

REPUBLIC OF KENYA
MACHAKOS COUNTY ASSEMBLY
OFFICIAL REPORT

Tuesday, 8th September, 2020

The House met at 10.00 a.m.

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

PRAYERS

Hon. Speaker: Sergeant at Arms, please ring the bell.

(Quorum Bell rung)

Serjeant at Arms, please stop ringing the bell so that we can start.

PAPER LAID

REPORT ON MACHAKOS COUNTY EMERGENCY RESPONSE FUND REGULATIONS, 2020

Hon. Speaker: Hon. Members, under this Order, we have one business by Hon. Patrick Kituku.

Hon. Kituku: Thank you, Madam Speaker. I wish to lay the following Paper on the Table of the Assembly today 8th September, 2020; report of the Committee on Delegated County Legislation on consideration of the draft Machakos County Emergency Response Fund Regulations, 2020. Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Patrick Kituku. Mr. Clerk, proceed.

NOTICE OF MOTION

REPORT ON MACHAKOS COUNTY EMERGENCY RESPONSE FUND REGULATIONS, 2020

Hon. Speaker: Hon. Members, under this Order, we have the same, Hon. Patrick Kituku on the notice of motion.

Hon. Kituku:

Madam Speaker, that aware that Article 94(5) of the Constitution provides that no person or body, other than Parliament, has the power to make provision having the force of law in Kenya except under authority conferred by this Constitution or by legislation and aware that Article 95(6) of the Constitution further provides that an Act of Parliament, or legislation of a county, that confers on any State organ, State officer or person the authority to make provision having the force of law in Kenya, as contemplated in clause (5), shall expressly specify the purpose and objectives for which that authority is conferred, the limits of the authority, the nature and scope of

the law that may be made, and the principles and standards applicable to the law made under the authority;

Noting that Section 110 of the Public Finance Management Act grants the County Executive Committee Member for Finance with the power to establish an emergency fund with approval of the Assembly based on monies appropriated by the Assembly to fund urgent and unforeseen expenditure and further aware that Section 10 of the Statutory Instrument Act provides in a manner in which a Statutory Instrument may be allowed or disallowed;

Hon. Speaker, I wish to give notice of motion that this Hon. House discusses and approves the committee report on Delegated County Legislation on consideration of the draft Machakos County Emergency Response Fund Regulations, 2020.

Thank you, Madam Speaker.

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

STATEMENT

BUSINESS FOR THE HOUSE FOR 8TH TO 15TH SEPTEMBER, 2020

Hon. Speaker: Hon. Members, under this Order, we have one business by Hon. Mark Muendo, the Leader of Majority Party in the Assembly and in his absence it can be moved by Hon. Alex Kamitu, the Minority Leader. It is a statement on the House Business Committee.

Hon. Kamitu: Thank you very much, Madam Speaker. I stand under Standing Order 41(2(a) where during the Statement hour, a Member of the House Business Committee designated by the Committee for that purpose shall for not more than ten minutes, present and lay on the Table, a statement informing the House of the business coming before the House.

Hon. Speaker, the House Business Committee met on Monday, 7th September, 2020 to review and ballot business for the House pursuant to the provisions of Standing Order 151. The Committee reviewed business balloted for 8th September, 2020, balloted additional business for that date and business for 15th September, 2020 as follows:

Tuesday, 8th September, 2020

Morning at 10.00 a.m.

- a. Report of Youth, Women and Sports Committee on Machakos County Stadium Programme by Hon. Geoffrey Kamulu, Chairperson.
- b. Report of Committee on Implementation on Implementation of the Machakos County Persons with Disabilities Act 2016 by Hon. Fredrick Muthoka, Chairperson

Afternoon at 2.30 p.m.

Report of Delegated Legislation Committee on Machakos County Emergency Response Fund Regulations 2020 by Hon. Patrick Kituku, Chairperson.

Tuesday, 15th September, 2020

Morning at 10.00 a.m.

Report of Budget Committee on Controller of Budget report for the first three quarters of FY 2019/2020 by Hon. Dominic Ndambuki, Chairperson.

Afternoon at 2.30 p.m.

Report of Environment, Energy, Lands and Natural Resources Committee on Machakos County Climate Change Policy by Hon. Robert Kisini, Chairperson.

Thank you, Hon. Speaker.

Hon. Speaker: Thank you, Hon. Alex Kamitu, Minority Leader. Mr. Clerk proceed.

MOTIONS

REPORT ON MACHAKOS COUNTY STADIUM PROGRAM

Hon. Speaker: Hon. Members, under this Order we have one business by Hon. Geoffrey Kamulu.

Hon. Kamulu: Thank you, Madam Speaker.

Hon. Speaker; that aware that Article 185(3) of the Constitution of Kenya 2010, provides that a County Assembly, while respecting the principle of separation of powers, may exercise oversight over the County Executive Committee and any other County Executive organs;

Recognizing that Youth, Women, PWDs and Sports committee is established pursuant to Standing Order 190 and the Second Schedule of the Standing Orders define its mandate as follows; to deal with all matters related to youth welfare, women affairs, empowerment of women, matters of equality, affirmative action and gender related issues and sports activities and facilities;

Appreciating that the committee while undertaking its oversight role engaged the Chief Officer, Youth and Sports on the Machakos County Stadiums programme with an objective of ascertaining its current implementation status with regard to approved budgets and also establish the viability of the project;

Further appreciating that the committee conducted fact finding missions to the physical locations of the stadiums;

Hon. Speaker, I wish to move the motion that this Hon. House discusses and approves the Youth, Women, PWDs and Sports Committee Report on the Machakos County Stadiums programme.

Hon. Speaker, I request Hon. Jacinta Luka to second my motion.

Hon. Speaker: Thank you, Hon. Kamulu, Hon. Jacinta Luka.

Hon. (Ms). Luka: Thank you, Madam Speaker. I second.

Hon. Speaker: Thank you very much. Hon. Kamulu proceed.

Hon. Kamulu: Thank you, Madam Speaker. I present the report on the Machakos County Stadium program. The department of Youth and Sports initiated the Machakos County stadium programme in the financial year 2018/19 and the programme endeavored to construct four stadiums in the County specifically in Masii, Kinyui, Ikombe and Mavoko wards within the financial year.

The relevance of the programme is to promote sporting activities and nurture talents amongst the youth within the County. Studies show a reduced risk for substance use in young people who play sports versus those who do not, including alcohol use, smoking and illicit drug use. Patterns of drug abuse among teens suggest that physical activity and in particular team sports, strengthens a person's resistance to substance use disorder.

The reduced risk of substance use through team sports participation is also likely impacted by the fact that students who choose to exercise regularly and enjoy team activities are more likely to make healthy decisions in general. Being surrounded by a healthy community of teammates, coaches, and other social aspects of participation in organized sports also maintains a network of support from others making healthy life decisions.

Participation in sports for children and teens also requires them to learn vital time management skills, and offers them a range of appealing challenges. Physical activities provide young people healthy opportunities to learn skills, take risks, and achieve goals.

Hon. Speaker, Sport involvement may also contribute to the social and personal development of youth. It has also been proposed that youth sport provides benefits for socio-emotional development, identity work, character building, and moral development, including the expression of values and sportsmanship behaviors. Many people involved in sport also believe that sport participation offers opportunities for learning and development that can directly transfer into other areas of life such as school and work.

Hon. Speaker, Article 183(3) of the Constitution of Kenya 2010 stipulates that the County Executive Committee members shall provide the County Assembly with full and regular report on all matters relating to the County. Further, Article 185(3) states that the County Assembly while respecting the principle of separation of powers may exercise oversight over the County Executive Committee and any other county executive organs.

Hon. Speaker, quarterly reports are important tools in assisting the oversight mandate of County Assemblies as they provide useful information such as absorption rate of funds allocated, status of development projects and performance levels of departments; Chief Officers of the various county departments are required by the County Governments Act, 2012 to provide timely quarterly reports to the County Assembly to aid its oversight role.

Hon. Speaker, the construction of each stadium was budgeted for at Ksh 50 million bringing to a cumulative total of Ksh. 200 million being appropriated in the FY 2018/19 and FY 2019/20 budgets.

In accordance with Article 185(3) of the Constitution of Kenya, 2010 the committee requested for status reports of the stadium programme from the Chief Officer, investigated and consequently compiled this report.

