

REPUBLIC OF KENYA

MACHAKOS COUNTY ASSEMBLY

OFFICIAL REPORT

Tuesday, 28th July, 2020

The House met at 3.05 p.m.

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

PRAYERS

PAPERS LAID

Hon. Deputy Speaker: Good afternoon Hon. Members. Under this Order we have papers as listed in the appendix; the first one is to be laid by Hon. Daniel Kiilu, Chairperson Education Committee or his designate. I can see Hon. Hellen Ndeti will be able to do that.

The second Paper is to be laid by Hon. Betty Nzioki, Chairperson of Culture, social welfare and tourism committee. We begin with Hon. Hellen Ndeti on behalf of Hon. Daniel Kiilu.

REPORT ON THE PUBLIC PETITION BY MACHAKOS COUNTY VOCATIONAL TRAINING CENTRES INSTRUCTORS

Hon. (Ms.) Ndeti: Mr. Speaker, I beg to lay on the following Paper on the Table of the Assembly today, Tuesday, the 28th day of July, 2020; the Education Committee report on the public petition by Machakos County Vocational Training Centres Instructors regarding their remuneration and welfare at their working stations. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you very much, Hon. Hellen Ndeti. Hon. Betty Nzioki. Just hold on.

REPORT ON PETITION BY THE MACHAKOS CREATIVE ARTISTS INDUSTRY

Hon. Betty Nzioki: Thank you, Mr. Speaker. Hon. Speaker, I wish to lay on the Table of the Assembly today Tuesday, the 28th day of July, 2020; the Report of the Culture, Social Welfare and Tourism Committee on Petition by the Machakos Creative Artists Industry. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you very much, Hon. Betty. I believe the Papers have been properly laid and have all been signed. Mr. Clerk, you may proceed.

NOTICES OF MOTION

Hon. Deputy Speaker: Hon. Members, under this Order we have two Notices of Motion. The first one is by Hon. Hellen Ndeti on behalf of Hon. Daniel Kiilu and the second one is by Hon. Betty Nzioki. Hon. Hellen.

REPORT ON THE PUBLIC PETITION BY MACHAKOS COUNTY VOCATIONAL TRAINING CENTRES INSTRUCTORS

Hon. (Ms.) Ndeti:

Mr. Speaker, that aware that Section 15 of the County Governments Act, 2012 provides that a person has a right to petition the County Assembly to consider a matter within its authority including enacting, amending or repealing any of its legislation;

Aware that the Assembly received a public petition by Machakos County Vocational Training Centres instructors regarding their remunerations and welfare at their working stations pursuant to the Standing Order 194;

Noting that in conducting its investigations the committee met with key parties in relation to the petition, raised pertinent issues and also reviewed relevant documents from petitioners and Education Department including the State Department of Science and Technology under Ministry of Education, Science and Technology;

Mr. Speaker, I wish to give the notice of motion that this Hon. House discusses and approves the report of Education Committee on Petition by Machakos County Vocational Training Centres instructors.

Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you very much, Hon. Hellen Ndeti. Hon. Betty Nzioki.

REPORT ON PETITION BY THE MACHAKOS CREATIVE ARTISTS INDUSTRY

Hon. Betty Nzioki:

Hon. Speaker, that aware that Articles 1 and 2 of the Constitution of Kenya, 2010 stipulates that:

1. All sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution.
2. The people may exercise their sovereign power either directly or through their democratically elected representatives.”

Further aware that Standing Orders 195 and 196 gives the definition of a petition and the procedure of submission of a petition;

Hon. Speaker, aware that the Assembly received a petition through the Office of the Clerk of the County Assembly from the Machakos Creatives Industry;

Acknowledging that Standing Order 201(1) provides that every petition presented or reported pursuant to this part, shall stand committed to the relevant sectoral Committee;

Cognizant of the fact that the petition was committed to the Culture, Social Welfare and Tourism Committee to consider and table a report on the petition to this House pursuant to Standing Order 201(2);

Hon. Speaker, aware that the Committee on Culture, Social Welfare and Tourism considered the petition and compile a report;

Hon. Speaker, I wish to give notice of motion that this Hon. House discusses and approves the Culture, Social Welfare and Tourism Committee report on petition by Machakos Creative Artists Industry.

Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you very much, Hon. Betty Nzioki. Mr. Clerk, proceed.

MOTION

REPORT ON FINANCIAL STATEMENTS OF COUNTY EXECUTIVE OF MACHAKOS FOR THE YEAR ENDED JUNE, 2018

Hon. Deputy Speaker: Hon. Members, under this Order we have one Motion to be moved by Hon. Joseph Musau, Chairperson Public Accounts and Investments Committee

Hon. Musau: Thank you, Mr. Speaker, Sir.

Hon. Speaker, that aware that 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;

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

Cognizant that the Audit report on Financial Statements of County Executive of Machakos for the year ended June 2018 was received in the Assembly;

Further aware that the report was committed to the committee of Public Accounts and Investments 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;

Informed that the committee invited the Accounting Officer, interrogated him and subsequently compiled a report;

Hon. Speaker, I wish to move the Motion that this House discusses and approves the report on Financial Statements of County Executive of Machakos for the year ended June, 2018.

Mr. Speaker, I would wish to call Hon. P.J. Mutiso to second this Motion. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you. Hon. Peter Joseph Mutiso.

