

REPUBLIC OF KENYA
MACHAKOS COUNTY ASSEMBLY

OFFICIAL REPORT

Tuesday, 7th May, 2019

The House met at 2.43 p.m.

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

PRAYERS

STATEMENT

Hon. Speaker: Hon. Members, under this Order, we have open business by the Hon. Kamulu; is it Hon. Kamulu? Proceed, Hon. Member.

Hon. Kamulu: Thank you, Madam Speaker. I was about to bring a Statement today and I wish to postpone the Statement for some correction until next time, Madam Speaker.

Hon. Speaker: The House notes that; it is your Statement so when you want to bring it, you bring it to the House.

Hon. Kamulu: Thank you, Madam Speaker.

MOTION

REPORT ON PETITION BY SOLAR PHOTO ELECTRICITY KENYA LIMITED

Hon. Speaker: Hon. Members, under this Order, we have one business by the Hon. Stephen Mwanthi.

Hon. Mwanthi: Thank you, Madam Speaker.

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

Aware that the Assembly received a petition from Solar Photo Kenya Electricity Limited as per Standing Order 194 on the 12th of June, 2018;

Aware that the company's prayer was that the Assembly intervenes and the County Executive pay him Ksh. 18,607,732 for supply and fittings of pipes to Masinga Sub-County Water and Irrigation department through LPO No. 2571246;

Noting that the petition was referred to the Finance and Revenue Collection Committee and aware that the committee investigated the matter and has compiled a report;

Hon. Speaker, I wish to move the motion that this Hon. House approves the report of finance and revenue collection committee on petition by Solar Photo Electricity Kenya limited.

Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Stephen Mwanthi.

Hon. Mwanthi: I call upon Hon. Kasyoki to second the motion.

Hon. Speaker: Hon. Kasyoki.

Hon. Kasyoki: Thank you, Madam Speaker. I stand to support the motion.

Hon. Speaker: Thank you, Hon. Member. Hon. Stephen Mwanthi.

Hon. Mwanthi: Madam Speaker, I request to use my phone because---

Hon. Speaker: You can use my iPad.

Hon. Mwanthi: The report is not there.

Hon. Speaker: Check if it is not there; it is there?

Hon. Mwanthi: I can just---

Hon. Speaker: We already have.

Hon. Mwanthi: I already got another one.

Hon. Speaker: Proceed.

Hon. Mwanthi: Thank you, Madam Speaker. Hon. Speaker, the Assembly received a petition through the Office of the Clerk of the County Assembly pursuant to Standing Order 194 from Mr. Julius Munyoki of Solar Photo Electricity Kenya Ltd. The petitioner's main prayer was that the Assembly intervenes to have the County Executive pay him Ksh. 18,607,732.00 for supply and delivery of pipes and fittings to Masinga Sub-County Water and Irrigation Department through LPO No. 2571246. On 12th June, 2018 the petition by Solar Photo Electricity Kenya Ltd was tabled in the House and pursuant to Standing Order 201 committed to the Finance and Revenue Collection Committee.

1.2 Mandate of the Committee

Hon. Speaker, the Finance and Revenue Collection Committee is one of the sectoral committees of the Assembly established pursuant to the County Assembly of Machakos Standing

Orders. Standing Order 190(5)(e) defines the functions of a sectoral Committee to as to: investigate and inquire into all matters relating to the assigned departments as they may deem necessary, and as may be referred to them by the Assembly.

In addition, the Second Schedule of the County Assembly Standing Orders defines the mandate of the Finance and Revenue Collection Committee to include all matters relating to the management of County public finance and revenue collection.

1.3 Committee Membership

Hon. Speaker, the Finance and Revenue Collection Committee as currently constituted comprises of the following Hon. Members:

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|---------------------------|--------------------|
| 1. Hon. Stephen Mwanthi | - Chairperson |
| 2. Hon. Josephat Kasyoki | - Vice Chairperson |
| 3. Hon. Betty Nzioki | - Member |
| 4. Hon. Grace Mutwiwa | “ |
| 5. Hon. Hellen Ndeti | “ |
| 6. Hon. Brian Kisila | “ |
| 7. Hon. Caleb Mule | “ |
| 8. Hon. Fredrick Muthoka | “ |
| 9. Hon. Justus Kitengu | “ |
| 10. Hon. Thomas Mutinda | “ |
| 11. Hon. Margaret Mwikali | “ |
| 12. Hon. Moffat Maitha | “ |
| 13. Hon. Phoebe Koki | “ |

1.4 The Petition

Hon. Speaker, the petition by Solar Photo Electricity Kenya Ltd was submitted pursuant to Section 15(1) of the County Governments Act which 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.” The petition was tabled in the House as per Standing Order 194 and referred to the Committee pursuant to Standing Order 200.