TERMS OF REFERENCE

Hon. Speaker, the committee adopted the following terms of reference;

- a) Overview of the approved budget for the stadium programme
- b) Actual programme expenditures and current implementation status.
- c) Committee's observations and recommendations

MANDATE OF THE COMMITTEE

Hon. Speaker, The youth, women, PWDs and Sports committee is established pursuant to Standing Order 190 and the second schedule of the Standing Orders define its mandate as follows: to deal with all matters related to Youth welfare, Women affairs, empowerment of women, matters of equality, affirmative action and gender related issues and sports activities and facilities.

COMMITTEE COMPOSITION

Hon. Speaker, during the compilation of this report the committee was comprised of thirteen Hon. Members as listed below:

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|-------------------------|--------------|
| 1. Hon. Geoffrey Kamulu | - Chairman |
| 2. Hon. Jacinta Luka | - Vice Chair |
| 3. Hon. Margret Ndalana | - Member |
| 4. Hon. Christine Koki | ” |

- | | |
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| 5. Hon. Justus Katumo | ” |
| 6. Hon. Antony Mulu | ” |
| 7. Hon. Michael Mutiso | “ |
| 8. Hon. Margret Mwikali | ” |
| 9. Hon. Grace Mutwiwa | ” |
| 10. Hon. Fredrick Muthoka | ” |
| 11. Hon. Agatha Mutunga | ” |
| 12. Hon. Irene Mbivya | ” |
| 13. Hon. Phoebe Koki | ” |

CURRENT STATUS OF EACH STADIUM

Hon. Speaker, the table below highlights the current status of the four stadiums with regard to the contract details and amount:

1. Kinyui Stadium which is in Matungulu East, Kinyui Market; the contractor is Framepack Company Limited and it was allocated Ksh. 49,740,000. The payment done so far is Ksh. 19,327,658 (for the first certificate), the pending amount is Ksh. 30,112,342 which is the amount raised for the 2nd certificate is Ksh. 12,440,708 and the status is 40 per cent complete. In the remarks we have noted that terraces construction is on-going and club house roofing is ongoing.
2. Ikombe stadium which is in Ikombe, Kinyaatta market, the contractor is Anabra Enterprises. The contract sum is Ksh. 49,740,000. The payment done for the first certificate is Ksh. 14,363,765. The pending amount is Ksh. 35,376,235 and then the amount raised for the 2nd certificate is Ksh. 24,320,235. The completion status is 70 per cent and the remarks are terraces, changing rooms and club house have been completed. Roofing terraces is on-going.
3. Mavoko Stadium, which is located in Athi River Makadara Market. The first contractor is Framepack Company Limited and the second contractor is Honor Logistics Limited which was awarded after second re-advertisement. The contract sum for the first contractor was Ksh 44,616,639.20 and the second one was Ksh. 44,717,695.50. No payment has been done for the first contractor and also the second one.
Pending amount is Ksh 4,873,680 (amount due as per quantified works done by the 1st contractor) and the remaining is Ksh. 44,717,695.50. Status is 10 percent complete and the project was re-advertised and awarded. What was happening there at the time we were conducting this report was that ground levelling was ongoing.
4. Masii stadium in Mwala sub-county, the contractor was Point mark Valuers. The contract sum was Ksh 49,045,478 and nothing has been paid then the pending amount is Ksh 4,705,280 which is the amount due as per quantified work done. Completion is at 10 per cent and the project was re-advertised, pitch is done and the club house foundation done.
5. Kenyatta Stadium basketball court which is in Machakos Central, Machakos Town. The contractor was Williane Limited and the contract sum is Ksh. 2,795,426. No payment has been done and the pending amount is Ksh 2,795,426. Status is 40 per cent complete and there is rolling and ground compacting ongoing

COMMITTEE OBSERVATIONS

Hon. Speaker, the committee made the following observations;

- a. That Masii stadium in Mwala Sub-County had low implementation levels; this was occasioned by re-advertisement of the project as the first awarded contractor faced some challenges that rendered him incapable of executing the project. Further, disagreements amongst the local community on the physical location of the stadium also hindered its implementation; the community had identified a location for

construction of the stadium but once the project kicked off, it was re-located. The Chief Officer informed the committee that the project had since been awarded to another contractor and was hopeful that it would be complete within the current financial year.

- b. That Mavoko stadium in Athi River had initially been awarded but the contractor faced some challenges that required the project to be re-advertised and awarded to another contractor; it was noted that no payments had been paid to either of the contractors.
- c. That Kinyui stadium located in Matungulu East had been awarded at a cost of Ksh. 49 million and a first payment of Ksh. 19.3 Million; the committee noted that the implementation status of the stadium was fair and urged the chief officer to fast track its completion.
- d. That Kombe stadium located at Kinyaata market had been awarded at a cost of Ksh. 49 Million and a first payment of Ksh. 14.3 Million; the committee noted that the implementation status was at 70 per cent; the terraces, changing rooms and a club house being complete.
- e. The committee also observed that the department had also initiated a project geared at constructing a basketball court at Kenyatta stadium in Machakos town valued at Ksh. 2.7 Million.

COMMITTEE RECOMMENDATIONS

Hon. Speaker, informed by the fact-finding missions, interrogation and discussions with the Chief Officer, the committee makes the following recommendations;

1. Full implementation of the stadiums

The committee urges the department of Youth and Sports to fully implement the stadiums programme as this will go a long way in developing talents amongst the youth and also ensure that the youth refrain from drugs abuse.

The committee noted that some projects had been re-advertised and this was a cause factor for the slow implementation of the stadiums; there is need to ensure that the contractors who are awarded have the capability of executing the projects.

The Chief Officer, Youth and Sports should also prepare implementation work plans with regard to the timing, procurement aspect and financing. Proper planning for the projects will ensure that funds and contractors are available early in the financial year and also prevent a situation of pending bills to arise.

2. Support of local football clubs

The department of youth and sports should come up with a policy that will nurture local talents for instance by sponsoring local football clubs either by purchasing footballs and uniforms for them. The essence of the construction of the stadiums is to promote sports within the county and the department needs to go further and ensure that the local talent is nurtured by creating an environment where sporting tools and equipment are readily available to registered local football clubs within the county.

3. Create awareness on importance of sports

The department of Youth and Sports should hold campaigns that will sensitize the youth on the importance of sports and the consequences of indulging in drugs abuse. The department should endeavor to hold tournaments and attach appealing prizes to the winners; this will go a long way in enticing the youth to participate in sports and as a result refrain from drugs abuse.

4. *Implementation of the Persons Living with Disabilities Act*

Implementation of the Act will ensure creation of a board that will manage the affairs of the PWDs and provide a framework for a coordinated approach by all government departments and institutions in the mainstreaming of disability across all planning, designing budgeting, implementation and monitoring of services and development programmes; The board will ensure that persons living with disabilities are actively involved in sporting activities and also ensure compliance in construction of persons living with disability projects.

Conclusion

Hon. Speaker, full implementation of the Machakos County stadiums programme is critical to the nurturing of sporting talents and more so ensuring that the youth are kept occupied in sporting activities thus dis-engage them from vices such as drug abuse. The department should endeavor to complete the other stadiums as envisaged in the County Integrated Development Plan. Hon. Speaker, it is therefore my privilege and duty to present this report to this Hon. House for consideration and approval. Thank you, Hon. Speaker.

(Applause)

Hon. Speaker: Thank you, Hon. Kamulu. I was just observing as Hon. Angela came in. Hon. Kisini, did you take the seat of Hon. Angela?

Hon. Kisini: Madam Speaker, I realized she was seated here but---

Hon. Speaker: It is not your fault; it is the fault of the Serjeant at Arms. Remember Serjeant at Arms, you should be guiding Members because if a Member steps out another Member will not know whether the seat was occupied or not and Hon. Angela I believe now you are comfortable where you are so that is okay. Let us just occupy the seats that we seat on right from the morning to the end; we are still in the COVID-19 era. So, Serjeant at Arms you need to guide Members properly.

(Question for debate was proposed)

Hon. Members, I am now inviting you to debate on the Motion. Hon. Majority Whip.

Hon. Mitaa: Thank you, Hon. Speaker. First, I want to applaud the Chair Hon. Kamulu for the report he has brought to this House through the committee. Hon. Speaker, I have some reservations on the report bearing in mind I seem to have visited some of the mentioned stadiums to be specific Ikombe and Kinyui and by the time I visited those stadiums, either activities have been done or the report might be wrong because to be specific and Hon. Nziva will maybe update us because one of the stadiums is in her Ward; to be specific Ikombe seemed to be behind by the time we visited.

