

MACHAKOS COUNTY ASSEMBLY**OFFICIAL REPORT****Tuesday, 13th May, 2014**

The House met at 3.15 p.m.

*[The Speaker (Mr. Mung'ata) in the Chair]***PRAYERS****PAPERS LAID****CONSIDERATION OF APPROVAL TO BORROW FUNDS**

Hon. Muinde: Mr. Speaker, Sir, I beg to lay the following paper on the table of the assembly today, Tuesday 13th May, 2014. The budget and appropriation committee report on consideration of approval to borrow funds, not exceeding the 5 per cent of the total allocation as stipulated in the Public Finance Management (PFM) Act, section 142 by the Executive and the county assembly as requested by the executive committee member in charge of finance and revenue collection.

Hon. Speaker: Paper laid, proceed.

(Hon. Muinde laid the paper on the Table)

MACHAKOS COUNTY ASSEMBLY SERVICE BILL 2014

Majority Leader (Hon. Mwonga): Mr. Speaker, Sir, I beg to lay the following paper on the table of the assembly today, Tuesday, 13th May, 2014; Machakos County Assembly Service Bill 2014. Thank you, Mr. Speaker, Sir.

Hon. Speaker: Proceed.

(Hon. Mwonga laid the Paper on the Table)

MACHAKOS COUNTY ASSEMBLY POWERS AND PRIVILEGES BILL 2014.

Hon. (Ms.) Sereka: Mr. Speaker, Sir, I beg to lay the following papers on the table of the assembly, today Tuesday, 13th May 2014. Machakos County Assembly Powers and Privileges Bill 2014. Thank you, Mr. Speaker, Sir.

Hon. Speaker: Paper laid. Proceed.

(Hon. (Ms.) Sereka laid the Paper on the Table)

NOTICES OF MOTIONS CONSIDERATION OF APPROVAL TO BORROW FUNDS

Hon. Muinde: Mr. Speaker, Sir, I wish to give notice of the following motion. That this Hon. House discusses and approves borrowing of funds by the Executive and county assembly for proper financial management as passed by the budget and appropriation committee. Thank you.

MACHAKOS COUNTY ASSEMBLY SERVICE ILL 2014

Majority Leader (Hon. Mwonga): Mr. Speaker, Sir, I wish to give notice of the following motion, that this assembly approves the Machakos County Assembly Service Bill 2014 as laid on the table of the house today Tuesday, 13May 2014. Thank you, Mr. Speaker, Sir.

MACHAKOS COUNTY POWERS AND PRIVILEGES BILL 2014

Hon. (Ms.) Sereka: Mr. Speaker, Sir, I wish to give notice of the following motion, that this assembly approves the Machakos County Powers and Privileges Bill 2014 as laid on the table of the house today Tuesday, 13th May, 2014. Thank you, Mr. Speaker, Sir.

Hon. Speaker: Proceed.

STATEMENTS LASDAP AND LATF PROJECTS

Majority Leader (Hon. Mwonga): Mr. Speaker, Sir, last week you directed that issue statement today on LATF AND LASDAP. Mr. Speaker, the statement had been sought on the floor of the house by Hon. Alex Kamitu about two months ago, Mr. Speaker. Mr. Speaker, I would like to start by apologizing for the delay but Mr. Speaker, it is only that the assembly has been too busy on other issue. Mr. Speaker, when we talk of LATF , that was local authorities transfer fund- this were monies which were transferred from the central government to the local authorities before the local authorities became defunct and as per the County Government Act,

all the assets and liabilities of the defunct local authorities were inherited by the county government, Mr. Speaker.

In Machakos County, Transition Authority and the office of the County Secretary undertook the above exercise as per the law, Mr. Speaker. Consequently, all the Lasdap projects were inherited by the Machakos county government. As you may be aware, Mr. Speaker, the lasdap project as managed by local authorities were lumped together though cross-cutting on different sectors. The Executive arm of the county government is formulated as per the devolved functions, which involves existence of different department, which we call ministries, headed by respective executive county committee members, in relation to the different sectors.

Mr. Speaker, the Hon. Member sought to know the status of projects which had been identified in different local authorities. That is the former Masaku County Council, Kangundo town council, Matuu town council, Machakos municipal council and Mavoko municipal council and as I issue my statement, some hon. members here were former Councilors in those councils, Mr. Speaker. I have mentioned and they are very aware that there is no difference between LATF projects and LASDAP projects.

Mr. Speaker, when we talk of LATF, we are talking of a vehicle which used to convey monies from the central government to the relevant local authorities, and then it was after recipient of the monies from the central government that the councils will move out to deliver services through LASDAP projects, that is local authorities service delivery action plan, but many people and even some hon members confuse LASDAP with LATF, linking their projects which were to be undertaken by latf and others to be undertaken by lasdap. Mr. Speaker, having elaborated on what lasdap and latf are, the lasdap projects were forwarded to the relevant departments of the county government. For instance, there were dispensary projects that were forwarded to the department of health. There were roads and bridges which were to be constructed by those different authorities, that five of them and they were transferred to the department of roads and public works.

Mr. Speaker, just to give a view, there were police posts and housing of police officers and they were seconded to the department of decentralized units. Mr. Speaker, the sub county administrators were instructed to give status report of the various projects within their sub counties including the course of the project which were to be undertaken. Levels of the works done amount paid, pending payment and procurement and payment documentation. The above reports were forwarded to a standing committee and the office of the county executive committee member for finance and revenue collection to assess procurement process undertaken by the various authorities before advising the relevant department on the way forward. All the projects found to have irregularities on procurement were forwarded to the national ministry of devolution to undertake the necessary auditing, Mr. Speaker.

Mr. Speaker, all the projects found to have been procured in the proper manner and given a clean bill of health were recommended for payment and the payment process is being undertaken by the respective departments and other payments were done. For instance, Masaku county council was constructing a toilet in Kitangani market, they were constructing a public in Kitangani market which was in the former Kangonde ward which is no longer there. It was

merged with Masinga ward and they became Masinga Central ward. The payment was done by the decentralized unit. We had Kwa-Mwaura AP camp and I think the hon. member Nzoka maybe was the Councilor for that area, if am not wrong, and he can attest to what I am saying the payment was done by decentralized units.

Mr. Speaker, there was also construction of public toilets in Ikombe and it was paid by decentralized units. That was just giving a view of projects which were undertaken by the county government of Machakos and were paid. Mr. Speaker it is important to note, in the whole process several issues have been noted. Some of the projects had procurement irregularities. The LATF fund was being implemented through LASDAP project initiative by the local authorities. All the accounts funding the LASDAP projects were handed over to the Transition Authority accounting officer and managed from the same office. All the pending bills from the LASDAP projects were inherited as liabilities by the county government and payments are on the process from the various departments. Information from specific projects can be sought from the relevant departments. So if we have a hon. member who has an issue in the former wards or current wards, he can consult with different departments.

I sincerely appreciate your continued support and my office and the office of the decentralized units is happy on the way we are working hand in hand. Thank you, Mr. Speaker. That is the statement I can issue on that issue that was raised by or the statement which was sought by Hon. Alex Kamitu. Thank you.

Hon. Speaker: Thank you very much. Let us hear from the member who asked the question whether he is content with the answer

Hon. Kamitu: Thank you very much, Mr. Speaker and thank you very much our Majority Leader, he has given us some details in regard to that question that I raised but my concern was the handing and taking over of those projects in regard to the outgoing leaders or the Councilors because as I said there was proper handing over of the CDF between the MPs but practically as read by the Majority Leader. There are some good answers but for auditing purposes some of us were not able to know how many project, that were left undone how many were completed and how many were not paid.

As mentioned, I have heard that there were some projects, he has given out some very good examples, that were paid for but in our wards, as he said, we are going to do some of the auditing. We are going to follow then we come up with the projects that were not completed and for that regard were also not paid. So, I leave it to there. Sincerely, he has done a great research but there are no satisfactory answers as to those projects that were not done because it is still pending. Otherwise, thank you very much, Mr. Speaker, Sir.

Hon. Speaker: Thank you. So basically, you are asking for further particulars. You are saying you are not contented and you are not.....just say, what more are you asking for? Are you asking for better particulars of the projects that were completed, paid or unpaid?

Hon. Kamitu: Exactly. That is what I was saying, because some of this projects as he says were taken over by the departments concerned. We should get from those concerned departments, we should get the breakdown on each ward that those projects that were done, paid and those projects that have not been paid for because as I said, we have some contractors who are also putting some complaints to us that they completed their projects and up-to now, they have not been paid. So that is exactly what I am trying to drive at. Thank you, Hon speaker

Hon. Speaker: Thank you very much.

Hon. Nzoka: Thank you, Mr. Speaker, Sir. Thank you for what Majority Leader has said but the question was here. We want itemized details. Like in my ward, I can say the projects which were not done which are done and which were paid. My projects which were paid, where paid last week Tuesday, just after one year, after the works were completed one year that is---

Hon. Speaker: Thank you very much. Now this is not a motion. Let's hear from the Majority Leader, are you in a position to supply further particulars as requested by Hon. Kamitu.