Hon. P.J. Mutiso seconded.

Hon. Deputy Speaker: You may read the report Hon. Joseph Musau.

Hon. Musau: Thank you, Mr. Speaker. It is the report of the Auditor-General on the financial statements of county executive of Machakos for the year ended 30th June, 2018 by the Public Accounts and Investments Committee

1.0 INTRODUCTION

Mr. Speaker, the report of Auditor General on the Financial Statements of County Executive of Machakos for the year ended 30 June 2018 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 audit 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.”

2.0 COMMITTEE MANDATE

Hon. 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.

3.0 COMMITTEE MEMBERSHIP

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

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

4.0 GUIDING LEGAL FRAMEWORK

Hon. Speaker, in the execution of its mandate the aforesaid, PAIC was guided by core constitutional and statutory laws on public finance management below:

The Constitution of Kenya, 2010

Article 201(a)(d)(e) provides that:

- (a) There shall be openness and accountability, including public participation in Financial matters;
- (d) Public money shall be used in a prudent and responsible way; and
- (e) Financial management shall be responsible, and fiscal reporting shall be clear.

Article 226(5) of the Constitution is emphatic that “if the holder of a public office, including a political office, directs or approves the use of public funds contrary to law or instructions, the person is liable for any loss arising from that use and shall make good the loss, whether the person remains the holder of the office or not.”

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 229(2) of the Constitution states that the Auditor-General may undertake a comprehensive performance audit within six months after the completion of any National or County project to evaluate, whether the citizen has gotten value for money in the project and submit the report to Parliament or County Assembly for tabling and debate.

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

The Public Finance Management Act 2012

Section 94(1)(iv) of the Public Finance Management Act 2012 states that:

- (1) The following factors, singly or in combination, may further indicate that a State organ or public entity is in serious material breach or persistent material breach of the measures established under this Act—
- (iv) is more than sixty days late in submitting its annual financial statements to the Auditor-General in accordance with this Act or any other legislation;

Section 96(1) of the same Act provides that:

- (1) Where the Cabinet Secretary finds a State organ which is a county government entity to be in serious or persistent material breach of its obligations or financial commitments, the Cabinet Secretary shall, in accordance with Article 225 of the Constitution, immediately stop the transfer of funds.

The Public Finance Management, County Governments Regulations 2015

Section 41 (2) provides that Debt service payments shall be a first charge on the County Revenue Fund and the Accounting Officer shall ensure this is done to the extent possible that the county government does not default on debt obligations.

Section 43 (2) states that County government entities shall execute their approved budgets based on the annual appropriation legislation, and the approved annual cash flow plan with the exception of unforeseen and unavoidable spending dealt with through the County Emergency Fund, or supplementary estimates.

Section 93 (5) A holder of a temporary imprest shall account or surrender the imprest within seven (7) working days after returning to duty station. In the event of the imprest holder failing to account for or surrender the imprest on the due date, the Accounting Officer shall take

immediate action to recover the full amount from the salary of the defaulting officer with an interest at the prevailing Central Bank Rate.

Section 101(4) an Accounting Officer shall prepare the financial statements in a form that complies with the relevant accounting standards prescribed by the Public Sector Accounting Standards Board, not later than three months after the end of the financial year and submit them to the Auditor-General with a copy to the County Treasury, the Controller of Budget and the National Treasury.

Section 130(1) states that an Accounting Officer shall provide footnotes to the Footnotes to annual financial statements prepared and submitted to the Auditor- appropriation accounts General pursuant to section 164 of the Act.

The Public Audit Act, 2015

Section 9(1)(e) provides that the Auditor General shall have powers of unrestricted access to all books, records, returns, reports, electronic or otherwise and other documents of entities listed under Article 229 (4) of the Constitution. Section 37 provides that the Auditor-General may, upon request by Parliament, conduct forensic audits to establish fraud, corruption or other financial improprieties.

Section 47(1) and (2) of the same Act adds that:

1. 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. The financial statements shall be in the form and content as prescribed by the Public Sector Accounting Standards Board.

Section 53(1) of the Act states that the relevant accounting officer of a state organ or public entity shall within three months after Parliament has considered and made recommendations on the audit report—

- a. Take the relevant steps to implement the recommendations of parliament on the report of the Auditor-General; or
- b. Give explanations in writing to the Parliament on why the report has not been acted upon.

Section 53(2) states that failure to comply with the provisions of subsection (1), the accounting officer shall be in contempt of Parliament or County Assembly and upon determination by Parliament or relevant County Assembly, Parliament or relevant County Assembly may recommend administrative sanctions such as removal as the Accounting Officer, reduction in rank among others.

Section 62(1)(b)(c) and (2) is clear that a person who-

- (b) Without justification, fail to provide information required under this Act;
- (c) Without justification, fail to provide information within reasonable time that is required under this Act;

Section 62(2) states that a person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years, or to both.

5.0 COMMITTEE SITTING AND EVIDENCE TAKING

Mr. Speaker, on August, 2019 the committee held a meeting with the Accounting Officer of the County Executive of Machakos (County Secretary) who was accompanied by other officers of relevant Departments. The Accounting Officer 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.

