

REPUBLIC OF KENYA
MACHAKOS COUNTY ASSEMBLY
OFFICIAL REPORT

Wednesday, 13th October, 2021

The House met at 10.34 a.m.

[The Speaker (Hon. (Mrs.) Mwangangi) in the Chair]

PRAYERS

STATEMENT SOUGHT
ALLEGATIONS AGAINST THE MACHAKOS COUNTY
PUBLIC SERVICE BOARD ON SOCIAL MEDIA

Hon. Speaker: Thank you. Hon. Members, under this order we have one business by the Hon. Dominic.

Hon. Ndambuki: Thank you, Hon. Speaker.

Hon. Speaker, Article 10(2) of the Constitution of Kenya, 2010, provides for National values and Principles of governance such as the rule of the law, human dignity, equity, social justice and human rights among others which binds all State organs, State officer, public officers and all persons whenever they apply, enact or implement public decisions; Aware that Article 41(1) and (2)(a) and (b) of the Constitution of Kenya, 2010, provides that everyone has the right of fair labour practices and that every worker has the right to fair remuneration and to reasonable working conditions;

Further, Article 47(1) of the Constitution of Kenya, 2010 provides that every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair;

Aware Article 47(2) of the Constitution provides that if a right or fundamental freedom of a person has been or is likely to be adversely affected by administrative action, the person has the right to be given written reasons for the action;

Further, Article 232(1)(g) and (2)(a) of the same Constitution provides for the values and principles of public service to include fair competition and merit as the basis of appointments and promotions and that the values and principles apply to all state organs in both levels of government;

Appreciating that Section 65 of the County Governments Act, 2012 provides for matters to take into account during appointments which among them include the need for open and transparent recruitment of public servants and in determining whether an appointment, promotion or re-designation has been undertaken in a fair and transparent manner, the overriding factors shall be merit, fair competition and representation of the diversity of the County;

Hon. Speaker, aware that there has been numerous allegations on violation of the above provisions of the law by a number of Members of the County Public Service Board of the County Government of Machakos;

Aware that some of these allegations have been shared in the social media and aware that the public need to know the truth on these allegations;

Further noting that these allegations taint the name of the County Assembly as the vetting and approval authority pursuant to Section 8(1)(a) of the County Governments Act, 2012; Hon. Speaker, pursuant to Standing Order 41(2)(c), I wish to seek a statement from the Chairperson, Labor, Public Service and ICT on the following:

1. The official position on the allegations being made on social media against the Machakos County Public Service Board.
2. The measures that the County Public Service Board has put in place to ensure equal treatment of all County Public Service officers.

Thank you, Hon. Speaker.

Hon. Speaker: Thank you, Hon. Dominic. Hon. Members, this is a Statement that is sought and the information sought is clear. As is the tradition members make comments so that as the committee that is supposed to address the matter is given the role of addressing the matter, the members have aired their views. Any member who has a comment? Thank you. So, Hon. Members this matter is committed to the committee on labor, the committee on labor, public service and ICT to respond within 30 days; to file a report within 30 days.

MOTION

APPROVAL OF REPORT ON THE AUDIT REPORT OF MACHAKOS COUNTY ASSEMBLY HOUSING SCHEME FUND FOR THE YEAR ENDED JUNE, 2018

Hon. Speaker: Thank you. So, members, on this order we have one business, it is indicated by Hon. Winifred Mutua, vice chair PAIC, but I am informed that Hon. Alice who has been transacting the business on this matter is going to present the business on the table. Hon. Alice.

Hon. (Ms.) Nzioka:

Hon. Speaker, that aware that Article 229(5) of the Constitution provides that ‘the Auditor-General may audit and report on the accounts of any entity that is funded from public funds;

Further aware that, Article 229(7) of the Constitution that states that Audit Reports shall be submitted to Parliament or the relevant County Assembly;

Cognizant that the Audit report of Machakos County Assembly Housing Scheme Fund for the year ended 30 June, 2018 was received in the Assembly pursuant to Article 229(7) of the Constitution;

Further aware that the report was committed to the committee of Public Accounts and Investments pursuant to Standing Order 185(2)(b) and (c) that states that “the Public Accounts and Investments Committee shall be responsible for examination of reports, accounts and workings of the County Public Investments and whether the affairs of the public investments are being managed in accordance with sound financial or business principles and prudent commercial practices;”

Aware that the committee after receipt of the report conducted several meetings with the Accounting Officer of the fund together with officers from the office of the Auditor General and consequently compiled a report;

Hon. Speaker, I wish to move the Motion that this House discusses and approves the report of the PAIC Committee on the audit report of Machakos County Assembly Housing Scheme Fund for the year ended June, 2018.

