

MACHAKOS COUNTY ASSEMBLY**OFFICIAL REPORT****Wednesday, 1st July, 2015**

The House met at 10.15 a.m.

*[The Speaker (Mr. Bernard Mung'ata) in the Chair]***PRAYERS****MOTION****SPECIAL AUDIT REPORT ON THE COUNTY AND FIVE DEFUNCT LOCAL AUTHORITIES**

Hon. Kalunde: Mr. Speaker, Sir, pursuant to Standing Order No. 185 (2), I wish to move the motion that this house discusses and approves the public accounts and investments committee special audit report on the county government of Machakos and five defunct local authorities from 1st January to 30th June, 2013. Thank you, Mr. Speaker.

Hon. Speaker: Proceed.

Hon. Kalunde: Can I ask Hon. Katela to second the motion?

Hon. Katela: Thank you Mr. Speaker, Sir. I stand to second that motion that this house, to discuss and approve the public accounts and investments committee special audit report of the county government of Machakos and five defunct local authorities from 1st January to 30th June, 2013 which will give a good audit on how and which properties the defunct councils left and what the county inherited so that we can at least have standard accounts of properties. Thank you, Mr. Speaker.

Hon. Kalunde: Mr. Speaker, Sir.

Preface

Mr. Speaker, Sir, on behalf of the members of the Machakos County Assembly Public Accounts and Investments Committee, I beg to move---

Hon. Speaker: Order, hon. member. Has the report been circulated?

Hon. Kalunde: Mr. Speaker, I laid papers---

Hon. Speaker: Ok. It has been circulated. Proceed.

Hon. Kalunde: I gave enough time to the hon. members to study the report. I beg to move the adoption of the Special Report of the Committee on the Auditor General report on the financial operations of the County Government of Machakos and its defunct local authorities for the period of 1st January to 30th June, 2013.

The Public Accounts and Investments Committee is a select committee established under the Standing Order No. 185 and is responsible for the examination of the working of public accounts and investments. The committee was constituted by the Assembly on April 30th, 2013 pursuant to Standing Order 185.

Committee Mandate

Pursuant to Standing order No. 185(1) and 185(2), there shall be a select committee to be designated the County Public Accounts and Investment Committee which shall be responsible for;

- a) The examination of the accounts showing the appropriations of the sum voted by the County Assembly to meet the public expenditure and of such other accounts laid before the County Assembly as the committee may think fit.

Hon. Maitha: Mr. Speaker, Sir, I seek guidance from you because we might be dealing with a report that is unconstitutional. Mr. Speaker, I want to be guided by the constitution. If you read the constitution, Chapter One, Article 3 (1) states that 'every person has an obligation to respect, uphold and defend this constitution. When you go to Article 229 (4) of the constitution, it says these; within six months after the end of each financial year, the Auditor General shall audit and report, in respect of the financial year, on the accounts of the national and county government. When you read section 229 (8), it states 'within three months after receiving an audit report, parliament or the county assembly shall debate and consider the report and take appropriate action.

Mr. Speaker, Sir, the report we are reading is for 2013. Unless months have turned to be years. The first month of 2013, the second month of 2013 and the third month of 2014 and 2015(???). Those are three months. If we may translate it. The report which is before this house is obsolete. We are not supposed to discuss it. It has surpassed the constitutional requirements. I would request this house, instead of wasting a lot of time listening to an obsolete report, we throw this report out of the window and we request for the 2014 audit report because it is in total contravention of this constitution which is very clear that anyone who contravenes the constitution is subject to legal action.

If this entity, which is a quasi-judicial entity, respects this constitution, the supreme law of the land of this nation, then we are not supposed to be discussing this report. It is past the constitutional requirement and it is an obsolete report. Thank you Mr. Speaker, Sir.

Hon. Speaker: The chairman is on the floor. We will entertain arguments after the report is laid. Proceed, Hon. Kalunde.

Hon. Kalunde: Mr. Speaker, the previous contributor is opposed to the reading of this report and he knows it.

Hon. Speaker: Proceed, Hon. Kalunde.

