

**REPUBLIC OF KENYA**  
**MACHAKOS COUNTY ASSEMBLY**  
**OFFICIAL REPORT**

**Tuesday, 5th December, 2017**

The House met at 11.03 a.m.

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

PRAYERS

**COMMUNICATION FROM THE CHAIR**  
ADVISORY ON HOLDING COUNTY EXECUTIVE COMMITTEE OFFICE IN AN ACTING  
CAPACITY

**Hon. Speaker:** Hon. Members, under this order we have a communication from the Chair and I greet you in the morning. On 8<sup>th</sup> November, 2017 during debate on the motion to approve the report on the five nominees for the position of County Executive Committee Members tabled by the Committee on appointments, the Leader of the Majority Party sought to know for long a member of the County Executive Committee can hold office in an acting capacity.

The Chair issued an interim communication on that matter and informed the House that the Chair will make a comprehensive communication on the same at a later date. Thereafter the Chair has since sought and received the legal opinion of the Attorney General of Kenya dated 23<sup>rd</sup> November, 2017 and a further advisory legal opinion from the Attorney General of 4th December, 2017.

In order to give Hon. Members time to interrogate the matter and to give members an opportunity to give their input on the matter, the advisory is hereby committed to the Committee on Justice and Legal Affairs for consideration. The Committee should table a report on the advisory in this House on 13<sup>th</sup> December, 2017 at 10.00 a.m. It is so ordered. Mr. Clerk, proceed.

**NOTICES OF MOTIONS**  
TAPPING WATER FROM YATTA CANAL, MAMBA AREA

**Hon. Speaker:** Hon. Members, under this order, we have four notices of motion as listed on the appendix and the first one is by Hon. Judas Ndawa. I invite the Hon. Member.

**Hon. Ndawa:** Thank you, Madam Speaker.

Madam Speaker, that aware that the United Nations considers universal access to clean water a basic human right and that water is a fundamental human need;

Aware that each person requires at least 20 litres of clean water a day for domestic use;

Cognizant that Article 43(1)(d) of the constitution states that every person has the right to clean and safe water in adequate quantities and acknowledging that the

County Government of Machakos proposes to provide water to all households by 2020 and that Matuu ward has been suffering from water shortages;

Noting that Matuu town draws water from Yatta canal which originates from River Thika and is 60 kilometres to town;

Aware that when there is water shortage and the water reduces in the canal, the water does not reach Matuu treatment works leading to shortage of water in Matuu Town;

Madam Speaker, I wish to give notice of the motion that the County Government of Machakos taps water from Yatta Canal, Mamba area which is a few kilometers from the main River Thika to Matuu treatment works which is 15 kilometres to Matuu Town.

Thank you, Madam Speaker.

**Hon. Speaker:** Thank you, Hon. Judas Ndawa.

#### ESTABLISHMENT OF ORPHANAGES IN EVERY SUB-COUNTY

**Hon. Speaker:** The next notice of motion is by Hon. Irene Mwendu is listed as notice of motion (b).

**Hon. (Ms.) Mwendu:** Thank you, Madam Speaker and members good morning.

Madam Speaker, that aware that Article 21(3) of the Constitution of Kenya 2010, provides that, all state organs and all public officers have the duty to address the needs of vulnerable groups within society, including women, older members of society, persons with disabilities, children, youth, members of minority or marginalized communities, and members of particular ethnic, religious or cultural communities;

Noting that children are the most marginalized and vulnerable members in most societies and aware that Article 43(1) of the constitution provides that every person has a right:-

- a. To the highest attainable standard of health, which includes the right to health care services, including reproductive health care.
- b. To accessible and adequate housing, and to reasonable standards of sanitation.
- c. To clean and safe water in adequate.
- d. To social security.
- e. To education.

Cognizant that, the Fourth Schedule, Part 2(9) gives the County Government mandate over pre-primary education, village polytechnics, home craft centers and childcare facilities; Acknowledging that Machakos County does not have an orphanage managed by the County Government;

Madam Speaker, I wish to give notice of the motion that the County Government of Machakos through the department of Education and Social Welfare establishes orphanages in every Sub-County to cater for the disadvantaged children in the community.

Thank you, Madam Speaker.

**Hon. Speaker:** Thank you, Hon. Irene.

#### ALLOCATION OF FUNDS TO CELEBRATE WORLD DISABILITY DAY IN MACHAKOS

**Hon. Speaker:** Hon. Members, the third notice of motion which is notice of motion 1(c) is by Hon. Justus Katumo.

**Hon. Katumo:** Thank you, Madam Speaker.

Madam Speaker, that aware that the 3<sup>rd</sup> day of December of every year is the world's disability day or the international day of people with disability which celebrates persons with disability;

Noting with great concern that this day has been promoted by the United Nations since 1992 to encourage a better understanding of the people affected by a disability, together with helping to make the general public more aware of the rights, dignity, and welfare of the disabled people as well as raise awareness about the benefits of integrating disabled persons into every aspect of life, from economic to political and cultural aspects;

Cognizant that the theme for 2017 International Day of People with Disability is "Transformation towards sustainable and resilient society for all;"

Aware that the overarching principle of this theme is to 'leave no one behind' and empowers people with disability to be active contributors of society;

Aware that it is based on transformative changes envisaged in 2030 agenda for sustainable development;

Madam Speaker, I wish to give notice of motion that the County Government of Machakos, through the department of Education and Social Welfare to set aside funds to facilitate people living with disabilities to organize an event within Machakos County to join the rest of the world in celebrating World Disability Day on 3<sup>rd</sup> December every year.

Thank you, Madam Speaker.

**Hon. Speaker:** Thank you, Hon. Justus Katumo.

#### RECONSTRUCTION OF THE DEMOLISHED KIOSKS IN MATUU TOWN

**Hon. Speaker:** Members, the final notice of motion under 1(d) is by Hon. Judas Ndawa.

**Hon. Ndawa:** Thank you, Madam Speaker.

Madam Speaker, that aware that an order from the former Matuu Town Council occasioned the demolishing of several kiosks within Matuu Market in Yatta Sub-County to pave way for construction of a market shed;

Aware that the kiosks were a key source of income for the kiosk landlords, tenants and their employees, watchmen employed to provide security and the council itself;

Noting that up to date, the completion of the construction of the market sheds has never been accomplished and therefore under-utilization of public land;

Aware that, the market shed does not hinder the reconstruction of other kiosks since the land is big enough to accommodate both the market shed and quite a number of kiosks;

Noting that these kiosks were a source of revenue for the council before they were demolished; and that since then the revenue has been lost;

Cognizant to the fact that Machakos County Government has not been able to attain its revenue target;

Madam Speaker, I wish to give notice of motion that this Hon. House discusses and approves the reconstruction of the demolished kiosks in Matuu town, to provide a source of income to the four classes of people that is the landlords, the kiosk tenants, their employees, the watchman and also provide revenue for the County.

Thank you, Madam Speaker.

**Hon. Speaker:** Thank you, Hon. Judas Ndawa. Mr. Clerk, proceed.

### STATEMENT

BUSINESS FOR THE HOUSE FROM 5TH TO 6TH DECEMBER, 2017

**Hon. Speaker:** Hon. Members, under this order we have the business as listed in the appendix and it is one statement by the Majority Leader, Hon. Francis Ngunga.

**Hon. Ngunga:** Thank you, Madam Speaker. Good morning, members. So, as it is tradition, I stand before you, Madam Speaker, again here 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, every Thursday or on the last sitting day, 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 met on Thursday, 30th November, 2017 and pursuant to the provisions of the Standing Order 151 balloted business for the week of 5<sup>th</sup> to 6th December, 2017 as follows;

Tuesday, 5th December, 2017

Morning at 10.00 a.m.

Report of Joint Committee of Finance and Labour on report on Suspension of Operations and Staff of Finance Department (Continuation of reading of the report and debate).

Afternoon at 2.30 p.m.

Motion that the County Government taps water from Yatta Canal, Mamba area, which is a few kilometres from the main river to Matuu treatment works which is 15 kilometers to Matuu (Hon. Judas Ndawa).

Wednesday, 6th December, 2017

Morning at 10.00 a.m.

Motion that the County Government through the Department of Education and Social Welfare establishes orphanages in every sub-county to cater for the disadvantaged children in the community (Hon. Irene Mwendu).

Motion that the County Government through the department of education, youth, sports and social welfare to set aside funds to facilitate people living with disabilities by organizing an event in Machakos within Machakos County to join the rest of the world to celebrate world disability day on 3rd December every year (Hon. Justus Katumo).

Afternoon at 2.30 p.m.

Motion that the House resolves the re-construction of the demolished kiosks to provide a source of income to the four classes of people in Matuu town, Yatta sub-county, that is the landlord, the kiosk tenant, the employees, the watchman; and also provide revenue for the County (Hon. Judas Ndawa).

Motion on extension of the Assembly to go on long recess on 20th December, 2017 instead of 6th December, 2017.

Madam Speaker, I urge the House to look at that business being the business balloted for today and tomorrow. Thank you, Madam Speaker.

**Hon. Speaker:** Thank you Hon. Majority Leader. Mr. Clerk, proceed.

### MOTION

#### SUSPENSION OF OPERATIONS AND STAFF OF THE DEPARTMENT OF FINANCE AND REVENUE COLLECTION

*(Hon. Masesi on 29.11.2017)*

*(Resumption of Debate on the Motion tabled on 29.11.2017)*

**Hon. Speaker:** Hon. Members, under this order, I am calling upon Hon. Cosmus Masesi, Just to remind you that he had actually introduced this motion and today's business is a continuation where the Hon. Member had reached.

**Hon. Masesi:** Thank you, Madam Speaker. Madam Speaker, I stand before this House for a continuation of this report so that, this House considers and approves the report of the Joint Committee of Finance and Revenue Collection and Labour, Public Service and ICT on suspension of operations and staff of the Department of Finance and Revenue Collection.

Madam Speaker, I want to believe that each and every member has the booklet because the issue was only one and we have an issue of publishing the same due to scarcity of funds. So, I want to believe each and every Hon. Member has his booklet with him or her.

Madam Speaker, again I want to remind this House that we went as far as the acknowledgement point on the side of preface. So, I want to pick from No.2 which is on the background.

Madam Speaker, on 27th June, 2017, the Governor of Machakos County issued a press statement about a policy to protect traders where collection of the following revenues was stopped; hawker's fees, small scale vegetable retailers and cereals vendors, market cess for livestock, bus park fees and fees charged to *mitumba* traders. The effect of this was reduced local revenue collections.

Further to this, on 18th August, 2017, the Governor of Machakos County made another statement in the media that he had suspended all the staff in the department of Finance. The officers suspended included all accountants, auditors, procurement officers, revenue clerks and support

staff in this department. This led to disruptions of the operations of the department. These events have triggered a number of responses as per the Constitution of Kenya and other laws.

Madam Speaker, Article 1 of the Constitution of Kenya provides that, all sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution and Article 2 of the Constitution states that, the people may exercise their sovereign power either directly or through their democratically elected representatives. Further Article 3(a) delegates the sovereign power of the Constitution to the County Assemblies in matters of the County Governments.