Madam Speaker, I call upon Hon. Angela Munyasya to second the motion.

Hon. Speaker: Thank you. Hon. Munyasya.

Hon. (Ms.) Munyasya: Thank you, Hon. Speaker. I second the motion.

Hon. Speaker: Thank you, Hon. Munyasya. Hon. Alice.

Hon. (Ms.) Nzioka: I now proceed to read the report and I will summarize. Report of the Auditor General on the financial statement of the Machakos County Assembly Housing Scheme Fund for the year ended 30 June, 2018 by the Public Accounts and Investments Committee.

Hon. Speaker: Hon. Alice, go straight to the membership of the committee, the legal framework.

Hon. (Ms.) Nzioka: Okay, Madam Speaker.

Committee Membership

Hon. Speaker, as at the time of compiling the report the Public Accounts and Investments Committee comprised of the following members:

- | | |
|-------------------------|-------------------|
| 1. Hon. Joseph Musau | -Chairperson |
| 2. Hon. Winfred Mutua | -Vice Chairperson |
| 3. Hon. Paul Museku | - Member |
| 4. Hon. Alice Nzioka | " |
| 5. Hon. Johana Munyao | " |
| 6. Hon. Josphat Kasyoki | " |
| 7. Hon. Peter Mutiso | " |

THE LEGAL FRAMEWORK

Committee sittings and evidence taking on page 4 the audit query is page 5 to 16

4.0 Failure to prepare financial statement that comply to IPSAS with its actual format

Observation

1. The response is insufficient and has not included details of the issues raised in the query such as the fund, chairman's report, report of the fund administrator and statements of corporate governance.
2. Statements of changes in equity is not shown in the amended financial statement.
3. The presented statements therefore, were contrary to Section 101(4) of the Public Finance Management (County Governments) Regulations 2015 that provides that an accounting officer

shall prepare the financial statement in a form that complies with relevant accounting standards prescribed by the public sector accounting standards board.

Recommendations

The accounting officer should ensure that the presented responses to the particular queries addressed the subject matter contained in each query so that the response qualify the auditors to drop the query in the following financial year and avoid recurrence of prior year issues

4.2 Inaccuracies noted in the financial statement

4.2.1 Difference in comparative figures

Hon. Speaker: Hon. Alice, just take the Members through the 4.2.1 and when you come to the table you just refer to the table. We need to understand what the queries are. 4.2.1 So I am guided that what you have is the summary so then you can go ahead.

Hon. (Ms.) Nzioka:

4.2 Inaccuracies noted in the financial statement

4.2.1 Difference in comparative figures

Observations

1. The response is insufficient and has not included details of the issues raised in the query such as the fund Chairman's report, report of the fund administrator and statements of corporate governance.
2. Statement of changes in equity is not shown in the amended financial statements.
3. The presented statements therefore we contrary to Section 101(4) of Public Finance Management (County Governments) Regulations 2015 that provides that an accounting officer shall prepare the financial statements in a form that complies with the relevant accounting standards prescribed by the Public Accounts Standards Board.

Recommendations

The accounting officer should ensure that the presented responses to the particular queries address the subject matter contained in each query so that the response qualify the auditors to drop the query in the following financial year and avoid recurrence of prior year issues.

4.3 Inaccuracies noted in the financial statements

4.3.1 Differences in the comparative figures.

Observations

1. The accounting officer has not given reasons for the differences or variance in the comparative figures. The entries entered that affected the changes in the comparative figures were not disclosed.
2. The non-disclosure of the entries that caused the variance indicates that there was no coordination between the auditor and the finance office during the time of audit.
3. The committee noted with a lot of concern that incorrect entries in the financial statements was a key contributor to the adverse opinion of this report.