6.0 QUERIES FROM THE FINANCIAL STATEMENTS

QUERY 1: Failure to Prepare Funds' Financial Statements

Hon. Speaker, during the year under review, the Department of Education, Youth and Social Welfare operated two funds namely Machakos County Social Welfare Fund and Machakos County Bursary Fund. An amount of Kshs. 52,248,016 was transferred to the Bursary Fund. The Funds' administrators failed to prepare and submit financial statements relating to the Funds.

Management Response

The Machakos County Bursary Fund and Machakos County Social Welfare fund Financial Statements have been prepared and presented to the auditors for audit review.

Committee Observations

The committee observed that on 21st February, 2019 the fund Administrator wrote a forwarding letter Ref. GMC/DOESTSW/Auditor General/Vol. /19(3), forwarding the County Bursary Fund Annual Report Financial Statements to the Office of the Auditor General. The letter was received in the said office on 22nd February 2019. However the committee noted that;

- i) The actual report on the financial statements was not availed to the committee for thorough scrutiny
- ii) The said financial statements were not availed to the Auditors during the time of auditing but instead it was forwarded four months late to the Office of the Auditor General that is on 22nd February, 2019.

Failure to avail the financial statements for Bursary Fund within the stipulated time to the office of the Auditor General was a breach of Section 47(1) of the Public Audit Act, 2015 and Section 62(1)(b)(c) that relates to failure to avail information and within reasonable time.

Further, the committee also observed that failing to submit the said financial statements within the stipulated time is an indicator of serious or persistent material breach as provided in Section 94(1)(iv) of the Public Finance Management Act 2012

Recommendations

The relevant investigating organs should investigate the grounds that led to the late submissions of Machakos County Social Welfare Fund and Machakos County Bursary Fund. Further investigation should also be done to determine the beneficiaries of the said funds.

After the investigation provisions of Section 62(2) of the Public Audit Act 2015 should be invoked.

QUERRY 2; Assets Inherited from the Defunct Local Authorities in Machakos County

Hon. Speaker, as reported in previous years, the County's financial statements do not include the assets of the defunct local authorities located in Machakos County although the County Government has since taken possession of the assets.

In addition, the Transition Authority (now defunct) did not formally handover the assets of the defunct local authorities to the County Government. Further, there are no ownership documents to the assets including title deeds and log books, among others. Consequently, it has not been possible to confirm the carrying values of the assets and their ownership status. The assets of the county Executive are therefore understated by an undetermined amount.

Management Response

As stated in the audit report, the assets inherited from the defunct local authorities have not been included in the financial statements of Financial Years 2013/14, 2014/15 2015/2016 and 2016/2017 since the Transition Authority and currently the Intergovernmental Relations Technical Committee (IGRTC) which took over from Transitional Authority (TA) is yet to do an official handing over of the same, and that is when the values of the assets can be established.

Observations

- i. The transition authority upto date has never formally handed over the report of Assets and liabilities of the defunct Local Authorities to Machakos County Government.
- ii. The committee after discussing on the response made reference to Appendix 2 on the report on identification, verification and validation of Assets and Liabilities for the five defunct councils of Machakos as at 27th March, 2013. In the report a committee referred to as The Machakos County Assets and Liabilities Committee comprising of 10 members was appointed and gazetted under Section 7 of the Gazette Notice No. 4370.

The objectives of the Committee were to:

1. Capture missing information in the inventory of Assets and Liabilities in the existing inventory done by the defunct Transition Authority.
2. Identify aspects that may need further action by the County Government of Machakos to have a comprehensive inventory of all assets and liabilities.
3. Identify and document the disputed assets and liabilities.
4. To validate all assets and liabilities under the said local authorities.

From the availed report this Committee noted that;

1. The specific number of the parcels of land and their identity details in all the said local authorities were NOT established by the Machakos County Assets and Liabilities committee
2. The specific number of computer accessories in each local authority was also NOT established
3. The number of furniture and fittings in each local authority were also NOT established
4. Details of current assets debts, rents, rates and cash in each of the local Authorities were also NOT established.
5. THAT up to date ownership documents such as title deeds of the land parcels, buildings, Logbooks of vehicles and valuation of all the stated Assets remains UNKNOWN.
6. The Machakos County Assets and Liabilities Committee lacked essential tools in performing their task such Maps, Survey Expertise, Allotment and Plot Numbers
7. The said committee did NOT visit all areas and again did not receive much information especially on land matters.

8. THAT it is difficult for Machakos County Government to apply its Finance Bill in the incoming Financial years to collect rates, rents and Charges on some of these Assets whose Valuation has never been determined and which also no plans have been laid in place to determine their valuation.
9. If the County Government of Machakos does not complete the unfinished business by the Transitional Authority, the County is bound to lose many of its assets that were handed over from the defunct councils to “opportunists” and “unknown people.”

Recommendations

1. After considering that the Transitional Authority did not hand over its report that contained critical information on the Assets and Liabilities of the County, this committee recommends that the County Government of Machakos should task the Intergovernmental Relations Technical Committee as established in the Intergovernmental Relations Act 2012 to undertake the task of completing the unfinished business from the Transitional Authority.
2. The County Government of Machakos should after three months upon this resolution report to the Assembly on the progress of implementation of the above recommendation as provided in Section 53 of the Public Audit Act.

