

REPUBLIC OF KENYA
COUNTY ASSEMBLY OF MACHAKOS
OFFICIAL REPORT

Wednesday, 16th November, 2022

The House met at 2.58 p.m.

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

PRAYERS

Hon. Speaker: Members, it appears we do not have quorum. I suggest that we ring the bell for 10 minutes and then we can commence.

(Quorum Bell rung for 10 minutes)

Members, I wish to add five more minutes. If we do not achieve quorum then we can adjourn. Are we in consensus? Ring the bell for five more minutes.

(Quorum Bell rung)

(Several Hon. Members entered the House)

We now have quorum so we can proceed.

STATEMENT SOUGHT
STATUS OF OPERATIONS AT KANGUNDO LEVEL IV HOSPITAL

Hon. Speaker: May I ask Hon. Dickson Maundu to proceed and seek the Statement.

Hon. Dickson Maundu (Kangundo Central, MCCP): Thank you, Madam Speaker.

Hon. Speaker, Article 43(1)(a) of the Constitution of Kenya provides that every person has the right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care. Part 2(2)(a) and (c) of the Fourth Schedule to the Constitution of Kenya provides that the functions of the County government include County health services, including County health facilities and the promotion of primary health care;

Hon. Speaker, Kangundo Level IV Hospital is in a deplorable state owing to lack of crucial infrastructure such as a perimeter wall, lighting in the facility, broken down mortuary equipment and lack of proper cleaning services;

The facility is within the jurisdiction of the County government and in poor condition with the imminent threat of the staff going on strike and lack of sufficient facilities to enable operations to provide much needed health care;

Hon. Speaker, pursuant to Standing Order 41 of the Assembly Standing Orders, I wish to seek a Statement from the Chairperson of the Assembly Committee on Health and Emergency Services concerning the following matters:

1. Whether Kangundo Level IV Hospital is optimally operational, whether it faces any operational challenges and whether there is any action taken by the County Government to address these challenges;
2. The state of infrastructure at Kangundo Level IV Hospital including perimeter walling, lighting and equipment, particularly mortuary equipment and any steps taken to address any inadequacies;
3. The status of human resource management at Kangundo Level IV hospital including the working conditions for the hospital workers, their welfare and any on-going or planned industrial action by the workers, and the action the County Government has taken so far regarding all these issues.

Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Maundu. I hereby commit that Statement to the Committee Health and Emergency Services to respond on or before 6th December, 2022. Next order.

MOTION

MACHAKOS COUNTY GOVERNMENT EXECUTIVE STAFF CAR AND MORTGAGE FUND REGULATIONS, 2022

Hon. Speaker: I call upon Hon. Francis Ngunga, the Chairperson to Delegated County Legislation Committee to move the Motion.

Hon. Francis Ngunga (Mua, MCCP): Thank you, Madam Speaker. I have a report as I moved it in the morning and the report is with you Members. Madam Speaker, with your guidance and I can see if we are not careful, we are likely to run out of quorum so Madam Speaker, I will be very technical in making sure that we go through this report quickly.

Madam Speaker, this is approval of report on consideration of the Public Finance Management (Machakos County Government Executive Staff Car and Mortgage Fund) Regulations, 2022 that I read in the morning.

Hon. 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;

Further aware that Article 95(6) of the Constitution 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;

Acknowledging that the Public Finance Management (Machakos County Government Executive staff car and mortgage fund) Regulations, 2022 were published in the Kenya Gazette vide Legal Notice No. 18 of 2012 and

submitted to the Clerk of the County Assembly for consideration in line with section 11 of the Statutory Instruments Act, 2013;

Cognizant that the Regulations seek to provide financing for the purchase, construction or development of a residential property and for the purchase of private cars by qualifying members of the Machakos County public service staff and employees;

Hon. Speaker, I wish to move the motion THAT pursuant to the Standing Order 189(B), this Hon. House approves Delegated County Legislation Committee report on consideration of the Public Finance Management (Machakos County Government Executive staff car and mortgage fund) Regulations, 2022.

So, Madam Speaker, there we are. I now propose the Question.....sorry---

Hon. Speaker: I request that you that there is a brief report.

(Laughter)

Hon. Francis Ngunga (Mua, MCCC): Yes Madam Speaker.

Hon. Speaker: You want to usurp my powers?

