

REPUBLIC OF KENYA
COUNTY ASSEMBLY OF MACHAKOS
OFFICIAL REPORT

Wednesday, 20th September, 2023

The House met at 10.39 a.m.

[The Temporary Speaker (Hon. Anastasia Mutevu) in the Chair]

PRAYERS

Hon. Temporary Speaker: Good morning Hon. Members I can see we do not have quorum so I direct the Serjeant at Arms to continue ringing the bell for 10 minutes.

(Applause)

(Quorum Bell rung)

(A Hon. Member spoke off record in local lingua)

Hon. Dominic Maitha (Muthwani, WDM-K): Madam. Speaker is it in order for a Hon. Member to use Kamba language while you are seated there? The sitting is still on.

Hon. Mbili Ndawa (Matuu, MCCP): Information, Madam Speaker. Unless we have started with Order No. 1 going forward nothing has already started. Orders have not been called.

Hon. Helen Ndeti (Nominated, WDM-K): Hon. Speaker, I think it is the high time that this Assembly introduces biometric so that people can take their work serious. It is very unfortunate, it will cost us but it would rather cost us just the way we are paying taxes let us feel it by signing the biometric. It is very unfortunate you drive all the way from Nairobi you come here and then you cannot work. The same thing is happening in committees. Seriously let us take our work serious we came to represent our people.

Hon. Catherine Mutio (Nominated, WDM-K): Madam Speaker, I stand to support Mheshimiwa Ndeti. Even in the Committees, I have been coming as a Vice-Chair and I seat there to Chair the meeting as one Member. This is becoming notorious and we cannot be praying God to bless us and saying 'give us journey mercies to come to work.' Which work? Let the biometric come back; if it is objection we will sit and give directions. It is very bad I was here at 9.15 a.m. sat in my car waiting and nobody is coming. It is becoming notorious. This is not good and we are not working for the electorate.

Hon. Helen Ndeti (Nominated, WDM-K): As MCAs let me tell you, you are so close to the people they should be able to see you here representing them with their issues.

Hon. Mbili Ndawa (Matuu, MCCP): But we are here.

Hon. Hon. Temporary Speaker: Serjeant at Arms, kindly stop the bell we can continue. Stop the bell. Hon. Members we can now start.

COMMUNICATION FROM THE CHAIR
VISITING DELEGATION FROM MACHAKOS
COUNTY UNIVERSITY STUDENTS WELFARE ASSOCIATION

Hon. . Temporary Speaker: Hon. Members, welcome to this sitting. I have the following communication to make. Hon. Members I wish to acknowledge the presence of Members of the Machakos County University Students Welfare Association who have visited the Assembly for a learning session. Hon. Members, will be given an opportunity to welcome them as you will be contributing to the business of the day. Thank you, Hon. Members.

STATEMENT SOUGHT
PREPAREDNESS FOR IMPENDING EL-NINO RAINS

Hon. Hon. Temporary Speaker: Let me call Hon. Dominic Maitha to make his Statement.

Hon. Dominic Maitha (Muthwani, WDM-K): Thank you, Madam Speaker. I wish to take this opportunity to welcome our visitors on the gallery and encourage them to know that this Assembly belongs to them in future and they are not limited to being future leaders in this Assembly. They should find it fit and know that from today's events they will be able to become future leaders. Welcome to this Assembly.

Hon. Speaker, that aware that the National Policy for disaster management in Kenya published in 2009, indicates that disaster profile is dominated mainly by droughts, floods, fires, diseases and epidemics that disrupt people's livelihoods, destroy infrastructure, lead to divert planned use of resources, interrupt economic activities and retard development;

Further, the same document outlines that disaster response costs the Government and other stakeholders more than it would otherwise be the case if sufficient efforts had been put in place for effective disaster management;

Informed that El Nino is a natural phenomenon associated with heating of the ocean surface and has highly been accelerated by the effect of Climate Change;

Hon. Speaker, you recall that Kenya experienced extraordinarily heavy rainfall between May, 1997 and February, 1998 due to the El-Nino weather phenomenon and that during this period of about 10 months, heavy rainfall caused widespread landslides and floods which were experienced in various parts of the country, Machakos County being one of them;

Aware that fertile farmlands, roads, railway lines, bridges, telephone and power lines were relocated and destroyed, massive drowning of people, livestock and wildlife was witnessed, outbreak of serious infectious diseases, soil erosion resulting from surface runoff and surface exposure were some of the great damages recorded in Kenya;

Considering that over the past few months, there has been numerous early warnings all over the country about expected El-Niño rains. Aware that the Kenyan Meteorological Department has warned that the rains will affect many parts of this country from October this year and has warned people to prepare for possible flooding and advised residents especially those settled in low and hilly areas prone to floods and landslides respectively to relocate;

Hon. Speaker, Machakos County is marked with attributes such high dependence on agriculture as the main economic activity, prevalent drought, scarcity of water during dry seasons, floods resulting to loss of lives and destruction of infrastructure and soil erosion resulting to siltation of water reservoirs;

Acknowledging that all the stated matters are directly related to side effects of El Nino, a phenomenon which has been predicted by the Kenya Meteorological Department and expected to occur from October this year, Madam Speaker;

Hon. Speaker, I wish to seek a Statement from the Department of Environment, Climate Change and Water on the following matters related to preparedness on the expected El Nino rains;

- i. County Government's preparedness on expected loss of lives and infrastructures like roads, bridges, electricity lines.
- ii. Safety preparedness of school-going children and transportation of residents from one end of the County to another.
- iii. Agricultural side effects of erosion of agricultural land, forests and livestock.
- iv. Harnessing and tapping of excess run off and storage to address water scarcity during dry period.
- v. Expected disease epidemics.

