounts and workings of the County Public Investments;
- c) The examination, in the context of the autonomy and efficiency of the County Public Investments, whether the affairs of the county public investments, are being managed in accordance with sound financial or business principles and prudent commercial practices.

COMMITTEE MEMBERSHIP

Mr. Speaker, the Public Accounts and Investments Committee comprises of the following Hon. Members;

- | | | |
|----|-----------------------|-----------------|
| 1. | Hon. Joseph Musau | – Chairperson |
| 2. | Hon. Winfred Mutua | – V/Chairperson |
| 3. | Hon. Agatha Mutunga | Member |
| 4. | Hon. Alice Nzioka | Member |
| 5. | Hon. Johana Munyao | Member |
| 6. | Hon. Josephat Kasyoki | Member |
| 7. | Hon. Peter Mutiso | Member |

SOME LEGAL PROVISIONS ON AUDIT REPORTS

Mr. Speaker, Article 229(5) of the Constitution provides that “the Auditor-General may audit and report on the accounts of any entity that is funded from public funds.”

Article 229(8) of the Constitution states that ‘within three months after receiving an audit report, the parliament or the County Assembly shall debate and consider the report and take appropriate action.’

Article 201(d) and (e) of the Constitution provides that the principles of public finance includes prudent and responsible use of public money and responsible financial management and clear fiscal reporting.

Article 226(2) of the Constitution states that the accounting officer of a county public entity is accountable to the County Assembly for its financial management. Article 232(1)(a), (e) and (f) of the Constitution provides that values and principles of public service includes high standards of professional ethics, accountability for administrative acts and transparency and provision to the public of timely, accurate information.

Hon. (Ms.) Kanini: Mr. Speaker, order.

Hon. Deputy Speaker: Yes, you may proceed.

Hon. (Ms.) Kanini: Thank you, Mr. Speaker. Mr. Speaker, I think you should advise us whether the chairman can continue reading the report while we do not have quorum.

Hon. Deputy Speaker: Mr. Clerk, can you find out if we have quorum please? Ring the bell so that we can be able to get quorum please and the bell is ringing you cannot leave the House. Thank you so much.

(Quorum bell rung)

You may stop ringing the bell please we have quorum. Hon. Members, I would like the Hon. Member to continue and before he does so it is important Hon. Members to ensure that whenever we have business before the House that we maintain quorum of the House until that business that is on the floor of the house is finalized.

I believe that is the reason why we have been chosen by our people to come and represent them here to enact their business so let us all ensure at all times we adhere to that and ensure we finish the House business before anything else. Proceed, Hon. Member.

Hon. Wambua: Thank you, Mr. Speaker. Continuation on some legal provisions on audit report. Mr. Speaker, we are in page four.

Section 47 of the Public Audit Act 34 of 2015 states that ‘the financial statements required under the Constitution, the Public Finance Management Act, 2012 (No. 18 of 2012) and any other legislation, shall be submitted to the Auditor-General within three months after the end of the fiscal year to which the accounts relate and the financial statements shall be in the form and content as prescribed by the Public Sector Accounting Standards Board.’

Section 62(1)(b) and (c) of the Act provides that ‘a person shall not without justification, fail to provide information required under this Act or without justification, fail to provide information within reasonable time that is required under this Act.’

Section 31 of Public Audit Act 34 of 2015 states that within three months after Parliament or the County Assembly has debated and considered the final report of the Auditor-General and made recommendations, a state organ or a public entity that had been audited shall, as a preliminary step, submit a report on how it has addressed the recommendations and findings of the previous year's audit.

COMMITTEE SITTING AND EVIDENCE TAKING

Mr. Speaker, on 26th March, 2018 the committee held a meeting with the Accounting Officer of Mwala Water and Sewerage company who had been invited to respond on various queries raised in the Audit report pursuant to Article 226(2) of the Constitution that provides that the accounting officer of a County public entity is accountable to the County Assembly for its financial management.

The queries raised in the audit report relate to the following areas;

- Presentation of Financial Statements (Improper identification of statements).
- Inaccuracies in Financial statements.
- Trade and other receivables.
- Unaccounted for water.
- Going concern.

- Corporate Governance, Board of Directors.

