

**REPUBLIC OF KENYA**  
**MACHAKOS COUNTY ASSEMBLY**  
**OFFICIAL REPORT**

**Wednesday, 26<sup>th</sup> September, 2016**

**The House met at 10.04 a.m.**

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

**PRAYERS**

**Hon. Speaker:** Good morning, Hon. Members.

**PAPER LAID**

AUDITOR GENERAL'S REPORT ON YATTA WATER AND SEWERAGE COMPANY

**Hon. Speaker:** The Hon. Kalunde, is he here?

*(Member absent)*

**BILL**

*Second Reading*

MACHAKOS COUNTY MANAGEMENT OF QUARRYING ACTIVITIES BILL 2016

**Hon. Ngunzi:** Thank you, Mr. Speaker. Aware that the Machakos County management of Quarrying Activities Bill 2016 was drafted pursuant to Article 185 (2) that mandates the county assembly to make laws that are necessary for or incidental to the effective performance of the functions of the---

Sorry, Mr. Speaker. Mr. Speaker, pursuant to Standing Order number 121 (1), I would like to move the motion that the Machakos County Management of Quarrying Activities Bill No. 9 of 2016 be read a second time. I call upon Hon. Peter Nzioki to second.

**Hon. Nzioki:** I stand to second.

*(Question proposed)*

**Hon. Speaker:** Proceed, Chairman.

**Hon. Ngunzi:** Mr. Speaker,

THAT aware that the Machakos County management of Quarrying Activities Bill 2016 was drafted pursuant to Article 185 (2) that mandates the county assembly to make laws that are necessary for or incidental to the effective performance of the functions and exercise of the powers of the county government.

Further aware that the Bill was tabled in the Assembly for the first reading on 11th August, 2016, after which it was committed to the committee of Environment, Lands, Energy and Natural resources for scrutiny pursuant to Standing Order 120 (1).

Mr. Speaker, Sir, informed that on 5th and 6th September, 2016, the committee conducted public participation in all the eight sub-counties pursuant to Standing Order 120 (3).

Remembering that on 17th and 18th September, 2016 the committee discussed and scrutinized the Bill at Reef hotel in Mombasa, I wish to move the motion that this Hon. House discusses and approves the report of the Machakos County Management of Quarrying Activities Bill 2016. Thank you.

**Hon. Speaker:** Thank you. I noted that Hon. Peter Nzioki had already seconded your motion so you can proceed straight to the report. Hon. Ngunzi. Sorry, Hon. Ngunzi, I am advised it is a different motion so invite somebody to second it.

**Hon. Ngunzi:** Let me call upon Hon. Raphael Mutuku to second the motion.

**Hon. R. Mutuku:** Thank you, Mr. Speaker, Sir. I second the motion before the House as read by the chairperson.

**Hon. Speaker:** Thank you. Motion is seconded. Proceed.

**Hon. Ngunzi:** Mr. Speaker, allow me to table the report of the committee on Environment, Lands, Energy and Natural resources on quarrying activities Bill 2016 as I will present today.

Mr. Speaker, Sir, quarrying in Kenya is a significant *Jua kali* informal sector involving land owners, quarry workers, both skilled and unskilled, quarry owners and concession owners who lease the land and extract stone (ballast) for sale. Due to growth in population and infrastructure, urbanization, demand for ballast and other materials as building materials has grown exponentially.

Mr. Speaker, quarrying cannot be justified while overlooking the negative impact that such activities have on health and environment. There is therefore a need to integrate environmental conservation and safety guidelines in all stages of stone crushing/quarrying activities so as to minimize the negative impact that may result. During the recent years, there has been a growing awareness on the importance and need for protection and preservation of environment and occupational safety in quarrying.

Mr. Speaker, Sir, the Machakos County Quarrying Activities Bill, 2016 was drafted pursuant to Article 185 (2) ‘a County Assembly may make any laws that are necessary for, or incidental to, the effective performance of the functions and exercise of the powers of the County Government under the fourth schedule.’

The membership is as indicated Mr. Speaker and I would not go through that. You can look at that list.

