

REPUBLIC OF KENYA
MACHAKOS COUNTY ASSEMBLY

OFFICIAL REPORT

Wednesday, 5th December, 2018

The House met at 3.54 p.m.

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

PRAYERS

Hon. Deputy Speaker: Good afternoon. Mr. Clerk, proceed.

PAPERS LAID

REPORT OF ENVIRONMENT, LANDS, ENERGY AND NATURAL RESOURCES COMMITTEE OF
THE SECOND ASSEMBLY ON VETTING OF THREE NOMINEES FOR THE POSITION OF CHIEF
OFFICERS

Hon. Kisini: Thank you, Hon. Speaker. Hon. Speaker, I beg to lay the following paper on the table of the House today Wednesday, the 21st day of November, 2018; the report of Environment, Lands, Energy and Natural Resources Committee of the Second Assembly on the vetting of three nominees for the position of Chief Officer. Thank you.

Hon. Deputy Speaker: Thank you, Hon. Member. Hon. Moses Mitaa.

REPORT OF AGRICULTURE COMMITTEE OF THE SECOND ASSEMBLY ON VETTING
OF TWO NOMINEES FOR THE POSITION OF CHIEF OFFICER

Hon. Mitaa: Thank you, Hon. Speaker. Hon. Speaker, I beg to lay the following paper on the table of the House today Wednesday, the 21st day of November, 2018; the report of Committee on Agriculture on vetting of two nominees for the position of Chief Officer. Thank you, Hon. Speaker.

Hon. Deputy Speaker: Thank you, Hon. Moses. Hon. Irene Mbivya.

REPORT OF TRANSPORT AND PUBLIC WORKS COMMITTEE OF THE SECOND
ASSEMBLY ON VETTING OF TWO NOMINEES FOR THE POSITION OF CHIEF OFFICER

Hon. (Ms.) Mwende: Thank you, Mr. Speaker and Hon. Members. Hon. Speaker, I beg to lay the following paper on the table of the House today Wednesday, the 21st day of November,

2018; the report of Committee of Transport and Public Works on vetting of two nominees for the position of Chief Officer. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you, Hon. Irene. Hon. Cosmus Masesi. Hon. Cosmas Kieti. Hon. Members, you have business before the House and you are coming to the House late. Could I have Hon. Cosmus Masesi lay the Paper followed by Hon. Cosmas Kieti, please.

REPORT OF HEALTH AND EMERGENCY SERVICES COMMITTEE OF THE SECOND ASSEMBLY ON VETTING OF TWO NOMINEES FOR THE POSITION OF CHIEF OFFICER

Hon. Masesi: Thank you, Mr. Speaker. I am sorry for being late a bit. Hon. Speaker, I beg to lay the following paper on the table of the House today Wednesday, the 21st day of November, 2018; the report of Committee on Health and Emergency Services on vetting of two nominees for the position of Chief Officer. Mr. Speaker, I lay the paper.

Hon. Deputy Speaker: Thank you, Hon. Cosmus Masesi. Hon. Cosmas Kieti.

REPORT OF TRADE, ECONOMIC PLANNING AND INDUSTRIALIZATION COMMITTEE OF THE SECOND ASSEMBLY ON VETTING OF NOMINEES FOR THE POSITION OF CHIEF OFFICER

Hon. Kieti: Thank you, Mr. Speaker. Hon. Speaker, I beg to lay the following paper on the table of the House today Wednesday, the 21st day of November, 2018; the report of the Trade, Economic Planning and Industrialization Committee of the Second Assembly on the vetting of one nominee for the position of Chief Officer. Thank you. Hon. Speaker, I lay the Paper.

Hon. Deputy Speaker: Thank you, Hon. Cosmas Kieti. Mr. Clerk, proceed.

NOTICES OF MOTIONS

REPORT OF ENVIRONMENT, LANDS, ENERGY AND NATURAL RESOURCES COMMITTEE OF THE SECOND ASSEMBLY ON VETTING OF THREE NOMINEES FOR THE POSITION OF CHIEF OFFICERS

Hon. Kisini: I wish to give a Notice of Motion as read below.

Hon. Speaker, that aware that section 45(1)(a) and (b) of the County Governments Act 2012 requires the Governor to nominate qualified and experienced County Chief Officers from among persons competitively sourced and recommended by the County Public Service Board with the approval of the County Assembly;

Aware that H.E Dr. Alfred N. Mutua, the Governor of Machakos County submitted to the County Assembly a list of nominees for vetting for the position of County Secretary and Chief Officers on 1st August, 2018;

Aware that three nominees were committed to the Environment, Lands, Energy and Natural Resources Committee on 7th August, 2018 pursuant to Standing Order 42(1) for vetting and approval;

Noting that the Committee conducted approval hearings of the nominees on 1st, 2nd and 4th October, 2018 and that it has compiled a report;

Hon. Speaker, I wish to give notice of the motion that, this Hon. House discusses and approves the Report of Environment, Lands, Energy and Natural Resources Committee of the Second Assembly on the vetting of three Nominees for the position of Chief Officer.

Thank you, Mr. Speaker; I give the notice.

Hon. Deputy Speaker: Thank you, Hon. Robert Kisini. Hon. Moses Mitaa.

REPORT OF AGRICULTURE COMMITTEE OF THE SECOND ASSEMBLY ON VETTING
OF TWO NOMINEES FOR THE POSITION OF CHIEF OFFICER

Hon. Mitaa: Thank you, Mr. Speaker.

Hon. Speaker, that aware that section 45(1)(a) and (b) of the County Governments Act 2012 requires the Governor to nominate qualified and experienced County Chief Officers from among persons competitively sourced and by the County Public Service Board with the approval of the County Assembly;

Aware that H.E Dr. Alfred N. Mutua, the Governor of Machakos County submitted to the County Assembly a list of nominees for vetting for the position of County Secretary and Chief Officers on 1st August, 2018;

Aware that two nominees were committed to the Committee on Agriculture on 7th August, 2018 pursuant to Standing Order 42 (1) for vetting and approval;

Noting that the Committee conducted approval hearings of the nominees on 1st and 3rd October, 2018 and that it has compiled a report;

Hon. Speaker, I wish to give Notice of the motion that this Hon. House discusses and approves the report of Committee on Agriculture on the vetting of two nominees for the position of Chief Officer.

Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you, Hon. Moses. Hon. Irene Mbivya.

REPORT OF TRANSPORT AND PUBLIC WORKS COMMITTEE OF THE SECOND
ASSEMBLY ON VETTING OF TWO NOMINEES FOR THE POSITION OF CHIEF OFFICER

Hon. (Ms.) Mwende: Thank you, Mr. Speaker.

Hon. Speaker, that aware that section 45(1)(a) and (b) of the County Governments Act 2012 requires the Governor to nominate qualified and experienced County Chief Officers from among persons competitively sourced and recommended by the County Public Service Board with the approval of the County Assembly;

Aware that H.E Dr. Alfred N. Mutua, the Governor of Machakos County submitted to the County Assembly a list of nominees for vetting for the position of County Secretary and Chief Officers on 1st August, 2018;

Aware that two nominees were committed to the Committee on Transport and Public Works on 7th August, 2018 pursuant to Standing Order 42(1) for vetting and approval;

Noting that the Committee conducted approval hearings of the nominees on 1st and 2nd October, 2018 and that it has compiled a report;

Hon. Speaker, I wish to give Notice of the motion that this Hon. House discusses and approves the report of committee on Transport and Public Works on the vetting of two nominees for the position of Chief Officer.

Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you, Hon. Irene. Hon. Cosmus Masesi.

REPORT OF HEALTH AND EMERGENCY SERVICES COMMITTEE OF THE SECOND ASSEMBLY ON VETTING OF TWO NOMINEES FOR THE POSITION OF CHIEF OFFICER

Hon. Masesi: Thank you, Mr. Speaker.

