

REPUBLIC OF KENYA
MACHAKOS COUNTY ASSEMBLY

OFFICIAL REPORT

Wednesday, 7th December, 2022

The House met at 10.22 a.m.

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

PRAYERS

MOTIONS

**APPROVAL REPORT ON HARASSMENT TO THE
PUBLIC BY MICROFINANCE INSTITUTIONS**

Hon. Deputy Speaker: Under this one we have two motions; the first one will be presided over by Hon. Peter Kilonzo.

Hon. Peter Kilonzo (Mbiuni, UDA): Thank you, Mr. Speaker.

Hon. Speaker, that aware that the Committee on Justice and Legal Affairs is a select Committee which draws its mandate from the Machakos County Standing Order 190 of the Second Schedule which defines its mandate as to deal with all Constitutional affairs, the administration of law and justice, including the elections, ethics, integrity and anti-corruption and human rights;

Aware that Article 231 of the Constitution of Kenya, 2010 as read together with the Microfinance Act, 2006 of Parliament provides for the licensing, regulation and supervision of microfinance business and for connected purposes;

Noting that pursuant to Standing Order 41, a Statement on institutions masquerading as

microfinance institutions and loaning members of the public monies and later auctioning their property was sought in the House on 18th October, 2022 and referred to the Justice and Legal Affairs Committee.

Hon. Speaker, I wish to move the Motion that this Hon. House approves the report of the Justice and Legal Affairs Committee on harassment of Members of the public by microfinance institutions in Matuu.

Thank you, Hon. Speaker. I call Hon. Vincent to second the motion.

Hon. Vincent Mutie (Upper Kaewa/Iveti, WDM-K): Thank you, Mr. Speaker. I second the motion being presented before the House in regard to the harassment by the purported micro financing institutions in Matuu area. This is a measure of deterrence not just those operating in that particular area but any other area within our County. We are not against people doing business but we want to promote the rule of law. Let people do business within the confines of

law. I second the motion.

(Applause)

Hon. Deputy Speaker: Thank you. You can now proceed with the Executive summary for the report.

Hon. Peter Kilonzo (Mbiuni, UDA): Thank you, Mr. Speaker and thank you, Mheshimiwa Vincent for seconding the motion. With me is the executive summary which is drawn from the conclusive report that we have written concerning the matter and I wish to prosecute the matter.

Hon. Speaker, there has been an outcry from members of the public concerning harassment by lending institutions and masquerading as microfinance institutions. Borrowers then end up taking money from these institutions and at some point, are not able to pay their loans on time due to financial constraints at a time when their businesses are hard hit by bad economic times. This has made the lending institutions take advantage and have resulted to taking to adverse methods of recovery by forcefully confiscating the clients' properties.

Hon. Speaker, on 18th October, 2022 during the morning plenary sitting, a Statement on harassment of members of public by microfinance institutions was sought to inquire on the following:

- i. What the National and County Governments are doing to ensure that the residents of Machakos are safeguarded from persons and institutions masquerading as Micro Finance institutions by loaning the residents monies and later auctioneering their property.
- ii. Whether the institutions pay business licenses to the County Treasury and if so what measures is the County Government taking to protect wananchi.

Mr. Speaker, the above Statement was committed to the Justice and Legal Affairs Committee to respond back to the House in 14 days. Further, due to the complexity of the matter the committee sought an extension through a motion on 8th November, 2022 and was given a further 14 days to report back to the House on 6th December, 2022.

LEGAL FRAMEWORK

Hon. Speaker, Sir, in undertaking its mandate, the Committee relied on the following laws among others.

1. The Constitution of Kenya 2010
2. The Microfinance Act, 2006
3. The Moveable Property Security Rights Act, 2017
4. The Law of Contract, Cap 23 Laws of Kenya
5. The Banking Act, Cap 488 Laws of Kenya
6. County Assembly Powers and Privileges Act 2012
7. County Assembly of Machakos Standing Orders
8. Companies Act, 2015

MATTERS UNDER CONSIDERATION

Hon. Speaker, the committee in the course of its interrogation process focused on the three allegations or issues namely:

- (i) Whether the microfinance institutions are operating within the law
- (ii) Whether confiscation of borrowers' assets is within the law.
- (iii) Harassment of the borrowers by the microfinance institutions.

ENQUIRY INTO THE MATTER OF HARASSMENT OF MEMBERS OF THE PUBLIC BY MICROFINANCE INSTITUTIONS

Hon. Speaker, the Justice and Legal Affairs committee conducted a site visit to Matuu on the 1st November, 2022 to meet with the complainants as well as the microfinance institutions on the concerns raised. Hon. Speaker, the Committee observed the following:

1. That some of the complainants indicated that the institutions signed contracts or agreements with them and are not taken through the terms and conditions thereof to understand the seriousness of such undertaking.
2. That proper channel of debt recovery is not followed by the lending institutions hence use of unethical means leading to infringement of the borrower's rights.
3. That some of the items that were forcefully collected from the complainants were never listed as collateral.
4. That the items collected from the defaulters as collateral were way above the cost of the loan plus interest.

Hon. Mbili Ndawa (Matuu, MCCC): Point of information. I just want to draw to your attention that the report that has been circulated to us is not what is being read.

Hon. Deputy Speaker: He is reading the summary.

Hon. Mbili Ndawa (Matuu, MCCC): I am holding what has been provided. This is Mwala; we are supposed to be talking about Matuu.

Hon. Deputy Speaker: Sorry for that. I think they are going to correct that. I think we can now proceed.

(The correct document was circulated to Hon. Members)

Hon. Mbili Ndawa (Matuu, MCCC): So now Chair, you direct the Chairman to show us which page now because we don't need to go back.