QUERY 3: Differences between IFMIS and the Financial Statements Figures

Hon. Speaker, the financial statements were prepared using a manual general ledger as opposed to an IFMIS ledger. There is no evidence that reconciliation between the two records was undertaken to ensure that figures reflected in the financial statements agree with the IFMIS report. As a result, discrepancies were noted between the financial statements’ figures and the IFMIS data in the following account balances:

Component	IFMIS	Financial Statements	Difference
	Kshs	Kshs	Kshs
Receipts	0	1,921,580,990	(1,921,580,990)
Transfers to Other Government Units	333,740,389	1,655,536,228	(1,321,795,838)
Proceeds from Domestic and Foreign Grants	59,626,172	109,997,189	(50,371,017)
Other Grants and Transfers	150,000	0	150,000
Exchequer Releases	5,937,353,280	7,398,999,999	(1,461,646,718)
Use of Goods and Services	869,402,022	992,913,236	(123,511,213)
Acquisition of Assets	794,069,222	850,694,781	(56,625,558)
Compensation of Employees	4,376,654,256	4,590,696,310	(214,308,053)
Social Security Benefits	3,665,770	0	3,665,770
Other Payments	12,710,269	0	12,710,269
Budget	8,730,834,395	10,078,517,468	(1,347,683,073)

In view of these discrepancies, the regularity, accuracy and completeness of the financial statements could not be confirmed.

Management Response

The discrepancies between the audited statement of receipts and payments against that of IFMIS was due to the fact that payments are recorded as paid by the IFMIS platform after transmission of the transaction from IFMIS to Internet Banking while Financial Statements only record payments when the actual payment has been made. It is worth noting that the audited financial statements were prepared based on IFMIS data reconciled against actual payments made through CBK as at 30 June, 2018

The approved budget by the County Assembly for the year was Ksh. 10,078,517,467. This is the same budget that was sent to the National Treasury to be uploaded in IFMIS.

Observations

The committee noted from the Query that there was no evidence of monthly reconciliation of accounts from the IMIS and those in the general ledger as provided in Section 54(1) of the Public Finance County Government Regulations 2015. Further the Accounting officer did not provide in the statement information explaining the discrepancies between the IFMIS figures and those in the Statement as provided in Section 164(2)(iv) of the Public Finance Management Act 2012.

The committee noted with a lot of concern that the Executive overspent the budget by Ksh. 1,347,683,073 as reflected in the table contrary to Section 43(2) of the Public Finance County Government Regulations 2012 that states that County government entities shall execute their approved budgets based on the annual appropriation legislation, and the approved annual cash flow plan with the exception of unforeseen and unavoidable spending dealt with through the County Emergency Fund, or supplementary estimates.

Recommendations

On the above matter the committee recommends that relevant investigating agencies should investigate on the disparities of the figures generated from IFMIS and those in the Financial Statement that resulted to unexplained difference of Ksh. 1,347,683,073.

QUERRY 4: Unsupported Accounts Payables – Deposits and Retentions

Hon. Speaker, the statement of assets and liabilities reflects a balance of Ksh. 106,247,155 in respect of accounts payables-deposits and retentions. However, the cash book and bank reconciliation statements in support of this balance were not provided for audit review. As a result, it was not possible to confirm the existence, completeness and accuracy of the accounts payables-deposit and retentions balance that is reported in the financial statements.

Management Response

The cashbook and bank reconciliation statement to support the balance for deposits and retentions has been provided for audit review.

Observations

It was observed that the supportive documents namely the cash book and bank reconciliation statements were not availed to the Auditor on time for review and this is a breach of Section 9(1)(e) of the Public Audit Act that gives the Auditor General powers of unrestricted access to financial books, records, returns, reports, electronic or otherwise and other documents of entities listed under Article 229(4) of the Constitution.

Further, failure to provide supportive documents on time contravenes regulation 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.”

It was also noted that the Accounting officer delayed the documents and availed them long time after the Audit exercise and such had no consequence on the audit report.

Recommendations

Pursuant to Section 53(1) of the Public Audit Act, 2015, the Accounting Officer should within three months of this resolution present a report to the Assembly on the verified cash books and reconciliations from the Auditor General in support of the deposits and payments stated in the query.

QUERY 5: Long Outstanding Imprests

Hon Speaker, the statement of assets and liabilities reflects an amount of Ksh. 51,667,748 as outstanding imprests as at 30 June 2018. The imprests date back to 2016/2017 financial year and no measures have been taken or intended to be put in place to recover the outstanding imprests.

Management Response

The County Government is currently in the process of recovering outstanding Imprest and to avoid such from recurring, we are currently doing monthly review of outstanding Imprest. The imprests dating back to FY 2016/17 had already been surrendered but not cleared in the system.

Observations

The committee observed that the Accounting Officer by delaying surrendering of imprests by one year contravened Section 93(5) of the Public Audit Act, County Governments Regulations 2015 that states that a holder of a temporary imprest shall account or surrender the imprest within seven working days after returning to duty station.

In the event of the imprest holder failing to account for or surrender the imprest on the due date, the Accounting Officer shall take immediate action to recover the full amount from the salary of the defaulting officer with an interest at the prevailing Central Bank Rate. Further, the Accounting Officer did not provide a report as to whether any interest was recovered from the delayed surrender of imprest pursuant to the above provision.