DETAILS OF FINANCIAL STATEMENTS

Presentation of Financial Statements

Query

Mr. Speaker, the following discrepancies were noted between note numbers shown on the face of the financial statements and those indicated in the notes to the financial statements.

Item	Notes on the face of the statements	Note number in the notes to the financial statements
Ordinary share capital	11	12
Retained earnings	12	13
Grants	13	14
Customer deposits	15	16

Therefore, the financial statements are not properly identified and do not wholly conform to the format prescribed by the Public Sector Accounting Standards Board.

The Accounting Officer responded that the discrepancies were as a result of typing error and were corrected and forwarded to the office of Auditor General for verification. The committee confirmed that the corrected section of the financial statements was forwarded to the Auditor General for verification but informed the officer on the need to be keen in reading and preparing financial statements to avoid contradictory information.

Inaccuracies in the financial statements

Queries

Mr. Speaker,

(i) The following castings error have been noted in financial statements

Item	Figure shown	Re-cast balance	Diff (Ksh)
Statement of comprehensive Income Expenses	20,591,891	20,637,200	(45,309)
Note 4(b) staff cost	6,064,513	6,064,649	(136)
Statement of cash flow Decrease in cash and cash equivalents	(7,699)	(2,618,907)	2,611,208

The management responded that the discrepancies were noted during the audit period and a copy of the amended accounts was forwarded to the office of Auditor General.

(ii) The statement of financial position reflects decrease in trade receivables by Ksh. 1,441,560 and decrease in other payables by Ksh. 2,180,203 but the statement of cash flows reflects nil movement of both items. The Management responded that a copy of the corrected cash flow was prepared and forwarded to the office of the Auditor General for verification.

(iii) The statements of cash flow also include deferred income of Ksh. 1,573,643, a non-cash receipt, which has been incorrectly added to, instead of being deducted from. Cash generated from operating activities.

The Accounting Officer (Management) responded that the disparity was noted and amended and a copy of the correct cash flow forwarded to the office of the Auditor General for verification.

In the queries (i) (ii) and (iii), all concerning inaccuracies in the entries of the financial statements the committee observed that the Accounting Officer and his staff were not keen in recording entries in the financial statements casting doubt in their level of competence.

This is in contravention of Article 232(1) of the constitution that provides that values and principles of public service includes high standards of professional ethics, accountability for administrative acts and transparency and provision to the public of timely and accurate information. The members further confirmed that the corrected (amended) financial statements were all received by the Auditor for verification but later after the Audit exercise.

(iv) Note 7 to the financial statements reflect deferred income closing balance of Ksh. 9,875,358. However, the closing balance of Ksh .9, 875,358 has not been shown in the statement of financial position as at 30th June, 2016. In the circumstance, the accuracy of the financial statements for the year ended 30th June, 2016 cannot be confirmed.

The response from the Accounting Officer was that only the amount that relates to the current financial years has been charged in the financial statements. The closing balance is an accumulation since the time of formation of the company so could not be shown in the financial statements. On this matter the committee was contented with the response.

Trade and other receivables

Query

The financial statements reflect trade and other receivables balance of Ksh. 4,812,587 as at 30th June 2016 as disclosed at Note 8 of the statements. The trade and other receivable balance is net provision for bad and doubtful debts of Ksh. 274,320. The provision appears inadequate as it is equivalent to only 10 per cent of the total inactive debts totalling Ksh. 2,743,203 as at 30th June, 2016.

Consequently, the full recoverability of trade and other receivables balance of Ksh. 4,812,587 as at 30th June, 2016 cannot be confirmed.

The Accounting Officer responded that he has advised the Board of Directors based on the ageing analysis to completely write off some of the debts of in active accounts whose connections were disconnected long before the formation of the company.

The committee observed that there is duplication of roles between the County Government and Mwala Water Company because the County Government is offering free water by sinking boreholes in the various wards. The defaulters therefore have an option of getting free water and so chances of paying the debts is very low considering also the level of poverty in the rural community.

It was also observed that Wamunyu Scheme, through intervention of the Department of Water in Machakos County pulled out of Mwala Water Company and the scheme is now run by the community as independent entity and that most of the defaulters are from this scheme. The committee discouraged the opinion of writing off some of the debts owing to the fact that the defaulters can be traced and by writing off debts is killing the company hence the spirit of devolution will be lost.

The committee was also informed that the company is handicapped in terms of taking legal action on the defaulters because of financial constraints.