Madam Speaker, Article 37 of the Constitution of Kenya provides that every person has the right, peaceably and unarmed to present petitions to public authorities. In addition, section 15(1) of the County Governments Act provides that, a person has a right to petition a County Assembly to consider any matter within its authority, including enacting, amending or repealing any of its legislation.

Madam Speaker, Article 41 of the Constitution guarantees the right of every person to fair labour relations. Further, every worker has the right to fair remuneration and reasonable working conditions. Under Article 47 of the Constitution, every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.

Further, if a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action.

Madam Speaker, Article 235 of the Constitution of Kenya 2010 states that the County Government is responsible, within a framework of uniform norms and standards prescribed by an Act of Parliament, for establishing and abolishing offices in its public service, appointing persons to hold or act in those offices and confirming appointments and exercising disciplinary control over and removing persons holding or acting in those offices.

Section 56 of the County Governments Act provides for the establishment of the County Public service which shall be headed by the County Secretary. Section 57 establishes the County Public Service Board (CPSB).

On disciplinary procedures, Madam Speaker, according to Section 59 of the County Governments Act, one of the functions of the CPSB is to exercise disciplinary control over, remove, persons holding or acting in those offices, advise the County Government on human resource management and development. The CPSB can visit any public office or body with a view to assessing and inspecting the status of compliance with the values and principles.

It has powers to investigate on its own initiative or upon a complaint made by any person, group of persons, the violation of any values and principles. The CPSB can also recommend to the relevant lawful authority, any necessary action in view of the violation of the values or principles by any person or public body.

The County Public Service Human Resource Manual 2013 and the Discipline Manual of October, 2014 outline the procedure for the disciplining of County officers. Where there is a discipline issue to be determined, an authorized officer shall issue the public officer concerned with a "Show Cause Letter" specifying the charges and contemplated punishment and giving such an officer an opportunity to defend him/herself.

The 'show cause letter' should be clear and specific on the allegations and the dates of occurrence and the period within which the concerned officer should respond. The affected officer shall reply to the allegations within 21 days.

The response is discussed in the Human Resource Advisory Committee and recommendations are made to the Authorized Officer. The committee may require the affected

officer to appear in person or a representative and this may include witnesses. Where there is need, the authorized officer may appoint not less than three officers of a rank higher than the affected officer to investigate the matter. The report shall be submitted to the Committee which shall discuss and make recommendations to the Authorized Officer who may decide to finalize the matter or refer it to the CPSB.

Madam Speaker, the disciplining of an officer starts with the Departmental Human Resource Advisory Committee. An employee who is aggrieved by the decision of a Departmental Human Resource Advisory Committee may appeal to the County Human Resource Advisory Committee. If further an employee is not satisfied with the decision of the County Human Resource Advisory Committee, such employee can appeal to the CPSB. An aggrieved person can still make a further appeal to the Public Service Commission.

Madam Speaker, the functions of the County Treasury are detailed in section 104 of the Public Finance Management Act, 2012 and they include monitoring, evaluating and overseeing the management of public finances and economic affairs of the County Government including among other things the following; preparation of the budget, collection and banking of revenue, implementation of the budget, management of debts and other obligations and preparation of financial reports.

Madam Speaker, Article 195 (1) of the Constitution of Kenya provides that, a County Assembly or any of its committees has power to summon any person to appear before it for the purpose of giving evidence or providing information.

Further, section 18 of the County Assemblies Powers and Privileges Act provides that, ‘a County Assembly or its committees may invite or summon any person to appear before it for the purpose of giving evidence or providing any information, paper, book, record or document in the possession or under the control of that person and, in this respect, a County Assembly and its committees shall have the same powers as the High Court as specified under Article 195 of the Constitution of Kenya, 2010.’

Madam Speaker, pursuant to these provisions the committee invited the following people in a bid to gather the facts.

Madam Speaker, the petitioners were invited to appear before the committee on 9th October, 2017 at 11.00 a.m. vide a letter dated 2nd October, 2017 ref: MKSCA/PSC/CMM/VOL.3/22. This invitation was later rescheduled to 16th October, 2017 and further re-scheduled to 23rd October, 2017 at 8.30 a.m. The petitioners were informed that they would be required to address the five grievances raised in their petition, Madam Speaker.

Madam Speaker, these three persons were invited to appear before the committee on 9th October, 2017 at 11.00 a.m. vide a letter dated 2nd October, 2017 ref: MKSCA/PSC/CMM/VOL.3/23. This invitation was later re-scheduled to 16th October, 2017 and further to 23rd October at 10.00 a.m.

The persons were informed that they would provide information, documents and evidence on a petition submitted to the Assembly by Finance staff (Directors, Accountants, Auditors, Revenue Officers, Procurement Officers and Messengers) of the County Executive. They were informed that the committee will require them to;

- a. Address the five grievances raised by the petitioners.
- b. Provide a list of officers suspended on 18th August, 2017 and their designations.
- c. Highlight the reasons why the officers were suspended and how long the officers will be on suspension.

- d. Provide evidence to substantiate the numerous complaints received from various avenues with regards to their competency, integrity and efficiency of the personnel and systems in the Finance Department.
- e. Provide the procedure of suspending officers as per the law and whether the same was followed.
- f. Report the financial implication of the suspension, the actual sum of money lost and the controls put in place to mitigate the loss.
- g. Explain why the officers were being called and told to re-apply yet they had not been sacked.

Madam Speaker, the finance staff of Machakos County Government (petitioners) presented a petition to the Assembly on 25th September, 2017 pursuant to section 15 of the County Governments Act and Standing Order 194 having been suspended from office since 18th August, 2017.

Madam Speaker, the petitioners alleged that the suspension was verbal and no individual suspension letters were issued. The officers therefore did not know the basis or duration of their suspension. They also questioned why senior finance officers such as the Chief Officers and County Executive Committee members were not also suspended since they were the leaders of their departments. They also wondered why all other chief officers in other departments were not suspended yet the accountants and procurement officers in their departments were suspended.

Further, the finance department staff wondered why they had not been paid since August, 2017 yet other staff had been paid. Madam Speaker, also they alleged that the governor used media houses to destroy their reputation and image by alleging that the finance officers were corrupt yet he did not have evidence to that effect.

Further, they stated in their petition that the closure of the department had led to the paralyzing of the operations of the County Government including revenue collection, payments and also the preparation of financial reports. Hon. Members, we have oral submissions by the petitioners

Madam Speaker, the petitioners were represented by the officials of Kenya County Government Workers Union (KCGWU), Machakos branch namely, Mr. Lawrence Bunyali (Chairperson), Mr. Chris Wambua (Secretary), Mr. Joseph Muli (Treasurer) and Ms. Ruth John (Youth Representative). Mr. Chris Wambua (Secretary) and Ms. Ruth John gave submissions on behalf of the petitioners under oath and informed the Committee that:-

1. They were evicted forcefully from the offices by the management of the County Government under the instructions of the Governor and their offices locked.
2. They sought advice from the KCGWU National Office and the Central Organization of Trade Unions (COTU) on the suspension. KCGWU National Office wrote to the Governor informing him that it had received information about unlawful termination of employment of workers, forceful and illegal eviction of officers from the offices.
3. The KCGWU National Office advised the Governor that the action of suspending the finance staff was unlawful as per Article 41 of the Constitution of Kenya which states that "every person has the right to fair labour practices" and section 45(1) Employment Act, 2017 which provides that "no employer shall terminate the employment of an employee unfairly" and section 46(g) of the same Act which provides that, 'the following do not constitute fair reason for dismissal or for the imposition of a disciplinary penalty: an



- employee's race, colour, tribe, sex, religion, political opinions or affiliation, national extraction, nationality, social origin, marital status, HIV status or disability.'
4. KCGWU National Office observed that the actions of the Governor were in breach of the Constitution of Kenya, Labour Relations Act, Employment Act and the International Labour Organizations (ILO) Conventions which Kenya had dully ratified. The illegal, forceful office evictions and terminations were blatant breach of all labour relations laws and may amount to criminal activity under the penal code.
  5. KCGWU National Office asked the Governor to desist from and withdraw the illegal actions failure to which it will take all steps to defend its members' rights.
  6. The County Government violated section 76 of the County Governments Act on prohibition of punishment contrary to the Constitution. The principles of natural justice were not observed and all the officers were branded corrupt without a hearing and suspended. The officers were not given any warning or opportunity to show cause why disciplinary action should not be taken against them.
  7. All the suspended officers get instructions from the County Executive Committee Member and the Chief Officer, Finance and if there was any corruption in the Department, the persons who should be held to account are the Executive Committee Member and the Chief Officer, Finance.
  8. All payments in the County Government were done through the Integrated Financial Management Information Systems (IFMIS) and final stages of payment were done by the Chief Officer, Finance thus the junior officers could not pay without the seniors' approval.
  9. Section 17 of the Employment Act required the employer to pay an employee the entire amount of money for which he or she has worked for and that the County Government was in violation of this law by not paying the suspended officers their August and September, 2017 salaries.
  10. It was unreasonable to punish all the officers yet there were only few who were liable.
  11. The Governor used the Media to claim that he had suspended the Finance Staff because they were corrupt. This was defamation since he had no proof of the allegations.
  12. The officers were given verbal communication to move out of the offices and not to report to work the following day until further notice. The communication came from the County Secretary. The officers came to know of the suspension through a memo circulated to the Sub-County Administrators through the social media 'whatsapp.'
  13. The officers were not issued with any letter or note to indicate the reason(s) or duration of suspension.
  14. The officers were able to view and print payslips for August and September, 2017 from Government Human Resource Information System (GHRIS) and there was no money in their accounts for August and September, 2017 salaries. There was no communication about the withholding of their salaries from the County Government. The petitioners added that they had sought to know from the Director of payroll why they had not been paid and the Director informed them that the Chief Officer, Finance came to his office and took the payroll away. The last but not the least;
  15. The officers had not been given any warning or cautionary letters before the suspension and most of them were taken by surprise.

Madam Speaker, Hon. Members. We have number 3.2; that is the reply to the petition by County Public Service Board (CPSB). Madam Speaker, the County Public Service Board (CPSB)

appeared before the committee at 10.50 a.m. The Board was represented by the Acting Chairperson, Ms. Scholastica Mbui, acting Secretary Ms. Mwendu Musyoka and Commissioners Muli Kasoa, Andrew Metho, Phillip Nzioka, and Dorothy Mwanzia. The CPSB is established under section 57 of the County Government Act and its functions and powers outlined in section 59 of the same Act. The Committee had invited the CPSB to advice on the procedures of suspending or sending officers on leave and whether in its opinion the procedures were followed. The members of the Board while under oath informed the committee that:-

1. It learned about the petition by the Finance Staff through the letter written by the County Assembly requesting it to appear to clarify on the suspension of the officers. Madam Speaker.
2. It sought audience with the Deputy Governor to find out how the officers were suspended and the Deputy Governor informed the Board that the officers were not on suspension but on leave but was unable to define the type of leave the officers were serving.
3. Officers on leave were entitled to be paid their salaries and that County Government was acting un-procedurally by failing to pay to the officers their August and September 2017 salaries.
4. The CPSB advised the Deputy Governor that by sending such a big number of officers on leave will ground the operations of the County Government and they should reconsider their action. The Deputy Governor explained to the CPSB that there were numerous complaints by the public about the officers and the logical thing to the County Government was to suspend operations of the Finance Department and send the officers on leave to pave way for investigations.
5. Disciplinary action in the County Public Service was a process that had five stages (tiers). The initial disciplinary roles of the CPSB were delegated to departmental advisory and human resource advisory committees. These two committees deal with preliminary disciplinary issues of staff and where they were unable to finalize; the matters were then referred to the CPSB. The CPSB looks into the matter and then gives a ruling. If an officer was not satisfied he/ she can make appeals in court and tribunals.
6. The issue of the Finance staff was still being handled at tier 1 and 2 and the Deputy Governor undertook to provide a report to the Board once the taskforce established to investigate the complaints by the public was through with investigations.
7. The CPSB informed the committee in their estimation procedure of was not followed in sending the finance staff on leave and had informed the Deputy Governor of that fact. The procedure of sending an officer on leave required that the officer fill in prescribed forms and this was not done.
8. The CPSB learnt most of the issues affecting staff in the County through the press and it was difficult to exercise disciplinary control as it had been left out most of the time.
9. The County Government had deployed some 100 officers to undertake the duty of revenue collection and was not satisfied with the action taken since the officers were not trained nor were they appointed officially yet they were performing a crucial task of dealing with money and added that the function of revenue collection was being done by the wrong officers. Madam Speaker, the Board noted that by deploying some officers to collect revenue and others to work on the IFMIS, the County had lifted the suspension of the operations of the department. It was unprofessional to have officers who had no skills on the assigned tasks.

