

REPUBLIC OF KENYA
MACHAKOS COUNTY ASSEMBLY
OFFICIAL REPORT

Tuesday, 20th February, 2018

The House met at 10.03 a.m.

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

PRAYERS

Hon. Speaker: Hon. Members, at this point, we have no quorum. Serjeant at Arms, can you ring the bell.

(Quorum Bell was rung)

(Several Hon. Members entered the chambers)

Good morning, Hon. Members. I welcome you to this session and I noticed we just have enough quorum. I just hope there is going to be more quorum and in the meanwhile let me welcome the students of Diamond School from Athi River. Is it a primary or a secondary school? Yes, primary school and this is in Athi River ward, that is the ward of Hon. Robert Kisini and he is not here. He should have been able to greet the students from his school.

By and by we believe he will come so you will be able to see him so that you can know that you are represented because matters with of the youth are also matters that are addressed by this Assembly, and thank you the teachers who prepared and facilitated the attendance.

It is good that you are providing learning opportunities for the young ones who in not so long in the future to come are likely to be those who are sited in this House and other Houses and other positions in this Republic. Welcome.

(Applause)

Hon. Members, I want us to go straight to the business of the House. Mr. Clerk, proceed.

COMMUNICATIONS FROM THE CHAIR
CONSERVATION OF THE ENVIRONMENT

Hon. Speaker: Hon. Members, under this order we have two communications from the Chair. The first one is on the conservation of the environment and this is for the information of the Members and also a thank you to the Members who participated in the manner that I am going to elicit in the communication.

When we were opening the Assembly on the Tuesday, 13th February, 2018, when we had prayers, I indicated that there is need to conserve our environment. Since then, Hon. Members, I am happy to report that some commendable efforts have been undertaken by none other than some of the Members of this House particularly on Wednesday, 14th February, 2018; a number of Hon. Members of this County Assembly held a meeting with the National Government in the Republic of Kenya led by the County Commissioner, Machakos County and the County Executive officers on saving the Iveti/ Katunga forest from deforestation and this meeting was at the County Commissioner's Office.

The result of the meeting, I am happy to report, was a ban on cutting of trees by the Governor in the Iveti forest. That is quite a step in the right direction.

(Applause)

Hon. Members, a further initiative to save forests in the County was undertaken by another group of Hon. Members of this Assembly and they were accompanied by our Senator, Hon. Kabaka, the County Commissioner, Machakos County and her team, the Chief Officer, Environment for Muumandu forest and in this case five hectares, that is over 20 acres of indigenous trees had been earmarked for cutting. Note, indigenous trees that take ages to grow and mature and while again about 50 hectares, that is nearly 100 acres of the forest are bare and without trees. So, you notice that the little that there is was earmarked for cutting.

So, the result again was a ban on tree-cutting on that forest and notice that this is an effort of both National and the County Government of Machakos. Hon. Members, allow me to appreciate the commendable efforts of the following Members who spearheaded the process of protecting our environment;

1. Hon. Francis Ngunga - Majority Leader
2. Hon. Paul Museku - Deputy Speaker
3. Hon. Peter Mutiso
4. Hon. Caleb Mutiso
5. Hon. Robert Kisini
6. Hon. Johana Munyao
7. Hon. Geoffrey Kamulu

(Applause)

Thank you, very much Hon. Members, keep up that spirit. I also want to appreciate all the officials of the National Government led by the County Commissioner, Madam Matilda Sakwa.

In the same note, I thank the County Executive led by His Excellency the Governor and his team for their cooperation in ensuring conservation of environment in the County of Machakos and I am hopeful that the efforts will be increased. I call upon each Hon. Member here to do their part particularly in conserving the environment.

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

The second communication Hon. Members is on a report of the Auditor General and this is to notify the Assembly that the Assembly received a report of the Auditor General on the

Disclaimer: *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Machakos County Assembly.*

Financial Statements of the Mavoko Water and Sewerage Company Limited for the Year ended 30th June, 2016, on 14th February, 2018 in accordance with Article 229(7) of the Constitution of Kenya.

Hon. Members, I hereby commit that report to the Public Accounts and Investments Committee and the Committee is required to interrogate the report and file a report before this House and the same to be done within three months as it is provided for in Article 229(8) of the Constitution of Kenya. Thank you, Hon. Members.

(Applause)

Mr. Clerk, proceed.

PAPERS LAID

CALENDAR OF THE SECOND SESSION OF THE SECOND ASSEMBLY

Hon. Ngunga: Thank you, Madam Speaker and good morning Members. Hon. Speaker, pursuant to Standing Order 25(1) and 151(5)(a), I wish to lay on the Table of the Assembly today Tuesday, 20th February, 2018; the report of House Business Committee on the calendar of the Second session of the second Assembly of Machakos County. Thank you, Madam Speaker.

FINANCIAL STATEMENTS OF MWALA WATER AND SEWERAGE COMPANY FOR THE YEAR ENDED 30TH JUNE, 2015

Hon. Wambua: Thank you, Madam Speaker and thank you, Hon. Members. Madam Speaker, I beg to lay the following paper on the table of the House today Tuesday, 20th February, 2018; the report of the Auditor General on the Financial Statements of Mwala Water and Sewerage Company for the year ended 30th June, 2015. Thank you, Madam Speaker.

