


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



**CONTRACT FOR THE
PROPOSED CONSTRUCTION OF MEMBER OF COUNTY
ASSEMBLY (MCA) WARD OFFICES PHASE V
MUTITUNI WARD
NEGOTIATION NO. 882611-2020/2021
BETWEEN
COUNTY ASSEMBLY SERVICE BOARD OF MACHAKOS
AND
ABGALE GENERAL CONTRACTOR LTD**

**County Hall
Along Mwatu wa Ngoma Road
P O Box 1168 – 90100
MACHAKOS – KENYA
Email: assemblymks@gmail.com**

Initials... .....

**PROPOSED CONSTRUCTION OF MEMBER OF COUNTY ASSEMBLY (MCA)
WARD OFFICES -PHASE V**

This Contract is entered into this^{5th}.....day of ...^{October}..... 2021

BETWEEN

The County Assembly Service Board of Machakos, (hereinafter referred to as "The Client", which term includes its successors in title and assignees) located in County Hall, along Mwatu Wa Ngoma Road, Machakos and whose mailing address is P.O BOX 1168-90100 in the Republic of Kenya.

Which is represented by **Mr. Felix Mbiuki** holding the position of the Clerk/Secretary County Assembly Service Board of Machakos (The Clerk);

AND

ABGALE GENERAL CONTRACTOR LTD (Hereinafter referred to as "the Contractor" which term includes its successors in title and assigns) whose mailing address is P.O. Box 16003-00509, Telephone Number 0727758986 and Email: abgalecontractors@yahoo.com

AND which is represented by **Eng. Ababa Chanasa** holding the position of **Director**

WHEREAS, the Client is desirous of engaging the Contractor for the construction of Member of County Assembly (MCA) Ward office at **MUTITUNI WARD**

AND WHEREAS the Contractor is willing to construct the said Member of County Assembly (MCA) ward office.

NOW THEREFORE the parties have hereto agreed on the following terms and conditions as follows: -

1. APPOINTMENT AND STANDARDS

- (a) The Client appoints the Contractor as its representative for the construction of Member of County Assembly (MCA) ward office.
- (b) The scope of work is as stipulated in the tender document.
- (c) The Contractor shall undertake the works and carry out its obligations to the highest standards.

- (d) The Contractor shall at all times act in good faith and in the best interest of the client and shall in all matters arising in connection with the undertaking of the works, support and safeguard such interests.

2. SCOPE OF WORK

- (a) The Contractor shall provide the services specified in the tender document tender No.882612-2020/2021 which document is an integral part of this contract.
- (b) The Contractor confirms to have carefully read, fully understood and agreed to comply with the provisions set forth in the specifications provided.
- (c) Notwithstanding the provisions of clause 2(a), this contract supersedes those of the documents mentioned above in case of conflict.

PROPOSED CONSTRUCTION OF MEMBER OF COUNTY ASSEMBLY (MCA) WARD OFFICES- NEGOTIATION NUMBER 882611-2020/2021

Article (1)

The above stated guide shall constitute an integral part of this Contract.

Article (2)

Both parties shall fully comply with the terms and conditions provided for in the laws regulating the contract for the construction of MCA ward office within the Republic of Kenya, including definitions, provisions, limitations, exclusions, terms, conditions, duties and obligations.

Article (3)

The construction works as per specifications consistent to the terms and conditions and rates stipulated by this Contract, and any annexure attached thereto that are an integral and complementary part hereof.

Article (4)

The Contractor undertakes that all the construction works offered will be as per the required standards and will conform to the terms of this contract.

3. TERM OF CONTRACT, SUPERVISION, AND REPORTING

Initials..... *CA* *SFB*

- 31 The services to be provided under this Contract shall commence on the 11th day of **October 2021** and shall be concluded no later than the 10th Day of **December 2021**.
- 32 The Contractor is engaged by the client to undertake the works as detailed in the Terms and conditions of engagement.
- 33 The Contractor shall report to the Clerk for this contract, in the manner and form specified by the client, and upon the reasonable request of the Client.
- 34 The Contractor shall neither seek nor accept instructions from any authority external to the Client in connection with the tender under this Contract. The Contractor shall refrain from any action which may adversely affect the Client and shall fulfill the commitments with the fullest regard to the interests of the Client.
- 3.5 In case of any impediment which may result in the Contractor not abiding to the timeline and conditions set forth under this Contract, the Contractor shall immediately notify the Clerk; such notification shall not release the Contractor from fulfilling the obligations under the Contract. The Client may, at its discretion, accept deviations from the timetables and conditions without prejudice to any other rights and remedies set forth herein.

4. PAYMENT

- 4.1 The Contractor shall be paid for the works undertaken in accordance with the standards detailed in the Terms of Reference and in accordance with the timelines set forth by the Clerk.
- 4.2 The Client shall pay the Contractor the amount of **3,195,950.80/=** payable by bank transfer upon certification by the Clerk that the Contractor has furnished the Client with a performance security and upon the issuance to the Contractor of a certificate of completion by the Client. This amount is established based on the understanding that it constitutes the entire Contractor's cost and profit as well as any tax obligation that may be imposed on the Contractor.
- 4.3 The Client shall pay the Contractor not later than sixty (60) days after the submission of an invoice by the Contractor and upon the issuance of an inspection and acceptance report by the relevant committee appointed by the Client.
- 4.4 The Contractors shall be responsible for the payment of applicable taxes, charges, or other levies, with respect to compensation or other payments it receives from the

Client under this Contract. The Client shall not be responsible for any additional or ancillary expenses.

5. GENERAL STANDARDS OF PERFORMANCE

5.1 The Contractor shall respect and abide by all laws, ordinances, rules and regulations, whether local or international in nature, bearing upon the performance of the obligations under this Contract.

5.2 The Contractor shall keep the Coordinator informed of all material developments for the duration of the contract.

5.3 Time shall be of the essence in delivery of this contract.

6. CONFIDENTIALITY

6.1 The Contractor, its employees or sub-contractors, shall not use any information acquired or developed in the course of this Contract for any purpose not authorized in writing by the Client.

6.2 The Contractor shall exercise utmost discretion during the performance of the Contract. The Contractor may not communicate to any other person, government, or authority external to the Client any information known to it by reason of its contractual relationship with the Client which has not previously been made public, except with the written authorization of the Client nor shall the Contractor at any time use such information for private advantage.

6.3 The Contractor shall be liable for any breach of confidentiality or any indirect disclosure that could vitiate the interests of the Assembly. The extent of any such liability shall be directly proportional to the extent of the damage caused.

7. INDEPENDENT CONTRACTOR AND LEGAL STATUS

7.1 Nothing contained herein shall be construed as establishing or creating between the Client and the Contractor the relationship of employer and employee or principal and agent. The Client agrees that the position of the Contractor is that of an independent Contractor.

8. INDEMNIFICATION

8.1 The Contractor shall indemnify, protect and defend at the Contractor's own expense, the Client and its agents and employees, from and against any and all actions, claims, losses or damages directly arising out of acts or omissions of the

Initials..... *CA* *RFB*

Contractor or its employees, officers, agents, sub contractors, or persons similarly situated in and relating to the performance of this contract, including, but not limited to, any violation by the Contractor of any legal provisions, or any rights of third parties, in respect of literary property rights, copyrights or patents.

8.2 The obligations under this clause do not lapse upon termination of this Contract.

9. APPOINTMENT OF AGENTS SUBCONTRACTING AND ASSIGNMENT

9.1 In the event the Contractor requires the services of sub-Providers, the Contractor shall inform the client in advance, who may exercise the right and discretion to reasonably object to the hiring of any particular sub-providers. In all instances, the Contractor shall be responsible for the professional and technical competence of such sub-providers, their employees and/or agents.

9.2 In no event shall the Contractor insert any language in any sub-contract asserting or implying a direct relationship between the Client and the said agents. In any event, the terms of any sub-contract shall be subject to this Contract.

9.3 The Contractor shall not assign, transfer, pledge, or make other disposition of this Contract or any part thereof, or any of the Assembly's rights, claims or obligations under this Contract except with the prior written consent of the Clerk.

10. TERMINATION

10.1 If the Contractor ceases to practice the relevant profession or carry out business wholly or for a large part; does not comply with any conditions of the Contract; submits false, materially inaccurate, or incomplete information; is found to have been negligent in the discharge of the professional duties by either a professional association that its employees are members of or by a court of law; offers incentives, inducements, or other benefit to any of the Client employees; does not deliver or delivers unsatisfactorily services; applies for a moratorium or applies to be declared insolvent; is granted a moratorium or declared insolvent; or if the property of the Contractor is attached, the Client has the right to give notice of termination of Contract immediately without notice of default.

10.2 The Contractor shall immediately inform the Client of the occurrence of any of the above events.

- (a) If any of the circumstances in clause 10.1 arise, the Contractor shall be deemed to be in breach of this Contract as a consequence.
- (b) The Contractor shall be bound to compensate the Client for all damage, costs, and loss of interest as a result of a situation as mentioned in clause 10.1 as a result of premature termination of the Contract, even in the event that a moratorium is granted or the Contractor is declared insolvent.
- (c) Damages shall include any costs incurred by the Client as a result of the premature termination of the Contract.
- (d) The conditions in paragraphs (a), (b), and (c) of this clause do not exclude the right of the Client to exercise other legal rights, including its right to impose liquidated damages, demand payment or compensation for damages, or for cancellation of the Contract.

10.3 Either party may terminate this Contract at any time by giving the other Party thirty (30) days' written notice in accordance with Clause 13 "Notices", unless otherwise permitted under this clause. In the event of a breach of the Contract on the part of the Contractor or failure to comply with any of the timelines or conditions set forth in this Contract; the Client retains the right to terminate the Contract effective immediately upon giving a written notice.

10.4 Nothing in this Clause shall be construed to exclude the right of the Client to exercise other legal rights and remedies available to it as set forth herein. In the event the Contract is terminated by the Client, the Contractor shall be entitled to a pro-rata payment for any works undertaken prior to such termination that has been accepted by the Client pursuant to Clause 4 - "Payments".

11. SETTLEMENT OF DISPUTES

11.1 Except as otherwise provided in the Contract, any dispute between the Client and the Contractor concerning the interpretation and performance of this Contract shall be settled in the first instance by negotiation between the Parties.

11.2 If after thirty (30) days from the commencement of such negotiations, the parties are unable to amicably resolve the dispute, either party may require that the dispute to be referred to a single arbitrator mutually agreed on between the parties.

Initials..... CA BFB

11.3 Where the parties are unable to agree on an arbitrator within fourteen (14) of the notification of the dispute, either party may request the Kenyan branch of the Chartered Institute of Arbitrators to appoint an arbitrator.

11.4 The decision of the arbitrator shall be final and binding on both parties. The fees and expenses of the Arbitrator shall be borne by the parties in equal shares.

11.5 Any award rendered in accordance with paragraph (11.4) above shall be final and binding on the Parties.

12. LAW GOVERNING THE CONTRACT

12.1 This Contract is governed by the laws of Kenya and shall be applied and observed by the Parties in utmost good faith.

12.2 Questions concerning matters governed by it, its meaning and interpretation, which are not expressly stated in it, are to be settled in conformity with the general principles on which it is based.

13. NOTICES AND AMENDMENTS

13.1 Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, electronic mail or facsimile to such Party.

13.2 Any modifications or amendments to this Contract shall be made by mutual agreement of the Parties. All such modifications or amendments shall be in writing signed by the Parties. For the Assembly, the Clerk or a designee shall have the authority to agree to modifications.

14. PRIVILEGES AND IMMUNITIES

14.1 Nothing contained in the Contract or any course of dealing between the Parties shall be deemed a waiver, express or implied, of any privilege or immunity that the Client may enjoy as a Constitutional institution.

14.2 Nothing contained in the Contract or relating hereto shall confer any privilege or immunity on the Contractor or its officers, employees, agents, sub-providers, or other persons similarly situated.

15. NON-WAIVER OF RIGHTS

Failure of, or delay by, the Client in the exercise of any rights or remedies provided by the Contract shall not be deemed a waiver of any rights of the Client, and shall not release the Contractor from fulfilling its obligations.

16. FORCE MAJEURE

16.1 Failure of a party to fulfill any of its obligations hereunder as a result of an event of force majeure arising after the date of signature of the contract shall not be considered a breach of or default under this contract.

16.2 A party affected by an event of force majeure shall notify as soon as practical the other party of occurrence of such event and afterwards of restoration of normal conditions.

16.3 Upon notification of occurrence of an event of force majeure by the affected party, the performance of the services shall be considered suspended until the notification of restoration of normal conditions or if the achievement of the objectives of the contract is no longer possible at all or not to a satisfactory degree, until the party's decision to terminate the contract.

17. ADVERTISING

17.1 Unless authorized in writing by the Assembly, the Contractor shall not advertise or otherwise make public the fact that it is undertaking the works for the Assembly. The Contractor shall not use the name, emblem, or official seal of the Client for advertising or for any other promotional purpose.


17.2 Notwithstanding the foregoing, the Contractor may make reference to their activities under this Contract in a curriculum-vitae, resume, or document of a similar nature.

18. RENEWAL

The Contractor acknowledges and understands that this Contract carries no expectation or entitlement to renewal.

19. ENTIRE CONTRACT

19.1 This contract including the Terms of Reference contains the entire agreement and understanding of the Parties hereto. It may not be changed orally but only by agreement in writing with the mutual consent of both Parties in accordance with Clause 13 "Notices and Amendments".

Initials.....  BFB

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



**CONTRACT FOR THE
PROPOSED CONSTRUCTION OF MEMBER OF COUNTY
ASSEMBLY (MCA) WARD OFFICES PHASE V
KIVAA WARD
NEGOTIATION NO. 882607-2020/2021
BETWEEN
COUNTY ASSEMBLY SERVICE BOARD OF MACHAKOS
AND
FREE DROP INTERIOR DESIGNERS LTD**

**County Hall
Along Mwatu wa Ngoma Road
P O Box 1168 – 90100
MACHAKOS – KENYA
Email: assemblymks@gmail.com**

Initials... *C.N.* *R.M.*

**PROPOSED CONSTRUCTION OF MEMBER OF COUNTY ASSEMBLY (MCA)
WARD OFFICES -PHASE V**

This Contract is entered into this^{stm}.....day of^{October}..... 2021

BETWEEN

The County Assembly Service Board of Machakos, (hereinafter referred to as "The Client", which term includes its successors in title and assignees) located in County Hall, along Mwatu Wa Ngoma Road, Machakos and whose mailing address is P.O BOX 1168-90100 in the Republic of Kenya.

Which is represented by Mr. Felix Mbiuki holding the position of the Clerk/Secretary County Assembly Service Board of Machakos (The Clerk);

AND

FREE DROP INTERIOR DESIGNERS LIMITED (Hereinafter referred to as "the Contractor" which term includes its successors in title and assigns) whose mailing address is P.O. Box 337-00519, Telephone Number 0725609263 and Email: info@freedropinteriors.co.ke

AND which is represented by **Bancy Kalekye** holding the position of **chief executive officer**

WHEREAS, the Client is desirous of engaging the Contractor for the construction of Member of County Assembly (MCA) Ward office at **Kiva Ward**

AND WHEREAS the Contractor is willing to construct the said Member of County Assembly (MCA) ward office.

NOW THEREFORE the parties have hereto agreed on the following terms and conditions as follows: -

1. APPOINTMENT AND STANDARDS

- (a) The Client appoints the Contractor as its representative for the construction of Member of County Assembly (MCA) ward office.
- (b) The scope of work is as stipulated in the tender document.

JA Initials.....^{C-N}.....^{R-M}.....

- (c) The Contractor shall undertake the works and carry out its obligations to the highest standards.
- (d) The Contractor shall at all times act in good faith and in the best interest of the client and shall in all matters arising in connection with the undertaking of the works, support and safeguard such interests.

2. SCOPE OF WORK

- (a) The Contractor shall provide the services specified in the tender document tender No.882607-2020/2021 which document is an integral part of this contract.
- (b) The Contractor confirms to have carefully read, fully understood and agreed to comply with the provisions set forth in the specifications provided.
- (c) Notwithstanding the provisions of clause 2(a), this contract supersede those of the documents mentioned above in case of conflict.

**PROPOSED CONSTRUCTION OF MEMBER OF COUNTY ASSEMBLY (MCA)
WARD OFFICES-
NEGOTIATION NUMBER 882607-2020/2021**

Article (1)

The above stated guide shall constitute an integral part of this Contract.

Article (2)

Both parties shall fully comply with the terms and conditions provided for in the laws regulating the contract for the construction of MCA ward office within the Republic of Kenya, including definitions, provisions, limitations, exclusions, terms, conditions, duties and obligations.


Article (3)

The construction works as per specifications consistent to the terms and conditions and rates stipulated by this Contract, and any annexure attached thereto that are an integral and complementary part hereof.

Article (4)

The Contractor undertakes that all the construction works offered will be as per the required standards and will conform to the terms of this contract.

3. TERM OF CONTRACT, SUPERVISION, AND REPORTING

 Initials..... C.N R.M

- 3.1 The services to be provided under this Contract shall commence on the 11th day of **October 2021** and shall be concluded no later than the 10th Day of **December 2021**.
- 3.2 The Contractor is engaged by the client to undertake the works as detailed in the Terms and conditions of engagement.
- 3.3 The Contractor shall report to the Clerk for this contract, in the manner and form specified by the client, and upon the reasonable request of the Client.
- 3.4 The Contractor shall neither seek nor accept instructions from any authority external to the Client in connection with the tender under this Contract. The Contractor shall refrain from any action which may adversely affect the Client and shall fulfill the commitments with the fullest regard to the interests of the Client.
- 3.5 In case of any impediment which may result in the Contractor not abiding to the timeline and conditions set forth under this Contract, the Contractor shall immediately notify the Clerk; such notification shall not release the Contractor from fulfilling the obligations under the Contract. The Client may, at its discretion, accept deviations from the timetables and conditions without prejudice to any other rights and remedies set forth herein.

4. PAYMENT

- 4.1 The Contractor shall be paid for the works undertaken in accordance with the standards detailed in the Terms of Reference and in accordance with the timelines set forth by the Clerk.
- 4.2 The Client shall pay the Contractor the amount of **3,195,950.80/=** payable by bank transfer upon certification by the Clerk that the Contractor has furnished the Client with a performance security and upon the issuance to the Contractor of a certificate of completion by the Client. This amount is established based on the understanding that it constitutes the entire Contractor's cost and profit as well as any tax obligation that may be imposed on the Contractor.
- 4.3 The Client shall pay the Contractor not later than sixty (60) days after the submission of an invoice by the Contractor and upon the issuance of an inspection and acceptance report by the relevant committee appointed by the Client.
- 4.4 The Contractors shall be responsible for the payment of applicable taxes, charges, or other levies, with respect to compensation or other payments it receives from the

Initials.....*C.N*.....*R.M*.....

Client under this Contract. The Client shall not be responsible for any additional or ancillary expenses.

5. GENERAL STANDARDS OF PERFORMANCE

5.1 The Contractor shall respect and abide by all laws, ordinances, rules and regulations, whether local or international in nature, bearing upon the performance of the obligations under this Contract.

5.2 The Contractor shall keep the Coordinator informed of all material developments for the duration of the contract.

5.3 Time shall be of the essence in delivery of this contract.

6. CONFIDENTIALITY

6.1 The Contractor, its employees or sub-contractors, shall not use any information acquired or developed in the course of this Contract for any purpose not authorized in writing by the Client.

6.2 The Contractor shall exercise utmost discretion during the performance of the Contract. The Contractor may not communicate to any other person, government, or authority external to the Client any information known to it by reason of its contractual relationship with the Client which has not previously been made public, except with the written authorization of the Client nor shall the Contractor at any time use such information for private advantage.


6.3 The Contractor shall be liable for any breach of confidentiality or any indirect disclosure that could vitiate the interests of the Assembly. The extent of any such liability shall be directly proportional to the extent of the damage caused.

7. INDEPENDENT CONTRACTOR AND LEGAL STATUS

7.1 Nothing contained herein shall be construed as establishing or creating between the Client and the Contractor the relationship of employer and employee or principal and agent. The Client agrees that the position of the Contractor is that of an independent Contractor.

8. INDEMNIFICATION

8.1 The Contractor shall indemnify, protect and defend at the Contractor's own expense, the Client and its agents and employees, from and against any and all actions, claims, losses or damages directly arising out of acts or omissions of the

 Initials... C:N R:M

Contractor or its employees, officers, agents, sub contractors, or persons similarly situated in and relating to the performance of this contract, including, but not limited to, any violation by the Contractor of any legal provisions, or any rights of third parties, in respect of literary property rights, copyrights or patents.

8.2 The obligations under this clause do not lapse upon termination of this Contract.

9. APPOINTMENT OF AGENTS SUBCONTRACTING AND ASSIGNMENT

9.1 In the event the Contractor requires the services of sub-Providers, the Contractor shall inform the client in advance, who may exercise the right and discretion to reasonably object to the hiring of any particular sub-providers. In all instances, the Contractor shall be responsible for the professional and technical competence of such sub-providers, their employees and/or agents.

9.2 In no event shall the Contractor insert any language in any sub-contract asserting or implying a direct relationship between the Client and the said agents. In any event, the terms of any sub-contract shall be subject to this Contract.

9.3 The Contractor shall not assign, transfer, pledge, or make other disposition of this Contract or any part thereof, or any of the Assembly's rights, claims or obligations under this Contract except with the prior written consent of the Clerk.