10. It is only the Board that can abolish offices and that the Governor did not have powers to suspend operations of a department. There was no provision in law for suspension of a department.
11. Members of the CPSB did not have a record of the number of employees of the County and did not know the exact number of employees in the County only approximating the number to be in the range of 6000.

Madam Speaker, Hon. Members, we have the reply to the petition by Acting County Secretary. Madam Speaker, the Acting County Secretary Ms. Grace Munguti, who was also the Chief Officer, Public Service, Labour and ICT department appeared before the committee on 23rd October, 2017 at 12.40 p.m. Under oath, the Count Secretary informed the committee that;

1. The officers were not suspended but sent on leave after the financial operations of the Finance Department were suspended.
2. The decision was taken by the County Executive Committee after several complaints from the public about the officers and it was meant to pave way for investigations into the allegations.
3. Madam Speaker, she communicated the decision of the County Executive Committee through a circular in form of a memo dated 18th August, 2017 to all the Heads of Departments that all the finance staff were to be sent on leave and should not report to work the following day.
4. It was the duty of the Heads of the Department to write leave letters to the employees after receiving the circular. The County would suffer costs unfairly if sued because of the Chief Officer, Finance failing to write letters of leave.
5. The Chief Officer, Finance was not sent on leave because she was the resource person who was to inform the investigations since the Department did not have an Executive Committee Member. Those are some of the responses by the county secretary.
6. There were no complaints leveled against the Executive Committee Members and Chief Officers from other departments.
7. The public were channeling most of the complaints through the media and that is why the responses were done through the media.
8. The officers were suspended on the basis of complaints received from the members of the public and not verbal allegations and hearsay and tabled to the Committee seven complaints to proof that.

Hon. Members, we have some documents submitted by the County Secretary on the petition. Madam Speaker, the County Secretary tabled before the Committee seven letters written by the public complaining about the Department of Finance which were the basis of suspension of operations of the department and sending officers on leave.

The County Secretary also tabled the documents listed below during the hearing and after the hearing;

- i. List of officers suspended on 18th August, 2017 and their designations.
- ii. Payroll schedules for the months of August and September, 2017 for the finance staff.
- iii. Names of the officers working on the task force investigating the suitability of finance staff.
- iv. Memo to the heads of departments communicating that all staff in the Finance Department should go on leave starting 18th August, 2017.

Madam Speaker, the letter by ratepayers Machakos and Mavoko Sub-Counties. That is as we analyze the letters which was tabled before the committee. Madam Speaker, this letter was not dated, not signed and was received on 10th November, 2016 addressed to the County Secretary. The letter states as follows;

- a. That services they receive are not satisfying yet they pay licenses and rates to get good services in return.
- b. Officers at the Machakos cash office shout at them.
- c. When they go to pay rates they had to 'wait for long hours before being served while the officer was busy doing other work or sometimes taking tea.'
- d. Clients have to keep on visiting the rates office sometimes up to four times.
- e. There is inconsistency in the amounts payable as rates as some people could negotiate how much to pay as property rates.

On the same letter, the committee made the following observations that:-

- i. The letter was not signed and if the allegations were to be relied upon, investigations should have been carried out.
- ii. The allegations in this letter are almost 10 months old and the Executive should have dealt with this matter then. Hon. Members, if you look just above it the letter was dated 10th November, 2016.

The County Secretary should have tabled the measures taken then, such as show cause letters.

**Hon. Museku:** Madam Speaker, point of order.

**Hon. Speaker:** Point of order chair of chairs?

**Hon. Museku:** Yes, Madam Speaker, thank you. Madam Speaker, I stand under, Standing Order 27(3)(a). Aware that Standing Order 27(2) provides that the House shall interrupt its business at 12.30 p.m. Aware also that Standing Order 27(3)(a) provides that the house may resolve to extend its sittings time and aware that Standing Order 27(4) requires the motion on extension of time to be moved at least 30 minutes before the time appointed for adjournment.

I wish to move the motion that the house resolves to extend sitting time to allow completion the reading of this report. I call upon Hon. Francis Ngunga to second me on this motion.

**Hon. Ngunga:** Thank you, Madam Speaker, thank you the mover. I guess Madam Speaker, looking at this the intention of this extension is pretty well and this report came before us and it was interrupted and I think members have now been able to get to the mood of this report.

So, Madam Speaker, I wish to support the fact that we move this House to sit for an extra 30 minutes to allow the member to finish the reading of this report. Thank you, Madam Speaker.

**Hon. Speaker:** Thank you, Chair of chairs and seconder Hon Majority.

*(Question proposed)*

Hon. Members, can I have your positions, just a few on this. The motion to extend the sitting of this session. Hon. Ndawa.

**Hon. Ndawa:** Thank you. Madam Speaker, I stand to support the motion. The report is very crucial and we need to finish the reading of the report. Thank you, Madam Speaker.

**Hon. Speaker:** Thank you, Hon. Ndawa. Hon. Mwikali.

**Hon. (Ms.) Mwikali:** Hon. Speaker, I stand to second that due to seriousness of this motion it continues. It gets extended. Thank you, Madam Speaker.

**Hon. Speaker:** Hon. Angela.

**Hon. (Ms.) Munyasya:** Madam Speaker, I stand to support that report reading be extended given that we have other matters to address this afternoon so that the completion can be done in time.

**Hon. Speaker:** Thank you Hon. Angela. Hon. Kalumu you had your hand up. Are you sure that you want to say something? Alright, go ahead.

**Hon. Kalumu:** Thank you, Madam Speaker I wish to support the motion bearing in mind that in the afternoon we have another business for this House. So, I support the motion. Thank you Madam Speaker.

**Hon. Speaker:** Hon. Members, my reading of the mood is that members may want to perhaps vote on this, Can I put the question members?

*(Question put and agreed on)*

**Hon. Speaker:** Hon. Cosmos Masesi, please proceed.

**Hon. Masesi:** Madam Speaker, Hon. Members, I want to say thank you for your observations for granting me some more time to continue with the reading of the report, and it is my prayer that we continue with the same spirit; I am talking in unity on matters of this House. Madam Speaker, we were checking on the documents submitted by the County Secretary and we went through the first letter.

The second letter was 3.4.2 anonymous letter dated 5th June, 2017. Madam Speaker, this letter is addressed to the Clerk of the County Assembly and copied to the Minister of Finance and was received at the County Secretary's office on 23rd June, 2017. The letter was not received in the Assembly.

The letter raised the following issues;

- a. Strengthening procurement regulations and rules to stop officers from inflating prices and taking bribes.
- b. Uncontrolled land rates collection in Athi River and corruption in quarries in Lukenya and Kathaana.
- c. Cement companies in Athi River being exempted from paying tax or cess.

- d. Staff establishment in the County being large and some do nothing the whole day. Many of them do not report to duty yet they are in the payroll.
- e. Collection of parking fees should be strengthened and paybill numbers investigated to establish whether all money posted there goes to the County kitty.
- f. Pass laws to punish and fine motorists found driving in town while using mobile phones.
- g. Dumping of litter on streets and reckless spitting should attract instant fine.
- h. Tame County askaris who go round collecting money from matatus and other motorists and pocketing the same.
- i. Sack lazy and non-performing staff to reduce wage bill.
- j. Sack and investigate officers in finance department who pass and authorize illegal and corrupt payments.

The committee observed that the letter was from an unidentified source and not signed and if the allegations were to be relied upon, further investigations should have been carried out.

The third letter was from Ashera Holdings Limited on trade license. Madam Speaker, Ashera Holdings Limited wrote an e-mail to the County Government of Machakos on 2nd May, 2017 requesting to be informed when the trade license will be out. The committee observed that this was not a complaint. Madam Speaker, we had another letter from Michael Kyalo of Tala.

Madam Speaker, Mr. Michael Kyalo wrote to the Governor on 10th August, 2017 and his letter received on 11th August, 2017. He was reporting the rot in the County Finance department. He said that officers were disrespectful, arrogant with not courtesy especially those at the grilled door payment office which was against Maendeleo Chap Chap philosophy.

The Committee observed that the group of persons referred here was small, cash office in Tala and the letter could have had a political agenda since it refers to the political party of the Governor.

We have letters received after suspension of operations. Madam Speaker, three letters were received after suspension of the operations of the department and officers send on leave.

The letters were as follows:-

- a. Anonymous letter dated 18th August, 2017 and received on 31st August, 2017 in the office of the County Secretary. The letter was addressed to the Governor-elect and the subject was rampant and massive corruption in Machakos County Government Workers.

The letter states as follows:-

- (i) The author requests the Governor to weed out hundreds of staff who have been sabotaging his development efforts and that a recent research show that over a thousand staff in the County do not support him but support his competitor.
- (ii) There are very many ghost workers in the payroll who report to work to sign in and then leave to attend to their private businesses.
- (iii) The officers in Departments of Finance and Procurement have been looting County resources and are seen constructing high rise buildings, driving luxurious cars and holding expensive parties like birthday party of Ksh. 1 million.

- (iv) The mushrooming kiosks in Machakos town around Susu Centre, Sokoni and near bus stop have been constructed and are owned by county officers.
  - (v) It will be difficult to run the Government with 80 per cent of the officers owing allegiance to his competitor and the balance of 20 per cent being very corrupt.
- b. Email dated 4th October, 2017 from Sarah Wasua on Harassment while executing a legally approved maisonette construction at Syokimau. Sarah states that they have all the approvals required to start construction but have been receiving and experiencing constant harassment from County Enforcement askaris and Administration Police (AP) from Syokimau APs post. The officers come in different private cars each day and demand bribes. They state that they will stop the construction until a time when the County will give assurance that there is no more harassment.
- c. An unsigned letter dated 2nd June, 2017 but received by the County Secretary on 6th September, 2017. The letter was addressed to the Governor and the subject was lavish lifestyle of County finance workers. The author of the letter states that most of the accountants have lavish cars and buildings worth millions of shillings acquired immediately they were employed. Most of the pre-qualified companies doing business in Machakos County are in one way or the other connected with the procurement officers.