When we were launching free seeds with His Excellency the Governor we visited that stadium and Hon. Speaker, it seemed to be behind schedule. As a Member from other Wards or other sub-counties which were supposed to benefit in the second phase of the stadiums, we expected by now our areas to have started construction of our stadiums but the response we are getting whenever we seek clarification is that, they are awaiting completion of those other stadiums and I believe when they allocated funds for construction of stadiums in the first phase, the monies were there, so the delay should not be connected to either funds not being available or work not being completed because every Financial Year we create vote lines for development or else activities and

I expected by now Kangundo, Kainga stadium to have been launched by now because my Ward was supposed to benefit in the second round for the construction of these stadiums.

So, mine is to request the committee again, maybe if they can update the report. I know they have time they can again visit these areas and give a report based like for this month we get a report on the status as at September 2020 because we are eagerly awaiting construction of stadiums in our wards. As the report has stated, sports is very paramount in our society; right now our youth are at home and maybe they can utilize these facilities to engage better than being idle in the houses. Thank you, Madam Speaker.

Hon. Speaker: Thank you Hon. Mitaa. Hon. Members, the Member who has just spoken really has raised some matters of concern. Hon. Kamulu, when did you call the Chief Officer? I am trying to go through the report to find out what date he appeared before you so that he gave you the information of the percentages of the completion. When did he appear, he or she? When did they appear before your committee; the dates?

Hon. Kamulu: Madam Speaker, thank you. Right now, I cannot actually remember the actual dates---

Hon. Speaker: The report should have captured that.

Hon. Kamulu: But, Madam Speaker, according to the concern of the said Member, I think it is very much in order in his recommendation that immediately the committee after the issue of Covid-19 is over, actually which has held us so that we cannot revisit them again, we will revisit again and see as a committee the status as per now because they might have done some work during this Covid-19 period.

Hon. Maitha: Point of information, Madam Speaker.

Hon. Speaker: Point of information. Thank you Hon. Kamulu. Hon. Maitha.

Hon. Maitha: Thank you Madam Speaker. Madam Speaker, according to what happened last year, there was nothing done on development. It is assumed that nothing was done because the Government did not provide funds for development projects in our wards and therefore I think there is nothing which was done by the Government.

Hon. Speaker: Hon. Museku, just a moment I will come to you and the other Members. Can I get a feel of the Members who come from where these stadiums are located? Hon. Nziva, I will also have Hon. Kisini because really, we may not even proceed to debate this motion if it is a report which is not reflecting what is on the ground. So, what is the position on the ground Hon. Members, those who come from the areas where the stadiums are located?

Hon. (Ms.) Nziva: Thank you, Madam Speaker and Members present. I think Madam Speaker, if you allow me I can contribute and also give the status of the Ikombe stadium---

Hon. Speaker: Please give the status not to contribute.

Hon. (Ms.) Nziva: Ikombe stadium there is a time around March, the work had stopped but they changed the contractor but the works now are ongoing and the status is above 60 percent according to my observation.

Hon. Speaker: Thank you. Hon. Kisini, for Mavoko.

Hon. Kisini: Thank you, Madam Speaker. I just want to give the status as you have directed, Madam Speaker. Mavoko stadium has been fenced with *mabati* all around. There was a contractor who was awarded that job. He dug and left soil all the way over, they started off the foundation but did not finish and he went off. When he went away that work stalled then thereafter I do understand there is another contractor who has been awarded that work.

I understand and I do not understand because I visited it; he is there trying to do the iron bars, the work is at its initial stages, it has not fully kicked off but there is a new contractor. Madam Speaker, I can give it around 20 per cent; that is the work done there. Thank you, Madam Speaker, unless there is a question which you might want to direct or to ask me. The work at Mavoko is at 20 per cent so it is below per.

Hon. Speaker: Thank you. Hon. Mutiso for Machakos stadium, I see on the report conclusion for Machakos that is (e), I think (4.0(e) 'the Members just noted that the committee has observed that the department had also indicated a project geared at constructing a basketball court at Kenyatta stadium, Machakos town valued at Ksh. 2.7 million and that is so. There is nothing more that said about that project, so maybe *Mheshimiwa* Mutiso you can tell us.

Hon. P. J. Mutiso: Thank you, Madam Speaker. As far as Machakos stadium is concerned, Madam Speaker, not much work has been done. So far, I am wondering after seeing this report because I was there sometimes a month ago but there was nothing much done. What I know is that maybe the officer is just getting reports from his juniors whereby he is supposed to go there.

What I can urge Madam Speaker, is that, because Machakos stadium is just near, it is about maybe less than half a kilometer, I urge the committee to visit that area and see what is happening and they will get the right thing because as far as I am concerned nothing much has been done. Thank you, Madam Speaker.

Hon. Speaker: Now that last word 'much' is it that nothing has been done?

Hon. P.J. Mutiso: No. According to this statement and the money which I have seen here, I doubt because it is just little which has been done and it is sometimes back there because these Members were there sometime back, I was with *Mheshimiwa* for Mumbuni North, and the time we were there we were with the Governor and we visited that area but what has been done there is what is there right now and nothing has been added to that as the status is concerned.

Hon. Speaker: Okay. I hear you.

(Hon. Museku's mic malfunctioned)

So, Hon. Museku, I think the front seats nobody has sat on them. You can come to the front seat; nobody has been on the seats. Let us hope they are working.

Hon. Museku: Thank you, Madam Speaker, for giving me this opportunity to contribute. Madam Speaker, two things which I would like to contribute on. First and foremost, is the planning nature of the way we execute major projects. Madam Speaker, if I remember very well, when these stadiums were being initiated, I remember in that year, there was actually no budget item for stadiums. We only come to hear that there is a stadium being done in Kinyui, there is a stadium being done in Masii, there is a stadium being done here as a Member of the budget committee.

So once these projects were initiated without proper budgeting right from the initial stages, then it came to now allocating funds in subsequent budgets to try and clear these stadiums. Madam Speaker, when we are doing budgeting especially the executive and the project managers of these major projects because when we talk about stadiums we are talking about major projects; these are projects which are costing Ksh. 40 million and above. Then what we are supposed to be seeing here is a detailed work plan with specific timelines given to the contractors for execution to completion.

When you look at this you can see for example when I read the Ikombe stadium status, pending amount, they talk about amount raised for the second certificate is Ksh. 24,320,000) so it is at 70 per cent completion, the Hon. Member is talking about 60 per cent completion, this project was for Ksh. 49 million, it has already been paid for Ksh. 14 million.

So, what is telling you is that maybe, whatever certificate are being raised, they are being raised and they do not comply with what is on the ground because if the Hon. Member is saying it is at 60 per cent, and they are talking about 70 per cent and they are already saying that a certificate for Ksh. 24 million has been raised, then that brings to question as to the execution and the status of the completion and how the projects are being done.

So, Madam Speaker, like the Hon. Member, Majority Whip talked about, there are other areas which are also awaiting construction of these stadiums yet as a budget committee we have not seen in the projection because for example, when we are doing budgeting, you find that we are given amounts for the current year and we are given projections for 2020/ 2021, 2021/2022, 2022/2023. We have not seen that money escalated under that specific department to those other years to give us comfort that once we finish with the current stadiums, we are going to be able to move to the other wards or sub-counties and construct for them stadiums also.

So, my take on this Madam Speaker, is that there seems to be lack of proper planning, lack of proper guidelines to the contractor as to expectations, as to when we can expect this project to be completed and handed over. It appears to be like it is something which will be funded year in year out because it was funded last year, it has been funded in the current financial year and from the status we are seeing here, the year will come and end and we still need to fund for it again next year and now we will not be budgeting for the other sub-counties which have not received stadia but putting in the same counties.

Secondly, and this I am addressing myself to the Chair of budget committee and the others, once a sub-county for example a specific ward has been awarded Ksh. 44 million for stadia, then when funds are being allocated, that needs to be taken into consideration because now, that sub-county has received Ksh. 44 million for a specific ward, another ward has received zero, so when they are being done---

Hon. Masesi: Point of order, Madam Speaker.

Hon. Museku: It is important that because all these are public funds which are being---

Hon. Speaker: Did I hear point of Order?