10. TERMINATION

10.1 If the Contractor ceases to practice the relevant profession or carry out business wholly or for a large part; does not comply with any conditions of the Contract; submits false, materially inaccurate, or incomplete information; is found to have been negligent in the discharge of the professional duties by either a professional association that its employees are members of or by a court of law; offers incentives, inducements, or other benefit to any of the Client employees; does not deliver or delivers unsatisfactorily services; applies for a moratorium or applies to be declared insolvent; is granted a moratorium or declared insolvent; or if the property of the Contractor is attached, the Client has the right to give notice of termination of Contract immediately without notice of default.

df Initials..... *C.W.* *R.M.*

10.2 The Contractor shall immediately inform the Client of the occurrence of any of the above events.

- (a) If any of the circumstances in clause 10.1 arise, the Contractor shall be deemed to be in breach of this Contract as a consequence.
- (b) The Contractor shall be bound to compensate the Client for all damage, costs, and loss of interest as a result of a situation as mentioned in clause 10.1 as a result of premature termination of the Contract, even in the event that a moratorium is granted or the Contractor is declared insolvent.
- (c) Damages shall include any costs incurred by the Client as a result of the premature termination of the Contract.
- (d) The conditions in paragraphs (a), (b), and (c) of this clause do not exclude the right of the Client to exercise other legal rights, including its right to impose liquidated damages, demand payment or compensation for damages, or for cancellation of the Contract.


10.3 Either party may terminate this Contract at any time by giving the other Party thirty (30) days' written notice in accordance with Clause 13 "Notices", unless otherwise permitted under this clause. In the event of a breach of the Contract on the part of the Contractor or failure to comply with any of the timelines or conditions set forth in this Contract; the Client retains the right to terminate the Contract effective immediately upon giving a written notice.

10.4 Nothing in this Clause shall be construed to exclude the right of the Client to exercise other legal rights and remedies available to it as set forth herein. In the event the Contract is terminated by the Client, the Contractor shall be entitled to a pro-rata payment for any works undertaken prior to such termination that has been accepted by the Client pursuant to Clause 4 - "Payments".

11. SETTLEMENT OF DISPUTES

11.1 Except as otherwise provided in the Contract, any dispute between the Client and the Contractor concerning the interpretation and performance of this Contract shall be settled in the first instance by negotiation between the Parties.

11.2 If after thirty (30) days from the commencement of such negotiations, the parties are unable to amicably resolve the dispute, either party may require that the dispute to be referred to a single arbitrator mutually agreed on between the parties.

 Initials..... C.N. R.M.

11.3 Where the parties are unable to agree on an arbitrator within fourteen (14) of the notification of the dispute, either party may request the Kenyan branch of the Chartered Institute of Arbitrators to appoint an arbitrator.

11.4 The decision of the arbitrator shall be final and binding on both parties. The fees and expenses of the Arbitrator shall be borne by the parties in equal shares.

11.5 Any award rendered in accordance with paragraph (11.4) above shall be final and binding on the Parties.

12. LAW GOVERNING THE CONTRACT

12.1 This Contract is governed by the laws of Kenya and shall be applied and observed by the Parties in utmost good faith.

12.2 Questions concerning matters governed by it, its meaning and interpretation, which are not expressly stated in it, are to be settled in conformity with the general principles on which it is based.

13. NOTICES AND AMENDMENTS


131 Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, electronic mail or facsimile to such Party.

132 Any modifications or amendments to this Contract shall be made by mutual agreement of the Parties. All such modifications or amendments shall be in writing signed by the Parties. For the Assembly, the Clerk or a designee shall have the authority to agree to modifications.

14. PRIVILEGES AND IMMUNITIES

14.1 Nothing contained in the Contract or any course of dealing between the Parties shall be deemed a waiver, express or implied, of any privilege or immunity that the Client may enjoy as a Constitutional institution.

14.2 Nothing contained in the Contract or relating hereto shall confer any privilege or immunity on the Contractor or its officers, employees, agents, sub-providers, or other persons similarly situated.

 Initials..... C-N R-M

15. NON-WAIVER OF RIGHTS

Failure of, or delay by, the Client in the exercise of any rights or remedies provided by the Contract shall not be deemed a waiver of any rights of the Client, and shall not release the Contractor from fulfilling its obligations.

16. FORCE MAJEURE

16.1 Failure of a party to fulfill any of its obligations hereunder as a result of an event of force majeure arising after the date of signature of the contract shall not be considered a breach of or default under this contract.

16.2 A party affected by an event of force majeure shall notify as soon as practical the other party of occurrence of such event and afterwards of restoration of normal conditions.

16.3 Upon notification of occurrence of an event of force majeure by the affected party, the performance of the services shall be considered suspended until the notification of restoration of normal conditions or if the achievement of the objectives of the contract is no longer possible at all or not to a satisfactory degree, until the party's decision to terminate the contract.

17. ADVERTISING

17.1 Unless authorized in writing by the Assembly, the Contractor shall not advertise or otherwise make public the fact that it is undertaking the works for the Assembly. The Contractor shall not use the name, emblem, or official seal of the Client for advertising or for any other promotional purpose.


17.2 Notwithstanding the foregoing, the Contractor may make reference to their activities under this Contract in a curriculum-vitae, resume, or document of a similar nature.

18. RENEWAL

The Contractor acknowledges and understands that this Contract carries no expectation or entitlement to renewal.

19. ENTIRE CONTRACT

19.1 This contract including the Terms of Reference contains the entire agreement and understanding of the Parties hereto. It may not be changed orally but only by agreement in writing with the mutual consent of both Parties in accordance with Clause 13 "Notices and Amendments".

 Initials.....C.N.....R.M.....

19.2 Except as elsewhere provided in this agreement, there is no other contemporaneous understanding or agreement, oral or written, between the Parties on said subject matter, and neither Party shall be bound by any statement or representation not contained or incorporated herein.

IN WITNESS WHEREOF the parties have hereunder duly executed this Agreement on the dates indicated hereunder.

Sealed with the Common Seal of:

The County Assembly Service Board of Machakos

FELIX G. MBIUKI
Clerk, County of the Assembly

In the presence of:
HILARY MUTHUI
Head, Legal and Library Services

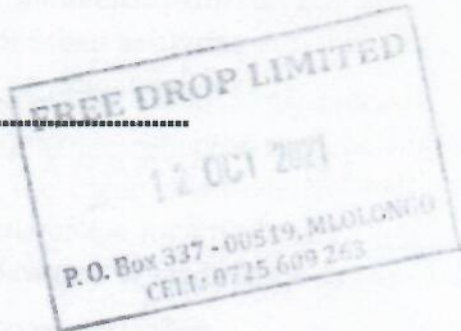
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Signed for and behalf of:
FREE DROP LIMITED.

NAME CHRISPIN NDUVA FOR DIRECTOR
POSITION ADMIN AND PROJECT
MANAGER.

In the presence of:
NAME RHONA MWENDE
POSITION PROCUREMENT MANAGER

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Initials C.N B.M

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



**CONTRACT FOR THE
PROPOSED CONSTRUCTION OF MEMBER OF COUNTY
ASSEMBLY (MCA) WARD OFFICES PHASE V
NDALANI WARD
NEGOTIATION NO. 882612-2020/2021
BETWEEN
COUNTY ASSEMBLY SERVICE BOARD OF MACHAKOS
AND
FREE DROP INTERIOR DESIGNERS LTD**

**County Hall
Along Mwatu wa Ngoma Road
P O Box 1168 – 90100
MACHAKOS – KENYA
Email: assemblymks@gmail.com**

**PROPOSED CONSTRUCTION OF MEMBER OF COUNTY ASSEMBLY (MCA)
WARD OFFICES –PHASE V**

[Signature] Initials..... CN R.M.

This Contract is entered into this 8th day of October 2021

BETWEEN

The County Assembly Service Board of Machakos, (hereinafter referred to as "The Client", which term includes its successors in title and assignees) located in County Hall, along Mwatu Wa Ngoma Road, Machakos and whose mailing address is P.O BOX 1168-90100 in the Republic of Kenya.

Which is represented by **Mr. Felix Mbiuki** holding the position of the Clerk/Secretary County Assembly Service Board of Machakos (The Clerk);

AND

FREE DROP INTERIOR DESIGNERS LIMITED (Hereinafter referred to as "the Contractor" which term includes its successors in title and assigns) whose mailing address is P.O. Box 337-00519, Telephone Number 0725609263 and Email: info@freedropinteriors.co.ke

AND which is represented by **Bancy Kalekye** holding the position of **chief executive Officer**

WHEREAS, the Client is desirous of engaging the Contractor for the construction of Member of County Assembly (MCA) Ward office at **Ndalani Ward**

AND WHEREAS the Contractor is willing to construct the said Member of County Assembly (MCA) ward office.

NOW THEREFORE the parties have hereto agreed on the following terms and conditions as follows: -

1. APPOINTMENT AND STANDARDS

- (a) The Client appoints the Contractor as its representative for the construction of Member of County Assembly (MCA) ward office.
- (b) The scope of work is as stipulated in the tender document.
- (c) The Contractor shall undertake the works and carry out its obligations to the highest standards.

Initials CR PM

- (d) The Contractor shall at all times act in good faith and in the best interest of the client and shall in all matters arising in connection with the undertaking of the works, support and safeguard such interests.

2. SCOPE OF WORK

- (a) The Contractor shall provide the services specified in the tender document tender No.882612-2020/2021 which document is an integral part of this contract.
- (b) The Contractor confirms to have carefully read, fully understood and agreed to comply with the provisions set forth in the specifications provided.
- (c) Notwithstanding the provisions of clause 2(a), this contract supersede those of the documents mentioned above in case of conflict.

**PROPOSED CONSTRUCTION OF MEMBER OF COUNTY ASSEMBLY (MCA)
WARD OFFICES-
NEGOTIATION NUMBER 882612-2020/2021**

Article (1)

The above stated guide shall constitute an integral part of this Contract.

Article (2)

Both parties shall fully comply with the terms and conditions provided for in the laws regulating the contract for the construction of MCA ward office within the Republic of Kenya, including definitions, provisions, limitations, exclusions, terms, conditions, duties and obligations.

Article (3)

The construction works as per specifications consistent to the terms and conditions and rates stipulated by this Contract, and any annexure attached thereto that are an integral and complementary part hereof.

Article (4)

The Contractor undertakes that all the construction works offered will be as per the required standards and will conform to the terms of this contract.

3. TERM OF CONTRACT, SUPERVISION, AND REPORTING

Initials.....*CN*.....*R.M.*.....

- 3.1 The services to be provided under this Contract shall commence on the 11th day of October 2021 and shall be concluded no later than the 10th Day of December 2021.
- 3.2 The Contractor is engaged by the client to undertake the works as detailed in the Terms and conditions of engagement.
- 3.3 The Contractor shall report to the Clerk for this contract, in the manner and form specified by the client, and upon the reasonable request of the Client.
- 3.4 The Contractor shall neither seek nor accept instructions from any authority external to the Client in connection with the tender under this Contract. The Contractor shall refrain from any action which may adversely affect the Client and shall fulfill the commitments with the fullest regard to the interests of the Client.
- 3.5 In case of any impediment which may result in the Contractor not abiding to the timeline and conditions set forth under this Contract, the Contractor shall immediately notify the Clerk; such notification shall not release the Contractor from fulfilling the obligations under the Contract. The Client may, at its discretion, accept deviations from the timetables and conditions without prejudice to any other rights and remedies set forth herein.

4. PAYMENT

- 4.1 The Contractor shall be paid for the works undertaken in accordance with the standards detailed in the Terms of Reference and in accordance with the timelines set forth by the Clerk.
- 4.2 The Client shall pay the Contractor the amount of 3,169,676.80/= payable by bank transfer upon certification by the Clerk that the Contractor has furnished the Client with a performance security and upon the issuance to the Contractor of a certificate of completion by the Client. This amount is established based on the understanding that it constitutes the entire Contractor's cost and profit as well as any tax obligation that may be imposed on the Contractor.
- 4.3 The Client shall pay the Contractor not later than sixty (60) days after the submission of an invoice by the Contractor and upon the issuance of an inspection and acceptance report by the relevant committee appointed by the Client.
- 4.4 The Contractors shall be responsible for the payment of applicable taxes, charges, or other levies, with respect to compensation or other payments it receives from the

Initials.....CN.....R.M.....

Client under this Contract. The Client shall not be responsible for any additional or ancillary expenses.

5. GENERAL STANDARDS OF PERFORMANCE

5.1 The Contractor shall respect and abide by all laws, ordinances, rules and regulations, whether local or international in nature, bearing upon the performance of the obligations under this Contract.

5.2 The Contractor shall keep the Coordinator informed of all material developments for the duration of the contract.

5.3 Time shall be of the essence in delivery of this contract.

6. CONFIDENTIALITY

6.1 The Contractor, its employees or sub-contractors, shall not use any information acquired or developed in the course of this Contract for any purpose not authorized in writing by the Client.

6.2 The Contractor shall exercise utmost discretion during the performance of the Contract. The Contractor may not communicate to any other person, government, or authority external to the Client any information known to it by reason of its contractual relationship with the Client which has not previously been made public, except with the written authorization of the Client nor shall the Contractor at any time use such information for private advantage.

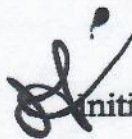
6.3 The Contractor shall be liable for any breach of confidentiality or any indirect disclosure that could vitiate the interests of the Assembly. The extent of any such liability shall be directly proportional to the extent of the damage caused.

7. INDEPENDENT CONTRACTOR AND LEGAL STATUS

7.1 Nothing contained herein shall be construed as establishing or creating between the Client and the Contractor the relationship of employer and employee or principal and agent. The Client agrees that the position of the Contractor is that of an independent Contractor.

8. INDEMNIFICATION

8.1 The Contractor shall indemnify, protect and defend at the Contractor's own expense, the Client and its agents and employees, from and against any and all actions, claims, losses or damages directly arising out of acts or omissions of the

 initials.....C.N.....R.M.....

Contractor or its employees, officers, agents, sub contractors, or persons similarly situated in and relating to the performance of this contract, including, but not limited to, any violation by the Contractor of any legal provisions, or any rights of third parties, in respect of literary property rights, copyrights or patents.

8.2 The obligations under this clause do not lapse upon termination of this Contract.

9. APPOINTMENT OF AGENTS SUBCONTRACTING AND ASSIGNMENT


9.1 In the event the Contractor requires the services of sub-Providers, the Contractor shall inform the client in advance, who may exercise the right and discretion to reasonably object to the hiring of any particular sub-providers. In all instances, the Contractor shall be responsible for the professional and technical competence of such sub-providers, their employees and/or agents.

9.2 In no event shall the Contractor insert any language in any sub-contract asserting or implying a direct relationship between the Client and the said agents. In any event, the terms of any sub-contract shall be subject to this Contract.

9.3 The Contractor shall not assign, transfer, pledge, or make other disposition of this Contract or any part thereof, or any of the Assembly's rights, claims or obligations under this Contract except with the prior written consent of the Clerk.

10. TERMINATION

10.1 If the Contractor ceases to practice the relevant profession or carry out business wholly or for a large part; does not comply with any conditions of the Contract; submits false, materially inaccurate, or incomplete information; is found to have been negligent in the discharge of the professional duties by either a professional association that its employees are members of or by a court of law; offers incentives, inducements, or other benefit to any of the Client employees; does not deliver or delivers unsatisfactorily services; applies for a moratorium or applies to be declared insolvent; is granted a moratorium or declared insolvent; or if the property of the Contractor is attached, the Client has the right to give notice of termination of Contract immediately without notice of default.

 Initials..... CN RM

10.2 The Contractor shall immediately inform the Client of the occurrence of any of the above events.

- (a) If any of the circumstances in clause 10.1 arise, the Contractor shall be deemed to be in breach of this Contract as a consequence.
- (b) The Contractor shall be bound to compensate the Client for all damage, costs, and loss of interest as a result of a situation as mentioned in clause 10.1 as a result of premature termination of the Contract, even in the event that a moratorium is granted or the Contractor is declared insolvent.
- (c) Damages shall include any costs incurred by the Client as a result of the premature termination of the Contract.
- (d) The conditions in paragraphs (a), (b), and (c) of this clause do not exclude the right of the Client to exercise other legal rights, including its right to impose liquidated damages, demand payment or compensation for damages, or for cancellation of the Contract.

10.3 Either party may terminate this Contract at any time by giving the other Party thirty (30) days' written notice in accordance with Clause 13 "Notices", unless otherwise permitted under this clause. In the event of a breach of the Contract on the part of the Contractor or failure to comply with any of the timelines or conditions set forth in this Contract; the Client retains the right to terminate the Contract effective immediately upon giving a written notice.

10.4 Nothing in this Clause shall be construed to exclude the right of the Client to exercise other legal rights and remedies available to it as set forth herein. In the event the Contract is terminated by the Client, the Contractor shall be entitled to a pro-rata payment for any works undertaken prior to such termination that has been accepted by the Client pursuant to Clause 4 - "Payments".

11. SETTLEMENT OF DISPUTES

11.1 Except as otherwise provided in the Contract, any dispute between the Client and the Contractor concerning the interpretation and performance of this Contract shall be settled in the first instance by negotiation between the Parties.

11.2 If after thirty (30) days from the commencement of such negotiations, the parties are unable to amicably resolve the dispute, either party may require that the dispute to be referred to a single arbitrator mutually agreed on between the parties.

Initials.....*C.N.*.....*R.M.*.....

11.3 Where the parties are unable to agree on an arbitrator within fourteen (14) of the notification of the dispute, either party may request the Kenyan branch of the Chartered Institute of Arbitrators to appoint an arbitrator.

11.4 The decision of the arbitrator shall be final and binding on both parties. The fees and expenses of the Arbitrator shall be borne by the parties in equal shares.

11.5 Any award rendered in accordance with paragraph (11.4) above shall be final and binding on the Parties.

12. LAW GOVERNING THE CONTRACT

12.1 This Contract is governed by the laws of Kenya and shall be applied and observed by the Parties in utmost good faith.

12.2 Questions concerning matters governed by it, its meaning and interpretation, which are not expressly stated in it, are to be settled in conformity with the general principles on which it is based.

13. NOTICES AND AMENDMENTS

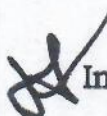
131 Any notice, request, or consent made pursuant to this Contract shall be in writing and shall be deemed to have been made when delivered in person to an authorized representative of the Party to whom the communication is addressed, or when sent by registered mail, electronic mail or facsimile to such Party.

132 Any modifications or amendments to this Contract shall be made by mutual agreement of the Parties. All such modifications or amendments shall be in writing signed by the Parties. For the Assembly, the Clerk or a designee shall have the authority to agree to modifications.

14. PRIVILEGES AND IMMUNITIES

14.1 Nothing contained in the Contract or any course of dealing between the Parties shall be deemed a waiver, express or implied, of any privilege or immunity that the Client may enjoy as a Constitutional institution.

14.2 Nothing contained in the Contract or relating hereto shall confer any privilege or immunity on the Contractor or its officers, employees, agents, sub-providers, or other persons similarly situated.

 Initials..... C.N..... R.M.....

15. NON-WAIVER OF RIGHTS

Failure of, or delay by, the Client in the exercise of any rights or remedies provided by the Contract shall not be deemed a waiver of any rights of the Client, and shall not release the Contractor from fulfilling its obligations.

16. FORCE MAJEURE

16.1 Failure of a party to fulfill any of its obligations hereunder as a result of an event of force majeure arising after the date of signature of the contract shall not be considered a breach of or default under this contract.

16.2 A party affected by an event of force majeure shall notify as soon as practical the other party of occurrence of such event and afterwards of restoration of normal conditions.

16.3 Upon notification of occurrence of an event of force majeure by the affected party, the performance of the services shall be considered suspended until the notification of restoration of normal conditions or if the achievement of the objectives of the contract is no longer possible at all or not to a satisfactory degree, until the party's decision to terminate the contract.

17. ADVERTISING

17.1 Unless authorized in writing by the Assembly, the Contractor shall not advertise or otherwise make public the fact that it is undertaking the works for the Assembly. The Contractor shall not use the name, emblem, or official seal of the Client for advertising or for any other promotional purpose.

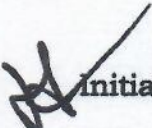
17.2 Notwithstanding the foregoing, the Contractor may make reference to their activities under this Contract in a curriculum-vitae, resume, or document of a similar nature.

18. RENEWAL

The Contractor acknowledges and understands that this Contract carries no expectation or entitlement to renewal.

19. ENTIRE CONTRACT

19.1 This contract including the Terms of Reference contains the entire agreement and understanding of the Parties hereto. It may not be changed orally but only by agreement in writing with the mutual consent of both Parties in accordance with Clause 13 "Notices and Amendments".

 initials..... C.N..... B.M.....

19.2 Except as elsewhere provided in this agreement, there is no other contemporaneous understanding or agreement, oral or written, between the Parties on said subject matter, and neither Party shall be bound by any statement or representation not contained or incorporated herein.

IN WITNESS WHEREOF the parties have hereunder duly executed this Agreement on the dates indicated hereunder.

Sealed with the Common Seal of:

The County Assembly Service Board of Machakos

FELIX G. MBIUKI
Clerk, County of the Assembly

[Handwritten signature]

In the presence of:
HILARY MUTHUI
Head, Legal and Library Services

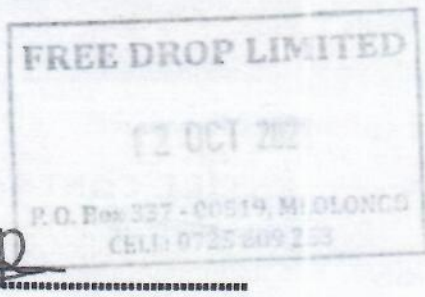
[Handwritten signature]

Signed for and behalf of:
FREE DROP LIMITED.

NAME CHRISPIN NDUWA FOR DIRECTOR
POSITION ADMIN AND PROTECT MANAGER

[Handwritten signature]

In the presence of:
NAME RHODA MWENDE
POSITION PROCUREMENT MANAGER



Initials CN R.M.