Hon. Peter Kilonzo (Mbiuni, UDA): Thank you, Mr. Speaker and thank you, Mheshimiwa Ndawa, for that keen observation. Mr. Speaker, I wish to continue from where I had stopped.

5. When collecting the items from complainants the MFIs use excessive force and end up breaking items from the victim's households and in some instances injuring the complainants.
6. The committee noted that while collecting these items proper channels are not used like use of court orders or being accompanied by the police to execute the court order.

7. The MFIs collected loan defaulter's items against the instruction given thereof of a letter of no objection issued by CBK which states that the institutions cannot take cash collateral or security from borrowers which will contravene Microfinance Act 2006.
8. Simple pay Capital Limited and Newark Capital Limited have been using the Letter of no Objection for purposes of transacting business contrary to instructions through a letter issued to them by Central Bank stating that they can only use the letter for registration purposes and not to transact any business.

RESPONSE BY THE CHIEF OFFICER, FINANCE AND REVENUE COLLECTION

Hon. Speaker, the Committee wishes to notify this house that it interrogated the response by the Chief Officer, Department Finance and Revenue Collection on the assigned task and the following was the response:

- i. On the issue of what the National and County Governments are going to ensure that the residents of Machakos are safeguarded from persons and institutions masquerading as Micro Finance institutions by loaning the residents monies and later auctioneering their property.

Response

Chief Officer, Department Finance and Revenue Collection responded that not only that the Micro Finance institutions are providing loans to the underprivileged people and mostly women to start a new business and they also have lot of consumption need. He further indicated that the County Government has very strong monitoring systems to ensure that the loan amounts are not being misused by engaging in public participation meetings within the County. The monitoring system not only ensures the repayment but sensitizes the public on being responsible citizens.

Further, guidance and counseling sessions also help them to start income-generation ventures to protect them from the debt trap. To avoid misuse of Micro Finance institutions, the County Government has to organize series of continuous client awareness and financial literacy programs and incorporate spouses in decision-making. This is important to understand that microfinance is a tool for directly reducing poverty and creating awareness amongst the female section of our society at the bottom of the pyramid. Citizens must be told not to apply for loans to repay debts. By providing material capital to poor person, their sense of dignity is strengthened and restored. Therefore, the County Government will deal with marauding gangs masquerading as Micro Finance institutions ruthlessly because genuine lending institutions play a critical role in Nation building.

- ii. On payment of business licenses to the County Treasury and measures taken by the County Government in protecting wananchi from exploitation by the Microfinance institutions.

Response

Chief Officer, Department Finance and Revenue Collection responded that lending institutions pay Business licenses to the County Government according to the Machakos County Finance Act, 2018. Lending institutions is a revolution for the entire society to work and strive to wipe out poverty from our society and by extension, we have a series of continuous assessments and enforcement on all businesses operating in Machakos County to make sure all revenue policies are adhered to. Poverty is a complex issue and is difficult to define, as there are various dimensions to poverty. He further informed the committee that the County Government treats all concerns from members of the public once reported with dignity and any stakeholder found to be flouting laid down procedure is dealt with accordingly where, withdrawing the trading licenses issued by the Government becomes inevitable.

Hon. Speaker, further, the Chief Officer, Finance and Revenue Collection informed the committee through a response that before issuing any business permit, they enquire and carry out a thorough background check by requesting all the clients to fill a form and attach the following requisite documents and information:

- a. Registered Business name;
- b. Physical address;
- c. Business identification number;
- d. Copy of certificate of incorporation;
- e. National ID or a Passport;
- f. Alien ID;
- g. Phone No, VAT certificate and KRA PIN No;
- h. Postal address.

After submission to their office, the licensing officer visits the business premises within a day to carry out inspection. The information obtained by the inspection visit determines the fees to charge for the permit and eligibility of the applicant. Therefore, if a business is granted permission by specific government entities and its activities are anchored in law, their mandate is limited both in operations and scope.

COMMITTEE FINDINGS

Hon. Speaker, the Committee found the following:

1. Simple pay Capital Ltd and Newark Capital Ltd have not complied with the Movable Property Security Rights Act, 2017 that requires all collateral to be registered on the Collateral e-Registry.
2. For failure to comply with the Movable Property Security Rights Act, 2017, the Microfinance institutions have no legal basis to take possession of any movable asset used as collateral upon default.
3. The Microfinance institutions have not been suing the borrowers so as to get court orders allowing them to attach any of the borrowers' assets.
4. Misrepresentation by the Microfinance institutions by either giving false or misleading information on the nature of the businesses.
5. Confiscation of assets was done illegally.
6. Members of the public lack proper guidance and information on financial literacy in as far as borrowing of loans is concerned.

9.0 COMMITTEE RECOMMENDATIONS

Hon. Speaker, considering the gravity of the matter at hand the Committee recommends the following:

1. Simple pay Capital Ltd, Newark Capital Ltd and other Microfinance institutions operating within Machakos County shall not undertake debt recovery without court orders.
2. Simple pay Capital Ltd, Newark Capital Ltd and other Microfinance Institutions who have confiscated assets without Court orders from borrowers should return all assets to the borrowers within Seven (7) days.
3. The County Government Department of Finance and Revenue Collection together with the Department of Trade, Economic planning and Industrialization to liaise/collaborate with the County security agencies to inform the police across the county of the ongoing harassment and ensure borrowers are not harassed by Simple pay Capital Ltd, Newark Capital Ltd and other Microfinance Institutions operating within Machakos.
4. The County Government Department of Finance and Trade to keep a database of all Microfinance Institutions operating within Machakos and create awareness to members of the public on prudent borrowing.
5. The County Government Department of Finance and Revenue Collection together with the Department of Trade, Economic planning and Industrialization to ensure all Microfinance Institutions are properly registered or licensed and consider withdrawing the trading licenses for companies operating illegally.
6. The County Commissioner to ensure;
 - (a) Investigations are done and all assets that were illegally confiscated from borrowers in Matuu, Yatta Sub-County by Simple pay Capital Ltd and Newark Capital Ltd are returned, and;
 - (b) Allegations of harassment of borrowers by staff members of Simple pay Capital Ltd, Newark Capital Ltd and other Microfinance Institutions operating within Machakos are investigated and perpetrators prosecuted.
7. The Committee recommends that the County Government, through the Department of Finance and Revenue Collection, to set up a Fund to assist members of the public to access soft loans to boost their businesses.