The petitioner’s grievances were:

1. The Company was contracted by the Machakos County Government to supply and deliver pipes and fittings to Masinga Sub-County Water and Irrigation Department as per LPO 2571246 (see Annex 5).
2. The Company accepted the award on 7th March, 2016 (see Annex 4) and between 26th and 29th May, 2016 delivered pipes and fittings to Masinga Sub-County Water and Irrigation Department.
3. The Company has been following up for the payments verbally and also in writing in the Departments of Water and Finance of County government of Machakos but all in vain.
4. The Company is facing financial stress; creditors are on its neck, financing other orders is a problem and paying staff and rent is a big headache.
5. Hon. Speaker, the petitioner’s prayer to the Assembly is that the Assembly assists him to get payment of Ksh. 18,607,732.00 for supply and delivery of pipes and fittings pipes to Masinga Sub-County Water and Irrigation Department.

1.5 Acknowledgement

Hon. Speaker, the Committee is grateful to the Office of the Speaker and that of the Clerk to the County Assembly for the support accorded during the Committee sittings and facilitating the Committee to retreat. I wish to express my appreciation to the Honorable Members of the Committee who sacrificed their time to participate in the activities of the Committee and in preparation of this report.

2.0 LEGAL FRAMEWORK

2.1 Presentation of Petitions

Hon. 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.

2.2 Invitation of Witnesses

Hon. 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.

3.0 COMMITTEE INQUIRY ON THE PETITION

3.1 Committee Inquiry on Petition

Hon. Speaker, the petition was occasioned by the failure of the County Executive to pay Solar Photo Electricity Kenya Ltd Ksh. 18,607,732.00 for supply and delivery of pipes and fittings to Water, Irrigation and Sanitation Department at Masinga Sub-County offices as per LPO 2571246. To gather information on the petition, the Committee requested information from the following persons:

- (i) The petitioner.
- (ii) The Chief Officer, Water and Irrigation Department.
- (iii) The Chief Officer, Finance and Revenue Collection Department.

3.2 Submissions by the Petitioner

Hon. Speaker, the petitioner appeared before the Committee on 17th September, 2018 and stated as follows:

1. That Solar Photo Electricity had been contracted by the County Government of Machakos to supply pipes and fittings to 11 sites in Masinga Sub- County in March, 2016 and delivered the items required on various dates in May, 2016 (*see annex 5*).
2. The Company has requested for payment through various means but it has been futile. The Company wrote a demand letter to the County Executive Committee

Member for Finance and Chief Officer for Water, Irrigation and Sanitation (*see annex 2(a) and (b)*) but they have not received any assistance. The Petitioner has visited the office of Chief Officer for Finance but she keeps on telling him to wait for supplementary budget. The Chief Officer, Water has been informing the petitioner there are no funds.

3. That the Company borrowed funds from financial institutions and it has suffered big losses. The Company has closed down since it could not sustain payment of its employees and also for its premises.
4. All the pipes were delivered to one site in Masinga County offices. The pipes were received Mr. Bernard Mbaka and David M. Mulili.
5. The Chief Officer who instructed the Petitioner to deliver the pipes to Masinga Sub-County was John Kilonzo Muthama. This was as per the offer letter of the contract.

3.3 Submissions by the Chief Officer, Water and Irrigation

Hon. Speaker, the Committee wrote a letter to the Chief Officer for the Department of Water and Irrigation on 26th February, 2019 (ref: MKSCA/PSC/CMM/FRC/VOL.5/29) (also see annex 7(a)) requesting the Chief Officer to provide the Committee with information on the status of payment for Solar Photo Electricity Kenya Ltd on supply and delivery of pipes and fittings to Water, Irrigation and Sanitation Department at Masinga Sub-County offices as per LPO 2571246.

The Chief Officer responded vide letter reference MWIS/MC/2C/ 10 VOL.II/ 54 dated 4th March, 2019 (see Annex 8) which stated that the Department was already processing part payment of Ksh. 3,000,000 for the LPO 2571246 for supply and delivery of pipes and fittings to Masinga Sub-County.