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

NOTICES OF MOTIONS

CALENDAR OF THE SECOND SESSION OF THE SECOND ASSEMBLY

Hon. Ngunga: Thank you, Madam Speaker.

Hon. Speaker, that aware that the House Business Committee is mandated to prepare and if necessary from time to time adjust the Assembly calendar with approval of the House;

Aware that the Assembly has just resumed from recess for the second session and that the House need to be guided on the dates of this session.

Further, aware that the regular sessions of the Assembly should commence on the second Tuesday of February and terminate on the first Thursday of December except the session commencing immediately after general election;

Aware that the Assembly calendar once approved by the House shall be published in the Gazette, Assembly website and at least two newspapers of National circulation.

Hon. Speaker, I wish to give notice of the motion that pursuant to Standing Orders 25(1) and 151(5)(a), the Assembly approves the report of the House Business

Committee on the calendar of the Assembly of Machakos County Assembly for 2018 for the second session.

Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Ngunga. I call on Hon. Musau.

FINANCIAL STATEMENTS OF MWALA WATER AND SEWERAGE COMPANY FOR THE YEAR ENDED 30TH JUNE, 2015

Hon. Wambua: Thank you, Madam Speaker.

Madam 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 the appropriate action;

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

Remembering that on 13th November, 2017, the committee undertook interrogation exercise of the Audit Report on Financial Statements of Mwala Water and Sewerage Company for the year ended 30th June, 2015.

Madam Speaker, I wish to give notice of 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, 2015.

Thank you, Madam Speaker.

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

STATEMENT

BUSINESS FOR THE HOUSE FROM 20TH TO 21ST FEBRUARY, 2018

Hon. Ngunga: Thank you, once again, Madam Speaker.

Hon. Speaker, I stand under Standing Order 41(2)(a) 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 in the following week.

Hon. Speaker, the House Business Committee balloted business for this week pursuant to the provisions of the Standing Order 151 as follows:-

Tuesday, 20th February, 2018

Morning at 10.00 a.m.

Report of House Business Committee on the Calendar of the Assembly by. Hon. Ngunga;

Report of PAIC Committee on Audit Report of Financial Statement for Mwala Water and Sanitation Company for the period ended 30th June, 2015 by Hon. Joseph Musau, PAIC Chairperson.

Afternoon at 2.30 p.m.

Report of Procedure and Rules Committee on amendments to Standing Orders by Hon. Museku;

Report of Education and Social Welfare Committee on CASA games by Hon. Kiilu, Chairperson, Education and Social Welfare committee Hon. Kiilu.

Wednesday, 21st February, 2018

Morning at 10.00 a.m.

Report of Agriculture Committee on the Status of Agricultural Training Centre, Machakos by the Chairperson, Agriculture committee;

Motion on suspension of sand harvesting in Kivaa Ward by Hon. Kiteng'u

Afternoon 2.30 p.m.

Motion of regulation of gambling business by Hon. Ngunga;

Report of Health and Emergency Services Committee on Status of Kangundo Level IV Hospital by the Chairperson, Health committee.

Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Ngunga. Hon. Members, that should guide you adequately on the business of the House for this week. Mr. Clerk, proceed.

MOTIONS

CALENDAR OF THE SECOND SESSION OF THE SECOND ASSEMBLY

Hon. Ngunga: Thank you, Madam Speaker.

Hon. Speaker, that aware that the House Business Committee is mandated to prepare and if necessary from time to time adjust the Assembly calendar with approval of the House, aware that the Assembly has just resumed from recess for the second session and that the House need to be guided on the dates of this session.

Further, aware that the regular sessions of the Assembly should commence on the second Tuesday of February and terminate on the first Thursday of December except the session commencing immediately after general election;

Aware that the Assembly calendar once approved by the House shall be published in the Gazette, Assembly Website and at least two newspapers of national circulation.

Hon. Speaker, I wish to move the motion THAT pursuant to Standing Orders 25(1) and 151(5)(a), the Assembly approves the report of the House Business Committee on the calendar of the Assembly of Machakos County Assembly for 2018 for the second session.

I wish to call Hon. Kamitu to second the motion. Thank you, Madam Speaker.

Hon. Speaker: Hon. Kamitu.

Hon. Kamitu: Thank you very much, Madam Speaker. I second and support the motion.
Hon. Speaker: Thank you Hon. Kamitu. Hon. Francis Ngunga, can you proceed.

Hon. Ngunga: Thank you, Madam Speaker. The motion having been properly seconded, the Assembly calendar therefore provides for a period in which the Assembly is to transact business during a session and is informed by the constitution, the County Governments Act, the Assembly Standing Orders and other relevant laws and the practices and traditions of the legislature worldwide.

The calendar enables the Assembly to plan execution of its business; it sets out schedule of days for the House sitting and days of recess. Standing Order 24(1) provides that the regular sessions of the Assembly shall commence on the second Tuesday of February and terminate on the first Thursday of December. Standing Order 24(2) provides that the Assembly may, by a resolution of the House, alter the commencement and termination dates of a given session.

Further, Standing Order 24(3) states that the Assembly shall continue to be in session and may adjourn for such a number of days as it may determine in the calendar while Standing Order 24(4) requires that a period of three months shall not intervene between the last sitting day of the Assembly in one session and the first sitting of the next session.