10.0 CONCLUSION AND ACKNOWLEDGEMENT

Hon. Speaker, the Justice and Legal Affairs Committee appreciates the assistance provided by the office of the Speaker and the Clerk of the County Assembly during preparation of this report. I would like to express my gratitude to the Hon. Members of the Committee who gave up their time and shared their expertise in drafting this report.

Hon. Speaker, it is thus my duty to table this report to this Hon. House for adoption on response to a statement on harassment of the public by Microfinance institutions. Thank you, Mr. Speaker.

(Applause)

Hon. Deputy Speaker: Thank you, Hon. Peter Kilonzo.

(Question proposed)

I now invite Members to debate. Hon. Helen.

Hon. Hellen Ndeti (Nominated, WDM-K): Thank you, Mr. Speaker. I stand as vice chair of this committee and as a Member of the same committee to support the report and to say that the report is very well-researched and I recommend that whatever the recommendations the committee has done be taken seriously. During the deliberations of the committee, I noticed that most of the people affected are women and this is very serious because the women seem to have taken over in terms of running households and I am sure a few of them have been taking loans to be able to cushion or to pay household responsibilities.

I am very happy with recommendation No. 7 where we are requesting the County Government to set aside some funds where these women can be able to access funds at attractive rates and as a Chair of the Women Caucus, I would request the other ladies in the House to make this as one of our subject matter where we can collaborate with our Governor and see how we can come up with solutions to these issues. Otherwise, I am fully in support of this report. Thank you.

Hon. Deputy Speaker: Thank you. Hon. Paul Wambua.

Hon. Paul Wambua (Kibauni, PTP): Thank you, Mr. Speaker. I was almost forgetting and saying Madam Speaker. Thank you, Mr. Speaker, Sir. I stand here as a Member of the Justice and Legal Affairs Committee and I wish to support the report on the rogue lenders and state that this is not a problem of Matuu alone. It is a problem the whole County finds itself in. It is a problem that the whole country finds itself in and Mr. Speaker, going by the current happenings in this country; you also note that the hustler himself has gone forward to further include his own lending tool to this country.

One, I wish to know that lenders are very good injectors of capital for those who want to do business and for those who want to do development. Without loans or capital from lenders most businesses, most SMEs would not be running. However, Mr. Speaker, I wish to know that as much as these lenders are good for our economic development, they need to follow due process of law. They need to follow the lending principles and they need to be kind to our people who may not be very well informed about lending processes.

Mr. Speaker, inasmuch as we want economic development, my main point on this was that the process through which they recover their monies from our people is gangster-like, is not professional and that is the reason why I support Hon. Ndawa's Statement because you will not come to my house, take property worth Ksh. 100,000 when I borrowed from you Ksh.10, 000. Mr. Speaker, I support this motion.

However, as a House as the elite of Machakos County, we also need to educate our people on the need for prudent borrowing. So I call upon this House that wherever we go, let us tell our people to do prudent borrowing because I have seen women who borrow to buy dresses. Women who borrow to buy *unga* for *chapati* and other trivial things. So Mr. Speaker, I would

advise Mheshimiwa Ndawa and other Members even as we implement the recommendations of this committee, let us also educate our people. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you, Hon. Paul. Hon. Loyd.

Hon. Loyd Mutua (Nominated, MCCP): Thank you, Mr. Speaker. I would like to recommend the work done by the Justice, Legal Affairs Committee; this is very good work. Loans or this institutions when they come to the counties, they should be able to help the members of the public with the need that they need finances to help their businesses but when those loans turn to be a burden because of the way they are doing their work in recovering the loans.....like here I have seen the committee findings No. 6; members of the public lack proper guidance and information on financial literacy and then again I find that the micro financing institutions operate by giving false and misleading information and when it comes to recovery of the loans, they do not go through a court process to recover their money. Then it is the work of the County government and this House to protect the members of the public by ensuring these institutions follow the law.

Inasmuch as we want them to invest in our county, we cannot allow them to affect our members because there is no need of taking a loan of Ksh. 20,000 and your properties worth let us say Ksh. 100,000 are taken. Those citizens will go into deep depression then that loan has no purpose to them. So, the recommendation that has been given by this committee especially No. 7 that the government seems to have started this process of giving soft loans; in as much as the limit is too low, we will have the same request for our county if such a kitty can be there to be giving our members and also the department of trade to educate our members on this loan because they are suffering because they do not have much information on how these interests are taken and understand how the loans recovery process is undertaken because when your properties are taken and they do not match with your loan; the members of the public should be educated that they can take a legal process for those companies that are taking their properties.

I support this report and I wish to request a follow up to be done so that all the recommendations that have been given here will be implemented. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you Hon. Loyd. Hon. Dee Kivuva.

Hon. Mutisya Kivuva (Nominated, WDM-K): Thank you, Mr. Speaker. I want to commend the Justice committee for a job well done because most of the families affected fall under my marginalized group I represent here. So, the first time since I joined this parliament, my people are being protected and I must commend the committee.