(Laughter)

What I would suggest Mheshimiwa Ngunga, there is a brief report so you could go through it briefly so that members can understand what it is instead of going on the bigger report brief one.

Hon. Mbili Ndawa (Matuu, MCCC): Madam Chair, point of information.

Hon. Speaker: Yes.

Hon. Mbili Ndawa (Matuu, MCCC): The motion has been moved but has not been seconded so it cannot stand.

Hon. Speaker: I wanted him to give a brief then I asked him to ask a member to second.

Hon. Mbili Ndawa (Matuu, MCCC): Brief on the motion or the report because the motion has to be seconded; it is a requirement.

Hon. Speaker: Then seconding comes first and then he gives a brief report; which comes first? Is it the egg or the chicken? Then finish with the report. I am guided that you finish with the report, then you call a seconder and then we move

Hon. Francis Ngunga (Mua, MCCC): That is it, Madam Speaker, thank you. So then Members, let us go to the report that is there. That report there establishes the preface there is the one that gives a brief outline on the committee's mandate. The Committee on Legislation is actually a very technical committee, Members. If you look at No.2, we have about those as our spheres where we are supposed to operate and they are really technical.

If you look at 1.2, you will see the combination of the technical members that I work with the 13 Members in my committee and we are beefed up by a secretariat that has five members and Madam Speaker it is worth noting that we also have an attachment of a legal officer in this committee. It is a very technical committee so we cannot do without a legal officer and I am pleased, Madam Speaker, we have one that has been able to assist us.

If you go to article 2, that is where we have the consideration of the Public Finance Management Regulations 2022, and the introduction background, Madam Speaker, I think I can mention something about that. Members, the Public Finance Management Regulations, the ones we are talking about were made by His Excellency, the Deputy Governor of Machakos, County executive committee and economic planning pursuant to Section 116, Part one of the Public Finance Management Act 2012, which empowers the account executive committee member to make regulations establishing public funds.

The Regulations were published in the Kenya Gazette on the 18th January, 2022, through a Legal Notice No. 18 of 2012 submitted to the Clerk of the County Assembly on the 3rd February, 2022 and subsequently laid in the House or in this House on the 30th March, 2022. Members therefore, we can see we have a history about what we were talking about.

The purpose of these Regulations was to seek to provide financing for the purchase, construction or development of our residential property and for the purchase of private cars by qualified members of the Machakos County Public Service staff and employees. So we have the overview there of the Regulations and Madam Speaker, and on behalf of the Members, we had a very robust engagement with the Members and went through all the Regulations thoroughly.

For your information, the Regulations are there they are captured there. Regulation 8(1) provides for citation and the definition of the terms. We have part 9 that talks about provides the establishment of the fund under the county department, regulation No. 4 provides objectives and purpose of the funds; I am on page 9 Members. Then we are part three (3) where we have the Regulation relates to the management and administration of the fund, and in this case, regulation six (6) establishes the advisory and loans management committee.

I think it is important that I mention how this committee or this fund is going to be managed by whom. Firstly, the County Executive Committee Member responsible for public service shall be the chairman. County Executive Committee Member responsible for County Treasury shall be a member, the County Attorney, the Chief Officer responsible for public service shall be an *ex officio* member and the Secretary, Chief Officer responsible for housing and planning shall be a member, Chief Officer responsible for transport again, then we shall have a secretary or Chief Officer of the County Public Service Board (??)

Regulation 7 is talking about advisory on the loans. Number 12 is talking on the functions of the advisory committee and that he says; it will include processing of application loans in accordance with what.....that is normal conventional, it is actually conventional Members. Then we have regulation No. 10 there which relates to administration of the fund how this fund is going to be administered and this recognizes the Chief Officer responsible for public service is a Fund Administrator, which with the following responsibilities, the responsibilities are highlighted there.

- (a) To supervise and control the administration of the fund;
 - (b) Request the board for appointment of such staff as may be necessary to assist in the administration of the funds.
 - (c) Utilize the interest accruing to the fund to pay for operating expenses and may impose any reasonable restrictions or other requirements or the use of the fund.
- May be members you may need to not No. (c), because it will interest you elsewhere along the report.