Hon. Speaker, Standing Order 25(1) requires the House Business Committee, with the approval of the Assembly, to draw up the Calendar of the Assembly. In addition, Standing Order 25(2) provides that once the Calendar of the Assembly is approved by the House it shall be published in the Gazette, the Assembly website and at least two newspapers of national circulation.

Further, Standing Order 27(1) provides for the hours of meeting of the House as Tuesdays 2.30 p.m., Wednesdays 10.00 a.m. and 2.30 p.m. and Thursdays 2.30 p.m. The Speaker, may however direct otherwise for the convenience of the House, but more than one sitting may be directed during the same day. Standing Order 27(3) provides that the House may resolve to meet on any other day, in order to transact business.

MANDATE OF THE COMMITTEE

Hon. Speaker, the mandate of the House Business Committee is stated under Standing Order 151(5) and includes the following:-

- (a) Preparation and, if necessary, from time to time, to adjust the Assembly Calendar with the approval of the House;
- (b) Monitoring and overseeing the implementation of the House Business and programs;
- (c) Implementing the Standing Orders respecting the scheduling or programming of the business of the Assembly and the functioning of the Committees of the House;
- (d) Determining the order in which the reports of Committees shall be debated in the House;
- (e) Taking decisions and issuing directives and guidelines to prioritize or postpone any business of the House acting with the concurrence of the Leader of the Majority Party or the Leader of the Minority Party, as the case may be; and
- (f) Considering such matters as may from time to time arise in connection with the business of the House and shall have and perform such powers and functions as are conferred on and ascribed to it by these Standing Orders or from time to time by the House.

Hon. Speaker, I am grateful to the office of the Speaker and that of the Clerk to the County Assembly for the support accorded during the deliberations and preparation of the proposed Calendar tabled before this House with this report.

I wish also to express my appreciation to the Hon. Members of the Committee who sacrificed their time to participate in the activities of the Committee and in preparation of the Calendar.

COMMITTEE COMPOSITION

Hon. Speaker, the Membership of the House Business Committee as provided for in Standing Order 151(1) includes the following:-

- | | | |
|-----|-------------------------------|---------------|
| 1. | Hon. Florence M. Mwangangi | - Chairperson |
| 2. | Hon. Paul Museku | - Member |
| 3. | Hon. Francis Ngunga | “ |
| 4. | Hon. Alex Kamitu | “ |
| 5. | Hon. Justus Kiteng’u | “ |
| 6. | Hon. Tariq Mulatya | “ |
| 7. | Hon. (Ms.) Jacqueline Nziva | “ |
| 8. | Hon. (Ms.) Betty N. Nzioki | “ |
| 9. | Hon. (Ms.) Angela Munyasya | “ |
| 10. | Hon. Francis K. Kalumu | “ |
| 11. | Hon. Peter J. Mutiso | “ |
| 12. | Hon. Moffat Maitha | “ |
| 13. | Hon. (Ms.) Annastaciah Mutuku | “ |
| 14. | Hon. Joshua N. Muli | “ |
| 15. | Hon. Judas M. Ndawa | “ |

CALENDAR OF THE ASSEMBLY

Hon. Speaker, the Committee was guided by Standing Order 24(1), (3) and (4) in coming up with the Calendar. In this regard, the committee noted that the second session of the Second Assembly of Machakos County commenced on 13th February, 2018.

The committee recommends as follows:

- (i) That the session that commenced on 13th February, 2018 terminates on 5th December, 2018, with a total of 130 plenary sittings.
- (ii) The second session be divided into three parts with four long recesses. You will have the annexure to see that, members.
- (iii) The first part of the session to run from Tuesday, 13th February, 2018 to Wednesday, 2nd May, 2018.
- (iv) The Assembly will then take a short recess of 12 days from 29th March to 9th April, 2018 during this period. This recess will enable Members to celebrate the Easter festivities.
- (v) At the end of the first part the Assembly to have a long recess of 33 days starting Wednesday 3rd May to Monday 4th June, 2018.
- (vi) The Second part of the second session to begin on Tuesday, 5th June, 2018 and run up to Wednesday, 29th August, 2018.
- (vii) The Assembly to take a short recess of 12 days in between this period from Thursday, 6th July, 2018 to Monday, 16th July, 2018.
- (viii) The Assembly to go on its second long recess of 26 days beginning Thursday, 30th August, 2018 and ending on Monday, 17th September, 2018.

- (ix) The third part of the second session to start on Tuesday, 18th September, 2018 and end on Wednesday, 5th December, 2018.
- (x) There be a short recess of 12 days for this period from Thursday, 25th October, 2018 and Monday, 5th November, 2018.
- (xi) The second session of the Assembly to end on Wednesday, 5th December, 2018 whereby the Assembly will go on a long recess of 10 weeks up to Monday, 11th February, 2019 when the third session will begin.

Hon. Speaker, the recommendations on the proposed sittings of the Assembly and recesses have been made taking into account the timelines of the Budget Cycle such as discussion and approval of the County Fiscal Strategy Paper within 14 days after its submission on 28th February, 2018; approval of the Appropriation Bill by 30th June, 2018; and Approval of the Finance Bill by 30th September, 2018, among others.

In addition, the calendar proposed considered major national festivities/events such as the Easter and Christmas holidays as well as school holidays. Further, the Committee considered the calendar of other legislatures such as the National Assembly.