Secondly, my issue is on recommendation No. 5 which says, "the county government department of finance and revenue collection together with the department of trade economic planning and industrialization to ensure all micro-finance institutions are properly registered or licensed and consider withdrawing the trading licenses for companies operating illegally."

My simple worry is it seems some of the microfinance institutions have been operating with licenses issued by our officers in the county government because in the first place, how did they get the trading licenses. Although the committee has finalized, it is also good we pursue the officers who have been erroneously or after being bribed to give the licenses to these micro-finances. So on the other side of the coin; let us also go for officers who have been giving the licenses. Thank you.

Hon. Deputy Speaker: Thank you, Hon. Dee. Hon. Vincent.

Hon. Vincent Mutie (Upper Kaewa/Iveti, WDM-K): Thank you Mr. Speaker. I rise to identify myself with this report having been a Member of this committee and very much involved in preparing this report. The subject that we are handling is a delicate one because we are dealing with people who injected private capital in our economy. We are dealing with people who came to do business and indeed we cannot say this capital is unwelcome.

Whereas it has helped other people to grow, other people have suffered in the hands of the same people. Our main concern is that when you give money to someone and it has come to a point when you have to recover that money, as the Statement was sought, it was about harassment during recovery. Actually, the problem is these micro-finance institutions were using unorthodox means to recover their money. They come to your house and they carry everything literally because someone was unable to pay Ksh. 10,000.

When they carry sofa sets, TVs, Woofers and the only thing they do not carry are babies and if there was an opportunity to sell babies, they would have taken them. What we are processing in this House is a measure of deterrence so that when people come to do business they can do it with decorum. We do not want a case whereby our people are going to suffer because they were ignorant or someone was taking advantage of their ignorance. We cannot justify and say because our people are not informed then that is a leeway for them to be harassed.

The county government should provide that understanding and that is why we are recommending that there should be a program from the County Government to help our people understand the importance of prudent borrowing, the importance of borrowing, not just for the sake of borrowing but to borrow and take this money to the reason and to spend this money in the reason that you borrowed it for and also to help these people who are giving out this money, that in as much as you want to do business, you have to do it within the precincts of the law.

If you are to recover the money from someone, then you cannot just become the law. The problem with these people is that they decided to become lenders and also become law whereby they go and take property from people because they are supposed to pay them their money.

We also need to encourage the county government. As the Governor gave us her speech, she indicated that she will create something she called Wikwatyo Fund. I think this is something the Governor needs to look at and understand the reason as to why our people are suffering is because they need money and if she can provide that money the better for them. It is better for our people to borrow from their government than to borrow from people who end up harassing them later.

Finally, the Assembly has responsibility which is to help our people. Let us grow together with our people and educate them and show them the importance of not just borrowing but also saving because the moment you grow your capital, then you reach a point where you will not need to borrow for basic needs within your business. Let people know you do not borrow to buy food, clothes or to go for outing with you boyfriend or girlfriend; you borrow to invest and the moment you do that, the investment will grow and at some point you will be debt free. I support this report and I welcome this House to support it. Thank you.

Hon. Deputy Speaker: Thank you, Hon. Vincent. Hon. Ndawa.

Hon. Mbili Ndawa (Matuu, MCCC): Thank you, Hon. Speaker. I will start by thanking our most able Chair Hon. Kilonzo from Mbiuni ward and the Committee for taking this matter seriously. Hon. Speaker, I want to confirm that the members of the Justice and Legal committee are people of sober minds. I stand to support the report because I am interested and affected party because Matuu is being mentioned here.

The County Assembly is the highest decision making organ in the County and if the Assembly does not take corrective measures to tame these robbers because I want to use the word robbers and the reason I am calling them that; what we call robbery with violence is where somebody goes to somebody and try to threaten or scare them then takes property from them, that is a clear definition of robbery with violence.

Hon. Speaker, our police spend a lot of time, energy and resources looking for thugs and we are now showing them some thugs. The Committee on Justice has made the work easier for the police to go for this people. There is no way we will allow our people to suffer *injuria sine damnum*; this is a Latin word which means one has suffered injuries and damages.

Hon. Speaker, when these micro finances go to someone's house and that person tries to resist the removal of the households, these goons assault those borrowers. I have a case which was reported in Matuu police station and because these people have money, it was changed to be opposite. It was reported that the borrower is the one who assaulted these goons. Hon. Speaker it is not possible for four men and one lady to be assaulted by one expectant lady and it is not possible.

I would have requested the committee to also recommend that the charge which was referred to that lady be discharged from court because it is a matter which has no basis but fabrication.

Hon. Speaker, I have four issues that I want to air; the matter before the House lies under the law of contract and there are some essentials that needs to be met for a contract to be valid. Essential one is offer and acceptance; essential two is consideration, three is capacity and the fourth one is a written binding document that will bind the two parties.

Hon. Speaker, that binding document is what we call agreement and that is where I am basing my argument. We have two types of agreements, we have liquidated and non-liquidated. Non-liquidated agreement is where somebody tells the other give me Ksh. 1,000 and gives it and they do not say this is what will happen if you do not pay. That is what we call non-liquidated agreement.

The other type is liquidated agreement which is where you agree that I will give you this and if you do not return, this is what will happen. Hon. Speaker, that can only be enforced when one party has gone to court and sought for authority to come and attach those properties that were mentioned in the agreement.

Hon. Speaker the report is very clear about the masquerading microfinance institutions because up to have not confirmed whether they are proper microfinance institutions; they try to bypass, or to usurp powers that they do not have. Instead of going to court so that the court can allow for the goods to be taken, then when the court allows, it is not the officers from the microfinance who can execute that; we have debt collectors who have the legal capacity to do so, not everybody. Those are the auctioneers and auctioneers cannot come and take somebody's table, sofa set and take it to the lender. The lender lent money and not items and the auctioneers will go and sell, dispose of those items and take the money to the owner.

