

MACHAKOS COUNTY ASSEMBLY**OFFICIAL REPORT****Tuesday, 14th October, 2014**

The House met at 2.40 p.m.

*[The Speaker (Mr. Mung'ata) in the Chair]***PRAYERS**

Hon. Speaker: Good afternoon Hon. Members. Welcome to today's sitting. Clerk Proceed.

NOTICE OF MOTION**LAND SURVEY FOR RURAL ROADS**

Hon. Muli: Thank you, Mr. Speaker. I am the chairman for committee of Agriculture, Environment Land and Natural resources committee. Mr. Speaker, Sir, I wish to give a notice of motion that this hon. house discusses and approves unveiling through search of land surveying for rural roads in various wards of Machakos County. Thank you, Mr. Speaker, Sir.

Hon. Speaker: Thank you. Proceed.

MOTIONS**LAND SURVEY FOR RURAL ROADS**

Hon. Muli: Thank you, Mr. Speaker, Sir. Aware that access to convenient roads services is a necessity which every citizen has a right to enjoy, aware that the ministry of lands did not survey most of the land in most parts of the early Machakos District in the late 1970s, further aware that much of this land was surveyed for rural roads to make accessibility of people and delivery of goods and services easy.

Aware that much of this land has been encroached for settlement and farming by the people around such areas denying other people essential services they should enjoy from the land. Mr. Speaker, Sir, aware that settlers neighboring such areas are now land locked and not

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able to access road services to their homes, I wish to move a motion that this hon. house discuss and approves unveiling through search of land surveying for rural roads in various wards, marking them again, declaring the public utilities with immediate effect.

Thank you, Mr. Speaker, Sir. I call upon hon. Kasimu to second me.

Hon. Kasimu: Thank you, Mr. Speaker, Sir. I stand to second that this house discusses and unveiling thorough search of land reserved for rural roads in various wards of Machakos County. Thank you, Mr. Speaker, Sir.

Hon. Speaker: The mover of the motion, Hon. Joseph Muli, I will give you some moment. Bring the house to the picture, what is your intention in this motion?

Hon. Muli: Thank you, Mr. Speaker, Sir. The issue of bringing this motion to the floor of the house is that, I have scrutinized that in Machakos County, we need extensive network for means of transport in each ward and you find, according to the earliest survey which was done in 1970s, much of the feeder roads have been interrupted, some have been closed, some of the people have taken activities of farming along those roads. Even there are buildings within those feeder roads which are along those feeder roads.

Mr. Speaker, Sir, this makes it hard to commute from some areas to others within our wards. According to the earlier surveyor, if you follow the maps which were made earlier, every land which is within our ward, the feeder roads had already been marked but they have totally been interfered with making them foot paths. Therefore, Mr. Speaker, I have brought this motion urging this house to discuss about the issue of these feeder roads so that they can be opened to be accessible to motorists.

Hon. Speaker: So, basically you are saying that there are feeder roads that have been taken away by the public and they are surveyed already?

Hon. Muli: Yes, Mr. Speaker. We need them to be surveyed once again because for example the tractors which are within our wards, we don't have powers to pass through those feeder roads since they were interrupted by some of the people who have farmed along those roads, Mr. Speaker.

Hon. Speaker: Hon. Deputy Majority Leader, you supported this motion. Let me have your idea about what you are supporting because if they are surveyed, they should not be surveyed again. The law should be enforced. I would be happier if you are telling me a standing

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committee to be appointed, something like that. Because we cannot debate, pass a motion which is inconsequential.

Hon. Kasimu: Mr. Speaker, Sir, we are aware that most us, that there is a culture of land grabbing in this country and the roads that were surveyed, most of them were done before or immediately after independence. So the people who are bordering these roads have encroached the boundary, started farming or they have added the sizes of their land.

So they have interfered with the roads such that if you buy land today, you will have to go to Machakos and pursue the surveyors to come back and survey once again because they have interfered with the boundaries and the roads that were reserved. So Mr. Speaker, we thought of giving the government of Machakos another chance of surveying and doing that work once again so that the Machakos people would stop fighting over boundaries and stop the culture of grabbing land, especially the roads that have been reserved for public use. Thank you, Mr. Speaker.

Hon. Speaker: The difficulty that I have is this; if the roads have been surveyed and the survey plans are still there and we are not saying they have been nullified, perhaps you are telling me that boundaries be marked now. The matter is still not yet on the floor, you can give us a moment. Is that what you intend?

Hon. Muli: Thank you, Mr. Speaker. That is what I intended.

Hon. Speaker: Okay, let us look at the wording of your motion. And now with the wordings of your motion, do you think it deserves that there is an amendment?

Hon. Muli: Mr. Speaker, Sir, if you feel there is any amendment which we can make, it can be brought to the floor of the house and we amend, Mr. Speaker.

Hon. Speaker: Hon members, this motion has been presented and seconded and I think members were alive to the discussion that I have had with the mover. So the motion is properly before the house for discussion and members are at liberty to push for the amendment as appropriate. So we can now begin with proposals.

Hon. Muinde: Thank you Mr. Speaker. I want to support this motion with amendments and I want to say that it is not just land reserved for roads within our county. Even land reserved

for springs, markets, nursery schools and shrines where our old grandfathers used to worship. They are still public land and they have been surveyed as such, they have been grabbed.

Mr. Speaker, in the 1980s and most part of the 90s, there was an effort to grab any public space in this country. That culture has not died and this country has lost chunks of public land to greedy Kenyans. We have examples where springs have been grabbed by individuals for their own selfish needs and therefore, I want to support this motion and say, it is not just land reserved for roads. All public land must be reclaimed by this government.

I am saying we need to have an *ad-hoc* committee to go round all our 40 wards, identify all those public lands, whether reserved for whatever purpose and present a report to this house and give the Executive this report and demand an implementation whereby what is rightfully for the public is given back to the public.

Perhaps, it may be an expensive affair but this government must be prepared, both the house and the Executive to ensure that all that which has been taken, because it is already surveyed, records show that its public land, so there is no need for further survey. Now, we only need to identify and ensure that it is taken back. In cases where those who have grabbed, feel they have enough muscle and can take this government to the court, then the Executive must also be ready to face such individuals and ensure at the end of the day, we will repossess this public lands. So, Mr. Speaker, I support with amendments. Thank you.