Recommendation

Pursuant to Section 53(1) of the Public Audit Act, 2015, the Accounting Officer should within three months of this resolution present a detailed report to the Assembly on recoveries of

the said surrendered imprests including the accrued interests as provided in Section 93(5) and (6) of the Public Audit Act, County Governments Regulations 2015.

QUERY 6: Failure to Meet Revenue Targets and Fully Absorb the Budget

Hon. Speaker, during the year under review, the County Executive's budgeted receipts and expenditure amounted to Ksh. 10,078,517,469. The actual receipts amounted to Ksh. 9,430,578,178 representing 94 per cent of the budgeted amount and thus a shortfall of Ksh. 647,939,289 while total payments amounted to Ksh. 8,090,106,555 which translates to eighty (80) percent of the budgeted amount or under expenditure of Ksh. 1,988,410,912. The budget for the County's own generated revenue was Ksh. 1,571,446,504 and actual amount collected was Ksh. 1,084,204,845 occasioning an under collection of Ksh. 487,241,659. The County's own generated revenue also declined by 14% from the previous year's collection of Ksh. 1,259,304,944.

The shortfall in the revenue collection and the noted under expenditure in various items resulted in delays in the provision of services and failure to implement projects that had been planned and budgeted for.

Management Response

The county government expected to receive Ksh. 95,744,681 and Ksh. 65,588,789 being grants meant for leasing of medical equipment and Transforming Health Systems for Universal Health Care Project respectively. These amounts had been budgeted for but were not received in the financial Year 2017/2018.

The County government expected to raise more revenue through the Machakos County Finance bill 2018 which was challenged in court (Constitutional Petition No. 5 2017 & Petition No. 9 of 2018). The cases were determined after the end of the financial year and this had already affected revenue collection for the financial year under review.

The failure to receive expected grants and the under-collection in local revenue contributed to *the* under expenditure of some of the budgeted items.

Observations

The Committee observed that the response from the Accounting Officer that the County Government could not fully absorb the whole of the approved budget because the County did NOT receive Ksh. 95,744,681 and Ksh. 65,588,789 grants. This is because the current accounting system of accrual basis allows for commitment of funds early to avoid delay of services.

Further, the response for under collection of revenue was also not satisfactory because in the same FY of 2017/2018 most business people were exempted from paying revenue following an exemption that was pronounced by H.E the Governor.

The response that the Finance Bill of FY 2017/2018 was challenged in Court was also not satisfactory. This is because the County Government of Machakos was directed by the Court to use the Finance Bill of the previous FY 2016/2017. In the said previous year the County collected a higher own revenue collection of Ksh. 1,259,304,944. Therefore the County should have collected own revenue collection higher or equal to Ksh. 1,259,304,944 but not less as seen in the Query

Recommendations

In 2017, the Office of the Controller of Budget reported that most County Governments were unable to meet their revenue targets because they used outdated valuation rolls to impose property taxes.

This committee therefore recommends the County Government of Machakos to:

1. Update the Valuation Rolls of Machakos County Government to increase revenue collection from property taxes that is updating valuation of county assets such as land and buildings.
2. Adopt advanced automation of revenue collection by using different e-payment options. This will facilitate keeping of tax related data and avoid revenue loss
3. Invest in Research and assessment of the viability of untapped revenue streams within the County.

QUERY 7: Failure to Observe Budget Ceiling - Compensation of Employees

Hon. Speaker, the County Executive, made a budget of Ksh. 4,613,606,356 towards compensation of employees for the year 2017/2018. This represents 46 per cent of the total budget which is a contravention of the requirements of the Public Finance Management Act, 2012 which restricts such expenditure to 35 per cent of the total expenditure. In addition, the actual expenditure on compensation of employees amounted to Ksh. 4,584,272,805 representing 57 per cent of the total actual expenditure as shown below.

Employees Cost Analysis	Budget Amounts Kshs.	Actual Expenditure Kshs.
Compensation of Employees	4,613,606,356	4,584,272,805
Total Expenditure	10,078,517,467	8,090,106,556
Percentage of Expenditure	46%	57%

Further, there was no evidence provided in terms of regulations approved by the County Assembly governing the ceilings of salaries, wages and benefits to public officers. Consequently, it was observed that a large amount of the budget was geared towards payment of employees' costs thus depriving funds to the most critical economic drivers which are domiciled in the development expenditure.

Additionally, the compensation of employees' figure includes an amount of Ksh. 3,350,200 (2016-2017 Ksh. 10,455,207) described as Top-Up house allowances to members of staff which however has not been explained or supported by way of authority and therefore remains unaccounted for. Consequently, the regularity and validity of the figure of Ksh. 3,350,200 could not be confirmed.





Management Response

The budget for compensation of employees was in the budget that was approved by the County Assembly. The development budget approved by the County Assembly accounted for 30 per cent of the Total County's approved Budget of Ksh. 10.078 Billion and this is per the law. The top up house allowance was utilized to pay top up allowances for some security officers. We expected to pay them through the payroll but were not seconded on fixed term/permanent basis,

so we paid them using payment vouchers. This will not recur since we have a security allowance vote-line in the recurrent budget.