Hon. Speaker, this is what we call robbery with violence and it should not be allowed to continue in our County. Hon Speaker, I have information that most of the microfinance institutions that operate in Matuu were chased from another county; I don't want to say which account because they may say I am interfering with their movement but I have information that they relocated Matuu after they were chased from another county and let it go on record that they are also on transit because we will not allow anybody to come and try to threaten and rob our people.

If you give Ksh. 10,000 and you will go on to collect property worth Ksh. 150,000 that is robbery. Hon. Speaker, there is a motorbike worth of Ksh. 150,000 which was taken by these Newark Limited because of Ksh. 10,000 it was not Ksh. 10,000 it was Ksh. 8,000 and they are still keeping the motorbike. The owner of the motorbike bought it on credit and he is supposed to be paying the seller of the motorbike and now he cannot make use of the motorbike.

I was requesting if the committee can also recommended that the microfinance institutions pay for what we call loss of use. They have made that particular person not to use the motorbike that he bought to be assisting him. I want to commend the committee for this good job and request this Hon. House because Hon. Speaker, you make the determination and advice the Table Office and also the Office of the Clerk. Let these decisions be communicated within the shortest time possible so that our people can be now happy and they can be able to operate without fear.

I want to draw to your attention that we have members of public or these borrowers who have relocated or transferred their goods, household goods from the matrimonial house to hide somewhere else for fear of these people. Now I have a lady who is going limping because she has a backache and when I asked her what a problem, she told me; Mheshimiwa I have been sleeping on the floor. The second question was where is he where is your bed? She told me that she located the bed for fear of these goons. Hon. Speaker, I want to request this House to approve the report.

Lastly, there is issue of sexual harassment by officers who go to confiscate these goods. We have reports from our electorates that these young ladies are being asked for sexual favors so that they can be allowed at least one week to look for money. Somebody want to sleep with you today so that he can give you a relief of one week. That is something which is not acceptable in this county. It should not be allowed at all.

Hon. Speaker, I support the report and request that the County Commissioner who has the mandate to manage matters of security in the County because she is just the County Security Committee, I am just requesting that she takes up the matter and communicates down to the Deputy County Commissioner and the ACCs and the Chiefs and the Assistant Chiefs so that this decision of the House can be implemented and can be adhered to. Thank you very much, Hon. Speaker.

Hon. Deputy Speaker: Thank you, Minority Leader. I now call upon the mover to reply.

Hon. Peter Kilonzo (Mwala, UDA): Thank you so much, Mr. Speaker, for this opportunity. I want to thank Hon members for that deliberation on this report. Mr. Speaker, It is worth noting that these non-deposit-taking microfinance institutions are not regulated by the Central Bank of Kenya and there is there was a case that was here at Machakos High Court that, that they challenged the amendment of Banking Act that now and required them to be regulated by the Central Bank of Kenya.

However, our issue that has been well pronounced is the conduct into which these microfinance institutions and firstly mentioned single-payer Newark have been conducting their business at Matuu. Mr. Speaker, if you have noted keenly, that these people go ahead and they use excessive force when taking these properties and they contravene the Movable Properties Act which requires before you to take any collateral it must be registered. That provision is even the e-Citizen platform and these institutions are not taking that into consideration.

Mr. Speaker, under the law of equity, he who needs equity must also do equity and whoever needs equity must also come with clean hands. The recommendations which we have given upon proper investigation of the matter, Mr. Speaker, it should be enforced so that now the people at Matuu can also rejoice. I also want to say, Mr. Speaker, this issue even cuts across the whole of Machakos County; it is in Mbiuni and every other ward. I want to plead with Members of this Assembly that we adopt this report because what is happening to Mheshimiwa Ndawa is also happening to your ward and if we send a signal to those institutions. Thank you, Mr. Speaker.

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

(Question put and agreed to)

(Applause)

Thank you, Hon. Members and I want to believe the Table Clerk will share these resolutions of the Assembly to the relevant departments. Thank you.

APPROVAL OF REPORT ON FINANCIAL STATEMENTS OF
MWALA WATER COMPANY FOR THE YEAR ENDED JUNE, 2019

Hon. Deputy Speaker: Thank you, and this one I call upon Hon Philip Ndolo to move the motion.

Hon. Ruth Kamau (Nominated, CCU): Thank you, Mr. Speaker. I am the Vice Chair of Public accounts and investments committee.

Hon. Speaker, that aware that Article 229(5) of the Constitution provides that, the Auditor-General may audit and report on the accounts of any entity that is funded from public funds; further aware that, Article 229(7) of the Constitution that provides that Audit Reports shall be submitted to Parliament or the relevant County Assembly;

Cognizant that the Audit report on Financial Statements of Mwala Water and Sewerage Company for the year ended 30 June, 2019 was received in the Assembly pursuant to Article 229(7) of the Constitution;

Further aware that the report was committed to the Public Accounts and Investments Committee pursuant to Standing Order 185(2)(b) and (c) which states that; "the Public Accounts and Investments Committee shall be responsible for examination of reports, accounts and workings of the County Public Investments and whether the affairs of the public investments are being managed in accordance with sound financial or business principles and prudent commercial practices;"

Aware that the Committee after receipt of the report conducted several meetings and consequently compiled a report;

Hon. Speaker, I wish to move the Motion THAT this House approves the Report of Public Accounts and Investments Committee on Financial Statements of Mwala Water and Sewerage Company for the year ended 30 June 2019.

Hon. Speaker, I wish to call Hon Irene to second the motion.

Hon. Irene Mulu (Nominated, WDM-K): Thank you, Mr. Speaker. I seconded the motion.

Hon. Deputy Speaker: Thank you.

