

REPUBLIC OF KENYA
MACHAKOS COUNTY ASSEMBLY

OFFICIAL REPORT

Wednesday, 15th February, 2017

The House met at 10.06 a.m.

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

PRAYERS

Hon. Speaker: Good morning Hon. Members. Let us proceed clerk.

COMMUNICATIONS FROM THE CHAIR

WELCOMING MEMBERS TO FIFTH SESSION OF THE FIRST ASSEMBLY

Hon. Speaker: Hon. Members, further to our communication of yesterday, I do proceed to put the following welcoming remarks;

Hon. Members, I welcome you all to the fifth session of the First County Assembly of Machakos. It has been a long recess for all of us and I believe that as we undertake our mandate this session, we will do so with renewed vigor.

Article 1 (1) (2) and (3) of the Constitution of Kenya stipulate that all sovereign power belongs to the people of Kenya and shall only be exercised either directly or through their democratically elected representatives, we who are assembled here today. This provision reflects the division of roles in our governance structures and gives us the constitutional obligation to fairly represent our people.

Therefore, Hon. Members, our Assembly must play its rightful role in the implementation of the Constitution of Kenya, 2010. Our Standing Orders support the Constitution in outlining the roles, functions and powers of the legislature in terms of the legislative process, oversight of the Government and representation of the people.

We are thus under special focus as we continue to discharge our functions and I have no doubt that we will rise to the challenge as we undertake our duties this last session of this First Assembly of Machakos.

REPORT OF THE AUDITOR GENERAL

Hon. Members, pursuant to Article 229 (4) (a) and (b) of the Constitution, within six months after the end of each financial year, the Auditor General shall audit and report, in respect of that financial year, on the accounts of the national and county governments and the accounts of all funds and authorities of the national and county governments.

The office of the Clerk is in receipt of two reports from the office of the Auditor General. The first is a report dated 22nd November, 2016 on the financial statements of Matungulu-Kangundo Water and Sewerage Company for the year ended 30th June, 2015.

The second report, dated 14th December, 2016, is on the financial statements of Mavoko Water and Sewerage Company Limited for the year ended 30th June, 2015.

The two were submitted in accordance with the provisions of Article 229 (7) of the Constitution. The reports are hereby committed to the Public Accounts and Investments committee for interrogation and preparation of a report to be tabled in the House as required by Article 229 (8) of the Constitution.

BIOMETRIC ATTENDANCE REGISTRATION

The biometric attendance registration system, an initiative of the County Assembly, has been in use until sometime last year when the same was discontinued. In 2014/2015 systems audit report from the Auditor General, an audit query was raised on the inconsistency in the signatures of the attending Members of the County Assembly to various committees. According to the report, there was no clear pattern of the signatures by the Members who attended meetings, casting doubts on the authenticity of the same.

In the most recent 2015/2016 financial year audit report, it was again noted that the system seems to have become obsolete, yet it cost the Assembly a lot in funding and is intended to enhance the Assembly's systems and to curb indiscipline in attendance of meetings.

Following the concerns raised by the Auditor General, I am left with no other choice but to direct that the biometric system be restored and the same be used both in committee sittings and plenary sittings, including when holding meetings outside the precincts of Assembly.

Further to this Hon. Members, the Speaker also directs that unless a plenary or committee sitting lasts for less than 30 minutes, no Member will be allowed to log out before half an hour lapses and those who do so, will have to forfeit their allowances for that sitting.

Hon. Members, ensure adherence to the aforementioned in observance of the Leadership and Integrity Act, 2012 as well as our individual declaration to commit to the leadership and integrity code.

RECONSTITUTION OF COMMITTEES

Hon. Members, on the House Business Committee, Standing Order 151 (2) states that 'the House Business Committee shall be appointed within seven days on assembly of a new House.'

Under Standing Order 151 (1) (e), members of the House Business Committee should be nominated by Assembly parties and approved by the House at the commencement of every Session. To comply with this Standing Order, I direct that the Clerk guides the Assembly Parties to comply with this Standing Order immediately to enable this House to comply with this Standing Order.

On the Committee of selection, two members were discharged from that Committee by their respective parties. I direct that the Clerk moves to have the parties that nominated the two members to proceed to nominate their replacements and proceed to forward them for approval by the House.