The Committee requested the Department to provide documentation on the payment vide letter reference MKSCA/PSC/CMM/FRC/VOL.5/38 dated 11th March, 2019 (see Annex 7(b)). The Department did not respond on this letter.

3.4 Submissions by the Chief Officer – Finance and Revenue Collection

Hon. Speaker, the Committee wrote a letter to the Chief Officer for the Department of Finance and Revenue Management on 26th February, 2019 (ref: MKSCA/PSC/CMM/FRC/VOL.5/28) (also see Annex 7(c)) requesting the Chief Officer to provide the Committee with information on the status of payment for Solar Photo Electricity Kenya Ltd on supply and delivery of pipes and fittings to Water, Irrigation and Sanitation Department at Masinga Sub-County offices as per LPO 2571246. The Chief Officer did not respond on this letter.

3.5 Committee visit to the project site

Hon. Speaker, the Committee visited the site where the pipes were delivered which was at the Office of Sub-County Administrator, Masinga Sub-County on 29th October, 2018. The Committee was received by the Sub-County Administrator, Mr. Mutungi who then handed over the Committee to the Officers responsible for Water matters in the Sub-County. At the site, the Committee was able to gather the following:

- i. That several pipes were still heaped within the compound.

- ii. That some of the pipes had been used for water reticulation within the sub-county. Some of the areas mentioned by the officers include boreholes in Musingini sub-location, eight boreholes in Muthesya ward and seven boreholes in Ndithini ward.
- iii. The Committee was able to view records of receipt of pipes and fittings between 26 and 31st May, 2016.
- iv. The Officers confirmed all the requested pipes and fittings were delivered at the sub-county offices.
- v. The Committee was informed that there was a record of the pipes issued and was able to confirm that a record existed.

4.0 COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

4.1 Committee Observations

Hon. Speaker, the Committee made the following observations during its inquiry on this petition:

1. That the contractor had done the work contracted as per the contract agreement and completed in good time.
2. That delay in paying the contractors had adverse effects on them. The loans they obtained to undertake the work had accrued huge interests and paying them at this time was not beneficial.
3. That the Department of Water and Irrigation stated that it was processing part payment of Ksh. 3,000,000 and this shows that the claim by the petitioner was genuine.
4. That the Department had taken long in paying the Company and it had suffered because it had taken loans.
5. That the Department of Water and Irrigation stated that it was in the process of paying but did not provide a definite date thus the payment may be in the process indefinitely.
6. That the Chief Officer who provided the information had not been vetted by the Assembly thus the Committee could not invite him for clarification.

4.2 Committee Recommendations

Hon. Speaker, the Committee makes the following recommendations as per the prayers of the petitioners:

1. The Department of Finance and Revenue Collection should ensure the petitioner, Mr. Julius Munyoki of Solar Photo Electricity Kenya Ltd, was paid for the supply and delivery of pipes and fittings to Masinga Sub-County, Water and Irrigation Department.
2. The Department should provide the Assembly with information on the progress of the payment within 30 days of approval of this report.
3. The County should plan to settle all the pending bills. Relevant Departments with pending bills should provide for them in their respective budgets to be in line with the recommendations from the Controller of Budget.

5.0 CONCLUSION

Hon. Speaker, during the process of dealing with this task, the Committee faced a challenge with the Chief Officers as most of them had not been vetted and were reluctant to appear before the Committee thus it took that long. In addition, the Chief Officers do not respond promptly to requests for information and this interferes with delivery of services. Going forward, the Committee urges the Executive to be prompt in responding to Committees' request for harmonious execution of Assembly mandate.

Hon. Speaker, it is therefore my pleasant duty and privilege, on behalf of Finance and Revenue Collection Committee to table this report on Petition by Solar Photo Electricity Kenya Ltd. in this Hon. House for consideration and approval. Thank you, Hon. Speaker.

Hon. Speaker: Thank you, Hon. Stephen Mwanthi.

(Question proposed)

Hon. Members, you are invited to debate the motion; the motion and also report. Hon. Muthoka.

Hon. Muthoka: Thank you, Madam Speaker. I stand here again this time to support this report and inform the Hon. House that the issue of pending bills, even if we bury our heads in the sand, under the table, as a County we have to sit down and see how we are going to deal with the issue of pending bills because this person when he appeared before our committee, he is a voter of Hon. Ngula and his children had dropped from university, their house was being auctioned because he did supply and he has not been paid.