Hon. Speaker, as you are aware what I have just said is what is going to happen. I am seeking a Statement to see how prepared we are as a County. El Nino is well known to us and we need to understand what measures is the County Government of Machakos putting in place to address what we have experienced before, Madam Speaker. We want a soonest response as to what is being done because exactly right now it is almost less than two weeks as per the predictions of the Kenya Meteorological Department.

For example, our roads I do not think there is any part in the County that is really undertaking grading for reasons well explained to us but taking into consideration the disaster that we are bound to experience then we need to know whether the emergency fund kitty that is supposed to cater for the same is in action because if most dams are not taken care at this stage it is going to end up in disaster.

We want to know what the County Government is doing so that in the next two weeks where we expect rains. Madam Speaker, for your information we experienced rains like about

two weeks ago and yesterday I happened to travel around Athi River and some parts of Athi River received rains on Friday, Saturday and yesterday. The magnitude at which the rains are coming at this early stage is a clear indication of that when rains start as early as October; it might seriously affect most of our areas.

We want to know what is the department of water and even other departments of the County Government doing so that they can mitigate this process before we start now coming to address effects other than trying to work on the effects before they come into effect. Thank you, Madam Speaker.

Hon. Temporary Speaker: Thank you, Mheshimiwa Dominic. I now invite Hon. Members to give comments on the Statement. Yes Minority Leader.

Hon. Mbili Ndawa (Matuu, MCCP): Thank you, Madam Speaker and ones more congratulations for taking that position. Before I give my sentiments allow me to welcome our friends here. I just want to inform them that we normally talk of future leaders but as far as I am concerned as you are seated there you are leaders. You do not have to wait for the future and if we talk about future it can start the next minute. I just encourage you also to develop interest of being legislators.

Coming back to the business before the House Hon. Speaker, I just want to say from where I stand, I can see danger in waiting. My age qualifies me to say so because I can see far. Hon. Speaker, as my brother is requesting to know, how the County is prepared to address the issues that will be caused by this El Nino rains that we are expecting in the next two three weeks.

Hon. Speaker, the issue of what we call emergency funds; right now we have funds for emergency but we do not have Regulations in place. So even if something happens we cannot spend those funds and I am made to understand that the regulation is being handled by the Delegated Committee. I do not know how, Hon. Speaker, a business is supposed to remain or is supposed to be handled by a Committee and take long time while we are aware there is a disaster coming.

Hon. Speaker, we are aware the County Government is ready to take some measures before the onset of the rains. The challenges of disbursement of the funds by the National Government I believe that is the only challenge. I have been into these department offices. I was in the department of water, they are ready and we are aware everybody is aware that the department of water is doing two dams per Ward and three weirs per Ward. The only challenge is that they cannot move because of that delay in disbursement of funds. As we talk here in this Assembly, we also need to talk with the National Government to move with speed and release those funds. They may release the funds when already things have gone the wrong direction.

Hon. Speaker, I think now we need to call what we call inter-governmental intervention. Let now the County Government and the National Government come together and come up with modalities because even if we are handling the matters as a County there are some issues that can happen and that can prove that we may not have the capacity to handle such matters. There is need for collaboration between the two levels of government.

The other issue you remember we passed a motion in this House that we fence all the existing dams so that when the dams are full, our kids and our people do not drown in the dam. That has not happened and I believe it is also because of delays of the funds by the national government. I am not defending the government, it is good to say what is there or what is true.

I have talked to H.E the Governor and she means well for Machakos people. She has tried her level best the only challenge is that the funds are not there. I am requesting that we also use our elected Members of Parliament from our respective Wards also to lobby at the National Assembly so that whoever is delaying or whoever is holding those funds can hear the cry of Machakos people and even the entire country because what is happening in Machakos is also happening elsewhere.

Otherwise, the Statement sought is timely, it is valid and it needs quick attention. Hon. Speaker, as my brother Hon. Dominic has said we may receive the rains in less than three weeks so I am worried you are about to commit this Statement to a certain Committee and will it be possible for that Committee to talk to the relevant department and table that report before this House within that short time. We need your advice and your guidance and I am very sure now the County of Machakos today depends on your wisdom. Thank you.

Hon. Temporary Speaker: Thank you, Minority Leader. Hon. Helen Ndeti.

Hon. Helen Ndeti (Nominated, WDM-K): Thank you, Madam Speaker. I stand here to congratulate Mheshimiwa Maitha for thinking ahead and bringing this Statement because definitely is going to raise issues and those concerned should be able to seat down and do something. My question is, if we have funds and even if we get funds from the national Government if the County does not have Regulations and you all know according to Public Finance Management Act there has to be Regulations to be able access those funds. What do we do as a County? What is supposed to be done to ensure that Regulations is in place?

So what is supposed to be done to ensure that regulation is in place? Why has it taken notice years; County Governments started in 2014 and we are in 2023. Why are these regulations taking so long? So mine is to request the committee concerned, together with the Executive and its respective department to work around the clock so that within the next two to three weeks, we also have Regulations in place, because even if the funds come from the National Government, we will still need the Regulations to dispense that money. Thank you, Madam.

Hon. Temporary Speaker: Thank you, Hon. Helen, and also our Chair of Women Caucus. Majority Leader.

Hon. Nicholas Nzioka (Machakos Central, WDM-K): Thank you, Madam Speaker. Madam Speaker, I want to thank the Hon. Dominic for, you know, thinking ahead as Mheshimiwa Helen would like to pit it. I also want to bring to the attention of this House that this Statement sought is not sought on why the Regulations on emergency funding have not been brought before this House. I think what have been sought is at what level are we in terms of preparedness in case the El Nino befall us. But that is not to say we don't need to, you know, bring to the attention of this House that we have deliberated on the matter of emergency funds but what remains for it to be operationalized is Regulations and it is equally important.

I want to say is that even as much as we prepare for the El Nino, we should also be able to look at the good side of El Nino because it is not always destructive, for example, I would be thinking, that the Department of Agriculture should be preaching to the farmers, that they should prepare early and plant early so that on the onset of the El Nino rains will be able to have something to harvest. More importantly, the wise men said failing to plan is planning to fail.