Recommendations

1. The accounting officer should disclose any new entries that could be entered after the end of the financial year; that is up to 15th July as advised by the National Treasury that affects the opening balance making it vary from the closing balance of the previous financial year.
2. The accounting officer should ensure that accuracy is observed while entering information in a financial statement that may lead to adverse opinion and hold responsible any officer concerned.

*4.4 An understated bank balances**Observations*

The committee observed that errors of omissions were done in the preparation of the financial statement as follows:

1. The accounting officer has not accounted for the Ksh. 25,000,034.087 deposited in KCB account number 1180847636 as stated in the query.
2. The response given for the entry in surplus is contradictory on whether to adjust the figure Ksh. 336,260 to reflect the Ksh. 335,195 or vice versa.
3. A bank charge of Ksh. 1,065 was omitted while preparing the trial balance.
4. The surplus of Ksh. 335,195 was also not indicated in the trial balance.
5. The amount of Ksh. 1,065 and a bank balance was a bank charge relating to financial year 2016/2017 and was also omitted.
6. The errors committed caused variances between the values in the financial statements and corresponding values in the trial balance. This act of inaccuracy was a contributor to the adverse opinion.

Recommendations

1. The accounting officer should forward to the auditor a response on the accountability of Ksh. 25,000,034.87 raised in the query and which was not addressed in the above response.
2. The fact that the accounting officer confirmed that the response that errors was committed that led to inaccuracies in the entries of surplus bank charges and bank balance is an indication that the prepared financial statements were not proofread and rechecked carefully. The accounting office should therefore ensure that accuracy is observed while entering information in a financial statement that may lead to adverse opinion and hold responsible any officer concerned.

*4.5 Inaccurate trial balance**Observations*

1. The response has not answered on the correct value balancing the trial balance on both the credit side and debit side if it is Ksh. 170,497,827 or Ksh. 171,988,787.
2. The committee in sentence one of the response noted the recurring element of errors that affected the bank balance brought forward.

Recommendation

The accounting officer should ensure accuracy of the trial balance was a source document for preparing financial statements and hold responsible any officer making such errors leading to adverse opinion.

4.6 Unexplained over disbursed

Observations

1. The response has not answered what the excess over disbursement of Ksh. 5,000,000 transferred from KCB to SBM represents.
2. There was non-disclosure of information in the auditor's report regarding inter county transfers during the time of audit.

Recommendation

Inter account transfers should be clearly captured and adequately disclosed in the financial statements for ease of review and reference. Further, authorization to borrow is required and should be attached as supportive document.

*4.7 Failure to Document Administrative Costs on Money Disbursed at 3 per cent**Observation*

The previous MoU signed between the Assembly and the Chase Bank did not include the 3 per cent charge to be used as administration costs.

Recommendation

The Assembly should provide the current status of the MoU if it has addressed the clause on the 3 per cent administrative costs to SBM Bank.

*Failure to Transfer Funds to the Reserve Fund Account**Observation*

The response has not answered on the whereabouts of the second instalment of Ksh. 25,000,000 that was not moved to SMB bank.

Recommendation

The Accounting Officer should ensure that sufficient disclosure, appropriate explanation and audit evidence are given at the time of audit to avoid unnecessary queries.

*Failure to Avail Cash Book and Bank Reconciliation Statements**Observations*

1. The response is not relevant to the query since it has not addressed circumstances that led to failure to provide reconciliations as provided in Section 90(1) of the Public Finance Management (County Governments) Regulations, 2015 that states that, Accounting Officers shall ensure bank accounts reconciliations are completed for each bank account held by that Accounting Officer, every month and submit a bank reconciliation statement not later than the 10th of the subsequent month to the County Treasury with a copy to the Auditor-General.
2. Although in the response, in the last sentence, the reconciliation was later prepared, they were not availed to the Committee for scrutiny and again they were not forwarded to the Auditor for verification.
3. The committee was concerned why the reconciliations could not be availed to the auditors at the right time before the audit report was prepared.

Recommendation

All prerequisite documents needed by the auditors during the time of audit must be availed failure to which responsible officers will be held accountable.