Majority Leader (Hon. Mwonga): Mr. Speaker, what the members are trying to do, I don't think it is in order. Mr. Speaker, I issued a statement on what was raised on the floor of the house. The hon. member that is Hon. Kamitu, I remember very well that he sought his statement and asked, what is the government doing on the stalled projects and the projects which were being undertaken by the defunct local authorities.

Mr. Speaker, he did not ask for itemized projects and how many which were not done. So Mr. Speaker, unless he comes again on the floor of the house and asks for another statement, I think I will be irrelevant to answer that, Mr. Speaker. Thank you.

Hon. Speaker: Yes and apparently this is your committee, you need to tell us what you have done so far. *(Addressing chairman of implementation committee, Hon. Kyalo Kyuli)*

Hon. Kyuli: Thank you, Mr. Speaker. I want to inform the House, through you, Mr. Speaker, that this is an issue that we are pursuing. We are on hot heels with it because as implementation committee, you remember Mr. Speaker that we had summoned the minister concerned a week ago so i wish to help and inform my Majority Leader that you should not be laboring on this because we are sitting on the same and there is a detailed report that I will issue to every member. I already have. So therefore, members let us not even labor so much on this issue it is under control and I plead with you to give me like a week or two and I will be having a report Mr. Speaker. Thank you

Hon. Speaker: Thank you very much. I think the direction I was going to offer was that the matter be dealt with by the chair of implementation and he is already on it, so that is done, so let us proceed. A request of a statement to the chair of the committee? Okay.

Hon. Muinde: Thank you Mr. Speaker for granting me this opportunity. I would want to request that the committee on implementation, if it's possible, to actually move around all the wards because like where I come from, two projects were not done. I do not blame anybody but the transition because things happened and the governments, both the county and the national, perhaps did not prepare very well. If this committee can move to all the wards, collect the data, give us a status report within this budget period, perhaps we can help this government by factoring in money to complete those projects that were never done. It is our county, we would want to, although there are challenges, some of the projects may fall within functions that were not devolved---

Hon. Speaker: Thank you. The point is done.

Hon. Muinde: If it is taken within the budget in process, then we can put in money and have these projects completed. Thank you, Mr. Speaker.

Hon. Speaker: Thank you. The point is done. Let us proceed to the next item. Another statement? Then we will hear you after that.

THREATS TO LIVES OF MEMBERS

Majority Leader (Hon. Mwonga): Mr. Speaker, last week you also directed that I issue statement on two statements that were raised, one by Hon. Dominic Maitha, chairman PAC, and member for Muthwani. I know he is very happy when I address him as the chairman PAC. I know there have been some issues but since it has not been communicated.....Mr. Speaker, I need your protection. Since it has not been communicated by the chair, he remains the chair that is what I meant Mr. Speaker. Mr. Speaker the other statement was sought by hon member for Ndalani, the vice chair for agriculture, who seems to usurp the powers of his chair. I will elaborate that later on.

Mr. Speaker, in this two statements, I saw no substance in issuing any statement regarding that. The issue of threats on their lives Mr. Speaker, I am not going to issue any statement. Already they have reported the issue to the police and the police are handling that. Mr. Speaker, the other statement which they sought is why hon. members of the national assembly.....I even lack words to express this. Why, Mr. Speaker..... Mr. Speaker, I need your protection.

Hon. Speaker: Proceed.

Majority Leader (Hon. Mwonga): Mr. Speaker, you know the statements being issued by hon members of the national assembly in political arena, they should not be brought in to this honorable house. This is not a political arena and if they want those MPs to substantiate

whatever they say, I think they can send their hon members from their respective constituencies to ask those questions in the national assembly. Thank you, Mr. Speaker.

Hon. Speaker: Let us hear---

Hon. Muthuka: Thank you Mr. Speaker, Sir and the rest of the members at large.

Hon. Speaker: I don't know whether it is a point of order or.....you are responding on whether you are contended with the answer.

Hon. Muthuka: No, he has not tackled my statement.

Hon. Speaker: Okay. Proceed.

Hon. Muthuka: Point of order number one is, he talked about the vice chair, who is usurping the powers of the chair. That, first of all, is insubordination. When the chair is not around, the vice chair takes over and if you don't understand the committees, the reason why committees in this house, they are not performing is because the chairs are not delegating their powers to the vice chairs and I thank God in agriculture and natural resources, the chair understands what we are doing and he normally delegates the powers. And when he delegates the powers, I normally assume that sit and I normally conduct the committee as a chair, because at that moment I am a chair. Secondly---

Hon. Speaker: Sorry, let us restrain ourselves please.

Hon. Muthuka: Mr. Speaker, Sir, the Hon. Member talked about that I requested the statements and he was very happy sitting down. You have not tackled about the statements that I had requested three months ago. I am still waiting for those answers because you had promised today to give the statements so am still seated down here waiting maybe to respond to the statement that is sought. Thank you, Mr. Speaker.

Hon. Speaker: I think hon. Majority Leader, there are statements that we have not received answers and we still need those answers. Let us go to the next statement. On which matter? Ok

Hon. Kitheka: Mr. Speaker, Sir, as per the way the Majority Leader has issued the statements. It has come to my realization that, he is the one who is usurping powers of the chairpersons. The chairpersons are the people who are supposed to be issuing statements of their respective committees and not touching any committee which he comes across. So I don't see the essence of the Majority Leader coming to issue a statement on labor while the chairman is seated here and he has the powers to issue that statement. Thank you, Mr. Speaker.

Hon. Speaker: Now, let me deal with that. I am the one who directed the answers be done by the Majority Leader. So, he is not out of order. Proceed. Now we are on the next statement.

FUEL FOR AMBULANCES

Hon. Maitha: Thank you Mr. Speaker and the hon members present. Mr. Speaker, I am seeking direction from the Majority Leader, regarding certain issues which are really affecting us on the ground. Mr. Speaker, the government of Machakos invested heavily in the purchasing ambulances which was quite a noble idea to an extent where every hon. member of this assembly wished to enjoy that facility but it was already a sell-by date idea, Mr. Speaker. What I am asking is this; we have got ambulances that were allocated to various stations within our wards and the worst scenario that we are experiencing, personally being one of them, is that I have called twice to get this ambulance to assist an ailing electorate. To my surprise, the ambulances were three or four days without any fuel Mr. Speaker. I need to know, why we bought so many ambulances that we cannot fuel? They were meant to address urgent matters and yet they don't have fuel. We need to know.

KONZA LAND

Secondly, we have seen on the dailies regarding the issue of the Konza Malili land tussle. We need the Majority Leader, through the ministry of lands, to give this assembly information regarding the official status of the Konza Malili land. Last but not least, I need the hon. Majority Leader to explain to these hon. members, some sentiments that we are receiving from the executive officers in the various ministries. Whenever you demand or request for a service, the first question or reply you get that you are not supporting the government. We want this substantiation given and be told, are services in Machakos going to be delivered on the degree of whether you are supporting or not supporting the government? If they have decided to play political role, then I know this assembly has got the powers to deal with them as per the law.

Hon. Speaker: Order, order. There is a member on the floor

Hon. Maitha: Last but not least, Mr. Speaker, last week I sought a statement from the Majority Leader regarding the presence of the chair of the hon. Senator but to my surprise I can see an interchange has been done. So, Mr. Speaker, we seek to have an official seat for the Senator. Thank you.

(Applause)

Hon. Speaker: Order, order. I am just wondering where the noise is coming from because we have a way of appreciating ourselves. Please let us maintain decorum. Majority Leader you have heard the points raised, dissect them and give to the responsible chairs to bring answers in the earliest of the next session. Proceed. We have a statement?

Hon. Muthuka: Thank you Mr. Speaker. I requested for a statement three months ago and we have been postponing every day. I will give on Tuesday, on Tuesday, on Tuesday, until when? Is it by the end of this parliament or when? The Majority Leader is here, I need to get the answers to my statement. Thank you.

Hon. Speaker: I thought I said that those answers will be provided maybe you did not listen well. May the answers be provided before the next sitting? Do you have the answers ready today? Wait until the microphone comes please. Take the mic.

Majority Leader (Hon. Mwonga): Mr. Speaker, I don't have the answers ready.

Hon. Speaker: Can you undertake that the answers will be available in the next sitting?

Majority Leader (Hon. Mwonga): Mr. Speaker now I am in a state of confusion because some members are saying that I should not be issuing statements on the floor of the house. They are saying it is the hon. chairpersons. Mr. Speaker, I think you should make a ruling so that I may not be seen as if I am usurping powers of the chairpersons.

Hon. Speaker: Proceed and make your reply, the direction is mine.

Majority Leader (Hon. Mwonga): Thank you, Mr. Speaker.

Hon. Speaker: If you don't have the capacity then you can delegate to the chairpersons.

Majority Leader (Hon. Mwonga): I have the capacity Mr. Speaker. Thank you.

Hon. Speaker: Let us proceed, Clerk.

Hon. (Ms.) Ndawa: Mr. Speaker, let me start by thanking the hon. Mwonga for the good work he has done to deliver today because I know for so many times we have been waiting and for once he has given a statement today. But I want to tell this hon house this; the truth is if a statement is requested in this house concerning the ministry of agriculture, the chairman agriculture should go ahead and undertake that. We are saying this because, what will be the work of the committee chairs if everything, all the work is pulled over to the Majority Leader.

