

**REPUBLIC OF KENYA**  
**MACHAKOS COUNTY ASSEMBLY**

**OFFICIAL REPORT**

**Tuesday, 30th May, 2017**

The House met at 10.07 a.m.

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

**PRAYERS**

**Hon. Speaker:** Good morning, Hon. Members. Let us proceed.

*(Quorum hitch)*

*(Quorum Bell rung for seven minutes)*

Clerk we may proceed

**PAPER LAID**  
**NATIONAL MONUMENTS WITHIN KIVAA WARD**

**Hon. Speaker:** Hon. Veronica.

**Hon. (Ms.) V. Mbithe:** Mr. Speaker, Sir, I wish to lay the following Paper on the Table of the Assembly, today, 30th May, 2017; report of Culture and tourism committee on the status of areas declared as national monuments by the national government within Kivaa ward in Masinga County. Thank you, Mr. Speaker, Sir.

**Hon. Speaker:** Proceed.

**NOTICE OF MOTION**  
**NATIONAL MONUMENTS WITHIN KIVAA WARD**

**Hon. (Ms.) V. Mbithe:** Mr. Speaker, Sir, I wish to give notice of the following motion; that this Hon. House discusses and approves the report of Culture and tourism committee on the status of areas declared as national monuments by the national government within Kivaa ward in Masinga County. Thank you, Mr. Speaker, Sir.

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

**MOTIONS**  
**NATIONAL MONUMENTS WITHIN KIVAA WARD**

**Hon. (Ms.) V. Mbithe:** Mr. Speaker, Sir;

THAT aware that Machakos County is endowed with various cultural and heritage sites, which by all means, should be protected and preserved for future generations;

Aware that Kenya launched sustainable development goals in 2016, key among them, strengthening of efforts to protect and safeguard the world's cultural and national heritage;

Acknowledging that national monuments are important to social groups as part of their remembrance of historic times or cultural heritage;

Aware that monuments celebrate past events, persons or symbols that are of great importance for the positive identity of the community;

Further, aware that monuments highlight key features of national or cultural symbolism, help communities appreciate the present and learn to anticipate the future,

Mr. Speaker, Sir, informed that the Cabinet Secretary for sports and culture, liaising with the National museum through the gazette notice No.9972 dated 2nd December, 2016 declared six areas within Kivaa ward in Masinga sub-county to be National monuments;

Mr. Speaker, Sir, I wish to move the motion that this this Hon. House discusses and approves the report of Culture and tourism committee on the status of areas declared as national monuments by the national government within Kivaa ward in Masinga county.

Thank you, Mr. Speaker, Sir. I call upon Hon. Mueni to second the motion.

**Hon. (Ms.) Mueni:** Thank you, Mr. Speaker, Sir. I support the motion that this House discusses and approves this motion so that the people of Machakos don't destroy the places referred for those people (??). Thank you, Mr. Speaker, Sir.

**Hon. Speaker:** Thank you. The motion is laid. Proceed and present the report.

**Hon. (Ms.) V. Mbithe:** Mr. Speaker, Sir, Machakos County is endowed with various cultural and heritage sites which by all means should be protected and preserved for future generations. Since the adoption of agenda 2030, Kenya, in 2016 launched the Sustainable Development Goals, key among targets of these goals is the strengthening of efforts to protect and safeguard the world's cultural and national heritage.

The Cabinet Secretary for Sports, Culture and Arts, liaising with the National Museums of Kenya through gazette notice No. 9972 dated 2<sup>nd</sup> December, 2016, declared six areas within Kivaa Ward, Masinga Sub-County of Machakos County which he considered to be of socio-cultural interest to be National Monuments (**Appendix I**).

The declared National Monuments include;

1. Kivaa sacred site (Ithembo ya Kivaa).
2. Kitonyeo kya Kivaa sacred site.
3. Kitonyeo kya Wamiaio sacred site.

4. Kitonyeo kya Kasolu sacred site.
5. Kitonyeo kya Kithoni sacred site.
6. Kitonyeo kya Ngaasini sacred site.

Mr. Speaker, Sir, Section 25 of the National Museums and Heritage Act 2006 confers the power to declare monuments to the Cabinet Secretary Sports, Culture and Arts. Sub-Section 25(1) states that ‘after consultation with the National Museums of Kenya, the minister may by notice in the Gazette declare;

- a) An open space to be a protected area within the meaning of this Act.
- b) A specified place or immovable structure which the minister considers to be of historical interest and a specified area of land.
- c) A specified site on which a buried monument or object of archaeological or paleontological interest exists or is believed to exist, and a specified area of land adjoining it, which is in the minister’s opinion required for maintenance thereof, to be a protected area within the meaning of this Act.
- d) A specified object or type of object, whether or not part of an immovable structure, which the minister considers to be of historical, cultural, or scientific interest, to be a protected object within the meaning of this Act.
- e) A building and a specified area of land adjoining it which in the minister’s opinion is required for the maintenance thereof to be a protected building within the meaning of this Act.
- f) A geo-park to be a protected area within the meaning of this Act.