5.0 GENERAL OBSERVATIONS

Hon. Speaker, the committee observed with a lot of concern:

1. That most of the responses given for the particular queries are either not relevant to the key issues raised in the queries or have not provided sufficient information to counter the query.

2. Further the committee observed that non-disclosure of information contrary to Section 9(1)(e) of the Public Audit Act, 2015 significantly contributed to the adverse opinion by the Auditor.

6.0 GENERAL RECOMMENDATIONS

Hon. Speaker, going forward the committee recommends that:

1. Section 9(1)(e) of the Public Audit Act, 2015 provides that the Auditor General shall have powers of unrestricted access to all books, records, returns, reports, electronic or otherwise and other documents of entities listed under Article 229(4) of the Constitution. In this regard all relevant documents and information in form of disclosure required at the time of audit should be availed to avoid unnecessary queries from featuring in the audit report.

2. Any response prepared to address a particular query raised in an audit report must address key issues contained therein the report as a way of preventing recurrence of such queries as prior year issues.

3. Any amended financial statement should be forwarded to the Auditor on time before the final report is out to necessitate closure of the issues raised.

CONCLUSION

It is therefore my privilege and pleasure on behalf of Public Accounts and Investments Committee to table before this Hon. House the report on Financial Statements of Machakos County Housing Scheme Fund for the year ended 30 June, 2018 for discussion and adoption.

Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Alice

(Applause)

(Question proposed)

Hon. Members, the debate is now open for the motion. Hon. Kalumu.

Hon. Kalumu: Thank you, Madam Speaker. Before I make comment on this Madam Speaker, I am seeking your advice, authority and your wisdom if I can comment on the statement that has been brought forward before the House today?

Hon. Speaker: The difficulty you are putting me in Hon. Kalumu is that I gave the opportunity and there was no member willing to comment and that particular time.

Hon. Kalumu: Maybe at that time I did not have the thought at that time.

Hon. Speaker: Let us first deal with the business on the Table then we will see.

Hon. Kalumu: Okay. Madam Speaker, let me make my comments on the report before us. If you go to 4.2, you will find there is some inaccuracy noted in the financial statement; that is a difference between comparative figures. In accounting language, that means that you could not compare, what is available, what has been transferred and the books of account could not inform the person looking at the books whether there was any transaction which happened at that particular time. So that means, the figures which where there could not give any information to draw any decision over the committee which was making this report.

Again, Madam Speaker, you find that if one characteristic of a financial statement which is comparative is not there, that means it has not followed the right standards which should be followed in making of financial statements.

The other one is 4.3 inaccuracies noted in the financial statement. The same observation shows that the figures; for example, today I have deposited some money in someone's account, the expectation is that if that money is not there, then someone should give a statement showing what happened to that money but if you look at the differences in this, it means that some deposits which were expected could not be traced.

Again, the real bank difference is that you go to 4.4 you will find that the accounting officer had not accounted for Ksh. 25 million. Madam Speaker that is a very big figure that cannot be quoted as an error of omission because such error means that a certain figure was left out when compiling a certain statement and that shows a certain level of ignorance. Either to the fund manager or the chair or anyone who was preparing the statements and that shows that something was being hidden or something happened to the money because that is like giving false information to the person who would draw conclusion and decision.

The other one Madam Speaker, is response given for entry in surplus. Madam Speaker, generally, the report has drawn conclusion that the accounting officer of the fund is not giving enough evidence of what is happening to our fund. If you can omit Ksh. 25 million and also you cannot get to know that the bank charged Ksh. 1,000 then there was a surplus then that means even the trial balance is not correct. Trial balance has to be debited and credited and if it is, then how did it balance if some charges were not shown. How did it balance when there was an omission of Ksh. 25 million, Madam Speaker. So generally the report shows that there is poor management of the Fund and also indicates that some money has gone somewhere where we do not know.

Madam Speaker, observation on 4.5 is that the response has not answered the correct value balance trial although that one has indicated but the Ksh. 170 million was not shown where it went also although later there was an omission of Ksh. 1 million somewhere there and also in this reporting, I think this is a summary because when you look at the trial balance, the committee I think should have provided for us to look at them because this one Madam Speaker, if you look at them the way they are being written you will not draw the right information surely because some of the information is credited or debited.