So I don't think what is being sought is in bad faith. All the departments in this County Government have a role to prepare for disaster and I will argue that it is not only the Department of Water and Environment, but also Department of finance because if an emergency comes, where are they going to get the funds? So I support this Statement sought, but let us look at the bigger picture and also the benefits of El Nino. Thank you, Madam Speaker.

Hon. Temporary Speaker: Thank you, Majority Leader. Hon. Ndwiki.

Hon. Daniel Ndwiki (Mlolongo/Syokimau, WDM-K): Thank you, Madam Speaker. First and foremost, I want to thank my colleague, Hon. Maitha, for seeking this Statement in this timely. El Nino is just around the corner and as a County, it is good that we know how prepared we are. During contributions, Madam Speaker, I have heard the Minority Leader try to confirm that the County is well prepared and every word will have two dams so it is just the cash that is not there. I don't think he whether he has the statement or the answer to the statement because I wish he was here to clarify because he says the count the county is well prepared. So I don't know whether you have the report.

Madam Speaker, with that, I want also to say that it is not everyone that needs dams. The preparedness for the El Nino does not only need dams, there are other measures that should be taken Madam Speaker. For example, in my area, in Mlolongo it is a place where we don't need dams; even if we need them, we don't have place to have those dams. So my question is if the preparedness is about the dams, what about so those areas where there are no places for dams and other issues.

So I would urge is wait for the report Madam Speaker, the County should go around everyone and see what is needed. It should it should not be just a flat plan that dams will do this in every ward because they have different needs. So in some wards in dams are needed in some other place like Mlolongo we don't need dams. We need something else like Madam Speaker, we need drainage. When it rains in Mlolongo, we have a problem on drainage; houses are swept away, roads are swept away and dams cannot solve that problem, Madam Speaker. So I think it is good for the county to plan as per the needs of the ward not just in generally, we have dams make this a request because we don't have the same needs.

So Madam Speaker I support this Statement, and as my colleagues have urged, it is good that the answer should come timely because when the answer comes after the rains, it will be of no use of us. So it is good Madam Speaker, and I urge you to give a timeline for this report to come before the rains so that the report is being acted upon. So thank you very much, Madam Speaker. I support thank you.

Hon. Temporary Speaker: Thank you so much Hon. and Ndwiki. It is true every ward has its own needs. Hon. Kavyu.

Hon. Francis Kavyu (Kinanie, MCCP): Thank you, Madam Speaker. I want to support what Hon. Ndwiki has just highlighted and also in support of the Statement sought by my neighbor, Hon. Maitha. It is evident and we recently had rains in the last two weeks, Madam Speaker, to confirm, as we talk in Kyumbi market, most of the roads have already been washed so we are not talking of an issue of being prepared for a disaster; we have already had a taste of what we might experience if we are going to have the rains as it has been predicted.

So what we are asking, as we also wait for the committee to sit and also bring a report, we need to be very categorical. If there are areas that need to be the areas of Machakos County, where being prepared means dams, let that be sampled and done. For Mavoko specifically, if you look at Muthwani ward, Kinanie ward, Mlolongo ward, and Athi River, the topology of the area is very different because majority parts of the area have the clay soil. So whenever there is a rain, 10 years now heading to 12 years of devolution most people have to carry two or three pairs of shoes before they can access the main road. So we are looking at a disaster.

In Mlolongo, if it is going to rain, the drainage in Mlolongo, Athi River, Kyumbi, and even some parts of Githunguri which is in Muthwani Ward, it is normally a mess. Therefore, what we are seeking is that before the rains come because we already have an experience of what it looks like, what are the short term measures that the County is putting in place to make sure once we have the rain, which is a blessing and we really want them, our people will be able to move from point A to B with minimal interruptions because devolution is all about making life easy at the grassroots level.

So we want even as the report is being looked at, let us do case by case and do an analysis to establish what the need for each particular area is so that we don't come up with a blanket solution that might not work. So we need the dams but we need to have a key emphasis on the roads and public works department to ensure that we are also prepared in terms of ensuring and also I think also Machakos Central will not be an exemption to that predicament. Thank you, Mheshimiwa Maitha, for bringing that Statement. It is timely and it needs to be worked on with a lot of urgency so that we avoid further crisis. Thank you, Madam Speaker.

Hon. Temporary Speaker: Thank you, Mheshimiwa. Hon. Mulinge

Hon. Joseph Mulinge (Muvuti/Kiima Kimwe, MCCP): Thank you, Madam Speaker. Madam Speaker, I start by applauding the member from Muthwani Ward because of sensing danger and coming up with a Statement that if it is taken with the right measures will solve anarchy that can leave the people of Machakos County crying. Madam Speaker, El Nino the word El Nino in the 1960s was defined in Spanish as a Christian child and El Nino was in most cases witnessed towards the month of December as we know Madam Speaker, El Nino is about the warming of temperatures towards the Equator that causes the warm water to raise in terms of vapor and create storms.

The reason why it is related or it is called a Christian boy is because it comes with a lot of advantages. The same case for the Christians who are saved, they get the benefits of being Christian. If it is not addressed the right way, it is *vice versa* for the people who are not Christians; the consequences they will face. Madam Speaker, we know El Nino because we experienced it in 1997. This is a dangerous phenomenon; we are supposed to talk about it being very serious.

Madam Speaker, El Nino brings or it brought big disasters like drought, diseases, malnutrition and as you are aware, Madam Speaker, when we were passing the budget, the country or the county was not under threat. So mine, I am urging the department that is concerned because they might be giving excuses when doesn't have enough money to address the threat to come up with the right measures, right policies, the right framework that will address the threats for it to become our savior to our county and one of the areas it can be addressed, it can be created to the Christian boy is the storm waters that it will bring to cause floods to come up with mitigation measures of creating dams and even preparedness because you

know what, because of that climate change which is going to be affected by continuous rain. It means that we are going to be having very many diseases.