Hon. Speaker, that aware that section 45(1)(a) and (b) of the County Governments Act 2012 requires the Governor to nominate qualified and experienced County Chief Officers from among persons competitively sourced and recommended by the County Public Service Board with the approval of the County Assembly;

Aware that H.E Dr. Alfred N. Mutua, the Governor of Machakos County submitted to the County Assembly a list of nominees for vetting for the position of County Secretary and Chief Officers on 1st August, 2018;

Aware that two nominees were committed to the Committee on Health and Emergency Services on 7th August, 2018 pursuant to Standing Order 42(1) for vetting and approval;

Noting that the Committee conducted approval hearings of the nominees on 1st and 2nd October, 2018 and that it has compiled a report;

Hon. Speaker, I wish to give Notice of the motion that, this Hon. House discusses and approves the report of committee on Health and Emergency Services on the vetting of two nominees for the position of Chief Officer.

Thank you, Hon. Speaker.

Hon. Deputy Speaker: Thank you, Hon. Cosmus Masesi. Hon. Cosmas Kieti.

HOUSE TO DISCUSS AND APPROVE THE REPORT OF TRADE AND ECONOMIC PLANNING COMMITTEE ON THE VETTING OF ONE NOMINEE FOR THE POSITION OF CHIEF OFFICER

Hon. Kieti: Thank you, Mr. Speaker.

Hon. Speaker, that aware that section 45(1)(a) and (b) of the County Governments Act 2012 requires the Governor to nominate qualified and experienced County Chief Officers from among persons competitively sourced and recommended by the County Public Service Board with the approval of the County Assembly;

Aware that H.E Dr. Alfred N. Mutua, the Governor of Machakos County submitted to the County Assembly a list of nominees for vetting for the position of County Secretary and Chief Officers on 1st August, 2018;

Aware that one nominee was committed to the Trade, Economic Planning and Industrialization Committee on 7th August, 2018 pursuant to Standing Order 42(1) for vetting and approval;

Noting that the Committee conducted approval hearings of the nominee on 2nd October, 2018 and that it has compiled a report;

Hon. Speaker, I wish to give notice of the motion that, this Hon. House discusses and approves the report of the Trade, Economic Planning and Industrialization

Committee of the Second Assembly on the vetting of one nominee for the position of Chief Officer.

Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you, Hon. Cosmas Kieti. Mr. Clerk, proceed.

MOTIONS

HOUSE DISCUSSES AND APPROVES A JOINT COMMITTEE REPORT ON IMPLEMENTATION STATUS OF MACHAKOS COUNTY SAND HARVESTING ACT, 2014.

Hon. Kisini: Again, Mr. Speaker, I am on the floor to give the Motion.

Mr. Speaker, that aware that the preamble to the Kenya Constitution provides that the Kenyan are respectful of the environment which is their heritage and determined to sustain it for the benefit of future generations;

Article 42(a) of the Constitution provides that every person has the right to a clean and healthy environment, which includes the right to have the environment protected for the benefit of present and future generations through legislative and other measures;

Aware that Machakos County Assembly enacted the Machakos County Sand Harvesting Act, 2014 whose section 3 states the objects and purpose of the Act is to provide legislative framework for regulating sand harvesting and to provide for the rehabilitation and protection of the environment from harmful effects of sand harvesting and related activities;

Further aware that the Environment Management and Coordination Act (EMCA) 1999 provides that sand harvesting can only take place after a proper Environmental Impact Assessment has been carried out with the approval of technical sand harvesting committees;

Aware that the sand harvesting management committee which is responsible for the proper management of the environment within the County has not been gazetted;

I wish to move the motion that this house discusses and approves a joint committee report on implementation status of Machakos County Sand harvesting Act, 2014.

Thank you, Mr. Speaker. I wish to call my Co-Chair on the Committee of Justice, Hon. Moffat Maitha to second the Motion.

Hon. Maitha Seconded the Motion.

Hon. Deputy Speaker: Thank you, Hon. Moffat. Hon. Kisini.

Preface

Hon. Speaker, the Fourth Schedule of the Constitution of Kenya, 2010 bestows County Government with matters of implementation of specific national government policies on natural resources and environmental conservation including soil and water conservation. Further Article 42(a) stipulates that every person has the right to a clean and healthy environment, which includes the right to have the environment protected for the benefit of present and future generation through legislative and other measures.

Sand harvesting is a major activity along most river banks in Machakos County due to an increasing demand of housing and development in the construction industry. This increased

demand of the resource is making sand harvesting to be widespread, highly unregulated, and uncontrolled and is being carried at an alarming rate. The transporters are making fortune in Nairobi while those scooping and loading living in poverty.

Joint Sitting of Committee of the Assembly

The joint sitting of Justice and Legal Affairs and Environment, Lands, Water and Natural Resources Committee is provided for under Standing Order 182(1) of County Assembly Standing Orders which states that “the two committees of the Assembly considering similar matters may, with the approval by speaker, hold joint sittings.”

The two Committees are established pursuant to the Standing Order 190(1) which states that “there shall be select Committees to be known as Sectoral Committees whose members shall be nominated by the Selection Committee in consultation with Assembly parties at the commencement of every Assembly.”

Committal to the Joint Committee

Hon. Speaker, a motion by Hon. Justus Kiteng’u was moved in the House requesting, for the suspension of the sand harvesting in Kivaa ward for a period of five years since the activities are detrimental to public health and had resulted to environmental degradation. Guided by several motions which the House had earlier approved suspending sand harvesting activities in various wards, the matter was referred to the joint Committee on Justice and Legal Affairs and Environment, Lands and Natural Resources to review the existing Machakos County Sand Harvesting Act, 2014, assess the impact of sand harvesting in the County and report the committee’s findings and recommendation.

Committee Mandate

The Joint Committee draws its mandate from the mandate of the two committees which are provided for in the Second Schedule of the Machakos County Assembly Standing Orders. Justice and Legal Affairs is mandated to 'constitutional affairs, the administration of law and justice, including the elections, ethics, integrity and anti-corruption and human rights while the Committee on Environment, Lands, Water and Natural Resources is mandated to “deal with all matters related to the implementation of specific national government policies on natural resources and environmental conservation, including soil and water conservation and forestry and control of air pollution, noise pollution, other public nuisances, and outdoor advertising; land survey and mapping, boundaries and fencing; electricity and gas reticulation; energy regulation; water management systems in built up areas and watersanitation services.

Committee Membership

The Membership for the Joint Committee is composed of members from Justice and Legal Affairs Committee and Environment, Lands, Water and Natural Resources Committee which comprises the following members:

1. Hon. Robert Kisini -Chair Environment Committee
2. Hon. Moffat Maitha -Chair Justice and Legal Affairs Committee
3. Hon. Christine Koki
4. Hon. Jane Nyawira
5. Hon. Alex Kamitu

6. Hon. Brian Kisila
7. Hon. Cosmas Kieti Muia
8. Hon. Jeremiah Munguti
9. Hon. George King'ori
10. Hon. Hellen Ndeti
11. Hon. Jacqueline Nziva
12. Hon. Joseph Musau
13. Hon. Mark Muendo
14. Hon. Michael Mutiso
15. Hon. Eric Musembi
16. Hon. Alice Nzioka
17. Hon. Dominic Ndambuki
18. Hon. Francis Kalumu
19. Hon. Patrick Kituku
20. Hon. Mohammed Ali
21. Hon. Cosmas Masesi
22. Hon. Stephen Mwanthi
23. Hon. Tariq Mulatya
24. Hon. Winfred Mutua

Terms of Reference

Hon. Speaker, in line with the provisions of the Constitution of Kenya, Article 42(b), the County Governments Act and the Standing Orders of County Government of Machakos, the terms of reference of the joint committee with respect to the tasks assigned by the House were:

1. To ascertain the implementation status of the existing Machakos County Sand and Harvesting Act, 2014.
2. To assess the impact of sand harvesting in the County and the extent to which the activities has affected the physical environment.
3. To report the committee's finding and recommendations.