Mr. Speaker, Sir, the Management of Quarrying Activities Bill, 2016 was tabled in the Assembly for First Reading on 11<sup>th</sup> August, 2016 after which it was committed to the committee on Environment for scrutiny pursuant to Standing Order 120 (1) “a Bill having been read the First Time, shall stand committed to the relevant Sectoral Committee without question put.’

Mr. Speaker, Sir, this Bill seeks to establish a legal framework to regulate quarrying activities, ensure sustainable exploitation and utilization, provide for raising of revenue and equitable sharing of the accruing benefits.

Mr. Speaker, Sir, this Bill was discussed with members of the public from the eight Sub-Counties of Machakos County and in general the following were their submissions;

- The mode of extraction of quarry materials should be evaluated.
- There should be a consistent formula of maintaining the designated roads for the vehicles transporting quarry products.
- There should be a specific percentage of the amount which should be taken back for the maintenance of the roads.
- Public participation should be done even in areas where sand is being harvested.
- People undertaking quarrying activities in their own land should not be subjected to licensing since in most areas where quarrying is done, hardly nothing can grow there to sustain the people.
- Clarification is needed on the magnitude of quarry works to be licensed and those who want to do quarrying for subsistence use.
- Clause 17 to be removed since it may amount to double taxation.
- County Government to ensure that all roads leading to quarrying areas are maintained as a way of giving back to the community.

Mr. Speaker, Sir, during Committee meetings held on 9<sup>th</sup> and 16<sup>th</sup> September, 2016, the committee did an in-depth scrutiny of the Bill and the following were their submissions;

1. In Clause 2 on Interpretation, the word Authorized Officer should be aligned with the definition of the same in Section 2 of the County Government Act, 2012. Also, include in the Bill if the Director has the power to delegate his duties to the Authorized Officer.
2. Delete the whole of Clause 19 (2) since it is a repetition of Clause 20 (d).
3. In Clause 19 (3) reduce the fine from Ksh. 500,000 to Ksh. 100,000. The amount proposed is so high.
4. In Clause 22 (2) (b), delete that Clause since the Hours mentioned here are already provided for in Clause 19 (1).

The Committee wishes to thank myself, for sponsoring the Bill, the drafters whose help has enabled the publishing of the Bill and all members of the County Assembly for their

participation. The committee further thanks members of the public for their participation during public hearing of the Bill.

Mr. Speaker, Sir, the Committee proposes the following amendments after considering the recommendations made by the public and also by the Members of the County Assembly. Amendments are annexed to the report. Thank you, Mr. Speaker, Sir.

**Hon. Speaker:** Very well. Thank you, chairman. The report has been presented and I open debate on the report. Kindly members, give your contributions.

*(Silence)*

Hon. Members, you look like you are well with the report of the day? Yes Hon Nzoka.

**Hon. Nzoka:** Thank you Mr. Speaker, Sir. I am one of these members of this committee which drafted this one and it is after we scrutinized and we went to the community, that is when we came up with these recommendations so I think without much ado everything is in order. This is the voice of the members of the public. Thank you Mr. Speaker, Sir.

**Hon. Speaker:** Thank you. Yes Hon. Nzeki.

**Hon. Nzeki:** Thank you, Mr. Speaker. I would like to touch, Mr. Speaker, on recommendation number 3, although I commend the committee for the job well done and I wanted them to either do some amendments on recommendation 3. There should be a specific percentage of the amount which should be taken for the maintenance of the roads. I thought it would be better if put the percentage which is supposed to be taken back to the residents of that area. Otherwise, when we say specific percentage it can be 75 percent, 20 percent, 1 percent so I thought they could talk of that percent.

**Hon. Speaker:** Hon. Nzeki, I want to be with you in that argument; where is that? I missed the point. You can repeat it again for my ears please.

**Hon. Nzeki:** Mr. Speaker, Sir, I was talking of recommendations---

**Hon. Speaker:** Number?

**Hon. Speaker:** Number 3 from the public. There should be a specific percentage of the amount which should be taken back for the maintenance of the roads. So I was saying that---

**Hon. Speaker:** You were saying that it can be described in the percentage.

**Hon. Nzeki:** Yes, in the percentage otherwise it can be 80 per cent, 20 percent, 15 percent or 1 percent. So I wanted it to be at least given a figure. Thank you Mr. Speaker, Sir.

