

MACHAKOS COUNTY ASSEMBLY**OFFICIAL REPORT****Wednesday, 29th July, 2015**

The House met at 2.35 p.m.

*[The Deputy Speaker (Mr. Nathaniel Nganga) in the Chair]***PRAYERS****PAPER LAID****REPORT ON UNION (BANKING SECTION) EMPLOYEES OF MACHAKOS**

Hon. Leonard Katela: Thank you Mr. Speaker, Sir. I beg to lay the following paper on the floor of the House today Wednesday, 29th July, 2015. It is a report of labor, public service and ICT committee on union banking section for employees of Machakos union. But Mr. Speaker, Sir, before I lay the paper, I want to bring to your attention that Hon. Mutuku is not dressed for business. Thank you.

Hon. Deputy Speaker: Have you laid your paper first. Hon. Katela, you have laid your paper?

Hon. Katela: Sorry?

Hon. Deputy Speaker: You have laid your paper?

Hon. Katela: Yes, Sir.

Hon. Deputy Speaker: Okay. Proceed, Clerk

NOTICE OF MOTION**REPORT ON UNION (BANKING SECTION) EMPLOYEES OF MACHAKOS**

Hon. Katela: Thank you Mr. Speaker, Sir. I wish to give notice of a motion that this hon. house discuss and approves a report of labor, public service and ICT committee on union banking section for employees of Machakos.

Hon. Deputy Speaker: Proceed.

MOTION

REPORT ON UNION (BANKING SECTION) EMPLOYEES OF MACHAKOS

Hon. Katela: Once more Mr. Speaker, Sir, thank you. I wish to move the motion that.....Sorry Mr. Speaker, thank you. Mr. Speaker, Sir, aware that the employees of Machakos district co-operative union, banking section, petitioned the county assembly on 10th June, 2014 praying that the assembly intervenes so that they could be paid their terminal dues after their services were terminated in 1993 and aware that the committee conducted hearings at their physical address in Kangundo and elsewhere and the precincts of the assembly and aware that the committee heard both the complainants and management of Machakos district co-operative union.

Mr. Speaker, Sir, I wish to move the motion this hon. house discusses and approves the report of the labor, public service and ICT committee on union banking for employees of Machakos . Thank you Mr. Speaker, Sir. I wish to call upon Hon. Kathinzi to second the motion.

Hon. Alexander Kathinzi: Thank you Mr. Speaker, Sir. I would like to second this particular motion that we had undertaken a particular discussion with some officials from this particular section and we unanimously agreed on a certain report which is yet to be tabled before this house today by our chairman, Hon. Leonard Katela. So that is the position as at now. I second this particular motion. Thank you.

Hon. Deputy Speaker: Proceed, Hon. Katela.

Hon. Katela: Thank you Mr. Speaker, Sir. There is a task force which was chosen to listen to the grievances of the employees of the former Machakos district co-operative union, banking section.

Preamble

Mr. Speaker Sir, Labour, Public Service and ICT Committee received a letter from the former employees of Machakos District Co-operative Union (Banking Section) through the Clerk of the County Assembly on June 10th, 2014 stating that they were sent on compulsory leave on 22nd January, 1993 and have not been paid their terminal benefits since then (see annex 1). The Committee met on 10th July, 2014 and agreed that there was a need to meet these employees in Kangundo to collect their views for further action.

Mandate of the Committee

Mr. Speaker, Sir, the Committee on Labour, Public Service and ICT was established pursuant to the second schedule of the standing orders with specific mandate on all matters relating to labour, trade, union relations, manpower or human resource planning, information, Communication and Technology.

Committee Members

- | | |
|----------------------------|-----------------|
| 1. Hon. Leonard Katela | - Chairman |
| 2. Hon. Renson Muthiani | - Vice Chairman |
| 3. Hon. Phoebe Koki | - Member |
| 4. Hon. Felix Ngu | “ |
| 5. Hon. Alex Kathinzi | “ |
| 6. Hon. Justus Katumo | “ |
| 7. Hon. Bibiana Nduku | “ |
| 8. Hon. Francis Matheka | “ |
| 9. Hon. Sammy Nduva | “ |
| 10. Hon. Catherine Nguluku | “ |
| 11. Hon. Alex Kamitu | “ |
| 12. Hon. Rachel Nduku | “ |
| 13. Hon. Anne Wairimu | “ |