So generally my comment is Madam Speaker, something needs to be done on the Fund and with serious effect we need to know what is happening and any information because this will bring problems with the Auditor General. Always when something like this happens they come with queries and when these queries are forwarded to the committee on PAIC then they should be able to tell us that the response that they got from whoever is manning the fund is good to solve that issue but if you look at the report Madam Speaker, it is not solving anything. So generally we are here the report before us is not availing any solution to the problem that we have. Thank you.

Hon. Speaker: Thank you, Hon. Kalumu. Hon. Mitaa.

Hon. Mitaa: Thank you, Hon. Speaker, for the opportunity. I first want to applaud the committee for the report and I also want to applaud my colleague Hon. Alice Nzioka for taking us through the report. Hon. Speaker, my colleague Hon. Kalumu also has touched much on what I wanted to recommend so first I want to agree with the report Hon. Speaker, and through your guidance because as the chair of the CASB, you are in charge of matters related to this Assembly and it is coming out clear that some departments maybe lacking the right professionals to undertake some of their mandate.

I would request your indulgence Hon. Speaker, to ensure that the department especially this department is run by a qualified professional because as an Assembly I would not expect to have queries in our reports when technology has improved everything, Hon. Speaker. Issues to do with record keeping we have packages which can help, if it is accountants to ensure that updates are done on either daily basis or weekly basis and that record and can be retrieved at the right time.

So Hon. Speaker, as I agree with the committee also this report is for 2018, Madam Speaker, I always talk about time. If you look at it it was received in 2019 here and I thought either in 2019 or early 2020, we would have tackled the report. So Hon. Speaker, issues to do with time need to be thoroughly checked and ensure that we do not keep the reports for long before they reach the Assembly. Thank you, Hon. Speaker.

Hon. Speaker: Thank you, Hon. Mitaa. Just before Hon. Masesi there is an important point that Hon. Mitaa has raised. The first one is on the capacity of the officers who are dealing with our accounts and it is good Hon. Mitaa you have talked of the period of this report. I want us to have in mind that this is the report of the year ended 2018 June. It is a year that started even before this current Assembly was in office that was July, 2017 and so it will be very difficult even for the current board to be able to answer to matters that are affected also by a previous board.

Secondly, since then there has been a change of the staff just to inform the House. Because you remember there were staff mostly from the accounts department who were suspended and who were reinstated just the other day and so that was a department that was short of staff and queries we put to the accounting officer why that report was adverse. The information we were given is that there were no staff in that department and most of all what they were doing was just to pay but reporting, reporting is dealing with issues like this. There were no officers so since then the issue of inadequate staff in the department has been addressed. It is the expectation that later reports should now show a different picture. So let us also have that in mind as we address this.

Then the time line is very important. We are dealing with history many years back; firstly of course there is delay from the Auditor General's report but then you notice if this report came to the Assembly in 2019 there has been too much delay. What is the PAIC doing and you Members constitute the membership in those committees? What is the Liaison committee that is comprised of the chairpersons doing on reports because we have been talking of delays on reports? So you cannot blame anybody but just the membership in the particular committee and this is a wake up lesson for all of us.

Let us process our reports as quickly as possible when they are committed let us process them as quickly as possible because we waste money sitting here to discuss a matter that is history. Let those who are outside because we have been telling the office of the Auditor General to try and bring these reports by the way once the year closes on 30th of June these reports are supposed to be discussed at least up to September. They should come quickly but the Auditor General does not meet that deadline so then again now our committees do not meet the deadlines.

Let us all pull our socks up so that we address these reports the soonest they come. Thanks much, Hon. Mitaa, for bringing up those pertinent issues. So we can carry on with our debate. Hon. Masesi you had something.

Hon. Masesi: Yes, thank you, Madam Speaker. Madam Speaker, first I would like to appreciate the committee for at least bringing the report and making sure that it comes to the House even if it is way back 2018, Madam Speaker. Madam Speaker, first and foremost I would like to...because I want to believe the accounting officer whose the Clerk was also there on the First Assembly and he should have furnished the report to the committee early enough.