The National Museums and Heritage Act 2006 defines a monument as;

- a) A place or immovable structure of any age which, being of historical, cultural, scientific, architectural, technological or other human interest, has been and remains declared by the minister under section 25(1)(b) to be a monument.
- b) A rock-painting, carving or inscription made on an immovable object.
- c) An ancient earthwork or other immovable object attributable to human activity.
- d) A structure which is of public interest by reason of the historic, architectural, traditional, artistic or archaeological interest attached to it; and has been and remains declared by the Minister under section 25(1)(b) to be a monument.

Mr. Speaker, Sir, the committee’s mandate includes all matters related to cultural activities, public amenities including betting, lotteries, casinos and other forms of gambling; racing, liquor licensing, cinemas, video shows and hiring, libraries, national heritage, museums and cultural activities and facilities, county parks, beaches and recreation facilities and local tourism; control of drugs and pornography; animal control and welfare, including licensing of dogs and facilities for their accommodation, care and burial of animals.

Mr. Speaker, Sir, the committee has twelve members as follows....I think it is well stipulated in the paper.

- |                                |                  |
|--------------------------------|------------------|
| 1. Hon. (Ms.) Veronica Mbithe  | - Chairperson    |
| 2. Hon. (Ms.) Bernadette Mueni | Vice Chairperson |
| 3. Hon. John Sila              |                  |
| 4. Hon. Peter Nzioki           |                  |
| 5. Hon. Timothy Kilonzo        |                  |
| 6. Hon. Justus Kyalo Kimata    |                  |

7. Hon. Leonard Wambua Katela
8. Hon. Alex Kathinzi
9. Hon. Winston Kanui
10. Hon. Collins Mbithi
11. Hon. (Ms.) Brigid Kitili
12. Hon. Dominic Maitha

Mr. Speaker, national monuments are important to social groups as a part of their remembrance of historic times or cultural heritage. They celebrate past events, persons or symbols that are of great importance for the positive identity of a given community. Monuments highlight a key feature of national or cultural symbolism, they remember the past, help communities appreciate the present and therefore learn in order to anticipate the future, In social groups and communities, monuments could be protected and preserved;

1. To understand and reflect upon the difference between historical events and memories between communities and cultures.
2. To act as important symbols in building and strengthening national and other group identities and values.
3. To preserve and pass community indigenous knowledge and experiences across generations.

Mr. Speaker, the Constitution of Kenya, 2010 recognizes culture as the foundation of the nation and states that it is the cumulative civilization of the Kenyan people and nation.

Article 11(2) declares that the State shall:-

- a) Promote all forms of national and cultural expression through literature, the arts, traditional celebrations, science, communication, information, mass media, publications, libraries and other cultural heritage;
- b) Recognize the role of science and indigenous technologies in the development of the nation; and
- c) Promote the intellectual property rights of the people of Kenya.

Article 69 of the Constitution of Kenya 2010 affirms that; the state shall -

- a) Ensure sustainable exploitation, utilization, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits;
- b) Work to achieve and maintain a tree cover of at least ten per cent of the land area of Kenya;
- c) Protect and enhance intellectual property in, and indigenous knowledge of, biodiversity and the genetic resources of the communities;
- d) Encourage public participation in the management, protection and conservation of the environment;
- e) Protect genetic resources and biological diversity;
- f) Establish systems of environmental impact assessment, environmental audit and monitoring of the environment;
- g) Eliminate processes and activities that are likely to endanger the environment; and
- h) Utilize the environment and natural resources for the benefit of the people of Kenya.

Mr. Speaker, Sir, Sub-article 69(2) states that ‘every person has a duty to cooperate with State organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources.’

To give effect to the above articles, Section 4 (1) of the Protection of Traditional Knowledge and Cultural Expressions Act 2016, confers County Governments responsibility to;

- a) Collect and compile information in relation to traditional knowledge and cultural expressions.
- b) Preserve and conserve traditional knowledge and cultural expressions.
- c) Protect and promote traditional knowledge and cultural expressions of communities within the County.
- d) Facilitate the collaboration and access to information and data relating to traditional knowledge and cultural expressions between County governments.
- e) Allocate financial resources to promote cultural activities
- f) Establish mechanisms for using culture as tools for conflict resolution and promotion of cohesion.