Meeting With Complainants at Kangundo

Mr. Speaker, Sir, a Sub-Committee of the Labour, Public Service and ICT Committee met the complainants in Kangundo on 29th and 30th August, 2014. The employees of the Machakos District Union (Banking Section) were represented by 10 members as listed below:

1. Albanus M. Maembe
2. Bernard M. Musyimi
3. Mutua Mwasi
4. Bismarck Kiema
5. Danson M. Maweu
6. Reuben M. Mutisya
7. George Kilonzo
8. Peter Mutuku
9. Gregory Muinde
10. Winfred N Mwatu

Mr. Speaker, Sir, Machakos District Co-operative Union was formed in 1972 by Coffee, Macadamia, Cotton and Dairy farmers of the greater Machakos district. The Co-operative union formed a Banking Section which had five branches in Machakos, Kangundo, Tala, Makueni and Kikima in Mbooni.

Mr. Speaker, Sir, the complainants informed the Committee that the banking section was going on well up to 22nd January, 1993 when the employees reported to work in the morning only to find notice on the doors informing them to go home on leave and the management would get in touch with them and they would receive their terminal dues. The committee was informed that, due to unavailability of funds, the employees were given transport of Ksh. 500 only.

Mr. Speaker, Sir, the Committee was further informed that, several attempts were made to have the Management of the Co-operative Union pay the employees their terminal dues but up to date only a small amount has been paid. On 18th July, 2012, representatives of the employees met the General Manager of the Co-operative Union accompanied by a human rights representative to discuss the issue of terminal benefits and he referred them to the Union's lawyer at Ufundi Cooperative in Nairobi. The lawyer asked the members how much they owed the union and whether the employees were ready to take Kshs. 100,000. The representatives turned down the offer since the lawyer did not explain the basis of paying such amount and also because it was very little compared to what each member owed.

Mr. Speaker, Sir, the Committee sought to know whether the members had supporting documents pertaining to their complaints. The Committee was informed that most members had appointment letters, letters requesting them to retire voluntarily, payslips and the notice asking them to go on leave. The complainants had all the documents and were ready to avail them to the committee when required.

Further, Mr. Speaker, Sir, the Committee was informed that the Co-operative Union had many assets and had been disposing some in the name of settling debts of the retrenched employees but they have not been paid. In addition, the Union received seven hundred million shillings from the World Bank to revive the banking section and also pay the retrenched workers but had failed to pay them. Moreover, the committee was informed that cooperatives received funds from the government to settle debts of their members but it had not paid its members.

Mr. Speaker, Sir, the meeting resolved that the former employees to avail all relevant documents such as appointment letters, pay slips, termination letters concerning their complaints to the committee by 2nd September, 2014.

Documents Presented By The Employees

Mr. Speaker, Sir, the committee received several documents from UBS employees and the following were viewed as relevant to the matters in hand;

1. Letters informing the employees to proceed on leave (annex 2).
2. Newspaper cutting stating that the national government had given cooperatives Ksh. 750 million to offset farmers debts (annex 3).
3. Letters of probationary appointment (annex 4).
4. Letters of voluntary resignation from Employment (annex 5.)
5. Tabulation by the employees on how they should be compensated (annex 6).

Mr. Speaker, Sir, on consideration of the above documents the committee resolved to write to the Management of the Machakos District Cooperative union requesting them to provide information on the issue of the retrenched employees.

Mr. Speaker, Sir, the management of the cooperative union wrote back to the committee stating that the employees dues had been addressed between 1993 and 2001 and involved the

then Ministries of the Cooperative, Labour, the Trade Union (KUCFAW) and UBS representatives (see annex 7). The letter also stated that the Cooperative union had to liquidate some prime properties to deal with the matter and payments were disbursed as and when realized, some in cash and others through the labour office.

Further, the letter stated that the cooperative union had no outstanding debt in regard to UBS staff terminal benefits and packages. Finally, the letter indicated that the cooperative union had never received Kshs. 700 million from the government to revive the section and to compensate the staff but was a beneficiary of the Government of Kenya waiver to revive the coffee sector, an exercise which was ongoing.

Mr. Speaker, Sir, the committee resolved to hear both parties so as to get the true picture of the matters at hand and that the management of the cooperative union should forward all relevant documents concerning the matter.