(Question proposed)

Hon. Members, you can now debate the motion. Sorry, you can first read the executive summary.

Hon. Ruth Kamau (Nominated, CCU): Thank you, Mr. Speaker. Allow me to go through the executive summary and it has been availed for every Member, I believe. Hon Speaker, this report on the financial statements of Mwala Water and Sewerage Company for the year ended June, 2019 was received in the Assembly in February, 2022, pursuant to Article 229(7) of the Constitution. Hon. Speaker, this report should have been received in the Assembly latest by end of January, 2020 hence the report was late by two years. This is in contravention of Section 48(1) of the Public Audit Act 2015 that requires the Auditor General to audit and report on accounts audited six months after the end of the fiscal year in question.

The report was committed to Public Accounts and Investments Committee pursuant to Standing Order 185(2)(b) and (c) and the report had a qualified opinion. The queries raised in the report by the Auditor General include:

- 1) Undisclosed uncertainty relating to going concern;
- 2) Inaccuracies in the financial statements;
- 3) Trade and other receivables; and
- 4) Unpaid share capital.

The Committee while exercising its mandate scrutinized the queries observed that:

1. Query on undisclosed uncertainty relating to going concern

- a) The Company is making losses due to high cost of production particularly on high electricity bills and low water sales.
- b) This state of affairs is leading the Company to a state of insolvency and if the County Government does not come in, the Company is likely going to close down and water service provision to the residents of Mwala will be highly affected.
- c) The committee scrutinized on the qualifications of the Management board and noted that most of the members do not have requisite expertise to propel the company into better performance and offering of satisfactory services.

The Committee recommends that the Company should come up with strategies to reduce their losses as well as to increase their income in order to reduce its dependency on funding from the County Government. Also the Company should establish any illegal connections that might be contributing to the high company loss and address the illegalities. Further, the County Government should allocate funds to clear the existing huge electricity bill since the Company is unable to pay for electricity expenditure.

2. Query on inaccuracies in the financial statements

The inaccuracies in the financial statements were associated with the low qualification of accountants since the company in its current financial status is not capable of employing certified accountants as confirmed by the accounting officer during the interrogation exercise. On this query, the committee recommends that the county department of finance shall second qualified accountants to this water company to assist in preparation of financial statements and also streamline book-keeping matters of the company.

3. Query three query on trade and other receivables

- a) The huge debt of Ksh. 4,699,428 resulting from unpaid water bills is a contributor to the uncertainty relating to the call to the going concern for the company hence it is a matter that needs immediate action.
- b) The engagement forums that the company held with the assistance of the local administration will have less significance as regards payment of the stated debts given the fact that the debtors have alternative free water provided by the county government.

The Committee on this query recommends that the company should develop a three-year debt policy to guide on enforcement procedures of debt collection, undertake debt analysis to determine debts that are payable and bad debts then invoke stringent measures to collect the outstanding payable debts by engaging a debt collector to ensure that the recoverable amount is collected.

The company should enforce water disconnection to customers who have long outstanding bills.

4. Query on unpaid share capital

The share capital of Ksh. 100,000 has not been paid by the county government to the company because the company has not concluded the process of preparing its ownership documents. The Committee recommends that the accounting officer, with the assistance of county legal office, should finalize the preparation of the ownership documents after which they should be forwarded to the relevant of his for implementation. Thank you, Mr. Speaker.

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

(Question proposed)

Hon. Members, you can now debate. Hon. Peter Kilonzo.

Hon. Peter Kilonzo (Mbiuni, UDA): Thank you so much, Mr. Speaker, for granting me this opportunity to contribute on the report of this of Public Accounts and Investments Committee. I understand that the issue is about the foregoing activities in Mwala Water and Sewerage Company, whereby from the report we are seeing that this company is making losses and what is devastating is the fact that the company has incurred debts even making the company operations not be smooth and making the company operations to be limited.

I understand that we have the boards which are given the mandate to run this company and I have seen the recommendation that this committee recommends that the Board of Mwala Water Company be reviewed; the membership of Board of Mwala Water Company, if the company was to improve to be to be reviewed, if they at any given time envisage for this company to improve on its current state.

Mr. Speaker, the County Government will not have the work of funding these companies at all times. The companies should come up with mechanisms on how they can raise up the money. The issues of these debts accruing from pending bills; if we continue funding this company from the county coffers, it means that these people, the board members, they will not have the mandate to ensure that this company runs well because they know by the end of the day, the county government will have to chip in and mitigate the harshness that is coming from these bills.

Mr. Speaker, I support this report and also say that the recommendations are good as pertains to the issues and the queries that have been raised. Thank you.

Hon. Deputy Speaker: Thank you. Hon. Carol.

Hon. Caroline Mutuku (Nominated, MCCC): Thank you, Mr. Speaker. Mr. Speaker, I am part of the committee that did the report. As the report has been tabled by Hon. Ruth, it was meant to be tabled in the House in 2020 so the fact findings had already been done by the Auditor General and the sitting had already been done so we just did the recommendations. All in all, Mr. Speaker, the cost of electricity is too high compared to the water tariff and the water tariff cannot change so, it is the company to see how they can they can get other sources of electricity beat using solar panels or something else.

That will bring down the cost of the production, which is very high. Also, as you have seen, as it has been reported also, Mr. Speaker, there is also financial statements showing the errors that occur in the financial statements which are brought about by lack of capacity of the accountants. Having low electricity costs will have will bring out profits if I may say so where you can get accountants who have capacity to do correct financial statements. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you. Hon. Paul.

Hon. Paul Wambua (Kibauni, PTP): Thank you, Mr. Speaker, Sir. Mr. Speaker, I may support the recommendations of this committee but before I do that, I wish to make several observations. One of them is the fact that we are reviewing financial statements which were prepared by unqualified persons. As an accountant, those are just records but for because these have been reviewed by the Auditor General, then we shall for now rely on them.