Let the Majority Leader do his work. But for now, these statements were asked like three months ago, so he has no reason to stand up here in this house and tell us he has been told that the work is supposed to be done by the committee chairs. Mr. Speaker, I think this hon. house is

not run the Kikamba way. Let us follow the procedures, let us follow the Standing Orders, the Constitution of this country and at the end of the day we are going to deliver to our people. Thank you.

(Applause)

Hon. Speaker: Proceed Clerk.

MOTIONS

CONSIDERATION OF APPROVAL TO BORROW FUNDS

Hon. Muinde: Mr. Speaker, Sir, aware that there have been delays in disbursement of funds from the central government and further aware that the cash inflow from the local sources are irregular due to circumstances beyond control, the county government has been experiencing challenges in meeting its recurrent financial obligations. The Public Finance Management Act, section 142 stipulates that a government entity can borrow funds from financial institutions that should not exceed 5 per cent of the total annual allocation, in order to manage its financial operations properly. Further aware that some functions of the county assembly have been delayed due to financial disbursement challenges, I wish to move the motion that this hon. house discuss and approves short term borrowing by the Executive and county assembly which should be repaid within the financial year as presented and passed by the budget and appropriation committee. Mr. Speaker, I ask Hon. Sammy Nduva to second the motion.

Hon. Nduva: Thank you Mr. Speaker and the Hon. House. Mr. Speaker, as a member of the budget committee in this assembly, this matter was brought to the committee on budget and deliberations were done, Mr. Speaker. As it pertains in the public finance management act, members of the budget committee agreed and passed with one voice that this motion be brought to this hon. house for the members to discuss and pass it.

Mr. Speaker, we know the strains the county assembly and the government of Machakos have been facing. Mr. Speaker, we are aware monies allocated to this government will be pumped to our accounts before or by June 30th and the assembly and the government of Machakos or any other county government will not have a chance to utilize these monies. Therefore, that's why we saw it of importance for the government and the county assembly to borrow monies and up to the 5 per cent it is allowed by the Act, that when the money comes to the accounts of the government, now the contracts and the expenditure that will be incurred by the county assembly and the government the monies will go straight to those entities. So, Mr. Speaker, I stand here to second the motion and request this hon house to support the motion. Thank you, Mr. Speaker.

Hon. Muinde: Mr. Speaker, the Executive committee member on finance did indicate in the letter that she sent to this house that we have been experiencing two months lag in the disbursement of funds from the central government thereby occasioning the county government of Machakos, that is the assembly and the executive, to experience short-term financial short fall. Mr. Speaker, this request by the Executive does not mean that the government is in financial quagmire. It is not an indication that tomorrow once this is passed, they will rush to the financial institution to borrow money. It is a procedural move to allow both the assembly and the executive sometimes to borrow money on need basis. Sometimes, we have obligations that are maturing and we need to spend money and at that time, the central government has not released money to either the Executive arm or the assembly.

So the purpose of this motion, Mr. Speaker, is to allow so that in such situation, the assembly is able to go out and borrow money on condition because it is stipulated in Section 142 of the PFM Act that you can borrow up to 5 per cent of your annual revenue but there is a caution that that borrowed money must be able to be repaid back within a year. So Mr. Speaker, this is just a move so that during those lean moments, operations of this house and the operations of the Executive do not stall so that once money come, after they have been delayed, we are able to repay back having already expended the money.

Mr. Speaker, traditions show that at the national level that is the national government, there is a tendency of the national treasury to release funds by late June knowing very well by that 1st June all accounts be national government entities must be swept back, giving money back to the treasury for re-allocation in the next financial year. I fear that this will also happen with the county assemblies that money may be coming to us around 27th or 28th of June and in two days' time, we will be expected to close the accounts again for the next financial year. But if we are able to spend even at times when real cash is not with us, we are able to pay back immediately we get money. So Mr. Speaker I want to urge this house to discuss this motion with sobriety and get to know that it is not just the Executive, it is both the Executive and this assembly because a case in hand is that there are times when committees in this house are not able to undertake their operations because there are no funds.

We want to mitigate such situations that, once such a situation occurs, the assembly service board and the finance department are able to go out and access funds within the law and during such times, the operations of the assembly and the other arm can operate. Mr. Speaker, it should also be clear that it is all about short term cash management, we don't want a situation where our employees are going without their salaries. We also don't want a situation where members of the assembly and the operations of the assembly are stalled because there is no ready cash.

So Mr. Speaker, I urge my colleague members to consider this motion as a proactive move to ensure that the operations of the assembly and the Executive arm of the government are able to run. Like now Mr. Speaker, both arms of the government are experiencing that financial hitch. There are no funds available. Situations are so bad that we need money and we are not able to access money because there is no money but as a spending entity, a government is a spending entity, we receive money, we also spend money.

People spend money they also receive money. But there are times they need to spend even when they don't have money. The situation is that they always go out to borrow, we want to be able to borrow when need arises. Thank you, Mr. Speaker.

(Applause)

Hon. Speaker: Chairman, I don't know, did you conduct civic education on this?

(Applause)

Did you meet the members, explain to them the effect, the procedures because it was important to sit down with the members explain to them properly, because the way I am seeing, hands getting raised on the other side maybe you did not sell your product.

Hon. Muinde: Mr. Speaker, I am a chairman of budget committee and the budget committee attended the proceedings 100 per cent and I explained to the budget committee and unanimously supported and as I have stood here, I have tried to use the best language possible to persuade my colleagues to understand. Mr. Speaker---

Hon. Speaker: I thought you would invite them in the deliberations, let them understand what you are saying. To me you are making a lot of sense, but maybe members did not understand what you are saying.

Hon. Muinde: Mr. Speaker, since members are free to air their views or to ask questions and we are in plenary, I am ready to explain. It is not about me, it is not about the budget committee, it is about us all, it is about Machakos County. So I am sure Mr. Speaker, members of this assembly will find it wise, in their own wisdom, to discuss it and pass it. I don't believe---

Hon. Speaker: Thank you very much.

Hon. Muinde: Thank you Mr. Speaker.

Hon. Speaker: You can now sit down and wait for questions. Hon. Kathinzi begins.

Hon. Kathinzi: Thank you Mr. Speaker. I think the hon. chair for budget is misleading this house totally because we have been demanding reports from the Executive side and they have not provided for those particular reports in spite of the expenditure and even the recurrent budget which we gave last year, the start of this financial year. And he is only mentioning the PFM Act but he is not quoting anything in the Constitution because the constitution is the supreme law of this country. Article 212 of the constitution of Kenya indicates that a county government may borrow only if the national government guarantees the loan.

(Applause)

And thereafter, the approval of the County Assembly. That is the only condition which can be able to allow that. I totally disagree because we already have the balances of this particular county which is lying in the office of the---

Hon. Speaker: Hon. Kathinzi, take me through that again. You are saying section?

Hon. Kathinzi: That is article 212 of the Kenya constitution and Mr. Speaker, remember the constitution of Kenya is the supreme law of this country. It supersedes any other law. So I request the chair---

Hon. Speaker: Order!

Hon. Kathinzi: I request the chair for budget to do his research again then call members for all of us to go for a *Kamukunji*, discuss the issue and then come back to the assembly. Thank you, Mr. Speaker.

Hon. Speaker: order, order, order. We are on plenary. There is serious question that has been raised and it is a constitutional matter. Can you now answer that question and see this is why you needed perhaps to---

Hon. Muinde: Mr. Speaker, I am happy to stand again to explain to my young brother, the hon. member from Kivaa, who is also my friend. I want to draw him to the provisions of section 142 of the PFM Act and I also want to say before I read it, that I agree that the Constitution of Kenya is supreme to all the other laws that exist.

(Applause)

But Mr. Speaker, when we talk about the loans he is saying from the constitution, it is those big loans that need the approval of the national government. Of course---

(Loud consultations)

Mr. Speaker, I need protection. I have been asked a question and I need to answer.

Hon. Speaker: Just a moment. Allow him to finish although there is also something I am checking. Just finish.

Hon. Muinde: Mr. Speaker, when the county governments have to borrow big monies for development and especially externally the approval must be sought from the national assembly and that is already given in the constitution and that is where the hon. member from Kivaa is quoting but here I am talking of short term cash management---

Hon. Speaker: We will have moments to interrogate him. Just finish.

Hon. Muinde: Mr. Speaker, that provision is given in the PFM 142, which is the main law managing public funds both in the county government and at the national government and I want to urge members to realize that we are not going outside to borrow. We are saying, when situations demand, on a need basis, there are times, Mr. Speaker, where if given an opportunity, the finance department of this assembly can go out and borrow. We are only saying they cannot go out to borrow when the assembly has not given them the authority. So meanwhile same applies to the executive.

Hon. Speaker: Okay, let us hear point of information. Order! Let us hear this several points there. Let us hear Hon. Ndeto.

Hon. Ndeto: Thank you, Mr. Speaker. I think there is something the chair needs to clarify. Out of his statements, he is indicating we are passing this motion but we are not in need right now. According to what he is indicating. His indication is as if we will pass it not for now, but to be used it at a time. This means, there is no need right now. Therefore, there is no need of discussing this motion, because according to his statement, there is no need now.