Also, towards the end of the fourth session, several discharges of members from committees were made by Assembly parties that had nominated them pursuant to Standing Order 156 (1). For effective functioning of the committees, there is need for replacement of these members pursuant to Standing Order 153 (3) which states that, ‘a vacancy occasioned by resignation or removal of a member from a select committee shall be filled within fourteen days of the vacancy.’

CHAIRPERSON OF COMMITTEES

Hon. Members, on 6th April, 2016, this Assembly discussed and passed a motion moved by Hon. Veronica Mbithe, which motion stated as follows; ‘that the position of the Deputy Speaker be sparred and fresh elections conducted for the position of the Chairperson of Committees to realign our Standing Orders.’

On 28th April, 2016, I communicated to this House about a court order in Machakos High Court, Petition No. 6 of 2016, Hon. Nathaniel Nganga Reuben versus the Speaker, County Assembly of Machakos and another.

In the interim order issued on 11th April, 2016, the court ordered that;

1. Pending the hearing and determination of the application herein, a conservatory order do issue to restrain the respondents from making any resolution and or decision to elect and or appoint any member of the Assembly or any person as a Deputy Speaker or as chairperson of Committees.
2. That pending the hearing and determination of the petition herein, the respondent’s decision dated 6th April, 2016 that nullified the position of Deputy Speaker be stayed.

In compliance with the court order, this House held in abeyance the implementation of a motion passed by this Hon. House on 6th April, 2016 to re-align the Assembly Standing Orders by replacing the position of Deputy Speaker with that of the Chairperson of Committees.

Well, members, this matter was concluded on 14th December, 2016 when the court delivered its judgment in which it issued the following orders;

1. THAT the Petitioner’s Petition be and is hereby dismissed.
2. THAT each party shall bear their respective costs of the Petition.

3. THAT the conservatory orders issued herein on 26th June, 2016 are accordingly discharged.

Since the issuance of this order by the High Court, the petitioner in that matter, Honorable Nganga, through his advocate, has given a notice of appeal dated 20th December, 2016.

In view of all the above, I direct that the Clerk ensures that the matter of the position of Chairperson of Committees is placed in the order of upcoming business in the earliest. Thank you. Let us proceed.

PAPERS LAID
ASSEMBLY CALENDAR FOR FIFTH SESSION

Majority Leader (Hon. Mwonga): Mr. Speaker, Sir, pursuant to Standing Order 25 (1), I wish to lay on the table of the House today, 15th February 2017, the report on HBC on the calendar of the county assembly of Machakos 2017 for the fifth session.

Hon. Speaker: Thank you. Paper is laid. Proceed.

INCOME AND EXPENDITURE FOR 2014/2015

Hon. Nzeki: Thank you, Mr. Speaker. Mr. Speaker, Sir, I wish to lay the following paper on the table of the assembly today 15th day of February, 2017; the report of income and expenditure for the county financial year 2014/2015. Thank you, Mr. Speaker, Sir.

Hon. Speaker: Paper is laid. Proceed.

NOTICES OF MOTIONS
ASSEMBLY CALENDAR FOR FIFTH SESSION

Majority Leader (Hon. Mwonga): Mr. Speaker, Sir, I wish notice of the following motion that pursuant to standing order 25(1), I wish to give notice of the following motion that this house discusses and approves the calendar of the county assembly of Machakos 2017 for the fifth session. Thank you, Mr. Speaker.

Hon. Speaker: Thank you. Notice is issued. Proceed.

INCOME AND EXPENDITURE FOR 2014/2015

Hon. Nzeki: Thank you, Mr. Speaker. Mr. Speaker, Sir, pursuant to Standing Order 190(5), I wish to give notice of the following motion; that this Hon. House discusses and

approves the report of income and expenditure for the county financial year 2014/2015 as tabled by the Finance and Revenue committee. Thank you, Mr. Speaker, Sir.

Hon. Speaker: Thank you. Notice is issued. Proceed.

STATEMENT

BUSINESS FOR THE HOUSE FROM 14TH TO 16TH FEBRUARY, 2017

Majority Leader (Hon. Mwonga): Mr. Speaker, Sir, I stand under Standing Order 41 (2) (a) where during the statement hour, a member of the House Business Committee, designated by the committee for the purpose shall, every Thursday or on the last sitting day for not more than ten minutes, present and lay on the table a statement informing the House of the business coming before the house in the following week.