Hon. Masesi: Yes. Madam Speaker.

Hon. Speaker: Hon. Masesi, how did you even come so close to Hon. Museku?

Hon. Masesi:(*Inaudible*)

Hon. Speaker: Yes, but the minute you found him using that mic you needed to keep distance at least until he finishes.

(Hon. Masesi moved to another designated seat)

It is you who came after him and there is no distance, even now you go to Hon. Mutiso there is no distance. I told you everyone is a suspect of Covid-19. What is the point of Order Hon. Masesi?

Hon. Masesi: Madam Speaker I want to defer with Hon. Museku in the fact that---

Hon. Speaker: Just make the point of order. You know order you are saying that he is out of order. So how is he out of Order?

Hon. Masesi: In the fact that Madam Speaker, when he says that sub-counties with those amounts like Ksh. 49 million when we are factoring the development money, those monies should be factored. My point was that we have sub-counties with even projects worth Ksh. 200 million and these are government projects, these are not MCAs projects. So my point of order was that---

Hon. Speaker: There is no MCA project. All projects are projects for the County Government implemented by the County Executive.

Hon. Masesi: My point was that we should not factor those projects done by the Executive because we as MCAs, we have the priority projects, the small ones which when implemented, assist the community in a big way.

Hon. Speaker: I am not getting the point of Order but we will have it on record. Hon. Museku, please proceed.

Hon. Museku: Thank you, Madam Speaker. What the Hon. Member I do believe is trying to say is that, there are major Government projects which we should now not consider when it comes to allocation of funds because Kinyui---

Hon. Speaker: Not consider or not question?

Hon. Museku: Not question.

Hon. Speaker: Is there any project that you would not question?

Hon. Museku: Not question---

Hon. Speaker: By way of oversight, is there any project that you should not question?

Hon. Museku: I don't think so, Madam Speaker.

Hon. Speaker: Alright.

Hon. Speaker: But you know the Hon. Member comes from Kinyui and Kinyui stadium is in his area and therefore I feel you but we also have wards, like there is Kangundo, we have got Hon. Ikusya, Hon., Majority Whip here who do not have Ksh. 44 million allocated to a stadium which they can be able to point at. So, what I am trying to say is this; all these funds are public money and it is all budgeted for under same sources of funding especially for stadiums which are

being initiated by the County Government of Machakos are coming from the equitable share and own revenue collection.

They have not been specifically funded by as a grant, they have not been specifically funded as a loan, they are coming from equitable share and own revenue collection which means, if it is equitable share and own revenue collection, then that money should be availed equitably amongst all sub-counties and amongst all locations or wards in our county.

So, my take on this Madam Speaker is that, we need to be able to factor this in, and what I mean by factoring this in is this, I do not mean that the Hon. Members projects are not considered but we need to start as a budget, Chair of budget committee, we need to start from a point of view Madam Speaker, of saying how much funds are available, how much has already been committed where?

So, when we are looking for commitments, then we are saying that this area has already.....for example, there are wards which have got major roads going through them which have been tarmacked and then now when it comes to KRB, the same wards want to be considered again. So, you have a tarmacked road going through your area, and then the funds of KRB when they come you want to get a share of that KRB while the KRB now should be assisting the other wards which do not have that major road.

So, what we are saying here is that we are not blind the fact that Kinyui, Ikombe, Machakos Central is actually a renovation, Hon. Peter Mutiso if you looked at it and the amount is Ksh. 2.7 million, it is nothing, it is for construction of a basketball court in comparison to what the others are, we are talking about Ksh. 44 million, Ksh. 45 million which have been awarded.

So, we cannot turn a blind eye to this and therefore, my main point of concern in as far as this report is concerned is that, after committing such huge amount of funds, then those funds need to be implemented immediately so that the end user can start utilizing those facilities and give chance for other wards also to come into the program and get these facilities with them.

So, Madam Speaker, through the Chair I would request the Chairperson to find out from the budget committee or with the CECM what has been budgeted for in the current year and where the funds which have been allocated for the current year are enough to finalize or to complete these projects as they are and what plan do they have for starting the other sub-counties stadia so that when you bring a report before the House Madam Speaker, it is complete. It shows that in the current year we expect completion of this stadium, that stadium and we also expect to start these stadiums and these other stadium next year. Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Museku. I will come to you Hon. Cosmus Masesi. Hon. Cosmas Kieti.

Hon. Kieti: Thank you, Hon. Speaker. I want to start by thanking the Chairperson for the good report that he has brought although Madam Speaker, we have some Members of this Hon. House, I have some reservations. Hon. Speaker---

Hon. Speaker: Hon. Kieti and Cosmus and Hon. Members, just a moment. Can you allow me that we need to agree; when a Member wakes up and says they have reservations on the report, it means that they are not satisfied with the report and they have a right not to be satisfied with it and this being an important report I am just wondering, perhaps the Chair who presented report; did you have occasion as a committee to pre-visit each of these stadiums? Did you have occasion to visit, physical visiting of the stadiums before you finalized on this report?

Hon. Kamulu: Madam Speaker, one thing before I answer that question we should not as a House, is that a committee goes to a site to research on specific activity. So, Madam Speaker, our

concern as far as these stadiums are concerned, was specifically about them. So we went on the site during that period---

Hon. Speaker: When was it that you went to the site because we should also see in the report, on this date we visited and perhaps because you are not experts in construction you had this perhaps we also have a Building Superintendent in this Assembly, you were accompanied by them, they advised you this. What are the dates you visited?

Hon. Kamulu: Madam Speaker, as I said those were side visits and maybe I cannot recall the dates but we took some photographs. If you look at the report at the back, you will find that we have photographs when we went to those sites---

Hon. Speaker: So, what were the dates, Hon. Kamulu?

Hon. Kamulu: I am requesting that Madam Speaker, through the Chair, I cannot as per now recall the actual dates of those site visits but we took photographs for example of Ikombe stadium, the status of that time, we took photographs of Kinyui stadium on the status by then and it is reflected in the summary of the amounts which has been given Madam Speaker, and if you listen to the statements of---

Hon. Speaker: Do not address the chair in that manner saying 'if you listen.' The Chair will always be listening Hon. Kamulu.

Hon. Kamulu: Thank you, Madam Speaker.

Hon. Speaker: The Chair is always listening.

Hon. Kamulu: Thank you. So---

Hon. Speaker: And why the Chair is concerned Hon. Kamulu, just resume your seat kindly. Why the Chair is concerned is this, every report will say that on this date we summoned this Member, the Chief Officer and they told us. On this date we visited and the problem is that a construction is something that develops progressively.

So, if these are photographs that were taken, when were they taken? That is the question. When were they taken? When did you visit so that now the Members can know as we are talking today when you are presenting this report, this is likely to be the state because a construction you start from the foundation so that a month later, you want to see a progression, so when is it that you visited? In other words, is your report complete? Is it complete?

Hon. Kamulu: Madam Speaker, unless the Chair advises otherwise, I as the Chairman of this committee thought that our report was complete but if we can be allowed to go and revisit again as per the current status, Madam Speaker, we can do it then we come up with another report but as per this one, I think we were thorough on what we were doing except the omissions of the days and that. So Hon. Speaker---

Hon. Speaker: Hon. Kamulu, the report is the property of this House and my concern is that if we proceed and vote and it is negative, that means you cannot bring this motion again until after six months and you have heard members here who are saying they were waiting for the completion of these stadiums which were started in different sub-counties so that these in their sub-

counties can now be started and we also appreciate the time that is left for purposes of development. That is why I am asking; is your report complete?

It is upon you to tell me that you want time to go and come back or I can direct you right away because the feeling of the Members is that the report has issues, if you had members who were talking on the status on the ground and every member waking up saying I have reservations, you can get an idea where the voting will take. Therefore, Hon. Members, I had proposed the question and the report became the property of the House and so, I am referring it back to the committee that has prepared the report and the committee needs to bring back a complete report with all dates of visits, with all dates of inquiries, with all dates of engagements with the executive officers involved.

A complete report, with all details on the budget, with all details on the payments done, with all details on the payments pending and with details of measured works, works that have been executed and we want to know the particular QS, who has measured those works in that report so that we can have a complete report and that one needs to be done within 21 days.

The issue of coronavirus, right now I appreciate may have affected your operations but right now matters are a little relaxed, provided you observe the social distance and you go there in masks and you do the needful carrying sanitizers, you can visit those sites and you can bring a proper report before this House within 21 days from today. Thank you.