Hon. Speaker: Be brief. Let me hear.... Any way it is taken.

Hon. Kitheka: Thank you Mr. Speaka for your protection.

Hon. Speaker: Order, Order, Order.

Hon. Kitheka: I wish first and foremost, to give a very clean analysis chronicle of what happened a month ago when we were passing a supplementary budget here. We passed a supplementary budget to borrow from one department to another. That succeeded even borrowing the money from the assembly to the Executive. We duped ourselves and we gave our own money to the Executive. Here comes a situation where now the chairman is categorical in telling us now we are not borrowing within.....we are not borrowing outside. Let me clarify to the chairman that we are borrowing outside because we are going to the banking institution to borrow and there is all that it takes from borrowing from the banks. There is.....all the interest and all that accompanies the borrowing.

Mr. Speaker, it sounds awkward for us to sit in this house and brush aside a constitutional issue which has been stipulated by the laws of this country and start arguing saying that it is not

meant for big money, it is meant for small money. That does not make sense at all Mr. Speaker. If we are going to carry this house in such a trend, we are going to make the people outside there be furious of us and they will storm this house to eject us because it will seem that we don't know what we are doing in this house.

(Loud consultations)

Mr. Speaker, Mr. Speaker, Mr. Speaker.

Hon. Speaker: Order!

Hon. Kitheka: Mr. Speaker, Mr. Speaker---

Hon. Speaker: Restrain yourself. You are almost getting out of order. Order! Are you through? Summarize now please.

Hon. Kitheka: Mr. Speaker, I want to assure these members, we have to follow the law, go by the constitution and have decorum when we are carrying business on this house. Thank you.

Hon. Speaker: Thank you. Hon. Mutuku is there? Now I see you. You will be next.

Hon. M. Mutuku: Thank you Mr. Speaker, Sir. I am in support of the chairman of the budget committee.

(Applause)

With the following reasons. It is legally constitutional as Public Finance Management act. Secondly, it is a common practice for young governments to---

Hon. Speaker: Order, Order, Order.

Hon. M. Mutuku: It is a common practice for young county governments and also young governments in the whole world. There is no government which can develop economically without borrowing.

(Loud consultations)

Hon. Speaker: Proceed. You are protected.

Hon. M. Mutuku: In borrowing, there is something we call cost-benefit analysis where we have to weigh the cost and also the benefits accruing from the borrowing. Remember, once we borrow, we are going to be cushioned because the money from the national government is usually delayed and the chair has said the money is normally released late June so once we borrow, we are going to make sure our projects which are going on, continue being serviced. We are not going to allow any projects which have started to stall because we don't have money. And that is the reason why we are borrowing that money to make sure the day to day running of the account is active. With those few remarks, thank you Mr. Speaker, Sir.

(Applause)

Hon. Speaker: So before we hear the mover of the motion. Let us hear.....

Hon. T. Kilonzo: Yes Mr. Speaker, Sir. I want to say, this county is not the one to start borrowing.

(Applause)

But I know there are those members who were here in this house in previous regimes and even those who were there in the municipal councils and we used to borrow money. We are not starting something new, local governments have been borrowing money. Even the government of Kenya has also been borrowing, so this is not something we are starting here and I urge my fellow hon. members not to oppose everything please. There are those things that we should talk in one voice. Thank you, Mr. Speaker, Sir.

Hon. Speaker: Let us hear the Deputy Majority Leader. Let us hear that---

Hon. Kasimu: Thank you Mr. Speaker, Sir. I would like first and foremost to congratulate those people who are opposing this because this is healthy in any democratic assembly and all over in the world. It is healthy.

Hon. Speaker: I get that. Kindly address the Hon. Members properly.

Hon. Kasimu: Alright. I withdraw and apologize---

Hon. Speaker: Order. I have taken up.

Hon. Kasimu:to the hon. members who are opposing the budget borrowing agenda that we brought today. I stand here to support. But hon. members, as we stand here, as we oppose, we will oppose with reasons, because I stand here to make it clear that the borrowing that the Constitution of Kenya is demanding that we go to the national government is when we

are borrowing heavily from outside. Even when we are getting money from outside, the county and outside this country is when we need to get a nod from the national government. We will remember what has been happening in the United States---

Hon. Speaker: Members...Order!

Hon. Kasimu:when the president brought the Obama care.

Hon. Speaker: Order, Order. I urge members to stop exchanging across themselves. If I catch you doing that, you will be out of order and you will see the exit. Proceed.

Hon. Kasimu: Thank you Mr. Speaker. So I was saying, in the United States is a healthy democratic nation and when the President brought the Obama care, the Republicans went against it and the Democrats supported it but they went to voting. The Obama care went through because the majority is the democrats and they won. But there is another Bill that has come recently that is supporting electrification in most of the African nations from the United States. The Republicans and the Democrats have united and supported that Bill, because it is a healthy and important Bill to that nation to support African nations.

(Applause)

There comes a time when we will have to talk as one voice as members of this assembly. We don't have to stand and oppose everything that comes from the Executive or that comes from the Majority Leader to this house. Sometimes let us know that united we stand, divided we fall as a house. I am requesting members, the hon. members, who are supporting this to come back to their senses and know that we need to support this Bill for the government to continue operating.

I have heard only one hon. member from Muthwani, the hon. Dominic Maitha has said that the ambulances in his ward that are without fuel. Surely, where do you think the government will get money to fuel these cars, the patrol cars that we have. It is simple. The money that we are borrowing here will go in operating the systems that are in this county government. County government is in two ways. We have the assembly and we have the Executive. When we borrow, it means that we will empower the executive and empower the county assembly. Thank you, Mr. Speaker.

Hon. Speaker: Now as we proceed further, I will ask the mover of the motion, or the chair to look at the Constitution, Article 212. It talks about borrowing by counties. It clearly puts two conditions which are mandatory that a county government may borrow only if the national government guarantees the loan and secondly, now what we are doing, with the approval of the county government assemblies. Do we have within yourself, a communication for the national government, that the request to ask for loans was made and approved.

(Applause)

Hon. Muinde: Mr. Speaker, I talked at length with the minister finance on this matter and she told me that it is a matter that she has discussed with the finance secretary at the national level, Mr. Rotich and that.....

Hon. Speaker: Order, I think the question was mine and I am happy with answer, proceed.

Hon. Muinde: She assured me that they discussed the matter and she also indicated that provision of the constitution because I heard the same thinking. But where there is a loan to be guaranteed by a national government, of course that should not be little money. When we are talking about short---

(Loud consultations)

Hon. Speaker: *(Addressing members engaged in loud consultations)* You are out of order. I don't want to repeat this. I said members should not speak without permission from the Chair. Proceed.

Hon. Muinde: Mr. Speaker, we are only talking about short term cash management which is stipulated by the very act that protects public funds. Mr. Speaker, I also want to urge members, as I answer this, that let us have an open mind and look at this request as also benefiting this house. So it should not be looked at, that the Executive arm of the government is benefiting out of this. There are times when projects may be undertaken at the ward level and that contractors may need to be paid or salaries need to be paid and money has been delayed from the national treasury. Do the operations of the county government come to a halt?

We should also think about this county assembly because the same authority giving the executive authority to borrow on short term basis is also being extended to this assembly and have given an example. And I am very sure this will happen. We have had cases where the controller of budget and the treasury releases money to the county government and on the following day they go to the media to say 'so many billions lying idle at the county level' yet at that period the counties have been having no money.

I fear situations in June, before the end of the financial year, where money will be pumped to the county accounts and that the national government goes to the press and says that counties were not able to spend, and i want to be put on record because June is fast coming. You will find a situation where money will be sent to the counties and a report to indicate 'the counties were not able to absorb money' yet there times we lacked finances. Mr. Speaker, we are only trying to mitigate the situation, whereby those lean moments, we are able to be liquid enough, spend with the intention to pay later. Thank you.

(Applause)

Hon. Speaker: Order! Chairman budget committee, it looks like when you were addressing me, you did not look at what was happening on the other side. If I were you, I would have ended with a plea that, 'I be given some time to build consensus.'

(Applause)

Hon. Speaker: Order, order. Let us give Hon. Rachel a minute to support.

Hon. (Ms.) R. Nduku: Thank you Mr. Speaker, Sir. I want to take this opportunity to just explain to hon. members and also in support of this motion. Just to let us know, all of us we know and according to what I have heard my fellow hon. members arguing about now, is about the ministers not bringing reports on accounting on what we allocated to them. But I just want to put it clear that plans are underway for these ministers. Just give me time---

Hon. Speaker: Order, Order. We said don't shout to a member on the floor.

Hon. (Ms.) R. Nduku: Because I know what is irritating them is that ministers have not given accountability of the money we allocated to them, but i want to request hon. members, because now we are in May, June is next month and these ministers, they are preparing their report to give to us, and every hon member will be given opportunity to ask the ministers questions. We are not hiding them. We are not saying that 'do not come to this hon. house' they will come. Even the money we are going to borrow, they will also give accountability of that money. It is not that they will not come. So I just wanted to put it clear that the ministers will come and they will give account of what we have allocated. Mr. Speaker. Thank you.