So the department is concerned it needs to address the problem with the right tools, apart from words. It has happened elsewhere, it happened in Kenya and we know the damages they can do. So, Madam Speaker, I support the Statement.

Hon. Temporary Speaker: Thank you so much, Hon. Mulinge. Hon. Dominic.

Hon. Dominic Ndambuki (Kathiani Central, WDM-K): Thank you, Hon. Speaker. and I wish to applaud the mover of the Statement Hon. Dominic Maitha, for the timely Statement, that Madam Speaker, as speakers who have spoken before me have alluded to that there is something that is big that is ahead of us and as a County, we need to be prepared and we need to get our priorities right. One Hon. Speaker, any procurement plan that needs to be done by the County Government needs to be aligned towards the preparedness for the impending El Nino rainfalls that the mover of the Statement has given consequences or effects of the El Nino rainfalls.

Hon. Speaker, my plea is to the County Government that we need to have concerted efforts on financial management so that any financial or budgetary framework, that is to be done needs to see beyond the El Nino rains, we will have the aftermath of that roads will be washed away, so we need to re-grade them and other things might arise. So we need to see beyond that and any procurement plan being done should look beyond that. Madam Speaker. Thank you, I support.

Hon. Temporary Speaker: Thank you, Hon. Dominic. Hon. Katiti.

Hon. Boniface Katiti (Muthetheni, UDA): Thank you, Madam Speaker, for last seeing me. I tried to raise my hands very severally but now..... I want to thank the mover of the Statement because it has come prior to the onset of the El Nino rains I have seen many times a lot of disasters happening and the government comes to give solutions later after the disasters. I have seen, like just the other day, people were hit on the road by a truck and then the government came in and they said now that the hawkers should vacate the road. I have also seen people being washed away in Mwingi and the government comes in and says that we should now build the bridge.

So instead of acting later after the disaster, I want to acknowledge what the mover of the Statement has said and we should now be prepared for the El Nino because we have the merits and the demerits of the El Nino rains. I can see and I think globally 90 per cent of weather departments in different countries have confirmed that there will be an El Nino rains next month. So, there are so many dangers that are coming up that will come and there are so many blessings that also will come.

It is good because there will be outbreaks and in terms of the dangers roads will be washed away, houses we will be washed; let me say this, we should set the policies right, we should, you should set the programmes right so that when anything comes, we should be prepared so that issues that we can mitigate any effect that can come to the disadvantage of the people of Machakos County. So let us be prepared before the onset of rains and at the end of the day, then I see we come up with Regulations as a member of the Delegated Legislation Committee. If the County Government Executive arm will bring the Regulations to us, then we

will pass, then we will just pass them so that we can make the Emergency Fund operational. Thank you, Madam Speaker.

Hon. Temporary Speaker: Thank you, Member for Muthetheni. Hon. Loyd.

Hon. Loyd Mutua (Nominated, MCCC): Thank you, Madam Speaker. I want to thank the mover of the Statement Hon. Maitha; this is a timely Statement. Majority of the Members have said a lot. I would like to emphasize two things. The emergency funds the 2 per cent that is supposed to be given out of the budget and this should be the wakeup call now we get the maximum 2 per cent because now the little amount that is being given right now, even if the legislation is put still that money is not enough for this El Nino that is coming up after El Nino. As Mheshimiwa Dominic has said, there will be an aftermath effect from there; how do we deal with them?

The other thing also is there is an issue he has talked about tapping of the water. The Department of Environment, Climate Change and Water, they work on how we can tap that water so that even if there will be destruction and at least we will tap that water to use it in future. Thank you, Madam Speaker.

Hon. Temporary Speaker: Thank you, Mheshimiwa and I would like to give the following directions. That the Committee on Delegated Legislation to fast-track the report on the proposed Regulations of Emergency Funds.

(Applause)

Secondly, I direct that the Committee on Environment and Natural Resources bring the response within 14 days.

MOTION

AUDITOR GENERAL REPORT ON THE MACHAKOS WATER AND SEWERAGE COMPANY FOR THE YEAR ENDED 30TH JUNE, 2020

Hon. Temporary Speaker: I call Hon. Philip Ndolo aka Kitoo, the Chairperson of the Public Accounts and Investments Committee to move the motion.

Hon. Philip Ndolo (Mitaboni, UDA):

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 states that Audit Reports shall be submitted to Parliament or the relevant County Assembly;

Cognizant that the Audit report of the Machakos Water and Sewerage Company for the year ended 30 June 2020 was received in the Assembly pursuant to Article 229(7) of the Constitution;

Further aware that the report was committed to the Committee on Public Accounts and Investments pursuant to Standing Order 185(2)(b) and (c) which states that “the Public Accounts and Investments Committee shall be responsible for the 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 Company 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 audit report of the Machakos Water and Sewerage Company for the year ended 30th June, 2020.

Allow me, Madam Speaker to call Hon. Katiti to second the motion.

Hon. Boniface Katiti (Muthetheni, UDA): I second.

Hon. Temporary Speaker: Thank you.

(Question proposed)

Hon. Temporary Speaker: Before I invite Members for debate, let me call the mover to take the House through the highlights of the report.

Hon. Philip Ndolo (Mitaboni, UDA): Thank you, Madam Speaker. Report of the Auditor General on the financial statement of Machakos Water and Sewerage Company Limited for the year ended 30th June, 2020. Madam Speaker, allow me to look at specific parts. Executive summary, background, committee observations, committee general recommendations, conclusions and acknowledgements.