- (d) With the approval of the County Executive Committee Member of finance, open and manage the bank accounts for the funds in accordance with the Public Finance Management Act of 2012.
- (e) Keep books of accounts and other records in relation to the fund including all the loans financed from the fund in accordance with the Public Finance Management Act.
- (f) Prepare sign and transmit to the Office of the Auditor General in respect of each financial year a statement of accounts showing the expenditure incurred from fund in such details as the County Treasury may from time to time direct in accordance with the public when Finance Management Act of 2012.
- (g) Provide any additional information as may be required for the purpose of examination and audit by the Office of the Auditor General.

So regulation No. 11 is here relates to the appointment of Fund Manager that were necessary. No. 15 contains the regulations gives condition for disbursement how the fund is going to be disbursed. Regulation 15 provides a temporary release of the documents that are going to be held by the fund. No. 16 again, provides for administration of the mortgage where Regulation 17 and 18 provide an application for a mortgage. I mean, how application for a mortgage shall be administered and that will be accompanied by the following. These are normal conventional things, Members and these are things that you I am sure you're already aware and experiencing.

From there we got Regulation 19. Again Members we are keen there you see this gives a direction to know the loan shall be granted where it comes to leasehold, where maybe the property that they have given out is leasehold, No. 19 gives Regulations on how a mortgage will be protected. No. 20 gives provision for loan repayment how it is going to be repaid.

Then from there we went to scrutinizing on the instrument and committee observation, this is where members want you to be keen because a committee was interested in this particular area. With the Regulations having been published on 18th January, 2022, received by the Clerk of County Assembly on 3rd February, 2022 and subsequently submitted to the Committee for consideration on the 30th March, 2022, the committee observed the following:

Statutory timelines

That the regulations where published in the Kenya gazette vide Legal Notice No. 18 of 2012 and submitted to the Clerk of the County Assembly for consideration in line with Section 11(1) of the Statutory Instruments Act, 2013.

Conformity of the regulations with other written laws

Madam Speaker, it is worth noting that one of the mandates of this committee is to ensure that the laws that are passed are in conformity with all the other statutory legislations exist. That the Machakos County Government (Executive staff car and mortgage fund) Regulations, 2022 conforms to the Constitution of Kenya, the PFM Act of 2012, Statutory Instruments Act, 2013 and other related laws except Regulation Section 23(4) which contravenes SRC circular Ref No. SRC/Admin/CIR 113/Vol.3/128 dated 17th December, 2014 as relates to the car loan and mortgage scheme for state officers and other public officers of the Government of Kenya.

Madam Speaker, the above stated regulations inappropriately delegates powers to the Fund Manager to charge an additional one per cent the loan granted to the borrower on top of the three per cent of the interest rate charged under Regulation 22(1) contrary to the aforementioned SRC circular hence not within the law.

Committee recommendations

Having examined the PFM Act here cited the Machakos County Government (Executive staff car and mortgage fund) Regulations, 2022 against the Constitution of Kenya, the PFM Act 2012, Statutory Instruments Act, 2013 and other related laws, the committee recommends that pursuant to Standing Order 189(b), the House annuls Regulation 23(4) as it contravenes SRC circular for inappropriately delegating powers to the Fund Manager to charge an additional one per cent of the loan granted to the borrower on top of the three per cent of the interest rate charged under the Regulations 22(1). Thank you, Madam Speaker.

Madam Speaker, with your advice before I call a seconder, for ease of debate, I want to say that we have been to consider these Regulations as a committee that came before us very keenly and we thought that these Regulations were conforming to all the laws other than just that one element we picked as a committee under the guidance of the legal officer and we felt that the Fund Manager had been delegated extra powers where they are given an extra power to charge an extra one per cent on interest rate on top of the three per cent allowable by the government.

Therefore we felt that this report will need to be taken back to the Chief Officer, Finance so that he does away with that Section 23(4) so that it comes again to the committee and eventually to the House for eventual purpose. Madam Speaker, the purpose of our committee is to ensure that the legislation that is passed here conforms to the statutory documents that exist in this country. So, Madam Speaker, it is our guided opinion that this House puts aside this report for the purpose of trying to rectify that one Section and then we shall have a way forward.

Madam Speaker, it is very important to note that for the last 10 years the staff that serve us diligently have not been able to enjoy this facility so it is a matter of county importance. Madam Speaker, with your indulgence, I want to ask Hon. Maeke to second this report. Thank you, Madam Speaker.

Hon. Speaker: Thank you very much, Mheshimiwa. Hon. Maeke.