Hon. Speaker: Ok. Members we want to hear those members who have not spoken in the house today. Ok, let us hear this point of information. And it must be sincerely a point of information.

Hon. (Ms.) Ndawa: Yes, Mr. Speaker. Hon. Members of Machakos County Assembly, I want to say this; we are not opposing this motion. We are saying the procedures must be followed. And I want to quote Mr. Speaker, why I am standing on a point of information. In the Public Finance Management Act 2012, section 140 states this.....my hon. member for budget is really trying to avoid..... it states, accounting executive committee member for finance may on behalf of the county government raise a loan for that governments purpose, only if the loan and the terms and conditions of the loan are set out in writing and are in accordance with Article 212 of the constitution, which the Speaker read for you.

And again in sub-section 58 and 142 of this Act which you were quoting. Mr. Speaker, you cannot go to a sub section or an Act, and then you quote the Act and you skip (a) you go to (b). It is automatically that a, b, c and d. It is compulsory.

(Applause)

We are not opposing. It is also the budget chairman who stood and told us the contractors are not paid---

Hon. Speaker: You are out of order now. Contractors are not paid.

Hon. (Ms.) Ndawa: I am now giving the information of what he said Mr. Speaker. Protect me Mr. Speaker.

Hon. Speaker: Order, order, order, Hon. Ndawa. You have made you point, let us hear hon.... That was information that I agree was information.

Hon. Maitha: Mr. Speaker, thank you Mr. Speaker. I just want to enquire this Mr. Speaker; you gave this hon. house, letters indicating that any motion that must be brought to the floor of this house must pass through the house business committee. I am a member of the house business committee. Did it pass through the stages of the house business committee Mr. Speaker? Thank you.

Hon. Speaker: Let us hear the other information.

Hon. Katela: Thank you Mr. Speaker, Sir. I want to inform my hon. colleagues that house business was to meet this morning and some members met and he just came late, so he should not blame anybody. We met in the morning from 1130 a.m.

(Loud consultations)

Hon. Speaker: Order!

Hon. Katela: We met in the morning. So you should not bring your problems to the..... you should not blame anybody for being late. Thank you, Mr. Speaker.

Hon. Speaker: Order! I will deal with the question of the house business committee because am the chair. I did not say you speak, I said I will deal with the matter of the house business committee. I am the chair. Notices were issued that the house business committee meets today atwas it 11, Mr. Clerk... and there was nobody who was in attendance. Order, Order,

Order. When nobody came, we discussed the matter in my office with several members, who were in attendance and i directed that this motion do proceed. So that is the ruling from the chair.

(Loud consultations)

Order! Let us proceed with the debate. Matters of debate only. Hon. Matheka.

Hon. Matheka: Thank you Mr. Speaker. Mr. Speaker, Sir, I wish to contribute on this motion which is a bit heated, causing a lot of heat in this house and I would like to inform the chairman budget that the PFM Act is a creation of the constitution and the constitution supersedes any other law. So, while he is quoting the PFM Act, he should also consult the constitution which will supersede the other act.

Mr. Speaker, Sir, as my fellow hon. member from Kivaa said, Article 212 states clearly, ‘if you want to borrow, if any county government wants to borrow, the national government has to approve’ and I am wondering why the hon chairman is putting the cart before the horse. He is trying to coerce this house to approve or to support the motion. The assembly to support the borrowing before the national government does so. In order of chronology---

Hon. Speaker: Order! Order! please.

Hon. Matheka: In order of chronology (a) comes before (b), so (a), should supersede (b) and the national government should approve first before the assembly ascends to that. Mr. Speaker, Sir, my second point is this; the chairman is trying to talk of small money, we don't know how small is small, we might talk of small money here only that we are going to borrow Ksh. 10 billion which is exceeding the budget of the whole county. So he should tell this house how small money is small.

Mr. Speaker, Sir, the Deputy Majority Leader said that we are not borrowing outside the county, we are borrowing within the county and to me outside means outside. If we are borrowing from the bank, we are borrowing outside the county because these banks are multinationals and a multinational working outside the county they only have branches here. So we should understand what borrowing means. If we are doing a local borrowing that is raising money within the county, we can understand. But, borrowing from the bank, is outside.

Mr. Speaker, Sir, I also would like to say this. Even in our own houses, we don't borrow money to go and buy food. We find that money. I can see Machakos county borrowing money to finance recurrent expenditures which is very wrong. To me if it was money to be borrowed to finance development expenditure, that can be something else. But money to finance recurrent expenditure, we are going on the wrong direction and this motion should be opposed in the greatest ways possible.

Mr. Speaker, Sir, my last point is to the chairman budget through you. Mr. Chairman Budget, we are not opposing the motion as such but please consult and call a Kamukunji, enlighten every member so that when we come to our house, we come as a united house. We are

not opposing the motion as such but we should be consulted. You only consulted members who you thought will support the motion but you never consulted the others. Please consult. Thank you, Mr. Speaker, Sir.

Hon. Speaker: Let us hear Minority Leader and then the deputy speaker. Let's hear your leader there.

Minority Leader (Hon. Kasoa) Thank you Mr. Speaker. I am just calling hon. member to approach this issue soberly and I think the issue which we have here, is only that the chairman never prepared the members in time, because he has a very good point and I support it partially because you remember, Mr. Speaker, you remember, Mr. Speaker---

Hon. Speaker: Order. Allow him to proceed.

Minority Leader (Hon. Kasoa): We have been experiencing a lot of delays in funds from the central government and I can see a point whereby we may get funds at the latest date of next month. And you remember very well, last financial year our money for the county assembly went back to Treasury. So I am just urging members, the chairman for budget just to organize a Kamukunji we discuss this issue once and for all. Thank you, Mr. Speaker.

(Applause)

Hon. Speaker: Thank you. Sorry. Let us hear from the Deputy Speaker first.

Hon. Nganga: Thank you, Mr. Speaker and the House at large. I realize this issue brings and causes a lot of attention from the members of the House and with your indulgence, I would like to request more time be appropriated to this issue so that members can be able to interrogate the scenario. Mr. Speaker, in furtherance of the issue that has been brought to this house, you realize it raises concerns about borrowing and any borrowing of whichever term that is concerned to any person. Mr. Speaker you realize that this is an issue that is required to be approached with caution.

Mr. Speaker, you have seen and witnessed what has happened in the national assembly when the matter of the Anglo Leasing came up. Mr. Speaker, that was a resolution that was approved by a sitting of that house more than 10 years ago when Moi was the President of this nation. Mr. Speaker, that same issue has come to haunt a government of two presidents. Mr Speaker, you realize that a vote has to be made so that the national assembly may give a direction on whether that payment for the Anglo-leasing may be treated as an honorable pay.

Mr. Speaker, you realize the issue that has been brought to us is of important consequence. The county government needs to be able to run even when we have short falls and the cash flow needs to be maintained in some way. But further to it, we realize that there are constitutional clauses that have been read by members here and further substantiation is required

to it. We may not know how much it means of a big or small borrowing and one of the clauses raises the need for national government guarantee. And in that clause, Mr. Speaker, it doesn't raise the demarcation between what will be a small and a big borrowing. And in itself, it raises issues of concern. It will be wrong for members to make a mistake that would cause the people of this county.

(Applause)

And in the same statement, I never meant that whatever is brought before us is a mistake but rather it will be good that we are sure of what is being done. As a member who represents an electoral area and a member who also represents a certain electoral college within the county assembly, I would find it important that the concerns that has been raised by members be clearly substantiated and be done with, with the proper wisdom, so that members maybe sure that whatever they are doing will not come to haunt this county in days coming in the future.

(Applause)

Mr. Speaker , it is not also clearly indicated who will guarantee short term and long term loans bearing in mind most of this members may not be able to have the fine facts about the status of the county treasury.

(Applause)

Mr. Speaker, while we might want to very much support the very issue that is before us, we might also be very well in need to be sure about the move we are going to take. And in our of our training's, Mr. Speaker as I wind up, one of our facilitators told us, one of the biggest mistake that parliamentarians in the whole of the world do, is that they approve issues that they don't very well know about.

(Applause)

Mr. Speaker, as a county assembly I do not want a member of this house or even a staff of this institution or even a staff of the whole county government to lack pay at the end of the month. Mr. Speaker, I will be more than impressed to have all of them paid. Mr. Speaker, I would love to see all our contractors who are doing the good job that they are doing within our county also paid. Mr. Speaker, I would not love to see them erroneously paid. M. Speaker, I would urge that in your guidance in your ruling, you may find it wise that with this house may find time to have the members informally consult further on this issue and authenticate the facts behind it so that by the time they make a decision on this issue, they are more than adequately informed, because this issue will not only affect the situation of this institution but also the

situation of the residents of this very honorable county. Thank you, Mr. Speaker.

(Applause)

Hon. Speaker: I think with that we can hear the chair budget.

Hon. Muinde: Mr. Speaker---

Hon. Speaker: Order!