Hon. Speaker, the sittings of the House shall be as per the provisions of Standing Order 25(1) and a motion approved by the House on 14th February, 2018 pursuant to Standing Order 27(3)(c) which changed meetings Hours of the House from Thursdays 2.30 p.m. to Tuesdays 10.00 a.m. As such, the sittings of the House will be on Tuesdays and Wednesdays at 10.00 (mornings) and 2.30 p.m. (afternoons).

In conclusion, Hon. Speaker, the calendar of the Assembly once approved shall be published in the Gazette, the Assembly Website and at least in two newspapers of national circulation pursuant to Standing Order 25(2). This will enable the County Assembly stakeholders such as the Executive, Senate, Development Partners, Civil Societies, and the Public among others to monitor the Assembly activities and participate accordingly. I urge the honorable members to approve the Calendar and adhere to it for the smooth operations of the Assembly in the discharge of its constitutional and statutory mandate.

Hon. Speaker, it is therefore my privilege to present the Calendar of the Assembly to this Hon. House for approval. Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Francis Ngunga.

(Question proposed)

I now invite Hon. Members for debate on the report. Hon. Mueni

Hon. (Ms.) Mueni: Thank you, Madam Speaker. I support the report by saying that the Members in that committee, I think they are qualified and we don't have to waste time talking about the report; it is very clear and this Assembly has noticed the importance of the calendar early enough for them to work.

What the Speaker has been doing, calling Members to come in the Assembly, that is not your work; these Members have to know their work and when they are coming from their homes to work, they have to know they are coming to work and they have been sent here by their people and not to be wasting time to be called by the bell or by the Speaker. It is very important even the Majority Leader, you have to show the example of coming to the Assembly very early.

(Laughter)

Because when you were out there, you were crying to come in this House, so you have to make use of the time and understand why you were send here by your people to work for them not to be knowing that you need to work when the time is over. The Member who is having the kids there, he had not come to the Assembly; the children are going to know that you are a Mheshimiwa who comes to the Assembly late. So what are you sowing the children. Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Mueni. You have done part of the job that I am supposed to do and thank you. Hon. Kamitu.

Hon. Kamitu: Thank you very much, Madam Speaker. I am one of the Members of the House Business Committee and I would request Members, this is the time to engage the House Business Committee and as per the report presented by the Majority Leader, and on a very serious note our Hon. Speaker took us to this meeting and as you can see, the calendar is well laid.

So, it is the work of the Hon. Members and as Hon. Mueni has said, this should be a House of business, a House of purpose, a House of reasoning and it is on this note Members, that we should be serious when reporting to this House.

Madam Speaker, I would also like to inform Hon. Members that as you have seen the calendar and during the short or long recess that is the time we are supposed to deliberate on the Committee meetings whereby we are supposed to be calling the Executive in regard to the respective committees to engage and interrogate the quarterly reports that are supposed to be interrogated by the various committees.

I support the calendar, it is a workable calendar, it is achievable and everything will be achieved by these Hon. Members. Thank you, Hon. Speaker, for the time you took to guide the Committee and may God bless you.

Hon. Speaker: Thank you, Hon. Minority Leader. Hon. Tariq.

Hon. Mulatya: Thank you, Madam Speaker. I want to take this opportunity to congratulate the House Business Committee for job well done. As the Whip of the House, you can see now the calendar is out and I can see there are no mistakes in this so we should watch our time so that we can get into business.

As Hon. Mueni has put it, Members did not have a clear schedule but the calendar is with us now; let us attend early, let us not be pushing Members, let us know our work. Thank you, Madam Speaker. I support the motion.

Hon. Speaker: Thank you, Hon. Tariq. Hon. Alice.

Hon. (Ms.) Nzioka: Asante Bi. Spika kwa kunipa nafasi. Nimesimama kupongeza kamati ya shughuli na ratiba katika bunge letu kwa maana wameleta ratiba na mipango ya majukumu ambayo tunapaswa kufanya katika bunge. Wakati wowote ata nyumbani kwetu wakati una mipango na ratiba, unafanya kazi kwa njia mwafaka. Hio Kamati imetupa jukumu sisi kama wabunge tuwe na mipangilio na wakati ambao tuko bungeni.

Wakati kiongozi wa wengi bungeni alivyokuwa akileta hio ratiba, kama mbunge ni lazima uwe na jukumu kuona mipango hasa tuna kazi katika bunge, tuna majukumu kutoka nje kwa waliotuchagua ama waliotuteua. Bi. Spika, kiongozi yeyote ni lazima awe na mipango. Kwa hivyo hii kamati imetuleta kwenye mwangaza na tunaapa ya kwamba, ni kwa sababu ya ratiba ambayo tumepewa tutafanya majukumu yetu na kuyatekeleza kama sheria inavyopasa. Asante, Bi. Spika.

Hon. Speaker: Asante sana, Mheshimiwa Alice.

(Question put and agreed to)

Hon. Members as we had indicated under this order, we had two business, the first by Hon. Francis Ngunga which we have finalized on and the second is by Hon. Musau and as I call him, Hon. Members allow me to make a comment on the business you have just approved.

Hon. Mueni started it by asking you to keep time. I was going to do it at this point because the procedure does not allow me to comment before you make your resolution. I want to repeat what Hon. Mueni has said; the calendar is very clear particularly on time, let us keep time. We agreed when we opened this second session that we are going to be punctual in the discharge of our mandate; it is part of our discipline and remember this calendar is going to be publicized to the public and the public will be coming to watch you debate and woe unto you if the public comes and finds these seats empty.