Secondly, when we say that the officers who are concerned by that time need to be accountable and maybe they have long gone or ceased to be staff of the Assembly, Madam Speaker, that one leaves the Assembly threatened because as an entity to oversight the Executive. If we still can have it these disparities within our documents, then a lot needs to be questioned.

Madam Speaker, again one would like to ask himself or herself why funds would transferred from KCB to SBM and how an accounting officer cannot be able to account for Ksh. 25 million. Madam Speaker, at the end of it, trial balance is meant to show or to prove that all debit sums and the credits are equal and if there are anomalies, monies were debited and we have credits so Madam Speaker, then the whole trial balance is at a mess. Madam Speaker, my feel is that we need to work on a timelines because our time we have less than eight months within the County Assembly and if we are looking at a report of 30 June which means 2019, June, 2020 June, 2021 then we might not be able to look at those reports.

So my plea is for us an Assembly to make sure that we do what is supposed to be done, let us work on the timelines and let us have all the reports submitted to the committees on the correct times. Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Masesi. Hon. Maitha.

Hon. Maitha: Thank you, Madam Speaker. I want to commend the committee for bringing such a report to this Hon. House. Madam Speaker, this report has so much inaccurate information.

Hon. Speaker: Just a moment.....(Inaudible). *Mheshimiwa* lets go on.

Hon. Maitha: Madam Speaker, even though this report is for 2019, there are so many things which need to be looked into. For example, if you look at 4.6, there is Ksh. 5 million which was transferred from KCB to SBM Bank but when you look at the flow, you cannot see the end where it went to. There is Ksh. 25 million which cannot be accounted for. Even though the officers were suspended and there were reinstated, does it mean that we are going to adopt a report which have so fees in this disparities, Hon. Speaker.

Hon. Speaker: Hon. Maitha, in the interest of the staff who was suspended, just to let you know that was history which we found in the table but the officers were not suspended because of the content of this report. It is good to differentiate that there were issues on some implementation of projects and that is why they were suspended and there was a case in court and not on what we have in this report so that we are not unfair to them and later the court acquitted them and that is how they came back to the Assembly service; just to clarify.

Hon. Maitha: Thank you, Hon. Speaker. Hon. Speaker, if you read carefully on 4.8, the response has not answered on the whereabouts of Ksh. 25 million and that is a lot of money, Madam

Speaker. It is time we involve the EACC to look into this matter because money might have being pocketed by some people without our knowledge and the committee should have included that recommendation in there observation that EACC should be involved so that they unearth that circle of the people who misused that money from this scheme, Madam Speaker. Thank you. I support the recommendations.

Hon. Speaker: Thank you, Hon. Maitha. So, Hon. Members, let me put the question. Hon. Members, I call upon Hon. Alice, the mover of the motion to reply before I put the question. Even you can reply from there.

Hon. (Ms.) Nzioka: Thank you, Madam Speaker. I take this opportunity to thank my fellow Hon. Members for having participated well in the motion. Madam Speaker, remember we have roles and one of our role is oversight and we should do it and we should lead by example we are entity that is watched from everywhere in our country and in our county and we should be accurate in doing our work and we think as a committee we will do what is supposed of us to see to it that this money which has not be elaborated on the whereabouts of the money and how the money was used. We will make sure we see the officers and meet them to know what went wrong. Thank you, Madam Speaker.

Hon. Speaker: I am just consulting Hon. Members because we want appreciate what we are voting on and whether we vote and there are no answers to queries which have being made and my thinking is that the PAIC committee should reconsider this matter and call it before it the relevant officers to get answers to the queries which we still don't have. It doesn't help just to vote on the report and you still have queries outstanding.

(Applause)

So, Hon. Members, because we cannot put a vote; if we put a vote it means the chapter is closed. The matter I direct it goes back to the PAIC committee; it should sermon the relevant officers and do a thorough investigation and bring a report to this House within 14 days. You want them to get 21 days; I appreciate because you sit it that committee. Alright within 21 days and we must be getting answers to all the queries which have being raised here. Thank you, Hon. Members.

ADJOURNMENT

Hon. Speaker: So that point the sitting of the House would be adjourned; it will commence on the 13 day of October, 2021 at 2.30 p.m. Thank you.

The House rose at 11.26 a.m.