LEGAL FRAMEWORK

A. Constitution of Kenya

Hon. Speaker, the preamble to the Kenyan Constitution provides that the Kenyan are respectful of the environment which is their heritage and determined to sustain it for the benefit of future generations. Article 42(a) of the Constitution provides that 'every person has the right to a clean and healthy environment, which includes the right to have the environment protected for the benefit of present and future generations through legislative and other measures.

Article 69(1)(a),(d),(e),(f) and (g) and (2) provides that the state will have mandate to; ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits; encourage public participation in the management, protection and conservation of the environment; protect genetic resources and biological diversity; establish systems of

environmental impact assessment, environmental audit and monitoring of the environment; eliminate processes and activities that are likely to endanger the environment.

In addition, Hon. Speaker, Article 70(1) of the Constitution provides for the enforcement of environmental rights by any person on allegations that their right to a clean and healthy environment is recognized and protected while Section 2(c) of part 1 of the Fourth Schedule of the Constitution stipulates that protection of the environment and natural resources with a view to establish a durable and sustainable system of development, including, in particular water protection and securing sufficient residual water which is a function of the national government and further, Section 10(a) of the part 2 of the Fourth Schedule of the Constitution provides that implementation of specific national government policies on natural resources and environmental conservation, including soil and water conservation is a function of the County Governments.

B. Environmental Management and Coordination Act

Hon. Speaker, Section 3 of the Environmental Management and Coordination Act reinforces the provisions of Article 42(a), (b) and 70(1) and (2) of the Constitution which seeks for the conservation of environment for present and future generation as well as enforcement of environmental right.

Section 29(1) and (2) of the Environmental Management and Coordination Act establishes a County Environment Committee for each county which is constituted by the Governor and Section 30 of the Environmental Management and Coordination Act provides that the functions of the County Environment Committee is proper management of the environment within the county for which it is appointed, development of a county strategic environmental action plan every five years and perform such additional functions as are prescribed by this Act or as may, from to time, be assigned by the Governor by notice in the Gazette.

Section 40(1) and (2) of the Environmental Management and Coordination Act makes provisions for County Environment Action Plan which shall be prepared by the County Environment Committee for consideration and adoption by the County Assembly.

In preparing the County Environment Action Plan, the County Environment Committee sought to undertake public participation and take into consideration every other county environment action plan already adopted with a view to achieve consistency among such plans.

Section 41A(1)(i),(ii) and (iii) of the Environmental Management and Coordination Act provides that the purposes of the Environmental Action Plans is to co-ordinate and harmonize the environmental policies, plans, programs and decisions of the national and county governments, as the case may be, in order to minimize the duplication of procedures and functions and promote consistency in the exercise of functions that may affect the environment, secure the protection of the environment across the country and prevent unreasonable actions by any person, state organ or public entity in respect of the environment that are prejudicial to the economic or health interests of other counties or the country.

Section 42(b)(I) and (g) of the Environmental Management and Coordination Act forbids any person without prior approval of the Authority given after an environmental

impact assessment, in relation to a river, lake, sea or wetland in Kenya from undertaking activities that relates to the following: excavate, drill, tunnel or disturb the river, lake, sea or wetland, direct or block any river, lake, sea or wetland from its natural or drain any lake, river, sea or wetland

C. **Machakos County Sand Harvesting Act, 2014**

Hon. Speaker, County Government of Machakos drawing from the principle of devolution enshrined in the Kenyan Constitution 2010, enacted as a county legislation 'the Machakos County Sand Harvesting Act 2014' which provides sand harvesting and management committee, designate sand harvesting sites, rivers bed and lake shore harvesting, hours of harvesting and transporting sand, licensing of harvesting, sale of sand, environmental impact assessment and enforcement mechanisms.

The Machakos County sand harvesting committee was established by section 4 and 5 of the Machakos County Sand harvesting Act whose function includes to maintain a register of all sand dealers, advise executive committee member on the structure and operations of sand harvesting and related activities, ensure that sand harvesting activities are compliant with this Act and any national norms and standards, ensure sustainable exploitation and utilization of sand resource, collaborate with other environmental agencies in management of environment as relates to matters of sand harvesting, formulate environmental conservancy programs in relation to sand harvesting, recommend to the executive committee member designated sand harvesting areas for gazettelement and recommend designated roads for transportation of sand and other excavated material in accordance with the Act.

Request for Status Report on the Implementation of Machakos County Sand Harvesting Act, 2014

Hon. Speaker, the joint committee through a letter requested the Chief Officer to provide the committee with the following information as relates to the implementation of the Machakos County Sand harvesting Act, 2014.

1. List of all registered sand dealers operating within Machakos County pursuant to the provisions of section 5(1) of the Act which mandates the County Sand Harvesting and Management Committee to maintain a register of all sand dealers.
2. Whether the Sand Harvesting Management Committee has undertaken any public participation as relates to their functions pursuant to the provisions of section 5(1)(a) and if so, the Chief Officer was required to provide a comprehensive documentation relating to the public participation activities.
3. Comprehensive information relating to the Sand Harvesting Associations approved by the Sand Harvesting Management Committee for vetting by the county assembly pursuant to section 6(1) and (2) of the Act.
4. Gazetted designated sand harvesting sites issued pursuant to section 8(1) of the Act.
5. Comprehensive information as to why sand harvesting and transportation is being conducted within the outlawed hours between 6.00

- p.m and 6.00 am contrary to section 11(a) and (b) of the Act.
6. Minimum pricing guidelines for sand issued by the Sand Harvesting Management Committee pursuant to section 12(1) of the Act.
 7. Whether there has been any rehabilitation done subject to issuance of sand harvesting activities pursuant to the provisions of section 18(a) of the Act. If so, provide comprehensive information on the said rehabilitated areas.
 8. Whether any order has been issued authorizing the closure of any sand harvesting site made pursuant to section 28(1) of the Act and if so provide comprehensive documentation subsequent therefor.

Response by the Chief Officer

Hon. Speaker, the acting Chief Officer Energy and Natural Resources replied to the committee's request as follows:-

1. That the Environment Management and Coordination Act, EMCA Act 1999 (revised 2016) part 3 section 29 requires formation of County Environment Committee and gives guidelines for its composition and therefore the sand harvesting management committee is responsible for the proper management of the environment within the County
2. That the members of the committee have been proposed and forwarded for approval, appointment and gazette by H.E the Governor and once the Committee is in place, the County Government will work in conjunction with National Environment Management Authority (NEMA) to map and identify suitable sites for sand harvesting
3. That all the sites shall be subjected to environmental Impact Assessment (EIA) to ascertain their suitability for sand harvesting
4. Meanwhile sand harvesting is ongoing as per prescribed fees and charges of Ksh. 21,000 for lorries below seven tonnes and Ksh. 35,000 for those above seven tonnes payable on monthly basis.
5. That the operation time is between 6 a.m and 6 p.m. is defied by truck operators.

Committee's Findings drawn from the response by the Chief Office

1. Implementation of Machakos County Sand Harvesting Act, 2014 is yet to take place with many sand harvesters taking advantage of the lapse to scoop sand. The County Government of Machakos has never demarcated the sand harvesting sites as provided by the Act to avoid instances where the sand miners conduct the sand harvesting business from any part of the river.
2. The Department responsible for the Environment and Natural Resources has been authorizing the sand harvesting activities in the County by giving sand dealers the permit to continue exploiting the rivers within the County with no plans to conduct

- the environmental impact assessment to the sand harvesting sites to ascertain their suitability before authorizing the sand dealers
3. The County Assembly enacted the Machakos County Sand harvesting Act in 2014 and since then, the Assembly has never received the list of the approved sand harvesting Association for vetting from the Executive Committee Member department of Environment and Natural Resources as provided in section 6(2) of the Act, 2014.
 4. Sand harvesting activities in Machakos has been taking place illegally and that the department of Lands and Natural Resources have been violating Article 42(a) of the Constitution which states that 'every person has the right to a clean and healthy environment, which includes the right to have the environment protected for the benefit of present and future generations through legislative and other measures.'
 5. Lack of designated sand harvesting sites has attracted uncontrolled sand harvesting activities in the County leaving the sand dealers to make fortune in Nairobi while those scooping and loading the sand and the community at large living in poverty.