Mr. Speaker, Sir, the House Business Committee met on 14th February, 2017 and pursuant to the provisions of Standing Order 151, balloted business of the week starting today, which was yesterday, as I was to table the statement yesterday, 14th to 16th February, 2017 as follows.....allow me, Mr. Speaker, to read what was to be there yesterday afternoon.

Hon. Speaker: Proceed.

Majority Leader (Hon. Mwonga):

14th February, 2017, Tuesday afternoon;

We were supposed to have report of House Business Committee on the Machakos County Assembly calendar for the fifth session.

Wednesday morning;

Report of finance and revenue collection committee on income and expenditure report of the county for 2014/2015 financial year.

Wednesday afternoon;

Report of PAC committee on Machakos Water Company 2015 and Machakos Municipal Council 2013.

Thursday (afternoon);

Report of Budget and appropriation committee in County Fiscal Strategy Paper 2017.

Thank you, Mr. Speaker.

Hon. Speaker: Thank you. Statement is done. Proceed.

MOTIONS

ASSEMBLY CALENDAR FOR FIFTH SESSION

Majority Leader (Hon. Mwonga): Mr. Speaker, Sir,

THAT aware that the HBC is mandated by the Standing Order 151 (5) (a), to prepare and if necessary from time to time adjust the assembly calendar of the House;

Aware that the assembly has just resumed from recess for the fifth session and that the House needs to be guided on the dates of the session;

Aware that Standing Order 24 (1) states that the regular sessions of the assembly should commence on the second Tuesday of February except the session commencing immediately after the general elections;

Aware that the assembly may continue to be in recess and adjourn for such a number of days as it may determine in its calendar;

Noting that Article 177 (1) of the Constitution of Kenya provides for elections of members of county assembly on the same day of general election of Members of Parliament, being the second Tuesday of August every fifth year;

Aware that the assembly calendar once approved by the House shall be published in the gazette, assembly website and at least two newspapers of national circulation, I wish to move the motion that this hon house discusses and approves the calendar of the County Assembly of Machakos 2017 for the fifth session.

Mr. Speaker, I call upon Hon. Muli who is a member of the House Business Committee to second the motion.

Hon. Muli: Thank you, Mr. Speaker. I second this motion which gives us the duty and calendar for the activities of this House. Thank you, Mr. Speaker.

Hon. Speaker: Thank you. Proceed with the motion.

(Applause)

Proceed and read the report.

Majority Leader (Hon. Mwonga): Mr. Speaker, Sir, the calendar of the Assembly provides for a programme of Assembly showing the dates when the House will be sitting and when it will be on recess. The calendar will enable members plan their time well so as execute their core functions of representation, legislation and oversight.

The Assembly Calendar 2017 is drawn pursuant to Standing Order 25 (1) that; 'the House Business Committee shall, with approval of the Assembly, determine the Calendar of the Assembly.' The Assembly Calendar 2017 gives outline of the dates for the fifth session of the First Assembly of Machakos showing clearly plenary sittings and recess.

Mr. Speaker, Sir, the Committee draws its mandate from Standing Order 151 (5) (a) which states that the House Business Committee shall prepare and, if necessary, from time to time adjust the Assembly Calendar with the Approval of the House. Mr. Speaker, Sir, allow me to skip the committee composition because members can see who the members are.

Mr. Speaker, Sir, the Committee was by guided Standing Order 24 (1) and (3) in coming up with the Calendar. Standing Order 24 (1) states that; ‘except for the Session commencing immediately after a general election, the regular sessions of the Assembly shall commence on the second Tuesday of February and terminate on the first Thursday of December.’

In this regard, the fifth session of the First Assembly of Machakos County commences on 14th February, 2017. The Assembly shall continue to be in session and adjourn for a number of days pursuant to Standing Order 24 (3).

Mr. Speaker, Sir, the calendar of the fifth session of the first Assembly of Machakos will have a total of fifty-two (52) regular sittings and ninety-five (95) days of recess divided in to three periods. The first period has twelve (12) sittings and runs from 14th February to 2nd March, 2017. The second period has sixteen (16) sittings and begins on 14th March to 6th April, 2017 while the third period of which has twenty-four (24) sittings commencing on 9th May to 15th June, 2017.

Mr. Speaker, the first recess will be a short one of ten (10) days starting on 3rd to 13th March, 2017 followed by a long recess of four (4) weeks commencing on 7th April to 8th May, 2017. This recess will allow members to break for Easter holidays and also connect with their electorates.