Mr. Speaker, Sir, the committee on Culture and Tourism conducted site visits on 13<sup>th</sup>, 30<sup>th</sup> and 31<sup>st</sup> March, 2017 with a view to investigate the following;

1. What impact does the designation of these sites as national monuments have on the community and the country at large?
2. Verification of the extent and condition of the said sites.
3. What is the potential of these sites as tourism attraction areas?
4. What triggered the declaration of the monuments?
5. Modalities of collaboration between the County Government, the National Government, the National Museums of Kenya and other stakeholders, such as the improvement of infrastructure and access to these monuments.
6. The potential for the formation of collaboration with the National Museums of Kenya to advice on the development and enhancement of the sites with a view of revenue collection in Machakos County.
7. Whether the County Assembly of Machakos could enact a legal framework for the better management of monuments and other cultural heritage sites within the County pursuant to the provisions in the National Museums and Heritage Act No. 6 of 2006.

Mr. Speaker, Sir, the following were the findings and observations of the Committee; Hon. Members met Mr. Joseph Kioko, the Coordinator of activities around the Kivaa shrines who explained the benefits of the shrines to the community and their role in the preservation and conservation of the environment and natural resources within the area.

He pointed out that there exists a council of elders who were in charge of these shrines. The committee was informed that the elders were made up of those with specific knowledge in the sectors of crops, culture, traditional human and veterinary medicine and traditional ecological law.

The committee noted that the concept of preserving these shrines had built the community’s capacity to take action for protecting their bio-diversity, food and culture based on revitalization of local knowledge and practices.

Some of the actions involved in identifying indigenous crop varieties that had disappeared from the community such as finger millet, sorghum, peas, cowpeas, yams, sweat potatoes, millet, pumpkins, *mongu* (gourd) among many others. Those which were available were held by a few elders in small proportions.

Mr. Speaker, Sir, the coordinator further said that preservation of these shrines was vital as they are symbolic to the indigenous knowledge held by the community. He reiterated that the practice of sacrifice to appease gods in a solemn Kamba culture that had been passed on from generation to generation.

The community performed a ritual at each stage of farming before planting to pray for rains and bless the seeds, to protect crops from pests and disease and before harvesting. This ritual circle needed to be revived in order to assure the right contest for the growth of the crops and a good harvest.

Mr. Speaker, Sir, traditionally the Kamba community was very religious. Most of the hills and some of the sections of the rivers were sacred. Some hills had a number of sacred sites and this phenomenon is now being used by the community around Kivaa to develop an eco-system functions supported by then sacred sites in order to protect threatened hills and other natural resources.

Unfortunately, the sacred ecosystems are now under threat of destruction through encroachment and religious intolerance. This informed the community's decision to approach the National Museums of Kenya so as to have these sites gazetted as national monuments. This would ensure less encroachment and as a result protect the sites to maintain forest cover, improve water catchment and restore the degraded ecosystems among many other benefits.

Mr. Speaker, Sir, the committee was informed that the non-governmental organization (NGO) called the Institute of Culture and Ecology (ICE) is working with the community to strengthen the whole social ecological system by revitalizing the sacred relationship between people and the nature.

This involved protecting the system of sacred sites in the area by sustaining the ritual cycle, bringing back indigenous seeds and cultural practices associated with them. This work is usually laid by elders who understand the whole culture around traditional seeds.

Mr. Speaker, Sir, the committee learned that the partner with ICE, the community in Kivaa was engaged in initiatives to hold community dialogue as a means of sensitizing the people and informing working consensus, reviving the seasonal calendar ritual cycle and drawing the eco-cultural calendar.

They also hold training sessions on dry land farming and form community's research groups to lead the process of reviving the seeds that are extinct or almost extinct. They carry out cross knowledge dialogue which involves sessions to verify indigenous knowledge and promote harmony between indigenous and western expertise.

Mr. Speaker, Sir, some of the community groups that had partnered with the NGO, including Akamba Custom Group, Mwangaza Group, Wia we Tene Group, Vinduka na Ivinda Group, Mercy Group, Lea Utulu Group, Matunda Group.

The groups joined together and acquired a piece of land within Kivaa Township where they intended to put up a community leaning and cultural center. They have started the group work including fencing and other initial works, the project has, however, been slowed by lack of funds.

Mr. Speaker, Sir, the outlined in the protection of traditional knowledge and cultural expressions at 2016 under the responsibilities of county government, this committee recommends that;

1. The county executive committee member of culture compiles and documents information in relation to cultural sites and traditional knowledge held by communities leaving around the Kivaa sacred site and other such areas within Machakos County.
2. The county government sets aside firms to maintain the sites including fencing, grading and assess roads and improvement of infrastructure around the monuments.
3. The county government to formulate mechanism to map out cultural and heritage sites within Machakos County.
4. The county government sets aside funds to put up recreational facilities and amenities within the sacred sites through which revenue can be collected.
5. The county government sets aside funds to build and enhance establishment of community learning and cultural centers to provide and enhance the will of the people through showcasing their cultural artifacts and other indigenous technology tools as well as act as important hubs where indigenous knowledge and practices can be shared.
6. The county government partners with stakeholders such as Institute of Culture Ecology and National Museums of Kenya to further explore mechanisms to exploit such other regions and areas within Machakos County.
7. The county government should develop a policy for two words better management of such cultural sites and other connected purposes.