REPORT ON THE IMPLEMENTATION STATUS OF THE MACHAKOS COUNTY PERSONS WITH
DISABILITIES ACT, 2016

Hon. Speaker: Hon. Members, under this Order we have one business by the Hon. Fredrick Muthoka.

Hon. Muthoka: Thank you, Madam Speaker.

Hon. Speaker, that aware that Article 183(3) of the Constitution of Kenya 2010 provides that the County Executive Committee shall provide the County Assembly with full and regular report on all matters relating to the County;

Further, aware that Article 185(3) of the Constitution provides that a County Assembly, while respecting the principle of the separation of powers may exercise oversight over the County Executive Committee and any other County Executive organs;

Noting that Standing Order 188(2) and (3) mandates the Committee on Implementation to do the following:

1. Scrutinize the resolutions of the Assembly (including adopted committee reports), petitions and the undertakings given by the County Executive Committee and examine—
 - (a) Whether or not such decisions and undertakings have been implemented and where implemented, the extent to which they have been implemented; and whether such implementation has taken place within the minimum time necessary; and
 - (b) Whether or not legislation passed by the Assembly has been operationalized and where operationalized, the extent to which such operationalization has taken place within the minimum time necessary”.
2. The committee may propose to the Assembly, sanctions against any member of the County Executive Committee who fails to report to the relevant Select Committee on implementation status without justifiable reasons.

Acknowledging that in executing its mandate, the Committee requested for information from the Department of Education, Skills Training, Social

Welfare, and Civic Empowerment on the implementation status of the Machakos County Persons with Disabilities Act 2016; further aware that the Committee invited the Chief Officer - Social Welfare and Civic Empowerment to a Committee meeting and discussed the Act with a view of ascertaining its implementation status;

Hon. Speaker, I wish to move the motion that this Hon. House discusses and approves the Report on the Implementation Status of the Machakos County Persons with Disabilities Act of 2016.

Thank you, Hon. Speaker. I wish to call Hon. Katumo to second my motion.

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

Hon. Katumo: Thank you, Madam Speaker. I second.

Hon. Speaker: Thank you very much. Hon. Muthoka, you proceed.

Hon. Muthoka: Okay, Madam Speaker, this is the report of Implementation Status of the Machakos County Persons with Disabilities Act of 2016.

1.0 INTRODUCTION

1.1 Preface

Hon. Speaker, Article 183(3) of the Constitution of Kenya 2010 provides that the County Executive Committee members shall provide the County Assembly with full and regular report on all matters relating to the County. Further, Article 185(3) of the Constitution provides that a County Assembly while respecting the principle of the separation of powers may exercise oversight over the County Executive Committee and any other County Executive organs.

Further, Standing Order 181 provides that within sixty (60) days of a resolution of the House or adoption of a report of a select committee, the relevant Executive Committee Member under whose portfolio the implementation of the resolution falls shall provide a report to the relevant committee of the House in accordance with Article 183(3) of the Constitution.

Hon. Speaker, based on the above provisions, the Committee requested for information from the Department of Education, Skills Training, Social Welfare, and Civic Empowerment on the implementation status of the Machakos County Persons with Disabilities Act 2016. The Committee further invited the Chief Officer, Social Welfare and Civic Empowerment to a Committee meeting and discussed the Act with a view of ascertaining its implementation status.

1.2 Mandate of the Committee

Hon. Speaker, the mandate of the Implementation Committee is outlined under Standing Order 188(2) and (3) and states as follows---

Hon. Speaker: Can we agree that we know what Standing Order 188(2) and (3) say, Hon. Members?

Hon. Members: Yes.

Hon. Speaker: Because we the Standing Orders, isn't it? So as we refer to the Standing Order and it is captured on HANSARD that is okay so we can move now to Committee composition.

Hon. Muthoka:

1.3 Committee Composition

Hon. Speaker, the Membership of the Implementation Committee as at the time of writing the report comprised of the following Hon. Members:

- | | |
|--------------------------|--------------------|
| 1. Hon. Fredrick Muthoka | - Chairperson |
| 2. Hon. Rozina Kanini | - Vice Chairperson |
| 3. Hon. Irene Mbivya | - Member |
| 4. Hon. Angela Munyasya | “ |
| 5. Hon. Geoffrey Kamulu | “ |
| 6. Hon. Mohamed Ali | “ |
| 7. Hon. Caleb Mule | “ |
| 8. Hon. Moses Mitaa | “ |
| 9. Hon. John Musyimi | “ |
| 10. Hon. Justus Kiteng’u | “ |
| 11. Hon. Justus Katumo | “ |
| 12. Hon. Grace Mutw’iwa | “ |
| 13. Hon. Francis Kalumu | “ |

2.0 LEGAL FRAMEWORK

2.1 Provision of Reports to the Assembly and Functions of the County Assembly

Hon. Speaker, Article 183(3) of the Constitution of Kenya 2010 provides that the County Executive Committee Members shall provide the County Assembly with full and regular report on all matters relating to the County.

Further, Article 185(3) of the Constitution of Kenya 2010, provides that a County Assembly, while respecting the principle of the separation of powers, may exercise oversight over the County Executive Committee and any other County Executive organs.

2.2 Powers of Committee of the Assembly

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, 2017 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.

2.3 Equality and Freedom from Discrimination

Hon. Speaker, Article 27 of the Constitution provides that:

- (1) Every person is equal before the law and has the right to equal protection and equal benefit of the law.
- (2) Equality includes the full and equal enjoyment of all rights and fundamental freedoms.
- (3) Women and men have the right to equal treatment, including the right to equal opportunities in political, economic, cultural and social spheres.

- (4) The State shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth.
- (5) A person shall not discriminate directly or indirectly against another person on any of the grounds specified or contemplated in clause (4).
- (6) To give full effect to the realization of the rights guaranteed under this Article, the State shall take legislative and other measures, including affirmative action programmes and policies designed to redress any disadvantage suffered by individuals or groups because of past discrimination.
- (7) Any measure taken under clause (6) shall adequately provide for any benefits to be on the basis of genuine need.
- (8) In addition to the measures contemplated in clause (6), the State shall take legislative and other measures to implement the principle that not more than two-thirds of the members of elective or appointive bodies shall be of the same gender.

2.4 Persons with Disabilities

Hon. Speaker, Article 54(1) of the Constitution provides that, person with any disability is entitled:

- (a) To be treated with dignity and respect and to be addressed and referred to in a manner that is not demeaning;
- (b) To access educational institutions and facilities for persons with disabilities that are integrated into society to the extent compatible with the interests of the person;
- (c) To reasonable access to all places, public transport and information;
- (d) To use Sign language, Braille or other appropriate means of communication; and
- (e) To access materials and devices to overcome constraints arising from the person's disability.

3.0 IMPLEMENTATION STATUS OF MACHAKOS COUNTY PERSONS WITH DISABILITIES ACT, 2016

3.1 Overview of the Act

Hon. Speaker, the Machakos County Persons with disabilities Act was approved on 16th November 2016 by County Assembly of Machakos. The Act was assented by the Governor on 25th November 2016 and published in Kenya *gazette* on 12th April 2017. The Act seeks to give effect to Articles 27 and 54 of the Constitution; to provide for the rights and rehabilitation of persons with disabilities; to achieve equalization of opportunities for persons with disabilities; and to establish the County Board for Persons with Disabilities; and for connected purposes.

Hon. Speaker, the object and the purpose of the Act is to:

- (a) Establish a mechanism to facilitate the advancement of rights, fundamental freedoms, progress and wellbeing of persons with disabilities;
- (b) Ensure equality and freedom from discrimination of persons with disabilities;
- (c) Establish an institutional framework on matters relating to persons with disabilities;
- (d) Provide a framework for a coordinated approach by all government departments and institutions in the mainstreaming of disability across all planning, designing budgeting, implementation and monitoring of services and development programmes;
- (e) Promote public awareness on matters relating to persons with disabilities;
- (f) Provide a framework against which the delivery of services to persons with disabilities can be monitored and evaluated; and

- (g) Provide for mobilization of resources for the provisions of services to persons with disabilities.