Meeting Of the Committee in the Presence Of UBS Representatives And The Management Of The Cooperative Union

Mr. Speaker, Sir, the management of the cooperative union and the Union Banking Section employees appeared before the committee on 25th November, and 2nd December, 2014.

Mr. Speaker, Sir, the management of the cooperative informed the committee that the Union Banking Section was closed in 1993 because of liquidity problems. The society had over borrowed and due to recession it was unable to continue operations of the banking section. The employees were sent on leave on 22nd January, 1993 and their service terminated on 7th April, 1993. After the termination of service, the employees demanded terminal dues and a meeting was convened whereby Mr. Solia and Mr. Kavivi represented them while Mr. John Wambua represented the trade union and Mrs. Nyamu represented Ministry of cooperatives.

Mr. Speaker, Sir, the management went on to inform the committee that the meeting resolved to dispose some assets of the society such as the plot where Kiamba Mall building stands to pay the employees. The employees were paid through the Ministry of Labour as well as the trade union.

Further, Mr. Speaker, Sir, the committee was informed that the employees were paid in bits depending on what was received from sale of assets but to date no employee owed the union any amount. The management pointed out that no one had gone to court to complain of non-payment of dues since 2001 until 2012.

Finally, Mr. Speaker, Sir, the management of the cooperative union told the committee that the employees were paid on the basis of 5 per cent contributed by the employee and 5 per cent by the employer and the root cause of the current complain was Kshs. 700 million alleged to have been received by the cooperative union from World Bank.

Mr. Speaker, Sir, the management of the cooperative union produced files of staff who had been paid their final dues for committee's perusal. Members went through the files one by

one and observed that the staff were paid their final dues and copies of payment schedules, payment vouchers and imprests to that effect were in the files.

Finally, Mr. Speaker Sir, the joint committee resolved that all the complainants visit the offices of the Machakos District Cooperative Union in person to check how their terminal benefits had been computed.

Committee Observations

Mr. Speaker, Sir, the committee received a letter on 28th January, 2015 (see annex 8) from the Management of the cooperative union stating that only two complainants (Julius Kikuvi and Reuben Mutisya) had so far visited the offices of the union and were satisfied by the computations.

Mr. Speaker, Sir, the committee resolved to write the complainants informing them to visit the union offices before 28th February, 2015. The complainants were informed of the resolution through a letter (ref: MKSCA/PSC/CMM/LPSICT/VOL1/26) dated 12th February, 2015 and received by the representatives the following day (see annex 9).

Mr. Speaker, Sir, the committee observed that the claims that the Cooperative Union's lawyer at Ufundi cooperative offered the employees' representatives Kshs. 100,000 were unsubstantiated and that the newspaper cutting tabled in the committee did not state that the money would be used to revive the union banking section.

Mr. Speaker, Sir, the committee also observed that all the complainants were paid as evidenced by payment schedules, payment vouchers and imprests in the files (see annex 10). Further, after the complainants were requested to visit the Machakos District cooperative union, only two did so which implies that the rest were no longer interested in the matter. Finally, the two complainants who visited the offices of the Cooperative Union were satisfied by the way their terminal dues were calculated.

Mr. Speaker, Sir, the union had stated that payments were being done in bits as and when the money was realized. The committee observed payments of as little as Kshs. 500 were being done and as a result the committee was presented with a voluminous document. This forced the committee to select a few of the documents that carried much weight to annex to the report.

Mr. Speaker, Sir, some of the documents presented to the committee were not dated and some of the employees had not signed payment schedules to show that they received the money. This scenario was very tricky to the committee on judging whether all the persons had been paid. Mr. Speaker, Sir, to clarify on the matter, the committee resolved to write to individual complainants through their representatives to file complaints of non-payment individually (see annex 11). The individuals were given 14 days from 20th March, 2015 to 2nd April, 2015 to write to the Assembly through the Clerk and up to date no one has responded.

Recommendations

Mr. Speaker, Sir, the committee recommends that this Hon. House discuss and resolve that the employees of Machakos District Cooperative Union (Banking Section) were dully paid their terminal dues.