EXECUTIVE SUMMARY

Hon. Speaker, this report on the Financial Statements of Machakos Water and Sewerage Company for the year ended June 2020 was received in the Assembly pursuant to Article 229(7) of the Constitution. The report, it was committed to Public Accounts and Investments committee pursuant to Standing Order 185(2)(b) and (c) and the report had a qualified opinion. The key queries raised in the audit report include long outstanding trade and other receivables, delayed remittance of statutory deductions, unconfirmed customer deposit balances, undisclosed material uncertainty on the company’s going concern and unlawful and un effective use of public resources.

The Committee while exercising its mandate scrutinized the queries and noted some issues such as debts which have been outstanding for quite a long time, high company liabilities exceeding available assets, unremitted statutory deductions, expenditure of customer deposits contrary to the law, unprocessed company ownership documents and high water loses resulting from dilapidated water system hence affecting the financial performance of the Company.

In order to address these issues raised from the particular queries the committee recommends measures such as providing budgetary allocation to help the company expand its only water source at Maruba dam as the Company puts in place measures to increase its revenue collection and also developing a debt management policy that will enable the company collect its debts which have been outstanding for long among other recommendations.

Background

Hon. Speaker, the Audit report on the Financial Statements of Machakos Water and Sewerage Company for the year ended June, 2020 was received in the Assembly on 4th March, 2022 pursuant to Article 229(7) of the Constitution that states that Audit Reports shall be submitted to Parliament or the relevant County Assembly. On receipt of the audit report, it was committed to Public Accounts and Investments committee pursuant to Standing Order 185(2)(b) and (c) and the report had a qualified opinion.

It is good to note that while observing the Constitutional requirements, this report should have been received in the Assembly latest by end of January, 2021 hence the report was late by almost a year. This is in contravention of Section 48(1) of the Public Audit Act 2015 that requires the Auditor General to audit and report on accounts audited six (6) months after the end of the fiscal year in question.

The Committee on Public Accounts while exercising its mandate as provided in Standing Order 185 invited the Accounting Officer and conducted interrogation on the audit report on 24th February, 2023. This is as per the provisions of Article 226(2) of the Constitution that provides that the Accounting Officer of a County public entity is accountable to the County Assembly for its financial management.

COMMITTEE GENERAL OBSERVATIONS

Hon. Speaker, the Committee after scrutinizing the Queries in part one on basis of qualified opinion, and part two of the report on lawfulness and compliance to relevant laws makes the following general observations in addition to the specific observations made under each query;

1. THAT the Company has high outstanding trade receivables or unpaid debts which increased with higher margin during the Corona period when the County Government gave a directive for continued supply of water to the customers even when they were unable to pay. The Committee noted that by June, 2023 the arrears for all Machakos County Departments totaled to Ksh. 29,353,661 but as at July this financial year, the Department had paid the Company a total of Ksh. 10 Million, hence there is good progress in clearing of the debts.
2. THAT the delayed remittance of the statutory deductions to the relevant institutions was occasioned by low revenue collection during the corona period and the Company has placed a standing order with the bank to deduct this money and is currently remitting Ksh. 250,000 on monthly basis.
3. The Company has been borrowing funds from the Customer deposits account to finance its operations at times when it experiences cash challenges and currently the company is making good progress by remitting Ksh. 250,000.00 on monthly basis towards repaying the amount due for customer deposits.
4. On the material uncertainty on going concern, the Company is tending towards insolvency since its current liabilities exceeded current assets resulting to negative working capital of Ksh. 10,430,510. The current water tariff is not cost reflective and therefore the Company depends much on support from the County Government and other non-governmental agencies to continue operating.
5. That the Company just like the other water companies are semi-autonomous and have not been fully devolved to the County and are still controlled by Tanathi and

this causes challenge in management of the Company which has also led to operational challenges.

6. The Company breached the Law by using quotations to procure Chemicals totaling to Ksh. 7,377,360.00 despite the expenditure being within the threshold of open tender procurement method.
7. The Company's non-revenue water (NRW) was at 27.68 per cent of the total production, an amount higher than the allowable loss threshold of 25 per cent prescribed by the Water Services Regulatory Board guidelines. This was majorly occasioned by the old and dilapidated water system. The committee was informed that measures to reduce this amount of non-revenue water (NRW) has been instituted and the Auditor confirmed that this rate is gradually reducing towards the allowed threshold as noted in the current audit report.
8. On appointment of Board members the Committee noted that some Members of Board do not meet the minimum qualifications as set out in the Water Act, 2016. Further, the committee after interrogating on the criteria used in appointment established that the appointments were done politically hence not conducted competitively as required by law.
9. The Company did not have a Risk Management and Technology policies in place and instead, it was using the disaster recovery plan for the County Government of Machakos but the Accounting Officer promised the Committee that within 90 days the said policies will be ready for use.

COMMITTEE GENERAL RECOMMENDATIONS

Hon. Speaker, the Committee after considering the specific observations under each query and the above general observations makes the following general recommendations:

1. The County Government departments should make timely payment of their water bills to the various water companies as a way of supporting them water in order to continue offering this essential service of water provision
2. The Company should ensure compliance of the law by making timely remittance of the statutory deductions as required and further come up with realistic payment plan to ensure that all the deductions due are fully remitted.
3. The fact that in Machakos Town there is high demand for water, the Company should expand its water reserves which will in turn lead to increase in revenue. This will reduce cases of borrowing which might have negative impact to its financial position.
4. The Company management should liaise with the office of County Attorney to fast track the process of transfer of the Company to the County Government of Machakos as required by Section 154 of Water Act, 2016. Further, within the next 90 days after the approval of this report, the management should furnish the Committee with information on the progress of transfer of the Company shares to the County Government.
5. The Company should strictly adhere to the provisions of Section 96(2) of the Public Procurement and Asset Disposal Act, 2015 that provides for advertising in the dedicated Government tenders' portals or in its own website, or a notice in at least two daily newspapers of nationwide circulation, if the estimated value of the

goods, works or services being procured is equal to, or more than the prescribed threshold.