Hon. Speaker: With the amendment that this should involve public land wherever it is? This is a function that is not devolved, what is your take on that?

Hon. Muinde: Mr. Speaker, we should not be shy of controversies. I know the moment we touch land in this country, you also touch the high and the mighty in this country. I know it will raise eyebrows even at the national level but perhaps, this is an area where we can also partner with the national government. When it comes to water and natural resources and matters on environment, I think it cuts across both the National and the County government.

I have an example in my ward, where a water spring which is squarely under the jurisdiction of this county has been grabbed. That is where my people get water. I know the moment we touch, even the national government will be interested and since these two governments serve the same Mwananchi, I believe we will be able to partner and ensure that whatever belongs to public has come back.

So, I don't think there will be an issue of 'this does not belong to the county' and should there be such a case then by our actions, we would have to prompt the higher authorities, either the ministry of lands or the Swazuri team (National Land Commission) to come in and I think we will be partners in this and together we win the game.

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Hon. Nganga: Thank you, Mr. Speaker. I was making a reference in our Standing Orders under the issue of land and if you look at page 136, seven schedule, land survey and mapping, boundaries and fencing, it is a devolved function. The only function that has not been devolved is on land allotment. Mr. Speaker, the issue that has been brought on the floor of the house by the hon. member is of much concern.

I once faced the same challenge when we were doing the grading of our roads. You realize that some of the feeder roads that have been devolved when we are trying to do grading on them, most of our residents have shifted their fences and reduced the size of the road from the ordinary 15 or 9 meters to around 7 meters and the tractors are not able to pass through this roads.

Mr. Speaker, you also realize that because this land surveying department was formed after independence and that time this country had a population of an average of 10 million people and we have quadrupled since that time, the government has not been able to respond to the issues of our citizens adequately and that is why Kenyans claimed for the devolution to be in the new constitution.

Mr. Speaker, we can only be able to address these issues when now we allow the devolved land survey function to go again and redo this surveying exercise because it was done long ago and most of the boundaries in our local areas have been altered and changed. So, you find the connection between roads in our rural areas is a huge challenge.

So Mr. Speaker, I find the spirit good and I would cite an example. One month ago, I had to go and intervene in my ward, somewhere where the old *wazee* had been given the mandate to run a local shrine in one of my markets. I had said that the practice of performing such rituals had already died and they are the *bonafide* managers of the land and they had sold that land to some private investors not knowing that the land belonged to the public whether they were the stakeholders holding that land on behalf of the public.

So they went ahead and sold the land and it was a serious dispute I had to solve because they didn't know that the land still belonged to the public until an agreement has been brought around to determine whether the land will be changed to a different use.

So Mr. Speaker, I find the spirit of this motion good and if we approve it and demand that the county executive takes up the matter and moves with speed to enlarge the size of our rural roads, you realize that if you go with your good car, once they come back to Machakos, they will need rebuffing because the road are seriously squeezed. Thank you, Mr. Speaker.

Hon. Nzoka: Thank you Mr. Speaker, Sir. I support the motion. What I can say, the roads have been encroached. We have a problem. There was an area where I was opening but the

residents tell you, 'this is my land, if you want it, go and bring a surveyor.' I had to spend KSh 12,000 here in Machakos to bring a surveyor to open that area. Again, I support it with an amendment. It has to include all public utilities. I know many public utilities which have been grabbed and when we are scooping the dams, I had a challenge with one neighbor of the dam who said he doesn't want the heap of soil to extended to his farm of which after the dam there is also a reserve area at the back where after scooping a dam, we make something for the cattle.

So when we are talking of these roads, it is real. And again we have to caution. There those buying land from others. They are given a path of one or two meters. The law requires 9 meters. That is the minimum. So you can see there are some areas where someone in the interior and when someone dies, to take him there and there is no road. If you are selling land you have to follow the law, give out a nine meter road that is what is required.

Hon. Speaker: Thank you, Hon. Nzoka but you went off the motion completely and talked about your purchases in Matungulu.

Hon. (Ms.) Sereka: Thank you, Mr. Speaker. I stand here to support the motion. Many of us here have been affected by people encroaching on the roads. The other day I had to spend a lot of money calling the surveyor so that the tractor can pass. People have already put fences and even build walls in the road. I think this is the high time this county should go on and call the surveyors and because we cannot survey when the survey is already done. Let them show us where the roads are and whoever has encroached on the road, Mr. Speaker.

To tell you, I am one of them who had a fence in the road. I had to remove it to be a good example to the community. Mr. Speaker, I think it is not even the roads alone. As I stand here I have a challenge with my health centre. Somebody has already gone there and started putting a church and I don't oppose because as they are saying a church is a public utility but each public utility has a purpose.

Some of us come from places where societies, where the owners of shambas. Like me, I have an issue with Katelembu and Lukenya and as we talk now, they have even gone ahead and started selling the public utilities. The other time I had a problem with Kyumbi market. It was already sold to people and some of them are in court as we speak. So I think it could be wise for these Hon. Members to go very fast and secure what is meant for the public. Thank you, Mr. Speaker.

Hon. Speaker: Yes Hon. Alice. I think I am right.

Hon. (Ms.) Nzioka: Asante sana Bw. Spika. Nimesimama ili kuunga mkono huo mswada. Kama mahali ambapo naishi, Mlolongo, mambo ya barabara imeleta shida sana. Kama ukienda Mlolongo, utapata kila mtu analalamika kusema kwamba duka lake limebomolewa, kiosk imetolewa, lakini kuna shida kubwa sana. Kwa mfano, Mlolongo kukitokea janga la moto, hakuna vile Kaunti inaweza saidia kuzima moto sababu hakuna barabara. Na ukiangalia tangia mahali ambapo ilianza, wengi katika Machakos walipatiana hizo barabara ili kuwa iwe unapata barabara imeachwa kama mita thelathini. Sasa ukienda utakuta ni kumi. Inakuwa ni shida sana kuingia, hata kama ni kazi inatakikana kufanywa hakuna nafasi.