Acknowledgement

Mr. Speaker, Sir, the Labour, Public Service and ICT committee is grateful to the office of the Speaker and that of the Clerk to the County Assembly for the support accorded during the committee sittings and visits. I wish to express my appreciation to the Hon. Members of the Committee who sacrificed their time to participate in the activities of the Committee and in preparation of this report.

Mr. Speaker, Sir, allow me to sincerely thank members of the public who took time to participate in the consultations. Mr. Speaker, Sir, it is therefore my privilege, on behalf of the Labour, Public Service and ICT Committee, to table this report and recommend it to this Hon. House, for adoption.

Hon. Deputy Speaker: Thank you. The report is properly before the house and it is open for debate. Any contributions towards the same? Yes Hon. Kathinzi.

Hon. Kathinzi: Thank you Mr. Speaker and the house at large. I would like to start by congratulating the chairman. He is an able chairman and we went through the claims which were brought before the committee by the union banking section and I wish Mheshimiwa Itumo was here because he comes from that particular area. Mr. Speaker, Sir, the members were accompanied by an officer from the office of the area MCA and for that matter, that is why I am eagerly asking myself whether he was around to see what we did and it was in the best interests of this house that we deliberate the issue properly and forward the relevant recommendation to the house for adoption.

Mr. Speaker this is something which happened many, many years ago and it was quite interesting because, as you can see through the document, it is a voluminous document and in my contribution, I would like to emphasis on the Annex. You can see from the Annex No. 1, it is a just after where the chairman has read up to. This is a communication, correspondence which was written from the office, that is the former employees that is the union banking section, Kangundo which was dated 6th of June, 2014 and it was addressed to the chairman, labor and social welfare committee, Machakos county assembly and they were requesting that they be paid their terminal dues.

As you can see from that particular title that reference point, they were requesting that the terminal benefits and packages for former union banking staff sent on leave on 22nd January, 1993. I believe, Mr. Speaker, most of us were in school that time but when you go to Annex No. 2, they complain that they were never communicated to. So they purported to say that they are still on duty. But Mr. Speaker, when you go to annex No. 2, one Sylvester Kivuva got a letter from Machakos district co-operative union limited on 19th January, 1993 indicating that this guy had been sent on leave.

After he came from leave, it is well written and I can read for purpose of interest of HANSARD report; that proceed on leave with effect from 22nd January, 1993. I read in part;

‘that this is to inform you that following the closure of the union banking section, the management sitting on 19th January, 1993 decided that you proceed on annual leave with effect from 22nd January, 1993.’

So this fellows, when the union banking section went on a.....it was not able to perform, they first send all the employees, a part of them, retaining just an handful, just a few of the employees, so to say and Mr. Speaker, you can see when you go to Annex No. 3, not No. 3. There is another one which is also another indication that we have Annex No. 5. When they came back from leave, they were told now the company had closed down and they were paid. There is a schedule which was used to pay these employees. It is there on record and I think we can be able to get that from the document, Mr. Speaker.

When you go to Annex No. 5, some of them went on resigning when they were told they are no longer employees of the union banking section ‘and you can get a letter of resignation from one S.N Mwaniki, Annex No. 5. This was indicating voluntary resignation from employment and this is also indicating that ‘this is to inform you that the management committee on the union banking section sitting on 19th March, 1993 discussed in depth and presents situation of the union and welfare of the employees. It was noted with much concern that most of the staff salaries were in arrears and the situation had forced the closure of some important services like the banking section and other services and other sections may close soon.’

So this was a reply to this particular fellow after he indicated that he was not satisfied that he could be kept on waiting not knowing whether he will come back to work so most of them resigned and they got their dues. This is something we discussed at length, at the committee level, which was indeed vigorous interrogation. We called the union representatives and also we called the lawyers who came and testified before this particular committee and we found out at last, that most of the former union, banking section, staff were paid.

If you go to Annex No. 6, there is a list that is attached there, Mr. Speaker, and this one is addressing the issue of compensation for the former union banking section staff send on leave on 22nd January, 1993 and it is very well elaborating that these people were paid Ksh. 286 million and attached list of the benefits is also there.

So Mr. Speaker, I am supporting this report because it came through the committee and interested parties like Hon. Itumo came in the floor of that particular committee and we discussed at length with him and also Mheshimiwa Kanui came to that committee. So this is a very straight committee and I applaud the entire committee members for their dedication. Even we met at very odd hours of the day to make sure that we go through that particular issue completely. So I support it. Thank you

Hon. Deputy Speaker: Thank you. Yes Hon. Nzoka

Hon. Wilson Kasimu: Bwana Mr. Speaker---

Hon. Deputy Speaker: Yes what is your point of order?