COMMITTEE VISIT TO THE OPERATION SITES AND MEMBERS OBSERVATIONS

Visit to Operation Sites

Hon. Speaker, Standing Order no. 190(5) (e) states that one of the functions of a sectoral Committee shall be to investigate and inquire into all matters relating to the assigned departments as they may deem necessary and as may be referred to them by the Assembly.

The joint Committee conducted site visits to all the eight sub counties in Machakos and mostly to the active sand extraction zones including Masii, Kalama, Mwala, Ekalakala, Kivaa, Mitaboni, Kathiani, Kangundo, Masinga, Wamunyu and Muthwani ward to ascertain the extent to which sand harvesting has affected the riverbanks and the adjacent environs with a view of recommending for suspension of the exploitative activity for a period of one year.

Field Observations

Mr. Speaker, the Committee found that the uncontrolled sand harvesting activities in the County has resulted in various physical environmental impacts which were observed during the field visit. These effects of river bed mining activity in and around the river ecosystem includes collapsing of riverbanks and riverbed erosion, destruction of landscape, damaging of bridges and road network, transformed river beds into large and deep pits and drying of rivers

Effect on underground water and Landscape

Hon. Speaker, landscape destruction at River Tulimyumbu in Kangonde location Masinga Central ward implies that the sand miners have not been keen to the environmental sustainability and that the sand harvesting activities have been violating the Machakos sand Act 2014 which discourages any sand harvesting business from riverbanks.

In addition, uncontrolled sand harvesting have caused soil erosion characterized by deep gullies on river beds as well as drying of the river leading to the loss of water for livestock and domestic use as it was witnessed by the Committee.

The figure below, shows how the sand harvesters have carried their activities in illegal way hence destructing the riverbank vegetation and depletion of underground water. Fig. 1 was captured in Masinga Central at Tulimyumbu River

Effect on Riparian Biodiversity

Hon. Speaker, clause 10(1) of the Act stipulates that harvesting of sand from riverbed shall be undertaken in a manner that allows adequate reserve of the sand is retained to ensure water retention but this has been violated across the County. Riparian biodiversity includes vegetation cover on and near the river banks, which is very beneficial to control the bank erosion and provide the nutrients for the aquatic biodiversity. The mining activity in the banks of rivers destroy the riparian land.

In addition, the activities have made the harvested zones vulnerable to landslides. This was witnessed by the members during the site visit to Mbiuni ward in Mwala Sub-County. Trees planted along the river banks to hold soil particles together as well as controlling the soil erosion had fallen down making the adjacent environs vulnerable to landslides.

The figure below, shows the negative effect of uncontrolled sand harvesting activities in the County which should be discouraged the benefit of present and future generations.

Fig.2 was captured at Kathama sub-location in Mbiuni ward

The Committee Recommends for urgent Construction of gabions---

Hon. Masesi: Point of order.

Hon. Deputy Speaker: Let the Member finish and you will do any corrections when we start debating the report.

Hon. Masesi: Mr. Speaker, it is on a different order.

Hon. Deputy Speaker: Let the Member finish the report please.

Hon. Kisini: The Committee Recommends for urgent Construction of gabions; if this would control both the velocity and volume of surface run-off flowing through the channels at any given particular time. A reduction in velocity would in turn translate into little or minimal erosion at this site.

Destruction of rural roads and bridges caused by the heavy trucks

Hon. Speaker, Clause 11(2) of the Machakos County Sand Harvesting Act provides that

the transportation of sand within the County shall only be done through designated roads. Transportation of the sand has been contravening this clause and that the damage caused by the sand transporting lorries to the terrain across the County testify how little revenue is being ploughed back to the fringe communities to protect the interests of the local people.

Hon. Deputy Speaker: Hon. Cosmus, yes point of order.

Hon. Masesi: Mr. Speaker, I am standing on Standing Order 30 on matter of county importance. Mr. Speaker, I beg if you could pend the business and go to the next business owing to the fact that it is a matter of county importance. Mr. Speaker, mine was a request on Standing Order 30 on adjournment on a matter of urgent county importance.

Hon. Deputy Speaker: Let me give direction on this Hon. Members. We have to dispense the business before the House. We start the House every day and we are called upon to stay late on.....this is work of a committee that has done its work. I would request we finish with the matter which is before us and then we move on to the other business considering that from tomorrow it is a day for rest and retreats; let us accomplish the work at hand because we cannot keep on pushing work ahead of us Hon. members. I beseech your guidance on this. So, Hon. Member, continue and finalize.

(Applause)

Hon. Kisini: Thank you, Mr. Speaker. I am almost through. Figure 3 below, shows how the illegal sand transporters have damaged the roads within the county using the heavy trucks in the un-designated roads to transport the harvested sand to the city

Fig 3 was captured at Masii ward Sub-County

Silting of the dam and pollution of the water

Transportation of sand which is by heavy commercial trucks leads to loosening of top soil which has been washed away during rain seasons, the eroded soil ends up in the dam increasing silt which reduces the dams holding capacity and as a result there is reduced water quantity thus unable to sufficiently meet the demands of the catchment and downstream population.

Figure 4 below shows Hon. Members interacting with the youths in Katangi ward as they wait the trucks to load the sand.

Fig 4 showing mining activities taking place at the mining site in Katangi Ward

Hon. Speaker, after interacting with the youths, members found out that the sand miners earn between Ksh. 2500 to 3500 while sand loaders are given Ksh. 200 to share among them per lorry then the lorry fetches almost Ksh. 30,000 in the city. This has left the residents of Machakos County poverty-stricken even though they have a good and rich natural resource.

BENCHMARKING TO MAKUENI COUNTY

Hon. Speaker, the committee found out that in 2015, the County Government of Makueni

enacted a law that makes scooping of sand from river beds using machines and the transportation of the commodity through the county at night illegal.

The sand conservation and utilization Act and various environmental conservation activities that the county together with the development agencies had put in place to restore rivers within the county. Some of these activities which the county government has been undertaking include construction of dams across the rivers and creating awareness among communities on the need for conservation of river ecosystems.

Mr. Speaker, Makueni county government has successfully controlled the illegal harvesting of sand through the following methods:

1. Embracing community policing.
2. Partnership with National Police Service during patrols.
3. Vigorous sensitization of the masses.

The figure 1 below shows the enforcement team training.

The figure 2 below shows the community baraza discussing issues pertaining sand within Makueni County.

Figure 3 below shows the outcome of the regulated sand harvesting in Makueni County. The sand dam is full of sand and the community is benefiting from it.

OBSERVATIONS FROM MAKUENI RIVERS

- I. Sand harvesting activities in Makueni County is fully controlled and the authority has ensured that sand dams and gabions in all designated and utilization sites are constructed.
- II. Makueni County has three categories of sand namely;
 - Domestic use below 1 tonne. Free but not for stock piling for commercial use.
 - Local use that attracts cess.
 - Sand harvesting for commercial/outside Makueni County with the ban still in force.
- III. The County has a benefit-sharing mechanism which is used as a tool to motivate the public. The revenue collected is shared in the following proportion
 - 50% of all revenue collected shall go to the Conservation fund;
 - (25% shall be given to the Authority for the day to day running of its activities;
 - 20% shall go to the County Government as revenue;
 - 5% shall go to the local community
- IV. The licenses are awarded to contractors who are able to prepare Environmental Impact Assessment to demonstrate their competence, technological know how to deal with environmental degradation.
- V. The activities of these contractors are closely monitored and evaluated to ensure effective implementation of the regulatory strategy.