Hon. Speaker, the main areas of the Act which the Department of Education, Skills Training, Social Welfare and Civic Empowerment was required to implement to make the Act operational include:

- (i) Establishment of a board to be known as the Machakos County Board for Persons with Disabilities to promote and coordinate the implementation of provisions of this Act.
- (ii) Establishment of a fund to be known as the Machakos County Persons with Disabilities Fund for the promotion of the welfare of persons with disabilities.
- (iii) The Executive Committee Member shall in consultation with the Board make Regulations generally for the better carrying out of the provisions of this Act.
- (iv) The County Government shall take steps to the maximum of its available resources with a view to achieving the full realization of the rights of persons with disabilities.

3.2 Invitation of the Chief Officer, Social Welfare and Civic Empowerment to the Committee

Hon. Speaker, the Committee invited the Chief Officer, Social Welfare and Civic Empowerment, Ms. Zuhura Rajab Khamisi to an online meeting via Skype on 23rd June and 10th July, 2020 at 3.30 p.m. The Chief Officer was required to appraise the Committee on the implementation status of the Act. The Chief Officer gave details on the implementation of the Act as per the main areas as follows:

3.2.1 Establishment of the Board

Hon. Speaker, Section 20 of the Act provides for the Establishment of a board to be known as the Machakos County Board for Persons with Disabilities. The Chief Officer informed the Committee that all the details for the formation of the Board had been forwarded to the Cabinet for adoption and eventual appointment. The Department has proposed persons to be members of the board.

While waiting for the approval of the formation details by the Cabinet, the Department had proposed for the appointment of the Assistant Director of Social Welfare and Civic Empowerment as the Acting Chief Executive Officer to the board. The proposed person will serve on acting capacity as the department awaits appointment by the County Public Service Board (CPSB).

The Committee was also informed that a Disability technical working committee was formed on 25th February 2020 comprising two representatives (male and female) from each sub-county. The disability technical working committee will work closely with the disability board after its formation and has the following duties;

- (i) Assist Social Welfare and National Council in the registration of PWDs.
- (ii) Mobilization during functions, issuing of bursaries etc.
- (iii) Assist Social Welfare in Civic education and empowerment.
- (iv) Work with the Social Welfare officers, Village Administrators, National Council for Persons with Disabilities officers and National Government Social Development officers in the Sub-Counties.
- (v) Participate in quarterly meetings called by the Directorate.

Hon. Speaker, the Committee was also informed that this was a voluntary grassroots formation by Social Welfare and Civic Empowerment Department which will assist in service delivery. Community Organizations such as National Council for Persons with Disabilities, National Government Social Development Officers and County Social Welfare Officers were consulted in the formation of the Disability technical working committee. The Disability technical

working committee will assist in the mobilization and execution of PWDs projects and activities to benefit majority PWDs in the entire County.

3.2.2 Establishment of Machakos County Persons with Disabilities Fund

Hon. Speaker, Section 29 of this Act provides for the establishment of the Machakos County Persons with disabilities Fund. The Chief Officer informed the Committee that the process of establishing the Machakos County Persons with Disabilities Fund was ongoing and that all the particulars had been forwarded to the Cabinet for approval.

3.2.3 Regulations for the Act

Hon. Speaker, Section 34 of the Act states that, the Executive Committee Member shall in consultation with the Board, make regulations generally for the better carrying out of the provisions of this Act. The Chief Officer informed the Committee that the Department made regulations for the operationalization of the Act and forwarded them to the Cabinet for adoption but were later returned with amendments. The Department incorporated the amendments and forwarded the regulations back to the Cabinet for approval where they are currently. After the cabinet adoption, the regulations will be forwarded to the Assembly for approval.

3.2.4 Availing of resources to achieve full realization of the rights of persons with disabilities

Hon. Speaker, Section 4 of the Act provides that the County Government shall take steps to the maximum of its available resources with a view to achieving the full realization of the rights of persons with disabilities. Towards the realization of this goal, the Chief Officer informed the Committee that for the past three financial years, that is 2018/19, 2019/20 and 2020/21, the Department received a total of Ksh. 10 Million each year. This money was meant for the whole Department and it forced the Chief Officer to divide the amount among five programmes that are under the Department namely;

- (a) Orphans and Vulnerable Children (OVCs)
- (b) Gender-based violence (GBV)
- (c) Persons with Disabilities (PWDs)
- (d) Support for the Elderly
- (e) Civic Empowerment for Women

Hon. Speaker, in view of the above, the PWDs programme has been receiving Ksh. 2 Million per year as opposed to Ksh. 10 Million as provided in the budget. The Committee was also informed that, in the FY 2018/19, the Ksh. 2 Million was used to purchase assistive devices which were distributed to PWDs in the County. In the FY 2019/20, the Department was in the process of procuring more assistive devices with the Ksh. 2 Million but the supplier was not able to supply on time as the shipment was delayed by the outbreak of COVID - 19 pandemic.

In the FY 2020/21, the Committee was informed that the Department has again been allocated Ksh. 10 Million which the Chief Officer intends to divide among the 5 programmes. The department intends to purchase assistive devices like wheelchairs, crutches and white canes. The Chief Officer further informed the Committee that the Department has been requisitioning funds from the Department of Finance and Economic Planning (County Treasury) for projects under the Department but the resources were not availed. The County Executive Committee Member and Chief Officer reported that their hands were tied because they do their part but the County Treasury does not honor their requisitions to avail the funds.

3.2.5 Challenges faced by the Department in the implementation of the Act

Hon. Speaker, the Chief Officer informed the Committee that in implementing the Act, the Department faced a number of Challenges. The main challenges include:

- (i) Slow process by the County Public Service Board (CPSB) in recruiting the Chief Executive Officer (CEO) of the County Persons with Disabilities Board. Without the CEO, the board cannot function and the whole Act at large.
- (ii) A number of clauses need amendments so that implementation is objective. For instance, there was need to have clear qualifications for Members appointed in the Board. There was also need to have further provisions to create linkages such as sub-county committees.

4.0 COMMITTEE OBSERVATIONS

Hon. Speaker, the Committee made the following observations;

1. The Act has not been operationalized since none of the main areas of operationalizing it has been implemented. The Machakos County Board for Persons with Disabilities and the Machakos County Persons with Disabilities Fund have not been operationalized. In addition, regulations for better carrying out of the provisions of this Act have not been forwarded to the Assembly for approval. Further, Ksh. 10 million allocated for PWDs have been reallocated for other uses thus the goal of allocating maximum resources to PWDs has also not been attained.
2. The establishment of a Disability technical working committee is not within the provisions of the Act and hence the Department cannot claim to be implementing the Act. In addition, the Committee noted that, members appointed in the Disability technical working committee were not conversant on matters relating to PWDs as they were handpicked instead of being chosen from groups dealing with PWDs. For instance, there was no representative from the deaf, no interpreter among others. Further, having the members appointed in the Disability technical working committee work on voluntary basis was unfair since they were committing their time and resources for the Committee.
3. The Chief Officer did not provide any documentation to the Committee on submission of requisite documents to the Cabinet for approval to operationalize the Act. The Chief Officer appeared not to know what was happening in the Department concerning PWDs and did not have good knowledge of the Act thus making the Committee doubt her competence. The mix-up of forming the Disability technical working committee which was not provided in the Act instead of a Board which was in the Act clearly shows that the Chief Officer was incompetent.
4. There are gaps in the provisions of the Act. For instance, in section 24 which provides for the qualifications for appointment of a person as a Chief Executive Officer. There is need to include experience in working with persons with disabilities. This will ensure that the person is fully aware of the PWDs' needs. This calls for amendment of the Act.
5. The Department procured assistive devices for PWDs in the 2019/20 which were never delivered to date and there is need to make follow up on the status of the equipment.
6. The Department had proposed that the Assistant Director in Social Welfare and Civic Empowerment be appointed as the Acting Chief Executive Officer (CEO) for the Machakos County Board for Persons with Disabilities while awaiting appointment of

a

CEO by the County Public Service Board (CPSB). There is no need to appoint anybody on acting capacity since the CPSB has not stated challenges in appointing a CEO.

7. The Committee observed that the failure by the County Treasury to release funds as requisitioned by the Department had hindered implementation of PWDs' projects. There is need to have the County Treasury release funds to the Department as requisitioned and on time.

Hon. Speaker: The mandate.

Hon. Muthoka: Okay; the mandate of the County Treasury is to release requested funds as per the Budget to Departments without delay. The Committee is further concerned why the County Treasury has been withholding funds for PWDs thus subjecting to suffering and pain.