Pia Mlolongo ama Athi River, kuna sababu ya kuwa na mtaro wa kuondoa maji machafu, lakini hakuna mahali wanaweza pitisha kwa sababu hakuna sehemu, iliyokuwa imetengwa. Watu wamejenga juuyake. Kwa hivyo nasema kama itawezekana, barabara ziachwe ile kipimo ambayo imetengwa na soko ipangwe, kwa sababu kukiwa na barabara wataweza kupanga soko. Ukienda mahali kama Mlolongo utakuta kuna sehemu ilikuwa imeachwa ya shule, kanisa, mahali pa maji, lakini hizo sehemu zote zimechukuliwa.

Council iliuzua hizo sehemu. Kwa hivyo nasema mswada ukiendelea waangalie waone kwamba hizo vitu zimerudishwa ili naye jamii iweze kufikia vitu kama mahospitali, maji na sehemu ambazo zimetengwa kwa matumizi ya jamii. Asante.

Hon. Speaker: Asante Sana kwa maono mema.

Hon. Nguzi: Thank you Mr. Speaker, Sir. I want to support the motion with amendment that it includes all public utilities. A case is in my ward of playground that is public and that has been taken over by an individual. We cannot move the individual because he claims the playground is his own.

Another case in my ward is Kibauni hill which is also public land, it is crown land. The whole place has been encroached on by people and thousands of people are living on it. We went with the minister lands and he promised to do something but it looks like, unless there is legislation from this assembly that empowers him to do so, we will not be able to move. So, Mr. Speaker, it is high time because mine is one of the examples. The whole county is in shit, so we need to move with speed and rescue this issue. Thank you.

Hon. Speaker: Thank you. Let us hear. Mheshimiwa, huko chini.

Hon. (Ms.) Ndinda: Asante Bwana Spika, na ninataka kuunga huo mswada, nikilinganisha na mahali nimetoka, Ndithini ward ambaye Yule anayeleta huu mswada Mheshimiwa Joseph anatoka. Wakati tingatinga zilikuwa zimeenda kutengeneza barabara

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tulikumbana na hilo jambo kwa maana kuna watu wengi wamelima mpaka kwenye barabara. Kuna barabara moja upande wa Mwea Farmers ambayo imefungwa kwa maana kila mtu alidai pale barabara imepitia ni yake, na mpaka wakati huu tingatinga haikuweza kukata barabara, maana wote walikataa na wakasema ni kwao.

Kwa hivyo nasema inafaa na ikiwezekana hilo jambo lianngaliwe kwa haraka, maana watu wanapata shida wanapopeleka ngombe kwa mto hawawezi pita mpaka uweze kuwasiliana na jirani akupatie nafasi ya kupitia. Kwa hivo hilo jambo naweza kuliunga. Asante.

Hon. Speaker: Thank you. Yes Hon. Minority Whip.

Hon. Kamitu: Thank you very much, Mr. Speaker---

Hon. Speaker: There is a point of order here. Let us hear the point of order here.

Hon. Kasimu: Hon. Speaker, Hon. Ngunzi has said the county is in shit. I want him to elaborate and substantiate, Mr. Speaker, Sir.

Hon. Speaker: Sorry about that. The Speaker did not hear that. Proceed.

Hon. Kamitu: Thank you Mr. Speaker, Sir. I stand here to applaud hon. Muli who has sat down and brought this issue. Mr. Speaker, Sir, if I can give out some examples in regard to my ward, Tala. I am talking about the roads within Tala. Tala is a town that is growing but there is a problem in regard to people who have constructed plots on those public roads and I remember informing the house that there were some red marks which were put on some buildings but the problem that we are having is that, our former government, I am not saying that it was as bad as that, but officers who were in charge of the lands and the like were most compromised and you could even see some people being given some notices but it depended on who was who in the government by then.

My point of standing here, Mr. Speaker, Sir, is to emphasize, now that we have realized that there are some public roads that were grabbed. This is the time as we normally say, 'the early bird gets the worm,' so now that we have realized that there are some public utilities that were grabbed, this is the time. We must make a quick move so that we may save time and save the land or the utilities belonging to the public. Thank you, Sir, and I applaud the hon. member who has brought this motion. I stand here to support, thank you.

Hon. Speaker: Thank you. But I don't want the house to get mixed up. Land as a function has not been totally devolved, what has been devolved is land use. So we are in a position to recommend surveys, re-arranging fences and boundaries but we may not be able to change land ownership, but I know, cooperating with the national government, we can recommend the national government to take action on a particular report they can also verify. So let us proceed within that understanding.

Hon. Ngui: Thank you, Mr. Speaker, Sir. Thank you very much for your guidance because we have this motion to discuss various wards where we come from. Mr. Speaker, as you have said and I want to bring this to attention that the survey department of this country has not been devolved and I wish to support this motion with amendment that we request the county department on roads to stamp its authority because the survey has already been done and cannot be done again.

It is now for the county government department in charge of land to make sure that the beacons are there and those people who have encroached the roads, to ensure the boundaries are pushed to the right beacons. Thank you, Mr. Speaker, Sir.

Hon. Manyolo: Thank you, Mr. Speaker, Sir and the house at large. I do support the motion and Hon. Ngui has said, we also have to add the administration, the chiefs, assistant chiefs and the headmen to assist within the villages. Because they have the know-how of what is within the area. Thank you, Mr. Speaker.

Hon. Nduva: Thank you Mr. Speaker, Sir. I congratulate you for the guidance you have given. This issue of grabbing of public land is there and everywhere in this country and as much as we understand, the survey was done, the maps are there and I think what we need to do, Mr. Speaker, Sir, is to pass a motion to empower our department of lands that, those areas that have issues because the Survey of Kenya have this maps, for them to move very fast and rescue this land because it is not possible for the county of Machakos to do survey again for this county because the survey was done by the national government and the maps are there.