REPUBLIC OF KENYA
COUNTY GOVERNMENT OF MACHAKOS
COUNTY ASSEMBLY OF MACHAKOS



County Hall
Along Mwatu wa Ngoma Rd
P O Box 1168-90100
MACHAKOS - KENYA



Email: assemblymks@gmail.com

**MINUTES OF THE 36TH MEETING OF COUNTY ASSEMBLY SERVICE BOARD IN
THE THIRD ASSEMBLY HELD ON 7TH NOVEMBER, 2023 AT 12:00PM IN THE
SPEAKER'S BOARD ROOM.**

PRESENT

Hon. Anne Kiusya	Chairperson
Hon. Felix Ngui	Member
Hon. Johana Munyao	Member
Hon. Janet Mutua	Member
Hon. Alex Kitili	Member
Mr. Joseph Mutisya	Secretary

INATTENDANCE

Ms. Carolyne Mutuku	Taking minutes
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CERTIFIED TRUE COPY
OF THE ORIGINAL

EXTRACT

a. Response to the show cause letter by the Head of Supply Chain Management.

The Board recalled that it had raised some procurement issues with regard to the procurement of a third-party insurance, CASA games uniform and management of ward offices contract in the previous meeting which the Secretary undertook to respond to in the day's meeting.

The Board in that regard sought for an explanation of the following issues:

- i. Procurement of a third-party insurance
- ii. Delay in procurement of CASA uniform
- iii. Inaction causing delay in the completion of projects for the construction n of ward offices at the inconvenience of members of the Assembly

The Secretary was called upon to give an explanation on the issues raised by the Board and which the Head of supply Chain had responded to vide a response to a show cause presented before the Board. On the issues raised, the Secretary took responsibility of procurement of a third-party insurance cover, delay in procurement of CASA uniform which had been occasioned by a delay in the approval of the budget and failure to extent various ward offices contracts.

Concerns by the Board:

1. Which other commitments, financial and otherwise the Secretary could have committed the Board and failed to report which could have committed the Assembly exposing it to high risk.
2. Why the information on the delayed budget was being relayed at the time of the meeting but no report had been presented early to indicate any challenges.
3. What corrective measures in the opinion of the Secretary could be applied to correct the already incurred inconveniences.

Responses by the Secretary:

1. As to which other commitments, financial and otherwise that the Secretary could have committed the Board and failed to report thus exposing the Assembly to high risk the Secretary informed the Board that he had not made any other commitment.
2. As to why the information on the delayed budget was being relayed at the time of the meeting but no report had been presented early to indicate any challenges the Secretary informed the Board that the same was an oversight.
3. As to what corrective measures in the opinion of the Secretary could be applied to correct the already incurred inconveniences the Secretary committed that such delays and inconveniences would not happen in future. For the ward offices contracts the Secretary undertook to review all of the expired contracts and present a report by the end of the month.

OBSERVATION

The Board observed that the Head of Supply Chain had exculpated herself and gave evidence on all matters sought therefore her exculpation meant that the responsibility on the issues raised rested with the Secretary who is the Assembly's accounting officer.



Resolution

Following deliberations, the Board directed the Secretary to ensure adherence to timelines guided by the law and reiterated that such inconvenience will not be entertained.

**CERTIFIED TRUE COPY
OF THE ORIGINAL**





 Westland's Road, Madonna House (Annex), 3rd floor, suite A305, westlands.
 P.O BOX 9886-00200, Nairobi, Kenya.
 0725609263
 Info@freedropinteriors.co.ke

TO THE DIRECTOR GENERAL PPRA,
 MINISTRY OF FINANCE AND PLANNING.
 ATTN: COMPLAINTS DEPARTMENT.
 DATE:th September 2023

Our Ref.

1.NEGOTIATION NO 882612-2020/2021- NDALANI WARD OFFICE CONSTRUCTION OF MCA OFFICE- CERTIFICATE 11 PAYMENT.

2.NEGOTIATION NO882607-2020/2021- KIVAA WARD OFFICE CONSTRUCTION OF MCA OFFICE- CERTIFICATE 11 PAYMENT

Dear Sir,

RE: COMPLAINTS LAUNCH AGAINST COUNTY ASSEMBLY OF MACHAKOS.

We are writing to seek your intervention on the below matter,

We were awarded contracts by the above-named government entity as per the attached signed contract documents.

The institution appointed a project manager who supervised the jobs on their behalf and upon completion and execution of all the lines of the BOQ, the projects were inspected accordingly and we were issued with completion certificates on 19 April 2023 as attached. We proceeded to invoice the Assembly on the 26th April, 2023 as attached.

We were given a date in April, 2023 to inspect same jobs jointly with the CIT team who raised concerns about some issues, namely, connection of the offices to the soak pit (EXTERNAL TOILET), works which we did not form part of the BOQ. When we asked, we were informed all the other contractors did the same and hence we should go ahead and do the works if in deed we wanted to be paid.

We wrote back to the Assembly as per the attached letter on the 5/6/2023 requesting clarification on the issue and if we could be issued with formal instructions for the works, the letter was received and responded on 10th July 2023 and a request to attend a meeting on the following day which we did.

Their stand was same that the building is nonfunctional without the connection but no clarification was given on the source of funding.

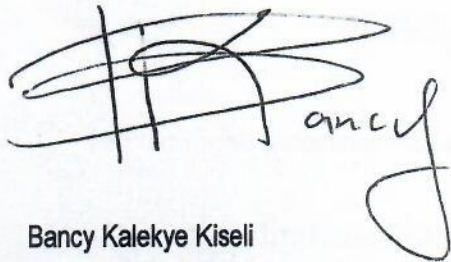
A Further response was written to us on 20 July 2023, requesting for the copy of instructions to spend Contingency funds. We responded attaching all the documents, they requested on 26 July 2023. The response is hereby attached. Since then, no communication has been done to us about the same. The assembly Finance department when we follow our payment refers us to the CIT committee and the cycle repeats itself.

Our payment has been ignored; we have never received any formal instructions or complains either from the institution procurement department or from the CIT about any works in the BOQ not done, on the other hand, we are paying a Facility that we took to facilitate this job and being charged very high interest rates by the bank every day.

We are seeking your intervention into this matter.

Thank you.

Yours Faithfully,

A handwritten signature in black ink, appearing to read 'Bancy', with a large, stylized flourish extending downwards and to the right.

Bancy Kalekye Kiseli

Ceo Free Drop Limited

FREE DROP LIMITED
P.O.Box 9886 - 00200,
NAIROBI
CELL: 0725 609 263

REPUBLIC OF KENYA
COUNTY GOVERNMENT OF MACHAKOS
COUNTY ASSEMBLY OF MACHAKOS



County Hall
Along Mwatwangoma Rd
P.O Box 1168 - 90100
MACHAKOS - KENYA

HON. SPEAKER
07 NOV 2023
MACHAKOS COUNTY ASSEMBLY
P. O. Box 1168-90100, MACHAKOS



Email: assemblymks@gmail.com

Telephone: 044 2020212

Website: www.machakosassembly.com

5/11/2023

Dear Madam Speaker,

RE: AIR TICKET TO UK, KSH. 413,890.

I write to bring to your attention the above subject matter which arose from our international trip to the UK.

The Assembly procured tickets at a cost of ksh. 413,890 which was way above the Ksh. 132,000 paid privately by a Member, Hon. Grace Bahati to the same destination.

Our prayer is that this issue is looked into and correct amount charged. Our ticket is 312% of the amount paid by a Member for a direct flight. The amounts paid for us are unrealistic and against the principles of fair procurement.

Signed:

1. Paul Wambua

2. Daniel Kivuva

3. Boniface Maeke

4. Francis Ngunga

5. Douglas Musyoka

6. Eric Wambua

[Handwritten signatures and IDs]
..... ID 22131709
..... ID 10574227
..... ID 714518
..... ID 25958913

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



County Hall
Along Mwatwa wa Ngoma Rd,
P O Box 1168 – 90100,
MACHAKOS – KENYA.



Email: assemblymks@gmail.com

'COPY'

REF:MKSCA/PRO/CMM/APP/VOL.6/047

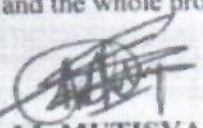
DATE: 29th August, 2023

Mr. Justus Musuma	-Chairperson
Ms. Salome Kioko	-Secretary
Mr. Dominic Musyoka	-Member
Mr. Erick Mwenda	-Member

RE: INSPECTION AND ACCEPTANCE COMMITTEE

Pursuant to Section 48 (1) of the Public Procurement and Disposal Act (2015), you have been appointed to the inspection and acceptance committee for Construction of County Assembly modern chamber- Contract no.751979-2019/2020

You are required to be guided by Section 48 (3&4) of the Public Procurement and Assets Disposal Act, 2015 as read with Regulation 35 (5&6) of the Public Procurement and Assets Disposal Regulations, 2020 and the whole procurement Act and regulations as you perform your duties



**J.L. MUTISYA
CLERK OF THE COUNTY ASSEMBLY**

Our Ref: SDS: MKSCA/04/23



Date: 18th August 2023

The Clerk,
Machakos County Assembly,
P.O. BOX 1168-90100,
Machakos.

Dear Sir,

Ref: PROPOSED DESIGN FOR A MODERN CHAMBER FOR MACHAKOS COUNTY ASSEMBLY TENDER NO. MKSCA/RFP/01/2016-2017 REQUEST FOR EXTENSION OF TIME NO. 4

We are in receipt of the Main contractor's request for extension of time vide their letter REF: ACL/CAM/SDS/2023/25/10-8 dated 10th August 2023. We have reviewed the request for extension and have outlined our recommendation here in.

We also make reference to our letter REF: SDS: MKSCA/01/23 dated 14th April 2023 seeking extension of the contract from 19th Dec to 19th June 2024. It is important to note that the progress of works on site has remained unchanged since December 2022 when the works stalled.

Our assessment is that the remaining work can be comfortably completed within 6 months. The pending works include; The Gate house and Generator house, Civil works, internal & External finishes, Mechanical and electrical service works and fittings including the lift, Generator and Air handling units.

In conclusion we recommend that the client extend the contract by 34 weeks to cover the period between December 19th 2022 to date and a further 36 weeks to ensure practical completion of the project. In total we are seeking a 70-week extension from 19th December 2022 to 18th February 2024.

As you consider this, we advise that you regularize the contract by way of an addendum as soon as possible to enable the MC to provide extended insurances and performance bond as well as generate an updated work program based on the new timelines.

Yours sincerely,

[Signature]
P.J. Kudich

Scope Design Systems Limited

Cell: All Consultants

Main Contractor – Ms. Amber Construction Ltd

All Sub-Contractors

Illegal
Consolidate the two letters on extension and merge in an addendum and merge of time missing clause on extension/accidents in date

Our Ref: SDS: MKSCA/05/23
Date: 21st August 2023

The Clerk
Machakos County Assembly
P.O. BOX 1168-90100
Machakos

SP Agreement
DI legal
Consolidate the two letters of extension and prepare an addendum to the existing clause 3 on term of agreement of liability defects liability period.
BBB/BBB

Dear Sir,

Ref: PROPOSED DESIGN FOR A MODERN CHAMBER FOR MACHAKOS COUNTY ASSEMBLY TENDER NO. MKSCA/RFP/01/2016-2017 EXTENSION OF CONSULTANCY CONTRACT NO. 02

Refer to the above subject matter. As you are aware through the site meeting minutes, project reports and our contract document, the project contract period ends in June 6th of 2022.

Reference is also made to our letter REF: SDS: MKSCA/04/23 dated 18th August, 2023. Therein we responded to the Main Contractors request for extension of time on their contract and granted them 70 weeks from 19th December 2022.

This pushed forward the completion date of the project to 18th February 2024.

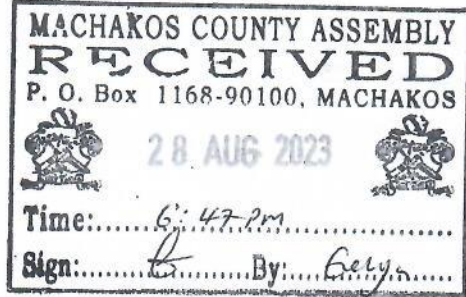
In view of the above, we hereby request an extension of the consultancy contract from 19th December 2022 to 19th August 2024. This will allow us to conduct our duties contractually and cover the period of construction up to completion and 6 months of defects liability after handing over of the project.

Please note that the extension of time and contract will attract additional costs which will be pro-rated in line with the current contract.

Yours faithfully,

P.J. Kuriah

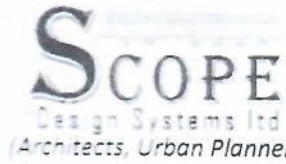
P.J. Kuriah
Scope Design Systems



Done
BBB/BBB
29/8/23

N/B - NO additional cost
BBB/BBB

Annex 40



Off Ngong Road, Nicholson Drive
P.O. Box 10591-00100, Nairobi Tel : 020-2186551. Mobile 0720-012418
Email: info@scoodesigns.co.ke. scoopedesignsvsystems@gmail.com.

(Architects, Urban Planners & Interior Design Consultants)

Our Ref: SDS: MKSCA/08/23
Date: 11th September 2023

The Clerk
Machakos County Assembly
P.O. BOX 1168-90100
Machakos.



Dear Sir,

Ref: PROPOSED DESIGN FOR A MODERN CHAMBER FOR MACHAKOS COUNTY ASSEMBLY TENDER NO. MKSCA/RFP/01/2016-2017 CONTRACT ADDENDUM NO.3

We have received the Addendum No.3 for the above contract that was initially signed on 18th October 2017, as the Principal Agreement, and which has had to be extended to 18th February 2024 to allow for execution of the works to completion and handover.

Under item 3 of the Terms of Agreement in the Principal Contract the period is outlined to be 2 years and six months to end on 18th April 2020, though the contract has had to be extended by 82 weeks so far to allow for completion of works.

The consultants have continued to provide the necessary project management, and contract administration services throughout the life of the contract.

The addendum No.3 has introduced a clause item 3 "that the extension of contract period as contained in this Addendum is a no-cost extension".

We wish to bring to your attention that the extended contract period has led to an increase in project supervision costs beyond what was envisaged by the parties at the start of the project. This has been occasioned by factors beyond the control of both parties.

In this regard we shall be submitting a request for compensation of costs for supervision of works for the extended period for your consideration.

Attached please find the 3 copies of the executed draft for your action.

Yours faithfully,

P.J. Kuriah
Scope Design Systems Ltd

Illegal
Do a reply
letter to Scope



REPUBLIC OF KENYA
COUNTY GOVERNMENT OF MACHAKOS
COUNTY ASSEMBLY OF MACHAKOS



Annex 41

County Hall
 Along Mwatu wa Ngoma Rd
 P O Box 1168 – 90100
 MACHAKOS – KENYA
 Third Assembly

Email: assemblymks@gmail.com
info@machakosassembly.com

OFFICE OF THE CLERK

In the Matter of Consideration of the Machakos County Annual Development Plan (ADP) 2024/2025

PUBLIC HEARINGS/ RECEIPT OF MEMORANDA FOR THE MACHAKOS COUNTY ANNUAL DEVELOPMENT PLAN (ADP) 2024/2025

Pursuant to Article 220(2) of The Constitution of Kenya, Sections 126 and 207 of The Public Finance Management Act, 2012, Sections 94 & 95 of the County Governments Act, 2012 and the Machakos County Public Participation Act, 2014, the Sectoral Committee on Trade and Industrialization invites members of the public and stakeholders to submit their recommendations on the Machakos County Annual Development Plan (ADP) 2024/25. The recommendations shall be submitted in the following manner:-

- Public hearings which shall be held on the dates, venues and time as indicated below; or
- Written memoranda which may be forwarded to the Clerk of the County Assembly, P.O Box 1168-90100, Machakos or hand delivered to the office of the Clerk, County Assembly Buildings at the County Hall Along Mwatu Wa Ngoma Road or email to info@machakosassembly.go.ke to be delivered on or before 13th November, 2023.

DATE	SUB-COUNTY	VENUE	TIME
09.11.2023	MASINGA	KIKULE MARKET	10.00AM
09.11.2023	YATTA	AIC NDALANI	10.00AM
09.11.2023	MWALA	TUMAINI SOCIAL HALL	10.00AM
09.11.2023	MACHAKOS	MACHAKOS SOCIAL HALL	10.00AM
10.11.2023	MATUNGULU	TALA- KITHIMANI (MATUNGULU WEST)	10.00AM
10.11.2023	KANGUNDO	MUISUNI COFFEE FACTORY	10.00AM
10.11.2023	KATHIANI	MITABONI PRIMARY SCHOOL SOCIAL HALL	10.00AM
10.11.2023	MAVOKO	KYUMVI CHIEF'S CAMP	10.00AM

- The Machakos County Annual Development Plan (ADP) 2024/2025 can be downloaded from the Assembly website www.machakosassembly.go.ke.

J. L. MUTISYA
 CLERK OF COUNTY ASSEMBLY



NOTICES

Machakos County ADP 2024-2025

County Fiscal Strategy Paper - 2023

Machakos County CIDP Plan 2023-2027

MORE NOTICES

ARTICLES



Dispensing of free treated water to members of the militia

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Machakos County ADP 2024-2025

November 6, 2023 by localhost

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REPUBLIC OF KENYA
COUNTY GOVERNMENT OF MACHAKOS
COUNTY ASSEMBLY OF MACHAKOS



County Hall
Along Mwatu wa Ngoma Rd
P O Box 1168-90100
MACHAKOS - KENYA



Email:

MINUTES OF THE 21ST MEETING OF COUNTY ASSEMBLY SERVICE BOARD IN THE

THIRD ASSEMBLY HELD ON 29TH MAY, 2023 AT 10:00AM IN THE SPEAKER'S BOARD

ROOM.

PRESENT

Hon. Anne Kiusya	Chairperson
Hon. Felix Ngui	Member
Hon. Johana Munyao	Member
Hon. Alex Kitili	Member
Hon. Janet Mutua	Member
Mr. Joseph Mutisya	Secretary

INATTENDANCE

Arch. P.J Kuria	Scope Consultants
Architect Evans Mugo	Scope Consultants
Architect Moses Okemwa	Amber Consultants
Qs Joel Mumo	Amber Consultants
Mr. Hillary Muthui	Chairperson, CIT Committee
Ms. Monicah Musyoka	Member, CIT
Ms. Stellamaris Wambua	Member, CIT

opportunity to interact with them although the Secretary had informed Board that the previous Board had engaged Scope consultants Ltd as project managers for the chamber project.

The Chairperson informed Scope Consultants that the Board was concerned about the desertion of the site by the contractor and for this reason sought to understand the reasons why the project had stalled yet there was sufficient budget and a project manager to supervise and advise the Board.

The Chairperson at this point asked Scope consultants to address the Board on three items namely: the status of the project, challenges facing the project if any and a proposed way forward. The Chairperson reiterated that the deliberations are held in an open and objective manner.

Remarks by Scope Consultants

Called upon to address the Board, Architect Kuria presented the following report:

1.0 INTRODUCTION

1.1 The History

The Historic promulgation of the new constitution for the republic of Kenya, created among others provisions, the Counties and County Government which comprise of 2 arms of government. The executive is led by the Governor while the legislation is constituted as a County Assembly representing the wards in the County. The County governments are represented at the national level by Senators.

Following the General Elections held in March 2013, the County governments are in place and operational but the existing infrastructure (offices, chambers) require to be remodeled and reorganized to suit the operations and status of the County Assembly.

1.2 Project Background

Machakos County is one of the counties in Kenya, with its capital as Machakos Town. It is the largest town in Machakos and also Kenya's first administrative headquarter. The county has a population of 1,422,000 as of 2019.

Ms. Carolyn Mutuku

Taking minutes

MIN NO. 179/3RD ASB/2023: PRAYER

The Assembly prayer was said to start the meeting at 10:00am.

MIN NO. 180/3RD ASB/2023: ADOPTION OF AGENDA

The agenda of the meeting was adopted for discussion after being proposed by Hon. Johanna Munyao and seconded by Hon. Felix Ngui.

MIN NO. 181/3RD ASB/2023: COMMUNICATION FROM THE CHAIRPERSON

The Chairperson called the meeting to order at 10:00am and welcomed members to the day's meeting. She recalled that the chamber project had stalled and the Board was yet to receive a substantive report on the status. The Chairperson recalled that the Board, in its previous meeting directed that all stakeholders be invited for a meeting with the Board for deliberations on the way forward.

At this point the Chairperson welcomed members once more to the meeting and informed them that the stakeholders were already at the waiting bay ready to present their reports to the Board. She asked that the deliberations be held in an open and objective manner for the purpose of serving the Assembly and the public at large as the agenda involves public funds which ought to be managed in a prudent transparent manner as provided for by the Principles of Public Finance and Management set out in the Constitution of Kenya, 2010.

MIN NO. 182/3RD ASB/2023: INTERACTIONS BETWEEN THE BOARD AND SCOPE CONSULTANTS

Remarks from the Chairperson

The Chairperson welcomed Scope consultants (Arc. Kuria and Eng. Evans Mugo) to the meeting and informed them that the current Board took office in September, 2022 but since then it had not had an

opportunity to interact with them although the Secretary had informed Board that the previous Board had engaged Scope consultants Ltd as project managers for the chamber project.

The Chairperson informed Scope Consultants that the Board was concerned about the desertion of the site by the contractor and for this reason sought to understand the reasons why the project had stalled yet there was sufficient budget and a project manager to supervise and advise the Board.

The Chairperson at this point asked Scope consultants to address the Board on three items namely: the status of the project, challenges facing the project if any and a proposed way forward. The Chairperson reiterated that the deliberations are held in an open and objective manner.

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1.2 Project Background

Machakos County is one of the counties in Kenya, with its capital as Machakos Town. It is the largest town in Machakos and also Kenya's first administrative headquarter. The county has a population of 1,422,000 as of 2019.

Machakos County has a total of 59 MCAs both elected and nominated. With the increase in the number of elected and nominated Honorable members, there has arisen need to make provision for a modern (interior and exterior) design for the new county assembly complex.

The County assembly of Machakos Intended to develop a modern debating chamber and settled for a design competition that was facilitated by BORAQS in December of 2016.

Three Bidders submitted their proposals and upon review of both the technical and financial submissions Ms Scope Design Systems emerged the winner of the competition.