The committee did not consider these three letters as they were received after the officers were sent on leave. Hon Members, note that.

On number 3.4.6 payroll schedules; Madam Speaker, the Committee had requested the County Secretary to provide payment schedule for the Months of August and September, 2017 to confirm whether the officers were paid as she had alleged.

The Committee made the following observations that:-

- i. The Committee had requested for the payment schedules sent to the Bank for August, 2017 and September, 2017 to confirm whether the salaries of the staff were actually remitted.
- ii. The County Secretary submitted to the committee payroll schedule instead of payment schedules and this document could not inform whether banks were instructed to pay the officers.
- iii. Madam Speaker, The County Secretary was withholding information from the committee contrary to section 27(3) of the County Powers and Privileges Act. Hon. Members we have a reply to the petition by the Chief Officer, Finance.

Madam Speaker, the Chief Officer, Finance, Ms. Jacinta Masila, Finance and Revenue Collection Department appeared before the committee on 23rd October, 2017 at 12.40 p.m. Under oath the Chief Officer, Finance informed the committee that:-

1. The officers were not issued with letters to show that they should proceed on leave, the reason for the leave and duration of the leave.
2. Madam Speaker, the August and September, 2017 salaries had been sent to the banks which were in the process of paying the officers. The Chief Officer, Finance was unable to give the exact dates when the money for salaries was sent to the bank but after further probing by the Committee. She said that the money was sent to the bank on Tuesday, 16th October, 2017.

3. The committee sought to get confirmation from the petitioners who were in the meeting whether they were paid with the concurrence of the Chief Officer, Finance and they said that they kept checking with the banks but there was nothing in the accounts.
4. Madam Speaker, her responsibility was to pay money to the banks after receiving payrolls while the role of issuing instructions was the duty of Director Payroll section in the Department of Labour, Public Service and ICT which was represented by the Count Secretary.
5. The money that had not been applied for will be applied for by close of the day that is by end of 23rd October, 2017.

Documents submitted by the Chief Officer, Finance and Revenue Collection. Bank statement on payment of salaries for August and September, 2017. Madam Speaker, the Committee requested the Chief Officer – Finance to provide bank statements for the Months of August and September, 2017 to substantiate the claim that the officers sent on leave had been paid. The Chief Officer provided bank certificates and statements from the following banks on 24th October, 2017.

- a. Kenya Commercial Bank – Machakos Branch.
- b. Equity Bank (K) Limited – Machakos Branch.
- c. Family Bank Ltd – Machakos Branch.
- d. Cooperative Bank of Kenya (Statement)

The committee observed that:-

- (i) The Chief Officer submitted bank certificates instead of bank statements for August and September, 2017 as requested during the hearing and vide a letter dated 23rd October, 2017 ref: MKSCA/PSC/FRC/CMM/VOL.4/6. The banks certificates and bank statement for October, 2017 were inadequate to verify the claim that the Chief Officer, Finance had paid the officers' salaries of August and September, 2017.
- (ii) The Chief Officer, Finance was withholding information from the Committee by submitting documents that were different from those that were requested and was hindering the committee from establishing whether the officers sent on leave were paid August and September, 2017 salaries. This action of the Chief Officer was in contravention of section 27(3)(f) and (g) of the County Assembly Powers and Privileges Act, 2017.
- (iii) The bank certificate from equity had the following narration; 'we refer to your letter dated 24th October, 2017. Kindly find below the amounts in our books for County salaries for which the salary schedules were not delivered for crediting.' The Equity certificate had an outstanding balance of Ksh. 23,741,946.55. The committee was convinced that this amount could be the salaries for August and September, 2017 for officers sent on leave for which the County Government had failed to submit payment schedules for crediting to individual accounts.

Hon. Members, we have committee conclusion on the petition. Madam Speaker, the committee observed that;

- (i) The appropriate institution to deal with the matter of discipline of County employees is CPSB and which was not involved in the whole affair. Members of CPSB indicated



- that the disciplinary process had not reached the level of the Board. It is rather curious that the members of the CPSB seemed unaware or ill informed about this drastic actions by the County executive in a matter that is squarely within their mandate. Even though the power to discipline staff had been delegated to the Chief Officers, the CPSB ought to have recalled their powers and be seized with the matter and deal with it by itself since the matter is of a high magnitude and that the Board has experts in that field.
- (ii) It is clear from the analysis of the evidence given by the parties in the petition that procedure was not followed in sending the Finance department officers on leave. Further, that going on leave is a voluntary process where an employee applies to go on one of several kinds of leave. The application is then considered by the relevant supervisor who has the discretion to approve or not to approve a specific application for leave. In this case Madam Speaker, none of the 437 finance employees applied for leave and none was granted to them according to procedure. That it is ludicrous for the County Executive to say that 437 officers of one department went on leave and that no disruption of service delivery was occasioned. Besides, the committee established that there is no leave which is known as “compulsory leave” either in law or any policies or regulations within the laws of Kenya Madam Speaker.
  - (iii) Madam Speaker, the fact that the County Executive did not engage the Kenya County Government Workers’ Union and the fact that they did not reply to their letter is a pointer to a violation of Article 41 of the Constitution on fair labour relations. Further, the County Executive was in violation of Article 47 of the same constitution on the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair. No written reasons for the action of the County Executive were given further breaching this right. Madam Speaker.
  - (iv) It is also clear that the County Executive Committee acted beyond its powers by purporting to suspend the functions of a department and purporting to send the finance officers on leave. Madam Speaker, The only institution that has the powers to create or abolish a County Office is the CPSB and which exercises this power with the approval of the County Assembly.
  - (v) The Committee was convinced that the 437 officers who had allegedly been sent on leave had not been paid their August and September 2017 salaries. Also, that the Chief Officer, Labour, Public Service and ICT who was also the Acting County Secretary and the Chief Officer, Finance had not given the requisite schedules to the banks to instruct them on who to pay the money that was available in the County’s salary accounts.
  - (vi) Madam Speaker, the Committee further observed that in this whole issue of the sending on leave of officers of the finance department several laws could have been violated including criminal law relating to abuse of office, violation of human rights, labour laws among others. That the action by the County Executive Committee to send the finance officers on leave has made the County Government susceptible to law suits and therefore the possibility of liability to pay damages to the affected officers in addition to lawyers’ fees and court charges.
  - (vii) Madam Speaker, the committee was of the view that the CPSB abdicated their duty to exercise disciplinary control over County officers in the particular case. The Committee holds that CPSB ought to have moved in a stronger way to reclaim their

mandate which was being usurped by the County Executive Committee. Madam Speaker, They ought to have advised the County Executive appropriately to avert any violation of the law.

- (viii) Madam Speaker, there is need to streamline the CPSB since the holder of Chairperson, CPSB and the Secretary, CPSB have been holding these important offices for too long. There is need to appoint substantive holders to these offices.
- (ix) Madam Speaker, the CPSB reported that it was not sure of the staff establishment in the County only giving an estimate of 6000. This requires staff head count and audit to establish the exact number of staff in the County and weed out ghost workers.

Madam Speaker, I would wish if it is possible to call upon my co-chairperson to do the remaining of the report, Madam Speaker.

*(Applause)*

**Hon. Speaker:** Hon. Members, it is procedurally alright for the current Hon. Member to call upon the other chair of the other committee that they sat together acknowledging that this was are port by two committees. And who is the other chair? Hon. Jeremiah. Point of order from Hon. Musyimi.

**Hon. Musyimi:** Is it in order for the chairman of finance to give a report which is substandard for saying that he has not called the exactly number of the employees of the county. How do we then measure the salaries?

**Hon. Speaker:** Hon. Member, you are out of order. Just wait for the report and then we debate it at the point of debate.

*(Applause)*

Hon. Jeremiah, proceed.

**Hon. Munguti:** Thank you, Madam Speaker. I would wish to carry on from where my colleague has left. Madam Speaker, we are in 4.0 committee inquiry on the statement. Madam Speaker, on 20th September, 2017, a statement was requested in the House on the suspension of Staff in the Department of Finance on 18th August, 2017, pursuant to Standing Order 42(2)(c).

The statement had raised the following questions;

- (a) Whether proper disciplinary measures were followed on suspension of the staff and when they will resume duty.
- (b) Why the County Government was in the process of recruiting other officers.
- (c) Whether in the given circumstances revenue is being collected as stipulated and if not how much revenue has been lost and measures put in place to ensure recovery of the same to address any shortfall in budget financing.
- (d) Measures taken to ensure the County Departments and agencies continue receiving financial support uninterrupted from the National Treasury. Madam Speaker, On 27th September, 2017, the statement requested on 20th September, 2017, was

responded to in the House pursuant to Standing Order 42(2)(c). The statement response was as follows:-

- (i) That the action of suspending staff was necessitated by numerous complaints received through various avenues with regard to the competency, integrity and efficiency of personnel and systems in the Department of Finance.
- (ii) Suspension of operations of the Department of Finance led to sending staff in the department on leave until the operations in the Department resumed and County Executive was not in a process of recruiting officers to replace them.
- (iii) Measures have been taken to facilitate revenue collection and basic financial operation in the County Treasury to ensure continuous service delivery by departments in the County.
- (iv) The Department is expected to undergo audit of operations which will streamline it resulting to optimum levels of operations thus higher collections. The optimum levels of operations will mitigate against shortfall in budget financing.
- (v) The audit will be fair and just and due process will be followed. The audit that started in the Department of Finance will be extended to other sectors of public service to ensure a workforce that is competent, of high integrity, service and result oriented.

Reply to the statement, County Secretary. Madam Speaker, the County Secretary replied to the statement on 23rd October, 2017 at the same time she was presenting submissions on the petition by finance staff. The County Secretary informed the committee that:-

- (i) The County was not in the process of recruiting new employees. The staff sent on leave was asked to fill-in suitability and wealth declaration forms to assist a task force that was undertaking audit in the Department.
- (ii) It was not fair to suspend all the 437 officers since all were not corrupt but due to public interest all the officers had to be sent on leave. The heads of the departments did not follow the due process since they did not give the officers any document to fill in while going on leave.
- (iii) A taskforce composed of Advisors of the Governor and neutral experts in Finance and Human Resource was carrying out audit to establish competencies and suitability of the officers before they can resume their duties.

Reply on statement by Chief Officer, Finance. Madam Speaker, the Chief Officer, Finance while responding on questions whether in the given circumstances revenue was being collected as stipulated and measures taken to ensure the County Departments and agencies continue receiving financial support uninterrupted from the National treasury informed the committee that:-

- (i) 100 officers sourced from other departments were assisting in revenue collection since 20th September, 2017. Since their redeployment, there has been significant increase in the revenue collection with some sectors that had been collecting less than Ksh. 1,000 recording an average daily collection of Ksh. 10,000 and at some point the daily collection reached over Ksh. 100,000. Officers on leave were recalled on need basis to assist with crucial services such invoicing in the IFMIS and preparation of salaries.
- (ii) The County will be able to recoup the losses realized and even surpass the budget target of Ksh. 1.7 billion after streamlining operations of the Department.
- (iii) The Department was not able to prepare and present required reports such as budget circular, County Budget and Review Outlook Paper (CBROP) and quarterly financial statements to the Assembly due to sending finance staff on leave. The public

participation of Finance Bill, 2017 was not properly conducted since the officers from the other departments who were involved had little knowledge on the bill.