The second observation is that this company has been two years late in submitting their accounts; they were supposed to submit this in the year 2020 and we are in the year 2023

because 2022 is almost over so such inefficiencies is what is ailing our public institutions. Mr. Speaker, we are going back to the era of KICOMI, KMC when it was being run by normal Kenyans not now that it is being run by the military; we are going back to the era where public institutions were run down for the benefit of a few.

I would recommend that and this House has that duty to ensure that we start doing things for the public that we serve and not for both getting solutions for people and I want to thank my MP Hon. Vincent Musyoka, Kwaya himself who is doing a power generating plant at the river Athi to enable the Kibauni Ward and other near nearby wards cut down on electricity costs because without this innovations then these water companies will be pulled down by water bills.

Mr. Speaker, we have no shortage of professionals to run these companies in Machakos and in Mwala to be specific and I wonder why today we don't have qualified people who are supposed to run this company. Mr. Speaker, I support the report and ask the Executive to move with speed and work very fast on the replacement of the human capital there and then ensure that we have proper people leading the institution.

Finally, I support the committee in calling for installation of alternative sources of power including solar power and then probably we should also think about wind power and working with people like Mheshimiwa Vincent Musyoka to see if there are ways in which we can generate our own power to pump water. Thank you, Mr. Speaker. I support.

Hon. Deputy Speaker: Thank you. Hon. Mbuva.

Hon. Charles Mbuva (Kangundo West, GDDP): Thank you, Mr. Speaker for affording me an opportunity as well to contribute on this report being a member of that committee which came up with the with the report. Mr. Speaker, there is a worrying trend in our country especially in the management of public sector entities. Mr. Speaker, when you listen and you read through this report, it projects an entity which is making losses and which does not even look as if it can change its status anytime soon. It is it is projecting an image of continuing to make losses.

Mr. Speaker, people who own the small commercial water projects will tell you they are working profitably. People will own private boreholes and just serving a particular village will tell you is a millionaire from that enterprise but an institution or an entity which is managing water with a huge clientele, facilitation and infrastructure cannot make profit. It is because of poor governance.

One of the reasons we are we are coming to this point is even when you listen to our report, it is highlighting incompetent workforce to the extent even the person who is supposed to reconcile accounts is not qualified. It is shows he shows he doesn't have the qualifications. The problem is getting people into responsibilities and into office they don't qualify. My thought is for us to turn around some of these institutions and like Mwala Water and Sewerage Company is to do an overhaul.

What business will the government of Machakos be having injecting capital to capital to people who are going to mismanage even what we are going to inject? We need to do an overhaul and so and see if there are incompetent people in offices, we get rid of them. Maybe they can be deployed into other areas which are not so critical if it so allows.

Mr. Speaker, there is also an issue of people lacking commitment when it comes to management of public entities. Some of these people who run down public institutions, they manage their businesses very well. You will find this director who has run down this company

owns a very successful private enterprise and they cannot transfer that expertise and experience in the public service because there is no commitment in the public service.

So, I support this report 100 percent and let it be a moment this House begins to think because now we are dealing with Mwala; in my committee I know there are bulks of reports coming. I am afraid we may be having a streak of similar reports. So you ask yourselves; how far can we go? Would we be suggesting that each year we will be setting aside funds to allocate to non performing entities? Can we possibly be making it as an agenda item year in year out? I beg to differ. Mr. Speaker, kindly, that is my submission that we look at governance and the qualifications of the people we are putting in this responsibility. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you, Hon. Mbuva. Hon. Helen.

Hon. Helen Ndeti (Nominated, WDM-K): Thank you, Mr. Speaker. Mine is one observation that we are talking about low water sales. It is contradicting because we very well know that in Machakos we lack water; even in the town. How can this company not be able to sell water? They need to ask if they are overcharging; really I do not know why this was put in the report because it is contradicting what we know is happening in our county.

So I support my colleague Mheshimiwa Mbuva that it is an matter of management. All these boils down to poor management; prudent management of these water companies. It is the high time the water department of our County develops some teeth to bite these people who are playing around with our water companies. Thank you.

Hon. Deputy Speaker: Thank you. Hon. Katiti

Hon. Boniface Katiti (Muthetheni, UDA): Thank you, Mr. Speaker. I want to than the mover of the motion and the committee that was entitled to bring this report to the House. If you employ somebody who is incompetent, then you are likely to get the wrong results. It is like if you do a wrong diagnosis then you are likely to administer the wrong prescription. So, this kind of incompetence should not be allowed in Mwala and even in Machakos County. Thank you.

Hon. Deputy Speaker: Thank you, Mheshimiwa. Minority Leader briefly then the mover can reply.

Hon. Mbili Ndawa: Thank you, Mr. Speaker, Sir. I will be very brief. I will give only two issues. Firstly, the issue in Mwala is also in other areas because they are water companies. One of the reasons why they are getting these losses is because they are using imagnate (??) meters or defective water meters. The meters which were put there over a decade ago are the same meters. Some are leaking and others are reading even when there is no water. So when you go to read the meter you will find that it has changed from 001 to 050 but at that particular time there is no water and that will go as a debt to the consumer.

Hon. Speaker, as we try to address the issue and state the issue of incompetence, let us also address this issue of meters. If we can have new meters which are functional that will solve the problem.

The other issue is that the boards that manage water do not have autonomy. Since the companies are owned by the County the person who is sitting there as the MD, the chairperson

and the board members will be getting instructions from other areas and they might be asked to forward some amounts of money and you know the consequences if they do not. If we can also give them autonomy to operate without interference from other quarters, I think that will solve the problem.