Mr. Speaker, Sir, therefore it is my privilege, on behalf of the culture and tourism committee, to table this report and recommend it to this Hon. House for adoption. Thank you, Mr. Speaker, Sir.

**Hon. Speaker:** Thank you Hon. Chairperson. The report is now before us. I invite your deliberations.

**Hon. Kathinzi:** Mr. Speaker, I can see this report is 100 per cent concerning my people who elected me to this county assembly. Mr. Speaker, I would like to appreciate the committee and being a member of this committee that this is a report which we have done a lot of due diligence when trying to go through the recommendations from the CEC member for culture.

Mr. Speaker, it is true what has been read by our chairperson Hon. Veronica is a job well done. This is a report which is uplifting the standards of culture, appreciating that every continent has its own culture, every area has its own priorities. It is true, Mr. Speaker, to mention that this things, when you hear of the chairperson mention several sacred sites, each site is known for its only importance and for those few members who come from Masinga, they know when we have drought in that area, we take a ship for worship.

Those old *wazees* go there, they try to practice their sacred processes and immediately, you see rain coming. So, it is true---

*(Applause)*

When these issues were realized by the NGO called, the Institute of Culture and Ecology (ICE) the people come from the side of Embu and they were assisting the community in terms of promoting the area.

Also we studied having things like seedlings, in fact the program the county government where we bought a lot of seedlings to plant within the county came from that particular area, Mr. Speaker.

Mr. Speaker, I would like to go to page 5 where we have a sentence at the second paragraph whereby, Mr. Speaker, Article 69(2) of the Constitution of Kenya states 'that every person has a duty to cooperate with the state organs and other persons to protect and conserve environment and ensure ecologically sustainable development and use of natural resources.'

Some of the issues have not been captured in this report. Mr. Speaker, but as you can see, we could have captured this because of the fact that I brought a motion to protect the issues of sand harvesting, that is part of this particular programme where the people of Kivaa said no sand harvesting.

That is a point which I would like for this particular assembly to realize that it is a total protection of the environment and also cutting of trees. We also have a programme whereby when you want to cut a tree, even if it is in your own shamba, you have to report to the headman to say 'I am cutting this particular tree but in exchange I am going to this particular programme to get like five seedlings to come and replace in my area.' So these are things which I am proud of to be associated with the people of Kivaa.

So, allocation of financial resources to promote the cultural activities is one of the shortfalls or problems we have been facing but when I had meeting with the CEC member and we discussed this in particular and he told me that it is good to make sure that this thing is gazetted so that it can fit in the assembly to get something like a vote head for that particular need to be catered for.

We also have another shrine which is called Kawenyweni shrine which used to be, in this shrine the old *wazees* used to slaughter a big bull. You see, every shrine used known for its.....others are taking finger millet, others are taking slaughtering of sheep, and others are for different particular area.

Like in Kawenyweni shrine, this shrine has been taken over by the Catholic Church because this area was very sensitive. Whenever there is a problem of an outbreak of a certain disease, as *wazees* go there, they pray to their gods and immediately that problem is sorted out and Catholic Church got in; this is true may be some of the Hon. Members may feel like it is a mystery.

Go to the Thatha Mission, they have taken over that Shrine and they have invested a lot of money they have built a shrine where by Catholic faithful go there every Thursday for a special prayer and this is something which is known, Mr. Speaker. So, I think the County Assembly should one day retreat and go and see as whole House try to see what exactly we are mentioning here it is true.

Special thanks goes to, we go to page seven where by stakeholders links, we have this Institute of Culture and Ecology from one Mr. Murithi is the lead group member who has been assisting the area by provision of education on how to protect the environment, provide some funds to, perhaps, take care of the widows, creating some employment in terms of having these seedlings being grown to various areas and we have several groups which are linked to that particular group, Mr. Speaker.



So, this is a very straight report and I am very proud of it at the last minute in our term and I am proud to be associated with to his report which is touching direct lives of my people and appreciate to my CEC member for this particular move.

When we went to talk to National Assembly and this particular Assembly, we also plead with the members that perhaps we give it priority that within our budget, I think you have allocated so development funds in particular department now to fence, have some upgrading of these areas, the county government can collect revenue from this particular sites because the very fantastic areas where you can also take your ride and go there spent some weekends there. Thank you so much. I support it and proud of it, Mr. Speaker. Thank you.

**Hon. Ndeto:** Thank you, Mr. Speaker. This is a good report. I just want to know from the member of Kivaa who has just given a good report on the background; does he support syncretism; that is a mixture of African Traditional Religion (ATR) and Christianity because he has just talked about the Catholic Church taking over the shrines in his areas. Thank you.