I believe every Member has got the message right. Hon. Musau.

FINANCIAL STATEMENTS OF MWALA WATER AND SEWERAGE COMPANY FOR
THE YEAR ENDED 30TH JUNE, 2015

Hon. Wambua: Thank you, Madam 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 of 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, on 13 November, 2013, the committee undertook interrogation exercise of the audit report of the financial statements of Mwala water and Sewerage Company for the year ended 30th June, 2015;

Madam 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 Sewerage Company for the year ended 30th June, 2015.

Thank you, Madam Speaker. I call on Hon. Johanna Munyao, a resourceful Member of this committee, to second this Motion.

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

Hon. Munyao: Thank you, Madam Speaker. I second the motion on the report of committee of Public Accounts and Investments on Mwala Water and Sewerage Company for the year ended 30th June, 2015.

Hon. Speaker: Thank you, Hon. Johanna. Hon. Musau, proceed please.

Hon. Wambua: Thank you, Madam Speaker. Before the House, Madam Speaker, is a report of the Auditor General on the financial statements of Mwala Water and Sanitation Company for the year ended June, 2015 by the Machakos County Public Accounts and Investments committee. Thank you, Madam Speaker.

On page 2, Madam Speaker, is a table of contents starting from the introduction, mandate of the committee, committee membership, some legal provisions of the audit reports, Committee Sittings and Evidence Taking, Basis For Qualified Opinion, Cash and Bank Balances, Trade and Other Receivables, Unaccounted For Water, Administrative Costs, Unsupported Expenditure, Trade Payables, Going Concern, Corporate Governance/Board of Directors, Late Submission of Financial Statements, Summary of Key Observations, Summary of Key recommendations and Conclusion, Madam Speaker.

On introduction, Madam Speaker. Madam Speaker, on 27th March, 2017, the report of Auditor General on the Financial Statements of Mwala Water and Sewerage Company for the year ended June, 2015 was received in the office of the Speaker 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.’

The committee mandate Madam Speaker. Madam Speaker, the Public Accounts and Investments Committee is established pursuant to Standing Order 185(1) and (2), that states as follows;

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.

Madam Speaker, the Public Accounts and Investment Committee is composed of

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

Madam Speaker, we have some legal provisions on audit reports that guided us, 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 that 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.’

Madam Speaker, on Committee sittings and evidence taking, the report of the Auditor General on the Financial Statements of Mwala Water and Sewerage Company for the year ended June, 2015 was a pending business that was not completed by the First Assembly hence it featured as a priority of the businesses the committee had incorporated in its work plan for the 2017/2018.

Madam Speaker, the committee commenced its sittings on 2nd October, 2017 to analyse the report alongside the management response that had been received from the Accounting Officer of the Company. On the same date, 2nd October, 2017, the office of the Clerk of the County Assembly wrote letters to the Executive Officer, Mwala Water Company and to the Office of Auditor General inviting them on 16th October, 2017 at 10.00 a.m. to consider the report as provided in Standing Order 185(2)(a).

Unfortunately, due to unavoidable circumstances, the meeting to interrogate the Executive Officer of the company was postponed. On 30th October, 2017, Madam Speaker, re-invitation letters from the office of the Clerk of County Assembly were sent to the two offices inviting them for a meeting scheduled 13th November, 2017 at 9.00 a.m.

Madam Speaker, basis for qualified opinion, the cash and bank balances, it was observed that;

The company did not maintain cash books and prepare monthly bank reconciliation statements for the four bank accounts disclosed under note 8 to the accounts with total balances amounting Ksh. 266,527.

Consequently, in absence of adequate records and documentation, it was not possible to ascertain whether the cash and bank balances of Ksh 266,527 were fairly stated. The Management responded that at the time of audit, the company maintained their cash books in Excel format and ever since they have been preparing manual cash books as required.

The committee inquired whether the manual cash books that were later prepared were forwarded to the Auditor General for verification and the office of the Auditor General confirmed that the documents were received, audited and certified.

The Committee recommended that for the next report to be submitted to the Auditor General, there should be proper supportive documents as provided in Regulations 104 of the Public Finance Management (County Governments) Regulations, 2015 that states that ‘all receipts and payments vouchers of public moneys shall be properly supported by pre-numbered receipt and payment vouchers and shall be supported by the appropriate authority and documentation.’

Madam Speaker, on trade and other receivables. The statement of financial position reflects trade and other receivables balance of Ksh 6,254,147 as at 30th June, 2015 net of provision for bad and doubtful debts of Ksh. 244,497. However, an amount of Ksh. 2,444,967 an equivalent of 38 per cent of the total debts was classified as inactive and only a 10 per cent provision of the

inactive debts was made as a provision, leaving an amount of Ksh. 2,200,470 inactive debts unprovided for.

In addition, the debt portfolio grew by Ksh. 1,584,181 or 34 per cent from the previous year's figure of Ksh. 4,669,966. Consequently, in absence of proper provisioning for bad and doubtful debts for the trade and other receivables, it was not possible to ascertain whether the trade and other receivables were fairly stated.

The management responded that some of the debts featuring in active accounts were inherited from the Government long before the formation of the company and that it has advised the Board of Management to write off some of the debts based on ageing analysis. It was also stated that the company is negotiating with consumers to clear the huge debts in instalments in addition to choosing a debt collector to assist in debt collection.