Mr. Speaker, Sir, the third and the last recess, *sine die*, of seven (7) weeks for this first Assembly will run from 16th June to 7th August, 2017. The recess will give room to members who wish to vie for various electoral positions in the August 2017 general elections to campaign. However, the Assembly may by resolution alter the dates of the calendar pursuant to Standing Order 24 (2).

Mr. Speaker, Sir, Pursuant to Article 177 (1) (a) of the Constitution of Kenya, 2010 ‘members of the second Assembly of Machakos shall be elected by registered voters on 8th August, 2017, this being second Tuesday of August in the fifth year. As such, the end of term of the First Assembly of Machakos will be 7th August, 2017 at midnight.

Mr. Speaker, Sir, the sittings of the House shall be as per the Standing Order 27 (1) on hours of meeting which states that ‘unless the Speaker, for the convenience of the House otherwise directs, the House shall meet at 10 a.m. on Wednesday and at 2.30 p.m. on Tuesday, Wednesday and Thursday, but more than one sitting may be directed during the same day.’

As such the sittings of the House will be on Tuesdays Afternoon, Wednesdays morning and afternoon and Thursdays afternoon.

Mr. Speaker, Sir, pursuant to Standing Order 25 (2), ‘the calendar of the Assembly, once approved, shall be published in the *Gazette*, the Assembly Website and at least in two newspapers of national circulation. I urge the honorable members to adhere to the Calendar for the smooth operations of the Assembly.

Mr. Speaker, Sir, it is therefore my privilege to present the Machakos County Assembly Calendar, 2017 to this Honorable House for approval. Mr. Speaker, Sir, the Machakos County Assembly Calendar, 2017, is attached to this report for ease of reference.

Mr. Speaker, Sir, I thank the Hon. Speaker and the Clerk to the Assembly for facilitating the committee to meet and compile the calendar of the Assembly for 2017. I also thank the members of the Committee for their co-operation during the compilation of the Assembly Calendar for 2017.

Further, I thank each and every one who contributed in the compiling of this year's calendar. Thank you, Mr. Speaker, Sir.

Mr. Speaker, the assembly calendar is attached to the report which I have read and I know members are privy to what is in there about the calendar. So, I want rest my case. Thank you, Sir.

Hon. Speaker: Members that is the calendar for the balance of the term. I take it that it has been received with approval and I proceed to put the question.

(Question put and agreed to)

The calendar is accordingly approved.

INCOME AND EXPENDITURE REPORT FOR 2014/2015

Hon. Nzeki: Thank you, Hon. Speaker.

That aware that Section 166 of the PFM Act requires every accounting officer of the county government entity to prepare a report for each quarter of the financial year in respect of the entity and submit the report the report to the county treasury;

Aware that the county treasury should consolidate the quarterly reports and submit them to the county assembly not later than a month after the end of the quarter;

Further aware that the county treasury submitted a consolidated report of income and expenditure report for the financial year 2014/2015 on 3rd November, 2015; Noting that the county assembly Standing Orders defunct the mandate of the finance and revenue collection committee to include all matters relating to the management of the county public finance and revenue collection;

Aware that the committee analyzed the report which was submitted by the department of finance and revenue management and made recommendations; Mr. Speaker, Sir, I wish to move the motion that this Hon. House discusses and approves the report of income and expenditure for the county for the financial year 2014/2015 as tabled by the finance and revenue collection committee.

Thank you, Mr. Speaker, Sir. I call upon Hon. Raphael Mutuku to second.

Hon. R. Mutuku: Thank you Mr. Speaker, Sir. I support the report of finance and revenue collection committee on the income and expenditure report for the financial year 2014/2015.

Mr. Speaker, as you are aware this report has been overdue in this assembly, this is the second introduction. There is a report showing how the county government spent money that was collected and money that was received from the national exchequer.

Mr. Speaker, it is also the report that is giving recommendations on how to guide the county government on where they had shortfalls and where they did not comply with the PFM Act 2012.

Mr. Speaker, Sir, I would urge the House, this is a report that has been long overdue and if the House is in support, they can proceed and approve this report for implementation so that we can see our county move ahead. Thank you, Mr. Speaker, Sir.

Hon. Speaker: Thank you. The motion is properly before us. Why the report has been re-introduced is that the previous report lapsed on the session and the Standing Orders require that the report be done afresh and every member was taken through the report and I will request the chairman to develop the summary of the report to refresh our memory and conclude on the matter.