Many times when we have issues in our areas, we involve the offices of the surveyors, and then they locate the beacons and the boundaries either of roads or other public lands. And if there are some people who have encroached on the land, they are moved. The law is there. If the person does not move and boundary does not suit the person to own the land, he is prosecuted. So Mr. Speaker, Sir, I urge this house to support this motion and pass the motion to empower our ministry of lands to move very fast and rescue this public lands. Thank you, Mr. Speaker.

Hon. Speaker: Survey has been done. Do we really need to empower them and the law is there to enforce the survey, isn't it?

Hon. Nduva: Mr. Speaker, what I mean, it is not the surveyors in the ministry of lands in the county, because they are the ones to involve the surveyors wherever there is a dispute of boundaries. Thank you, Mr. Speaker.

Hon. Speaker: Any more contributions? Then I proceed to ask the question, those in support of the motion as brought by Hon. Joseph Muli, with the amendments as brought up by Hon Isaac Muinde?

(Question put and agreed to)

The motion succeeds with the amendments and with additional directions that, since is a land matter which is emotive, the office of the Speaker will spearhead an 11-member strong committee to oversee the process, within an initial term of 90 days. We shall form the committee and members will be named.

BILL

Second Reading

MACHAKOS COUNTY WARD DEVELOPMENT FUND BILL 2014

Hon. Nduva: Thank you Mr. Speaker, Sir. I wish to present the Ward Development Fund bill 2014 to be read for the second reading. I call upon Hon. Ruth Ndumi to second the reading of the bill for the second time.

Hon. (Ms.) Ndumi: Thank you, Mr. Speaker, Sir. I stand to second that the Machakos County Ward Development Fund Bill 2014 be read now for the second reading. Thank you, Mr. Speaker, Sir.

Hon. Nduva: Thank you Mr. Speaker, Sir. I stand now to read the ward development fund bill 2014 for the second reading.

Preamble

Mr. Speaker, Sir, the ward development fund bill 2014 was read for the first time in the house and thereafter, committed to the Planning, Trade, Tourism and Cooperative committee

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pursuant to Standing Order No.121, 'a bill, having been read for the first time shall stand committed to the relevant sectoral committee without question put. The bill was discussed by the members of the county assembly and taken to the public for public participation.

Mr. Speaker, Sir, all the recommendations from the hon members and members of public were forwarded to the drafters of the bill for the amendments and they were annexed to this report.

Committee meetings

Mr. Speaker, Sir, the Committee meeting of Planning, Trade, Tourism and Cooperatives and other invited members interrogated the bill at 67 Airport Hotel from 6th to 9th May, 2014. Further Mr. Speaker, Sir, the committee and members of agriculture, environment and natural resources once more retreated to Eden Beach Resort on 25th to 29th September, 2014 to further look into clauses which were unconstitutional, to ensure the bill met the constitutional requirements.

Mr. Speaker, Sir, the following members attended the meeting in both venues:

1. Hon. Sammy Nduva- Chairman Planning
2. Hon. Joseph Muli- chair agriculture
3. Hon. Leonard Katela- Member
4. Hon. Charles Mutisya
5. Hon. Mutuku
6. Hon. Francis Matheka
7. Hon. Edrick Ngunzi
8. Hon. (Ms.) Amina Mutio
9. Hon. Collins Mbithi
10. Hon. Cornelius Kitheka
11. Hon. (Ms.) Jacinta Luka
12. Hon. (Ms.) Jacqueline Nziva
13. Hon. Alphonse Wambua
14. Hon. Kyalo Kyuli
15. Hon. Cecilia Sereka
16. Hon. (Ms.) Mbithe Mutiso
17. Hon. (Ms.) Bibiana Nduku
18. Hon. Philip Ndolo
19. Hon. Festus Ndeto

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20. Hon. (Ms.) Phoebe Koki
21. Hon. Stephen Muthuka
22. Hon. Wilson Kasimu
23. Hon. Alex Kathinzi
24. Hon. (Ms.) Mary Ndinda
25. Hon. Michael Mutuku

Others in attendance, were:

1. Hillary Muthui- Principal Legal Counsel.
2. Evelyne Kimote- Senior Clerk Assistant.
3. Mutuku Kavita- First Clerk Assistant.
4. Dorothy King'oo- Legal Counsel.

Hon. Kathinzi:(*inaudible*) According to that job well done by these particular members, there is a public recommendation where they have said, 'after the election of the members.....(*inaudible*) I think it is 3.1 of that report. That is page 4.

Hon. Speaker: Okay.

Hon. Kathinzi: May be I can read it. Thank you, Mr. Speaker. It says 'Recommendation of the members of public.' Mr. Speaker, Sir, the members of the public recommended that the members nominated to the ward development committee to elect their chair and not the MCA of that particular ward. So that means we will not have a lot of say in that particular committee.

Mr. Speaker, if I can proceed, it says, 'the members of the committee should be qualified to manage funds as well as to be trained on the project and fund management.' So, I think in addition to this, I can say, these members should come from that particular ward. We don't want to take members from Ndithini to come and manage the funds for Kivaa ward.

Hon. Speaker: Hon. Kathinzi, on the matter for patron. That is what I wanted you to address.

Hon. Kathinzi: Thank you Mr. Speaker, I can try to explain. This is what I am saying. If, I would like to know, the normal procedure report we get from our youth or women groups, I should not be party to making decisions on which particular projects to be done. Let the committee sit down, come with the recommendations. This is the way to go. I should not even be a signatory to that particular accountant to release the money but I should be given a report before the implementation of any particular project.

Hon. Speaker: That is oversight and that is our primary role and that is why you are here. So you still have that power even if the fund is done tomorrow.

Hon. Kathinzi: Mr. Speaker, that is what I meant but in different words.

Majority Leader (Hon. Mwonga): Thank you, Mr. Speaker, and the house at large. Mr. Speaker, first and foremost I would like to start by saying that, what does not kill you, makes you stronger. Mr. Speaker, I am very strong as the Leader of Majority and it doesn't matter how it happens but it happens. Mr. Speaker, back to the report of the planning committee---

Hon. Speaker: Those are strong points in support of this?