In light of this Machakos County Assembly was able to contract SDS Consortium in 21st July, 2017.

The design was detailed and tender documents prepared.

2.0 DESIGN BRIEF

2.1 Terms of Reference

The terms of reference were to develop a debating chamber within the county assembly compound in Machakos town, Machakos County.

A concept for the proposed project which reflects a place of excellence as it is implemented, as it develops and as it ages. In addition, the scheme should possess a unique architectural character where aesthetics and modernity are an integral and vital component of the development.

Requirements include;

- a. A building befitting the stature of the County Assembly.
- b. A building that can pass the test of times and share the architectural language with the existing buildings.
- c. A building that is highly aesthetic and of the best standards possible.

The scheme was to illustrate the potential for meeting the client's brief, of a status symbol, economy and environmentally friendly building; that will live the test of times.

2.2 Schedule of Accommodation

The building comprises the debating chamber, the public gallery, the speaker's gallery, the speaker's lounge, the Hansard bay and other support facilities.

The building should allow for appropriate and activity oriented spacing. Activities and sections related to each other should be accommodated in proximity and also in view of a possible extension of the Chambers. The facility is expected to have an estimated total area of 500 square metres.

2.3 Building Standards

This building being of an important symbolic standing shall be undertaken as an intelligent building in a medium-high standard, appropriate to accommodate the chambers and to present a monument of its own. It shall be of representative character, 'ageless' and highly aesthetic.

The spaces created should preferably be flexible to allow for the dynamic nature of the chamber's business and the changing technical requirements of usage.

Technical standards of the building should include all such facilities as air conditioning, ventilation, audio-visual systems and in case of multi floor system, provision of access for physically challenged. Additionally, the building should be designed environmentally friendly; if possible renewable energy sources should be incorporated and with the possibility to integrate solar power.

The facility should be equipped with a backup generator for constant power supply in case of power outages.

All entry points into the building should have appropriate security measures such as screening to ensure controlled access. Further, the building should provide for the following;

- a. Original, Innovative, and Creative Architecture
- b. Inspiring, Symbolic and Monumental
- c. Prestigious and Authoritative; Reflecting the stature of the County Assembly Chamber
- d. Aesthetically pleasing and Ageless
- e. Environmentally friendly and Sustainable
- f. Provide for Gardens and Ceremonial Access
- g. Promote African Traditional Architecture and use of Local Materials and Cultural Artifacts.

2.4 Landscaping

Part of the design for the development of the Chamber building is landscaping of the compound. All the areas should be included in the design. This includes sufficient parking

space for staff and visitors as well as space for special functions. Additionally, the site should allow for recreation and outdoor activities.

2.5 Designing for the VIP

As part of Chamber's activities, there are frequent visits of VIP's. In order to facilitate these kinds of visits, it is recommended that provision be made for a separate access to the building and the site. The Consultant should take into account that during these occasions, there are always lots of spectators along the roads. Security is an important issue during such visits and a smooth handling should be assured. Sensitive areas should be especially taken care of in order to assure the VIP's comfort, convenience and security.

2.6 The Site

Location - The site, belongs to the County Government of Machakos. It is situated in Machakos town and borders by Mwatu wa Ngoma Road to the West, Mjini Street to the South and Syokimau Road to the East.

Size - The site measures approximately 1200 sq.m i.e 30 by 40 metres including two structures proposed for demolition measuring approximately 212.16 sq.m and 91.6 sq.m .

Topography - The site is fairly flat, gently sloping towards the East.

Trees - There exists mature trees on site and the design will endeavor to preserve them.

Fence - The site is surrounded by a 2400mm high masonry wall.

Existing buildings - Buildings on site include the existing chamber building and offices. There is also a Cafeteria building and MCAs office building that shall be demolished to accommodate the new chambers building. There is also an ongoing construction of a new County Office Building.

Kenyan Specifications

As the building will be constructed in Kenya, the rules and regulations according to the Building Code 1969 edition, shall apply and it is within the scope of the Consultant to comply with these specifications.

Planning Regulations

The planning regulations of the County Government of Machakos shall apply and it is for the Consultant to obtain and inform themselves accordingly.

Equipment

The Chamber requires some specific equipment to operate its activities which will be procured under this project. For intended future extensions, there should be space allowed for the accommodation of additional technical equipment, and wiring i.e. concealed conduits for additional installations.

Furniture

The Consultant should assume that the chamber will need to be newly furnished under this project. It is assumed that the furnishing will be in accordance with the design and only in cases possible and indicated in detail, furniture from the present chamber in use might be transferred to the new chambers building.

3.0 PROPOSED SCHEDULE OF ACCOMMODATION FOR THE ASSMBLEY COMPLEX

- a. Gate and gate house
- b. Ceremonial drop-off point
- c. Reception/security desk
- d. County assembly chamber
- e. VIP Gallery
- f. Public gallery
- g. Members breakout lobby
- h. Waiting lobby
- i. Sergeant at arms niche
- j. Ladies washrooms(public & VIP)
- k. Gents washrooms(public & VIP)
- l. Assisted washrooms ladies
- m. Assisted washrooms gents
- n. 1no. lifts
- o. Equipment room
- p. Recording room
- q. Printing room
- r. Utility block (outdoor air-holding unit)
- s. Basement

4.0 DESIGN PROPOSAL, CONCEPT & CONSIDERATIONS

4.1 Access

The members of the public will access the building from the existing entry/gate which has an existing control point. The design proposes to provide an alternative access point for ease of traffics management. For VIP access, a separate gate is provided next to the ongoing county assembly offices building and a covered drop-off point has been provided.

The walkway from the ceremonial drop-off point for the VIPs up to the chamber, is covered.

4.2 Reception/Security

This is provided as the check point and a point to grant authority to access.

4.3The Chamber

Interior Design Overview

The chamber will be within the 3-storied building and is designed as a modern debating chamber for the Members of County Assembly (MCA's). The consultants have proposed to model the seating on the basis of horse-shoe concept. The design has accommodated 68 seating members whereby the levels have been varied by terracing the seats so as to ensure unobstructed view to the speaker's chair. The extra 8 seats will take care of an increase in the number of members in the future.

Speaker's Podium will be situated directly opposite the main entrance and it will have space for 3 executive seats i.e. the Speaker, the Governor, the Senator and several other stands on either extreme ends of the Podium for uses that will be determined in future. The Speaker's Podium will have a rear exit, a lavatory facility and a private lounge behind it.

The design has provision for a space for the Clerk of the County Assembly and his two assistants, in front of the Speaker's Podium, adjacent to the main entrance, ext to the dispatch table where the mace shall be placed. A space has been provided for the Sergeant at Arms at the entry area to the chamber.

The design has provision for 68 County Assembly Members sitting spaces, whereby 4 no. shall be reserved for wheelchair users. For each seat there should be modern communication delegate unit to facilitate debate in the Chambers, controlled by the Speaker.

A Hansard cubicle is provided, in soundproof glass and acoustic panels at the VIP Gallery level staff and also ICT equipment.

A Speaker's /VIP gallery with a sitting capacity of 48 guests is provided with a separate exit.

A Public Gallery is provided, with its separate staircase for access, separate from the VIP staircase.

Each of the workstation will be fitted with power and data outlets and a delegate unit, while air conditioning is integrated to provide for the comfort of the members. Provision will be made for workstation for the physically challenged. The design also incorporates an Electronic Voting System with privacy, to facilitate voting, inclusive of a display screen

The wall paneling will be designed in MDF panels on foam padding and there's an interplay of planes and double layering of panels so that acoustics can be enhanced and ensure there's minimum echo or reverberation.

The ceiling will be designed to have 2 levels whereby the central feature is lower and is to have suspended lights affixed to it, and shaped to match the floor seating arrangement suspended lights will be done to increase illumination.

The chamber will be served by the digital multimedia and will be connected to the Hansard recording room and sever room.

The Chamber will also be provided with gallery of the public and VIPs as well as cubicles for the Hansard and the press.

In order to offer convenience, and for ease of consultation, the Speaker's lounge and the Member's washrooms are located next to the Chamber but away from the main lobby.

The Chamber should conform to requirements of Occupation, Safety and Hazard Act 2007

Exterior Design Overview

On the exterior of the building the façade of the building will have sun shading devices which will be take care of direct sunlight into the building lessening heat gain inside the building.

On either side of the building openings have been provided for as well as an open stepped roof creating a stack effect that automatically cools the building during the hot sunny days

Big enough windows to allow for enough lighting into the building have been proposed.

All these are geared towards attaining the highest human comfort possible for the users of the building while at the same time providing an aesthetically appealing building that is environmentally friendly.

4.4 Provision for People with Disabilities

The Design Proposal has made provision for the physically challenged persons by providing a lift for the building and toilet for the disabled for male and female. These are located next to the toilets for the members.

The Proposal also provide for 1No. lifts to serve all the floors. This will cater for the elderly and the physically challenged. The seat layout for the Chamber will make provision for wheelchair users, providing only a top with microphone and space for the wheelchair.

4.5 Landscaping

The external environment will be redesigned by the landscape specialist who will guide on the plant materials, the formations and gazebos for outdoor seating.

4.6 PROJECTS INDEX

The statics for the project are meant to capture the basic data for the project as follows:

Area of the Chamber Building	- 500 m ²
No. of seats in the Debating Chamber	- 68
No. of seats in VIP Gallery	- 38
No. of seats Public gallery	- 84

4.7 ELECTRICAL & MECHANICAL ENGINEERING SERVICES REPORT

ELECTRICAL SERVICES

4.7.1 Power Supply

Power supply to the facility will be connected to the existing 3phase, which is adequate. Assessment of current power usage will be done to determine of a transformer is necessary.

4.7.2 Standby Generator

A standby generator will be provided to serve the building, taking into account future additions.

4.7.3 Lighting & Power Outlets

We propose to specify for wiring, accessories and lighting fittings in line with the internal finishes.

High quality brass accessories, dimmer switches and superior lighting fittings will be specified. The lighting system within offices and other working areas will be designed to provide an illuminance of 400 to 500 lux. The lighting in the chamber will be the suspended type to suit the triple volume space.

Self-contained battery operated emergency lighting units shall be provided in escape routes and lobbies to serve in the event of power failure from both the mains and the standby generator.

4.7.4 Power Distribution

Power distribution shall be by appropriately sized cables to take into account current carrying capacities and the associated voltage drops.

Heavy equipments such as Air Conditioning Units, and air-handling units shall be supplied by designated circuits.

Sensitive equipment shall be supplied through separate clean lines which are separately earthed and screened.

Consumer Units and distribution boards shall be provided at the various load centers taking into account circuits on mains and those on generator.

All distribution boards and consumer units shall have miniature circuits breakers of the correct overload protection and short circuit characteristics. The standard 13A-3pin socket outlets shall be installed for general purposes. The clean power outlets shall be mounted on trucking, floor boxes or in walls.

4.7.5 PABX

The team will assess the PABX proposed for the ongoing county offices building and ensure provision is done for the connection of the chamber.

4.7.6 CCTV & Access Control

The public areas, lobbies and passages will be fitted with CCTV surveillance system as well as the main access doors manned for controlled access.

We propose to have the CCTV systems as a modern high speed high resolution CCTV system with images of high clarity. The system should have generous storage space.

All main access doors and equipment room doors shall have a programmable access control system to ensure that it's only authorized personnel who have access to designated areas.

4.7.7 Fire alarm and detection system

An addressable fire alarm system comprising of smoke detectors, heat detectors, break glass points, sounders and beacon lights shall be provided.

4.7.8 Public Address System and Quorum Bell

A public address system comprising of microphones, speakers and the main sound control equipment will be provided. The bell will be done such that its electronics and it rings to the various parts of the building.

4.7.9 Structured Cabling

We propose to do a network of Cat 6 cabling and outlets. The digital recording racks will be housed in the same room with the network cabinet and the two systems are interfaced such that every works station can access the proceeding in the chamber. This means the chamber will be connected to the offices in the ongoing county offices building.

4.7.10 Recording

A new digital recording system will be installed instead of the analogue recording system. The digital system comprises of miniature cameras within the chambers which picks the proceedings in the chamber and relay it to the recording equipment through an optic fibre. The recording equipment is linked to the Hansard workstations where the recorded information can be converted into printed material.

4.7.11 Multimedia Systems

The systems to be considered under multimedia are audio visual multi lingual systems, electronic voting system, video conferencing system and teleconferencing equipment. This shall be done in close consultation with the client.

4.7.12 Passenger Lift

We proposed a 6-passenger lift, to improve access for both the old and people with disabilities

4.8 MECHANICAL ENGINEERING SERVICES

4.8.1 Plumbing, Drainage & Fire Fighting Installations

We propose to installations in line with the proposed status of the building. These shall include sanitary fittings, plumbing & drainage pipework, water storages tank, hose reel systems and portable firefighting systems.

We propose to do fire suppression system in some designated areas such as the recording room, Hansard room and the network server room.

The toilets will have flush valve which are appropriate in public buildings.

Since the area is served with a sewer line, proper connection will be made to take care of the project effluence.

4.8.2 Air Conditioning & Mechanical Ventilation

The chamber will be provided with air conditioning systems, ducted from outdoor air-handling units running on the underground crawlway.

4.8.3 Water Storage Tank

A water storage tank will be provided at the roof level with a pressurized system for the plumbing.

5.0 STATUS OF THE WORKS

The works commenced in June 9th 2020 with a completion date of 6th June 2022. The revised completion date was 19th December 2022.

The Main contractor has suspended the works since December 1st 2022 whereby the scope of works executed so far stand at 57%.

The following is an overview of the works as of 31st March 2023:

5.1 Preliminaries - 100%

- Site offices and stores - 100%
- Hoarding - 100%
- Demolition - 100%
- Temporary Power connection – 100%
- Temporary Water Connection - 100%

5.2 Chamber - 50%

A. Substructure: Excavation-100%, Raft foundation, RC retaining wall & Column bases – 100%,

B. Basement: Concrete Slab100%, Columns-100%, Staircase-100% Doors, Windows,

Finishes-0%

C. Ground Floor: Slab-100% Columns - 100%. walling- 100%, staircases- 95 %, Doors&windows-0%, Internal finishes -30%,External finishes -10%

D. First Floor: Form work, reinforcements- 100%, concrete slab- 100%, columns – 100%, walling- 100% doors& windows-0%, Internal finishes -35%,External finishes -10%

E. Roofing – Formwork- 100%, Reinforcement- 100%, Concrete Slab-100 % Water proofing-0% Steel Trusses-100% Roof cover -100% Parapet walling- 100% rainwater installations- 10%

F. Lift Shaft – Formwork, Reinforcement, Concreting @ Lift Pit(Basement)-100%, GF- 100%, FF-100% Finishes-0%

5.3 Ancillary Structures: Generator House & Gate House. -0%

- setting out of the gate house was done. Excavations, foundation walling, GF slab, walling/louvers, roof slab, electrical works, mechanical works – 0 %.

5.4 External Works-0%

- Road & Civil works, MHs/foul water drainage, storm water drainage, landscaping etc.- 0%

5.5 Electrical services - 20%

- Electrical Works, Structured cabling, Fire Alarm systems, Audio Visual Equipment, UPS equipment
- Points and conduits are being provided in the structure. - 50%

5.6 Lift installations, Generator installations – 0% Pending importation of the lift and procurement of the generator by the MC

5.7 Mechanical services - 10%

- Plumbing & drainage, Fire hose reel, portable fire extinguishers, HVAC installations points and conduits are being provided in the structure. - 50%

5.8 Furniture, Multimedia Installations & Artworks -0%

MC was guided to start procurement of the artworks for the project during the previous site meeting held on 13th July 2022.Still Pending.

6.0 PROBLEM STATEMENT

The progress of works on site has been affected by various factors outlined here below:

6.1 Approved Drawings

There has been a notable delay in securing approved drawings from the Machakos, County Government. The client was also advised to write to public works to benefit from exception of

the statutory fees for the approval of the project. This was done successfully and fees waved. The drawings were submitted, circulated and approvals done.

6.2 Design Changes

We received input from the state department of public works through communication forwarded by the client on the design and were able to make adjustments accordingly.

The substructure design was revised following input from the Geo-technical survey conducted before commencement of substructure works.

The client was desirous to use the crawl space below the chamber, as a functional basement. This resulted in an increase of the floor to ceiling heights for the space by the Project Architect. Adjustments have been made on the roof structure of the Chamber with introduction of steel trusses to carry the roof cover in lieu of a reinforced concrete roof structure.

The quantity surveyor was able to quantify all the design changes and the overall work done so far in the financial appraisal no. 2 which will be forwarded to the client for review and adoption.

6.3 Advance Payment to the Contractor

The issue of advance payment was resolved Through the Project Implementation Committee. The result was clear that no advance payment was to be made. The MC has however made a claim for the costs associated with obtaining the advance payment guarantee. These costs will be captured in the financial appraisal no. 2 along with the support documents.

6.4 Payment Certificates

The project has experienced considerable delay towards the payment of certified payments to the contractor. The current certificate no. 7 was issued on 10th May 2022 and is yet to be processed. We continue to encourage fast tracking of the payments to the MC to ensure smooth progress on site.

6.5 Power Line Rerouting

There is a power line cutting through the site at the junction of Syokimau Avenue and Mjini Road. Due to their proximity to the working area on site the Project manager advised the CL to consult with Kenya Power to have the lines rerouted off the site. The Client received a quotation from KPLC and shared the same with the PM. An instruction was later issued to the contractor to make the payments for the work to commence. This has affected the pace of works at the roof slab level with the MC exercising extreme caution around the affected area. The Contractor has since settled the amount and is making follow up on the matter. To date, Kenya Power have not rerouted the affected power lines and this remains an area of concern that may cause delays towards the overall completion of the project.

6.6 Service Items Importation

The project Sub-contractors have experienced a challenge in sourcing of service items especially on ICT. This has been occasioned by the changing market trends and even more so due to the disruption caused by Covid 19 Pandemic.

However, even as the markets return to normal, importation of service items is still pending and is a cause for great concern as it might lead to delays in the delivery of the project within the contract period. The MC had also indicated that due to cash flow slump occasioned by delayed payments, they have not been able to commit funds for these items.

6.7 Extension of time

We received an extension of time request from the contractor in November 2022, which the Architect responded to by recommending the extension of the contract period from December 19th 2022 to 26th June 2023 through Ref. No. SDS:MKSCA/21/22.

To date the client has not responded to the above letter. Currently, the MC has suspended the works on site indefinitely, pending any further communication from the client and settlement of the outstanding payment.

As a follow up of our discussions during the CIT Chamber retreat on the 30th and 31st of March 2023, It was noted that the project timelines require to be extended to ensure project completion and contractual discharge of the main contractor M/S Amber Construction Ltd. We thereafter recommend an extension of time to cover the lost time with which the works have stalled, from 19th December to date amounting to 4 months and an additional 9 months based on the pending works on site. We are therefore requesting an extension of the contract of 56 weeks, from 19th December 2022 to 19th January 2024.

6.8 Financial Appraisal No.2

We note that there has been a back and forth correspondence within the CIT regarding the consideration of the Financial Appraisal no. 2. We believe all the queries raised have been addressed adequately and the project QS has prepared the firmed up document for sharing and adoption.

6.9 Consultants Remuneration

We also bring to your attention the considerable delay in settling the consultants fee note no. 2 that was raised over a year ago. Attempts to enquire on the processing of the same were met with silence and inaction all the while the consultant was conducting their duties onsite.

We appeal to the client to facilitate the consultant as soon as possible.

7.0 WAY FORWARD

There is need for the project stakeholders to play their part diligently to ensure smooth execution of functions towards the completion of the project. This can be through ensuring fast paced processing of payments and decisive decision making on approvals sought out by the project team.

The approvals by the client for the additional works communicated by the consultant, some of which have already been executed by the main contractor, to be done in writing.

The review and adoption of the financial appraisal no. 2 is critical at this juncture as it will enable the processing of interim payment certificate no. 7 towards the Main contractor and enable resumption of works on site.

The Client is also advised to extend the contract and ensure regularization of the contract as soon as possible.

9.0 PROGRESS PHOTOS



Image 1. View the chamber building from the existing Machakos assembly offices. Roof cover installed



Image 2. View of the project from the site store



Image 3. Internal view from within the chamber highlighting plastered walls at 65%



Image 4. View of some of the roof trusses fabricated on site at the roof level. Heat insulation and roof cover installed. Finishes to follow.



Image 5. View of the roof slab area, parapet wall done and steel fabrication and fixing done.



Image 6. View from the external corridors within the chamber. Plastering of walls ongoing.

Architect Kuria further informed the Board that the week of 15th May, 2023 he was made to sign an addendum which he did under duress because he felt that his costs of extension ought to have been addressed.

Further, Scope presented Financial Appraisal No. 2 which contained the following highlights arising from joint measurements done on 5th September, 2022 between Scope, the contractor and members of the public works to determine the actual quantities of work done. The Architect brought forth the following highlights:

1. There was an arithmetic error of **Kshs.52,760,492.75** (Fifty-Two Million, Seven Hundred and Sixty Thousand, Four Hundred and Ninety-two Shillings, Cents Seventy Five only).
2. Following the evaluation there is a net savings of **Kshs.9,801,746.65** (Nine Million Eight Hundred and One Thousand Seven Hundred and Forty Six Shillings Cents Sixty Five.) as noted herein.

Below are M/s Amber construction ltd claims evaluated to date as follows ;

- a) Additional works
- b) Interest on delayed payments
- c) Fluctuations
- d) Extended Preliminaries
- e) Costs incurred on advance payment guarantee

1. According to clause 22 on variations the contractor shall provide the project manager with a quotation for carrying out the variations. The contractor applied for variations, after assessment the total additional works incurred amounts to **Kshs.22,565,149.50**(Twenty-two Million, Five Hundred and Sixty Five Thousand, One Hundred and Forty-Nine Shillings, Cents Fifty), see attached.
2. According to Clause 24 on compensation events the contractor is entitled to interest on delayed payments based on the central bank rates + 3% interest rate. The total Interest amounts to **Kshs. 2,847,515.25** (Two million, Eight Hundred and Forty Seven Thousand, Five Hundred and Fifteen Shillings Cents Twenty Five).
3. According to clause 25.2 on price adjustment the contractor is entitled to compensation for cost escalations. A base index of 100 was used against the price index of various

materials bought during the different stages of the project. Total Fluctuation claims amounts to **Kshs.6,343,337.75**(Six Million, Three Hundred and Forty-Three Thousand, Three Hundred- and Thirty-Seven-Shillings Cents Forty-Five)-see attached.