Hon. Kalunde:

- b) The examination of the reports, accounts and workings of the county public investments.
- c) The examination, in the context of the autonomy and efficiency of the county public investments, whether the affairs of the county public investments, are being managed in accordance with sound financial or business principles and prudent commercial practices:

Provided that the Committee shall not examine any of the following, namely:

- (i) Matters of major County or National government policy as distinct from business or commercial functions of the public investments.
- (ii) Matters of day-to-day administration.
- (iii) Matters for the consideration of which machinery is established by any special statute under which a particular county public investment is established.

Committee Membership

Mr. Speaker, Sir, this report was approved by the committee members as listed below: -

Hon. Joseph Kalunde	-Chairperson
Hon. Margaret Ndalana	-Vice Chairperson
Hon. Anne Wairimu	-Member
Hon. Winston M.Kanui	-Member
Hon. Mutua Mutuku	-Member

In Attendance

- 1. Evelyn Kimote. - Ag Principal Clerk Assistant.
- 2. Ruth Mwikali. - Senior Clerk Assistant.
- 3. Susan Kanini. - Internal Auditor.
- 4. Dalmas Masila. - Senior Research Officer.
- 5. Nora Mwendwa. - Public Communications Officer.

Kenya National Audit Office

- 1. Charles Kiage.
- 2. Henry Manegane.
- 3. James Ngure.

Executive summary: Committee sittings and evidence-taking

Evidence Taken During the Session

The committee commenced its sittings on 22nd September, 2014 and held nine sittings in which almost all the accounting officers appeared before the committee to explain and respond to queries which had been raised in the Auditor General's special audit report in respect of their departments.

All the witnesses were subjected to thorough examination by the committee which critically analyzed both oral and written submissions. Although most witnesses provided the required information, the committee noted with great concern that some accounting officers delayed to avail the required documents or information despite reminders.

Mr. Speaker, Sir, allow me to thank the members of the committee for their efforts, commitment and exemplary performance in ensuring the successful production of this report. Mr. Speaker, Sir, all the recommendations contained in this report were arrived at through consensus and after exhaustive and constructive deliberations, taking cognizance of the fact that there is adequate machinery within the County Government to implement these recommendations.

General Observations and Recommendations

A summary of the committee's observations and recommendations on some of the salient and critical queries raised in the report of the Auditor General are indicated here below:-

a) Failure to hand over by the defunct local authorities to the county government

The committee noted that handing over was not done as instructed by the ministry of local government Circular Ref. No MLG/1333/TY/ (52) dated 18th February, 2013. During interrogation, the committee was informed that the process of verification of assets and liabilities undertaken by Transition Authority and the Office of the Auditor-General was ongoing. The Committee recommends that the process be hastened to enable the County Government have a proper assets register and determine the correct position of its liabilities.

b) Failure by accounting officers to act in time when dealing with the Auditor General

In the course of audit exercise, the Auditor General issued management letters to accounting officers to take positive action on audit queries before the final audit report is produced. However, there were several cases where the accounting officers failed to act on the management letter or acting when it is too late, leading to audit queries that would have otherwise been avoided. The delay then, have been explained were due to weak structures because the county Government was at the formative stages.

The management also reported cases where the auditors did not include responses to management letters in their final audit report despite the same having been provided. A case in

point was the expenditure on the funeral expenses of the late Sen. Mutula Kilonzo.

In this regard, the Committee recommends that:-

- a) Accounting officers must take management letters issued by the Auditor General very seriously and act on them promptly.
- b) Where an accounting officer fails to ensure that matters capable of being resolved with the Auditor General through timely action are resolved, he/she should be sanctioned by the appointing authority.
- c) Failure to close down all bank accounts as instructed

The committee noted with deep concern over the failure by all defunct local authorities to close down all bank accounts as instructed by the ministry of Finance Circular Ref. No. MOL/IFMIS/1 (41) dated 7th March, 2013. The defunct local authorities continued to operate most of the accounts up to 2nd July, 2013 contrary to the directive by the Transition Authority. The committee also noted that in most of the defunct local authorities, bank reconciliations were not done on monthly basis as required.

The Committee also observed that service delivery to the public had to continue despite the directive of the circulars issued to the defunct local authorities for example payments for salaries, electricity bills for street lighting, collection of garbage, cleaning of public places like the markets and drainage within the former local authorities.