COMMITTEE RECOMMENDATIONS ON SAND HARVESTING ACTIVITIES IN MACHAKOS COUNTY

1. Suspension of sand harvesting in Machakos County for a period of one year to allow the County Government to rehabilitate the exploited sites and also implement the Machakos County Sand harvesting Act, 2014. From the foregoing therefore, the committee advises the sectoral Committee on Finance and Revenue Collection to delete the proposal in the Machakos County Finance Bill, 2018 which seeks to raise revenue through issuance of licenses for sand businesses including harvesting, transportation and any other related activities.
2. The Machakos County Sand Harvesting Act 2014 should be urgently reviewed to regulate sand harvesting within the county and ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources to ensure the equitable sharing of the accruing benefits.
3. The county executive Committee should urgently develop a policy relating to environmental matters specifically sand harvesting which shall give further details on how to ensure that the Machakos County Sand Harvesting Act, 2014 once reviewed will be enacted without any obstacles.
4. The Executive Committee Member and County Chief Officer responsible for County Department of Environment and Natural resources should within thirty days after the adoption of this report by House develop a policy for consideration by the County Executive Committee. Further, after the Executive Committee Member and County Chief Officer responsible for County Department of Environment and Natural resources should within 30 days after the date stipulated above, forward to the county Assembly the above stipulated policy.
5. The County Government revokes all existing sand harvesting permits in Machakos County and the National Environmental Management Authority (NEMA) in collaboration with the County Government of Machakos gazettes Machakos County as undesignated sand harvesting zones.
6. Rehabilitation after sand harvesting is highly recommended and should be one of the conditions for issuing sand harvesting certificates. The Committee recommends that no further issuance of sand harvesting permits until the exploited sites are fully rehabilitated and their adjacent environs including the damaged roads, riverbanks, catchment areas among others to ensure environmental sustainability.

ACKNOWLEDGEMENT

Hon. Speaker, the Joint Committee on Justice and Legal Affairs and Environment, Lands and Natural Resources is grateful to the office of the Speaker and that of the Clerk to the County Assembly for the support accorded during the committee sittings and visitations. I wish to express my appreciation to the Honorable Members of the Committee who sacrificed their time to participate in the activities of the Committee and in preparation of this report.

Hon. Speaker, it is therefore my privilege, on behalf of the Joint Committee on Justice and Legal Affairs and Environment, Lands and Natural Resources to table this report and recommend it to this Hon. House for adoption. Thank you, Mr. Speaker.

(Applause)

Hon. Deputy Speaker: Thank you Hon. Kisini for your tenacity.

(Question proposed)

Hon. Deputy Speaker: Hon. Fred Muthoka.

Hon. Muthoka: Thank you, Mr. Speaker. I wish again to remind Members there is a guidance you shared yesterday in the House; when a report is being read, the Members to be in. I have seen the chairman of justice committee was not even in and has just walked out. So, it is important when your report is being read here to be in. I stand here to support this report and congratulate the committee but I was also chairman when we were doing this because I was the chairman of Justice committee and this is good work and I am telling you Machakos County we are almost lagging behind in everything.

If you go to Makeni County, they enacted this thing in 2015 and you cannot believe; their rivers are now full of sand. In fact, there is river near Wote town where they only did one weir there and that river is serving the whole of Wote with water today.

I will urge Machakos County as the Assembly and the Executive; let us hold back sand harvesting, let us ban it for one year so that all stakeholders, the community, leaders, dealers and the authority, we sit down and look for amicable ways of doing this thing.

Hon. Deputy Speaker: Point of order.

Hon. Muendo: Thank you, Hon. Speaker. It is just an observation and it is a serious one. In this report, the committee Member should have put their names and their signatures so in future all the committees must ensure that because if you look at it; it is only the chairman. But that is just an observation, Hon. Speaker.

Hon. Deputy Speaker: The secretariat has noted that the report should have an appendix of Members signing and endorsing the report. I think that is procedural and should be enforced by the secretariat. Hon. Maitha, you have a page where they have signed?

Hon. Maitha: You see, the Chair of environment read the report but where he has signed. Oh! I thought it was chairman but it was a Member; there is no problem.

Hon. Deputy Speaker: Thank you. You may continue Hon. Fred.

Hon. Muthoka: So, It is the high time Machakos County we stop sand harvesting for a period of one year, we enact this law; it will help our future generations. Even now Mr. Speaker, people are moving into their lands and they don't care if they are destroying roads. We went to Hon. Mitaa's place and we found somebody in his own land but he doesn't care about public roads, he has finished.

In Mitaboni, it the same and this people are being left in poverty. A lorry of 22 tonnes leaving the owner of the land with only Ksh. 1,500 and this person goes to Nairobi and sells that sand at Ksh. 60,000. So, we have to protect our people. We ban sand for a period of one year, we enact this law and we move forward as a county. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you. Hon. Kamulu.

Hon. Kamulu: Thank you, Mr. Speaker. As we applaud the joint committee for the good work, my take is; we have Acts in the county and they are not put into use and that is why we

have a problem in the sand harvesting. So, in page 16, I am appealing to the county government of Machakos just the way committee has appealed we put into use the Sand Harvesting Act 2014 in this county.

Mr. Speaker, I am moved by the Makueni model on page 16; if you look at observations from Makueni rivers, the sand harvesting activities in Makueni of fully controlled and the authority has ensured that sand dams and gabions in all designated and(*inaudible*) are constructed. So, it is in order the same is done in Machakos County.

If you go to number three, there is a motivating factor in that model shown where the county has a benefit sharing mechanism. In fact, money is divided in various levels. If this one is adopted in Machakos, it will be good because we cannot stop sand harvesting indefinitely; it should be harvested but with a proper mode for the benefit of the people.

If you look at number four, the licenses are awarded to contractors who are able to prepare Environmental Impact Assessment in Makueni but in Machakos, it is harvested by anybody, anywhere and anyhow. That is why there is a very big problem of environmental degradation in Machakos.

Number five is also something to actually put in place in Machakos because it can regulate the activities of those contractors who are closely monitored and evaluated effective implementation of the regulatory strategy. So, the same should be followed in Machakos and if that one is done, then Machakos is going to benefit a lot as far as that natural resource is concerned. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Hon. Tariq Mulatya.

Hon. Mulatya: Thank you Mr. Speaker. First, I congratulate the joint Committee for the good work and I fully support the report but I need make few recommendations and I think this one pertains the the Clerk Assistants. You can see there are a lot of pictures and I can recommend if these pictures were colored, we could have seen what the photos are all about because I have seen in one of the photos were I was attending some meetings around my place.

Hon. Speaker, if you can see physically where I am standing with these old women and my PA, it is like 10 meters like a distance from the public gallery all the way down. When the picture is not colored you can barely notice what is happening there. When you come to the picture in Makueni, I think they were trying to make a well of water; we can barely see what is happening there. So, in future, we can put some colored photos for clarity.

On the other side, I want to still insist that what we don't want to be done in our areas and rivers is sand scooping. Look at the pictures and you will note that, people are not harvesting, because what would have been harvested there is already gone; they are digging and digging and this is not sand harvesting.

I can give a good example of my area; there is a SACCO in Kangonde where I come from and they are taking money from the sand harvesters and it is really paying and it is working with the civilians there. I have seen us join hands with them and we have built two ECDE classes. That time we had graders, we used to use the same money to fuel unlike some of our Members here who are collecting money from innocent citizens, others taking from business men while we have resources where we can generate our own money---

Hon. Deputy Speaker: Point of order from Hon. Moffat.

Hon. Maitha: Mr. Speaker, is it in order for the Hon. Member to insinuate that some Hon. Members are getting money from innocent people. Can he elaborate and name those Members who are doing so.

Hon. Deputy Speaker: Hon. Tariq.

Hon. Mulatya: Hon. Kisila and Hon. Ndawa are doing that and we have the evidence we can table in the House. They have some WhatsApp groups where they are contributing monies---

Hon. Deputy Speaker: Hon. Tariq, the information you are giving, if there is proof we should have it when you are speaking about it before the House so that you can table it. So, what I would suggest is that, you go ahead but make sure you finalize what you are saying but that information needs to reach the office of the Speaker; pertaining those activities you are talking about.