Hon. Muinde: Mr. Speaker, I find this debate very interesting and very healthy on both divides but, Mr. Speaker, the hon. member from Ikombe fell short of declaring his position. He is actually on the middle ground which is not very good for democracy. It is better to be either warm or cold, support or not support. But, Mr. Speaker---

Hon. Speaker: So, I restrain myself. Let us hear you.

Hon. Muinde: Mr. Speaker, I also don't want to be misquoted. I did not say that contractors are not paid. Work is going on, many operations of the county are ongoing. We are only saying this is a procedural move to allow when situations are bad to allow those responsible to be able to borrow on a need basis so there are times when money may delay. That is exactly what I said. So there are times when contractors can be paid, there are times when we need to pay them or the government needs to pay them and there could be no money. So I just wanted to make that clear.

On the amounts to be borrowed, the Act is clear that the maximum that can be borrowed within a financial year should not exceed five percent of the annual allocation of that county entity. And it doesn't mean that you take five per cent and you multiply by the amount that the county has budgeted for. We may not need all that, but we are saying at any one time that upper limit may not or should not be exceeded. Mr. Speaker, I also wonder, I find disconnect between Anglo Leasing and the motion at hand. What does this house have to do with Anglo Leasing?

(Loud consultations)

Hon. Speaker: Proceed. Just a moment. Proceed. Order, Order, Order. Deputy chair you will have a moment to respond. Let him finish. You will have a moment to show the disconnect.

Hon. Muinde: Mr. Speaker---

Hon. Speaker: Order! I don't want to hear that. Proceed.

Hon. Muinde: Mr. Speaker, I actually urge my hon colleagues to just go slow on this. Let us not have just a lot of energy to oppose even what is good for us. We will need to run, I am even taking an example of this assembly. Everybody here can attest that we do not have money right now, just for small moneys to run. Mr. Speaker---

(Loud consultations)

Hon. Speaker: Order! We said we don't speak.....we can only speak through the Chair. Just wait. Order! Take your seat. Finish.

Hon. Muinde: Mr. Speaker, if this motion passes, you find that there are times we need as little as 3 million, as little as 10 million to facilitate members to do their own operations here. That is the kind of money we are talking about. Mr. Speaker, it will be very painful at the end of next month, which will be the end of this financial year, when a lot of money will be pumped to us when the remaining balance of the allocation of this assembly and that money within three or four days, is taken back. Mr. Speaker, as I say this, it is also hurting because when we pass a motion here on money matters, some of us who are also beneficiaries of that motion run to the controller of budget to block it. If we are not able to get money, Mr. Speaker, we will not be able to run this assembly and the affairs of the government.

They are the same people trying so hard shoot down this motion, Mr. Speaker. I would want to urge them to go slow and see the light and we all flow together. I humbly urge you members, please it is for the good of us all. There is no hidden card on the authority to borrow. Every spending entity sometimes borrows, when the resources available at that moment is not enough to defray all the expenses that are accruing at that moment, Mr. Speaker. Thank you.

Hon. Speaker: Okay. Thank you. Let us hear the Deputy Speaker, there was only that point that you were raising.

Hon. Nganga: Thank you Mr. Speaker. I am just here to substantiate my sentiments and thank you Mr. Speaker for this opportunity. As you realize, before this house, I swore an oath to be able to practice the responsibilities that you bestowed on me, with all the fairness possible. And the hon. member that was previously on floor has alleged to me on sitting on the fence. Mr. Speaker, as a member that has been elected by this Electoral College, any point contradictory to the sentiments on the floor is always a point of concern to the man on the chair.

Mr. Speaker, as you have done and demonstrated right away, you yourself as been able to give both the divides of this house the responsibility to proclaim their positions. In the same capacity Mr. Speaker, I should also be able to raise the concerns on either sides of this house. And raise the pros and cons of the issue that is before us. Mr. Speaker, doing that in itself is only in furtherance of the exercise of the jurisdiction that has been bestowed upon me.

And in that point Mr. Speaker, I am not just sitting on the fence, am raising the concerns on why these things are good, why we should support this motion and also raising the concerns

why this motion must have some intricacies. When I mention or refer to the issue of Anglo-Leasing, I don't mean that this is purely Anglo-Leasing. I am only saying that in our national assembly, more than 10 years ago, a similar kind of a motion was tabled and the members then never knew that in days to come, they might have approved something that would come to haunt that house for more than 10 years.

(Applause)

Mr. Speaker, I was only giving a cautionary measure to the conscious members of the house that in as much as we may want to support this it, would also be good that we interrogate whatever is before us. Isn't that wise? Mr. Speaker, I want to make the reference as I wind up to the sentiments of one hon. senator for Kisumu Sen. Anyang' Nyong'o, during the debate on impeachment of the governor of Embu today. The hon. Senator said that democracy, in essence, demands consultation and mutual consensus.

(Applause)

Mr. Speaker, you realize we are operating under a new constitution that has bestowed a lot of responsibility and powers to the masses and people that represent them. Mr. Speaker, I would not want to be quoted that at some point I slept on my responsibility to raise the concerns that will be aware of. On this note therefore, it is good that we build consensus and we consult as widely as possible so that we do the only thing that is good.

This county needs to continue leading in implementation of the devolution agenda. Mr. Speaker, I am for the fact that we need to continue leading even up to more than beyond 2030. Mr. Speaker, in doing that, we must always ensure that at every opportunity we do what is right. I want to urge fellow members to find it that---

Hon. Speaker: Order!

Hon. Nganga: I want to urge fellow members to find it that---

Hon. Speaker: Kindly summarize now.

Hon. Nganga: Yes Mr. Speaker, that having a dissenting or different opinion does not mean that whatever is in the floor is wholly disapproved. I want to urge our fellow members to find it within themselves that they can differentiate between agreeing to agree and disagreeing to agree. Thank you, Mr. Speaker.

(Applause)

Hon. Speaker: We can hear hon. Ndeto and then come to you. Let's hear what you have to say

Hon. Ndeto: Thank you Mr. Speaker. It is always good for this hon. house to have information concerning issues that we are discussing. And i want to give further information over this motion. Article 58 of the PFM Act, states these. 58 (2) (a)---

Hon. Speaker: That is section or article?

Hon. Ndeto: 58 of the Public Finance Management Act. This is talking of the national government and it states these... 'the cabinet secretary shall not guarantee a loan under sub section 1, unless the loan is for a capital project.' 58 (i) states these... 'the cabinet secretary has taken into account the recommendation of inter-governmental budget and economic council in respect of any guarantee to a county government.' The equivalent of the inter-governmental budget and economic council within the county government is the County Budget and Economic Forum, which is stipulated in Section 137 of the PFM Act.

137 states these 'as soon as practicable, after the commencement of this Act, a county government shall establish a forum to be known as.... the name of the county, county budget and economic forum. That is Machakos county budget and economic forum. Chairman budget, you need to tell us, does Machakos county budget and economic forum this exist because it is given mandate, when you read down there, to discuss borrowing by the county. So I wanted to give this information, you can further consult Section 58 where we were 2 (a), (h) and (i). It is very clear over these matters, so Mr. Speaker as you give the ruling today, it is very important for us to consult both the law and also the PFM Act. Thank you.

(Applause)

Hon. Speaker: Thank you, thank you very much. Further information, we want to veer very quickly. Anybody on this side, very quickly.

Majority Leader (Hon. Mwonga): Thank you Mr. Speaker and I would start by thanking members who have contributed to this important motion and thank those members who are having a hard line stance on opposing this motion. Mr. Speaker, I am 100 per cent opposed to the *Kamukunji* way because that will be killing of democracy of this hon. house. Mr. Speaker, if we go the *kamukunji* way, it means this will be a Yes assembly and the taste of any debate in the assembly is where members support and others oppose. And the climax of such a debate is voting, Mr. Speaker.

(Applause)

Mr. Speaker, before we go that way, I ought to urge my fellow hon. members and I want them to remember the 2012/2013 budget. The controller of budget released some funds to the counties, two days to the close of the year, Mr. Speaker. And as we speak, as members will agree with me that I do and perfectly and 100 per cent represent the Executive in this hon. house, Mr. Speaker the information I have and it is the correct information, is that the government has not released funds for March, April and May. Mr. Speaker, why the Executive member for the finance ministry or docket is asking for authority to borrow is, supposing the controller of budget is not going to release any funds until the end or until somewhere around the end of June, Mr. Speaker. What will happen?

Mr. Speaker, it means all the functions of the Executive and the assembly itself the functions itself are going to be grounded, Mr. Speaker and it is the same hon. members who will start complaining 'we wanted to go for this training, we want these allowances' and the chief finance officer will not be having funds. So, Mr. Speaker, I think the mood of these hon. members, the majority of them, is we vote and we and we exhaust this motion, Mr. Speaker Thank you, Mr. Speaker.

Hon. Speaker: Let us hear hon. Ngunzi. We have not heard hon. Ngunzi.

(Loud consultations)

Hon. Ngunzi: Mr. Speaker, thank you Mr. Speaker. Now there is a point we have kept dwelling on and the issue here is not timings. June is coming, we have no problem with that but the borrowing must be within the law. Simple.

Hon. Speaker: Hon. Nzeki has not.....we have not heard hon. Nzeki yes and then Ndalani. I am looking for those who have not contributed.