In this regard, the Committee recommends that:-

- a) Bank reconciliation statements should be done on a monthly basis and cash survey done at the closure of every financial year to avoid misappropriation.
- b) Although the Auditor General raised a query on the closure and transfer of bank accounts, the committee note that it was prudent to continue offering services to the people but emphasizes that a correspondence should have been conveyed to the Transition Authority.

Outstanding Imprests

Cases of outstanding imprests were reported in the County Executive as at 30th June, 2013, the total outstanding imprests were Kshs. 5,405,434. The Committee observed that Government financial regulations and procedures on imprest as supplemented by various circulars issued by Treasury from time to time, clearly spell out guidelines for management of imprests and faulted accounting officers for failing to enforce them. In respect of the above, the County Treasury took measures and all outstanding imprests have since been surrendered.

In this regard, the Committee recommends that:-

- a) Accounting officers must immediately take the necessary steps to ensure that all outstanding imprests within their jurisdictions are fully recovered.
- b) In the event that there is failure to account for or surrender the imprest, the amount should be recovered from the salary of the defaulting officer.

Unsupported Expenditures

The County Government, incurred expenditures on various votes such as imprests, foreign travel, conferences among others amounting to a cumulative total of Ksh.19, 851,835 which were not properly supported as at time of audit.

During interrogation the committee heard that most of the documents to support the expenditure were provided to the auditor for verification and have since been satisfied. The committee strongly recommends that all expenditures should always be properly supported.

Non Compliance to Public Procurement and Disposal Act, 2005 and Regulations 2006

The committee noted that due to the formative problems facing the County Government, most of the procurement for goods and services was done through directed or restricted tendering. The committee notes that the County Government has so far established a procurement unit. The relevant committees have also been formed to facilitate the operationalization of the procurement functions and all procurement is being done strictly in accordance to the Public Procurement and Disposal Act, 2005 and Regulations 2006.

The committee strongly recommends that the provisions of the Public Procurement and Disposal Act, 2005 and Regulations 2006 should be followed strictly. The committee further recommends that, in future all officers who contravene the Public Procurement and Disposal Act, 2005 and Regulations 2006, would be surcharged.

Staff/Personnel Profile

The committee noted that during the transition period, the County Government appointed 156 staff when the County Public Service Board (CPSB) was not in place. Further, the committee was informed that the appointments were on contractual and not permanent basis, awaiting the formation of CPSB to regularize the appointments. The appointments were done in consultation with existing structures of the Transitional Authority who were overseeing the settling to office of the new county government. The contract appointment letters were signed by the Interim county Secretary.

The committee noted that it was important to make these appointments to allow County operations to commence immediately while awaiting formal appointments by the CPSB. The committee was informed that a CPSB has so far been established. In this regard, the committee strongly recommends that employment should strictly follow the recommended establishment and officers who contravene this should be held responsible.

IFMIS and G-PAY

The committee noted that IFMIS/G-PAY had not been implemented in all the departments, Sub Counties and the County Assembly except in the County Headquarters due to delay at the national Treasury and LAIFOMS was still operational for revenue collection.

Further, the committee also noted that at the time of transition, IFMIS was a new system and officers had not been fully trained on its use. However, several trainings have now been done on IFMIS to enhance the use of the system.

The Committee recommends that the County Treasury must follow up with the national Treasury to ensure an all-time efficient and reliable functioning Integrated Financial Management and Information System (IFMIS) and G-PAY are fully installed covering a more diverse functional mandate.

Acknowledgement

The Committee would like to appreciate the Speaker and the Clerk of the Machakos County Assembly for facilitating the operations of the committee. The committee also wishes to appreciate the witnesses who were invited to give evidence. Further, the committee is indebted to the secretariat of Machakos County Assembly and the Kenya National Audit Office (KENAO) for the services rendered.

The commitment and dedication of the aforementioned made the work of the committee and production of this report successful. Mr. Speaker, Sir, on behalf of the Committee, I now wish to table the report and urge the House to adopt it and the recommendations therein. Thank you, Mr. Speaker.

Hon. Speaker: Thank you very much. Who is seconding your report?

Hon. Kalunde: I call Hon. Kanui to second.

Hon. Kanui: Thank you Mr. Speaker, Sir. I wish to second the report as it has been tabled by our chairman. Thank you.

Hon. Speaker: Let us begin by hearing hon. Dominic.