Hon. Mulatya: Thank you, Mr. Speaker. What I am saying I know we have WhatsApp groups from Hon. Kisila contributing money and I am not scared of him I can table it in the House, the group is there and I also have some friends who have contributed there; they have Mpesa messages. Also Hon. Ndawa is another Member; we can also table facts in this House.

I know what I am saying and it is unnecessary for us to have this sand and we are just scooping it and wasting. I fully support this report and say that if Hon. Moffat you want me to give you the evidence, I will do so. Thank you.

Hon. Deputy Speaker: Hon. Mutinda.

Hon. Mutinda: Thank you, Mr. Speaker. I want to say that the committee did a good work and it is good that this House supports this report so that we may end up with a county which is conserving its soil and environment.

Mr. Speaker, in this report, there is a missing page, the last page because I don't see where signatures are to be put but I think the same is also missing for the report of Wamunyu. When you go to page nine of the 22 pages you find Wamunyu mentioned there and I would wish the report includes it down there because there are problems there and it was visited.

I have river Athi where sand is scooped. The ministry for interior and National coordination is making a lot of efforts to try and control the sand to see to It that sand is not ferried in my ward but the challenge is that the river borders the other side of Yatta sub-county so lorries ferry and use that road and pass again in Wamunyu.

In fact, for the Members who are refusing the sand to be ferried to see the lorry pass in their ward and they have sold any sand and they don't intend to sell the sand. So, Mr. Speaker, I think it is important that we support that sand harvesting is stopped and in fact in the stopping we see whether we can stop for two years because as we talk, we have no budget for rehabilitating the sand harvesting areas.

So by the time we will have such a budget and the time the gabions will be constructed and the time will be available for harvesting, it will require not a year but even two or three years. I would wish we extend the period so that when we have the gabions or weirs ready is when we can have the sand harvested.

Otherwise we may end up saying one year and we end up having done nothing and we start harvesting the sand again.

The other thing is for an area to be designated as a sand harvesting area, the public should be fully involved so there should be public participation on the same and not just the people near that river but the people of the entire ward so that the interests of those people is taken care of. We have areas in my ward where the sand is harvested the roads are impassable and roads are used by everyone so we have to involve the public as we try to say we are designating the same areas later again. Sand harvesting has been negatively affecting our people and education-wise, roads and so many things. There is a secondary school in my place where the results of 2017, the best students had a D+ followed by the next with a D and the rest followed.

(Laughter)

So, investments for parents in millions of shillings and parents cannot get children going to universities and previously before the sand was being ferried, children used to go to universities from that school but now those are the effects of sand harvesting. So such negative effects should be checked and this House, I beg we try to see that sand harvesting is stopped in Machakos County and we have a way of harvesting it.

The other thing is to see to it that we don't receive few monies as a county and end up investing a lot for the same to look for something like water because sand is water. So, we spend a lot of money looking for water just to sell sand at throw-away prices. I think we should just stop the sand harvesting and we start afresh and see how we can do it again later. Thank you, Mr. Speaker.

Hon. Deputy Speaker: In view of time, let me have Hon. King'ori please.

Hon. King'ori: Thank you, Mr. Speaker. Muthwani is a sand harvesting and sand scooping zone and I am on the opinion that this Act should looked into as recommended here because the people who scoop sand always manage to escape because of the law so we should see to it that the loopholes they are using are catered for.

One year is a long time but is not enough; we need more time like the Hon. Member for Wamunyu has said. Maybe two years would be better; I think we can amend one year to become two years because time of making this roads passable after harvesting the sand, we need time and money and a larger budget will be needed for the same.

I think we need around two years so that we can budget it very well and we come up with a good resolution that will cater for the welfare of the people of Machakos and each part of the county which harvests sand and we use it properly because we cannot be having natural resources which are not helping the people of Machakos and yet we have so many resources that can give us money and also we can be giving other counties loans because of what we have. Mr. Speaker, this is a good report and we should support it.

On the other side of the Executive, it is the high time we coordinate with them; they should also learn that we are stakeholders. So when they are making resolutions, they should consult even the House and also have public participation and get it well as guided by the law.

Article 69(1) of the Constitution of Kenya states that the state should ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources and ensure equitable sharing of accruing benefits coming from those natural resources; meaning that when you just think of something good, there are better things when consulted.

There are so many things that can come out of consultation and that is why the Acts also talk about public participation because the public also needs to be educated on the do's and don't's

of sand harvesting and sand scooping so that they can understand very well that we are doing it for the benefit of the community that live in Machakos. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you. May I call the mover of the motion to respond?

Hon. Kisini: Thank you Hon. Members for your comments, your participation and for highlighting those small issues; we will take care of like the signing of the other Members. It was just an oversight; I want to say we are sorry for that and for the observation of the colored pictures.

I also want to thank the Hon. Members for being persistent and for waiting this important motion which cuts across almost the whole county. I request we pass it and see if that one year will somehow change the control of sand harvesting in Machakos. I want to give an example of where I come from, Athi River and more specially too my colleagues in Kinanie and Muthwani; it is different from the other parts because the other parts it is scooped in the rivers but in Kinanie, they dig through holes and tunnels, they say it is the gold mine which was left in the times of Noah and some of them die inside while digging those trenches.

So, I am requesting we pass the motion and we see if we can regulate it for one year and see how it behaves. Thank you, Hon. Members.

Deputy Speaker: Thank you, Hon. Kisini.

(Question put and agreed to)

(Applause)

Hon. Members, before we move to the next order, I want to point that it is important for the secretariat to ensure that this report which has been adopted is taken to the relevant authorities in time. Important decisions have been made here; banning of sand harvesting in Machakos for one year which means, the implication of this is that, we should not meet with any truck coming from anywhere carrying sand.

That will remove the vice of trucks moving from Yatta, one area to another and say they are coming from this this area and not that area. So, it will mean Machakos, as a county we should not see trucks moving within the sand ferrying sand within a period of one year until the recommendations which have been put by the committee are met. Thank you.

NULLIFICATION OF POSITIONS HELD BY THREE OFFICERS AS COUNTY EXECUTIVE COMMITTEE MEMBERS

Hon. Deputy Speaker: We now move to the next motion and this is by Hon. Mark Muendo.

Hon. Muendo: Thank you, Hon. Speaker.

Hon. Speaker, that aware that Article 2(1) and (2) of the Constitution of Kenya 2010 states that the Constitution is the supreme law of the Republic of Kenya and that it binds all persons and state organs at both levels of the Government and that no person may claim or exercise state authority except as authorized under the Constitution;

Aware that the this the Committee on Public Appointments tabled a report on 8th November, 2017 in this Hon. House rejecting the nominations of Ms. Faith Syokau Wathome Kithu (MBS), Ms. Ruth Nduku Mutua and Ms. Naomi Mutie Kamala as County Executive Committee Members for lack of relevant qualifications for the portfolio nominated to pursuant to Section 9(2) of the Public Appointments (County Assemblies Approval) Act, 2017;

Hon. Speaker, aware that H.E the Governor of Machakos appointed them when they had not been vetted and approved by the Assembly contrary to Article 179(2) of the Constitution of Kenya 2010 and section 4 of the Public Appointments (County Assemblies Approval) Act, 2017;

Hon. Speaker, cognizant of the fact the three aforementioned officers filed a petition at the High Court of Kenya at Machakos seeking amongst others a declaration that they satisfied the requirements set out in law for appointment as County Executive Committee Member via constitutional petition No.12 of 2017;

Aware that the ruling of the Court delivered on 5th November, 2018 nullified the positions held by the said officers as County Executive Committee members;

Hon. Speaker, I beg to move the Motion that the Assembly discusses and resolves that;

1. The Officers vacates any offices they are holding illegally as the Court ruled on constitutional petition No. 12 of 2017;
2. The Officers be surcharged jointly with the appointing authority of any public funds received in terms of salaries and allowances;
3. Any contracts they may have entered into be cancelled with the resulting costs surcharged to them;
4. The resolution of this Hon. House be forwarded to the following bodies:
 1. Ethics and Anti-Corruption Commission (EACC).
 2. Controller of Budget (CoB).
 3. Divisional Criminal Investigation Officer (DCIO).
 4. Directorate of Public Prosecution (DPP).
 5. The Senate.
 6. Salaries and Remuneration Commission (SRC).