4. The project manger approved an extension of time of 28 weeks therefore the preliminary items were adjusted to cover for the extended period. Total Extended preliminaries amounts to **Kshs.6,447,677.75**(Six Million, Four Hundred and Forty Seven Thousand, Six Hundred and Seventy Seven Shillings, Cents Seventy Five)-see attached.
5. In accordance with the contract documents, the client had agreed to pay 20% of the contract sum as advance payment to the contractor. Thereafter the client dismissed the offer, however a commission and overhead costs of **Kshs.7,724,641.00** (Seven Million, Seven Hundred and Twenty-Four Thousand Six Hundred and Forty-One Shillings.) had been incurred by the contractor which he is entitled to a refund. In addition, the Main contractor has a claim of **Kshs.22,500,000 00** and we request the employer to negotiate this item as it may lead to third party interpretation.
6. As noted herein the total outstanding amount payable to the Main contractor is **Kshs.223,466,379.10** (Two Hundred and Twenty-Three Million, Four Hundred and Sixty-Six Thousand Three Hundred- and Seventy-Nine-Shillings Cents Ten)

CONCERNS BY THE BOARD

1. Whether Scope had presented reports to the client as required of them by the Contract.
2. Whether in his opinion the said error of 52 million would affect the project
3. What in his opinion was the reason for the misunderstanding between him and the CIT
4. Whether he could assure the Board that the project would be finalized within the contract sum of Ksh 349 million.
5. When a certificate is deemed to be due for payment.
6. In his opinion, what is the role of the Department of Public Works in the project

RESPONSES BY SCOPE DESIGN

1. As to whether Scope had presented reports to the client as required of them by the Contract Arch Kuria informed the Board that he had constantly supplied reports to the client until November, 2022 when he wrote a proposal to extend the contract which was not responded to until around the beginning of May, 2023.

2. As to whether the said error of 52 million would affect the project the Architect assured the Board that the project is safe and will be delivered within the Ksh 349 million safe for variations which must be approved by the client.
3. As to what in his opinion was the reason for the misunderstanding between him and the CIT, the Architect informed the Board that he thought the CIT lacked capacity and, in his opinion, the CIT was receiving misleading advise from some quarters unknown to him.
4. As to whether the project would be finalized within the contract sum the Architect responded in the affirmative adding that he is registered with the BORAQS, the professional body all builders and the same is managed by the Ministry of Public Works and therefore his opinion is objective.
5. As to when a certificate is to be deemed for payment and start attracting interest the Arch informed the Board that it is 45 days after it has been dispatched by the project manager and any delay after that must accrue interest.
6. As to what is the role of the Department of Public Works in the project the Architect informed the Board that the role of Public works is oversight and quality assurance, being a public project being procured from public funds but not to manage the project because there is a contracted project manager.

Resolution

On the presentation made by Scope designs, the Board resolved to receive reports from the other stakeholders before deciding on the project.

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



County Hall
P.O Box 1168-90100, Machakos
Along Mwatara-Ngoma



Email:

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PROCURING ENTITY: COUNTY ASSEMBLY OF MACHAKOS

DOCUMENT	PROVISION OF SECURITY SERVICES
CATEGORY	PROVISION OF SECURITY SERVICES
TENDER NUMBER	1310321-2022/2023
TENDER DESCRIPTION	PROVISION OF SECURITY SERVICES
PROCUREMENT METHOD	OPEN

X

Details

General Info

Type: PDF
Size: 1 MB
Modified: 5:51 PM Jun 26
Created: 4:54 PM Jun 26

Sharing

Anyone with the link
Bernard Mutua
Can View
Owner

Description

No description

Annex 44

Annex 45



Details

General Info

Type PDF
 Size 174 KB
 Modified 3:15 PM Jul 21
 Created 3:12 PM Jul 21

Sharing

Anyone with the link
 Can View
 Owner
 stephen.ndambuki

Description

No description

REPUBLIC OF KENYA
 COUNTY GOVERNMENT OF MACHAKOS
 COUNTY ASSEMBLY OF MACHAKOS



County Hall
 Along Mwatia wa Ngoma Rd
 PO Box 1168 – 90100
 Machakos – Kenya



Email:

INVITATION TO TENDER

The County Assembly Service Board of Machakos invites application from qualified and eligible firms to bid for supply and delivery of CASA uniform and equipment's.

S/NO	ITEM DESCRIPTION	TENDER NO.	BUDGET ESTIMATE (KSH)
1	Supply and delivery of CASA uniform and equipment	MCA/ONT/001/2023/2024	4 Million

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REPUBLIC OF KENYA
 COUNTY GOVERNMENT OF MACHAKOS
 COUNTY ASSEMBLY OF MACHAKOS



County Hall,
 P.O. Box 100, Machakos
 Machakos, Kenya



Telephone: 011-444-1111

INVITATION TO TENDER

The County Assembly Service Board of Machakos invites applications for qualified and eligible firms to bid for the following tenders:

NO	TENDER NEGOTIATION NUMBER	TENDER DESCRIPTION	TARGET GROUP
1	11/10/18 1021/2024	Supply and delivery of sports uniform and equipment	WOMEN
	11/10/21 1022/2024	Provision of Security Services	OPEN

For documents, see the advertisement posted on the website www.machakos.go.ke or the Machakos Public Information Centre (PIC) for the bid document using the PAFs, registration number provided above or with procurement information portal (www.paf.or.ke) at the time of bid.

Complete bid documents should be submitted together with the required fee to the PIC at www.machakos.go.ke or at the procurement of public goods, July, 2024 at 11:00 AM.

Tenders should only be opened immediately after the opening of the bids at the PIC at the time specified in the advertisement. Bids received after the time specified in the advertisement will not be considered.

11/10/18
 CLERK OF COUNTY ASSEMBLY

REPUBLIC OF KENYA
COUNTY GOVERNMENT OF MACHAKOS
COUNTY ASSEMBLY OF MACHAKOS



County Hall
Along Mwatu wa Ngoma Rd
P O Box 1168- 90100
MACHAKOS - KENYA



Email:

**MINUTES OF THE 20TH MEETING OF COUNTY ASSEMBLY SERVICE BOARD IN
THE 1ST SESSION OF THE THIRD ASSEMBLY HELD ON 30TH OCTOBER, 2023 AT
5:00PM IN THE SPEAKER'S BOARD ROOM.**

PRESENT

Hon. Anne Kiusya	Chairperson
Hon. Felix Ngui	Member
Hon. Johana Munyao	Member
Hon. Janet Mutua	Member
Hon. Alex Kitili	Member
Mr. Joseph Mutisya	Secretary

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INATTENDANCE

Ms. Carolyne Mutuku	Taking minutes
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EXTRACT

MIN NO. 165/3RD ASB/2023: MATTERS ARISING FROM THE MINUTES

c. Progress on the construction of the Assembly modern Chamber

The Secretary informed the Board that he had appointed an inspection and acceptance committee to manage the Assembly modern chamber guided by Section 48 of the Public Procurement and Disposal of Assets Act. However, the Board recalled that in its previous meeting it had directed that the Secretary puts in place a liaison person (s) and in this case was concerned the same had not been implemented. Upon consideration of Section 48 of the Public Procurement and Disposal of assets Act (PPADA) the Board noted that the roles under that section of law was not applicable since the team as appointed lacked capacity to execute the stated mandate.

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REPUBLIC OF KENYA
COUNTY GOVERNMENT OF MACHAKOS
COUNTY ASSEMBLY OF MACHAKOS



County Hall
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MACHAKOS - KENYA



Email: assemblymks@gmail.com

**MINUTES OF THE 36TH MEETING OF COUNTY ASSEMBLY SERVICE BOARD IN
THE THIRD ASSEMBLY HELD ON 7TH NOVEMBER, 2023 AT 12:00PM IN THE
SPEAKER'S BOARD ROOM.**

PRESENT

Hon. Anne Kiusya	Chairperson
Hon. Felix Ngui	Member
Hon. Johana Munyao	Member
Hon. Janet Mutua	Member
Hon. Alex Kitili	Member
Mr. Joseph Mutisya	Secretary

INATTENDANCE

Ms. Carolyne Mutuku	Taking minutes
---------------------	----------------

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EXTRACT

a. Response to the show cause letter by the Head of Supply Chain Management.

224 X344A

The Board recalled that it had raised some procurement issues with regard to the procurement of a third-party insurance, CASA games uniform and management of ward offices contract in the previous meeting which the Secretary undertook to respond to in the day's meeting.

The Board in that regard sought for an explanation of the following issues:

- i. Procurement of a third-party insurance
- ii. Delay in procurement of CASA uniform
- iii. Inaction causing delay in the completion of projects for the construction n of ward offices at the inconvenience of members of the Assembly

The Secretary was called upon to give an explanation on the issues raised by the Board and which the Head of supply Chain had responded to vide a response to a show cause presented before the Board. On the issues raised, the Secretary took responsibility of procurement of a third-party insurance cover, delay in procurement of CASA uniform which had been occasioned by a delay in the approval of the budget and failure to extent various ward offices contracts.

Concerns by the Board:

1. Which other commitments, financial and otherwise the Secretary could have committed the Board and failed to report which could have committed the Assembly exposing it to high risk.
2. Why the information on the delayed budget was being relayed at the time of the meeting but no report had been presented early to indicate any challenges.
3. What corrective measures in the opinion of the Secretary could be applied to correct the already incurred inconveniences.

Responses by the Secretary:

1. As to which other commitments, financial and otherwise that the Secretary could have committed the Board and failed to report thus exposing the Assembly to high risk the Secretary informed the Board that he had not made any other commitment.
2. As to why the information on the delayed budget was being relayed at the time of the meeting but no report had been presented early to indicate any challenges the Secretary informed the Board that the same was an oversight.
3. As to what corrective measures in the opinion of the Secretary could be applied to correct the already incurred inconveniences the Secretary committed that such delays and inconveniences would not happen in future. For the ward offices contracts the Secretary undertook to review all of the expired contracts and present a report by the end of the month.

OBSERVATION

The Board observed that the Head of Supply Chain had exculpated herself and gave evidence on all matters sought therefore her exculpation meant that the responsibility on the issues raised rested with the Secretary who is the Assembly's accounting officer.

Resolution

Following deliberations, the Board directed the Secretary to ensure adherence to timelines guided by the law and reiterated that such inconvenience will not be entertained.

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RECORD OF SELECT COMMITTEE OF THE ASSEMBLY INVESTIGATING THE ALLEGATIONS LEVELLED BY THE COUNTY ASSEMBLY SERVICE BOARD AGAINST THE CLERK, MR. J.L. MUTISYA HELD ON FRIDAY, 1ST DECEMBER, 2023 AT THE COUNTY ASSEMBLY CHAMBER

MEMBERS PRESENT

- | | |
|---|--------------------|
| 1. Hon. Nicholas Nzioka (Majority Leader) | - Chairperson |
| 2. Hon. Mbili Ndawa (Minority Leader) | - Vice Chairperson |
| 3. Hon. Francis Kavyu (MCA, Kinanie) | - Member |
| 4. Hon. Francis Kitaka (MCA, Ndalani) | - Member |
| 5. Hon. Winfred Mutua (MCA, Nominated) | - Member |
| 6. Hon. Rosina Kanini (MCA, Nominated) | - Member |
| 7. Hon. Justus Mutuku (MCA, Wamunyu) | - Member |
| 8. Hon. Anastasia Mutevu (MCA, Nominated) | - Member |
| 9. Hon. Mercy Njagi (MCA, Nominated) | - Member |
| 10. Hon. Lloyd Mutua (MCA, Nominated) | - Member |
| 11. Hon. Rose Wavinya (MCA, Nominated) | - Member |

WITNESS

Mr. Joseph Laban Mutisya

SECRETARIAT

- | | |
|------------------------|---------------------------|
| 1. Mr. Matthew Muange | - Head of the Secretariat |
| 2. Ms. Louisa Kamau | - Senior Hansard Editor |
| 3. Mr. Brian Muthusi | - Legal Counsel I |
| 4. Ms. Susan Kiluva | - Clerk Assistant |
| 5. Ms. Mercy Ndambuki | - Clerk Assistant |
| 6. Ms. Mirriam Musembi | - Commissionaire |

The Committee convened at 9.08 a.m.

PRAYERS

Hon. Chairperson: Members and secretariat, welcome to today's meeting, 1st December 2023. I believe you have the agenda of the day and I would ask that we adopt the agenda. I need a proposer. Mheshimiwa Kitaka proposes, Mheshimiwa Anastacia seconds.

Today, we sit again in this committee that is considering the removal of the Clerk to the County Assembly, Mr. J.L. Mutisya. In today's programme, we would want to discuss the charge sheet in summary then we will welcome Mr. Mutisya and then CASB, and in any case, we will also welcome the witnesses. So, let us just keep an open mind, let's stick to the agenda as guided by the charge that was brought against Mr. Mutisya.

Secretariat, please take us through agenda number three.

Mr. Matthew Muange: Good morning, Hon. Members. Agenda 3 is about ---

Hon. Chairperson: You'll be very brief because we had invited Mr. Mutisya at 9:00a.m. Would 10 minutes be sufficient?

Mr. Muange: Yes, that is ok.

Hon. Chairperson: OK, thank you.

Mr. Muange: This is regarding the questions that were framed regarding the charges leveled against Mr. Mutisya. The schedule of charges: -

One, violation of the provisions of the Constitution, the County Assembly Services Act, No. 24 of 2017... Under this charge, the Board accuses of failure to observe transparency or responsibility by obtaining an unauthorized loan facility outside of the powers of the Clerk as the Secretary to the Board, and Mr. Mutisya is required to explain.

The relevant laws here are Chapter 12 of the Constitution of Kenya and Section 102 of the Public Finance Management Act, Section 141 (2) of the PFM Act, Section 142 (1) of the PFM Act, Section 142 (2) of the PFM Act and Hon Members, I would like to request for addendum on this that we also add Article 212 of the Constitution.

I'll go to question 2 on the breach of procurement law and processes. Under this charge, Mr. Mutisya is charged with single-handedly sourcing a Third-Party insurance cover for the Assembly motor vehicles without due procurement procedures. The laws relevant to this are Section 149(1) of the PFM Act and Section 149 (2d) of the PFM Act.

Then there is Section 44 of the Public Procurement and Disposal Act, 2015, Section 103 of the Public Procurement and Disposal Act, 2015, Section 103 (2) which says that a procuring entity may use direct procurement if any of the following conditions are satisfied. The details are laid thereupon. Then we have Section 103 (3) and Section 104 which says that an accounting officer of a procuring entity shall adhere to procedures concerning direct procurement. The procedures have been mentioned there below.

Number 3, amendment of the Budget without approval of the County Assembly. This charge refers to the delay in the approval of the Machakos County Appropriation Act of 2023 which led to late implementation of County programmes. A further charge is of altering the Machakos County Appropriation Act (No.2), and Act No. 2 should be the Supplementary budget, without the approval of the Assembly.

The relevant laws are Chapter 6 of the Constitution on leadership and integrity, Section 20(1) (a) of the County Assembly Services Act, 2015, Section 131 (1) of the PFM Act, and Section 131(3) which states that an amendment to the budget estimates may be made by the county assembly (not an individual) only if it is in accordance with the resolutions adopted regarding the County Fiscal Strategy Paper.

The fourth accusation is abuse of office. The evidence before the committee indicates that the accused procured Third-Party insurance yet a requisition had been done to procure comprehensive insurance for the same vehicles. Then there is single-handedly borrowed from the Bank without the consent of the Board. This matter refers to... there should have been some consultations between the Clerk and the Service Board. The relevant laws are Section 15 of the Public Officers Ethics Act No. 4 of 2003 and Section 17 of the County Assembly Services Act, 2015, which details are laid below.

There is a fifth accusation of incompetence and inaction. There is an accusation of mismanagement of development projects, then the Board has also alleged that correspondences meant for the Board's information and action on the modern chamber which are procedurally sent through your office were never acted upon and neither presented to the Board for guidance.

The Board has also alleged that the operations of the Assembly have been adversely affected by your inaction on payment of bills on time leading to poor service delivery, then there is a charge on failure to ensure performance contracts are signed on time in the financial year 2022-2023 and ensuring that the Assembly has a third strategic plan on time. There is also a charge of failing to plan on time hence delaying procurement processes like procurement of air tickets which causes a big loss of funds for buying expensive tickets thereafter.

There is also a charge of inept or incapacity of handling the Assembly's mandate to the public. A case pointed out herein is where on 2nd November 2023 for public participation in the consideration of the Annual Development Plan (ADP) 2024/2025, the public was to

download the ADP from the assembly website and this was not done. It was uploaded on the website a little bit late.

The relevant laws relating to that are Section 19 of the County Assembly Services Act No. 24 of 2017, which indicates that the Chief Administrative Officer of the County Assembly is responsible for the day-to-day management and functioning of the County Assembly. A reference is also made to Section 17 (1f) of the County Assemblies Services Act.

I go to charge number 6 on gross misconduct or misbehavior. The accusation is failure to implement the County Assembly Service Board resolutions. The Board charged him with failure to implement the decisions of the County Assembly Service Board, which amounts to insubordination. That case refers to the CASA uniforms that were meant for Members and staff of the County Assembly to enable them to take part in the County Assemblies Sports Association games in August 2023.

In the second charge under gross misconduct or misbehavior, the board has charged that the accused failed to adopt a recommendation by the contract implementation team that the project be managed by invoking Section 150 of the Public Procurement and Disposal of Assets Act but instead appointed an inspection and acceptance committee under Section 48 of the PPADA. The relevant laws are Section 48 Public Procurement and Disposal of Assets Act, then there are various details of what is contained in Section 48 of the Act---

Hon. Chairperson: Yes, Mheshimiwa... Use the mic, use the mic, please.

Hon. Francis Kavyu: The second part where the board has charged that you failed to adopt a recommendation by the contract implementation team that the project be managed by invoking Section 150 of the Public Procurement and Disposal of Assets Act, but instead appointed an inspection and acceptance committee under Section 48, which project is being referred to?

Mr. Muange: This is regarding the implementation of the construction of the chamber and the two sections are very different. The said Clerk was supposed to invoke Section 150 for the construction of the chamber and instead came up with a committee under Section 48 under the Public Procurement and Disposal of Assets Act. We have given the details there as written in the Act. You can see we have 48 there; the Inspection and Acceptance Committee is different. If you see Section 150 is on contract administration.

Hon. Kavyu: I just wanted us to be on the same page as to which project are we referring to, so if it is the chamber then it is clear.

Hon. Chairperson: If you look at charge number six on mismanagement of development projects, if you go to paragraph 4, the Board talks about the construction of the chamber, so I think that is where they are drawing the text from; if you look at the charge.

Hon. Kavyu: That's ok. You know there were the ward offices, and I just wanted clarity on what we are referring to, so if it is the chamber, it's ok. I'm aligned. Thank you.

Mr. Muange: I think the matter, because it was referring to projects, I think it was to apply to all such projects being implemented by the Assembly. Brian, you can just refer to and advise the committee. That matter should be covering the various projects that are implemented by the Assembly, but it's in line.

Mr. Brian Muthusi: Clarify what you are asking exactly.

Mr. Muange: The charge on failure to implement County Assembly Service Board resolutions and the Board had requested invoking of Section 150, but instead a committee was appointed for inspection and acceptance on the same under section 48, but I think that relates to all projects of the County Assembly. We have said that that refers to the chamber and we want clarity, to see whether it also refers to all other projects being undertaken, including Mutituni.

Hon. Chairperson: We may not want to take that direction. Our role is not to redraw the charge. We are going to stick to the charge as it was drawn by the County Assembly Service Board. Let's stick to the charge.

Hon. Kavyu: Mr. Chair, on the same, maybe with the assistance of Brian, two sections have been quoted on the Public Procurement and Disposal Act, what is the crime there? Is it failing to adhere to the directive by the Board to invoke Section 150 or is there a mistake if somebody opts to invoke Section 48?

Mr. Muthusi: I think what is coming out, because that is under the broader grounds for removal, what we read yesterday, and that is why you might see some sort of repetition of one thin two different times, but now when we are talking about gross misconduct, which is under C, and that is where failure to implement County Assembly Service Board resolutions, the issue being what we were reading yesterday among what constitutes gross misconduct, if the Board has directed that let's take this route then you take a different route, that is what we were reading as part of failure to implement your employer's directives, so that's why it is falling under gross misconduct and failure to implement Board decisions. I hope I'm answering your question.

Hon. Chairperson: Thank you. Any reaction?

Hon. Mbili Ndawa: So Chair, the two sections cited, 150 and 48, are there similarities or can one section take charge of the other?

Hon. Muthusi: It depends on the nature of the project you're implementing and I think what's coming out is that there was a contract implementation team under Section 150 that had been managing or oversighting the project, then at some point, it seems that that committee was disbanded and another committee formed under a different section which deals with administration of projects, so from the charge, what we see is mainly the issue of the directive that was given by the Board was different from what was later implemented by the Clerk.

The idea is, from the charge, there had been a contract implementation team (CIT) that had been oversighting the construction of the chamber then at some point that CIT was disbanded and an inspection and acceptance committee formed in its place, under section 48, which the Board now is saying was unprocedural as it was not the direction that had been going on and it's not what the Board had directed. I think that's why the Board is putting it under gross misconduct for giving a directive then it's not followed and something else is done.