**Hon. Kathinzi:** I think, Mr. Speaker, that is a very straightforward question which has been directed to me. Mr. Speaker, you see I have explained that when I was a little boy, I used to go there and see the old *wazees* do that particular practice but the Chairman of that particular shrine, he said once---

**Hon. Speaker:** Order! Hon. Member for Kivaa. I just want to understand from the Member, is your faith on trial in this report? Is the faith for the Member of Kivaa on trial?

*(Laughter)*

**Hon. Ndeto:** The faith of the Member of Kivaa is not on trial---

**Hon. Speaker:** Then you are out of order.

**Hon. Ndeto:** Okay.

**Hon. Speaker:** Let us proceed.

**Hon. Katela:** Thank you, Mr. Speaker. I support that report and at the same time, although you might rule me out of order, I really wanted to assist my brother, the Member for Kivaa because the report is not from the Member for Kivaa. The report is for this House and the committee on what they found out. The Member for Kivaa was very categorical that he was happy, at least the Assembly and the Government have noticed something in his ward and they were ready to assist his people to promote there long time dream.

Sincerely, even Indians or Asians have their cultural values and they really promote them. So why not Kambas and we are really known that it is the only community which keeps its cultural equipment like *uta* (bow) if I could quote *uta thyaka* (arrow sheath). We are second I think after Maasais, so Mr. Speaker, I support this motion and without much ado, Mr. Speaker, you should put the question. Even Hon. Mueni is happy with the motion. Just put the question and we move to other business. Thank you, Mr. Speaker.

**Hon. Speaker:** Thank you. Lastly, let us hear Hon. Nzoka.

**Hon. Nzoka:** Thank you, Mr. Speaker, Sir. I want to go quickly to recommendation number IV and V, where we talk of trying to do funding. On my side, we have a problem. In this House, we do discuss and pass good motions. What there is that we have a problem with our Executive, they do not go as per the House. They do not go the way the House goes.

**Hon. Katela:** Point of order.

**Hon. Nzoka:** Because you can see, if you go to my area---

**Hon. Speaker:** Hon. Nzoka, the matter at hand is a recommendation for funding.

*(Applause)*

**Hon. Nzoka:** Yes, I am saying, yes we have recommended for funding but we do request out Government to execute---

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

**Hon. Katela:** Thank you, Mr. Speaker. I think the Member is out of order because we are not discussing any arm of the Government, we are discussing the motion. It is either you support the motion or you do not support it and you stop discussing the Government. Mr. Speaker, I think he should sit down and then you put a question and the matter be rested.

**Hon. Speaker:** Hon. Katela, the matter is not about discussing the Government. The matter is about discussing the contents of this report and I find Hon. Nzoka out of order. Let us hear Hon. Nziva.

**Hon. (Ms.) Nziva:** Thank you, Mr. Speaker. I was on a point of order because Hon. Nzoka---

**Hon. Speaker:** But that matter has been determined. Let us proceed and put the question.

*(Question put and agreed to)*

*(Applause)*

Let us hear Hon. Nzeki, he is in the House.

## REPORT ON REVENUE MONITORING AND ENHANCEMENT

*(Hon. Nzeki on 04.04.2017)*

*(Resumption of Debate on the Motion tabled on 04.04.2017)*

**Hon. Nzeki:** Thank you, Hon. Speaker. I have brought a report of Revenue Monitoring and Enhancement exercise which was done at Mavoko and here I start.

The Finance and revenue collection committee made site visits to Mavoko and Masinga Sub-Counties on revenue enhancement and monitoring exercise on 5<sup>th</sup> to 9<sup>th</sup> May, 2016 and on 8<sup>th</sup> July, 2016. The aim of the visits was to identify the number of quarries that undertake stone-cutting and other related quarrying activities for the purpose of royalty fee assessment and to find out how revenue collection exercise was being conducted in the selected areas.

Mr. Speaker, Sir, Standing Order 190 (5) provides mandate of sectorial committees which among others include to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned department; investigate and inquire into all matters relating to the assigned departments as they may deem necessary, and as may be referred to them by the Assembly; make reports and recommendations to the assembly as often as possible, including recommendation of proposed legislation.

In addition, the Second Schedule of the County Assembly Standing Orders defines the mandate of the Finance and Revenue Collection Committee to include all matters relating to the management of county public finance and revenue collection.

Mr. Speaker, Sir, the Finance and Revenue Collection Committee is currently constituted comprising of the following Hon. Members mentioned below:-

- |                            |                    |
|----------------------------|--------------------|
| 1. Hon. Nzeki Munyaka      | - Chairperson      |
| 2. Hon. Hon. Bibiana Nduku | - Vice Chairperson |
| 3. Hon. Raphael Mutuku     | - Member           |
| 4. Hon. Timothy Kilonzo    | “                  |
| 5. Hon. Alice Nzioka       | “                  |
| 6. Hon. Philip Ndolo       | “                  |
| 7. Hon. Benedette Mueni    | “                  |
| 8. Hon. Nina Mbithe        | “                  |
| 9. Hon. Amina Mutio        | “                  |
| 10. Hon. Veronica Mbithe   | “                  |

Mr. Speaker Sir, the following are the observations of the committee to the sites visited:-

#### *Masinga Site Visit*

Mr. Speaker, Sir, the committee visited Kangonde barrier point which is situated at Kangonde market in Masinga sub-county. The barrier point is used to collect cess from commercial vehicles transporting goods using Embu-Matuu road. The main product transported through the barrier point is sand and other products including oranges, melons, vegetables and maize.