Hon. Nzeki: Thank you Mr. Speaker. I just wanted to comment on this issue and I support our budget chairman.

(Applause)

I support him on this issue since national government is always releasing money very late and I know that money has not been released from March to June. So since it has not been released, we have to do one thing. We did.... *(inaudible)*....of funds, we did supplementary budget then we are only doing what we call overdraft. That is short term...Yes borrowing is an overdraft, then that means that is a short term before the end of the financial year which ends in June. So Mr. Speaker, Sir, I support the chairman, since in our homes, even in our homes we do budget borrowing. We have to borrow and even the national government is also borrowing. Thank you, Sir.

(Loud consultations)

Hon. Speaker: Order. Before you inform the house, let us hear that member. He has not spoken *(signaling Hon. Joseph Muli)*

Hon. Muli: Yes, thank you, Mr. Speaker. I would like to inform this house that, members who are opposing this motion, we have financial disbursement challenges from the central government. They should be aware of that. Secondly, I would also like to guide them and tell them that, out of the process this disbursement of money if we are given loan, the rule of development has we are the first county in development in this Kenya that our development will be in motion.

We should not be caught hostage by saying we don't pass this motion. I wonder why of the hon. members who are opposing this motion. There must be a hidden agenda and they have to come out clearly so that we can be aware because, mostly as we are legislators---

(Loud consultations)

Hon. Speaker: Order!

Hon. Muli: You have to protect me Speaker. Speaker you have to protect me.

Hon. Speaker: Kindly, tell us what youOrder.

(Loud consultations)

Hon. Muli: I will testify, protect me Speaker, I need to be protected, Speaker

Hon. Speaker: Order!

Hon. Muli: I need to be protected.

Hon. Speaker: Hon member just sit down. Get seated first. Now tell us what you meant by hidden agenda.

Hon. Muli: Thank you Mr. Speaker for just allowing me to explain. When I say about the hidden agenda, I wonder why some hon. members are opposing this very good motion. The hidden agenda is as they present their grievances, why they are not proposing alternatives to this motion. They are not bringing the agendas to challenge the issue, Mr. Speaker. Yeah. And that is very much true.....therefore---

(Loud consultations)

Hon. Speaker: Order!

Hon. Muli: Guide me .Mr. Speaker.

Hon. Speaker: Don't stand. Sit down. Let him conclude. Conclude.

Hon. Muli: As I conclude Mr. Speaker, I can see the mood of this house. I request because, God created people of their different categories. Therefore, if it was my wish, I could request we vote to see how..... Thank you a lot.

(Loud consultations)

Hon. Speaker: Order!

Hon. Kitheka: Thank you Mr. Speaker, I seek your---

Hon. Speaker: Order!

Hon. Kitheka: Mr. Speaker.

Hon. Speaker: Order, Mr. Ngunzi, Hon. Ngunzi, order!

Hon. Kitheka: We are going to vote and voting---

Hon. Speaker: Order, Order.

Hon. Kitheka: Mr. Speaker, in voting, a wrong and another wrong doesn't make a right Mr. Speaker.

(Loud consultations)

Hon. Speaker: Order!

Hon. Kitheka: Mr. Speaker, let me substantiate that. Even if we vote and we vote when we are outside the law, it will be a nullity in the same issue. Mr. Speaker, there is something I want to inform these members. Mr. Speaker, these hon. members are talking about small money and they don't know exactly the percentage which is remaining for the county. Mr. Speaker, the percentage remaining for our county is seven per cent, we know it is remaining seven per cent. Here comes a situation we are requesting for five percent at this time. Mr. Speaker, we know why the money of the Machakos County did not come in at this time, it is because the money had

been misused.

(Loud consultations)

Mr. Speaker, Mr. Speaker, Mr. Speaker, I wish---

Hon. Speaker: Order. I rule that you are out of order. Sit down hon. Kitheka you are out of order.

Hon. Kitheka: Mr. Speaker, protect me.

Hon. Speaker: Sit down, you are not protected.

Hon. Kitheka: I have a point.

Hon. Speaker: Sit down, sit down. Wait, wait. Let us hear this first.

Hon. Ngui: Thank you Mr. Speaker, Sir. Mr. Speaker, I have been seated here listening to both sides on this debate. Mr. Speaker, I want to say this; whoever thought of this motion and brought it to this house, this is a well-thought motion and a very noble idea to this county.

(Applause)

Mr. Speaker, you realize that Machakos County is moving with speed to meet the needs of the people of Machakos County, the poor citizens of Machakos County. Mr. Speaker, I stand here, I am the chairman on roads committee. You realize that the ministry of roads has initiated so many projects. Right as we talk to date, we have projects worth Ksh. 5 million in every ward completed already.

(Loud consultations)

As we stand here, Mr. Speaker, again we have two road projects which have been given tenders to people in every ward which are going to start next week. Mr. Speaker, you realize that these people want to get paid.

(Loud consultations)

Mr. Speaker, protect me---

Hon. Speaker: Order!

Hon. Ngui: Mr. Speaker, protect me.

Hon. Speaker: Order!

Hon. Ngui: Mr. Speaker, please protect me.

Hon. Speaker: Order!

Hon. Ngui: I need your protection, Mr. Speaker.

Hon. Speaker: Hon. Ngui, just have a seat. Come on, have a seat. Hon. Members I will halt this debate for the next few minutes. Let us go to the next agenda Clerk.

(Applause)

Hon. Speaker: Kindly sit down, sit down. Next agenda.

(Loud consultations)

Order, Order! The direction I have given.....order, order, order hon. members... the direction have given is not that have adjourned the motion. I am saying it has been halted. Let us finish the rest of the agenda first. Proceed with the next agenda. What is the next agenda?

RECESS

Hon. Muinde: Mr. Speaker, I am only standing to wonder aloud how a motion on recess can be discussed and passed. Because if we discuss and pass the recess it means we stop everything that we are doing until we come back again. So, Mr. Speaker, I am opposed to a situation where we are discussing that matter.

Hon. Speaker: Where is the motion?

Hon. Muinde: Let us go back to that hot motion, discuss and vote.

Hon. Speaker: Sorry hon. members, I meant this too. Order, Order. Sorry hon. members. What was in my mind was the Bills. Lets us read the Bills and then get back to the original motion.

BILLS

First Readings

Disclaimer: *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor, Machakos County Assembly.*

MACHAKOS COUNTY POWERS AND PRIVILEGES BILL

Hon. (Ms.) Sereka: Mr. Speaker, Sir, I wish to present the Machakos County Powers and Privileges Bill 2014 to be read for the first reading today, Tuesday, 13th May, 2013.

Hon. Speaker: Proceed.

(Order for First Reading read - Read the First Time and ordered to be referred to the relevant Sectoral Committee)

Hon. Speaker: That Bill is read accordingly for the first time and committed to the committees. Proceed.

MACHAKOS COUNTY ASSEMBLY SERVICE BILL 2014

Majority Leader (Hon. Mwonga): Mr. Speaker, I wish to present the Machakos County Assembly Service Bill 2014 to be read for the first time today, Tuesday, 13th May, 2014. Thank you, Mr. Speaker.

Hon. Speaker: Proceed, Clerk.

(Order for First Reading read - Read the First Time and ordered to be referred to the relevant Sectoral Committee)

Hon. Speaker: It is duly read for the first time. Now back to the motion. Yes hon. Manyolo.

MOTION

CONSIDERATION OF APPROVAL TO BORROW FUNDS

Hon. Manyolo: Thank you Mr. Speaker, Sir and the house at large. Mr. Speaker, Sir, the motion ahead of us for borrowing, I am in support of it. It is not only Machakos County which is borrowing nor Machakos Assembly. In the last three days, we saw the national government, borrowing funds from China. In 1942, the President of Korea..... *(inaudible)*..... borrowed money from Japan to assist him the war which was going on. Who are we that we can't borrow? In the spiritual wing of intervention, the Bible clearly says, a time came when Jesus and his disciples had problems. Jesus told the disciples 'can you go and seek' and the Bible says 'seek and it will be given unto you.' What is the problem for us seeking?

(Applause)

Can the spirits of will and acceptance be within our people who are opposing the motion?

Hon. Speaker: Thank you very much.

Hon. Manyolo:and they stand in salute saying 'we are going to accept.' Mr. Speaker, Sir.

Hon. Speaker: Order.

Hon. Manyolo: Mr. Speaker, Sir, in the last point. The last minute Jesus was crucified, they voted on who will benefit from the clothes of Jesus. Why can't we vote we know who takes the day? So Mr. Speaker, Sir, let us vote Mr. Speaker, Sir.

Hon. Speaker: Sorry, members I want us to discuss this motion exhaustively. Let us hear ...there is a Hon. Member there.

Hon. (Ms.) Mutune: Thank you Mr. Speaker, Sir. I think we have exhausted everything and I want to agree with different laws that give guideline to this motion. I want to say this; this move is only to support the two entities of this government to have a smooth run.

(Applause)

I want to cite an example. We have been here in the assembly and sometimes we go to trainings without funds and I see members of this house who are pretending right, they move to the corridors of the Clerk and instruct the Clerk to borrow funds. Where do you expect the Clerk to get funds if you don't grant the authority?