The committee observed that, Madam Speaker, 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.

The Committee recommended the management, with consultation of CEC Finance, to 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.'

Madam Speaker, on Unaccounted For Water (UFW); the Company produced 263,721 cubic meters (m³) of water and out of which 106,272 m³ was billed to consumers. The balance of 157,449 m³ approximately 60 per cent of the total produced represented non-revenue water (UFW). The UFW was 35 per cent over and above the industry standards of 25 per cent in accordance with Water Services Regulatory Board guidelines. The UFW of 60 per cent may have resulted in loss of sales of approximately Ksh. 22,489,097.

The significant level of (UFW) implies that the expenditures reflected in the financial statements of Ksh. 26,772,648 are not matched with the revenue of Ksh. 26,287,420. The revenue and the loss for the year are not fairly stated.

Madam Speaker, the management responded that the main cause of un-accounted water was due to old dilapidated pipeline and high pressure in pipes resulting from pumping long distance.

The Committee noted that the company has been funded Ksh. 54 million to rehabilitate the whole water system. This money has been kept by Tana Athi Company who is the main client. The contractor who is doing the rehabilitation work is on site and work has commenced. It was also observed that it may not be true to have Ksh. 22,489,097 loss resulting from water leakage and that this is likely to be a cartel to loot public finances.

Madam Speaker, the Committee recommended that the Ethics and Corruption Commission should investigate the cause leading to loss of 157,449 m³ approximately 60 per cent of the total water produced and which is worth Ksh. 22,489,097 and take necessary legal measures on the officer/s concerned.

The Committee also recommends that in the new rehabilitation program, the company should embrace use of gravity instead of pumping to reduce pipe breakages and cost.

On the point of administrative costs; Madam Speaker, the statement of comprehensive income for the year ended 30 June, 2015 reflects Ksh 10,925,572 under administrative costs out of which Ksh. 10,262,457, about 94 per cent, are not supported with information and documentary evidence. Under the circumstances, the propriety of the Ksh. 10,262,457 expenditure could not be confirmed. The management responded that the supportive financial schedules had not been prepared at the time of audit.

Madam Speaker, after inquiring from the management the committee confirmed that the office of the Auditor General did not receive supportive documents to support the expenditures at the right time. This appeared to be mere ignorance and breach of 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.’

Madam Speaker, on this matter, the committee recommended that Mwala Water and Sewerage Company should adhere strictly to the provisions of Section 47 (1) of the Public Audit Act, 2015 stated above for any other report prepared for submission to the Office of Auditor General failure to which provisions of Section 63 of the same Act that states that ‘except as otherwise provided for under this punishment is given, is liable on conviction to a fine not exceeding two million shillings or to a term of imprisonment not exceeding one year or, to both,’ should be invoked.

Madam Speaker, on page 11, there is a table of unsupported expenditure. The following expenditure figures as reflected in these financial statements were not supported with documentary evidence.

Item	Financial statements Ksh.	Supporting schedule Ksh.	Variance (Ksh.)
Work in progress	4,770,840	3,263,288	1,507,552
Operation costs-Maintenance of plant and equipment	2,335,344	0	2,335,344
Operation costs-Chemicals	778,448	0	778,448
Operation costs-M/V repairs and Maintenance	1,287,529	0	1,287,529
Operation costs-Maintenance of water	19,000	0	19,000
Total	9191161	3263288	5,927,873

Consequently, the propriety of the Ksh. 5,927,837 expenditure could not be confirmed as proper charge to public funds.

Madam Speaker, the Management responded that the supportive documents (Schedules) for the expenditures were submitted to the auditor General late after the audit exercise. The committee observed a big variance of expenditures supported with documents against the ones not supported.

Hon. Speaker: Point of order, Hon. Musau. Can you resume your seat? Hon Ndawa.

Hon. Ndawa: Thank you, Madam Speaker. We don't have the list of wherever the Hon. Member is reading. We were together from point A to somewhere, but right now we cannot confirm whatever he is reading. So, can we have a list or the report?

(The Speaker consulted with the Clerk at the Table)

Hon. Speaker: Hon. Members, I am also in the same predicament as you are and the office of the Clerk is seeking the members apology and indulgence so that they can print; I am told they are about seven pages that were left out on the printing and if the Hon. Members if so approve, we can have the mover of the motion proceed with reading, we listen as carefully as we can as the office of the Clerk prints the rest of the papers so that by the time they are brought here, we will start our business on the debate from the first pages as we also peruse the pages which you don't have.

That is in order Hon. Members, it is so ordered by the Speaker. Hon. Musau proceed. Hon. Mueni, just rest where you are. Proceed.

Hon. Wambua: Thank you, Madam Speaker. This House shall go into the books of history as most keen Houses in this country. Thank you so much, Hon. Ndawa for your observation. Madam Speaker, I proceed, we are page 12 of 19. The Management responded that the supportive documents, known as Schedules for the expenditure were submitted to the Auditor General late after the audit exercise.

The committee observed a big variance of expenditures supported with documents against the ones not supported. Although the Company forwarded the supportive documents that were missing at the time of audit, that was in contravention to Regulations 104 of the Public Finance Management (County Governments) Regulations, 2015 that states that 'all receipts and payments vouchers of public moneys shall be properly supported by pre-numbered receipt and payment vouchers and shall be supported by the appropriate authority and documentation.'