Mr. Speaker, Sir, the committee was informed by the Revenue Collection Officers manning the barrier point that lorries were paying Ksh. 1,300 per trip and that revenue fluctuated depending on the time of the season. During rainy seasons revenue increased since waters from hills would deposit sand in the rivers but during the dry seasons when the rivers had less sand, revenue would decrease.

During the dry seasons, lorries would move to the neighboring Mbeere sub-county in Embu County. Embu County was charging Ksh. 2,600 and Machakos instead was charging Ksh. 1,300 and that is a difference of Ksh. 1,300 and collecting sand from rivers Tana and Athi, they were paying Ksh. 2,000 per trip bringing a total of Kshs. 4,600. The trip to Mbeere costs a lorry Ksh. 15,000 per trip on fuel as compared to Ksh. 10,000 in our county.

In the month of April several lorries were carrying sand from Mbeere County and for the first 15 days of the month, 290 lorries were recorded compared to 460 lorries that carried sand from Masinga through Kangonde barrier point.

Mr. Speaker, Sir, members noted that revenue had increased after sand cess was increased to Ksh. 3,000 per lorry per trip from Ksh. 1,300 before a court petition which suspended the implementation of Machakos County Finance Bill, 2015. It was also noted that, the use of monthly permits collected less revenue as compared to payments per trip.

Mr. Speaker, Sir, the committee observed that all lorries were paying cess through Mpesa paybill platform. There were instances where lorry drivers would come without float in their Mpesa. In such cases they would leave the money with revenue collectors to pay for them, then forward the Mpesa message to the driver before reaching Kithimani barrier and to issue a receipt to collect later. It was noted that this was a lapse that could lead to loss or pocketing of revenue. This was made easier by lack of mobile revenue monitoring unit by the department.

Mr. Speaker, Sir, collections for selected months from the data availed by the officers at the barrier point were as follows; Ksh. 627,900, Ksh. 902,200, Ksh. 604,900 and Ksh. 596,700 in the months of November 2015, December 2015, March 2016 and April, 2016 respectively.

The barrier point had collected Ksh. 193,700 for first six days of May, 2016 when the committee went to the ground for revenue enhancement exercise translating to approximately Ksh. 968,500 if the collections were to remain constant for that month. On average, over the period the barrier point collected Ksh. 656,567 per month and if extrapolation was to be done for a year, the barrier has a potential of collecting over Ksh. 7,878,804 per annum.

Mr. Speaker, Sir, the officers highlighted that the enforcement vehicles at Kangonde barrier was very old and not strong enough to chase after lorries and vehicles that could evade paying cess. The officers at the barrier did not have uniform and badges for identification and they informed members that the uniform given to them had been worn out.

They further informed members that they did not have warm clothing for the night and raincoats for rainy days and at times when it was raining heavily they could let lorries pass the barrier point. In addition, the officers informed members that they were not provided with source of light to light the barriers and they resulted to using their salaries to buy paraffin for lamps to be kept at the barrier and see at night. They also bought charcoal from their salaries to keep them warm at night.

### *MAVOKO SITE VISIT*

#### *A. Lukenya Barrier Point*

Mr. Speaker, Sir, the committee started Mavoko site visit for Mavoko Sub-County at the barrier point on the way to Lukenya Academy. At the barrier point, committee members had a discussion with the revenue clerks manning the station. The officers explained that they do not collect the cash from the lorries ferrying stones, sand and other building materials. The transporters made their payments through Mpesa pay-bill till number 656500 which was under the name of Machakos County.

The officers had two revenue gadgets and they explained that in case of total failure of the machines, they usually record the vehicle registration numbers of the vehicles and mobile phone numbers of the drivers so as to issue receipts later. They added that they undertake this exercise under the directions of the County Revenue Director.

Mr. Speaker, Sir, the committee noted that the station had recorded six lorries between 7.00 a.m. and 10.00 a.m. which was a low turnout. The committee agreed to leave some members and

a Clerk Assistant at the barrier point to observe the activities at that station. While at the barrier point the committee noted that lorries from Simba Cement, National Cement Company, did not stop to pay cess.

The officers informed the committee that they had been instructed not to charge them and no further details were provided. The committee enquired on the number of lorries the Simba cement had and the approximate number of trips the lorries made per day. The officers at the barrier point informed members that the Company had about nine lorries and they were making about seven trips translating to 63 trips per day. The committee members agreed to visit the Simba Cement factory which was about one kilometer from the barrier point to find out why the lorries were not paying cess at the barrier point.