**Hon. Speaker:** That is a matter that you can raise in the committee of the whole. Yes Hon. Rachel.

**Hon. (Ms.) R. Nduku:** Thank you, Mr. Speaker. I want to support the report and also congratulate the committee for coming up with such a report. I want to raise a concern in the recommendations, bullet four from the last, where they are saying, 'people undertaking quarrying activities in their own land should not be subjected to licensing.' Mr. Speaker, I want to disagree with this because most of the people who come to buy quarries in our area and they want to do quarrying activities in the same area for matter of business and all that.

So I do not know why the committee thought that these people should not be subjected to licensing and wherever there is a quarrying activity there must be effects around there. So I do not know whether it is good terms when people are allowed to carry quarrying activities without licenses. Thank you, Mr. Speaker.

**Hon. Speaker:** Yes. Thank you. Yes Hon. Nzoka?

**Hon. Nzoka:** Thank you. I want to respond to, bullet three where a member contributed and said a certain percentage should be indicated. Mr. Speaker, Sir, if you go to the roads which are leading to these quarries, there are some which are in pathetic condition. So it would be difficult to set a certain figure. It is the duty of the County Government to repair those roads through the money they have sourced from the income.

It can be more it can be less. It depends on the situation of the road because there are places where there is no need for any repair because there are also the companies which are doing the quarrying, they do assist in putting some material. So we cannot come up with a specific figure because it will depend on the situation of the road. Thank you, Mr. Speaker.

**Hon. Speaker:** Yes.

**Hon. (Ms.) R. Nduku:** I wish to ask my fellow Hon. Member, when we talk of quarries to take care of the disabled around them, what do they mean? Do they mean the people who are surrounding quarries are the only disabled people and how will the quarries know whether the people who are around them have disabilities or I do not know whether they wanted to talk of the needy people around or the needy communities. I do not know because not all quarries are surrounded by disabled people, Mr. Speaker. Thank you.

**Hon. Speaker:** Where Is that Hon. Rachel? That is in page? Page 3?

*(Silence)*

I have not seeing that Hon. Rachel. Yes, 1, 2, 3. Are you having the right copy of the report or I am lost. Hon. Chairman, you have two samples of the report? Because the report I have bullet three is reading 'there should be a specific percentage of the amount which should be

taken back for the maintenance of the roads. I have not seen anything like levy. Hon. Chairperson, maybe you can declare the right copy of the report.

**Hon. Ngunzi:** Mr. Speaker, you are handling the right copy.

**Hon. Speaker:** Which does not have the disabled?

**Hon. Ngunzi:** It does not have the disabled.

**Hon. Speaker:** It does not have the disabled. Then those who have the report indicating the disabled, maybe you can raise it up so that it is replaced. Kindly, in a minute you will be helped with the right report.

*(Report circulated)*

Is that the only error that is in that report?

**Hon. Ngunzi:** That is an error, Mr. Speaker. In our discussion, at the committee level, we removed that part.

**Hon. Speaker:** That point of yours.

**Hon. Ngunzi:** Maybe the clerk assistant was not keen to make the amendments. Thank you.

**Hon. Speaker:** Hon. Members, for those who have a report that is having that particular problem, I think we can help the Chairperson and cancel it from the report and then we can proceed. I thought the Chairman would be grateful for that help.

**Hon. Ngunzi:** Thank you, Mr. Speaker, for that assistance.

**Hon. Speaker:** Then let us proceed. Yes, Hon. Peter Nzioki.

**Hon. Nzioki:** Thank you, Mr. Speaker. On recommendations from the public, bullet 2, 'there should be a consistent formula of maintaining the designated roads for the vehicles transporting quarrying products.' If you go to bullet 4, 'there should be a specific percentage of the amount which should be taken back for the maintenance of the roads.' Mr. Speaker, that seems to be the same thing. If maybe, Mr. Speaker, it seems the meaning is almost the same only that the difference is the percentage they are talking about in bullet 4.

Also, Mr. Speaker, again on bullet 6, 'the Government to provide jaw crushers to ease the extraction of quarrying activities.' Provide jaw crushers. To who, Mr. Speaker?