6. The County Government should allocate funds in the subsequent budgets to assist this water company in overhauling the old dilapidated water system. This will help in reducing water loss and hence increasing the volume of water availed to its residents.
7. The County Water Committee which H.E, the Governor constituted this year to investigate on the state of water companies in the County and whose report is yet to be forwarded to the Assembly should provide lasting solutions to address the current managerial and operational challenges facing all the water companies.
8. Pursuant to the provisions of Section 53(1) of the Public Audit Act 2015, the Accounting Officer should within 90 days after approval of this report take the relevant steps to implement the recommendations in this report or give an explanation in writing to the Assembly why the report is not implemented.

CONCLUSION AND ACKNOWLEDGEMENT

Hon. Speaker, water service providers or water companies in Machakos County as provided in the Water Policy 2020 recognized these service providers as key players in provision of water for all as outlined in the Constitution. However, these water companies have faced challenges ranging from high cost of operation, long outstanding bad debts, high water leakages and political interference. This therefore calls for the County Government of Machakos to put up strategies to support these water service providers if at all they are going to continue providing water to the residents of Machakos.

Hon. Speaker, the Committee on Public Accounts and Investments is grateful to your office for facilitating the committee to undertake its work, the Office of the Auditor General for the advisory given and Members of the Committee and the Secretariat for commitment and effort throughout the process of report writing.

Hon. Speaker, it is therefore my pleasure to table before this Hon. House the report on Financial Statements of Machakos Water and Sewerage Company for the year ended 30 June 2020 for discussion and adoption. Thank you, Hon. Speaker.

Hon. Temporary Speaker: Thank you, Mheshimiwa. I now invite Members to debate the report. Hon. Helen Ndeti.

Hon. Helen Ndeti (Nominated, WDM-K): Thank you, Madam Speaker. I congratulate the committee; you have done a good report. Very comprehensive but I stand here very disappointed. I feel nauseated and I feel very bad to listen to such a report. I wish I never came to listen to such a report. I am sorry to say so. It is a very good report but everything is not what we want to hear as an Assembly. Starting from corruption, mismanagement, unqualified board members and political interference.

It is very sad to listen to that but as a county we need to move on by making very drastic measures and what I would say is we start by ensuring that the board members are qualified enough to run a company.

Secondly, the County Government must make sure there is funding for these companies. The company should also be self-sustaining because if they are collecting, there is nothing free. That water is not given for free what happens to the money they collect. They are unable to

collect debt, they are misusing people's deposits; I mean, it is a very sad report and I am sorry this committee PAIC had to go through all that.

Seriously, we need to pull up our socks and be able as Kenyans to run a company profitably. So what I would call for is dissolving that board and coming up with more qualified people because water is life and our people need water. We do not have enough water for Machakos but if these companies were properly run and professionally I can tell you we would be having plenty of water. Thank you, Madam Speaker.

Hon. Temporary Speaker: Thank you. Hon. Katiti.

Hon. Boniface Katiti (Muthetheni, UDA): Thank you, Madam Speaker. First I want to thank the chairperson PAIC and the committee for having come up with those precise and clear recommendations. My worry is if there has been that kind of trend, time has come that we should move from being rhetoric to solutions because if we shall settle on the recommendations by the committee, then everything will run well. Those incompetent board members will be kicked out and be replaced with competent people. The mismanagement of the company will be history.

So the recommendations are good and what I would urge the relevant department is to make sure that the recommendations of the committee are fully followed and eventually I know this county will have plenty of clean water that will be available for domestic and even for irrigation. Thank you, Chairperson for having come with that kind of motion. It was long overdue and I now urge the implementers to implement the recommendations of the committee. Thank you. Madam Speaker.

Hon. Temporary Speaker: Thank you Mheshimiwa. Hon. Dominic Maitha.

Hon. Dominic Maitha (Muthwani, WDM-K): Thank you, Madam Speaker. I just want to note that the report that has just been tabled by the Chair PAIC in our documents we only have the motion. We do not have the comprehensive document so I would wish the secretariat note that because the Chair went through very deep details but in the document that we have received on the wall is only the motion we do not have the comprehensive document so that we analyze it.

In a general overview, Madam Speaker, I do not know what point in time will this country adheres to the law. The Committee Chair has alluded the document is late; it is already past the constitutional timelines. The law says six months it is now almost two years since when we are discussing this report. Considering that we still have some reports that are yet to be tabled for the financial year 2021/2022, 2022/2023 and Madam Speaker, when we are addressing an issue that is three years late, then it means that we are really lagging behind in terms of constitutional adherence and the rule of law.

I am just saying from the general observation and overview is that we want first to adhere to the constitution as the Hon. Helen has said all the issues that are tackled in that report, is purely constitutional adherence. Corruption, nominating the right people to sit in the boards and everything even payments. The PFM Act is very clear because when you have consumed something from an institution and that institution has to have continuity you must pay. If the County Government itself is not able to pay the water bills to the water companies that means we are killing the water companies.

What I would urge is that Madam Speaker, we adhere to what the recommendations of the committee have said and of importance is we adhere to constitutional timelines. If this report

would have been brought at the right time then we would not even be discussing about it. We would be discussing the positive outcome of the recommendations of the committee two or three years back.

Finally, Madam Speaker, our parastatal bodies or the water companies honestly and seriously Madam Speaker, not even Machakos Water Company even Mavoko Water, Yatta Water and Sewerage Company all these parastatal bodies are facing serious challenges. If those challenges can be addressed through the same recommendations and I would tell you Madam Speaker, if you do a round check on all the water companies, the same recommendations by the committee would still re-appear and resurface.

What I would urge is let us use this document as a blue print to see how we can perfect and have our water bodies and other institutions run well and managed well as per the constitution and as per the law and by so doing we will be able to create jobs, offer services to our people and even have some surplus money that can even support our budget. Thank you, Madam Speaker.

Hon. Temporary Speaker: Thank you, Mheshimiwa Dominic. Majority Leader.