Hon. Maitha: Thank you Mr. Speaker and I wish to applaud the chairman for giving us an obsolete report which actually gives this house the worst attendance in terms of chairmanship reports. Mr. Speaker, I will be very honest. I have no time to waste in listening to an obsolete report. If the chairman has presented a report of 2013 in 2015, then the report for 2014/15 will be presented, probably, in 2018. So the committee will only have provided two reports.

Secondly, Mr. Speaker, if this house cannot respect the rule of the law which is the constitution, Mr. Speaker---

Hon. Speaker: Order, Order. Take us through the law.

Hon. Maitha: The constitution is very clear, Mr. Speaker. I beg to have a copy of the constitution so that I can take you through. If we go to Article 3 (1) of the constitution, Mr. Speaker, it says ‘every person has an obligation to respect, uphold and defend this constitution.’

I am now talking and referring to the report that the chairman has presented, he is a hon. member of this house. Then when we go to Article 229 of the constitution, Mr. Speaker, which talks about the establishment of the office of the Auditor General, it clearly outlines of the functions of those constitutional commissions. It is not me who wrote this, Mr. Speaker.

If you read 229 (8), it is very clear, Mr. Speaker, ‘within three months after receiving an audit report, parliament or the county assembly shall debate and consider the report and take appropriate action.’ Game shot. The constitution is very clear. Mr. Speaker, I am surprised when the hon. chairman stands here to tell this house, I am the one who has been an obligation to table this report.

Mr. Speaker, during the time and tenure I was the chairman PAIC of which I was maliciously removed from because of my zest and quest for accountability. That is the time I was so much frustrated to bring this report. I would have given this report as immediate as possible as per the constitution. I don’t want to dwell on the past because that time has gone. He is now the chairman and I respect his chairmanship. But do we sit here and listen to a report that is already past the sell-by-date and past constitutional requirement?

Then if this house can do so, then we better contravene the total constitution and then act outside the law because the constitution is very clear. Within three months after receiving an audit report, parliament or the county assembly shall debate and consider the report and take appropriate action. Timelines are given here so by us contravening this constitutional requirement, then we will be an institution that is going against the constitution.

We will be an institution that does not respect the rule of the law. We will be an institution that cannot be trusted if it cannot respect the law. It is as good as we throw this report out of the window, forget about it and wait for the current audit report. Then the chairman can follow the constitutional timelines and requirements into this house. Thank you Mr. Speaker, Sir.

Hon. Speaker: Let us hear the chairman but before the chairman speaks, Article 229 of the constitution, sub section 8 says ‘within three months after receiving an audit report, parliament or the county assembly shall debate and consider the report and take appropriate actions.’ That provision is couched in mandatory terms. Maybe we hear from the chairman whether this report came three months ago.

Hon. Kalunde: Mr. Speaker, Sir, it is clear that hon. Dominic has agreed that he was once the chairman of PAIC and when he was removed from that chairmanship, he started a lot of problems to the point that it delays the preparation of this report. I am surprised now at this time, he can raise a question to start telling us that the constitution says one, two, three, when he

knows that he was the problem in tabling this report. We delayed for quite a number of times when hon. Dominic was saying that he cannot allow anybody else to be the chairman of PAIC.

Hon. Speaker: Order Hon. Kalunde. I expect you to address this House on the matter that I have raised today. Are you within the law?

Hon. Kalunde: I would say that I am within the law.

Hon. Speaker: Proceed from that point and support your legality. Now the hon. member is in order.

Hon. Maitha: Point of order, Mr. Speaker.

Hon. Speaker: The hon. chairman is defending his position. Allow him to proceed.

Hon. Kalunde: I am saying that the report now is there for discussion and I am urging the members to support it and approve it. Mr. Speaker, Sir, the delay on this report, remembering that a month ago is when I laid the paper to this hon. house and we were involved in many other things that delayed the discussion of this report and I gave them time to read the report so that when we discuss it, everybody would be understanding it. I am expecting other queries but not the delay of the report. Thank you, Mr. Speaker.

Hon. Speaker: Thank you. Hon. Dominic, you began by quoting chapter 1 of the constitution- sovereignty of the people and supremacy of this constitution. Article 1 begins with sovereignty of the people, article 2 proceeds with supremacy of the constitution. I don't know, what is your interpretation of that, what is superior to the other?