- (iv) She was not able to estimate the amount of money the County was losing monthly but once the operations were streamlined the County will collect more and realize the budget target.

Madam Speaker, 4.3 documents tabled before the Committee on the statement by County Secretary; 4.3.1 Officers working on the task force investigating the suitability of finance staff. Madam Speaker, the Committee requested the County Secretary to provide a list of members the taskforce undertaking staff and system audit. The list is provided by the County Secretary is shown in table 4.1.

**Table 4.1: List of Names Working on Taskforce Undertaking Finance Audit**

	NAME	CURRENT POSITION	SPECIALIZATION
1.	Mr. Sammy M. Mbova, CBS	Advisor to H.E the Governor	Administration
2.	Mr. Hyslop Ipu, EBS	Advisor to H.E the Governor	Ethics and Integrity
3.	Mrs. Bernadette M. Nzioki, EBS	Advisor to H.E the Governor	Human Resources
4.	Ms. Scholasticah Mueni	Ag. Chairperson CPSB	Human Resources
5.	Mr. Kimeu Kimeu	Advisor to H.E the Governor	Human Resources
6.	Mr. Boniface Mwaura	National Government	Finance/ Accounting
7.	Mrs. Elizabeth Mutisya	Human Resources	Ethics and Integrity
8.	Mr. James Kathili	Chief Legal Officer	Secretary
9.	Ms. Gloria Katatha	Senior Legal Officer	Secretary

*Source: Compiled from Report submitted by the County Secretary; 24th October, 2017*

Madam Speaker, the Committee made the following observations:-

- (i) That it could not ascertain whether the task force was properly constituted as per the law. There was no proof that the appointment of the task force was gazette and there were no terms of reference attached to show what was expected from it.
- (ii) That Ms. Scholasticah Mueni, the Ag. Chairperson CPSB categorically said that she was not aware of the composition of task force investigating the finance staff. The committee later observed that she was a member of the task force. Please note Roman (ii).
- (iii) The Committee was not satisfied as to the neutrality of task force and also that task force did not include representation from other stakeholders like the KCGWU union.
- (iv) The taskforce was to undertake finance audit however it had only one finance professional while the rest were Human Resource and Ethics and Integrity professionals. This brings to the question the competence to do a financial audit.

4.3.2 Communication that all staff in the Finance Department should go on leave. Madam Speaker, the committee observed that a letter from the County secretary dated 18th August, 2017 had been sent to chief officers, accounting officers and Sub-County Administrators informing them

of the suspension of financial operations in the County Government Machakos effective from 18th August, 2017. All the officers in the finance department and those seconded to other departments by it were to proceed on leave with immediate effect. The Chief Officers, Accounting officers and Sub-County Administrators were to ensure compliance.

Madam Speaker, 4.3.3 Report on Revenue Collection after Redeployment of Officers; Madam Speaker, the Chief Officer informed the Committee that revenue collection had improved since the redeployment of 100 staff from other departments on 20th September, 2017. The committee requested for a report to confirm the facts and the following was presented on 24th October, 2017 by the Chief Officer.

Table 4.2 shows report of local revenue collections as submitted by the Chief Officer, Finance and Revenue collection on 24th October, 2017.

Table 4.2: Report of County Local Revenue Collections for July – October, 2017

Month	Bank Collections	Paybill Collection	Total Collections
July	1,635,747	34,612,090	36,247,837
August	4,970,791	16,374,719	21,345,510
September	781,078	12,078,001	12,859,079
October*	101,768	25,806,409	25,908,177
Grand Total	7,489,384	88,871,219	96,360,603

Source: Report from Chief Officer Finance; 24th October, 2017.

NB\* figures for October, 2017 as at 23rd

Madam Speaker, the Committee also obtained a report of monthly revenue receipts at the County Revenue Fund Account with the Central Bank of Kenya through the Clerk of the County Assembly and the report is shown in table 4.3.

Table 4.3: Report of Actual monthly Revenue at County Revenue Fund (CRF) Account with Central Bank of Kenya

Month	Own Revenue	Exchequer
July	132,267,763.40	544,780,867.00
August	101,192,535.80	NIL
September	1,151,460.00	544,780,868.00
October	7,317,293.00	NIL

Source: Central Bank of Kenya; 1st November, 2017

Table 4.4 gives comparison of local revenue as reported by the Chief Officer, Finance in table 4.2 and as reported by the Central Bank of Kenya in table 4.3.

Table 4.4: Comparison of Local Revenue as per Report given by Chief Officer - Finance and Report by Central Bank of Kenya

MONTH	LOCAL REVENUE AS REPORTED BY CHIEF OFFICER - FINANCE (A)	LOCAL REVENUE AS REPORTED BY CENTRAL BANK OF KENYA (B)	DIFFERENCE (A – B)
July	36,247,837.00	132,267,763.40	-96,019,926.40

August	21,345,510.00	101,192,535.80	-79,847,025.80
September	12,859,079.00	1,151,460.00	11,707,619.00
October	25,908,177.00	7,317,293.00	18,590,884.00
TOTAL	96,360,603.00	241,929,052.20	-145,568,449.20

Madam Speaker, from table 4.4 the Committee observed that:-

- (i) The Chief Officer, Finance reported less than what was received in the County Revenue Fund (CRF) account for the months of July and August, 2017 by Ksh. 96,019,926.40 and Ksh. 79,847,025.80 respectively.
- (ii) The Chief Officer, Finance reported more than what was received in the CRF account for the months of September and October, 2017 by Ksh. 11,707,619.00 and Ksh. 18,590,884.00 respectively.
- (iii) The variations in these records point out to problems in revenue records or manipulation of the records and investigation on the information given is required.
- (iv) If it is true that the County collected the amount reported for September and October, 2017; then the Chief Officer did not bank County revenue as provided for in the section 119 of the Public Finance Management (PFM) Act. There is need for further investigations.
- (v) The County lost substantial amount of money by suspending operations of the finance department and sending officers on leave. Considering the amount collected in July and August, 2017 the amount can be estimated to be more than Ksh. 200 million.

4.3.4 Statement of Internet Banking (IB) for the period from July 2017 - October, 2017; Madam Speaker, the Committee requested for the statement of internet banking to confirm whether the County was transferring funds from the commercial banks (collecting accounts) to the County Revenue Fund account. The committee summed up the transfers of local revenue as reflected in the Internet Banking statement and they tallied with the total figures of local revenue as reported by the Central Bank of Kenya.

4.4 Committee Conclusion on the Statement: Madam Speaker, in the estimation of the Committee,

1. The sending of the finance officers on leave has adversely affected service delivery in the County. A report of the Assembly Fiscal Analyst confirms that the Budget Circular, and County Budget Review and Outlook Paper (CBROP) have not been presented to the Assembly. The Finance Bill was presented late and is yet to be considered by the Assembly. The program based budget has not been finalized because the officers responsible were affected by the suspension of the County finance services. This means that the County government is not complying with statutory obligations and its budget making process can be challenged in court.
2. The current County budget has total revenue of Ksh. 9.9 billion out of which Ksh. 1.7 billion should be mobilized through local sources. For the period that officers from the finance department have been on leave, revenue from all local sources has not been collected or banked. This trend can be compared with a similar period in 2016/17 that is July to October when approximately Ksh. 380 million was collected in revenue. This means that a similar amount was definitely lost in uncollected revenue in the current financial year that is 2017/18. This means that it is most unlikely that the County will meet its target of Ksh. 1.7 Billion in local collection. Further this means that the planned development projects will not be implemented due to budgetary constraints, statutory

obligations will not be met, there will be audit queries by the Auditor General and pending bills will pile up leading to suspension of essential services.

3. The implementation of the budget cannot occur in the absence of finance officers of the County Treasury. Due to the absence of the Finance Officers, procurement processes will be delayed and this may lead to non-absorption of funds, requisition of funds from the exchequer account at the national treasury. The fact that there are no finance officers at the County treasury means that the operations of the County Assembly will be equally affected since it is the County Executive that does requisitioning on behalf of the Assembly.
4. The committee was made aware that the County Executive has not been submitting financial reports to the Assembly as required under section 166 (4) of the PFM Act. This situation is exacerbated by the sending of the Finance Officers on “compulsory leave”. This delay also affects the work of the Assembly in that it will not be able to exercise its mandate of oversight in time.
5. The Committee observed that the Chief Officer - Finance and the County Secretary were less than candid in giving information to the committee. Indeed in some instances the committee was convinced that the two were telling utter untruths to the committee. In other instances the Chief Officer, Finance and Count Secretary were deliberately misleading the committee.
6. The Committee is sceptical about the legal status of the Vetting taskforce constituted by the governor. They observed that no Terms of Reference or gazette notice for the gazetting of its members had been produced before the committee and further that no proper report was availed to it.
7. The Committee observed that the report on revenue collection submitted by the Chief Officer for the months of July to October, 2017 was inaccurate and misleading. The report was meant to justify the assertion that revenue collection had improved since finance officers were sent on leave. This report should be investigated as the committee suspects that the Chief Officer may not have banked revenue in contravention of section 197(g) of the Public Finance Management Act, 2012.

Committee inquiry on the motion; Madam Speaker, on 17th October, 2017, a motion of adjournment to discuss a definite matter of urgent county importance was moved in the House pursuant to Standing Order No. 30. The motion required the House to discuss:-

- (a) Delay in submission of a full list of Executive Committee Members to the Assembly,
- (b) Failure to collect revenue and procurement of goods and services,
- (c) Diversion of County revenue,
- (d) Suspension of staff and failure to pay County employees their salaries since August

During debate Honorable members pointed out that the County was heading in the wrong direction with most of services having stalled among them tractor programme, provision of drugs in health facilities and collection of garbage. The motion was discussed and subsequently referred to the joint committee of Finance and Revenue Collection and; Labour, Public Service and ICT for further inquiry after a member tabled a document written by the National Treasury which was seeking clarification of the legal basis of the directive of the Governor to waive taxes, fees and charges approved by the County Assembly.

The Committee observed that most of the matters in the motion had been handled by the Petition and Statement. The Committee resolved to deal with the letter from the National Treasury, the amount of revenue lost and the impact of the suspension of operations of Finance Department.

Press statement stopping collection of revenue; Madam Speaker, on 27th June, 2017, the Governor issued a press statement directing the Department of Finance and Revenue Management and all revenue collection and enforcement agencies of the County Government of Machakos to stop collection starting on 28th June, 2017 for unspecified period. The revenues affected were:-

- (i) Hawkers fees,
- (ii) Small scale vegetable retailers (Mama Mboga),
- (iii) Small scale cereal vendors,
- (iv) Market cess for livestock,
- (v) Bus park fees for Matatus, Nissans, Tuk Tuk, Maruti and Boda Boda,
- (vi) Fees Charged to Mitumba traders.