Maybe some of us do contracts here and we get paid but let us think of the best of people who have not been paid. Thank you, Madam Speaker,

Hon. Speaker: Thank you, Hon. Muthoka. Hon. Mitaa.

Hon. Mitaa: Thank you Madam Speaker for granting me the opportunity to give my input on the report by finance and revenue collection. I wish to start by thanking the committee for the job they have done as Hon. Muthoka has stated, the issue of pending bills is really becoming a problem and as earlier stated by Deputy Speaker that going forward, we need to re-look at the issue of pending bills.

If possible, we allocate some money and see how we can keep on reducing this burden which Hon. Speaker is affecting our people; they are unable to do their business promptly and as stated here, it is very clear that materials were supplied in due time and this person, Solar Photo Electricity Company had actually done the mandate and they got the contract in the right way.

So, the honorable thing to do, Madam Speaker, is just to clear this thing because is true the pipes are there and if possible if I can request the department of water, maybe instead of purchasing more pipes, like now we are in the process of looking for more pipes and we have pipes lying idle there; Madam Speaker, I can request them maybe to relocate the fund and first to clear the pending bills as we utilize what is available on the ground. Thank you, Madam Speaker.

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

Hon. Masesi: Thank you, Madam Speaker. Madam Speaker, first and foremost, I want to appreciate the committee led by the Hon. Chair Stephen Mwanthi for giving us a detailed report

for this petitioner. Then Madam Speaker, I want to confirm that in fact, this petitioner comes from my ward and it is a big concern when you look at the report; this contract was given on March 2016 and I want to believe this is the time maybe the petitioner got a loan from the bank bearing in mind that we always operate on loans with interest. I am trying to imagine what kind of interest that loan is accumulating up to date.

Madam Speaker, the report tells us that some Ksh. 3 million is in the process of being paid. Madam Speaker, we also need to confirm whether Ksh. 3 million was paid and it is the high time that this House requests for a full report on the current state of pending bills we have as a County. Again we need to know because I want to believe all the years we have been budgeting for the pending bills; we need to know also how much has been paid for what we have budgeted and be given the exact pending bills. I want to believe they cut across all departments not only this petition.

It is the high time as an Assembly and the Executive we see how we can at least do something pertaining to the pending bills. Otherwise, Madam Speaker, I want to support fully the committee to confirm that the materials in fact they were delivered to Masinga Sub-county. So, Madam Speaker, we have no reason and also the executive has no reason of not to pay the petitioner. So, I want to support fully the report and I wish to stop there, Madam Speaker.

Hon. Speaker: Thank you, Hon Masesi. Hon. Members, I now put the question.....sorry, the mover of the motion to reply. I was going to put the question; proceed Hon. Mwanthi to reply.

Hon. Mwanthi: Thank you, Madam Speaker. I must first start by appreciating the members who have contributed and contributed positively in the House today on this report. Madam Speaker, this issue of unpaid bills has negatively affected our county. Hon. Speaker, if sometimes if you go around and meet people from outside when you say that you come from Machakos, the first question you meet is whether you have started to pay your contractors and this to some extent doesn't look good when we are being such questions.

So, my prayer is that if possible, the County should pay the contractors all pending bills and let them come clear on that issue; we don't know how much exactly how much money is being demanded by contractors from the County so that as we prepare the coming budget, we can work out that issue to make sure or to change the image of our County.

Otherwise, it looks as if the whole community has that issue of not paying debts to people after getting services. So, we met the petitioner, he was here in that date we have stated and if I may say, the man was almost crying saying that even by that he could not pay school fees for his children. So my plea is that let the County Government come clear, submit all the required documents and see how best we can do to our people. Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Stephen Mwanthi.

(Question put and agreed to)

Hon. Members, the petition having been voted by the House positively, the Clerk of the Assembly will communicate on the resolution of the House to the petitioner and then will also write to the CEC member, department of finance and economic planning of the Machakos

County Government so that the payment can be done in accordance to the resolution of this House. Thank you.

ADJOURNMENT

Hon. Speaker: Hon. Members, at this point, the sitting of the House will stand adjourned; it will continue on the 8th day of May, 2019 at 10.00 a.m.

The House rose at 3.15 p.m.