Hon. Nicholas Nzioka (Machakos Central, WDM-K) Madam Speaker I want to thank the committee for a wonderful job they are doing in regard to the existing water companies. However, I would want to ask, who owns these companies? Is it a higher institution in the National Government or is it the County Governments because sometimes we are caught in between who supervises them. When they draw their budgets, who approves their budgets? It starts there; on who regulates the resources, who regulates them, because in the current scenario, the county approves the appointment of Board members. Once the board members are in place, they do not seem to answer to us directly but they seem to answer to Tanathi which is regulated by the National Government. So, we appoint the board members and they are answerable to another body.

The question of water companies has also been raised in the Senate and even the Governor has been called to the Senate several times in regard to the same and the debate I keep asking is; once somebody is not answerable to you, can you really regulate them. So, even as we seek to endorse the recommendations of the committee, my question needs to be answered once the County appoints the board of directors, why do they answer to another institution and not the county government under the department of water.

Secondly, we are in ASAL so the commodity we are talking about is water and none of our water companies since time immemorial have registered profits. They seem to lose the product they sale and they are in constant debt and they are also losing money. So, we need to come up with quick fix on how to regulate unaccounted for water that we lose every day.

Unfortunately, it is our people who are doing either illegal connections or because of rogue officers who are connecting water without meters. So, we are having a serious issue where people are consuming water that they cannot pay for and I think we need to look at the technology in place. For example, Kenya Power currently, you cannot interfere with their system, they will quickly notice somebody somewhere has tampered with our flow of electricity and they will catch you very quickly.

So how about we also introduce the same; smart meters or smart reticulation system where once you tamper with it sends a signal somewhere. I do not know, I am not very good in technology that somebody is tampering with the reticulation and if they are found, they are made

to account for the water that they are consuming illegally. Otherwise, we will not tire through the committee to recommend what we think is good for the survival and service delivery with the water company. Thank you, Madam Speaker.

Hon. Temporary Speaker: Thank you, Majority Leader. Minority Leader.

Hon. Mbili Ndawa (Matuu, MCCP): Thank you, Madam Speaker. I will start by congratulating our most able Chair together with his Members for coming up with an elaborate and self-explanatory report. The committee has done a wonderful job and it has given us an exact report of what happens in those companies. What I would suggest is that once we pass resolutions in this House, the implementation must be done otherwise the resolution will change to be minutes.

A difference exists between minutes and notes. If you pass resolutions and you do not implement, they turn to be notes and they are just kept in our drawers. This is the high time this House ensures that all the resolutions made are followed to the letter. Otherwise, the wise men say, a change needed in a grandson has to begin with the grandfather and grandmother downwards

Hon. Speaker, the issues we are talking about of the companies are all about water and you know water is life. Again, water is not a privilege but a right provided for in our constitution. Article 43(1) of the constitution says that every Kenyan is entitled to clean and safe water. Part (d) of it says and in adequate quantities. So, if my stomach can accommodate 10 litres per day, that is what is provided for by the constitution and this does not happen in our county and other counties.

What are the factors that lead to where we are now? Hon. Speaker, has the Majority Leader has asked, who owns these companies. It is just common sense since the companies are dealing with water and water is a devolved function, then automatically the water companies are owned by the County. The other question that the Majority Leader and the Chairperson have not told us is; who appoints the board of directors and what criteria is used to identify so and so is going to be the Chair of the board and such will be the member of the board.

Hon. Speaker, we must set standards. From the previous regime these board members are appointed as a reward for loyalty during the campaign time and I am not sorry to say so. Because you support candidate 'A' and they won, the only reward you can get is to be placed in Mavoko Water Company as the Chair and that particular person has no knowledge, skills nor academic qualifications concerning water. You are just kept there.

Hon. Speaker, sometimes I asked myself, why is it that secondary school boards are more effective than primary schools boards. The answer I received after my own investigation is; in primary school there are no standards; the only qualification is to have a child in the primary school. As long as you have a child there and you have never gone to any class you qualify to be elected as a representative of that class.

Hon. Speaker, you are aware the elite people are very busy and may not have time to be coming to those schools every Thursday because most of the parents meet on Thursdays. Those who are elite are in Nairobi, others are busy during their work. So, the people who cannot manage themselves are the ones who are free and they are the ones elected into those positions. Do you expect that particular member to project for the school and yet he has not projected the same for himself or herself.

That is what is happening in our water boards and that is why I am recommending we must and I am using the word we must set standards. The issue of political rewards let us forget about it so that we can deliver to our electorates.

The other factor that I have seen Hon. Speaker, is when the auditors are doing the auditing, they do it up to a certain percentage. There is what we call 25 to 30 per cent unaccounted for. The report we are getting here is 70 per cent, 30 per cent cannot be accounted for. What is this unaccounted for? The water that is lost and which does not pass through the meter because of the old pipes which burst all the time. You pump water and the pipe bursts on the way and water spills all over.

Again, there are illegal connections; somebody has a water meter and behind it, there is another "T" which diverts that water to the main tank. So, we also need to investigate and identify all the illegal connections so that this water can be accounted for.

Another recommendation I am making is; we expect the output to be more than the input. What we are spending in pumping this water is not what we are getting because of these power bills. Nowadays, Kenya Power energy is very expensive so if we can move from this energy to renewable energy we will be solving these problems. I am very sure most of the companies cannot manage their financial requirements that they are supposed to meet.

A good example is Yatta Water Company; as we talk it has a power bill of about Ksh. 4 million. If we can be able to acquire solar panels worth Ksh. 1 million we will be done with that issue of water bill. In fact, we should move from using Kenya Power to solar power. Let Kenya Power be the back-up during the cold season of July when we do not have much heat from the sun but in the other months in Machakos County we are privileged to have adequate sun, we are blessed with sun. So, if we can recommend this to be done, I am sure we will have assisted these companies. I am also sure what is happening in Yatta Water Company is also eating this other water companies like Mavoko, Kangundo and Machakos.