Madam Speaker, the Committee observed that, under Section 159 of the Public Finance Management Act (PFM) the County Executive Committee Member - Finance is given the power to waive a County tax, fee or charge imposed by the County Government and its entities in accordance with criteria prescribed in regulations provided that:

- (a) The County treasury maintains a public record of each waiver together with the reason for the waiver and report on each waiver in accordance with section 164 of the same Act;
- (b) A State Officer may not be excluded from the payment of a tax, fee or charge by reason of the office of the State Officer or the nature of work of the State Officer; and
- (c) Such waiver or variation has been authorized by an Act of Parliament or County legislation.

In making the directive the Governor did not state which law he relied on. Again, by issuing the directive, the Governor seems to exercise powers that are vested by law on other agencies including the Executive Committee Member, Finance.

The County revenue raising laws oblige the County treasury to collect revenue from different sources. These laws include the Machakos County Finance Act 2016, Trade License Act, Rating Act, Sand Harvesting Act, Liquor Licensing Act, Cooperative Societies Act, Revenue Administration Act, Designated Parking Places Act, Public Markets and Stalls Act and Management of Quarries Act.

Madam Speaker, Section 196 (5) of the PFM Act makes it an offence for a public officer to direct another public officer to do an act that constitutes a contravention of, or a failure to comply with, this Act, the Constitution or any other written law.

Article 210 of the Constitution makes it mandatory that if there is to be any tax waiver, then it has to be provided for under the law. There is no law that has been enacted pursuant to this Article either nationally or in Machakos County. The Assembly processed the Tax Waivers Bill 2017 but the same was defeated on the floor of the House. However, this Bill did not provide for the waiver of tax, charges or fees other than land rates. Therefore, even if the Bill was passed it would not have allowed the waiver of the taxes, fees and charges as contained in the Governor's press release.

Madam Speaker, In effect it means that the Governor's directive is untenable in law. Again, to give the directive legitimacy, there ought to have been public participation and involvement of the Assembly. Further, the directive ought to have been published in the Kenya Gazette.

Madam Speaker, 5.2 Letter by National Treasury to the Governor, Machakos County;



Madam Speaker, in a letter dated 7th July, 2017 the Cabinet Secretary, the National Treasury; Mr. Henry Rotich wrote to the Governor of Machakos on a press statement on the Machakos County Government Policy on Protection of traders.

The Cabinet Secretary referred to a press statement issued by the Governor on 27th June, 2017. The letter reminded the Governor of Article 210 of the Constitution which bars the imposition, waiver or variation of taxes, fees or charges except as provided by legislation.

The letter referred the Governor to section 159 of the Public Finance Management Act 2012 which gives power to the executive committee member for finance to waive or vary taxes, fees or charges provided such waiver or variation has been authorized by an Act of Parliament or County legislation.

The letter sought clarification on the legal basis for the Governor's directive to waive taxes, fees and charges approved by the County Assembly as communicated in the said press statement. It was advised that indeed as pointed out by the Cabinet Secretary for National Treasury, there was no legal basis for the Governor to waive taxes, fees and charges as per the Governor's press statement of 27th June, 2017.

Madam Speaker, the Committee made the following observations:-

- (i) There was no County law on waiver of taxes and the Governor contravened Article 210 of the Constitution of Kenya, 2010. In addition, by practice waiver is applied on accrued interest and not the principal and is mainly not applicable to daily payments but rather yearly payments. The daily collections once not collected does not accrue thus waiving should not apply.
- (ii) The Machakos County Finance Act, 2016 authorized the officers in the department of Finance and Revenue Collection to collect revenue and the law does not permit person to direct officers to stop collecting revenue this is violation of section 196 (5) and (6) of the Public Finance Management Act, 2012.

Recommendations; Madam Speaker, 6.1 Committee Recommendations on the Petition by Finance Staff; with regard to the petition and in view of the above and in consideration of the prayers by the petitioners, the committee recommends to this Hon. House the following;

1. That the County Executive does recall unconditionally all officers of the Finance department of County Government of Machakos numbering about 437 to resume duty with immediate effect.
2. Hon. Members, I being the chairperson of labour, public service and ICT, the County Executive and specifically the Chief Officer in charge of Finance ensure that the unpaid salaries and allowances of all officers of the Finance department of County Government of Machakos are paid immediately and not later than fourteen (14) days after the adoption of this report.
3. The County Public Service Board should ensure proper disciplinary procedures are followed before suspending officers as outlined in the County Public Service Human Resource Manual 2013 and the Discipline Manual of October 2014.
4. The Chief Officer, Labour and ICT reports to this House within 30 days on the progress of the implementation of the recommendations contained in this report.

Recommendations on the Statement and the Motion; Madam Speaker, concerning the motion and statement the committee recommends the following:

1. That the County Executive and specifically the Finance Department of County Government of Machakos resumes with immediate effect the collection of all taxes, charges or fees as per the National and the County legislations.
2. That the Finance Department of County Government of Machakos does an audit to establish the amount of revenue lost as a result of the Governor's directive to waive taxes and charges; outline intervention measures to cushion shortfall in budget financing and provide a report to the Assembly within two (2) months of adoption of this report.

*(Applause)*

3. That the Auditor General and Ethics and Anti – Corruption Commission (EACC) investigates revenue collection by the County Government of Machakos for the period between 1st July, 2017 and 31st October, 2017 to establish the reasons for variance between the report of Chief Officer – Finance on local revenue collection and that of the Central Bank of Kenya and take necessary action on the Chief Officer if found to be misleading the Assembly and or not banking County revenue as required.

*(Applause)*

4. That the Ethics and Anti-Corruption Commission (EACC), the Senate and the Auditor General do investigate whether the issue of the waiver of taxes, fees and charges by the Governor through his press statement of 27th June, 2017 was in contravention of Article 210 of the Constitution of Kenya, 2010 and section 196 (5) and (6) of the Public Finance Management Act and if so take necessary action.

*(Applause)*

5. That the Governor appoints substantial Chairperson and Secretary to the County Public Service Board who shall be vetted and approved by the County Assembly within sixty (60) days after approval of this report.

*(Applause)*

6. The County Public Service Board in conjunction with Department of Public Service and ICT to conduct human resource staff audit within two (2) months of approval of this report to weed out ghost workers and determine the suitability of each staff.

*(Applause)*

7. That the County Government of Machakos to establish an independent vetting team that takes into consideration representation from workers union to undertake lifestyle audit of all officers of the County Departments.

8. That the Chief Officer, Finance and Revenue Collection and the Acting County Secretary be investigated for providing misleading information and documents to the Joint Committee contrary to section 27(3)(g) of the County Assemblies Powers and Privileges Act No. 6 of 2017.

*(Applause)*

7.0 Adoption of the report by the committee; Madam Speaker, the undersigned members of the joint committee have hereby appended their signatures to adopt the report. The names are as listed. Madam Speaker, I therefore recommend this report on Suspension of Financial operations and staff of the department of Finance and Revenue Collection to this Hon. House for consideration and approval. Thank you, Madam Speaker. May God bless Machakos County.

*(Applause)*

**Hon. Speaker:** Thank you, Hon. Jeremiah. Do you have a seconder to this report?

**Hon. Munguti:** Thank you, Madam Speaker. I would like to call Hon. Masesi to second this motion.

**Hon. Speaker:** Hon. Masesi was one of the members who moved the motion so get somebody else.

**Hon. Munguti:** Thank you, Madam Speaker. I would like to call Hon. Betty to second this motion. She is out? I would like to call Hon. Kalumu to second this motion.

**Hon. Kalumu:** Thank you, Madam Speaker. I would like to second the adoption of this report on suspension of finance and revenue department employees. Thank you, Madam Speaker.

**Hon. Speaker:** Hon. Members, let me thank the three members that have addressed his House on this motion by way of reading and also seconding respectively.

*(Question proposed)*

Hon. Members, I invite you to debate the motion. Hon. Majority Leader.

**Hon. Ngunga:** Thank you, Madam Speaker. Thank you, Hon. Members for being patient. Madam Speaker, mine will be setting the pace for the mood of this report. I want to thank the joint committee for work thoroughly done. Members, if you look at the report that almost levels the report by the committees on appointments.

Members, if you were in this House, this is a report that has been thoroughly scrutinized and I think members, it stands the threshold of a report. Let me take this opportunity to also thank the committee on selection for having found Hon. Masesi and Hon. Jeremiah fit to chair this committees.

*(Applause)*

Members, you realize that this House is ready to fly, there is quality scrutiny. I want also to thank the members of the technical bench who sat for hours on end to prepare this report that is up to the task.

Members, I have a few things that I have been able to pick from this report worth our attention. When members of the county executive are asked to come before a committee and these members come with half-truths, misleading information.

Members, as recommended by this committee, it is high time that this House became serious. This is a report that touches on the nerve of this County. As you are aware, the assembly is incapacitated in terms of finances; that is common knowledge now and is in the public domain now.

Some of the issues raised in this committee are the issues that are bedeviling the House. Madam Speaker, I want this House to take this report very seriously because it is time that this House raised the bar. For example, when you talk about the Ksh. 380 million that is said to have been lost, I have a letter that came from the Governor that again saying he has austerity measures that he want to take place during the period that his finances were lost.

These are the times that this finance officers were on suspension and it is said that out of the Ksh. 380 million, actually it is Ksh. 400 million, the austerity measures are being taken and it looks that the House, this Assembly, is the one that is bearing the brunt. Thank you, Madam Speaker, I want to allude that for a very long time, I think this House and the county government of Machakos has been led by mischief, falsehood. This report lays bare a few of these.

I am disturbed by the fact that the fines will be collected and not be banked. One wonders where these funds go because if you look at the table that are here; there are two tables I have been trying to compare. On page 26, thank you, Madam Speaker, look at the funds that were collected on that page; there is local revenue as reported by the Chief Officer and then there is the banking.

On table there talks about a collection and the other about banking. You realize the disparity between the monies that were collected and the monies that were banked. So as the committee recommend that serious action be taken on the officers who would be found culpable, I think these are some of the issues that his County Assembly is supposed to be raising or rather to be doing oversight and must raise above the bar.

This is not about which party you come from. This is not about which side of the House you sit in.

*(Applause)*

This is about the future of the county government of Machakos and I am suspicious for last five years and these are some of the things that has been bedeviling us. I am happy this House has now become of age and is now getting to the task and I want to challenge members, with or without finances, it is high time we did our job and did it to the expectations. Members of the public expect nothing less than the best.

Madam Speaker, I wonder why these 437 members who were working for the county government are to go unpaid for this period. You realize that if you look at the banking at Equity, the bank indicated that it had money that is somewhere in a reserve account but the bank does not have instructions to pay the workers but then somebody says the workers had been paid.

*(Applause)*

Madam Speaker, I had an opportunity to address the workers that are complaining here and one of the times, they stormed the Assembly and I addressed them and looking at the, some of the allegations coming here that they are driving big cars and have high rise buildings, I think are neither here nor there.

If, for example, a member of the public has a complaint against a particular person, it is not that you raise that complaint to a particular person and do not raise that complaint against a group. For example, I drive a Mercedes Benz today; does it mean that the rest of the members here drive Mercedes Benz?

So, if a person is corrupt it does not mean that all the members are corrupt. So, branding the 437 members as corrupt and that all of them go home by a press statement, I find this unfortunate and very uncalled for. It is actually the height of impunity.