Mr. Speaker, Sir, on visiting the Simba Cement factory, the committee had a meeting with the Human Resource Manager who informed members that the company was not paying cess out of an agreement between the Governor, Executive Committee Member - Finance and the Directors of the Company of which one of them is Dr. Sunil Dhall, who is also the Executive Committee Member of Trade, Economic Planning, Industrialization and Energy department.

He added that the agreement of five years was on the basis that the company together with sister company Devki, donated materials for construction of the stadium, that is steel and cement, at a cost of Ksh. 54 million. The HR manager could not provide the details of the agreement and referred the committee to the Executive Committee Member for Finance and Revenue Collection.

Mr. Speaker, Sir, the committee enquired from the HR manager on the amount of the cement making materials that were carried by the lorries of the company per day. The HR manager was not in a position to provide the details since they had outsourced transportation services and that the issues of materials for the company were under procurement and accounts departments.

The HR manager informed the committee that the company was using nine lorries to transport the materials from the quarry to the factory. The HR manager provided the vehicle registration numbers for the nine lorries as: KCB 467T, KCB 468T, KCB 469T, KBU 427W, KBS 780Z, KBS 869Z, KBU 428W, KBT 523S and KBS 868Z.

Mr. Speaker, Sir, the committee observed that there were two lorries that were not in the list provided above which were carrying quarry materials in the name of Simba Cement. The identification numbers of the lorries were KCD 468T and KCD 449W. Members enquired from the officers about the two lorries and they informed members that they had requested for a list of lorries from Simba cement but they had failed to provide.

The officer in-charge called one of the officers from Simba cement who confirmed that the two lorries were not from the company. The officer from the Cement Company was tasked by the members to ensure that the barrier point was provided with a list of the lorries transporting cement making materials for the company.

Further, Mr. Speaker, Sir, the committee observed that there was a big change on the collection after members and clerk assistant were left at the barrier point. During the period when the committee was around the collection jumped from Ksh. 6,120 to Ksh. 31,740, a difference of Ksh. 25,620 in less than four hours. More lorries, about five, were queuing by the time the committee was getting this report.

Mr. Speaker, Sir, going by the rate of collection of Ksh. 25,000 in four hours, the barrier point has a potential to collect over Ksh. 70,000 per day. On average, the barrier was collecting Ksh. 65,000 translating to Ksh. 23,400,000 per year. If the county had ten barriers with such potential or higher, the revenue from cess would be over Ksh. 234 million.

*B. Quarries in Lukenya*

Mr. Speaker, Sir, the committee observed that the area around Lukenya Academy had mainly four quarries as follows:-

*Kwa Kasanga*

This quarry produces Cement making materials and is owned by Simba Cement. The Committee was not able to visit the quarry because of the time constraint.

*Bhudia Enterprises 2008 Limited*

The approximate area under quarrying by the company was 70 m<sup>2</sup>. The company had paid Ksh. 50,000 for single business permit and Ksh. 4,000 for firefighting. The company had a NEMA certificate.

*Lukenya Stone Limited*

The committee was able to establish that the company was making sales of between Ksh. 300,000 and Ksh. 500,000 per day. The approximate area under quarrying by the company was 70 m<sup>2</sup> and had paid Ksh. 1,000 for application, Ksh. 50,000 for single business permit and Ksh. 4,000 for firefighting. The company had a NEMA certificate. The company has been offering material support of building stones to the neighboring schools. The Foreman called on members who wanted building stones for schools in the areas they represent to come for them.

*Kwa China*

The committee could not access this quarry due to poor road network and also time constraint. The committee noted that there were quarries that did manual quarrying of stones but could not visit them due to insecurity.

*Committee Observations*

Mr. Speaker, Sir, the committee observed that the County was not charging companies operating quarry companies in Lukenya area quarry extraction fees. The Machakos County Finance Act provides that the County collects quarry extraction fees from quarries at the rate of Ksh. 100 per every cubic meter of quarry material removed but this information was not available from the documents displayed by different quarry companies the committee visited.

Mr. Speaker, Sir, on the failure by National Cement Company to pay cess, the committee sought information from the department of Finance and Revenue Collection. The committee requested the department to provide agreement on exemption from paying cess. Further, the committee wrote to the National Cement Company management requesting for an explanation why its lorries were not paying cess when transporting cement materials from quarries in Lukenya area.

Mr. Speaker, Sir, the Executive Committee Member for Finance and Revenue Collection replied to the committee stating that the County Government of Machakos did not have any agreement on payment of cess with the National Cement Company. She stated that the National Cement Company had requested the County Treasury to exempt the company from paying cess through a letter dated 2<sup>nd</sup> August, 2016.

Further, she stated that the County Treasury had granted the company a provisional waiver for three months pending approval of the required legislation which was before the County Assembly on 15<sup>th</sup> August, 2016.