The county government could have spent more than 35 per cent of the budget in compensation of employees as required by the PFM act because when the National Government, ministry of health devolved its members of staff to the county government, the large number of staff in that ministry had to be included in the county payroll. The department of health monthly total wage bill amounts to an average of Ksh. 247,000,000.00. This is 29 per cent of the total budget before factoring other departments.

Further, County executive incurred Ksh. 4,590,962,310 during FY 2017/18 compared to Ksh. 4,759,877,326. This recorded Ksh. 168,915,016 (4 per cent) decrease from FY 2016/17. The reason as to why the percentage of compensation of employees increased is the unspent funds during FY 2017/18 which amounted to Ksh. 1.5 Billion as analyzed in the table below.

Percentage Analysis of Compensation of Employees				
	2017-2018 (Ksh.)	2016-2017 (Ksh.)	Comparative Change Ksh.	%age Change
Total Actual Expenditure (a)	8,090,106,556	9,478,561,253	(1,388,454,697)	-15%
Unspent funds (b)	1,520,453,256	157,829,411	1,362,623,845	863%
Total Ideal Expenditure (a+b)	9,610,559,812	9,636,390,664	(25,830,852)	0%
Compensation of employees (d)	4,590,962,310	4,759,877,326	(168,915,016)	-4%
Ideal percentage (d/(a+b))	48%	49%		
percentage (d/a)	57%	50%		

Observations

The committee confirmed the following:

1. That with the large number of Officers in the Dept. of health being in the payroll consuming upto 29 per cent of the total budget, It is practically difficult to observe the 35 per cent compliance on compensation of employees as required in the PFM Act. This justified why the expenditure on the compensation of employees had been budgeted at 46 per cent. Subtracting 29 per cent from 46 per cent leaves 17 per cent as the budget for the rest of the employees who do not fall under Health Department.
2. That the Executive of Machakos went ahead to spent further Ksh. 1,520,453,256 which they referred to as *Unspent funds* from the previous financial year thereby shooting now the budget for compensation of employees from 46 per cent to 57 per cent with no evidence of supplementary budget. The committee took note that the 46 per cent budget was enough to address the Health workers case.
3. That the Unspent funds amounting to Ksh. 1,520,453,256 was not disclosed in the Budget.

4. Therefore, according to the committee there is no justifiable and convincing reason as to how and why the Ksh. 1,520,453,256 being referred to as Unspent Funds was actually spent since the official budget was set at 46 per cent and not 57 per cent.
5. That spending the Ksh. 1,520,453,256 which is 11 per cent above the 46 per cent that was budgeted for compensation of employees without evidence of approved supplementary budget from the Assembly amounts to unlawful expenditure pursuant to Article 226(5) of the Constitution that states that “if the holder of a public office, including a political office, directs or approves the use of public funds contrary to law or instructions, the person is liable for any loss arising from that use and shall make good the loss, whether the person remains the holder of the office or not.”

Recommendations

The committee recommends that the relevant investigatory agencies should investigate on how Ksh. 1,520,453,256 was spent without approval from the County Assembly and act accordingly as provided in Article 226(5) of the Constitution stated above.

QUERY 8: Irregular Payment Made to Football Kenya Federation

Hon. Speaker, the department of Tourism, Sports and Culture made a payment of Ksh. 13,500,000 to Football Kenya Federation on 21 December 2017 as support for CECAFA games which were held in the County between 3 December and 17 December 2017. The department did not have a budget for such an activity and the payment was not approved by the County Executive Committee Members’ Cabinet. Further there was no memorandum on how the funds were to be used and the payment was done after the games had ended. There was also no acknowledgement from FKF on receipt of the money. The regularity of the payment could therefore not be confirmed.

Management Response

The County Government through Special Programmes Unit facilitated the payment of Ksh. 13.5 Million under Other Operating expenses budget. These funds were paid to FKF to cater for entrance fees for Machakos County Youth aimed at promoting Sports and Tourism in Machakos County. The payment was done after the games had ended because the number of youth/people who benefited had to be determined for accuracy of payment. Appended are documents relating to this payment.

Observations

Mr. Speaker, after considering the response and documents provided the committee confirmed that;

1. It was a serious crime for the Executive to spend money amounting to Ksh. 13,500,000 on CECAFA, money that was not in the approved budget by the County Assembly.
2. Given that the Ksh. 13,500,000 said to have been spent on CECAFA was not in the budget, this was illegal expenditure that even implied negatively by depriving the residents of Machakos County essential services.
3. There was no satisfactory document to show if Ksh. 13,500,000 spent on CECAFA was actually approved by the CEC cabinet

4. There was also no specific details of the Machakos County Youths who are being stated in the response to have spent a whopping Ksh. 13,500,000.

The committee in general observed that the Ksh. 13,500,000 spent on CECAFA games was spent unlawfully and without proper authority.

Recommendation

The committee recommends that the relevant investigatory agencies should investigate on how Ksh. 13,500,000 was spent on CECAFA games without the proper authorization and then act accordingly as provided in Article 226(5) of the Constitution stated above.