Madam Speaker, I hate talking this way today. A CEC member who is actually supposed to be under this House has failed to sign monies to this Assembly. What is the difference between this report and what we are experiencing now? For the last two months, the assembly has been going without money. The Controller of Budget and Treasury have appropriated money to this House but monies have not been released to this House because of impunity. This must end now, Madam Speaker.

*(Applause)*

We cannot be an oversight organ that cannot be able to bite. It high time, members that you sharpened your nails and started scratching. This House must be respected, the reports that come here must be respected and I am looking forward to seeing these reports because the recommendations that the two co-chairs have been able to recommend timelines.

We are going to be around and that is why in the morning we were moving the extension of the House so that we see to it that business continues unabated.

*(Applause)*

Madam Speaker, I can speak for time on end but I wanted to set members on the mood that the county seems to be rotten. It is you members here that are the hopes and aspirations of the public out there. If you are up to the task, here is the report for you. Thank you Madam Speaker.

*(Applause)*

**Hon. Speaker:** Thank you Hon. Majority Leader. Hon. Mueni.

**Hon. (Ms.) Mueni:** Thank you, Madam Speaker. Mine is to support the report and without wasting time, I think Madam Speaker, you can put the question because I think if those executive people starting with Jacinta, we have to start by mobilizing the public and go to remove her from the office.

*(Laughter)*

It is a very bad office and I think that is why the Governor is supporting them and he is not bring the right people to the House to be vetted.

*(Applause)*

So, I think we have to ask the Governor to bring the right people. We have children who are educated, he can put them in the papers and they apply for the work. 120 people in Machakos County is the one that is fast and he says he is the County Number one and Kitui and Makueni counties have already vetted their people.

So, I think he is the one who is wrong. He has to bring the nominees, we vet them and we don't need the rotten people who are in office. We have to mobilize the people and bring them out. Thank you, Madam Speaker.

*(Applause)*

**Hon. Speaker:** Hon. Mulatya.

**Hon. Mulatya:** Thank you, Madam Speaker. I wish to move an amendment to recommendations 3 and 4. Hon. Members, I am on page 32 on 6.2; that we include Commission on Revenue Allocation. Thank you.

**Hon. Speaker:** Thank you.

**Hon. Mulatya:** Okay. Let me read it. Are we there? That the Auditor General and Ethics and Anti-Corruption Commission (EACC) investigates revenue collection by the County Government of Machakos for the period between 1st July, 2017 and 31st October, 2017 to establish the reasons for variance between the report of Chief Officer, Finance on local revenue collection and that of the Central Bank of Kenya and take necessary action on the Chief Officer if found to be misleading the Assembly and/or not banking County revenue as required.

Recommendation number 4; that the Ethics and Anti-Corruption Commission (EACC), the Senate and the Auditor General do investigate whether the issue of the waiver of taxes, fees and charges by the Governor through his press statement of 27th June, 2017 was in contravention of Article 210 of the Constitution of Kenya, 2010 and section 196 (5) and (6) of the Public Finance Management Act and if so take necessary action.'

Thank you, Madam Speaker. I wish to move an amendment to the recommendations 3 and 4 that I have read to include the Commission on Revenue Allocation and I wish to call Hon. Musau to second.

**Hon. Speaker:** Hon. Musau.

**Hon. Wambua:** Thank you, Madam Speaker. I would wish to second my Chief whip given that the revenue commission and the Chief Officer work hand in hand so all measures taken against the Chief Officer, if found guilty should also be taken against the CRA. Thank you, Madam Speaker.

**Hon. Speaker:** Hon. Members, don't put up your hands before I even propose the question. The proposed recommendation is on recommendation number 3 and 4 to include another another authority that should also be involved in investigations on this matter and that is the Commission on Revenue Allocation.

*(Question of amendment proposed)*

Can I have some comments? Can I have your sentiments on this proposal to amend the motion? Hon. Hellen.

**Hon. (Ms.) Ndeti:** I recommend that we adopt the inclusion of CRA because they are also part of the bodies that....they are part of the department from the treasury that handle the allocation of funds to various devolved units.

**Hon. Speaker:** Thank you Hon. Hellen. Any other member who wants to contribute. Let me put the question, Hon. Members, that the CRA be included in recommendations number 3 and 4.

*(Question of amendment put and agreed to)*

*(Applause)*

So, Hon. Members, the motion is amended on recommendations 3 and 4 to include CRA as one of the independent offices to that will be taking part in the recommendations of this House by way of implementation of the recommendations. Hon. Members, we proceed with the main debate of the motion. Hon. Museku.

**Hon. Museku:** Thank you, Madam Speaker. I stand here to recommend and support that report presented by the joint committee of finance and revenue collection and labour, public service and ICT and first of all commending them for the exemplary work they have done. I have gone through this report and also went through it when I was at home and I have seen that a lot of attention to detail was put in this report. Being as sensitive as it was, I thank both chairpersons who were chairing this committee and he members for having made sure they sifted through the many documents which they got and came up with a refined report which has been presented before this House.

If you look at the report, you will find that they did consider including some letters that were anonymous which were not signed and actually they said they did not put those into consideration because they could not authenticate their origin.

That tell you that they looked at everything conclusively and made informed decisions. Madam Speaker and Hon. Members, I want to reiterate on the issue of the Chief Officer, Finance giving false figures on the things that were on the amounts of revenue collected *vis-a-vis* what the Central Bank of Kenya indicated as having been collected.

Being the person in charge of this, Madam Speaker, and having a finance background, any finance person, after being requested to account for or to present figures that were collected has to do due diligence on the numbers and look at all sources of revenue within the county and present to the committee with the figures which are authentic.

It is alarming, Madam Speaker, to see a finance officer saying for the month of July, the collections were only Ksh. 36,247,830 against what the Central Bank of Kenya says was collected of a whopping Ksh. 132 million. How can your figures, sincerely have a variance of Ksh. 96 million if you are a finance person?

*(Applause)*

That is a question that needs to be investigated. In total, if you look at the months of July to October, you find there is a negative variance of over Ksh. 145,568,449 difference between what the committee was given by the officer against what the Central Bank of Kenya reported. Further, in the report, you saw that they actually did authenticate that the figures given by the Central Bank of Kenya were the correct figures. So, where was this officer collectivizing these figures from?

One thing that we need to understand is that these officers were testifying under oath and therefore any information which they were giving before this committee was under oath and therefore there is need for consideration of perjury proceedings to be taken against those officers for giving false information under oath.

*(Applause)*

The other thing, Madam Speaker, looking at those numbers as they are and looking at the inability of these county officers in charge of revenue collection not being able to account for not even what they have collected here correctly, how can we then as a House sit here and wait for Treasury to continue remitting funds to the same people who cannot even account for not even what they are collecting.

*(Applause)*

I would put it as a recommendation for this House to consider passing a recommendation that no refuter funds should be remitted to the County government until such a time as we are sure that they have got structures in place for accountability of all revenues all collected and remitted from the treasury to this county and how they are being used. Madam Speaker, I think that item is of utmost importance and we need to give it utmost consideration by this House. Thank you, Madam Speaker.

*(Applause)*

**Hon. Speaker:** Hon. Kisini.

**Hon. Kisini:** Thank you, Madam Speaker. I really want to stand and recommend and say that both committees had done a very commendable job. We have seen and we have gone through the outcome. Wrong degrees, wrong waivers, wrong losses, wrong people who were not gazetted and whom we were trying to vet and so forth. So I really want to say that committee really did a good job and they went even further to dig deep on what was happening within that finance department.

I just wanted some clarification maybe from both chairmen; I want to refer to page 34 where there was that adoption of the report. I do believe that this committee or the members



retreated to a certain place to jointly write the report and if you try to check there are some members who have not signed or agreed. So, I wonder why did they not sign or accept the recommendations because I think they were all paid allowances to go and speak in one voice. Thank you, Madam Speaker.

**Hon. Speaker:** Point of Information from Hon. Johana.

**Hon. Munyao:** Madam Speaker, I wish to correct that member. We cannot tie committee sitting allowance to the deliberations or whether we agree to the contents of a certain committee or whether we differ because a committee or opinions within the members of the committee would be at some point we agree at some other points we disagree.

So, we cannot a member cannot say that it should be obvious that because you are getting a sitting allowance then you must be out to pass any deliberations which are tabled before a committee. So, I would wish to request the member to withdraw, Madam Speaker.

**Hon. Speaker:** Point of what? Order, information?

**Hon. Ngunga:** Point of information, Madam Speaker.

**Hon. Speaker:** Hon. Majority?

**Hon. Ngunga:** I raise quickly to point out to Mheshimiwa Johana from Mutituni, Machakos Town Sub-County that when members retreat and in the process of writing a report there are two things; one is either agree with the report and you sign for that or that you have a dissenting voice and you indicate that you are dissented. Mheshimiwa Johana, it would be taken therefore that these members that did not append their signatures here were not part of that committee and that, in case the office of the Speaker realizes that any monies were assigned to these people, then I think these Hon. Members will be surcharged.

*(Applause)*

**Hon. Speaker:** Hon. Cosmus.

**Hon. Masesi:** Thank you, Madam Speaker. I just want to remind the Hon. Members that at the time of the retreat, we had to go through the report and agree on what was to be amended then we were to come back on Monday for the signing so it was not possible for all members to sign. My report, which I have, has got only two members who have not signed and it is available for the members. You can look for yourselves; the two Hon. Members are Hon. Phoebe Koki and Hon. Constance Mbula.

Madam Speaker, at the time we came here for signing, one of the Hon. Members that is Phoebe Koki plucked her report from the file and went away with it which was contrary to the laws of this House making way with a certain report before it is tabled in the House. Madam Speaker, that calls for an action and we would wish to hear from you advise on the same to curb on the same in future days. Madam Speaker, it is only those two members who did not sign the report. Thank you, Madam Speaker.

**Hon. Speaker:** Hon. Members, just for your guidance, can I let you know that under the Standing Orders, if there is quorum as signed, those who have not signed will not invalidate the report. That is the first point.

*(Applause)*

The second point is that as to the conduct member that may relate to this particular motion and any other, that is a different business of the House and it is on my table; it is going to be handled in the appropriate time. So, can we proceed, members, with the debate? I have been on this side, let me come to this side. Hon. Ndawa.

**Hon. Ndawa:** Thank you, Madam Speaker. I stand before this House to support the report because I also took part in coming up with the report. Those who are said to not have signed, maybe they were different leafs. I have seen the copy, I have here I have not signed but I have signed so many pages. So, I do not know what happened, maybe the person photocopying the report did not use the one I signed. So, failing to sign does not mean I do not support the motion. I support it 100 percent.

*(Applause)*

I support it for the following reasons. Point number one, the committee took their time to interrogate every party which was interested in this matter and each party was given ample time to give their side of the story. The other reason why I am supporting the report is that, in our constitution is that everybody is entitled to or his required by law to follow or do things in what we call due diligence. When you are doing something you have to follow the law.

So, I am saying that some of the actions which were taken in this matter before us were *ultra vires*. *Ultra vires* means that that person went outside his mandate because you cannot do something without following the law. Madam Speaker, I believe when it comes to sacking of employees, there is what we call engagement contract and I am very much aware a contract was signed between the County Government of Machakos and the employees.

There is what we call essentials of a contract, Madam Speaker. Essential number one is offer and acceptance. Essential number two is what we call consideration. Essential number three is to come up with a binding document or agreement and when these essential are all met that means there is no party that can repudiate from the engagement contract.