Hon. Musyimi Maeke (Kalama, CCU): Thank you very much, Madam Speaker. I second the motion. As a Member of the Delegated Legislation Committee, as the Hon. Member from Mua has explained to the House, there is need for this House to make those considerations because all the laws that this Assembly makes should not be punitive.

I was mathematically looking at the one per cent that is being added and it may be like so in paper but it translated to a lot of money because if you are taking a loan of Ksh. 5 million, one percent translates to Ksh. 50,000 and if you are giving to 1,000 members it translates to almost Ksh. 50 million. You find that in the amounts they were inserting one per cent meant for administration yet the three per cent as it has been alluded to is already taking care of the administrative expenses.

So our prayer is that this House will also make a consideration of letting.....so that we do not pass rules that are going to be so oppressive to the staff members and owing to the fact that this kitty acts as a motivation because some of our salaries are very low and in this House, it is evident that we are struggling to get quorum because there is no motivation and I believe of these monies are availed to these Members who are working for this County Assembly, it will be very helpful to them.

So I second the motion that the report goes back to the concerned Finance Department and they come up with proper Regulations which are not punitive and then it is adopted with urgency for them to enjoy. Thank you very much.

Hon. Speaker: Thank you very much, Mheshimiwa Maeke.

(Question proposed)

I now invite Members to debate this motion. Mheshimiwa Muoki.

Hon. Muoki Musila (Ndithini, WDM-K): Madam Speaker, I think the committee on Delegated Legislation did a very good job and I am kind of not very happy with the one per cent that is being surcharged on the administration of the fund. I thought those who are going to administrate are employees of the same county meaning that they will be paid twice for the same service. So, I am saying the path that has been taken by the committee is the best; let us delete that and then bring it back here we support it. As I sit down I am saying I support the motion. Thank you.

Hon. Speaker: Thank you, Mheshimiwa. I need more contribution from Members. Mheshimiwa Lucky.

Hon. Lucky Nzau (Matungulu West, WDM-K): Thank you, Madam Speaker. I stand positive of the motion but with some questions because it is touching on the welfare of the staff of the county. I would say I appreciate the Committee and the Chair; they did a good job, beautiful, well-articulated, well-prepared and organized. Madam Speaker, I would like to say with the current exercise in the county about the employees and staff, this motion would be best fitted when it comes after the task force report is out and the situation of staff be cleared because if it goes through at this time the county may stand the risk of losing a lot of funds by giving funds to unwarranted staff. I support that we defer the motion to another time. Thank you, Madam Speaker.

Hon. Speaker: Thank you, Mheshimiwa Lucky. Any more contributions from Members? I therefore invite the mover of the motion to reply.

Hon. Francis Ngunga (Mua, MCCP): Thank you, Madam Speaker and Hon. Members, for your patience and giving us the support that you have and I think Madam Speaker, it is worthy highlighting Hon. Whip said the House makes laws and these laws are not tailored for any particular consumption. You know laws are universal and whoever is found by these laws will consume them.

Madam Speaker, I am hoping that the House finds favor in passing this report whether, we are going to have 200, 5,000 or 10,000 members of staff, they are going to consume these laws. These laws are not tailored for any particular person. It is actually laws that are going to be consumed by the county. Let me suffice to say that Madam Speaker, the Committee on Delegated Legislation is one misunderstood committee but it is one committee that would need to ask for support from this House because going round when we were getting our legacy report, we realize that there is so much legislation that is lying in our shelves here that have been passed by this House but has not been made operational.

With your support Members and support of my committee, we are going to dust those shelves and we are going to wake up to the occasion and ensure that legislation is followed. We have so many Acts that have not been operationalized. Acts are there but Regulations have not been brought to this House. We are going to ensure as a committee those Regulations are

brought to this House, debated, passed and given to the relevant departments for eventual consumption.

Madam Speaker, I want to thank your office. I want to thank the Members for the support and I want to say that we are up to the task. Our biggest role here is to legislate; our biggest role here is to pass laws. That is why Madam Speaker, I was at 8.00 a.m. to prepare. You must have heard this report was well-versed. Thank you, Madam Speaker.

Hon. Speaker: Thank you very much, Mheshimiwa. I now put the question.

(Question put and agreed to)

(Applause)

ADJOURNMENT

Hon. Speaker: Therefore, there been no more business the House adjourns to Tuesday 22nd November, 2022 at 10.00 a.m. Thank you, Members.

The House rose at 3.41 p.m.