As Machakos County Assembly, this is the highest decision-making organ of the county and the electorates are watching us and want us to provide solutions to their problems. I believe the Table Office and the HANSARD departments are capturing our sentiments. Let us not come in this Assembly, make noise and go. I want to come here and talk about things that can be helpful to our county and propel it to the next level.

So, Hon. Speaker, I support the report and request the observations that the committee have given us is a guideline; let us take each recommendation and analyze it properly and I am very sure if we go by what the chairperson has proposed, we will have solved this problem. Thank you, Madam Speaker. I support the report.

Hon. Temporary Speaker: Yes.

Hon. Dominic Maitha (Muthwani, WDM-K): Madam Speaker, there is a genuine issue that has been raised by the Majority Leader and seconded by the Minority Leader; and I will just bring to your attention the following. As per the Water Act of 2016, it says that ownership, use and management of water resources is vested and held by the National Government and I repeat, every water resource is vested in and held by the National government in trust for the people of Kenya.

It continues to say, the authority established in Part II(5) shall serve as an agent of the National Government and regulate the management and use of water resources. Madam Speaker, it is the high time we start invoking the transfer of functions of Acts in the constitution. If the law

says that water is managed by National Government, then it is common sense that this report should have been tabled in the National Assembly.

Yes, we are discussing the audited reports for the water companies, but they are still being held by the National Government. That leaves more questions than answers and we need to understand, does the county government have the legal mandate even to do financing---

Hon. Mbili Ndawa (Matuu, MCCC): Point of information, Madam Speaker.

Hon. Temporary Speaker: Yes, point of information.

Hon. Mbili Ndawa (Matuu, MCCC): Thank you, Hon. Speaker. I just want to inform my brother and he is raising a very pertinent issue. After the 2010 Constitution some functions were devolved and the issue of water is co-shared function. The National and County Governments have interests. So, each level of government can handle but I will request if we can have both governments coming together, we can be able to address the problem better. Thank you, Hon. Speaker.

Hon. Dominic Maitha (Muthwani, WDM-K): Madam Speaker, thank you for that information but I am acting on the law and I had said this is the Water Act of 2016 which came into effect in 2017. I am not speaking of the Water Act of 2002; I am talking about the Water Act of 2016 that was gazetted by the Cabinet Secretary for Water and Natural Resources in 2017. The law says that, all water resources are properties of the National Government. It says, in Part II on ownership, use and management of water resources and it says 'every water resource is vested in and held by the national government in trust for the people of Kenya.'

What am I trying to say? If under the chapter of transfer of functions, if water is devolved as we are saying.....let me give a practical example, Madam Speaker. I want to invoke even this House. Recently these Hon. Members received a Ksh. 10,000 increase by SRC. Then the government through the Finance Act 2022 proposed a housing levy of 1.5 per cent of the gross tax. They gave you Ksh. 10,000 and on the other hand took about Ksh. 15,000. What was the basis, Madam Speaker?

So, the same case applies to this Act, the National Government says it has devolved water functions to the County Government but still they are holding key areas of the same that the County functions as they say have been limited to some operations. How I wish what the Hon. Minority Leader has proposed, that we have an inter-governmental engagement such that if you have devolved water services, all water services to the County Government let them be a solely owned function of the County Government so that even financing, control, appointment, audit and everything is fully under the County Government where the County Executive CEO who is our Governor has outright powers to look into these water companies.

By so doing, you will find that there will be efficacy, service delivery will be top-notch and the people of Machakos and in other counties will receive value for money from these water companies. But as at now, there are powers that even the Governor cannot go; even appointing the directors of these water companies is quite difficult and once she does that she will be taken to court.

So, if it is a matter of devolution, let us devolve services fully and control these services or bodies using the constitution. The PFM Act is cross cutting in the National and County

government, the Constitution which is the supreme law cross cuts as well. So, devolve without limitations. Thank you, Madam Speaker.

Hon. Temporary Speaker: Thank you, Mheshimiwa Dominic. I now invite the mover to reply.

Hon. Philip Ndolo (Mitaboni, UDA): Thank you, Madam Speaker. I want to thank the entire House for a healthy debate. There are issues that have been raised like the issue of transfer of functions that was asked by the Majority Leader; who owns the company and while he was away, I think I talked about the issue of transfer from Tanathi to the County Government. That was one of the recommendations by the committee.

The other issue is why the report has delayed. This report was brought during the election time and there was no enough time, after election there was also the issue of forming committees that is why the report came late.

The issue of bad debts, I can thank the county government of Machakos because they owe most of these companies' big debts but they are paying well. We also called the Chief Officer water and Chief Officer Finance and they showed us how they are going to pay these debts quarterly. So, there is progress and most of these companies have been paid their debts.

The other issue is about meters and wastage of water; I can say that the Mavoko Water Company has good meters such that they can know when there is leakage and detect from their offices but the other companies in Machakos are having a lot of problems.

The issue of implementation that was raised by the Minority Leader, it is good that the Chairman of Implementation Committee is here and he has contributed a lot. He will handle that case within 90 days and I think he will bring that report.

On the issue of appointment, Minority Leader, I think you have talked a lot about this issue and loyalty of members. We have raised as a committee the issue that the board members to bring their qualifications and they have not done that. That is a great issue because most of the members do not meet the requirements for being members of those boards.

The other issue is that our County Government and our Governor appointed a County Water Committee to look into these issues which have not been tabled and they are going to be tabled. Thank you, Madam Speaker.

Hon. Temporary Speaker: Thank you, Chair.

(Question put and agreed to)

(Applause)

ADJOURNMENT

Hon. Temporary Speaker: This House adjourns to Wednesday, 20th September 2023 at 2.30 p.m.

The House rose at 12.19 p.m.