They continue to clarify, I'm just reading, "However you appointed an inspection and acceptance committee under Section 48 of the PPADA knowing that the officers you had appointed lacked the necessary technical capacity to undertake the functions prescribed in that specific section of Law. I was not there yesterday when the Board was presenting, but I hope they were able to talk about the composition of the CIT, and how that was different from the inspection and acceptance.

The CIT was broad, it even had officers from the Public Works from the Executive, so I think the issue is the technical capacity to remove that team and bring in a different team that lacks the technical capacity.

Hon. Ndawa: The second team is from the Assembly, without representation of the other side? That is what you're telling us?

Mr. Muthusi: The board might clarify that because the issue for them seems to be technical capacity.

Hon. Chairperson: I think we will find out from the files, those details. We would want to dig in and look at the team that was appointed, to know the composition, but I think he's efficiently answered that according to the Board, they gave a directive that the accused refused to follow, or did not follow. Mheshimiwa Lloyd.

Hon. Lloyd Mutua: I want to direct my question to Brian to help us understand. The charges are different, but when it comes to the explanations or the reasons for the charges, we've seen a repeat, like let's say number 1, the violation of the provisions of the Constitution, here we are talking about the loan. We have asked the question about the loan to be explained here, how he borrowed the loan without being authorized and following the process. Then when we go to abuse of office, we repeat the same. Are we expecting a different answer from the explanation we have been given here?

Mr. Muthusi: No, it might not necessarily be different. What is happening there is, one action can amount to different grounds. It can be yes, you've violated a law, again the abuse of office comes to, because you have the power to maybe sign a letter that will be respected elsewhere, then you do that without... already there is the violation then there is the abuse the office that you hold; the power that you hold. So, it can be one act that amounts to different grounds.

Hon. Chairperson: Thank you. Any other reaction? Thank you very much. I think we are done with that part and now we go to agenda number 4 and agenda number 4 we have several sub-agendas. It's the summons and we are expecting Mr. Mutisya any time. This is a question directed to the secretariat, did you send out the letter of invitation? Did you indicate the time and venue? I want that captured in the mic.

Mr. Muange: Yes, we did. We sent the letter, we indicated the venue and the time and we have a copy of that.

Hon. Chairperson: Can we have a copy of the letter?

Mr. Muange: Yes, I can just be given some time I collect the file from the Clerk's office.

Hon. Rosina Kanini: Through the Chair and on the same note, was the letter received?

Mr. Muange: The letter was served by a process server and should have reached him in person. We also sent a WhatsApp message and an email, which we displayed to the committee yesterday.

Hon. Chairperson: I would want to get a copy of the letter that was served by the process server, indicating it was received, and also the email and WhatsApp, as part of our annexures, and it should be shared for the committee members to see.

Mr. Muange: I request just a few minutes to collect the letter from the Clerk's office. Thank you, Chair.

Hon. Ndawa: Mr. Chair, I propose before we check for the letter, maybe we send somebody to check whether Mutisya might be in the office waiting to be called. We may spend a lot of time looking for letters while he is around.

Hon. Chairperson: We direct the Serjeant-at-Arms to look for Mr. Mutisya within the precincts of the Assembly at the holding area, maybe the Clerk's holding area, and then you bring us the report, please; and the reception at the gate.

(Serjeant-at-Arms stepped out to find Mr. J.L. Mutisya)

Hon. Chairperson: Yes, Mheshimiwa Kasanga.

Hon. Justus Mutuku: Chair, we are requesting a file for Mheshimiwa Rose.

Hon. Chairperson: Karibu Mheshimiwa Rose.

(Serjeant-at-Arms came back)

Hon. Chairperson: Can we proceed? We had sent, it through the Secretariat, and I see she has come back and we need to ask what is the response from the Serjeant-at-Arms.

Mr. Muange: The response, these are the letters we forwarded---

Hon. Chairperson: No, no, no, I'm asking about, we sent out the Serjeant-at-Arms to look out for Mr. Mutisya.

Mr. Muange: He's not within the precincts of the Assembly.

Hon. Chairperson: Thank you. We also had sent for the letters you sent out as an invitation. Do we have copies?

Mr. Muange: Yes, we have copies.

Hon. Chairperson: Members, with me are letters of invitation and also a copy of the email sent out, and I will set it out to you to see for yourself.

(File with the documents shared with the Members)

Hon. Mutuku: Chair, as we confirm, did the accused receive the email?

Hon. Chairperson: According to the secretariat, and I do not want to answer for them, yes, but the question is, did the accused receive the email?

Mr. Muange: We believe the email is a valid form of communication and it has been legalized. We are sure his forwarding address---

Hon. Chairperson: The committee is in session, Waheshimiwa.

Mr. Muange: The forwarding address as given in the email is where the letters were forwarded, so we believe he must have received the same. As well, we would be forced to

confirm from the phone which forwarded the message through WhatsApp whether it shows a green light indicating that he received and opened the same.

Hon. Lloyd: I don't know, maybe the I.T. people can tell us, via email if someone decides not to respond, you might not know whether he received it or not, but for WhatsApp, we can confirm, but there is a question the Chair was asking. Was the physical letter received? Do we have a confirmation from someone who took whether it was received?

Mr. Muange: Yes, we have not been able to reach the Clerk because the response has to go back to the Clerk, but it was served through a process server. It was given a process server to serve the same. We would like to get the response, which I've not seen the attachment in the file.

Hon. Chairperson: The other question would be, do we have any response to the letter we sent out, either via WhatsApp, via email, or physical letter? Do we have?

Mr. Muange: Hon. Members, we are trying to reach the Clerk for that particular response so that we can provide the same to the committee within a reasonable time.

Hon. Francis Kitaka: Chair, for our purposes of clarity, we would want to know what our Assistant Clerk is referring, to by saying that he's trying to follow up with the Clerk because we are also investigating a Clerk, so is it our Acting Clerk or Clerk?

Mr. Muange: From the Acting Clerk, because everything is reaching his office. I just need to walk to his office and see whether I can get a good response to those questions.

Hon. Chairperson: We will allow you to check whether we have any response from the office of the Acting Clerk, please.

Hon. Ndawa: Maybe Chair, we may want to confirm, what is the allowable time if one has been summoned or invited to attend or appear. How long are we supposed to give him? He was supposed to be here by 9:00 a.m., and now it is almost less than a quarter to 10:00 a.m.

Hon. Chairperson: To be fair, and also we said we need to protect the integrity of the committee, we approved a schedule, right? And he was supposed to be here from 9:00 a.m. to 11:00 a.m. I would request that we sit here waiting for him between 9:00 a.m. and 11:00 a.m.

Hon. Ndawa: Well guided.

Hon. Chairperson: We may want to have a break of the proceedings, but within the chamber, as the Head of the Secretariat goes to look for a response, from the Clerk, but be within the precinct of the chamber.

Hon. Mutuku: Chair, before we break---

Hon. Chairperson: Yes, Mheshimiwa Kasanga? Mheshimiwa Kavyu, we are in session.

Hon. Mutuku: ---or could there be an official body that had communicated to the accused before the information of summoning him to come here had been done to him, not to appear here?

Hon. Chairperson: We are a formation of the House. This committee was formed through the procedures of the House, and so we will not dwell on whether any other person is also on this matter; we will do our work and report back to the House.

Hon. Mutuku: Well guided, chair.

Hon. Kanini: Through the Chair, this letter is addressed to the Chairperson, County Assembly Service Board.

Hon. Chairperson: No, there are two letters. Check the other letter.

Hon. Ndawa: Hon. Chair, I will request my colleagues, since this is an independent Select Committee assigned by the Assembly, let us not be concerned with other bodies. We are supposed to execute what we have been mandated to do, and we forget other bodies, whether the County Service Board or any other body.

Hon. Chairperson: Mheshimiwa Ndawa, we are here because due process was followed, and until the House gives another direction, we just continue with our work. Thank you.

Hon. Ndawa: Ok.

(Members took a break for 55 minutes)

Hon. Chairperson: Are we ready, secretariat? Thank you. Welcome back from the break. We would want to continue with the committee session, and at the point of going for a break, we had asked the secretariat to confirm to us whether the invitation to the accused was sent out and whether there was any response. So, secretariat.

Mr. Muange: Indeed the secretariat earlier confirmed the communication for invitation to the accused was done. Unfortunately to this hour the accused has not been able to arrive and it is almost 11:00 a.m. We had given the accused two hours to appear before the committee. The committee has been patient enough awaiting the appearance of the accused who has not appeared before the committee up to now. We have checked within the precincts of the Assembly and the accused is not within, as expected through the invitation done to them.

Hon. Chairperson: Do we have any response to the invitation letter that you sent out?

Mr. Muange: Not yet.

Hon. Chairperson: Thank you. Yes, Mheshimiwa.

Hon. Ndawa: Since we had given up to 11:00 a.m, one can be held up in a jam or can have a puncture on his way, so I propose the remaining 13 minutes, we still be patient for that 13 minutes so that if by 11:00 a.m. he will not have arrived, then we can be able to decide on the way forward.

Hon. Chairperson: I think that is fair enough; that is what we had indicated since the start of the session, that we'll be here for two hours until the time lapses, so we plead for your patience; it's only, as you say, 13 minutes.

Hon. Kavyu: Mr. Chair, the clerk to the committee was also to confirm to this committee whether the process server served the letter to the accused. It's one of the items that we had tasked him to confirm.

Hon. Chairperson: He has confirmed that an invitation was sent through WhatsApp, through email, and the court process server.

Hon. Kavyu: The one for a process server, he was to confirm with the Acting Clerk that the process server was confirmed to have delivered because, upon delivery, the recipient is normally supposed to sign to confirm receipt or the person serving comes back and confirms that he has indeed delivered the letter. That copy.

Mr. Muange: Unfortunately, I think the response that was supposed to be served back by the process server to the Acting Clerk was not available; I was not able to get it. Hopefully, in the course of the day, I will be able to follow up and bring a response to this committee soonest.

Hon. Chairperson: I think that is part of the documentation we will be expecting to get before we write our report.

Hon. Ndawa: Maybe Chairman to ask, is there any other business that we can be conducting as we wait for the remaining minutes, instead of staying idle. Maybe there is something that we can handle.

Hon. Chairperson: We are not staying idle. We are actually waiting for the accused to come and since we have an approved work plan, I would want us to stick to it.

(Members waited another 14 minutes until 11:01 a.m.)

Hon. Chairperson: I think it's evident that going by our program, the person we are expecting, Mr. J.L. Mutisya, has not arrived in time so we will end this session and reconvene at 11:30 a.m. for another session with members of the County Assembly Service Board. So, this session adjourns to 11:30 a.m. Thank you.

The Committee adjourned at 11:02 a.m.

**RECORD OF SELECT COMMITTEE OF THE ASSEMBLY INVESTIGATING THE
ALLEGATIONS LEVELLED BY THE COUNTY ASSEMBLY SERVICE BOARD
AGAINST THE CLERK, MR. J.L. MUTISYA HELD ON FRIDAY, 1ST DECEMBER,
2023 AT THE COUNTY ASSEMBLY CHAMBER**

MEMBERS PRESENT

- | | |
|---|--------------------|
| 1. Hon. Nicholas Nzioka (Majority Leader) | - Chairperson |
| 2. Hon. Mbili Ndawa (Minority Leader) | - Vice Chairperson |
| 3. Hon. Francis Kavyu (MCA, Kinanie) | - Member |
| 4. Hon. Francis Kitaka (MCA, Ndalani) | - Member |
| 5. Hon. Winfred Mutua (MCA, Nominated) | - Member |
| 6. Hon. Rosina Kanini (MCA, Nominated) | - Member |
| 7. Hon. Justus Mutuku (MCA, Wamunyu) | - Member |
| 8. Hon. Anastasia Mutevu (MCA, Nominated) | - Member |
| 9. Hon. Mercy Njagi (MCA, Nominated) | - Member |
| 10. Hon. Lloyd Mutua (MCA, Nominated) | - Member |
| 11. Hon. Rose Wavinya (MCA, Nominated) | - Member |

WITNESSES

- | | |
|-----------------------|--------------------------|
| 1. Hon. Felix Ngui | - Vice Chairperson, CASB |
| 2. Hon. Johana Munyao | - Member, CASB |
| 3. Mr. Alex Kitili | - Member, CASB |
| 4. Ms. Janet Kimeu | - Member, CASB |

SECRETARIAT

- | | |
|------------------------|---------------------------|
| 1. Mr. Matthew Muange | - Head of the Secretariat |
| 2. Ms. Louisa Kamau | - Senior Hansard Editor |
| 3. Mr. Brian Muthusi | - Legal Counsel I |
| 4. Ms. Susan Kiluva | - Clerk Assistant |
| 5. Ms. Mercy Ndambuki | - Clerk Assistant |
| 6. Ms. Mirriam Musembi | - Commissionaire |

The Committee convened at 12:05 p.m.

Hon. Chairperson: I just want to communicate something as the Chair, that while we were in the first session, some communication arrived at the Office of the Clerk, and I would wish for the Head of the Secretariat to read the communication and then we take it from there.

Mr. Muange: Thank you Chair. This is the communication; it is addressed to the Select Committee of the Machakos County Assembly in the matter of Joseph Mutisya Laban, the Machakos County Assembly, Machakos. It reads, "Dear Sirs, Reference NAIROBI/ELRC PETITION NO. E004 OF 2023" that is employment labour relations court, Joseph Mutisya Laban versus Machakos County Assembly Service Board.

It reads, "The above refers and the order of the court made on 27th November 2023. Our client has been served with a notice to appear before the Select Committee of the County Assembly, despite the court having stayed the disciplinary proceedings against our client. Kindly note that the said invitation and the ensuing proceeds are in contravention of the court order and we have instructions to institute contempt of court proceedings against you. We shall serve you in due course with the application. A copy of the order is attached."

The writer is MKN, that is Yours faithfully, MKN & Company Advocates, and the address is given as Bruce House, 11th Floor, Standard Street, Nairobi. The letter was received at 9:45 in the morning. I think that was when the committee was in session.

Hon. Chairperson: What does the attached order say?

Mr. Muange: The order here is written Republic of Kenya in the Employment & Labour Relations Court, Nairobi, Petition No. E004 of 2023, Joseph Mutisya Laban, the Petitioner or Applicant versus the Machakos County Assembly Service Board, as the Respondent, in court on 27th November 2023 before HOn. Justice B. Manani.

Order, this matter coming up on the 27th of November before Hon. Justice B. Manani for directions on the Notice of Motion dated 23rd November 2023 brought under certificate of urgency and upon reading the application in the absence of the counsel for the applicant and the counsel for the respondent, it is hereby ordered that the application dated 23rd November 2023 is certified urgent that pending the hearing and determination of the application inter partes, a conservatory order is hereby issued staying the respondent's decision on the 14th November 2023, suspending indefinitely, the petitioner from his position as Clerk to the County Assembly of Machakos and instituting removal proceedings against him.

Three, that the matter be placed before Justice Duma Nderi on 7th December 2023 for further directions. Given under my hand and seal of the Honourable Court, this 27th day of November 2023, issued in Nairobi on the 28th day of November 2023. It is signed by the Deputy Registrar of the Employment & Labour Relations Court in Nairobi, but this order was served to the Service Board, and I think we may have some legal interpretations made to Members from the legal officer.

Hon. Chairperson: Exactly. We need your advice on the same.

Mr. Brian Muthusi: Thank you Chair, and Hon. Members. What did you want me to address, specifically?

Hon. Chairperson: The letter from the advocate, what is the intention?

Mr. Muthusi: The advocate here refers to an order issued on 27th, dated 28th of November and the matter in court is between Joseph Mutisya Laban and the Machakos County Assembly Service Board and the main order, which is order number two is that pending the hearing and determination of the application inter partes, a conservatory order is hereby issued, staying the respondent's decision made on 14th suspending indefinitely the petitioner from his position as the Clerk of the County Assembly and the second part is instituting removal proceedings against him.

My interpretation first is that the parties that are involved, this is a matter between the Clerk and the County Assembly Service Board, and for me, the matter that is in court doesn't relate to the ongoing process. I think the Board will be able to clarify to us better how they are handling this matter, but at no point is there an order that has been directed to the County Assembly or the Speaker of the County Assembly, but to the Board.

Hon. Chairperson: So, it doesn't halt our proceedings?

Mr. Muthusi: It doesn't because it is addressing the Board. It's an order that has been directed to the Board; it's the Board to handle that because immediately the Board gave a notice of motion to the Speaker, that's it. The Board has no role going forward. It's the Board to deal with that at the Court, explain to the court what's happening, because as of now, the

Board, even after receiving this, wouldn't have come to the House and tried to stop anything that is happening.

There is no order stopping the Assembly or the Speaker from handling what is before them. This is an order directed to the Board and it's the Board to deal with it in court and maybe when they appear, tell us what they're doing about it, but for me, as regards the ongoing business, this is not an order that has been directed to the Speaker or that has been directed to the Assembly, so the House business should proceed and maybe to even sort of further clarify, once the Board decided to give a notice of motion to the House, that was the end of it, so it's them to explain what they had done at that point, whether the order came before they gave that decision or whether it came after they had already moved a notice of motion, it's them to tell us whether they are in contravention of the order and what they're doing about the court order. Thank you.

Hon. Kavyu: Maybe what Mr. Brian can also clarify, the court, has the power to stop the proceedings of the Assembly.

Mr. Muthusi: Generally, the judiciary has power to interpret the law and what is happening now is what would be called administrative action. Once a process has been done, because it's provided for in law, the exercise of removing a Clerk is provided for in law, there is how it's supposed to be done, once that has been done, the opportunity is there to go to court and ask the court to review whether that process was ok, but not to stop a process that is provided for in law. So, yes, the court can interpret what happened but it has to interpret a process that has been concluded. It has to review the process, see whether it was carried out properly then it will give an interpretation of whether the law was followed, not to stop the process while it's ongoing.

Hon. Kavyu: Thank you.

Hon. Ndawa: Mr. Chair, according to the interpretation we are getting from the legal officer, we are not privy to the matter before the court. Privy means we are not party; we have two parties in that matter. Party number one is one, Joseph Mutisya and party number two is the County Assembly Service Board. The committee you are chairing now is not Mutisya, not County Assembly Service Board, so I don't think we are affected in any way because this is an independent select committee and it has not been mentioned in the said order, so I think we are good to continue with whatever we are doing.

Hon. Chairperson: Thank you. I would say the same because this select committee is not a creation of the Board; it's a creation of the Assembly and we are not anywhere in that order, so I think the notification by the advocate should be to the County Assembly Service Board or any other body, but not to us, unless we are enjoined in the matter before the court, so I think we proceed. Now we need to have a session with the commissioners of the County Assembly Service Board, so if you can ask them to come in.

(Members of the County Assembly Service Board were ushered in)

Hon. Chairperson: Welcome, Members of the County Assembly Service Board. We want to thank you for honoring the invitation. As you may be aware, this is a Select Committee that is formed by the House to look into the removal from office of the Assembly Clerk, Joseph Laban Mutisya, after some charges were leveled against him by the Board. It is your opportunity to clarify issues or questions from Members, but before you do that, you're going

to be placed under oath so that we are within the administrative actions of the committee. Thank you. Start with the Vice-Chair.

(The Oath was administered on the Members of the County Assembly Service Board - Hon. Felix Mutunga Ngui, Hon. Johana Munyao, Commissioner Alex Nyamai Kitili, and Commissioner Janet Mwikali Kimeu.)

Hon. Chairperson: As I had earlier said, the commissioners for the County Assembly Service Board did level some allegations against the Assembly Clerk, and through the process, the Clerk was suspended. We invited him to come and answer the charges, but unfortunately, he was not able to come within the stipulated time so we want to move to the next level.

You leveled the charges and I would ask the Vice-Chair, since he is the head of the delegation to say if you have anything extra, but within the charges, that you would want us to hear, it's your time, and then members will have a few questions, then we can proceed.

Hon. Felix Ngui: Thank you, Members. Good afternoon, we want to thank you again for your invitation to come and meet this committee. Chair, we gave our evidence yesterday against the charges that the Board had leveled against one Joseph Mutisya and as of now, we do not have anything extra to add; everything is in our file and we have attached all our evidence, so we leave everything now to the committee to look at the evidence we have attached and now do your work so we have nothing to add to our evidence. Thank you.

Hon. Chairperson: Any comment from the other commissioners? No? I'll invite you Members if you think you need just a comment, because we have the charges and the evidence, and restrict yourself to the charges, not anything outside the charge.

Hon. Kavyu: Mr. Chair, I need some clarification on two issues. One, on charge number two where the former Clerk is accused of breach of procurement law and processes on the issue of the third-party insurance cover, I would like the Board to provide some clarity, because I went through the response that was given by the procurement officer detailing that she did what was supposed to be done, where she followed all the necessary steps up to the last bit where an award was issued to Kenya Orient for provision of a general insurance cover, but from the charge sheet, the indication is that the accused went ahead and procured a third party insurance cover for the assembly motor vehicles.

One of the clarifications that we would like the Board to provide is on what amount was paid for the third party vis-a-vis what the Assembly would have paid for the general insurance cover if we had obtained it. I want to find out if there were any discrepancies and also if the third-party insurance cover was still provided by the same insurance service provider who had been approved through the tendering process, and that bit of it is I think there is an insurance sticker that had been provided but you can also help us quantify how many vehicles were covered under the third party insurance cover arrangement.

Lastly, on the same, you can also share with this committee the proof of payment; what was presented to the finance department, and what supporting documents were provided to the Finance Department to effect the payment that paid the insurance provider who provided the third party.

The second question is on charge---

Hon. Ndawa: Mr. Chair, I would propose, because we have several charges and the plaintiff is present because the Service Board is the plaintiff and Mutisya is the respondent, I would request that you direct that we go from charge one up to the last charge so that we can get

clarity on the allegations diffused against the respondent. I'm requesting, I see that Mheshimiwa Kavyu is now moving to another charge, if we can go from number one up to the last one, we will save time and we'll be able to understand properly.