Thank you, Hon. Speaker. I call on Hon. Mitaa to second my motion.

Hon. Deputy Speaker: Hon. Moses.

Hon. Mitaa: Thank you, Hon. Speaker. I support the motion by the Majority Leader hon. Mark Muendo. I second. Thank you, Sir.

Hon. Deputy Speaker: Thank you, Hon. Moses.

(Question proposed)

Hon. Members, you may debate on the motion. Hon. Mueni.

Hon. (Ms.) Mueni: Thank you, Hon. Speaker. Mr. Speaker, the motion is very clear and if we have to debate, I think we cannot go contrary to the court. The court has brought us the report and they have to vacate and be discharged; nothing more because even if we discuss the

whole night, they have to go home and pay the money they have been receiving during the time they have been in the office.

Mr. Speaker, I think the Majority Leader has used his mind to bring the motion because they are eating the money of the county and they are not having the qualifications; they do not have the degree for health and they are helping the county.

Mr. Speaker, we discuss so many things in this House and the executive, it seems they take us for granted and we are the ones who make the laws in this county; the Governor does not hear, the executive does not hear and they are just watching us and seeing us as fools. They have been paid and we have not been paid; they are driving big cars with our money; what is all these? Mr. Speaker, I think we have to do something even if we are not going to be paid for all this year and we make Machakos to have a change. The other regime, we were singing the way we are singing now and it looks as if it is a chorus so Members, make a difference so that Machakos County can go to another level.

We have been discussing about the sand and whine I was supporting the Governor who is here but now he is not my Governor, he was telling me he will pack the sand in two kilogrammes; that is what he was telling me. He was saying; I will not see any water going to the river and he said he will do all that work.

Now, I don't know what he is doing but I am not discussing anybody; it is what he is doing. He is not paying me, he is not paying the other members and what he can do is going around telling the people what you have heard today and that is not a Governor. He has to go his home and you know very well that he is not having a family; the family has already gone which is very unfair.

Hon. Deputy Speaker: Hon. Mueni.

Hon. (Ms.) Mueni: I withdraw.

Hon. Deputy Speaker: Please.

(Laughter)

Hon. (Ms.) Mueni: So, I think the best thing here, even Mr. Speaker, there is no need of discussing so much; the answer is there, just put the question and we go home.

(Laughter)

Hon. Deputy Speaker: Hon. Grace Munini.

Hon. (Ms.) Mutwiwa: Thank you, Hon. Speaker. Well, I think this motion is late and if you check on this paper, it was discussed on 8th November, 2017.....on page 2 on paragraph two and it says; Aware that the this the Committee on Public Appointments tabled a report on 8th November, 2017 in this Hon. House rejecting the nominations of Ms. Faith Syokau Wathome Kithu (MBS), Ms. Ruth Nduku Mutua and Ms. Naomi Mutie Kamala as County Executive Committee Members for lack of relevant qualifications for the portfolio nominated to pursuant to Section 9(2) of the Public Appointments (County Assemblies Approval) Act, 2017.

I think we are just being taken for a ride and there are so many things we have passed in this House and nothing has happened and that is why we are being abused left and right as House. This is a Hon. House and mine is to support the motion and say that as my colleague

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Hon. Mueni has said you just put the question and we go home because it is long overdue and we are being taken for a ride. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Hon. Katumo.

Hon. Katumo: Thank you, Mr. Speaker, Sir. I stand to support this motion by Hon. Mark Muendo, our Majority Leader. I like this motion because based on Constitution of Kenya 2010 which is our supreme authority on which we seek and we remain guided, you find that we have two very importunate points and indicators in this motion that we must take along with us.

First, we have officers that purport to have qualified for a position on which they are working and holding office and these are Ms. Faith Syokau Wathome Kithu, Ms. Ruth Nduku Mutua and Ms. Naomi Mutie Kamala. When their names were brought and nominated when they were interrogated, they did not qualify to be appointed to these positions.

Secondly, the Governor went ahead and appointed them to the offices in which they hold when they were rejected and it tells us how things are being done here in Machakos County; it does not matter whether the procedures are followed or not but my major point is that there are these persons holding offices that who are being paid for the work to be done when they are not qualified.

I think this is criminal, it is a mistake and other people are not being paid but others are paid for the work they are not qualified to do. Therefore, I support this motion that such kind of persons together with the appointing authority need to be taken to account; why should do an illegality and continue to pay and at the same time legalize what is not right.

This motion seeks that these officers should leave the offices immediately; it is perturbing and disturbing when you go to the offices and you find the same people who you did not accept approve in this House. The officers we rejected and they purport to hold those offices and then it becomes very difficult and I am not very sure whether you can enter an office you have not been given legally.

Therefore, I support that they should pay our money back; we ask ourselves our money is going and this are some of the avenues and holes where our money is getting lost and they should pay with immediate effect. Any contract should be terminated and these people don't stand any chance if taken to the following authorities and agencies for investigations.

You see, the one holding the office, the appointing authority, they are answerable to the authorities given here and therefore, I do stand to support this motion that going forward, we will never again really allow the Governor to disrespect the resolutions of this House to appoint the people.

Why should somebody appoint people that are not needed? Is there another interest that we don't know? I really don't understand why people who don't qualify; somebody holding a certificate and then appointed to head a CEC office unless there is some other interest, I really don't understand and therefore, I support this motion the way it is. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Hon. Moses.

Hon. Mitaa: Thank you, Hon. Speaker. Again I stand to support this motion by our Hon. Majority Leader. Hon. Speaker, one thing which our County is known for a long period is the issue to do with impunity. We have witnessed in county that the law is not followed and people do things like the market way.

These offices of CECs are not normal offices where anyone can just come and occupy them' there is a process and I think one way why the counties were abolished and they created

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the excursive and the Assembly is that here is some checks here and there on matters pertaining to the running of the county governments.

Hon. Speaker, the names we have here of Ms. Faith Syokau Wathome Kithu, Ms. Ruth Nduku Mutua and Ms. Naomi Mutie Kamala as CEC Members, for lack of relevant qualifications for the portfolio nominated to pursuant to Section 9(2) of the Public Appointments (County Assemblies Approval) Act, 2017.

I believe there was a reason why these names were turned down and as we have been saying time and again that we need people who can perform; we don't just want busybodies in offices and offices are not just filled for the sake of having people in those offices.

Mr. Speaker, accountability and performance is important, service delivery within the shortest time so that our people can enjoy services; let them benefit from what we can offer because at the end of the month we earn salaries from taxpayers money and there is need to give back equivalent or better of what we receive.

These three CECs have been in office for the last one year despite the fact that we turned down their applications and I believe the Assembly is now biting very well. I need to add under the resolutions, I need to add (g); the report needs to be forwarded to Kenya National Audit Office (KENAO) because these are the people who are working on the reports that come to this office.

That is a very important office which needs to have a copy of this report so that when they are preparing the 2018/19 report, they might also check on what these four people have done and the illegality which we are about to pass on whatever they did during the time they have been in office and let them be surcharged and I believe they can also be state officers for a while because as we have said we cannot continue entertaining impunity in the County. Thank you.

Hon. Deputy Speaker: Hon. Kisini.

Hon. Kisini: Thank you, Hon. Speaker. I want to salute the mover of the motion for bring it to the House and I want to say that enough is enough. This is the first batch which we rejected and which the Governor said 'No, they will continue to be in office,' only for the court to say it is illegal for them to continue serving.

Then there is the other group when we say No or when we were in the process of vetting, they were rushed and we were told that we don't know how to count the days and then there is the current ones. I want to say this is a House of honour and it is good to prove that when we say No, our No is a No.