Majority Leader (Hon. Mwonga): Yes, Mr. Speaker. I am saying that because of what Hon. Kathinzi was trying to explain because it is not going to kill him even if he is not the patron of this. It is going to make him stronger, Mr. Speaker. Mr. Speaker, I want to congratulate the committee on Planning but on page 3, I think we are borrowing this from the Constituency Development Fund, Mr. Speaker. And in the CDF system, if I may say, the members who are supposed to be in that committee are directly elected by the people who we represent.

Unlike in this bill where we are saying, ward development fund committee at ward level, they be recruited and it should be a competitive exercise by the public service board. Mr. Speaker, these are committee members not employees of this committee. I would like to hear from the chair, whether it was an oversight or what, Mr. Speaker.

Hon. Speaker: I want to gather that point properly. Repeat again.

Majority Leader (Hon. Mwonga): Mr. Speaker, in their report they are saying that ward development fund committee be advertised and recruitment be done competitively through the public service board. Mr. Speaker, I think we are borrowing this idea of ward development fund from the CDF where the members are elected by the public and the particular communities in those areas. I don't know why we are bringing in the Public Service Board to employ committee members of this ward.

Mr. Speaker, I think we should go the constituency way and also on the same page, once we have this funds devolved at the ward level---

Hon. Speaker: Sorry, if it is not the Public Service Board, who appoints?

Majority Leader (Hon. Mwonga): Mr. Speaker, the member should be appointed by or elected directly by the community and this is what happened in the last committee of the CDF. If I am clear, I need to move to the next issue, Mr. Speaker

Hon. Speaker: Why do you want them elected by the public?

Majority Leader (Hon. Mwonga): Because of public participation. We cannot have them recruited by the Public Service Board because they are not employees. These are committee members and this is what is happening in the CDF committees down there.

Hon. Speaker: Let us look at paragraph six. It reads ‘members recommended that operational expenses should be catered for by the county government and not from the fund.’ That means, if they are employed, they will be paid by the county government and it needs to be a competitive employment process.

Majority Leader (Hon. Mwonga): Mr. Speaker, that is another issue I was about to raise and I have said we are borrowing the whole idea from the CDF.

Hon. Speaker: Yes, but we are saying that the CDF may not be good law either. Maybe we are making the fine law today?

Majority Leader (Hon. Mwonga): Okay. Thank you, Mr. Speaker. I want to go to the next issue that is on paragraph 4 the same page; the members recommended that the funds be shared equally not equitably. Mr. Speaker, I am wondering whether it is at county level or when we have the money at the ward level. If it is when we have this money at ward level, they cannot be shared equally but equitably meaning according to the needs of that particular area in that ward, Mr. Speaker.

So those are the two clarifications I wanted from the chair and Mr. Speaker, if we can amend those two proposals, recommendations of this committee, I fully support this report. Thank you.

Hon. Speaker: Let us hear the chair. And guide us on whether the Majority Leader attended your forums in making this report.

Hon. Nduva: I think the majority leader did not attend this meeting in Mombasa. I understand he was busy on the other side of the county. Mr. Speaker, Sir, the clause for the ward development committee, I think something was not put as we had agreed and I feel members who are here, can testify to this. There are two committees in this fund, there is a county committee and this is where members will be recruited by the service board.

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Hon. Speaker: You are saying, there will be a committee at the headquarters.

Hon. Nduva: There will be a committee at the headquarters and there will be a committee at the ward level.

Hon. Speaker: So the committee at the headquarters is the one proposed to be employed competitively by the Service board?

Hon. Nduva: Exactly, Mr. Speaker.

Hon. Speaker: And the committee at the ward level by the electorates?

Hon. Nduva: The committee at the ward level should be elected by the electorates.

Hon. Speaker: Members, we are at the same page. Thank you.

Hon. Nduva: The other part, equitable and equally, Mr. Speaker, we debated on this issue and members felt that, this money is like the way the other resources of the county are divided. They should be done the same because if we talk of areas which are developed, some other areas, the population is also low.

So if we consider all this, what is in Machakos, Ndithini or Yatta, you find that that area that is not developed, the population is also high, so the committee members felt that monies for this fund should be divided equally. Thank you, Mr. Speaker, Sir.

Hon. Speaker: On the matter for equally and equitably, I think that is a proposed amendment, which is key. Let me hear contributions on that point.

Hon. Nganga: Thank you, Mr. Speaker, for giving me this opportunity. I rise to support the proposal for the amendment by the Majority Leader on the amendment of equitably and equally. Mr. Speaker, you realize that, when the missionaries came to Kenya, first they settled in Machakos and development began within this area and then it spread to the other areas of the county.

Mr. Speaker, with the central systems of government we have had, Machakos is the centre for development. The former Machakos district, when Makueni and Kitui used to be part of Machakos, you realize during those days, this area used to still receive a lot of government finance, all the way 50 years down the line.

You realize that, there is a lot of equity across the entire county. If you look at what is in Kangundo, Yatta, Masinga or Mavoko, the needs are varying. Some of the geographical areas are very big you need to serve as many people unlike other areas. Some people also have urban

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population in some wards and others are sparsely populated which would require a lot of projects.

Mr. Speaker, the poverty index is also different. You come to Machakos and realize the needs of the people here are not the basic needs of other beings, unlike in the other wards where you realize people at this day and age would still want to be supplied with water. Mr. Speaker, I would like to call upon members, to find it in their wisdom to amend this report on sharing of the funds, from equally to equitably.

Even if you look at the law that is anchoring the sharing of the National funds for the county government, there have been factors that have been put across. We consider population, poverty index, geographical areas, prudence in use of finance within those areas and those counties that are using their funds.

The same thing, Mr. Speaker is being done in the allocation of CDF funds that in itself is a basis of wisdom that we can use as a point of reference when we are amending this law. So when we say that we are going to do this equally, then Mr. Speaker, we will be disadvantaging some of those areas that have been maligned by the previous regimes.

So I want to call upon members to support that amendment so that all areas are given money depending on the pressing need of the population. Thank you.