Unaccounted for water (UFW)

Query

Records available indicate that in the year 2015/2016, the company produced 183,561 cubic meters (m³) of water, out of which 112,898 m³ or about 62 per cent of the total volume produced was billed to customers. The balance of 70,665m³ or approximately 38 per cent of the total output was not billed to customers.

During the year under review, the average selling price of each cubic meter of water was Ksh. 107 hence the estimated loss from unaccounted for water was Ksh. 7,561,155. The allowable loss limit for the industry is set at 25 per cent of production hence the abnormal loss incurred by the company from unbilled production amounted to Ksh. 2,650,898. Management responded that the UFW occurred due to old dilapidated pipeline which was inherited from the government and is being rehabilitated by a project funded by World Bank. The company is also building pressure break point tanks to ease pressure in pipelines. Further, the management has established a revenue water committee and is sensitizing consumers on importance of managing water to reduce /eliminate wastage.

The Committee noted that the company has been funded Ksh. 54 Million to rehabilitate the whole water system. This money has been kept by Tanathi Company who are the main client. The contractor who is doing the rehabilitation work is on site and work has commenced.

In addition based on the findings of the committee, the Mwala Water and Sewerage Company system was installed many years back and because of this undetected pipe breakages resulting either from construction activities or chemical reactions in the soil and illegal connections are expected.

Going concern

Query

As reflected in the statements of comprehensive income and financial position at pages 1 and 2, in the year 2015/2016, the company recorded a loss of...there is a typo error... Ksh. 741,900, 2014/2015 which was a loss resulting in depletion of general reserves from negative Ksh. 4,567,524 as at 30th June, 2015 to negative Ksh. 5,309,424 as at 30th June, 2016.

Further, the current liabilities of Ksh. 8,391,345 as at 30th June, 2016 exceeded the current assets of Ksh. 5,171,415 by Ksh. 3,219,930. This indicates existence of a material uncertainty which may cast significance doubt about the ability of Mwala Water and Sanitation Company Limited to continue as a going concern.

The management responded that the company has been incurring huge expenditure in its operation and this has been attributed by high electricity bills. The company has developed proposals for having gravitational flow of water as a remedy for reduction of high electricity bills.

The committee observed that upon payment of debts totalling to Ksh. 4,812,587 as stated in the query of trade and other receivables, this can reduce the liabilities and improve performance of the company. Again by initiating the proposed project of supplying water using gravitational force, it will be a cheap venture and this will reduce liabilities resulting from high electricity bills.

Corporate Governance Board of Directors Query

As reported in 2014/2015, the current Board of Directors comprises seven Directors. However, as stipulated in terms of their appointment letters pursuant to the company's articles and memorandum of association, the term of five Directors expired in 2013 having served for three years from February, 2010. Therefore, the Board is in office illegally. Consequently, any actions or decisions taken by the board on behalf of the company may not be legally binding should these be disputed by third parties.

The Accounting Officer responded that the company, in collaboration with County Government of Machakos and Tanathi Water Service Board held annual General Meeting on 30th June, 2017 where retirement of Board members whose term had expired took place. The Committee confirmed that currently the company does not have a complete Board of Directors.

Late Submission of Financial Statements Query

Section 47 of the Public Audit Act, 2015 requires every state corporation to prepare and submit its financial statements to the Auditor-General within three months after the end of the financial year to which the accounts relate. However, the company's financial statements for the year ended 30th June, 2016 were submitted to the Auditor-General on 10th November, 2016, one month after the deadline of 30th September, 2016. The company therefore breached the law on financial reporting.

The Accounting Officer in response said that being the second time for the company to be audited by Auditor General the company had really improved on financial reporting and will be able to meet deadline in future. The committee noted that the Accounting Officer did not give factual reasons as to why the financial statements were not submitted in time and that the company was not sensitive to public audit standards and practices.

GENERAL OBSERVATIONS

Mr. Speaker, the following is a summary of key observations.

1. The Company lacks qualified personnel who are conversant with standards and format of preparing financial reports. This is evident from the many errors and inaccuracies arising in the queries which were also confessed by the Accounting Officer.
2. The total debt stated under Trade and other receivables is Ksh. 4,812,587 out of which Ksh. 2,743,203 is classified as inactive debts and Ksh. 274,320 as bad or doubtful debts leaving a balance of Ksh. 1,795,064 as active debts.
3. The unbilled water (Non-Revenue Water) amounted to Ksh. 2,650,898 which with proper collection mechanism can be recovered.