The Committee recommended strict adherence to the provisions of Section 47(1) of the Public Audit Act, 2015 for any other report prepared for submission to the Office of Auditor General failure to which provisions of Section 63 of the same Act that states that 'except as otherwise provided for under this Act, a person who is found guilty of an offence under this Act for which no other punishment is given, is liable on conviction to a fine not exceeding two million shillings or to a term of imprisonment not exceeding one year or, to both,' should be invoked.

Madam Speaker, on the query of trade payables; the statement of financial position reflects an amount of Ksh. 9,056,056 under other payments as at 30th June, 2015 which includes electricity payables of Ksh. 4,477,453 in 2013/14, Ksh. 4,894,232 that are not supported with analysis or documentation. It is therefore not possible to confirm accuracy of the trade and other payable figure of Ksh. 9,056,056 as at 30th June, 2015.

Madam Speaker, the management responded that just like for the case of the queries of Unaccounted for Water, administrative costs and unsupported expenditures, the annual analysis or supportive documents were not available at the time of audit and they were later availed to the office of Auditor General for verification.

The committee observed non-adherence to submission of financial documents on the right time as provided in Section 47(1) of the Public Audit Act, 2015. It was also observed that electricity bill of Ksh. 4,894,232 was paid by the County Government of Machakos.

The Committee recommended that the Company should adhere strictly to the provisions of Regulations 104 of the Public Finance Management (County Governments) Regulations by availing all relevant financial documents at the right time.

Madam Speaker, during the year, company financial performance continues to deteriorate as it made a loss of Ksh. 485,288 (2013/14 loss 5,282,879) leading to a retained earnings to a negative of Ksh. 4,567,524.

The current liabilities of Ksh. 10,530,348 as at 30th June, 2015 exceeded the current assets balance of Ksh. 6,620,674 by Ksh. 3,909,674, an indication of existence of a material uncertainty which may cast significant doubt about the ability of Mwala Water and Sanitation Company Limited to continue as a going concern.

The management responded that the high operational costs incurred by the company is caused by high electricity bill and that the company has developed a proposal for having gravitational flow of water as a remedy for reduction of high electricity bill.

The committee noted that there was a contradiction in the response by the management since in the above response on the query of Trade Payables, the Accounting Officer stated that electricity bill was being paid by the County Government of Machakos.

The committee recommended that the Ethics and Anti-Corruption Commission should investigate on the issue underlying electricity payment and act accordingly as provided in Section 62(1)(d) and (e) of the Public Audit Act, 2015 that states that;

62 (1) A person shall not;

(d) Submit false or misleading information;

(e) Misrepresent to or knowingly mislead a member of staff of the Office of the Auditor-General or professional acting under this Act.

Madam Speaker, the Board of Directors comprised of seven directors. However, the term of five directors expired in 2013 having served for three years from February, 2010 as per their appointment letters and memorandum of association. The Board is therefore in office illegally.

Consequently, any actions or decisions taken by the board on behalf of the company may not be legally binding should disputes arise. In the response to the above query, the Management agreed with the observation of the auditor and stated that in liaison with the Machakos County Government, Water services Regulatory Board and Tanathi Water Services Board an Annual General Meeting is being organized and the main agenda will be retirement and appointment of new Directors. The Committee observed that at the time of interrogation, the company had not constituted the Management Board.

The Committee recommended that within 90 days, the company should in consultation with Tanathi Water Services Board organise 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.'

On late submission of financial statements; Madam Speaker, although Section 13(1) of the Public Audit Act, 2003 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, the financial statements for the year ended 30 June, 2015 were submitted on 13 June, 2016, over eight months after the deadline of submission on 30 September, 2015.

The Accounting Officer responded that being the first time to be audited by the Auditor General's office the company was not aware of the required procedure and promise in future to observe the deadline for submission.

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.

Madam Speaker, the following is a summary of key observations made by the committee;

1. Late submission or absence of adequate records and supportive documents at the time of audit was observed as stated in queries 1, 2, 4, 5 and 6 regarding cash and bank balances, Trade and other receivables, Administrative costs, unsupported expenditures and Trade receivables respectively.
2. The current liabilities as at 30th June, 2015 exceeded the current assets by Ksh. 3,909,674. This casts a doubt on the ability of the company to sustain itself.
3. There was significantly high loss of Unaccounted For Water valued Ksh. 22,489,097 which is 35 per cent above the 25 per cent standard provided by Water Services Regulatory Board.
4. Inability of the Company to employ qualified staff with knowledge on principles of accounting. This was said to be due to financial incapacity.
5. The Company did not have a complete Board of Directors in office hence difficult to make decisions that are legally binding.

SUMMARY OF KEY RECOMMENDATIONS

1. On late submission of reports to the Auditor General, the Company should submit future reports on time as provided in Section 47(1) of the Public Audit Act, 2015 '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.'
2. On the matter of lack of supportive documents, the Company should, in future, observe provisions of Regulations 104 of the Public Finance Management (County Governments) Regulations, 2015 that states that 'all receipts and payments vouchers of public moneys

shall be properly supported by pre-numbered receipt and payment vouchers and shall be supported by the appropriate authority and documentation.’