Hon. Chairperson: I'm avoiding a situation where we spend so much time, yet we have the documents. I would think while we are doing our report writing, in case we don't have clarity, we can invite the Board to come, otherwise, and I understand this file very well, if you go to every charge, there is attached evidence up to the last charge. My thinking would be, that if we find any gaps, that is when we would invite the Board.

Hon. Ndawa: The reason why I'm saying so, is in the charge that Mheshimiwa is handling about the issue of the insurance, I thought it would be prudent if the Service Board gave the registration numbers for the vehicles that are said in the report because I have tried to peruse from the *nini*, I have not seen the registration. You cannot say vehicles; if there is a vehicle you say number this, this, this. We cannot just talk about vehicles. So, it's good they give us the registration numbers. I have tried to look but I have not seen it in the file.

Hon. Chairperson: Thank you vice-chair.

Hon. Kavyu: Mr. Chair, I think if you can allow me please, because I was on the floor, I think what the member is asking falls under the scope of the cover. That's where they give us the details of which vehicles were covered, and the issue of going charge by charge, we are only supposed to raise issues of where we need some clarity, because charge number one might not have any clarity that is required, so I just raised a query on where I needed clarity. Then the last bit, so that they can answer them together, is on this issue of the letter of offer of appointment to the position of analyst where the Board indicated that the approval that had been given was for a contract basis, but at the point of issuing the appointment letter, the candidate was issued with a permanent letter. I went through the same and this is the letter that was written: letter of offer for appointment to the position of Fiscal Analyst II on permanent and pensionable terms. It reads, "this is to convey to you the decision of the County Assembly Service Board, that you be, and are hereby, appointed to the position of Fiscal Analyst II, effective 1st February 2022."

The request that I'm making is that from the submission yesterday, the Board indicated that the Board resolved to award the job on contract basis, so I don't know whether the minutes supporting the same have been shared with the committee. If not, because I don't have it in my file, the request that I'll make is the minutes that showed the agreement of the Board for appointment. If that is shared, it will also add weight to the report writing of the committee.

I also saw the letter was signed by the Late Mbiuki who was the Clerk then. The Board can also clarify what the accused failed to do because there is another letter that is also attached that is almost similar, but the appointment here indicates it was on contractual term for a three-year basis.

Hon. Chairperson: Mheshimiwa, I think it is for this committee, while we are doing our work, that we'll identify those gaps and if necessary, we'll write to the Board to clarify.

Hon. Kavyu: Mr. Chair, I think because they're here, and that's the reason we called them today, I don't think that would be a challenge for them to provide that clarification because the second that was also awarding the same person on contract, that was signed by Mutisya Joseph Laban indicating that the same person was on contractual term for three years.

The clarification that we wanted is the minutes of the Board to affirm that the position was either to be on contractual basis or a permanent basis and also they can clarify what mistake

the accused made because if he was supposed to correct, there is a letter. Maybe they can clarify where the gap is or what he was supposed to do that he never actioned. Those are the two items that I needed clarification on. Thank you.

Hon. Chairperson: You've heard the clarifications that are required, so please, go ahead.

Hon. Ngui: Thank you Chair. I'll start with the issue of the third-party cover. What I want to bring to your attention is in breaching the procurement law on this, the Clerk did not do any procurement, so he acquired the insurance directly and there was no documentation. This was also paid directly; there was no contract and this cover ran only for one month and it was for Madison Insurance, and after the one month, that is when he did the insurance cover with Kenya Orient, the insurance that is now with the Assembly for the general cover. This one was acquired for one month from Madison Insurance directly without any procurement and it is for all vehicles of the Assembly. We have attached just one vehicle, number 16G070A, and the insurance was running from 1st July 2023 to 31st of the same month 2023. That is for the insurance. On the payment---

Hon. Chairperson: Vice Chair, since you say it's for all vehicles, do we have the records for the other vehicles?

Hon. Ngui: This is just one of them; I think maybe we can---

Hon. Chairperson: Could you provide to the committee at a later date, not now.

Hon. Ngui: Yes, we can look for it, but for now we have just a sample of one vehicle.

Hon. Chairperson: Ok.

Hon. Ngui: On the payment on how he paid, I'm saying it was done directly and it was paid directly, I think through imprest. There was no contract or anything, so there was no proof of payment for this.

On the matter raised concerning Shadrach Mbithi, his appointment letter, as you have said, was signed by the former Clerk, Felix Mbiuki, and now he left, so upon realizing that the officer was given the wrong appointment letter, the officer complained to the Clerk, which I believe was verbal, and when he complained to the Clerk, the Clerk now wrote the correct letter, correcting the anomaly in the other letter, to be on contract basis, but he failed to put him in the scale that was on the job advertisement. The officer has now been going to the Clerk complaining of being paid less, so now we accuse him of inaction and failing to listen to the staff because the staff has been suffering and he has come to these Members complaining many times, and the staff is here, maybe if need be, I think he can be called to confirm that if need be.

Hon. Chairperson: So, the charge is that even though the Clerk did correct the anomaly, he did not place the officer in the right job group? That is the charge?

Hon. Ngui: Yes

Hon. Chairperson: So, occasioning the officer to lose his rightful earnings in terms of salary and maybe allowances.

Hon. Ngui: Exactly?

Hon. Chairperson: And you are able to maybe provide minutes of the Board and payslips to support that? Because how would we know that he's been earning less? How else would the committee know that he's been earning less?

Hon. Kavyu: And Mr. Chair, I think he has also mentioned a very vital component, the advert that was done, if it is also available, it will also be very important for it to be availed because that will clear any questions surrounding the same.

Hon. Chairperson: That would be helpful. We would wish that we have the whole process, how it started and where it ended, so that we know at what point was the law breached. The advertisement, the minutes of the Board, the letter of offer, the acceptance of the offer, such things.

Hon. Ngui: OK, you'll be provided with them.

Hon. Chairperson: Thank you.

Hon. Lloyd: I have a question on the same. You've mentioned that the employee has been complaining to the clerk. Has he been complaining through any writing or it's just oral evidence we'll rely on?

Hon. Ngui: That is verbal. You know this being a junior staff, when you start writing letters to your boss, you know the consequences, so the officer has just been complaining verbally, but there has been inaction.

Hon. Chairperson: Yes?

Hon. Johana Munyao: Thank you Chair. I think the evidence of the complaint, as indicated the first letter was drawn by the late Secretary to the Board, arising from the minutes which employed that officer. The second letter is from the verbal complaints made by the said officer, which now made the immediate former clerk to write another letter. We are saying here that as a Clerk he is supposed to be implementing the decisions of the Board but he took it upon himself to write a letter to the same officer lowering his grade, contrary to the initial job scale which had been awarded by the Board as given in the advert.

Hon. Chairperson: Thank you, Commissioner. Mr. Vice Chair, I would ask you to sit in for me, I have a phone call.

Hon. Kavyu: Through the Chair, on the issue of proof of payment, maybe you can tell the committee, what is the minimum amount that can be paid, or the maximum, from the imprest? And does the Clerk have the express authority to pay the imprest directly without involving the Finance Department, or how was the direct payment done?

Hon. Vice Chairperson (Hon. Ndawa): Vice Chair, County Assembly Service Board?

Hon Ngui: Yes, please.

Hon. Vice Chairperson (Hon. Ndawa): Let's allow Hon. Anastacia to raise her concern so that you can be able to respond to both.

Hon. Anastacia Mutevu: Thank you Chair, because mine is just the concern, that the Vice Chair can answer the same, about the insurance cover, the first one was paid directly and there was no procurement process done, whether now the Assembly is having another insurance which is in operation now. Was the procurement process done on the same?

Hon. Ngui: Thank you Chair. I will start with the one for *Mheshimiwa* Anastacia. There was no procurement done. That is why we are saying there's a breach of the law for procurement, and on the matter of insurance, I said that the Assembly now is in the contract for General Insurance with Kenya Orient, starting from the month of August for one year, to next year August. So, this insurance that was procured directly, the third party, was only for one month, so when we are raising matters of incompetence, it's whereby this insurance expired and the Clerk was not able to acquire another insurance, so he opted to get a third party insurance, which is against the law, without following the process of procurement. The payment that he made to Madison Insurance was done through IFMIS and we can ask the Finance Department to furnish you with proof of payment; the amount he paid.

Hon. Kavyu: Through the Chair, that is very clear. What I'm asking is, is the Clerk a signatory or he also has the capacity to do the payment on his own? The issue of procuring the third party, that one we are in agreement it's a mistake and it was also exposing the users, bearing in mind those vehicles sometimes even are used by Members of this Assembly for transport. That one we are in agreement. The bit that we are asking, because you said the Clerk paid directly without involving anybody and for any payment to happen, there are normally signatories that need to sign, as a Board, are you indicating that he overlooked all those processes and went ahead and single-handedly procured the services from Madison and also went ahead and made a payment without involving anyone else?

Hon. Ngui: Through the Chair, the Clerk is the accounting officer of the Assembly and the process of payment, he is the one who approves all the payments, so what happens, is he just gives instructions to finance, pay this; make this payment, and there are those people who are assigned on the IFMIS to do the payment and he is the one who is the final, so when the Finance does it, he is the one who approves the process so that it can be implemented. I think *Mheshimiwa Johana* you can give an input.

Hon. Vice Chairperson (Hon. Ndawa): *Mheshimiwa* Commissioner.

Hon. Johana: We are saying that as the Accounting Officer, he is the one who initiates any financial expenditure and he's also the same person who is supposed to end the payment process, so the issue of acquiring a third party, if you go by the response from the Head of Supply Chain, the officer exonerated herself that they were in the know, whereas we know all the services, all the goods are supposed to be procured as per law. The payment of the third party was authorized by the Accounting officer who happens to be the former immediate Clerk.

Hon. Vice Chairperson (Hon. Ndawa): Maybe before you move on, Hon. Kavyu and before I allow the other commissioner to say whatever he wants to say, I want to make this ruling: it is the duty of the plaintiff to prove his/her allegations before the arbitrating body beyond any reasonable doubt, and for this matter, on the issue which is being raised by Members here, you've not provided us with information or any document supporting or saying that one, Laban Mutisya, paid this amount. You have not even given the amount, because if we talk of payment that was made, and you're not telling us how much, how do we

believe that payment was done? It is your responsibility, as the County Assembly Service Board, because you are the managers of this Assembly, to furnish this committee with that information so that we can be able to move forward.

Otherwise, some of the charges are very difficult for us to handle and we might be forced by circumstances to drop some of the charges because if they are not substantiated, we cannot just go on rumor-mongering. Hon. Commissioner, you can proceed.

Commissioner Alex Kitili: I want to approach the issue of the third party in three dimensions. Number one, there was no Board resolution that the third party must be in place. Number two, there is the threshold that anything that is beyond a certain amount should go through the procurement process. That has not been in the knowledge of the procurement officer. Number four, it is not even allowed within the government agencies that we should have a third party, and here the issue that we are deliberating about is the payment.

Now that we have the evidence that the third party was with us and the procurement have exonerated themselves from the process, it means how it came into existence, how it was paid, was in total control of the accounting officer, because we were not aware even the third party was in place, and again, how it came, we were not also aware, and even when a show cause letter was done to procurement, they said they were not in the know of the existence of a third party.

The issue totally remains with the accounting officer, and for your information, when we asked those questions, you'll see in the minutes of 7th November 2023, that he admitted the mistakes. In fact, he has also signed those minutes, because the minutes are signed immediately after the deliberation, only to mean, actually when we summoned him, some of the information that you are asking us, we wanted him to come over to us and clarify them from where we are seated. That is why even now we are not able to substantiate them, and again, you know the Board must be the eyes on the operations of the Assembly, but hands off the operations, not to seem like we are interfering with the operations. That is actually where we are and where we are seated. Thank you.

Hon. Kavyu: Through the Chair, I think what the Commissioner has explained, we are in agreement. There is a mistake, but when you say somebody has done something wrong and you are raising a charge against them, the burden of proof lies with you to prove beyond reasonable doubt, because you have talked of threshold, and that's why we have kept asking, how much did he pay? If the amount is within the threshold, then there is what can be paid using imprest and as an accountant, whether the finance manager or junior accountant, at the point where I'm either processing or approving any form of payment, I would require supporting documents showing that all the necessary approvers that are supposed to approve before that payment is approved, one of the checks he would check, was the procurement process adhered to?

What we want to find out, is the Board indicating that the immediate former clerk disregarded and actioned the payment, processed it, and paid. We want to understand, that he might be the approver but for it to come to him as the final approver, it goes through stages; it has to come from the user department where the Head of the department will give a go-ahead and probably go through finance, so somebody has to key the payment. What we are asking is, did it go through all those stages up to a point where the accused made the final approval? That is the only clarity we are looking for

Hon. Chairperson: Commissioner go ahead.

Comm. Alex Kitili: In response to the Hon. Member, number one, in procurement laws, we don't encourage single sourcing. The reason why we do tendering is to make the process competitive such that you can get the best and the lowest bidder. Other than looking at whoever you're giving a contract to, you have to also see whether it encompasses your requirements; it meets your needs. This was not done through the tendering, so we don't know whether the cover we had at that time was the best and of course, you know the parameters of a third party. Our Members who use our Assembly vehicles, including our Speaker, our Majority, our Minority, and the D.S., were not covered. The third-party covers the other side. That was one.

Number two, if it was single-sourced, that is not encouraged. Even if it was within the threshold of the imprest that can be taken, again, it was not competitive. That is where we come in as a Board because that is where we should come and control. Somebody can be within the threshold but then he abuses the limit because he is doing it single-handedly and he is doing the single-sourcing.

That is the limit and as a Board, the policy of the government is we do it through tendering so that you can also make the process competitive and get the best and lowest bidder.

Hon. Chairperson: Thank you, Commissioner. Yes, Commissioner.

Hon. Johana Munyao: Thank you Chair. We understand where the committee is coming from and we are very much willing to provide evidence as required. One, an extract of the IFMIS payment to that insurance cover and also an invoice that was raised by the same company, that is Madison Insurance.

What we are saying here is that you can work within the acceptable threshold, but you cannot use that opportunity to procure an illegal service. Subjecting the Assembly to a third party, you know you might have bought within the threshold; to us what we can say is that there was no planning because we should be able to tell when an insurance cover is supposed to end and procure within time so that we don't subject ourselves or the Assembly membership to such risks. For the evidence of what was paid, though an illegal service, is going to be provided. Thank you, Chair.

Hon. Chairperson: Hon. Members, I wish that, and I'll give you your time *Mheshimiwa*, don't worry, I wish that we rely on what is provided and if we feel there is any gap, we list every gap against every charge and we will ask that they provide evidence, otherwise we might end up interrogating now and they do not have. So, I would ask that we rely on what they provided; if we need further evidence, we will write to them to provide or even call them here to appear again to substantiate. Is that in order? Ok. *Mheshimiwa* Lloyd, go ahead.

Hon. Lloyd: Thank you Chair. I would have proposed from the start, for us to not waste time asking Members whether they have questions or not. From the first charge, you just read the first charge, if no one has anything, up to the end, but since you have not done that, I would have liked the commissioners to go on record, on charge number three, amendment of the budget, I understand we have what was gazetted, we have everything. They have given evidence of the change of budget without the approval of the County Assembly. I would like them to go on record, what we said and what was gazetted that we did not agree with. On the change of budget, there is that amount that was changed.

Hon. Chairperson: Commissioner.

Hon. Ngui: Thank you Chair. In response to that, I think we have everything. We have provided the HANSARD, which is attached here, of what the Assembly passed on the

supplementary budget and we have also attached the published Act. When you go to the Act, you will be able to find all those discrepancies. Where there is a change, you'll be able to see, because the Act is very big. I think you will have time to go through it; you'll see this is the HANSARD and this is what was published which is not what was in the HANSARD. You'll be able to see it directly.

Hon. Lloyd: Alright. So, the discrepancies are many, not just one?

Hon. Ngui: Yes.

Hon. Lloyd: OK, then.

Hon. Chairperson: Yes, it's in our files marked CASB 008 to CASB 0012. I think our secretariat will be able to pick the details and in any case, if the details are not clear, the chair will be writing to you to provide further evidence, ok? Sawa.

Hon. Ngui: Just a case, for example is R0004, you can check on that for your reference. R0004, but they are many; you'll be able to see. Thank you, chair.

Hon. Chairperson: The secretariat is going to go into the details of what Mheshimiwa Lloyd is asking; that we must be able to see what was passed in the House and what was gazetted. Thank you. I think we are good. We will let the Commissioners leave the committee room and we will be left to continue. So, once again Commissioners, thank you, and you can be sure we will be writing to you for further clarification or even calling you here for more clarification. Thank you.

Thank you very much Members and secretariat. We are still on agenda four and at this point, we need, as per the minutes of the last meeting, have we been able to identify any witnesses? Because we had said after Mr. Mutisya appears, after CASB appears, we'll have a good picture of whether we need to invite more witnesses and in that case, have we identified any witnesses? Yes, Mheshimiwa Lloyd?

Hon. Lloyd: Just a proposal, whether the committee will agree or not, there is something where I was asking about the complaint made by the employee. From what I have gotten from the commissioners, yes, the letters are arising from the complaints made, which we don't have evidence, but we can have evidence from the person appearing himself. That's enough evidence. So, if we feel we need to, if we don't then it's ok.

Hon. Ndawa: Again Chair, I think it is good to also invite the procurement lady, that officer, to come and confirm the document which is in the file, whether it is authentic or it's a cooked one.

Hon. Chairperson: Have you identified another witness?

Hon. Kitaka: Chair, in line with the way this payment was done, because the Clerk himself is not the finance officer, we would want to know, if the committee finds it fit, that our finance officer can explain if there is anywhere that he is touched on the same.

Hon. Kavyu: To add to what Mheshimiwa Kitaka has raised, I think from the finance guy, we'll also be able to get clarity in terms of the process flow that the Board was not able to clarify, because I don't think in an institution, a single person can process and approve

payment successfully. It has to go through stages, so the finance officer will be able to provide that clarity.

Hon. Chairperson: Any other witness that we may need?

Hon. Mutuku: Chair, I can see the letter that was drawn by the late Clerk, Mbiuki, the difference was just the Job Group. We want to know, according to the scales of the Assembly, whether group I and the other one which was in the previous letter are paid the same, because the difference is just the job group and the payments down there are just the same.

Hon. Chairperson: So, who do you want us to invite to make that clarification?

Hon. Mutuku: Chair you will assist me with that, but the officer who is in charge of that department, I don't know whether it is the HR. Whether the job groups are paid the same.

Hon. Chairperson: OK. Any other witness identified? Ok. We have the person in charge of HR, we have the person in charge of Finance, we have the author of the letter that is here, and also the employee, and as per our schedule, they're supposed to appear today in the afternoon.

Hon. Lloyd: You'll make the ruling on that. The intention of Mheshimiwa's question, job group 1 and job group 2 the way they are being ranked, we would like to know the difference in salaries so that we know how much the employee has lost in that period so that it helps us now in determining that charge.

Hon. Chairperson: Yeah, you're right. So, those witnesses are good. Secretariat, I think you need to move with a lot of speed to invite them and we start at 2:30 p.m.

Hon. Ndawa: Maybe the secretariat can advise whether they are around or they have gone for that cultural dance in Makueni.

Hon. Chairperson: We don't need to pre-empt. Let them come back with the report. So, we adjourn until 2:30 p.m. Thank you.

The Committee adjourned at 1:15 p.m.

**RECORD OF SELECT COMMITTEE OF THE ASSEMBLY INVESTIGATING THE
ALLEGATIONS LEVELLED BY THE COUNTY ASSEMBLY SERVICE BOARD
AGAINST THE CLERK, MR. J.L. MUTISYA HELD ON FRIDAY, 1ST DECEMBER,
2023 AT THE COUNTY ASSEMBLY CHAMBER**

MEMBERS PRESENT

- | | |
|---|--------------------|
| 1. Hon. Nicholas Nzioka (Majority Leader) | - Chairperson |
| 2. Hon. Mbili Ndawa (Minority Leader) | - Vice Chairperson |
| 3. Hon. Francis Kavyu (MCA, Kinanie) | - Member |
| 4. Hon. Francis Kitaka (MCA, Ndalani) | - Member |
| 5. Hon. Winfred Mutua (MCA, Nominated) | - Member |
| 6. Hon. Rosina Kanini (MCA, Nominated) | - Member |
| 7. Hon. Justus Mutuku (MCA, Wamunyu) | - Member |
| 8. Hon. Anastasia Mutevu (MCA, Nominated) | - Member |
| 9. Hon. Mercy Njagi (MCA, Nominated) | - Member |
| 10. Hon. Lloyd Mutua (MCA, Nominated) | - Member |
| 11. Hon. Rose Wavinya (MCA, Nominated) | - Member |

WITNESSES

Ms. Nancy Wambui Wangai - Head of Department, Supply Chain

SECRETARIAT

- | | |
|------------------------|---------------------------|
| 1. Mr. Matthew Muange | - Head of the Secretariat |
| 2. Ms. Louisa Kamau | - Senior Hansard Editor |
| 3. Mr. Brian Muthusi | - Legal Counsel I |
| 4. Ms. Susan Kiluva | - Clerk Assistant |
| 5. Ms. Mercy Ndambuki | - Clerk Assistant |
| 6. Ms. Mirriam Musembi | - Commissionaire |

The Committee convened at 3:02 p.m.

Hon. Chairperson: Head of the secretariat, we are missing a member of the secretariat; the legal counsel. It's important that he is here. Please, can you confirm whether he is joining us? He's joining us later? Ok, thank you.

Welcome back to this session. As indicated earlier, we had identified the witnesses and I'm advised by the secretariat that there is a witness who has requested to appear first because she has a personal matter to take care of after we are done with her. So, we will go ahead and invite the Head of Procurement because after this she really wants to handle a very personal matter. *Mheshimiwa*, you have something to say? Ok.