Hon. Speaker: I think, Hon. Members, it cannot be well put unless somebody is supporting the equal share. Let us honor the father of this motion

Hon. Matheka: Thank you Mr. Speaker, I will go back to the committees for clarity. One committee is established by part two, section 4 of this, which is the county ward development committee and the other committee is established by part 4 section 33 which is the ward development fund committee.

Those are two different committees and its only one committee which will be employed by the County Public Service Board. The other one will be chosen directly by the people, to allow public participation

Going back to the issue of equal distribution and equitable distribution, Mr. Speaker, Sir, when we were in Mombasa, we debated on that for a long time and we came to an agreement that, if the money will be distributed according to the population, size and all the key indexes which are used to distribute this money, we will end up doing the same thing which has been done by the former National government.

I take an example of Machakos Central. It has more population than Masinga central or any other ward. And if we go by that index, it means that Machakos Central will get more money than Kivaa ward or Masinga Central ward, and in actual fact Masinga Central and Kivaa need

more money because they are less developed than Machakos. That was the argument which was put forward.

If we go for the area index, it will be the reverse. Kivaa has the largest area but less population. At the end of the day, all things will balance.

Hon. Speaker: There is a point of information and a point of order. Let us take the point of information first.

Hon. Kathinzi: Mr. Speaker, I would like to ask whether it is in order for the hon. member to start discussing the population of Kivaa ward here.

Hon. Speaker: The point of order is sustained. Yu should not discuss about your population.

Hon. Nganga: Mr. Speaker, I would like to know whether the member is in order to claim that once these funds are allocated equally or equitably, the end result will be the same and citing examples which don't have a formula or point of reference. Mr. Speaker, I would like to refer him to the sharing of county funds. When the national government is distributing funds using that formula of equitably, Nairobi gets the largest share because of population size, but Turkana gets the second largest share because of the effect of population, poverty index and the geographical area.

So there are all manner of factors which will influence what each and every ward will be able to receive. So it is not very automatic that Machakos will get the largest share if we distribute these funds equitably. But the largest share will go to the people who are adversely affected by the factors that will be put across. Thank you, Mr. Speaker.

Hon. Speaker: I think hon. Matheka you concede that equitably is more progressive than equal. But just proceed. Round up.

Hon. Matheka: Thank you Mr. Speaker, Sir, I totally agree with you, but my point is very simple. Nairobi has the largest population that is why it is getting the highest share. Turkana has the largest area that is why it is getting the largest share in area size. My argument is, when we come to population, Machakos will definitely get the highest share. And mind you, Mr. Speaker, Sir, referring Kivaa, I am not maligning Kivaa. I am just giving an example.

Hon. Speaker: You will be out of order, I gave out a finding. Don't discuss Kivaa. Let us proceed.

Hon. Matheka: Thank you Mr. Speaker. What I am saying is, if we go by those indexes, we will end up giving the highest populated ward the highest amount of money and at the end of the day, it might be the highest developed ward in the county. That is my argument, Mr. Speaker.

Hon. Kasimu: Thank you Mr. Speaker. I stand here to support that ward development fund money be shared equally. Mr. Speaker, I am reminding the hon. house that we are politicians---

Hon. Speaker: You mean equally or equitably?

Hon. Kasimu: Equally. I would like to know the message I will take to Matungulu East people when they get lesser money than Kangundo East. It will be a political war and they will say their hon. member, Mr. Matheka is strong in the assembly, I am weaker. That is why I was given little money or a small share than the neighboring ward.

Mr. Speaker, Sir, let us go the 40 wards and equally share the money. We are politicians and let us not pretend that when we go to politics we don't have any athletics to tell our people. We go by the number and the amount of money that we have taken home. It is not the measurements or whatever you call it here. I don't care. We need money equally in the 40 wards. Thank you, Mr. Speaker, Sir.

Hon. Nzeki: I stand by what Majority Whip has said. Equal distribution of the funds. Again we go to page four, where it is saying that allocations should also go to non-governmental organizations. I don't see why we should pump our money to outside bodies. Otherwise it will be duplication of projects.

They might start a project then I pump my money there and in the end they say it is them who have done the job. So I totally disagree with our money being taken back to the projects which have been started by NGOs. Thank you, Mr. Speaker.

Hon. Speaker: Hon. Members, I want again to draw to your attention to an existing Act of parliament, the equalization fund. We cannot make a legislation that is offending an existing national legislation. And the spirit in that Act is equitably not equal. So as we debate, perhaps if we make a law that is illegitimate, then we will have been doing nothing. Now that we know that, we can proceed with that caution.

Hon. (Ms.) R. Nduku: Thank you, Mr. Speaker and also thank you for reminding us about the equalization fund but I want to support that the money in the wards to be equal and

reminding my fellow hon. members that ward development fund will not be the only money to be working in our wards.

We will be having the ministries we are having now, the CDF funds will also be there and as the hon. member for Matungulu has said, it will be a kind of war if the money will be in different amounts in each ward.

So Mr. Speaker, knowing that what you have told us is true, I want to ask this house to support that the money be equal in each ward, because even if we look at different indexes, it will differ at the end of the day. Thank you, Mr. Speaker.

Hon. Speaker: I think the house appears to be divided on this. We put the question that those in support of the amendment that funds of the ward devolvement fund be shared equally.

(Question proposed)

Hon. Members I don't know whether you have understood this question, because both of them are ayes. Ok. Let me paraphrase the question again in a different manner, and the operating word will be equitably so those who say yes to equitably will have it and those who say nay to equitably, it will mean those who say equal will have it. Are we in agreement? Right.

(Question put and negatived)

The nays have it and that the funds to be shared equally. But Hon. Members if for any reason that will be contravening any existing legislation, then you will be advised towards an amendment. I think the report has been exhausted. Any additions? That was the only controversy we have gone over?

Then the house can convert to a committee of the whole house. You shall have an opportunity to go clause by clause as amendments have been proposed. You can bring your issues in the committee of the whole house. The chair will take his place, thank you, we will meet later.