Hon. Maitha: Mr. Speaker, Sir, chapter one talks about sovereignty of the republic of the people and the supremacy of this constitution. But when you go to Article three, it is clear. I don't know which language I should use. I am not good in Swahili, unless you tell me to use mother tongue which is not allowed.

It says clearly, 'defense of these constitution.' If this hon. member cannot stand to defend this constitution, what else can he defend? It says clearly, 'every person has an obligation.' What does the word obligation mean, Mr. Speaker? You must by whatever means respect, uphold and defend this constitution. Any attempt to establish a government, otherwise than in compliance with this constitution, is unlawful. The county assembly of Machakos under the county government of Machakos under the devolved system is established under this constitution, Mr. Speaker.

I wonder this hon. member, who is vested with the responsibility of legislating, if he can disown this constitution, which even defines his job description, which even creates room for the provision of his current position and then he goes ahead and says that he is within the law to

present a report of 2013 in 2015, when the constitution is very clear, Mr. Speaker. What are we discussing, sincerely speaking?

The report by itself is obsolete. If we cannot stand to respect this constitution, Mr. Speaker, I don't think this house is a house that respects the rule of law. All legislation that we are going to come up with here, Mr. Speaker, if they are not anchored by this constitution, then all what we are going to be doing will be null and void.

I would request the chairman, yes the report has come, there is very little we can do about the report. It is an outdated report. It is like the budgetary allocations and estimates that we do, Mr. Speaker. Once the financial year has lapsed, it is the end of it.

We cannot talk about last year, we only have a choice of appropriating if there are any moneys that have gone to the next financial year like today, that was not spent yesterday, forwarded today we can only appropriate it.

We cannot start talking about last year's financial budget. It is already gone. The only thing we can do is to appropriate or re-allocate. So what we are doing here, we are guided by this constitution, Mr. Speaker, and I want to stand guided by this constitution. If Article 229 (8) says clearly within three months, that is when we debate the report, what are we debating, unless years have turned to be months? I think Mr. Speaker, I am more than clear.

Hon. Speaker: Let us hear Hon. Mueni.

Hon. Mueni: Thank you, Mr. Speaker, Sir. Hon. Dominic is right, our chairman is also right so what am asking is, is there any use of the report to our county at this time? Is there any use of us discussing about the report? Thank you, Mr. Speaker, Sir.

Hon. Muthuka: Thank you Mr. Speaker, Sir and the rest of the house. Mr. Speaker, I think we are in our right minds and I don't understand how come the committee can only see three members of that committee who should be supporting the chairman to table this report.

Secondly, Mr. Speaker, if you go to the date that they started compiling the report, that was 22nd September, 2014. I don't understand. D don't we have timelines to table reports in this hon. house? So Mr. Speaker, because I think we are overburdening the chairman, I will appeal to the chairman, because the work is enormous, you may resign so that we can get somebody who is energetic and who can deliver report in time so that we can be seen to protect the constitution.

(Applause)

Hon. Speaker: Order hon. Muthuka, are you imputing improper motive on the chairman when you say he is not energetic? What do you exactly mean?

Hon. Muthuka: Mr. Speaker, even from where I stand, the chairman, with all due respect, we can see that he is overwhelmed.

Hon. Speaker: Order. I direct that you withdraw and apologize to the chairman.

Hon. Muthuka: Mr. Speaker, I withdraw and apologize but it is a humble request. The chairman, you can request for assistance from other quarters. We are here very energetic and we can assist you to perform better. Thank you.

Hon. Speaker: Let us hear the point of order from hon. Anne.

Hon. Wairimu: Thank you Mr. Speaker, Sir. I am a member of the committee. Mr. Speaker, yes we started in September but we had a lot of problems getting the auditor general coming to be with us. He kept on postponing all the time and by the time we got him, time had run out, and that is why we are bringing the report at this time. Thank you, Mr. Speaker, Sir.

Hon. Matheka: Thank you Mr. Speaker and the house at large. Mr. Speaker, Sir, first I would like to inform the hon. chair for PAIC that any incoming government assumes all the liabilities and the assets of the government which was there before. When he came to office, he assumed all the liabilities and the assets of the PAIC committee with this report included.