(Applause)

I want to say this; this borrowing is guided by law. It should be five per cent of the entity. So this is a small borrowing which will be accounted for.

Hon. Speaker: Order!

Hon. (Ms.) Mutune: This money will be accounted for. It is not time to account for the money.

Hon. Speaker: Let us be patient and listen to one another please.

Hon. (Ms.) Mutune: I am on the floor. Mr. Speaker, protect me. Mr. Speaker, Sir, I want to say that PFM Act section 142 permits the two entities to borrow and I wonder why the hon. members are saying that we should not borrow. For example, if the funds are delayed, what do you want us to do or we just sit outside where we have been sitting throughout the year? Things are going on at our wards, things are being done there and there are so many questions because there are no funds. Why can't we give the authorities the power to borrow and then repay the money? Thank you.

(Loud consultations)

Hon. Speaker: Okay.

(Loud consultations)

Order, Order! What you are doing is wrong. Let us sit down. Let us get seated. Let everybody sit down.

(Loud consultations)

Order, Order! This is the way I want us to go and I have heard both sides. No. I have heard somebody say 'Munyaka eteela. Members I think we need to..... Even now you are out of order. Please don't speak. And you are out of order also. Let us stop joking about this. It is a serious matter and this is what I will urge the mover of the motion to do, having heard both sides. Can you move an amendment to your motion? That amendment can be 'allowed with approval of the national government as it is in the constitution?

Hon. Muinde: Mr. Speaker, I stand to reiterate my original position. I am not accepting an amendment. I am assuring you we are within the law. We can authorize the government entities, the officers responsible to borrow on behalf of this government entities to borrow. We are within the law. I don't know what it any amendment would mean to us. We are strictly within the law, Mr. Speaker.

(Applause)

Hon. Speaker: Can you attempt to explain to us the implication of Article 212, subsection (a) of the constitution. Short term borrowing, as you have put in your motion. Actual borrowing, what is it?

Hon. Muinde: Mr. Speaker, according to me, I find this as a matter of interpretation of the law. I think we can go beyond the mere word in the constitution Article 212, that the intention was to ensure that county government will not go out on a spending spree and carelessly borrow and subject this country in to huge debts.

Hon. Speaker: We need to be orderly here. Please let us not talk without permission of the chair.

Hon. Muinde: Mr. Speaker, my knowledge about finance will inform me that to find a situation whereby an entity has to borrow, a county government has to borrow and go to the extent of asking the national government to provide a guarantee, this surely means that the amount borrowed are substantial. What we are talking about here are not huge amounts but just little amounts to cushion government entities to run. Mr. Speaker, the question of how much, I don't know for how many times I may have to say that the law is clear. We are talking about a maximum of five per cent and we are also saying the amount so borrowed must be repaid within a financial year or within a year, if my interpretation is also right.

Meaning, Mr. Speaker, the same knowledge about finance is if amounts can be borrowed, and be repaid within a year, that means it is little money. Huge monies borrowed by a government like concessionary loans can run to tens of years like twenty years. So, if it amount that must be paid, it means the county government can borrow and repay within a year. Meaning it is actually manageable. We have gone too much to really talk about huge amounts of money. We are talking about short-term cash management. Short-term is only to defray short term maturing obligations when fault you.

So we are not talking about financing huge projects by the county government and borrowing like what the national government is doing by asking funding from China on the standard gauge railway. That is not the kind of money we are talking about. Mr. Speaker, you agree with me there are times this assembly may require like Ksh. 10 million just to run its affairs. Do we need to go to the national government to ask for a guarantee to be guaranteed to borrow 10 million? Mr. Speaker, the intention---

(Loud consultations)

Hon. Speaker: Order!

Hon. Muinde: So Mr. Speaker, this has always happened. The former local authorities and some of us were here and some of the officers are also here, they would meet and pass as a resolution to allow the officers to borrow to manage the cash flow. We are only talking about management of cash flow. Members are reading too much, I fear that if we don't approach this motion with good intention, we will begin to be like cutting a tree on which we are sitting on.

We will begin to suffer and not only this assembly but also the operations of this county. If it comes to payment of wages and salaries, it is our people who work for the county government they are the people to benefit when they are paid.

We are talking about financing recurrent expenditures; let us say for example, on roads. The graders must move. We need fuel. The minister cannot even borrow a penny without the assembly giving the authority. We are only talking about operations of the government. Members I humbly urge and I repeat, I humbly urge to play full ball and allow this government to run. Allow us to run. We shall be all happy and our citizens that we serve, will be happy Mr. Speaker, we are not giving a blank check to the executive to spend without responsibility.

Statements on the government indebtedness should also be table to us and this indebtedness does not mean external debts. Even statutory deductions, stand as debts when they are not paid. Mr. Speaker, there have been times when the Executive has not been able to pay KRA on deductions on PAYE and other deductions when the money delayed. When we do not pay the interest and the penalties that accrue when that is not done is unmanageable. We are saying, 'let us allow the government to flow smoothly by doing the needful.' We need to be responsible. We need to support our own government, Mr. Speaker. Thank you.

Hon. Speaker: Chairman, do you know why you are finding it difficult to add a rider, that in your motion, 'let there be borrowing but within the law.'

(Applause)

Unless you want to offend the law, I wouldn't think there is any consequence on that and the law is there. There is law in the Constitution, there is law in the PFM Act. What is the problem? If i were you I would get off it and say 'let there be borrowing within the law' and that will solve everything.

(Applause)

Kindly find wisdom in my words.

Hon. Muinde: Mr. Speaker, I totally agree with you and by standing here to move this motion, we are only saying the government entities should be allowed to borrow within the law, that is what am saying.

(Applause)

That is what I am saying. Mr. Speaker, I don't know whether my colleagues on the other divide, are finding their vocabularies difficult. What they are saying and what we are saying is the same language. The borrowing, Mr. Speaker, the borrowing and the spending by the government entities must be within the law. And it is the laws that we are quoting. Obviously,

we cannot spend or borrow outside the law. So to what extent they are trying to impose is a different area.

Hon. Speaker: Okay. Let us hear Hon. Veronica.

Hon. (Ms.) V. Mbithe: Thank you Mr. Speaker. I stand on the floor of the house to support this motion. Now, allow me to air what I have because I have realized that in this house we need education. We need to know the interpretation of the law, word by word.

(Applause)

Why I am saying that, just the other day, we discovered that we have so many things that we have not learnt as a house. So when we come to the floor of the house, we just support or oppose and we hate each other because we do not understand these things. Mr. Speaker, I support within the law.

(Applause)

Why I am saying this, this will make us be spotless as a county assembly. I am not saying that I am opposing but I am saying I am supporting the motion within the law. And Mr. Speaker, we are the legislators. What is the work of the legislator? The legislator makes the law and we are the ones who make the laws of the county guided by the law of the country. Thank you, Mr. Speaker, Sir.

Hon. Speaker: Thank you very much. Hon. members, I think the point is clear here. We say that the motion.....let me frame the question this way, we say 'that the motion be allowed in compliance with the constitution and PFM Act and any other relevant law.' Can I therefore put the question, that.....

(Loud consultations)

Order, order, order...that there be an amendment to the motion 'that there be borrowing within the law.' Those in support of that question can you say 'ayes'

(Question put and agreed to)

(Applause)

Okay. Let us sit down.

(Loud consultations)

There is no question after the question has been put. You are asking for division.

(Loud consultations)

Order. Order! We need to sober up there hon. members. Order. I wouldn't think that there is anywhere we have amended the constitution because we got no authority to do so. There is nowhere we have done that. What we have basically done was this; that he amended this motion and we agreed that there be---

(Loud consultations)

Ok. Let us do this. Just sit down. He is here. Let us hear him. One minute. Let us hear. Confirm what you did. Order! Let us hear him.

Hon. Muinde: Mr. Speaker, although the question has been put, when we talk about the law, if it is a matter of interpretation, there are so many laws that govern this country. The supreme law being the constitution, acts of parliament and laws passed by the assembly. So when we talk about within the law, it is all the laws that govern this country.

(Loud consultations)

So, Mr. Speaker, even those other laws in this country.

Hon. Speaker: So my thinking on what the chair is saying.....let us reason together here. My thinking of what the Chair is saying is this; that any borrowing should be done in accordance with the Constitution. So where is the mistake there?

(Loud consultations)

Hon. Speaker: Yes, let us hear Hon. Kitheka.

Hon. Kitheka: Mr. Speaker, Mr. Speaker. Supremacy, supremacy of the constitution, Mr. Speaker.

Hon. Speaker: Order, Order. Just pull it.

(Very loud consultations)

Hon. Kitheka: *Enda.... (unprintable words)* Mr. Speaker. I am addressing about supremacy of this constitution

Hon. Speaker: Pull it. Order! Bring it. Order

(Loud consultations)

Hon. Members, order! Can you sit down, please. Let us sit down.

(Very loud consultations)

It is very disparaging to see an assembly behave like this. Indeed very disparaging. It is a shame that even the members of the gallery are watching us do this.

ADJOURNMENT

Hon. Speaker: The Speaker, will give directions about this matter tomorrow morning.

The House rose at 5.34 p.m.