*(Applause)*

So, in this, I am saying we adopt the report and we implement exactly what has been recommended by this Hon. Committee.

The other issue, Madam Speaker, when it comes to issues of finances, we need to have what we call financial sanity. Maybe things were not done the way they were supposed to be done and since now we have come to this house, kindly Hon. Members, this is the high time we should instill sanity in Machakos County so that things can be done the way they are supposed to be done.

*(Applause)*

There is a saying that says a sin is a sin no matter who commits the sin even if it is the father. There are so many mistakes here and we need to adopt the report so that in future nobody will go against the law. Thank you, Madam Speaker.

*(Applause)*

**Hon. Speaker:** Thank you, Hon. Ndawa. Hon. Kalumu.

**Hon. Kalumu:** Thank you, Madam Speaker. I stand to support the adoption of this report and the recommendations which have been given by the joint committee. I will start by saying it is only in Machakos where infidelity of the law or of the rule of the law is prevailing in the offices of one who can be called somebody in the government of Machakos County. If you look at the things which are being done, they are not being done professionally. Stopping collection of revenue amounts to taking this County to another level of poverty. Because we only depend on that revenue to support our budget.

Suspension of workers without letters that shows that someone is not serious on his job and I would like to show one thing, that claims which were made by some of the letters we received as claims showing that some of the buildings or flats or kiosks belong to some of the staff, there is no substantial evidence of that claim and one who brought the claim should have come with substantial evidence to show that this money used to build this flat is part of the revenue of Machakos County.

Being an MCA today does not mean that I do not have an extra hustling. I also have a hustle somewhere else and everything I own does not mean that it comes from the salary I get from this House. Madam Speaker, all the allegations made to the employees of Machakos finance and revenue collection gives a bad picture because if you want good work to be done, you need to motivate your employees but what is happening in Machakos County, employees do not have security of their jobs yet they are in jobs and still looking for others because they fear they might be fired the next minute.

I suggest and I request that law when we are laying off our employees should be followed.

*(Applause)*

It also shows that on page 20 that the County Public Service Board is toothless and was not even consulted for it consideration or input so that the employees could be send on leave. That shows that body is useless and should be abolished and another one be put in place.

The source of sourcing 100 employees to another department knowing that they do not have any skills shows that you can be taken round without knowing where to start. You are an employee of water you do not have any skills for water. You can be taken anywhere and also that was also to support that during that time, a good amount of revenue was collected which is improper. When you look at the report of CBK in comparison with what was collected, you find that we were misled during the joint committee. Thank you, Madam Speaker.

*(Applause)*

**Hon. Speaker:** Thank you, Hon. Kalumu. I think that members are almost exhausting this debate that we could as well vote? Yes I think can I put the question?

**Hon. Museku:** Madam Speaker, point of order. I think there is feeling from a section of the members that they would like to continue debating on this motion in the afternoon or---

*(Loud consultations)*

I am getting from one section of the House is saying they want to continue, another section is saying no. So, I think, Madam Speaker, maybe you may need to make a decision.

**Hon. Speaker:** Hon. Members, I am giving direction that we are going to exhaust this motion now. Can I have anyone who wants to contribute before I put the question? Hon. Johana.

**Hon. Munyao:** Thank you, Madam Speaker. I want to thank the committee which came up with the report that I also want to state that I am happy we are for the good of the county and this means that in all the operations, we must also be fair as a house as we also do our oversight role as a House. When I looked at the report which also contained some evidence which was not considered, which also contains some statements like forceful eviction of officers from offices where maybe also no evidence was presented, which also recommends that the top officers in the various departments, especially in finance and procurement, the CECs and the finance Chief Officers were not also suspended when others were being suspended and at the same time we are saying the top officers in any departments are accountable for any wrong done.

If they are answerable and accountable then it means the same officers are also capable of taking actions which can prevent, actions which may put the departments at some stake. So we may not seem to protect the junior officers and at the same time accuse the top officers.

**Hon. Speaker:** Hon. Mueni.

**Hon. (Ms.) Mueni:** Thank you, Madam Speaker. I think the member is not having what he want to say because he wants to defend somebody somewhere and that is very wrong.

*(Applause)*

You have to be yourself. The truth will.....speak the truth it will make you safe and no need of trying to talk what is not necessary. I think you have to be yourself. Mheshimiwa, I know you are very clever but do not be a sycophant.

*(Laughter)*

**Hon. Speaker:** Hon. Mueni, some of the terminology you are using are too strong and I ask you to withdraw the last part.

**Hon. (Ms.) Mueni:** Thank you, Madam Speaker. I withdraw but the truth has been heard. I apologize.

**Hon. Speaker:** I will take it you have withdrawn no buts. Hon. Johana, please carry on and finalize we want to get to other matters.

**Hon. Munyao:** Thank you, Madam Speaker for your protection. Hon. Members, you will agree with me that even in your own private businesses. Madam Speaker, I need some space because---

**Hon. Speaker:** Do not continue getting protection. Tell the Members what page you are referring to.

*(Applause)*

**Hon. Munyao:** I am raising a statement to point them to a certain page but I was saying, even in our own private businesses whether you have engaged your brother or sister, you would not allow them to mess up with your business. So, I want to refer them to page 26---

**Hon. Ngunga:** Point of order!

**Hon. Speaker:** Point of order, Hon. Majority.

**Hon. Ngunga:** Thank you, Madam Speaker. The Member on the floor is saying that, he wants to refer them to and so then I wonder; these them are who? Is it the committee Members, is it the Members seated here? Who is therefore the Member referring to?

*(Applause)*

**Hon. Speaker:** Hon. Johana, address the House, not 'them.'

**Hon. Munyao:** Hon. Members. Thank you, Madam Speaker. I want to refer the House to page 10---

**Hon. Speaker:** Hon. Johana, you had referred to page 26. So, we go back to page 10?

**Hon. Munyao:** Yes, we can start with page 10.

*(Laughter)*

My first issue was the second paragraph where the petitioners alleged the suspension was verbal and no individual suspension letters and then they are wondering why the senior finance Officers and the CECs were not suspended. So, my argument was that they are answerable to their departments and for any wrongs in the department.

So, when we sit as Hon. Members on one end to accuse the heads of those departments and on the other hand also expect them also to bring sanity in the departments, then we are saying, we are not fair as, Hon. Members.

*(Loud consultations)*

At the same time, Madam Speaker, I would like also to draw the Members now to page 26 where we have the table on local revenue as reported by the Chief Officer and also by the Central Bank, we have seen the discrepancies there but I would like to say, Madam Speaker, as a House, to me we raised our issues in the middle of a process. When the Executive Officers from the Executive were requested to step aside for investigations and the House intervened, it was not possible to---

**Hon. Speaker:** Just on a point of order for guidance, Hon. Johana. I am just wondering whether you are giving evidence now before the Committee or you are submitting on the report because you notice that these figures, if I got the Committee right, they were brought by the witnesses who were summoned and the witnesses are the Chief Officer and other witnesses from the Finance department. So, are you able to make a comment or contribution to that report without appearing to give evidence on their behalf?

**Hon. Munyao:** Madam Speaker, my comment is that, the report has not taken into consideration all the issues which were raised by the petitioners because the investigation was not done..... did not allow enough time for the Executive to complete and I therefore---

**Hon. Speaker:** A moment, Hon. Johana.

**Hon. Ngunga:** Thank you, thank you, Madam Speaker. I think I will be a bit blatant here and Madam Speaker, with your consideration as the Member, that this is a very Hon. House Mheshimiwa Johana. So, when you start looking at a report that a committee and another have been able to sit down and you want to mutilate it then you also need to have some little discipline where you pick out the items that you are saying.

Now, Hon. Johana, when you say that for example the petitioner raised issues and they were not addressed, you will also need to raise the particular issue so that you say for example, issue number one that was raised by petitioners was not addressed and then the committee will be answering that. But otherwise, Mheshimiwa Johana, when you now start defending positions that probably in my opinion a party position, I think this is the law we are going to sink. That is why you can see you are reading even the report backwards, upwards.

*(Applause)*

A report is normally read from page six to 10 onwards, like that but do you know you are starting from 26, 10, 6 and that is why you are mixed up. Bw. Johana, rise up above the bar---

*(Applause)*

This is a report by learned men like you, this is a House of learned people like you but you see, if now---

**Hon. Speaker:** Hon. Majority, a point of order is never that long. Please sit down

*(Applause)*

Resume your seat

**Hon. Ngunga:** Thank you.

**Hon. Speaker:** Can you conclude your submission, Hon. Johana if you had not concluded.

**Hon. Munyao:** Thank you, Madam Speaker. I wish to request that the Executive is given time to address the issues like for example, the position of their vetting process which was reported in the House---

**Hon. Speaker:** There was a process of amending this motion. We need to act orderly. There was a process of amending this motion. Are you asking to amend the motion on the recommendations?

**Hon. Munyao:** Yes, Madam Speaker.

**Hon. Speaker:** In what manner?

**Hon. Munyao:** That this House gives the Executive time to present the issues which have been given in the recommendations and which had not been---

*(Laughter)*

Madam Speaker, I wish that this House considers and gives some more time to the Executive to bring a reaction to this report other than approving the report the way it is.

**Hon. Speaker:** Can I have your seconder to that motion? Can I have a seconder? There is no seconder, so the amendment fails.

*(Laughter)*

Hon. Members, can I have any other Member willing to contribute. Hon. Winnie.

**Hon. (Ms.) Mutua:** Thank you, Madam Speaker. I want to commend the Committee for the good work they did during the report and now I would request the House, if it possible, Machakos be done thorough audit of workers of our monies because what we are getting from the report, it is a very sad and a threatening report.

So, if the County can be audited in everything and also the National Government to stop giving the County money, we suffer all of us. No one will be suffering more. So, let the National Government stop the amount of money they are giving to our County until through audit is done. Thank you, Madam Speaker.

*(Applause)*

**Hon. Speaker:** Hon. Angela.

**Hon. (Ms.) Munyasya:** Madam Speaker, I am glad most Members of this House agree with the motion and appear to be supporting the motion and I would just like to state that, Madam Speaker, figures do not lie.

*(Applause)*

If an item costs Ksh. 10, you cannot be told it is about Ksh. 10. It is either Ksh. 10.50 or Ksh. 10. So, the disparities in these figures are evidence enough that our finances are not well taken care of.

*(Applause)*

The Members that brought these figures to the House, the Executive, came and swore under oath and they were given enough notice to bring us the right figures. So, Madam Speaker, I do not see the point of debating further on what was brought and what was not brought. An institution is as strong as its financial background and finances are the backbone of any institution.

So, if Machakos County is going to proceed and is going to make a difference and an impact in service to the people then the finances must be intact and there must be---

*(Applause)*

There must be a structure of handling our financial positions in the County. Thank you, Madam Speaker.

**Hon. Speaker:** Hon. Members, I now put the question.

*(Question put and agreed to)*

### **ADJOURNMENT**

**Hon. Speaker:** Hon. Members, the House stands adjourned to reconvene at 3 p.m. on the 5th December, Tuesday, 2017. That is today. Make no mistake, it is today at 3 p.m.

The House rose at 1.43 p.m.