(The Bill was read a Second Time and committed to a Committee of the whole House today by leave of the House)

COMMITTEE OF THE WHOLE HOUSE

(Order for Committee read)

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[Mr. Speaker left the Chair]

IN THE COMMITTEE

[Mr. Chairman (Hon. Nduva) took the Chair]

MACHAKOS COUNTY WARD DEVELOPMENT FUND BILL 2014

Hon. Kathinzi: I would like to bring to your attention that this house does not have a quorum. Maybe you can advise us the way forward.

Hon. Chairman: Hon. Kamitu. Yes.

Hon. Kamitu: Thank you very much our hon. and able chairman. I just wanted to bring to the attention of the whole house that I was a member of the agriculture as well as the planning committee and I was in the 67 Hotel and also in Mombasa but my name does not appear as a member who contributed on this development fund so am worried why my name is not there. Thank you.

Hon. Chairman: Thank you Hon. Kamitu, we will look at it and you will be included.

Hon. Muli: Thank you Mr. Chairman for giving me this opportunity. I would like to answer hon. Kamitu that these members here were invited by the planning committee in Mombasa and not at 67 Hotel. It is only that we were invited by committee of planning directly in Mombasa. Therefore we shall enquire if you were at Mombasa then we fix you.

Hon. Nzioki: Mr. Chairman, I would also like to draw the attention of the chair that I am a member of planning committee and I was in that meeting and my name does not appear in this list. Thank you.

Hon. Chairman: hon. members, as per Standing Orders, we cannot adjourn this sitting even if it is the chair and one member who remain. So I think clerk we can continue.

(Clauses 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, 31, 33, 35, 39, 40, 41, 42, 43, 45, 47, 48 agreed to)

Clauses with amendments

Clause 4

Insert 'ward development fund' after the word 'county. Delete 'all the ordinary revenue of the county in every financial year' and insert 'the total revenue of the county in every financial year and with which, include the remittance to the county by the national treasury and the ordinary revenue of the county.' Delete as approved by the county.

Clause 5

(2) (a) Delete and economic planning after the word finance, Delete deputy chief officer insert director.

(2)(b) Delete deputy chief officer and insert director

(2) (c) Delete deputy clerk and insert director

(2) (d) Insert by the county public service board after the word recruitment, insert financial interest.

(2) (e) Delete the executive committee member and insert the person, insert in the county after the word matters.

(3) Delete sub section 2(d) and insert sub section 2(e)

(4) Delete nominated, delete the subsection 2(d) and insert subsection 2(e).

Clause 7

(1) Insert ward development fund after the word county.

(1) c- delete discuss and insert review after the word receive.

(1) d- delete the compilation and insert maintenance after the word insure the.

Clause 8

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8(1) - delete from and insert by after the word appointed, insert competitively recruited before the word by.

Clause 8(2) - insert b before the word subject

Insert the following after the word county, ward development fund

Clause 8(2) a Restructure to read 'responsible for the day to day management of the affairs of the committee and the administration of the fund .

Clause 8(2) b Delete 'county management'

Clause 8(2) c Delete monthly, insert and quarterly

Clause 8(2) a Delete to him before the word assigned

Delete the word county management before the word committee

Clause 8(4) (a) and (b) Restructure to read for the officer administering the fund shall serve for four a term of four years, renewable once.

Clause 9

Clause 9(1) - delete the word appropriate.

Clause 9(2) - delete the following-the county management committee may design any of the officers seconded under the subsection 1 to be officer of the fund in respect of one or more words as may be appropriate.

Clause 11

Clause 11(1) - delete the following 'and every'

Clause 11(3) -delete the following, bank accounts may be maintained for every ward.

Clause 11 (7) - delete the word constituency and insert the word ward.

Clause 12

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Clause 12(1) – insert the word relevant before the word county.

Delete the word executive and insert the word assembly.

Clause 12(3)-delete the word particular

Clause 12(4) - insert the following words ‘and such project’

Clause 12(5) - delete the word the current and insert the word each.

Clause 14

Clause 14(3) – insert the following words in the section before the word emergency.

Clause 14(2) –delete the following words ‘shall determine appearing before the ward committee’.

Clause 14 (4 and 5) – delete the following ‘for each project the project management committee shall set aside a sum of five per cent centum of the total allocation for the project to cater for administration expenses of the project.

(5) The sum set aside under section 4 shall be properly accounted for and proper books of accounts kept and returns made to the ward development fund committee for that ward on how the sum has been used.

Clause 15

Clause 15(2) – insert the following after the word county, ‘ward development fund.

Clause 16

Clause 16(10) – delete the word ‘together with appearing after the word committee and insert the following word -as part of.

Clause 17

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Clause 17 (3 and 4) –restructure to read, the officer administering the fund shall submit to the executive committee member and an annual report of the activities in operation and expenditure under this act shall submit it to the assembly.

(4) At the end of every financial year, the executive committee member shall submit separate account of the county management committee and accounts for each ward development fund committees to the auditor general.

Clause 18

Clause 18(1) - insert the following after the word county ‘ward development fund’.

Clause 18(2) - delete the following ‘but that not more than three percent of the total allocation in the financial year may be used for this purpose.

Clause 18(3) delete the word fixed and insert the word determined.

Clause 19

Clause 19(2) - insert the following after the word county ‘ward development fund’.

Clause 26

Clause 26 –restructure to read, ‘distribution of 26, the moneys in the fund among all the wards.

Clause 28

28(1)a- delete the following, ‘be in respect of those falling within the function of the county government as contemplated and part two of the fourth schedule to the constitution and clause 28(8) a -15 per cent of the each ward annual allocation may be used to support education programmes.

Clause 31(2)

Delete the following, 'notwithstanding the provision of subsection one, and education bursary scheme ...and continuous assessment test shall be considered as a development project for the purpose of the Act, provided that such a project shall not be allocated more than 25% of the total funds allocation for the ward in any financial year.

Clause 32

Clause 32-restructure and split in to two sub sections.

32 For the purposes of this act county management committee may consider partial funding of a project financed from sources other than the fund on condition that-

(a) There is no objection by other project partners and,

(b) The part funding for the project..... Pursuant to this Act shall go to a defined unit or any part thereof or phase of the project in order to ensure that the particular portion defined in the allocation is completed with the funds allocated and this Act.