Lastly, this is a report of 2019 and we are in 2022, we are breaking today to come back in 2023; when shall he have the report of 2022? That means the report of 2022 will be discussed by the Fourth Assembly. Hon. Speaker, I would request if we can advise the person who audits these accounts to move with speed so that we can debate something that we are aware of because 2019 is a gone Assembly and this is another Assembly. So if we can ensure that we discuss things that are within our time. Thank you. I support.

Hon. Deputy Speaker: Thank you, Minority Leader. I now call the mover to reply.

Hon. Ruth Kamau (Nominated, CCU): Thank you, Mr. Speaker. From where I stand, Mwala Water and Sewerage Company is supposed to be an investment and investment is an activity or service that is supposed to bring in returns. So, an investment cannot operate under losses year in year out and in this day and age, I believe the market is flooded with qualified accountants and so it is prudent we do what needs to be done and we should not be talking about mismanagement at this point in time. We should not be talking about unqualified personnel in this day and time. We should be talking about profits, enlargement and expansion of these companies.

Water is an essential commodity so we cannot talk about shutting down the company. All we need to do is to improve on what is already there, change what needs to be changed and I know these companies can operate at a profit. Lastly, I would like to thank the Hon. Members for your contribution and input on this matter. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you.

(Question put and agreed to)

ADJOURNMENT OF THE HOUSE FOR LONG RECESS

Hon. Deputy Speaker: I call upon the Minority Leader to move the motion of adjournment.

Hon. Mbili Ndawa (Matuu, M CCP): Thank you, Hon. Speaker.

Hon. Speaker, that aware that the first Session of the Third Assembly commenced on 27th September, 2022;

Aware that pursuant to Standing Order 25(1), the Assembly approved an Assembly calendar on 18th October, 2022 and aware that the calendar provides for the sittings and recess for the House;

Acknowledging that Standing Order 24(1) provides that except for sessions commencing immediately after the general election, the regular sessions of the Assembly shall commence on the Second Tuesday of February and terminate on the first Wednesday of December;

Aware that during the first Session of the Third Assembly, this Hon. House has transacted critical business such as swearing in of members, election of the

Speaker, Official Opening of the Assembly, Approval of appointment of nominees to the County Executive Committee amongst other motions and reports; Further aware that Standing Order 25(3) provides that on a day when the Assembly is scheduled to adjourn to a day other than the normal sitting day in accordance with the Assembly Calendar, the Leader of the Majority Party or the Leader of the Minority Party or another member of the House Business Committee shall move a motion of adjournment which shall be debated for not more than three hours after which the Assembly shall adjourn without question put;

Hon. Speaker, I wish to move the Motion that pursuant to Standing Order 24 and 25 (3), this House adjourns for long recess from today 7th December, 2022 to resume on 14th February, 2023.

Thank you, Hon. Speaker.

Hon. Deputy Speaker: Thank you. I invite Members to debate. Hon. Helen.

Hon. Helen Ndeti (Nominated, WDM-K): Thank you, Mr. Speaker. I support the motion that the Minority Leader has just finished reading. I think the House has been working very hard and it is the high time we go home and relax and be with our families, our constituents and we come back when we are full of strength to work again.

Hon. Deputy Speaker: Thank you, Hon. Helen. Hon. Aliphonce.

Hon. Aliphonce Mutinda (Kivaa, MCCC): Thank you, Mr. Speaker. This being the approach to Christmas and most of the Hon. Members are in a Christmas mood, I think it will be wise for us to adjourn the House and start the long recess so that we can have time to also meet our electorates because they also need us and we also need to have time to come fully prepared to work. I support the motion fully. Thank you.

Hon. Deputy Speaker: Thank you. Hon. Constance.

Hon. Constance Mbula (Nominated, MCCC): Thank you, Hon. Speaker. As the Minority Leader said we adjourn. It is the right time for us to go to our areas. God has blessed us with rains, we are preparing our *shambas* and we must remember there is hunger and people have no food. We have been traversing here and there distributing food; some of us have gone economically dry because you have to give people food. So this is the right time to help our people and look into our *shambas* so that we can have food abundance in the future. Thank you. I support.

Hon. Deputy Speaker: Thank you. I now call the mover of the motion to reply.

Hon. Mbili Ndawa (Matuu, MCCC): Thank you, Hon. Speaker. I want to take this opportunity to thank the Hon. Members for the good sentiments that they have given on the matter before the House. I want to give four points. Hon. Members, are family people, they have kids, parents and relatives. So they also need time to go and stay with family members. Again, Hon. Members need time to go and mingle with electorates who are the appointing authority so

that they can feel the elected Member has not disappeared. So if we adjourn we will have such time.

This adjournment will give Hon. Members time to identify needs within their wards so that when we come next year 14th February, 2023 we bring projects that are co-owned by the Member and the electorate after they have consulted.

Finally, I want to take this opportunity to wish the Assembly together with the staff a merry Christmas and a happy New Year, and also take this opportunity to wish the electorates who appointed us to this House, I want also to wish them a Merry Christmas and Happy New Year and request them as they celebrate the Christmas and Happy New Year, let them also remember that January is coming and there will be a need for school fees. So let us be very careful as we enjoy ourselves during the vacation. Thank you very much, Hon. Speaker.

Hon. Deputy Speaker: Thank you, Hon. Minority Leader. Hon. Members, I too wish you a Merry Christmas and Happy New Year, together with our electorates. Let us go and mingle with them and as we meet in February, we come up with the motions and Bills that are going to take this great County of Machakos to the next level.

ADJOURNMENT

Hon. Deputy Speaker: Now this House stands adjourned to Tuesday, 14th February, 2023 at 10.00 a.m. Thank you.

The House rose at 11.55 a.m.