8. The Committee observed that the County was lagging behind other Counties such as Kisumu, Meru and Uasin Gishu in implementing PWDs Act. In short those counties have implemented. These Counties have successfully implemented PWDs Act and the Department needs to benchmark with them to learn on the best practices on operationalization of the Act.

5.0 COMMITTEE RECOMMENDATIONS

Hon. Speaker, the Committee guided by the observations made and Standing Order No. 188(2)(b) which states that, the Committee shall scrutinize the resolutions of the Assembly (including adopted committee reports), petitions and the undertakings given by the County Executive Committee and examine whether or not legislation passed by the Assembly has been operationalized and where operationalized, the extent to which such operationalization has taken place within the minimum time necessary makes the following recommendations.

1. The County Executive Committee Member for the Department of Education, Skills Training, Social Welfare and Civic Empowerment and the Chief Officer - Social Welfare and Civic Empowerment should ensure that the Machakos County Persons with Disabilities Act 2016 is implemented within sixty (60) days of approval of this report. Where it is not possible to implement the Act within the stated time, the Executive Committee Member and the Chief Officer should provide the Assembly with a detailed report on why it is not possible; stating clearly the reasons hindering the implementation.
2. The Committee recommends sanctioning of the County Executive Committee Member for the Department of Education, Skills Training, Social Welfare and Civic Empowerment and the Chief Officer - Social Welfare and Civic Empowerment should they fail to implement the Machakos County Persons with Disabilities Act 2016 with sixty days (60) of approval of this report or failure to provide a satisfactory report on the failure to implement the Act citing clearly the reasons hindering implementation.
3. The Chief Officer - Social Welfare and Civic Empowerment should ensure that the amount of Ksh. 10 million allocated to PWDs program is spend on the specific projects as indicated in the Budget for FY 2020/21.
4. The Chief Officer, County Treasury should provide an explanation to the Assembly on why she has not been releasing funds for PWDs as requisitioned by the Department within 21 days of the approval of this report.
5. The Department of Education, Skills Training, Social Welfare and Civic Empowerment should consider benchmarking with the Counties that have successfully operationalized PWDs Act such as Kisumu, Meru, Uasin Gishu among others.

6.0 CONCLUSION AND ACKNOWLEDGEMENT

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

Hon. Speaker, it is therefore my privilege and duty on behalf of the Implementation Committee to table this report on the floor of this Hon. House for consideration and approval. Thank you, Hon. Speaker.

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

(Question proposed)

Hon. Members, the motion is now open for debate. Hon. Museku.

Hon. Museku: Thank you, Hon. Speaker, for again affording me this chance to contribute. First and foremost, I would like to congratulate the chairman and his entire committee for a very well and thoroughly done report. I must say I have personally gone through the entire report and I can attest that they have been very thorough and have covered this very important issue concerning our county pretty well.

Hon. Speaker, it is disheartening to note that the Machakos Persons with Disabilities Act was approved by this Hon. House and ascended in November, 2016 and from November 2016, we are talking about 2017, 2018, 2019 and we are now in 2020; almost four years down the line after the act has been approved or passed it has not been implemented. Madam Speaker, the moral or the morality and development of a people is determined by how they treat not only their peers but how they treat those who are less disadvantaged in their society.

How can we be saying that from 2016 the Persons with Disabilities Act which is in place, a board; a simple thing as beginning the establishment of a board to run the affairs of people with disabilities has not been formed Madam Speaker, since 2016. What are we talking about? Our brothers and sisters who are living with disabilities have been denied what is rightfully theirs which has even been put in law by the Act and we are saying that as a County Government we are doing well. There is no way we can be doing well if that is the situation as it is, Madam Speaker.

That Act establishes the Machakos County Persons with Disabilities Fund. We are talking about a budget here Madam Speaker, which they are giving Ksh. 10 million in the budget and actual allocation goes down to Ksh. 2 million and we are talking about an entire county allocating Ksh. 10 million in the first place in the budget to cater for orphans and vulnerable children, to cater for gender-based violence (GVB people), to cater for people with disabilities, who again you need to subdivide into there are deaf people, there are people who cannot talk, dumb, there are those with physical disabilities. In that PWD alone we have got several categories in it. Then we have the elderly inside there and we have civic empowerment for women inside there Ksh. 2 million.

Yet the Act said we need to put in place a Fund like the way we have the Bursary Fund, like the way we have any other Fund which is there to ensure that funds are allocated and managed in that Fund to assist our people with disabilities. Why have we not been able to create something as important as this Fund? Why have we not been able to put a board in place and when the Chief Officer is asked about it, she now says the papers are before the County Executive Committee, the cabinet for review which tells me that it is only after she got the summoning to come here is when she remembered that there is this and that and I will go and give an answer like that because the

report itself says that she did not show proof that those papers were actually presented before the cabinet. There is no proof that was presented before the committee.

The report also talks about the Chief Officer not being conversant with matters concerning PWDs. Madam Speaker, yet she is the Chief Officer in charge of social welfare and civic empowerment. That is her core business under social welfare, among the core things she should be looking at is issues of PWDs and those of us who are less privileged in society. Madam Speaker, these things I speak with a heavy heart because in my ward, I do have persons living with disabilities and we as a society or as a people have to chip and go into our pockets and assist these people.

I keep on getting in touch with Hon. Justus Katumo for assistance if he has got this equipment or device if we can be able to assist each other to help people in my ward yet they are supposed to be having a fund which is assisting them, Madam Speaker. Now, Madam Speaker, first and foremost, I think this Chief Officer needs to be as the committee has said needs to be looked at to ensure whether she is aware of her mandate and of the things which she is supposed to be doing.

They have also talked about gaps in the Act. For example, they have said in this Act we do not have experience as one of the factors of determining who will become the Chief Executive Officer in charge of this based on what the Act has put. Madam Speaker, the end result of that could be we will end up picking somebody who does not know anything to do with PWDs, who does not have any experience in dealing with these matters and therefore, when they are given Ksh. 2 million they accept it because they do not understand the vastness of the problem on hand. They do not seem to understand how deep this issue is, Madam Speaker.

Finally, the thing that has touched me the most even that Ksh. 2 million Madam Speaker, bought devices and those devices seems they were bought for show because they were bought and they were never delivered. So we have people out there who need these devices to move around, who need... they are basic necessities for them to live and you buy them and then you keep them in the store. That shows you the ineptitude of these people. It shows you that they do not seem to understand the issues they are talking about and what they are supposed to be doing on a day to day basis, Madam Speaker.

I would also appeal to the CECM Finance and the entire team in the Executive and our Chair budget committee, sincerely speaking to allocate more funds for people living with disabilities because when we give Ksh. 10 million for all those sub-sectors I have given you then even if the entire Ksh. 10 million was given, it would be a drop in the ocean. We need to get proper budget which shows all the orphanages in our County which show all the people living with disabilities, what do they require, what aids they require, which show all gender-based violence statistics, how much do we get in GBVs, the elderly how many they are and how much do we allocate there. Civic empowerment, women groups, how many do we have and how much do we allocate there.

So that when we are coming up with a budget we are coming out with a budget not just by assuming Ksh. 10 million is enough but a quantified budget which should be able to cater for all these people and in so doing create the basic minimum amount which should be put in the Machakos County Persons with Disabilities Fund. Which to me should be a kind of a Fund which should be ongoing as the act requires it to be.

So, Madam Speaker, I would like to first of all again say thank you, to the Chair and say that all the recommendations which have been made by that committee should be implemented forthwith, Madam Speaker, and with haste because our people with disabilities have suffered long enough when the law is in place to assist them. Thank you, Madam Speaker.

(Applause)

Hon. Speaker: Thank you, Hon. Museku. Hon. Kisini.

Hon. Kisini: Thank you, Madam Speaker. I stand, first of all to commend the committee and the Chairman, for such a noble and good report. I want to say that they have tried to dissect, to check the inside and the problems we have in this department and which is face by the Hon. Member. Madam Speaker, I also want to echo the Hon. Chair who has just spoken immediately before I took over and say that I also want to emphasis on the recommendation and more specially on No. 4 where the County Treasury should provide an explanation to the Assembly on why she has not been releasing the money for PWDs requisitioned by the department within 21 days of the approval of this report.

Yes, Madam Speaker, it is very important if from 2018/2019 budget the approval of Ksh. 10 million was there and they have been releasing Ksh. 2 million and with problems.