Clause 34

Clause 34(1) a –delete the following words, 'elected member of the county assembly' and insert 'member of the ward development fund committee and,

34(1) b- delete the word 'male' and insert the word 'men'

Clause 34 (1) c- delete the word female and insert the word woman

Clause 34(1) d- restructure to read one representative of community based organisations

Clause 34(1) e- restructure to read, representative of special interest group

Clause 34(2) a- insert the following immediately after the word 'the county ward development fund management committee through the officer administering the fund.

Clause 34(2) b- restructure to read:-

b) Each ward shall be elected and elect seven persons referred to in sub section 1(a, b, c, d and e)

Clause 34(2) c- restructure to read, ‘upon conclusion of the election of the seven persons in subsection 1(a, b, c, d and e) in the manner stipulated in paragraph (a), the officer of the ward development fund committee shall forward the names of the funds of the ward development fund committee to the officer administering the fund for onward transmission to the member of the county executive committee for gazettelement.

Clause 34(2)d- delete the following , ‘upon conclusion of the election of the chairperson in the manner stipulated in paragraph (d), the officer of the ward development committee shall forward the names of the members of the ward development fund committee to the officer administering the fund for onward transmission to the executive committee member for gazettelement.

Clause 34(4) - delete the word ‘Kenya’ and insert the word ‘County’.

Clause 34(7) - restructure to read, each ward unit shall prepare with a list of priority projects to be submitted to the ward development fund committee.

The county officer in charge of the ward units shall facilitate and oversee the process.

Clause 34(12) – restructure to read, the committee in consultation with county public service board may employ staff not exceeding five in number and such staff shall have knowledge in information and communication technology , construction and basic accounting.

Clause 34(13)- delete the word ‘help’ and insert the word ‘assist’.

Clause 35

Clause 35(1) - delete the following words appearing immediately before the word ‘come up with’ and insert the word ‘develop’

Delete the words ‘discuss then’ and insert the word ‘and ‘.

Clause 35(2)- delete the following words ‘deliberate on’ and insert the word ‘consider’.

Clause 35(3) – delete the following words ‘quorum of the ward development fund committee shall be one-half of the total membership’.

Clause 37

Clause 37(1)- insert the following words ‘ward development fund’ before the word ‘the management’

Delete the word ‘monthly’ and insert the word ‘a quarterly’ before the word basis.

Clause 38

Clause 38(3) - restructure to read, the county management committee and the ward development fund committee shall monitor the implementation of projects in their respective areas and shall submit monitoring reports to the county assembly from time to time.

Clause 38(5) - delete the following words appearing immediately before the word ‘without by the county government’.

Clause 44

Clause 44(1) - delete the word ‘project’ and insert the word ‘county’.

Clause 44(2) – delete the following word ‘ward development fund committee’ and delete the following ‘county project committee.’

Clause 46

Clause 46(2) - delete the following ‘for the avoidance of doubt no more government development allocation shall continue alongside the project funded under this Act.’

Clause 49

Clause 49- restructures to read

- (1) The initial capital of the fund shall be such sum as may be appropriate for that purpose and at the ...of the county department for public works during the current financial year
- (2) Notwithstanding sub section one, if this Act comes into operation midway in a financial year, the chairperson of budget and appropriation committee shall within one month of its publication, introduce in the assembly, the amount proposed to be put in the fund and the amount proposed shall be allowed to go through supplementary estimates.

(Clauses 4, 5, 7, 8, 9, 11, 12, 14, 15, 16, 17, 18, 19, 26, 28, 31, 32, 34, 35, ,37, 38, 44, 46, 49 as amended agreed to)

First schedule , sub section 2 (5) – restructure to read- a meeting of the committee shall be presided over by the chairperson or in the absence of the chairperson another member of the committee elected by the members present.

(5)- delete the following, a member of the county management committee who contravenes paragraph one shall cease to be a member of the county management committee upon direction of the member of the county executive committee.

Sub section 6(3)- restructure to read, every document bearing the imprint of the seal shall be received in evidence and unless the contract is approved, shall be deemed without further prove to be authorized or under the authority county management committee.

(First Schedule as amended agreed to)

New clauses

Long title

Insert ‘provide for the establishment, administration and use of’.

(Question, that the new clauses 2, 3, 5(2), 8(1), 8 (20(c), 11, 12 be read a Second Time, put and agreed to)

(Question, that the new clauses 2, 3, 5(2), 8(1), 8 (20(c), 11, 12 be added to the Bill, put and agreed to)

(The House resumed)

[The Temporary Deputy Speaker [Hon. Raphael Mutuku] in the Chair]

**REPORT, CONSIDERATION OF REPORT AND THIRD READING
MACHAKOS COUNTY WARD DEVELOPMENT FUND BILL 2014**

Hon. Nduva: Mr. Speaker, I wish to report that the committee does report to the house its consideration of the Machakos Ward Development Fund bill and its approval thereof with amendments. Thank you, Mr. Speaker.

Hon. Temporary Deputy Speaker: Hon. Members, the chair having reported back to the house, I now proceed to put the question, that the committee do report to the house its consideration of the Machakos Ward Development fund bill and its approval thereof with amendments.

(Question proposed)

(Question put and agreed to)

Hon. Nduva: Mr. Speaker, Sir, I present the Machakos Ward Development Fund bill to be read for the third reading. Thank you, Mr. Speaker. I call upon Hon. Wilson Kasimu to second the Bill.

Hon. Kasimu: Thank you Mr. Speaker, Sir. I stand to second that the Machakos Ward Development Fund bill 2014 be read for the third time. Thank you, Mr. Speaker.

Hon. Temporary Deputy Speaker: Hon Members, the bill having been read for the third time, I now put the question the Machakos Ward Development fund bill 2014 be read a third time.

(Question proposed)

(Question put and agreed to)

(The Bill was accordingly read the Third Time and passed)

Hon. Members, the bill having been read for a third time, it is now considered passed by the House and it should now proceed for the assent.

ADJOURNMENT

Hon. Temporary Deputy Speaker: Hon. Members, having no other business, the House adjourns till tomorrow at 10 a.m.

The House rose at 4.35 p.m.