In case of breach provisions of Section 63 of Public Audit Act, 2015 should be invoked that states that ‘except as otherwise provided for under this Act, a person who is found guilty of an offence under this Act for which no other punishment is given, is liable on conviction to a fine not exceeding Ksh. 2 million or to a term of imprisonment not exceeding one year or, to both.’

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. The future of this company is constrained by huge debts casting a doubt on the sustainability of the Company. The County Government of Machakos should set up a policy to take up the management of the Company and rescue it.
5. The Company should in three months plan for appointment of 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 Directors 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.’

CONCLUSION

Madam Speaker, in order for the County Government of Machakos to realize one of its goals of providing employment and promoting the spirit of devolution, there is need for the Government to intervene to rescue some of its entities that are collapsing due to managerial or financial constraints.

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, 2015 for discussion and adoption. Thank you, Madam Speaker.

(Applause)

Hon. Speaker: Thank you, Hon. Musau. Hon. Members, allow me to propose the question.

(Question proposed)

Hon. Members at this point that proposal of the question by the Chair would lead to a debate on the motion at hand. However, the Chair has noted that nearly seven pages of the report were missing from the records that you had in your dockets. Hon. Members, I want guidance from your house leadership what is the way forward. Hon. Museku?

Hon. Museku: Thank you, Hon. Speaker. I think, considering two things; first and foremost, the report is quite lengthy, the report covers a wide area of issues of financial importance to the company and we also do not have part of the report, almost seven pages missing.

I would request that we postpone or we move ahead the debate of this matter to allow members to be able to get all the papers and to allow the members to internalize the report and look at it, so that they can be able to have some constructive debate in the House considering that this is a financial report. That is my proposal, Madam Speaker. Thank you.

Hon. Speaker: Do you have a seconder? Do you have a seconder Hon. Museku.

Hon. Museku: I would request Hon. Mutiso to second me on that.

Hon. P.J. Mutiso: Thank you, Madam Speaker. I stand here to support the Chair of Chairs because this is a financial report which we need enough time to go through. So, I support the motion.

Hon. Speaker: Thank you, Hon. Museku and Hon. Mutiso.

(Question proposed)

Can we have some contribution on this particular question that I have just proposed, Hon. Members? Hon. Mueni.

Hon. (Ms.) Mueni: Thank you, Madam Speaker. The idea of Deputy Speaker is okay because Hon. Members and this House cannot pass something that they have not read because it is only that we respect you for the member reading something that we are not having was very wrong and the office of the Clerk, they must be awake and be giving the members what is coming; it is very important.

Madam Speaker, as the Deputy Speaker has said this is about money and we have to be careful when we are passing it because this means some people have to be very responsible, they have to be bringing reports to the House and that we have to be given time to go and read. Thank you, Madam Speaker.

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

Hon. Ndawa: Thank you, Madam Speaker. I stand here to support what the Deputy Speaker has proposed since these are financial matters; they are sensitive issues when it comes to money. When I was a young man, I was a Scout and there was a law which said 'the scout obeys orders from those in authority without questions but when it comes to money, we have to

question.’ So, Madam Speaker, I would support that we postpone so that we can have ample time.

The other thing I would request, Madam Speaker, seeing this is a House of law, I would request every person who is supposed to be doing something to do exactly what he or she is supposed to do in good time. That is what we call discipline.

In fact, that report which is supposed to come before the House is supposed to be in the pigeon holes; the members are supposed to pick them from the pigeon holes so that they can come to the Assembly ready.

So, I am trying to request the office of the Clerk to pull up your socks and do exactly what is required in good time. Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Ndawa.

(Question put and agreed to)

Hon. Members, the Chair directs that the Hon. Members be supplied with the full report of the PAIC immediately and the office of the Clerk, must as requested by a number of members, pull up its socks. I assure the Hon. Members that what has happened, particularly on this report, the Chair is going to take it up with the Clerk’s office and that this is not likely to be repeated.

Hon. Members, at this point I would like to call upon Hon. Kisini. Hon. Kisini, you got visitors at a time when you are not here but of course the visitors are for the whole House and they arrived before you were here. You would have greeted them when I welcomed them at the beginning but you are here now. Hon. Kisini can you come here to the Table and address the young children from your school; very briefly.

(Applause)

Hon. Kisini: Thank you, Madam Speaker, for allowing me to welcome the children from Diamond Academy. I was not aware and I want to say sorry because maybe I came late I had no prior knowledge but I want to say welcome. I hope you have followed the procedures of the House, you have got something from it. This is what we do and this is how we debate. I hope most of you will emulate or want to become debaters at some time. I think you might thought of becoming a Speaker one time or a Majority Leader or an MCA.

(Laughter)

So, I want to say welcome to this Hon. House, let us be together. The teachers who organized for the children to come and be with us, I want to say welcome to this Hon. House we are all together and I hope maybe you will be with us in the next sitting. Thank you, Madam Speaker.

(Applause)

Hon. Speaker: Thank you, Hon. Kisini. Hon. Members, I believe you would not mind taking a photograph with the children after the House adjourns and so Serjeant at Arms you can

organize for that photograph to be taken immediately after the House adjourns and the Speaker will also be there.

ADJOURNMENT

Hon. Speaker: Hon. Members, at this point this House adjourns to the Tuesday, 20th of February, 2018 at 2.30 p.m. Tuesday is today.

(Laughter)

The House rose at 11.33 a.m.