(Applause)

Hon. Nzeki: Thank you, Hon. Speaker. I would like give a brief of what was brought to this Hon. House. Members discussed about it and went through and what was really remaining was the approval for the recommendations which were made by the committee of finance.

Mr. Speaker, Sir, the Finance and Revenue Collection Committee tabled the report on Income and Expenditure for the County for 2014/2015 on 20th September, 2016. On 26th September, 2016, I requested the House for deferment of debate on the report since the department of Finance had requested to be granted more time to provide bank statements and details on expenditure on projects. The report came up for debate on 15th November, 2016.

Mr. Speaker, Sir, there was a heated debate for and against the recommendations contained in the report and eventually putting the question was deferred to allow members time to table amendments as per Standing Order No. 52 (1) which provides that the proposer of an amendment to a motion shall, before moving it, hand the proposed amendments in writing, signed by the proposer, to the Clerk at least two hours before the order is read.

Mr. Speaker, Sir, due to other urgent business in the House, it was not possible to re-introduce the report in the House before the end of the fourth session. I therefore take this opportunity to re-introduce the report of Finance and Revenue Collection Committee on Income and Expenditure of the County for the 2014/15 and urge the House to approve the report.

Mr. Speaker, Sir, it is a long time since the report was tabled in the House and members being busy, I would like to have a recap of the recommendations to freshen up their memories. The committee had eleven recommendations as follows: -

1. That the Department should encourage businesses in a given location/market to form associations including SACCOs. This will help in establishment of a database on businesses to make it easier to project revenue from the traders, regulate trade operations and have a forum of to address traders' grievances.
2. That the Department should have consistency in revenue category names. Revenue categories should not be renamed every financial year. Maruba Park revenue should be named Machakos People's Park since Maruba is part of the Park and Park is widely known.
3. That the Department should establish mobile revenue check units to assist in monitoring compliance in payment of revenue and curb laxity of revenue clerks.
4. That Department should formulate a policy for approval by the Assembly on transfer of funds to the Central Bank of Kenya.
5. That the Executive Committee Member for Finance should come up with a legislation that will allow utilization of health revenue at the source and formation of boards to manage the fund with people's representative on board.
6. That Finance and Revenue Management Department should ensure that it had control over all revenues collected in the County regardless of whether the role of collection was delegated to another department or agency by ensuring a proper revenue collection and management policy was in place.
7. That Department should ensure that the Machakos County Revenue Administration Act 2015 and the Machakos County Liquor Licensing Act 2014 were implemented to enhance revenue collection to attain revenue targets.
8. That the Department had not implemented the recommendation on keeping of accurate records made in the report of Income and Expenditure for 2013/2014. This had led to mix-up on revenue from land rates, debt clearance, cess and building plans approvals. This mix-up may have led to loss of revenue by the County and the committee calls for further investigations by the Auditor General on revenue records in the County.
9. That the Chief Officer had failed to provide information in her possession in relation to banking activities of the County government to the Assembly Committee of Finance and Revenue Collection thus contravening Article 183 (3) of the Constitution of Kenya, Sections 14 and 15 of the National Assembly (Powers and Privileges) Act and Section 197 (1) (k) of the Public Finance Management Act 2012 and administrative disciplinary action should be taken against the officer.
10. That the issue of pending bills was not clear in the County and that the Auditor General should undertake investigations on the pending bills of the County.
11. That local revenue recorded in the report by the Department could not tally with the supporting documents on transfer of revenue to the Central Bank of Kenya and recommends the department to undertake funds transfer to the Central Bank of Kenya at least twice a week.

Thank you, Mr. Speaker, Sir.

Mr. Speaker, the report was brought to this Hon. House sometimes last year and it was discussed by members and by then it was almost clear that it was to be passed. Then all of a

sudden, we went for recess and members were almost to recommend the recommendations and pass the report and because we had discussed it, Mr. Speaker, I would like to request this Hon. House, with your permission, to adopt the report and pass it. Thank you, Mr. Speaker Sir.

Hon. Speaker: Thank you. Any member with any additional contributions? I remember it is a report that had been exhaustively discussed.

(Question put and agreed to)

The report is accordingly concluded.

ADJOURNMENT

Hon. Speaker: That is the end of the morning business. We will meet in the afternoon. House adjourns.

The House rose at 10.42 a.m.