**Hon. Speaker:** Where is that?

**Hon. Nzioki:** Bullet 6.

**Hon. Speaker:** Again, I think that is an alien....yes, let us hear Hon. Nzeki first.

**Hon. Nzeki:** Mr. Speaker, Sir, the Hon. Member has the wrong document in his possession because already the Chairman has clarified that there are two documents circulating in this Hon. House. So, should the document which is not supposed to be in this Hon. House be removed from this House and we remain with only one document which I have. We do not have those words you are talking of, Mr. Speaker, Sir.

**Hon. Speaker:** Kindly, Hon. Members, you can help the sitting on by bringing, maybe surrender the documents that have errors. Because Hon. Nzioki you must have been referring to a document that had an error. Then those who have the right documents kindly let us share, so that we can finish.

*(Report circulated)*

How many Members do not have a document so that we can see how we can share? You can give my copy at the back. Yours is a good document? Kindly share. How many have the right documents to see whether it is possible we proceed?

*(Members with right documents raised their hands)*

You have the right document. Then it looks like, Chairman, we may have not been able to proceed with your business. What do we do?

**Hon. Ngunzi:** This is quite disturbing, Mr. Speaker. I did not realize that we were holding two different copies and in the absence of the...maybe Mr. Speaker, we can see the number of members holding no copies at all so that we can make a decision.

**Hon. Speaker:** The number that is holding no copies at all is larger. Maybe we can show by hands.

*(Members without copies raised their hands)*

Yes, let us hear the point of information.

**Hon. Nzoka:** Thank you. I agree even the one that I am holding is not correct because when my Chairman was going through, there was a lot of jumping. So, the document we can just delete on the face. All what he has it is also here. What we removed from here is not what was

affected so we can just cancel. That one is removed then we continue with the document. I am saying, this document and the one which you are holding, the problem is after we changed that one and this was not changed so we can just rub it out.

**Hon. Speaker:** Hon. Members, I think the proper thing to do is to have this business pushed to afternoon and any other business will be subsequently affected but this business will take priority because of the nature of the business today.

Hon. Kalunde, you were late. Your paper was skipped. I will allow you to present your paper and the notice.

### **PAPER LAID**

#### **AUDITOR GENERAL'S REPORT ON YATTA WATER AND SEWERAGE COMPANY**

**Hon. Kalunde:** Thank you, Mr. Speaker. I beg to lay the following paper on the table of the House today Wednesday, 26th October, 2016; report of Auditor General on the financial statements of Yatta Water and Sewerage Company Limited for the year ended 30th June, 2015. Thank you, Mr. Speaker.

**Hon. Speaker:** Thank you. The paper is laid. Let us proceed with the notice.

### **NOTICE OF MOTION**

#### **AUDITOR GENERAL'S REPORT ON YATTA WATER AND SEWERAGE COMPANY**

**Hon. Kalunde:** Mr. Speaker, Sir, I wish to give notice of the following motion; report of Auditor General on the financial statement of Yatta Water and Sewerage Company Limited for the year ended 30th June, 2015. Thank you, Mr. Speaker. I would like to call upon Hon. Kanui to support the motion.

**Hon. Speaker:** Hon. Kalunde, this is a notice and you have issued the notice. We are yet to take on the motion. So, the current practice that we are having to enable Members go through then reports, once a notice is issued and the report is circulated and that proper debate will be scheduled by then House Business Committee.

**Hon. Kalunde:** Thank you, Mr. Speaker.

**Hon. Speaker:** Yes. Hon. Kitheka.

**Hon. Kitheka:** Mr. Speaker, Sir, I think if I might not have heard the wrong statement---

**Hon. Speaker:** Yes.



**Hon. Kitheka:** He has stated the audit report of the Auditor General and I see what is in hand is a report of Public Accounts Investment Committee of the Assembly on audit report. He has addressed the issue of the Auditor General---

**Hon. Speaker:** The paper is report of Auditor General. Hon. Chairman, what is the matter of the report? It is that of the Auditor General or is it matter of PAIC?

**Hon. Kalunde:** It is Auditor General.

**Hon. Speaker:** Thank you. Then other issues will be raised on the matter for debate.

### **ADJOURNMENT**

**Hon. Speaker:** Thank you. Then, Hon. Members, the House will adjourn until the afternoon when we shall continue with Hon. Ngunzi's business.

The House rose at 10.38 a.m.