(Applause)

He should not complain about the previous chairman but take his work seriously and see what he can do about the committee. Coming to the issue of Article 229 sub section 8, and I am wondering as I always do, whether it is in order for this hon. house to discuss a report which is outdated and that subsection says it very well the report shall be in this house within three months after it was audited.

I know it was audited in 2014 and now we are in 2015. It is a year and over. Mr. Speaker, Sir, we should follow the due course of law and we should now be discussing the 2014/15 report, Mr. Speaker, Sir.

Mr. Speaker, Sir, also when you go into supermarkets and you find an item has a sell-by-date and the sell-by-date has lapsed, that item is thrown out and burned. This is the same thing we should do to this report. It is past its sell-by-date and we have no business discussing it here. Thank you.

Hon. Speaker: Yes Hon. Matheka, what do you understand by sovereignty of the people? Is it in the interest of the people that we discuss this report?

Hon. Matheka: Mr. Speaker, Sir, it is in the interest but we should not contravene the same constitution.

Hon. Speaker: It is the interest of the larger population.

Hon. Matheka: Yes, I do agree with you but we should also not contravene the constitution.

Hon. Speaker: And the sovereignty of the people is in the constitution, isn't it?

Hon. Matheka: Yes, I totally agree with you.

Hon. Nzeki: Thank you Mr. Speaker, Sir. I remember we used to go to the Clerk's office, asking how we can get these people from Auditor General's office. There were delays and I expect and what you have heard from one of the members is that, they used to ask for those people to come and be with them because they can't sit without them.

They delayed and that is why you find by 22nd September, 2014 is when the committee started sitting. It means that there some difficulties and challenges from the Auditor General's office, that is why you find the report was brought late last year before we went for recess.

Hon. Maitha: Point of order, Mr. Speaker.

Hon. Speaker: No. Proceed.

Hon. Nzeki: So I remember it was brought the same time with my report of income and expenditure and mine came first. So Mr. Speaker, Sir, in that committee there are so many challenges and it is one of the difficult committees to handle. So Mr. Speaker, Sir, I ask this hon. house to allow the report to continue being discussed because it was brought late, we went for recess. This year we went for recess another time and now it has been brought. Why can't we sit down, we study it and discuss it.

Hon. Maitha: Point of order Mr. Speaker.

Hon. Speaker: Let me take the point of order.

Hon. Maitha: Mr. Speaker, I have said once and again is this hon. member in order to convince this house to accept a report that is obsolete. One, he is saying they faced challenges. The constitution gives us timelines. Did they ever, through the able chairman, table a request to this floor to request for extension of time under the prevailing circumstances of delay in terms of summoning the witnesses? That has never been done.

For example, the chairman of the Ad-hoc committee brought a request to the floor of this house to seek an extension which was debated and granted. Did this chairman, respecting the rule of law and respecting the standing orders of this hon. house, bring a request to extend the timelines of the committee under the prevailing circumstances of the challenges they were

facing? And more so Mr. Speaker, I want to say this, Chapter one the constitution, states ‘the validity or legality of this constitution is not subject to challenge by or before any court or other state organ.’ So when we are challenging Article 229, we are contravening the constitution.

Hon. Speaker: Allow the chairman to proceed. He is in order to raise the point.

Hon. Nzeki: Thank you Mr. Speaker, I agree with hon. Maitha but when we were in the same committee, he was my chairman. We used to ask the Clerk’s office whether we can get the people from Auditors General’s office. They were not provided, so when they were provided to the present chairman, it is when he brought the report. They compiled the report and brought it to the house. So because it is Auditor General’s office which brought these problems, we continue discussing it, then next time I think it will be brought much early.

Hon. Speaker: Let us hear a different member. Let us hear hon. Gregory, right.

Hon. Munyao: Thank you, Mr. Speaker. I think, Mr. Speaker, we can’t base our arguments on delays but I think we have to base arguments on the constitution because in this hon. house, Mr. Speaker, we normally use the constitution. So Mr. Speaker, if we are talking on some issues to be(*inaudible*) on this document, I think it is very hard that document to be implemented this year because some issues which are discussed in this document were to be implemented in the last financial year. So if we are going to discuss this document at this time, how will the implementation, be done? Thank you, Mr. Speaker.