QUERY 9; Failure to Settle Long Outstanding Pending Bills

Hon. Speaker, Note 1.3.1 (other important Disclosures-Pending accounts payables) to the financial statements reflects pending bills of Ksh. 954,194,940 (2017 Ksh. 1,002,834,669.82). Some of these bills date back to 2010/2011 and some of the reasons given for failure to settle the bills are that there were no funds. This is despite the fact that the statement of receipts and payments reflects a surplus of Ksh. 1,340,471,622. It is also not clear why goods and services that had been included in the procurement plans and budgeted for lacked funds to pay once the services had been rendered. The budgeted amounts could have been diverted to other uses. The Executive would have reported a reduced surplus of Ksh. 386,276,682. The Management has not indicated the measures it has put in place to ensure that the long outstanding bills are cleared without affecting other normal operations of the County Executive.

Management Response

The County Government has over the years been committed towards clearing all outstanding pending bills and that is why the figure has progressively reduced. During financial year under review, the County did not incur any pending bill. Further, we have provided for the pending bills in the Current year.

Observation

The committee observed that from the documents provided by the Accounting Officer, the County Government of Machakos improved greatly in its effort to clear pending bills of the years preceding the financial year in question.

Recommendation

The County Government of Machakos should within 90 days from the resolution of this report provide the Assembly with a comprehensive and detailed report on the current status of pending bills stated in this query as provided in Section 53 (1) of the Public Audit Act 2015.

Further this committee recommends that going forward the County Government of Machakos should not enter into contract on new projects until ALL pending Bills are paid in full. This will help to protect our citizens who are investing a lot in contracts with Machakos County Government but end up staying for years without being paid.

7.0 CONCLUSION

Hon. Speaker, the management of public funds is an issue the Kenyan population is passionate about. A fundamental objective of every government is maintenance of fiscal

discipline, resource mobilization, strategic resource allocation, and efficient delivery of public services.

When the devolved system of government was adopted in Kenya, the importance of establishing strong and effective public financial systems at the County level became inevitable. There has been considerable effort towards establishing the foundations of a sound PFM system in many areas within the devolved system of government in Kenya. Although implementation of the PFM systems in the Counties is still in its formative stages, considerable achievements have been made in many fronts.

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 County Executive of Machakos for the Year ended June, 2018 for discussion and adoption. Thank you, Hon. Speaker.

Hon. Deputy Speaker: Thank you very much, Hon. Musau, for that report very well read.

(Question proposed)

Hon. Deputy Speaker: Hon. Members, you can debate on the report now. Any member who wants to comment? Show me also the ... Hon. Hellen.

Hon. (Ms.) Ndeti: Thank you, Mr. Speaker. I take this opportunity to congratulate the PAIC committee through their Chair, for coming up with a report well-written and very detailed. My only comments and I am going to make general comments because I did not take note of each single item. I think the report talks of sometimes in December 2017 where Ksh. 13 million was paid to the Football Kenya Federation without any approvals; this is just an example because if I listened very well there are very many issues that require investigations.

It is unfortunate that our county has just continued to do or to manage public funds without following the Public Finance Management Act and I commend the committee for ensuring that at least where there is unclear expenditure, they have insisted on investigations to be carried out.

I can only call upon the county and the same time the Assembly whose mandate is to do an oversight through the PAIC committee to ensure that all those investigations are carried out and the report of the investigations is brought to this House so that we may understand what happened. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you, Hon. Hellen. Can you show me the people on the outside, the Hon. Members on the outside is there any Member who would want to contribute from the outside there? Anybody who wants to contribute on the report? You need to raise up you hand so that I can be able to see. I cannot see any hand, which is, raised there and inside here any Hon. Member who wants to contribute further on this report before we approve it, before I put the question? Hon. Peter Joseph Mutiso.

Hon. P.J. Mutiso: Thank you, Mr. Speaker. My concern is on some few areas like on the side of bursaries. I think, Mr. Speaker, it is very clear that there was a budget on bursaries, which were awarded to beneficiaries, and when awarding bursaries, first there are many things, which

you consider; first, you have to give whoever wants to be given bursary to fill a form. That is one way of identifying the beneficiaries and in this case, it has been said that there was money given but there was no proof on the same.

So, that was a problem and it is a problem that an officer who was involved in this matter should be answerable on this issue because the Act is very clear; if you are an officer and you can't approve the monies that you have given to someone, you must face the law so there are consequences on the same.

Bw. Chairman, another issue is on assets; I have been in the last municipal in the last regime and I was lucky enough, I have some documents on pieces of land that belongs to this county and some of the officers have taken some of them away. There is a lot of land especially in Industrial area, there was somewhere where impounded goods kept after being impounded but now that land has been fenced and belongs to someone and that is a problem.

So, during this time of identifying the assets, it means that, those people who were on Transition Authority were not able to give that report and it means that they were doing nothing and maybe they had some interests on the same, Mr. Speaker, and I think nothing can perish in this government because there must be documents on the same.

On your way to the County Commissioners area in Mumbuni, there is a lot of pieces of land belonging to this county but they have gone to waste. For example if you go somewhere near Mavivye, there is land which belonged to County Council of Machakos and that land belongs to someone now and it was given by the minister who there when the land was neglected and the minister was one Kaimenyi. I know that land is located. It belongs to.....I think they have taken it, there was a councillor who maybe was given that to settle there but at long last he acquired that land or maybe it was sold to him. The same people are supposed to tell us what is happening on land because many pieces of land which got lost to the hands of those people. So, Bw. Chairman they must be answerable to those such properties of this county.