Hon. Kasimu: The member before the house now, Hon. Nzoka, is not properly dressed. I hope it comes to your attention and he comes properly dressed.

Hon. Nzoka: I am very sorry. I was not aware, I don't know why I have come this way but can you allow me to contribute then I just walk out.

Hon. Deputy Speaker: Much obliged. You have been allowed to go and shape up then you come back.

(Laughter)

Hon. Nzoka: Can I just contribute---

Hon. Deputy Speaker: Not really. Another contribution? Yes, Hon. Willy

Hon. Kasimu: Thank you Mr. Speaker, Sir. We have gone through the report and we are in support of the committee that has done a good job. Mr. Speaker, I was of the opinion that we adopt the report as it is and the proposal of the committee because it is black and white, Mr. Speaker. Thank you, Mr. Speaker

Hon. Deputy Speaker: Yes Hon. Muli.

Hon. Joseph Muli: Thank you Speaker. I have just shortly gone through the document and, Mr. Speaker, the document is explanatory. The committee has done a very wonderful job. They have investigated fully and everything has been already been presented in this report whereby, Mr. Speaker, even there is no question or answer to debate further. Therefore, through your honour Speaker, I request as my previous contributor had requested, we adopt the report because it has digested up to the last bit. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Yes Hon. Nzoka.

Hon. Nzoka: Thank you Mr. Speaker, Sir. I think Hon. Kasimu now can see. Hon. Kasimu can confirm I am well dressed.

(Laughter)

When I checked this document, although I checked when we were here, I have been in cooperative societies a lot and the way the investigation was done, I acknowledge the committee and the chairman. The whole committee they digested well. I even understand there before,

during the Kibaki regime, where by the co-operative societies were waived a total of Ksh. 7.2 billion of which Muka Mukuu, my society, was one of them which benefitted through a waiver of Ksh. 242 million and this time during this time we are now, the government also released, through the national government through our President Kenyatta, they released Ksh. 750 million for the other remaining co-operative societies that had some bills to clear.

The way the management sat down and gave the compulsory leave. It is procedural because you cannot keep on with the workers when you cannot afford to pay them and it has been evidenced here the co-operative society was at its knees. It could not hold employees so they proceed for leave and again they were to be paid bits and bits as they were sourcing money for the.....you know, you cannot sell the assets at once. It can take even two, three years to sell the assets. You are selling this one moving to this one so I say the report I support it. I request members to adopt it because there is nothing to digest up to there. Thank you Mr. Speaker, Sir.

Hon. Deputy Speaker: Looking at the mood of the house, I find that is much support to the report therefore I proceed to put the question.

(Question put and agreed to)

The report is adopted and the recommendations are therefore enforced. Proceed, Clerk.

MOTION

CENSURE OF HON. FESTUS NDETO

Hon. Kasimu: Mr. Speaker, Sir, we wish to defer our motion most probably for next week. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Your reasons of deferment

Hon. Kasimu: Mr. Speaker, Sir, we have enough reasons to defer but I don't think they will be of more importance to the House at the moment. We wish that you accept that you will push the motion to next week for us to be---

Hon. Deputy Speaker: Hon. Mukewa, it is proper that you convince the Chair on the reasons why you feel you cannot proceed with the motion.

Hon. Kasimu: Mr. Speaker, Sir, protect me. I am of the point that---

Hon. Deputy Speaker: Let the member explain himself.

Hon. Kasimu:a moment to continue with the motion until next week that will be ready and properly laid before the house, if you allow Mr. Speaker, Sir.

Hon. Deputy Speaker: It is important that whenever any motion is before the house, the member who brings it and commits to the house is properly prepared to tackle it. Therefore, with that we defer the matter to next week on Tuesday afternoon without much ado.

Hon. Kasimu: Thank you, Mr. Speaker.

Hon. Deputy Speaker: Proceed, Clerk.

ADJOURNMENT

Hon. Deputy Speaker: Okay, no other business therefore the house adjourns until tomorrow, same time.

The House rose at 3.12 p.m.