Let us go by what has been recommended and let this serve as an example so that the Governor can respect us and we can be respected. He can get to know that ours is not to say it for the sake of saying it or to gain any political mileage but we follow the law. I totally and fully support these recommendations which should be followed to the letter to see to it that these serves as an example. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you. Hon. Tariq Mulatya.

Hon. Mulatya: Thank you, Mr. Speaker, Sir. Mine goes to paragraph 4 where we can see clearly that there was a petition filed and the High Court of Kenya in Machakos and when you read down there you find that on 5th November, 2018, the positions of these members were all nullified by the court. Hon. Speaker, we need the executive to honour this court ruling.

We have been passing motions and Bills and doing a lot of things in this House and when it goes to their side, they just ignore everything. We want this one from the High Court honoured immediately. Thank you.

Hon. Deputy Speaker: Thank you. Hon. Steve Mwanthi.

Hon. Mwanthi: Thank you, Mr. Speaker. Mr. Speaker, it has come such a time when the County Government of Machakos, that is the Assembly and the Executive to respect the rule of law and Acts that are being passed by the Assembly. It is unfortunate that some CECs who were rejected by the Assembly went to the Court and were still rejected by the High Court in Machakos and they are still in that same office.

It is unfortunate and I think there are people who are now proved they cannot hold such senior offices. It happened that today, I went one of the departments but unfortunately the same people are desperate to getting photos. They told a video clip forcing a Hon. Member just to get a snap with them and then they are saying they are in office; they are no informed, if I may say.

There even people who are just peddling lies; I personally....when they caught me because I was forced to enter an office, it is evident but it is unfortunate that they are even talking of a CIDP that has not been passed, they are not aware they are the same people; if they were in office legally and they are the people who are supposed to come and negotiate with the Assembly on how to approve the CIDP.

I was in vain even to explain to them that it will not be possible for the Assembly to even pass the Finance Bill if there will be not CEC for Finance because the Assembly needs to negotiate with the policy makers on some of the issues. It is unfortunate and the only hing you can get from them is may be the photo or a video but they have nothing that is tangible to give to the County, Mr. Speaker.

So, I think it is prudent and the motion is on time that his House resolves that these people leave those offices immediately or else we take these reports to all these bodies for these people to be dealt with and any money they have either signed or received in the name of being CEC when they were rejected by the Assembly be surcharged from the same people and possibly any legal process should be undertaken on the same people. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you, Hon. Steve. Hon. Johana.

(Applause)

Hon. Munyao: Thank you, Mr. Speaker. I wish to oppose the motion that the officer who were mentioned in the motion; Ms. Faith Syokau Wathome Kithu, Ms. Ruth Nduku Mutua and Ms. Naomi Mutie Kamala, based on the Constitutional Petition No.12 of 2017. I want to believe that contrary to the statement given in the motion that it nullified the positions held by the said officers as CEC members, the petition only nullified the positions held by the said officers then--

Hon. Deputy Speaker: Hon. Member, do you have the Petition with you here?

Hon. Munyao: Yes, I have.

Hon. Deputy Speaker: Could you read for me the section?

Hon. Munyao: Yes, I can. Can I be allowed a minute then I---

Hon. Deputy Speaker: You read all of it completely; the recommendations.

Hon. Munyao: Yes, I will do.

Hon. Deputy Speaker: Go ahead. I hope it is something written which you can be able to table before the Assembly. If it is not written, then you might have to bring it at another time because whatever is given as evidence before the House has to be tabled as evidence of what you are saying. So, I would request; do you have a printed copy of the ruling with you?

Hon. Munyao: I have a soft copy, Mr. Speaker.

Hon. Deputy Speaker: Unless you say you are going to put it on the website, how are members going to view your---

Hon. Munyao: It is accessible if you google search, it is accessible. Petition No. 12 of 2017. It is in the public.

Hon. Deputy Speaker: So what did you want to do, Hon. Member?

Hon. Munyao: Responding to whether I have the evidence, I was responding to that.

Hon. Deputy Speaker: So, you only have it in soft copy?

Hon. Munyao: Yes.

Hon. Deputy Speaker: Hon. Members, the judgement I am going to make is this; let other printed copies be in the House unless you put it in.....because this is something that is being discussed in the House now. So, what reference are the members going to make on that ruling you have?

Hon. Munyao: I thought they could google search but if it is not possible, I can table it another day.

Hon. Deputy Speaker: Please make sure another day.

Hon. Munyao: Thank you, Mr. Speaker.

Hon. Deputy Speaker: Continue. Hon. Mueni.

Hon. (Ms.) Mueni: Thank you, Mr. Speaker. I think this is not a House of jokes because the Member has been out for all that time and we have been her so if he was serious, he would have come from the beginning and have all those papers he is having. Mr. Speaker, I think we have to be serious and those are the people; they are going for money from the other side and coming here. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you. May I call the Hon. Member to respond?

Hon. Muendo: Thank you, Hon. Speaker and Hon. Members. Let me say the impunity which is in Machakos County is unbearable. Here we have a judgement of the High Court in Machakos giving a verdict on these appointments. It happened that I sit in the appointments committee and these people appeared in the appointments committee and we are following the law and I remember some of them like there is one by the name Naomi Mutie Kamala had a certificate from Utalii College for catering. Those are some of the grounds that made us reject the names.

After this Assembly rejected them, these are the same CECs who went to the Court themselves and I want the House to note that they said that they were rejected because it was not constitutional. The same court where they had gone to seek to be appointed, rejected and said; let them be vetted, that was the judgement, because the law was not followed.

What else are we looking for? Why are these people in office? They should vacate the office like yesterday, be surcharged, pay back all the money they have been earning in that one year. This time, members of the Assembly are going to be vigilant; we are going to take this report to these bodies; in fact, as early as next week and we as the Assembly leadership are going to visit these offices to make sure these officers are completely out of office.

(Applause)

We are also going to make sure that a follow up on them being surcharged if not so, the Assembly should go to court to have them surcharged. It is actually pathetic when you see some of the Members standing to defend yet there is a court judgement saying they should not be in office.

Today, one of the Hon. Members went to.....Hon. Member for Ekalakala.....I saw in the social media that they took a photo with him, the same officers; that is like a mockery. I think they wanted to show that this House can do nothing and they knew we are coming to debate on this motion.

Let me say that we are not going to leave things hanging; wherever a report is supposed to be taken, the House leadership and my leadership as the Leader of Majority, we are going to those offices to talk to them and give them the documents and we tell them what is happening in Machakos County.

Unless we do that, these people will be laughing all day saying 'they went to the Assembly, they didn't cease, so what. We are in office.' So, Hon. Members, thank you very much for supporting the motion and I promise you, this time you will see people leaving the offices. Thank you, Hon. Speaker.

(Applause)

Hon. Deputy Speaker: Thank you, Hon. Members for your active participation on the motion.

(Question put and agreed to)

Hon. Members, it is important that now you have adopted the motion for you to familiarize yourselves with the judgement; it is available with the secretariat. I have just asked for a copy of it here with me so that as you do other things, be able to examine what the Judge said in that judgement.

Unless you read the judgement clearly, you can find a Hon. Member who was trying to say they are in office...it was not nullified what they are. Remember, the Judge said that their first vetting expired and it was not enough and they should be re-vetted by the Assembly. So, whatever positions they are holding no, they should have come back for re-vetting for the positions they are holding now.

So, it doesn't matter the court said they need to come before the Assembly for vetting and I therefore direct that the office of the Clerk goes ahead and ensure the resolutions as passed by this Hon. House are forwarded to bodies as the House has resolved. That is:

- a. Ethics and Anti-Corruption Commission (EACC).
- b. Controller of Budget (CoB).
- c. Divisional Criminal Investigation Officer (DCIO).
- d. Directorate of Public Prosecution (DPP).
- e. The Senate.
- f. Salaries and Remuneration Commission (SRC).

Any other bodies which the Members have said.

ADJOURNMENT

Hon. Deputy Speaker: This House stands adjourned to Tuesday, 27th November, 2018 at 10.00 a.m. Thank you, Hon. Members.

The House rose at 6.04 p.m.