4. The current liabilities of Ksh. 8,391,345 exceeded the current assets of Ksh. 5,171,415 by Ksh. 3,219,930 as at 30th June, 2016. Further from 2014 to 2016, the company recorded an increase in losses.
5. At the time of interrogation, the company had not constituted the Management Board yet and that key decisions on how to address the huge liabilities and approaches of reducing the Unaccounted For Water cannot be made and if made they cannot be legally binding.
6. The Company contravened Section 47 (1) of the Public Audit Act, 2015 that states that ‘the financial statements required under the Constitution, the Public Finance Management Act, 2012 (No. 18 of 2012) and any other legislation, shall be submitted to the Auditor-General within three months after the end of the fiscal year to which the accounts relate.’

RECOMMENDATIONS

Based on the above key observations, the committee recommends as follows;

1. On trade and other receivables, the company should partner with the neighbouring water schemes to blacklist the defaulters who have a habit of defaulting then joining other schemes. Also there is need to set a maximum consumption level of water above which the company should disconnect the supply to the customer. This will reduce the risk on non-payment.
2. On the query of Unaccounted For Water, the company should sharpen its monitoring system. This will arrest water losses resulting from pipe breakages and illegal connections. The end result will be a reduction in the Unaccounted For Water.
3. The County Government of Machakos should write off some of the old debts pursuant to Section 150 (2) of the Public Finance Management Act, 2012 that states that “An Accounting Officer for a County Government entity, may with the approval of the County Executive Committee member for finance, write off a loss exceeding the amount referred to in subsection (1) but not exceeding a further amount, and in circumstances prescribed by the regulations approved by Parliament.” This is because based on the current situation it seems impossible for the company to recover the huge debts.
4. On the query of corporate governance the Committee recommended that within 90 days, the company should in consultation with Tanathi Water Services Board organize for an AGM and appoint new Directors as provided in Section 132(1) of the Companies Act No. 17 of 2015 that states that ‘a public company shall ensure that at appointment of director during public general meeting of the company, a motion for the company, appointment of two or more persons as directors of the company by a single resolution is moved only if a resolution that it should be so moved has first been agreed to by the meeting without any vote being cast against it.’
5. On late submission of Financial Statements the Committee confirmed that the company contravened Section 13(1) of the Public Audit Act, 2003 and recommended that any future reports intended for submission to the office of Auditor General should be within the time limit stipulated failure to which provisions of Section 47(1) of Public Audit Act, 2015 on Audit offences should be invoked.

CONCLUSION

Mr. Speaker, on 22nd October, 2013, the World Bank reported that smooth devolution of water services calls for County Leadership to drive reforms without disrupting services. It was also stated that well performing water companies play an indispensable role in strengthening the legitimacy of Counties and therefore there is need to budget for sustainable of water services.

Mwala water company is one among the upcoming water companies hence the need for County Government of Machakos to intervene to promote its service delivery. It is therefore my privilege and pleasure on behalf of Public Accounts and Investments Committee to table before this Hon. House the report on Financial Statements of Mwala Water and Sewerage Company for the Year ended June, 2016 for discussion and adoption.

Thank you, Mr. Speaker. This report was read and adopted by all committee Members. Thank you, Mr. Speaker.

Deputy Speaker: Thank you very much, Hon. Joseph Musau, for that report and Hon. Members, as I had earlier directed it is a lengthy report; you need to have a look at it so that now when we come next time, we can be able to deal with it.

(Question proposed)

It is open for debate but as we have said we need to go and be able to interrogate the report, be able to look at it. Remember it is a report that has been presented by public accounts and investments committee. So, water companies are investments which are being made by County Assembly; you need to look at them. They are supposed to be making money for the county, so analyze the queries and be able to come out with questions so that when we are discussing the report next time we can be able to have more informed discussions.

I will therefore say this report goes back now to the House Business Committee for re-allocation in the coming week so that we can be able to do it.

ADJOURNMENT

Deputy Speaker: This House stands adjourned to Tuesday, 17th of July, 2018 at 2.30 p.m.

The House rose at 12.42 p.m.