Mr. Speaker, Sir, the National Cement Company responded to the information sought by the Committee and stated that it had invested a lot in the County and contributed much in the general growth economically and socially hence it needed to be exempted from paying cess. In addition, the company stated that it had employed over 500 Kenyans and the company was just taking off thus it needed the incentive from the County.

Mr. Speaker, Sir, members observed that the issue of exemption of cess came after the committee discovered that the lorries of the company were not paying cess. This is because the committee visited the area on 8<sup>th</sup> July, 2016 and the company was requesting for exemption on 2<sup>nd</sup> August, 2016. The committee members observed that the Executive Committee Member for Finance and Revenue Collection and the Management of the National Cement Company were trying to cover up an issue of cess evasion.

Members observed that cases like these were the one that were contributing to non-achievement of revenue targets by the department. Members observed that the County was failing to collect Ksh. 1,200 per lorry per trip from the National Cement Company and for approximately 60 trips per day, all year around, the county was failing to collect not less than Ksh. 25,920,000. This amount could be higher given that the committee surveyed one barrier point and only one type of revenue.

Mr. Speaker, Sir, members observed that the company did not state in definite terms how the County was to benefit from its investment in the area and that total exemption from paying cess was very expensive for the County. In addition, the committee felt that there should have been an agreement stating how the county was to benefit from this arrangement and not just a letter.

Mr. Speaker, Sir, the move by the Executive Committee Member for Finance and Revenue Management was against Article 210 (1) of the Constitution of Kenya which states that no tax or licensing fee may be imposed, waived or varied except as provided by legislation. Exemption of cess in anticipation that a law will be enacted is unlawful. Laws are not made to correct illegalities but are made for posterity and the action of the Executive Committee Member for Finance and Revenue Collection was unlawful.

Mr. Speaker, Sir, the move to exempt National Cement Company from paying cess for which one of the Managing Directors was an Executive Committee Member for the County amounted to conflict of interest and was against Article 73(2) of the Constitution of Kenya.

The exemption from paying cess is akin to favouritism and other improper motives or corrupt practices on the part of the Executive Committee Member, Finance and Revenue Collection and the entire County Government of Machakos since one of the top members of the Executive Committee is a Director of the Company being exempted from paying cess.

Mr. Speaker, Sir, the National Cement Company is in breach of the Machakos County laws for not paying the necessary revenues to the County Government.

#### Recommendations

1. That the department of Finance and Revenue Collection should provide the officers working at the barrier points with working tools and amenities which include badges, uniform, lighthouses and shelters.
2. The department of Finance and Revenue Collection can consider deploying a new vehicle at the Kangonde barrier point for enforcement.
3. That the County Government should keep a record of all quarries operating in the County and ensure that they pay quarry extraction revenue as per the Machakos County Finance laws.

4. That the Executive Committee Member for Finance and Revenue Collection immediately commences the collection of all revenues due from National Cement Company and all its affiliate companies, associates or subsidiaries.
5. That the department for Finance and Revenue Collection sensitizes all revenue clerks on their work of revenue collection including laws governing revenue collection and the county government policies and regulations on revenue collection.
6. That the department for Finance and Revenue Collection puts in place proper mechanisms for the daily monitoring, inspecting, evaluating and reporting at revenue collection points and constantly reviewing the systems and correcting any fault and leakages of revenue.
7. That the Ethics and Anti-Corruption Commission (EACC) investigates the exemption of National Cement Company from paying cess to the County Government of Machakos contrary to Article 210 (1) of the Constitution of Kenya which states that no tax or licensing fee may be imposed, waived or varied except as provided by legislation.
8. National Cement Company pays revenue owed to the County Government accruing from quarry transportation materials, cess, and quarry extraction fees which is approximately Ksh. 25,920,000 per year.

Mr. Speaker, Sir, the Finance and Revenue Collection 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. I wish to express my appreciation to the Hon. Members of the Committee who sacrificed their time to participate in the meetings of the Committee and in preparation of this report.

Mr. Speaker, Sir, it is therefore my privilege, on behalf of the Finance and Revenue Collection Committee, to table the Report on Revenue Monitoring at Lukenya Quarries in this Hon. House for consideration and adoption. Thank you, Mr. Speaker Sir.

**Hon. Speaker:** Thank you. The report is laid. Let me take a few contributions. Yes.

**Hon. (Ms.) B. Nduku:** Thank you Mr. Speaker, Sir. I support this report from the committee. If you look at recommendation number three ‘the County Government should keep a record of all quarries operating in the County and ensure that they pay quarry extraction revenue as per the Machakos County Finance laws.’ So, Mr. Speaker, I stand to support it.

**Hon. Speaker:** Thank you. I proceed to put the question on adoption.

*(Question put and agreed to)*

## ADJOURNMENT

**Hon. Speaker:** Then the House adjourns.

The House rose at 11.20 a.m.