The other one is on long outstanding imprest; I think that one is Ksh. 51,667, 748, outstanding imprest as at June, 2018. The same officers who were there could not even give a report on this and on the matter you are supposed to give a report within seven days but it has taken years. So, they are supposed also to tell us what is happening because the officers are known and they are there, unless they want to hide that information. Bw. Chair, another one is on.... it was very clear because the Controller of Budget had questioned on this and but was no answer given to them. So, if the government wants to recover all this, let us identify the government agencies who can deal with this matter so that we may be able to recover the government properties if we want to save this county.

Bw. Chair, another one is on Kenyatta stadium; I think there was a time FKF wanted to build that stadium and money was given; that is the information we have because when you want to do a project, you must have a plan, budget among other factors. So, how come that the money was there and there was no budget if there were no dubious ways that they wanted to escape with that money. So they must be answerable on this matter and it has taken not less than five years without that officer of the government giving us answered on the same.

So, Bw. Chairman, stern measures must be taken on this matter so that the money can be recovered if possible because as I have seen even the contractors on the same were not paid. Why is it so and the money was there Ksh. 13 million plus and they were not paid yet there were pending bills and there was budget.

So, Bw. Chair I think there are some issues that we need them to be addressed by this Government and this Hon. House must be serious on this because we are here to safeguard the resources of the people of Machakos County. We are given this opportunity by people of Machakos County so that we may save them but it seems that we are just burying our heads in the sand and we should not do that Bw. Chairman. So maybe God will help us because this is a serious matter and some of us maybe we know what is happening but we are just sitting somewhere watching what is happening. So, Chair, I am bitter on this issue because some issues I know them and is very painful. Thank you, Chair.

Hon. Deputy Speaker: Thank you. Again can you show me the people outside, is there anybody who wants to comment. That is Hon. Mueni.

Hon. (Ms.) Mueni: Thank you, Mr. Speaker. I want to support the words of Mheshimiwa Mrefu about the imprest---

Hon. Deputy Speaker: Do we have a Mheshimiwa Mrefu, Mheshimiwa Mueni?

Hon. (Ms.) Mueni: Hon. Mutiso. My statement is about the imprest. Those people are getting imprest to go and work but they were taking the imprest to take home and we have bills which were not paid, and they were taking that money. The money for government does not get lost. So, we want those people, the executive who have gone home the government to follow them and get the money back. That money is for poor people and we need to help them. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you, Hon. Mueni. Is there any other member outside there before I put the question? Okay, I can see there is nobody else who wants to comment on this neither is there anybody on the inside here so I go ahead and put the question.

(Question put and agreed to)

So, Hon. Members, I just want to put one or two comments before we close and that concerns this report. This is an audit report Hon. members which has been prepared by PAC and several issues which has come out of this report which I would like to just touch briefly now that the House has adopted the report is that if you look at the various issues which have been raised here they are weighty, very weighty issues. If you talk about reconciliation differences between funds which have been issued by the exchequer versus what the IFMIS system is showing with the difference of about Ksh. 1.4 billion between what the exchequer has issued and what the IFMIS book is showing, that needs to be investigated to find out why we have such a discrepancy.

When you talk about Ksh. 51 million as difference between cashbook and bank reconciliations, not actually reconciled, documents not given on time, query four, supporting documents for cash bank and bank reconciliation; these are things which are supposed to be done on monthly basis. Bank reconciliations are supposed to be done on a monthly basis and therefore if we are saying that by the time of the audit, the bank reconciliations were not ready, were not

submitted, then that makes you wonder whether we know really what is in our Bank accounts and what is happening in the bank accounts themselves.

Hon. Mutiso has talked about the imprests of Ksh. 51 million; since 2016/2017, people have not surrendered impress and imprest is supposed to be surrendered every week. We are talking about an audit which was done in 2018 and somebody has been having un-surrendered imprest. Does he have a supervisor and does the supervisor know what they are doing in as far as imprest is concerned?

Query six on own revenue shortfalls in own revenue which again are connected to lack of projects while we received 90 per cent from the exchequer; why are you now relating projects only to own revenue? The money which comes from the exchequer should also be used for development but we seem to be only giving excuses saying we did not meet own revenue therefore projects could not be done yet 90 per cent of the money from the exchequer was received.

Query number seven; Ksh. 1.5 billion monies in the CRF which are unspent and these are the funds which I believe are rolled over to the next financial year and should be utilized for paying pending bills and other items which again were not utilized.

So I think over and all, the report has come out with good recommendations and I would urge the secretariat to ensure that the recommendations which have been made by this committee are actioned upon as soon as possible. The issue Hon. Peter Mutiso raised that there seems to be a need to reconcile the Municipal Council versus County Government Records of assets.

I am sure the Transition Authority handed over report years ago and that report should be available to us here in the Assembly. So, maybe I will be recommending Hon. Peter Joseph Mutiso to get in touch with the Office of the Clerk and find out the records of the Transition Authority to see whether those items you are talking about were included in the Transition Authority report versus what we actually have.

ADJOURNMENT

Hon. Deputy Speaker: With that Hon. Members, the House adjourns to resume on Tuesday the fourth day of August 2020 at 10.00 a.m. Enjoy the rest of the evening.

The House rose at 4.23 p.m.