Hon. Matheka: Thank you, Mr. Speaker, Sir. I have heard the chairman finance say that the report came the other day and they were lacking officers from Auditor General’s office. Mr. Speaker, Sir, I continue wondering. In February or March, 2014, PAIC Committee was in Kaputei hotel discussing the same with an officer from the Auditor General. What were they doing? Were they wasting public funds or what were they doing? Thank you.

Hon. Muli: Thank you Mr. Speaker. It is true the presentation of the document is not anchored in the constitution and without much ado, we need to be guided so that we avoid pushing one another. If there is any rectification which can be done because, Mr. Speaker, we were very much waiting for this document. The committee has done a wonderful job and the report which is here is very crucial and is needed in this house, Mr. Speaker. Thank you.

Hon. Speaker: Hon. Members, I would wish that I issue directions on this matter. Hon. Kithaka, you feel that you can save the house on this matter?

Hon. Kithaka: Yes. Mr. Speaker, I think the only way I can save this house is to urge you to throw this document out simply because it seems it has been overtaken by events. Simply because, I first opened page 14 and I saw the issues of the late Mutula and those are issues

already in court and in the Senate. Let us not discuss issues which are already in other institutions.

So Mr. Speaker, I kindly request us to observe the respect of this house by discussing things which are prompt and which can save the situation in this county. Thank you, Mr. Speaker. I hope I have helped the situation in the house.

(Laughter)

Hon. Kanui: Thank you, Mr. Speaker, Sir. What I want the members to understand first is, an audit report is a post-mortem exercise and the chair PAIC is in order to present that post mortem report. So saying we throw the report away, I think it is unfair because even dead bodies undergo post mortem.

(Laughter)

This is the time they should do the post mortem of the report because it is the first report of this Assembly since it was inaugurated. Thank you, Mr. Speaker, Sir.

Hon. Speaker: It seems there is need for post mortem.

Hon. R. Mutuku: Thank you Mr. Speaker, Sir. I start be applauding the chairman of the committee and the members of the committee for the time they spent preparing this report. Indeed they did a good job. They have tried. Mr. Speaker, there is one issue that I want to concur with members, that the report was supposed to be tabled three months after the lapse of the financial year when that report was received.

Mr. Speaker, because of that mistake, I would urge the Chair that we reject this report and in future the chairman and even the other chairpersons should obey the constitutional timelines to avoid circumstances whereby we do not follow the law. We are the people who are legislating and we have to follow the law as legislators. Thank you, Mr. Speaker, Sir.

Hon. Speaker: There is a question I have been asking. What is the interest of the larger package, because the people are sovereign in this constitution? Hon. Raphael, let me hear.

Hon. R. Mutuku: Mr. Speaker, the constitution is very clear that the supreme power lies with the people and Mr. Speaker, Sir, sometimes due to public demand, reports maybe tabled and, Mr. Speaker, I could have expected a situation whereby the chairman could have come on the floor of this house and sought extension of time because the chair was very aware that it was in the interest of the people that we needed this report so much. So Mr. Speaker, maybe we may request for your guidance on this matter, knowing that the supreme power of the constitution lies with the people. Thank you, Mr. Speaker, Sir.

Hon. Speaker: Again to help the house engage its mind. When you read again Article 229 subsections 8, it states ‘within three months after receiving an audit report, the parliament or the county assembly shall debate and consider the report and take the appropriate action.’ That article does not give us the time within which to present the report. It tells us we should debate within three months. So one thing we need to ask ourselves is, when does debate begin? Does it begin when a motion is laid or does it begin when a communication is made to the house?

The other issue is, Article 1 talks about sovereignty of the people. Is it in the interest of the larger public that this report is debated? These are the questions I would want us to consider and then we will come for further arguments on Tuesday. Let us prepare well so that I am guided to make a proper ruling that will guide this house from now on the matter. Hon. Kalunde you may have to consult your legal team.

(Laughter)

Let us go to the next matter. Clerk.

ADJOURNMENT

Hon. Speaker: That is about all of the business today. I am impressed by the participation today. Hon. Majority Leader, kindly have a seat. You didn't stay in this house. It was good participation and I am happy the house is engaging with reason. Let us prepare and have good debate on Tuesday afternoon on this particular matter. Thank you very much. Let us meet in the afternoon.

The House rose at 11.22 a.m.