Madam Speaker, you can check what Ksh. 2 million can do in the entire county. In Athi River, is a cosmopolitan county whereby we have some many people with disabilities of various kind. So you can imagine what can be done with Ksh. 2 million or even Ksh. 10 million. So Madam Speaker, I emphasize as that recommendation says within the 21 days we move with speed and the Chief Officer comes and explains.

The other issue I want to raise is that these vulnerable people have no equipment and more specially the bicycles. They come to see us, they visit our offices, they are in problems because of different equipment which they lack. They can also not access the offices which have been constructed because they did not take care of the physically challenged. Madam Speaker, the report and the recommendations and observations talk everything so it is the high time we see to it that this report is fully implemented. Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Kisini. Hon. Katumo.

Hon. Katumo: Thank you, Madam Speaker. I want to commend this committee of implementation. I think they are within their mandate to have come up with this good report that of course generally speaking Madam Speaker, you understand in general terms the County has been very lax in implementing the legislation we have passed in this House. It has been a trend that we do an Act or legislation but it takes eternity for them to implement. It becomes very difficult but on three points I want to say having passed, approved and being the mover of that Act in 2016 in November, we have been pushing for so long and I think our constituency has been hopeful that something is going to be done concerning their affairs.

Madam Speaker, you may think that I am very strong but without these two crutches you will know that I am useless and cannot do anything. So when you do not provide and make sure our members have access to such devices, it becomes very difficult for them to live normally.

Madam Speaker, secondly, the thinking where we have a problem, the thinking of the officers in that department that you can only provide mobility devices is even totally wrong. There are those who do not require mobility devices but they require other things and resources to be able to live a good life. Therefore, it brings to that recommendation that I think there is a gap within that department where always they are saying that they are procuring and buying mobility devices with the amount that we give them.

Thirdly, Madam Speaker, it is disheartening for a Chief Officer who is the custodian of the funds to lie to the committee that they have procured the equipment that was supposed to be 2018/2019 and when we talked to them she was saying that because of Covid-19 they are in the high seas and we requested for documentation and they could not provide. Of course, Madam Speaker, the gist of this House in trying to allocate funds for PWDs becomes an exercise in futility when you give funds and they are not utilized for the intended purposes and therefore, the other side needs to work very hard to make sure that the energy and lobbying mechanisms that we use to get funds is used.

Madam Speaker, it is in this House where a circular was done to all departments to provide the Assembly with the proper allocations as the budget had been approved and assented to by the Governor. Therefore, when in the virtual meeting when we tried to inquire from the Chief Officer and the CEC how much money had been allocated to PWDs, they could not tell, they could not say how much which means they are not aware. Even the money they say they have requisitioned from the other side what do you requisition for if you do not know how much you have? Therefore, it becomes very difficult when you are working with some of these departments when they do not know how much and for what projects and for whom the money has been allocated.

Madam Speaker, if you look at what the report has said if we give or approve Ksh. 10 million for PWDs it becomes Ksh. 10 million for the whole department. I do not think that is proper because we say we have different programs the Ksh. 10 million we allocate specifically for that category becomes the money for the several categories that you have. I think that in budgeting is improper and cannot be allowed to continue like that.

Then Madam Speaker, you also see in the report that I do not know how to operationalize an Act is by yourself doing what you think should be done. The provisions within the Act say that you form a board then the board becomes the one to do the other things. Now you find the Chief Officer and his staff went ahead and appointed a technical committee. You know they use the Sub-County admins to make sure that...bring for me two PWDs from your area, a male and a female and that becomes a technical committee. We have not provided for such.

What should be done is when the board is in place, we will have the opportunity to come up with the committees they think will help them to perform. Madam Speaker, going forward I think it is our request to the other side to become serious and make our work easier for our people.

You see in February this year, I and my colleagues were invited to Kisumu to go and benchmark on the areas they have done for their PWDs in the Act. We borrowed a lot because they have gone ahead; actually I passed the Act before them and then I provided them with the Act itself and they customized the same for their county and they have gone ahead and done the same. I have done the same for Meru County, I have done the same to Kilifi, I have done the same to Uasin-Gishu and they have gone ahead and done something. Therefore, it is my prayer and request that this department will not hesitate but go forth and do that.

Therefore, I support summoning, censure or even impeachment of somebody who is not working. I do not think this County can afford to continue paying somebody who is not doing their work because I am doing my work when the other side does not do its work then it means we are not working and the blame squarely lies on me and the rest and this Assembly.

Then of course there has been also, finally, Madam Speaker, the issue of the County Treasury not releasing the money that has been requested by the departments. It is my observation, I have heard this and the committee has heard this from two to three Chief Officers saying that we are not given the money we requisition for and therefore, I think this House, we can have the Whole House Committee and try to understand why the County Treasury has not been releasing monies to fund various projects that we have. Madam Speaker, I support.

Hon. Speaker: Thank you, Hon. Katumo. Hon. Jacinta.

Hon. (Ms.) Luka: Asante sana Mheshimiwa Spika. Kwa kweli Madam Spika, tumeweza kusikia ripoti na nasimama kuunga mkono kwa vile imeweza kutokeza uwazi ambavyo mambo imekuwa ikiendelea katika Kaunti yetu na vile watu wetu wameweza kunywimwa haki nayo. Na hio ripoti ikianza ilianza na vile katiba inasema kuhusu watu ambao wanaishi na ulemavu, vile ambavyo wanastahili kuchukuliwa na mambo yao vile inastahili kuwa wakitendewa.

Kwa hivyo hio inaonekana wazi yakwamba Kaunti yetu imevunja sheria kwa kutozingatia hayo mambo maana tukiangalia katika hiyo *Act* ambayo ilipitishwa mwaka wa 2016 imechukua muda na sio muda kidogo ni muda mrefu na watu ambao wanaishi na ulemavu si ati hawako. Wako

na wamekuwa wakiteseka na kupitia hayo mambo yote kile ambacho walistahili kutendewa na hawakutendewa wengine ulemavu wao uliweza kuongezeka.

Kwa sababu kama unahitaji kiti cha magurudumu na upati unakaa hapo unakuta ya kwamba kwa vile husongi hafanyi nini ama nini unakuta ulemavu wako umeongezeka na wengine ambao waliitaji kama *white cane* wenye hawaoni kutembea unakuta wengine mtu anaweza kuumia sababu hajui kile ambacho kinamzunguka. Maana hiyo huwa inawasaidia wajue nini iko kand ndio ajue mahali atapitia. Kwa hivyo hio imekuwa haipendezi sana na ndio unaona mabo ikienda vile.

Ndio watu wanaoishi na ulemavu na wanajua shida ambazo wanapitia ambao ni walemavu saa zingine huongea wanasikia moyo uko na ugumu na uko na uzito kwa sababu watu wanateseka na ni haki yao kusaidika na pesa imepitishwa kwa ajili yao lakini haitekelezi vile ambavyo inahitajika. Kwa hivyo *Madam Speaker*, kile ambacho naweza sema ni hatua ichukuliwe ili kila jamba iende vile ambavyo inastahili na kila mmoja akaweze kupata hali yake kulingana na sharia. Asante.

(Applause)

Hon. Speaker: Thank you, Hon. Jacinta. Hon. Members, I call upon the mover of the motion to reply briefly.

Hon. Muthoka: Thank you, Madam Speaker. I want to thank Members for their support and I tell you one thing oversight is not attacking anyone; we have just laid the truth here. You cannot have an Act which was passed in 2016 and you are a Chief Officer receiving a salary, sitting in a big office, having a car, having a driver and when we ask you, you blame the Governor. No, she has to be responsible to her department. Thank you, Members.

(Applause)

Hon. Speaker: Thank you, Hon. Muthoka. Hon. Member I now put the question.

(Question put and agreed to)

So, Hon. Members, it is important that what you resolve in this House is also implemented otherwise it will also be the same issue with the Act. So let us see the implementation of the resolution and for the House I noted, the Table Office I am addressing you, the issue of the need to review the Machakos County Persons with Disabilities Act 2016. That is the work of the Assembly so you need to take note and do what is necessary.

ADJOURNMENT

Hon. Speaker: So, Hon. Members, at this juncture the sitting of the House is adjourned and it is going to resume on the eighth day of September 2020 at 2.30 p.m. thank you.

The House rose at 12.22 p.m.