(The Officer was invited to give evidence)

Hon. Chairperson: You may proceed and administer the oath

(The Oath was administered on Ms. Nancy Wambui Wangai)

Hon. Chairperson: Thank you very much. I don't know how to address you; is it Miss Wangai or Mrs. Wangai? Mrs. Wangai? Thank you, Mrs. Wangai. Welcome to this session. I'll explain to you briefly why you're here. This is a select committee of the County Assembly of Machakos that is looking into allegations and charges leveled against the Clerk, who is on

suspension, and when we were scrutinizing some of the documents, the committee thought it wise that you come and give some clarification on some matter and so that is why you're here. You should be open to the committee; it's not like we want to harm you, no. We just want some clarification on some matter that arose and since it touches on procurement and we understand that you're the head of procurement in this Assembly, that is why you appear. I would want first of all to ask the secretariat, did you invite her formally? Can we have a copy of the letter.

Mr. Muange: Yes, Chair we did invite her formally and here is the letter forwarded for invitation to the committee.

Hon. Chairperson: Just for record, did you receive the letter of invitation?

Ms. Nancy Wangai: Yes, I did.

Hon. Chairperson: Thank you. Members, I invite you to raise the concern to Mrs. Wangai for clarification.

Hon. Kavyu: Through the Chair, maybe before we proceed, will there be need for her to be supplied with a file or the letter? There is a letter that she had written.

Hon. Chairperson: Of course, for ease of our work and also for ease of her reference, but you should only supply her with the document that pertains to her, not the whole file.

(The documents were supplied to the witness)

So, did you receive the show cause letter dated 29th August 2023?

Ms. Nancy Wangai: Yes, I did receive this show-cause letter.

Hon. Chairperson: And you understood the contents thereof?

Ms. Wangai: Yes, I did.

Hon. Chairperson: You are the one who wrote the response dated 8th September 2023?

Ms. Wangai: Yes, I'm the one who wrote the response letter.

Hon. Chairperson: Please use the mic closely to you. You're confirming that you're the one who did the response on 8th September 2023?

Ms. Wangai: Yes.

Hon. Chairperson: Thank you. I invite Members to ask questions and I ask the Vice Chair, would you please come in and stand for me? I have a call that is coming in.

Hon. Vice Chairperson (Ndawa): Yes, it is now open for Members, and maybe before the first one I want to ask, you said your name is?

Ms. Wangai: My name is Nancy Wangai.

Hon. Vice Chairperson (Ndawa): On the letter that we have just handed over and the one

that you have confirmed, there is another issue of insurance covers for County Assembly motor vehicles, which are said to have been procured on third-party insurance cover. Are you aware of them?

Ms. Wangai: Yes, I'm aware that there was a third-party cover that was procured at some point.

Hon. Vice Chairperson (Ndawa): Who procured the insurance?

Ms. Wangai: I don't know who procured. I want to confirm that I did not procure third-party cover for Assembly vehicles.

Hon. Vice Chairperson (Ndawa): Who handles procurement issues in this Assembly?

Ms. Wangai: The procurement department handles what has been requested through requisitions.

Hon. Vice Chairperson (Ndawa): And you head that department?

Ms. Wangai: Yes.

Hon. Vice Chairperson (Ndawa): And you're confirming to this committee that you never took part?

Ms. Wangai: Yes, I want to confirm that I didn't take part in procurement of third-party.

Hon. Vice Chairperson (Ndawa): And you said you're aware of the existence of those third-party covers for the vehicles?

Ms. Wangai: Yes.

Hon. Vice Chairperson (Ndawa): As the head of the department, did you enquire to know how the covers were procured without your knowledge and you're the person who is supposed to be dealing with such?

Ms. Wangai: Mr. Chairman, the functions of the procurement department is not to audit processes of procurement, but rather to deal with the processes that have been brought forward to procurement department. If something doesn't come to procurement, it is not one of the procurement functions to know how it happened.

Hon. Vice Chairperson (Ndawa): Ok. Procurement is a process that has several steps to be undertaken up to the final stage. Did you take part in any of the stages?

Ms. Wangai: I did not take part in any of the stages of that subject procurement.

Hon. Vice Chairperson (Ndawa): Ok, thank you. Well answered. Other Members?

Hon. Justus Mutuku: Hon. Chairman, at some point the head of that department said she came to realize that there was a process of procurement being done. As the head of that department, did you raise an alarm or did you whistle to the relevant offices?

Ms. Wangai: Mr. Chairman, I will repeat again that that is not within my functions. Mine is

to deal with what has been brought to procurement. As for what has not happened or what has happened outside procurement, that is not within the purview of the procurement department.

Hon. Vice Chairperson (Ndawa): Any other question?

Hon. Kavyu: Through the Chair, Nancy, maybe you can shed some light to this committee. One of the things we are investigating is that the thirdparty insurance was a direct procurement. Could you shed some light to the committee on the threshold in terms of what can be procured directly without necessarily having to go through your department or is it that all procurement or any service that is being procured by this Assembly, is it a requirement for it to go through the department for adherence to the Procurement and Disposal Act?

Ms. Wangai: Mr. Chairman, the thresholds are given in the second schedule of the Public Procurement and Assets Disposal Regulations, 2020, and the thresholds indicate what can be bought using what method. For direct procurement, it has no limit, but then for every subject procurement, you look at the value involved. There is a method called low value that looks like a direct procurement but it has a low value impact, as in, the monies involved is small money. For services, you can buy using low-value procurement method up to Kshs. 50,000. For direct procurement, it has no limits, but then the requirements are there in the schedule.

Hon. Kitaka: Nancy, through the Chair, are you in a position to tell this committee the value that cost the Assembly for the third-party procurement of insurance? Are you in that position?

Ms. Wangai: I didn't see any document that is related to that particular procurement. I therefore don't know the value that was involved.

Hon. Kitaka: Ok. You are saying that a direct purchase has no limit?

Ms. Wangai: Yes, but it has the conditions that you need to meet. That now differentiates direct procurement from the low-value procurement.

Hon. Kitaka: Ok, thank you.

Hon. Ndawa: Chair, would you mind to tell us what are the steps that should be followed in direct procurement? What is supposed to be done, up to the last stage?

Ms. Wangai: The process of direct procurement is guided by the reason you're choosing direct procurement. If you choose direct procurement because there is no other supplier of that item, then there is a process of doing that. If you choose direct procurement because of urgency, there is a process of doing that. If there is no other supplier, there is supposed to be a requisition done and duly approved from Finance to the accounting officer, then it comes to procurement, we prepare a bid document, we issue that bid document to the single supplier of that good or service or works, the document is received within the specified period, evaluation is done, the professional opinion is done and that is forwarded to the accounting officer for award and then the contract is signed.

If you choose direct procurement because of the urgency, then you may not have that time to go through the procurement process as I have indicated before, so you go direct to the supplier that you have identified and you sign a contract with him. That is direct procurement.

Hon. Ndawa: Who signs the contract?

Ms. Wangai: The contract is signed by the supplier and the accounting officer.

Hon. Ndawa: Since you don't work alone in your department, did you inquire to know whether any other officer from your department was involved in the same?

Ms. Wangai: When I learnt that there was such procurement, I informally asked them but nobody seemed to be in the picture.

Hon. Chairperson: May I ask that in the case third party insurance, what do you think necessitated the direct procurement. Is it urgency or it's only that particular supplier who could offer that service?

Ms. Wangai: Mr. Chairman, that would be difficult for me to even call it direct procurement because I don't know the values that are involved. I think I would be in a better position to respond to that question if I had the values involved, so that I can tell apart if this is direct procurement or low value.

Hon. Chairperson: In your presentation, I have heard you say that there is professional advice that you normally would give in such an award, right?

Ms. Wangai: Yes.

Hon. Chairperson: Did you at any time give professional advice?

Ms. Wangai: No.

Hon. Chairperson: No? So In effect, whoever awarded the contract, awarded, are you telling this committee, minus the professional advice of the department of procurement?

Ms. Wangai: Yes, I'm confirming that.

Hon. Chairperson: The other question would be, when you learnt that the procurement had been done, did you take any professional action to advice that whatever was being done was against procurement laws?

Ms. Wangai: I did not take any action because, I will state this again, the functions of procurement is not to look at what is happening outside procurement; ours is to look at what is happening within procurement department. What has been forwarded to us is what we deal with, unless we are called upon to look at that other one that didn't come to procurement like the way you have done.

Hon. Chairperson: So, in effect, are you saying you do not initiate procurement?

Ms. Wangai: No, procurement doesn't initiate procurement.

Hon. Chairperson: Thank you.

Hon. Kavyu: Mr. Chair, maybe just a clarification. From your explanation Nancy, it means you telling the committee that it would not bother you if this Assembly the accounting officer, or the finance person decides to buy things directly, you'll be comfortable when you're moving around you see there is a new bus that has been bought and it never went

through the necessary procurement process, are you telling the committee that it will not bother you and you'll not take any action to stop that, as long as nothing has been brought to your department? Because as the head of procurement in this institution, it is also ethical, whether somebody decides to violate the procurement rule, don't you think you have a duty to advise and also if in an event it is persistent, you escalate the matter to the next level?

Ms. Wangai: Mr. Chairman, I did not mean that I'm just going to sit back and wait for everything to go bad, but what I meant, there are things that may happen without my knowledge. For such big procurements, there is no way that something will be bought and I won't know, but there are other things, especially services, that will be bought and you'll not see them, and you're not consuming this service, so at no point are you coming into contact with the contract that is arising from that which was done outside procurement. That is what I meant.

Hon. Kavyu: Ok. Who is the custodian of the contracts that are entered into by the Assembly with any third party?

Ms. Wangai: The custodian of the contracts is the Clerk, but we also maintain copies. In procurement we maintain copies in the procurement files.

Hon. Kavyu: So, in this case, do you have any file or copies of the contract in your office pertaining to this particular third-party insurance cover that was provided to the Assembly?

Ms. Wangai: I do not have any procurement record or any contract record for this particular procurement.

Hon. Kavyu: Lastly, through the Chair, in case of a necessity for direct procurement as a result of urgency, is there any derogation that is required or the accounting officer, because there is an urgency, can just wake up and progress without any form of derogation?

Ms. Wangai: I'm not sure I've got the question. Maybe you can---

Hon. Kavyu: What I'm asking, maybe in an event there's an urgency for the Assembly to undertake direct procurement for a service or a good that means they'll not have to go through your department, is there derogation that is required for an accounting officer to execute that or they are final?

Ms. Wangai: The accounting officer in all procurement matters is the final, but then for every procurement, there is a process. There is somebody who initiates the procurement, whether urgent or not. There is an approval that is sought and then there is a process if it is not urgent. If it is urgent, it is us, we accede. So, there is no particular time when the Clerk initiates and concludes the process.

Hon. Kavyu: Thank you, Mr. Chair.

Hon. Mercy Njagi: Through the Chair, based on your explanation when it's urgent, it's usually the accounting officer and the supplier doing it just directly with each other? That's my understanding from what you've explained.

Ms. Wangai: Not really. The accounting officer, as I said, will not initiate and conclude a process. It requires some players.

Hon. Njagi: Ok. So, in previous instances, you say you have copies of whatever contracts that have been undertaken, whether normal or in urgent situations, right? You have copies of that kind of contracts?

Ms. Wangai: Yes, we have copies of contracts that are being undertaken, or have been undertaken by the County Assembly.

Hon. Njagi: Even on the angle of urgency, you do have copies, but you do not have this particular one?

Ms. Wangai: Apparently we've not had any contract that has been signed out of urgency. We don't have a single one.

Hon. Kavyu: Through the Chair, on the letter that was written to you on 29th August for show cause, part C, the former Clerk, or the CEO, highlighted that there was failure on your part to procure the CASA games uniform---

Hon. Chairperson: I don't want to cut you short, but I would want to request, on the matter of third party, are we done? Because I don't want us to come back there.

Hon. Ndawa: No Chair.

Hon. Chairperson: Ok.

Hon. Ndawa: Through the Chair, I have three questions. Question number one, Nancy, do we have exceptional items or exemptional needs that exclude the procurement department from doing its work?

Ms. Wangai: No we don't, Mr. Chairman.

Hon. Ndawa: You don't have?

Ms. Wangai: We don't have any exemptions.

Hon. Ndawa: Ok. Question number two, from where you sit, was that need of insurance, does it qualify to be urgent?

Ms. Wangai: Mr. Chairman, urgency is defined in the Procurement Act. There is what you consider to call a procurement an urgent procurement.

Hon. Chairperson: Could you kindly quote a particular section of the Procurement Act that defines urgency?

Ms. Wangai: Unfortunately I have not carried my Act. Maybe I can clarify that later. I have to check.

Hon. Chairperson: Then we will request that you give us what is the definition of urgency, so the secretariat you'll need to do a letter. Or, you have it? Please proceed and give her.

(The witness was handed a soft copy of the Procurement Act)

Ms. Wangai: Excuse me, Mr. Chairman. I'm seeking assistance. I don't seem to know where it has gone when I downloaded it.

Hon. Chairperson: *(To secretariat)* Please assist her.

Ms. Wangai: Mr. Chairman, the Act defines an urgent need as follows.

Hon. Chairperson: Quote the Sections.

Ms. Wangai: It's Part 1 of the Procurement Act. May I now read? Urgent need means the need for goods, works or services in circumstances where there is an imminent or actual threat to public health, welfare, safety, or of damage to property, such that engaging in tendering proceedings or other procurement methods would not be practicable.

Hon. Ndawa: Thank you, Mr. Chair, for that definition, and from what we have read, an insurance cover has commencement date and it also has expiry date. Now the matter before the House now is insurance cover, which I believe there is somebody who is supposed to know when the cover commenced and when it's supposed to expire. From where you sit, does this one qualify, because I believe, if the cover is for one year, somebody will monitor and the process will start before the expiry date, so that as the date comes, we have an---

Hon. Chairperson: Let her answer the question. Don't lead her to the answer you want.

Ms. Wangai: Mr. Chairman, according to the definition of an urgent need, provision of insurance services does not qualify to be an urgent need.

Hon. Chairperson: The last question, because I don't want to bore the procurement officer with many questions, is it fair for a Head of Department to witness a felony being committed and fail to take action?

Ms. Wangai: No, it is not fair, Mr. Chairman.

Hon. Ndawa: So, Chair if you allow, I don't want to pin anybody, Hon. Chair, from what we are experiencing in our day-to-day activities, the traffic officers on the road, one can be bribed and when the EACC men come, instead of arresting one officer, they arrest both, or the whole team. The reason is, the others have witnessed a felony being committed and they have failed to take action, so in this matter now, our procurement officer here has confirmed that she learnt about the procurement which was done and was not within the law. Why didn't you raise concern, or you write to your boss or, if you are not willing to write to the person who is the accounting officer, why didn't you raise the matter with the Speaker of the County Assembly?

Ms. Wangai: Mr. Chairman, I learnt about this through the show cause letter. That is the time I came into contact with the fact that there was a procurement that was done about that matter and at that time, I was required to respond to an allegation, so the most I could do was to first respond to the allegations that were leveled against me.

Hon. Chairperson: Are you telling the committee that the first time you knew, as the head of procurement, that there was third-party insurance cover that had been procured was 29th August?

Ms. Wangai: Yes, that is the time I got the information that third-party was actually bought.

Hon. Chairperson: As Mheshimiwa said, and you have confirmed, that it was not an emergency, did you, out of curiosity, ask the accounting officer on what cover the vehicles were running on from 1st July 2023 to 29th August 2023, because of course as a diligent officer, I would be aware that the covers expired and I would want to know what the accounting officer is planning to do?

Ms. Wangai: Mr. Chairman, the procurement department informs the Clerk, but not supervising the Clerk.

Hon. Chairperson: Did you inform the Clerk that the covers will be expiring on 30th June or were about to expire?

Ms. Wangai: Yes, I informed him before the expiry.

Hon. Chairperson: Do you have any written document?

Ms. Wangai: I don't have any written document, but he was aware that insurance was expiring and the procurement process that was running could not have been accomplished by the time they were expiring.

Hon. Chairperson: In practice, communication between officers is always through internal memos, and in the case of procurement, I would think, I am not an expert, but I would think of this nature, would take at least three months, so I would expect that you would have written to the Clerk three months just so that when you start the processes, by the end, you have an insurance cover at the start of the financial year.

Ms. Wangai: Mr. Chairman, that communication on that kind of information is supposed to come from the user of the service, not procurement. It is the person who is using the service who should know when the contract is ending and therefore, requisition for the service in good time. Ours is to receive this requisition.

Hon. Chairperson: So, in the case of the third-party insurance cover, because it is vehicles, buildings, all those kind, who is the user department who was supposed to have raised this issue to the Clerk so that the Clerk informs you?

Ms. Wangai: The user of the service is the Department of HR and Administration, not procurement.

Hon. Chairperson: Thank you.

Hon. Kavyu: Maybe, Mr. Chair, one last one, Madam Nancy, is contract management part of the procurement process?

Ms. Wangai: Again, I would need to confirm the sections; the contracts are managed by the user with the help of procurement.

Hon. Kavyu: I've never had an experience in the public sector, but I've had an opportunity to work in a finance department where procurement was one of the sections in that department, and most of the time. The head of procurement, towards the expiry of any contract, they used

to take that pro-active action to check with the user department. We have contract AB or contract D that is up for expiry on this particular date. What plans do you have? Is it up for renewal or are we going to *nini*? IS that normally the case in the public sector or it's a bit different where you only action when the user acts?

Ms. Wangai: Mr. Chairman, the functions of the user department are clearly given in the Act and that falls under the user department.

Hon. Ndawa: Mr. Chair, I think the procurement officer has answered the questions that we intended to ask and now from what we are getting, because we have the fleet manager who manages the issues of the vehicles, I think that is none of what is supposed to be asked, so I want to say she has answered all what was supposed to be answered by her.

Hon. Chairperson: Unless any Member has a very burning question? Yes, Mheshimiwa Lloyd.

Hon. Lloyd: Not really on the same, but still on the insurance, Chair. After the third-party insurance which lasted for a month, the insurance was procured again, that's the general one. Did it follow the due process?

Ms. Wangai: Mr. Chairman, even as the third-party was being procured, the procurement proceedings for the general insurance were going on, so we eventually entered into a contract, whose proceedings were competitive, later in early August.

Hon. Chairperson: Were you involved in that one?

Ms. Wangai: I was involved from initiation to contract signing.

Hon. Chairperson: Which is what the law says?

Ms. Wangai: Yes.

Hon. Chairperson: The uniform for CASA games, what can you tell us about that, because I see up and including the date of the games, the participating teams from the Assembly did not have uniforms and I am made to understand, up to date, uniform for CASA has not been issued.

Ms. Wangai: Mr. Chairman we received the approval for this procurement, as I have indicated in my response, and we immediately as procurement embarked on the procurement process. As per my response, the requisition for the CASA games was received on 26th June. I'm only referring to my response so that I properly---

Hon. Chairperson: Take your time, take your time.

Ms. Wangai: We received the requisition on 26th June 2023 as I have indicated and I submitted the intent to publish that tender to the accounting officer immediately, but then by the time we were receiving that approval, the year had ended. This necessitated the raising of another requisition for this financial year and we received that on 11th July.

Hon. Chairperson: The approval took how long?

Ms. Wangai: I want to dwell on the second requisition.

Hon. Chairperson: No, no, no. I also want to get information on the first one. If you could provide the information, you raised the---

Ms. Wangai: The requisition for procurement of this item was received on 26th June 2023. I submitted the intent to publish for approval on the same day. Before I got the approval to publish, the financial year ended. That prompted the user department to do a requisition so that the requisition is committed to the current financial year's budget. That was done on 11th July 2023. That is when I received the requisition. Then I got the approval to publish the tender on 21st July 2023 and I published that same day. Then the procurement process requires that open tender takes a number of days, a minimum of seven, so we gave the bidders up to 31st to submit the bid documents and during that day, we appointed an evaluation committee. They sat and submitted their evaluation report on 3rd August 2023.

Hon. Chairperson: Use the mic.

Ms. Wangai: I was trying to go through the procurement process of the uniform and I was at this stage where the evaluation committee submitted its report, that was on 3rd August and they recommended that they do due diligence on the lowest evaluated bidder. In concurrence with the evaluation committee, I advised the Clerk that due diligence be performed and that was on 4th August. The accounting officer approved that recommendation on 8th August. Due diligence was conducted and submitted on 9th August. I submitted my professional opinion the same day on 9th and the accounting officer awarded the tender the same day on 9th. We did the notification letters and submitted them the following day, 10th August, which marked the beginning of the standstill period. We received the acceptance letter from the successful bidder on 14th August. Upon the completion of the 14 days as required by law, the contract was signed on 28th August and we issued an LPO on the same date.

Hon. Chairperson: Ok. Up to there, do you know when the CASA games were being held?

Ms. Wangai: They were starting before 28th, I think it was the week before that Monday of 28th.

Hon. Chairperson: The CASA games, for the record, were being held between 19th and 27th August and you issued a contract for supply of uniforms and an LPO on 28th of August.

Ms. Wangai: Yes, Mr. Chairman. That was the best the procurement department could have achieved. If you look at the timelines that we were given, we could not have jumped any of the steps that we undertook.

Hon. Chairperson: I really understand, but why would you procure goods for an event that has already passed? What informs that?

Ms. Wangai: Mr. Chairman, when a procurement is requested, it can only be cancelled by the accounting officer. I don't have the authority to terminate a procurement proceeding.

Hon. Chairperson: I agree, and I'm looking at it from the point of view of, you are the professional here. The accounting officer maybe is not a professional in procurement, and you owe him/her professional advice so that he is able to execute his accounting role effectively. Did you deem it fit to advice the accounting officer that this process will lapse way beyond the intended use of the goods?

Ms. Wangai: I may not produce anything written, but those are discussions I kept raising, because if you look at the time it was taking for me to get the approvals, they are unnecessarily long.

Hon. Chairperson: I will refer you to your letter, the second paragraph from below, the one that begins with some.

Ms. Wangai: Yes, I have seen it, Mr. Chairman.

Hon. Chairperson: You acknowledge that there are lapses, but you seem to exonerate the procurement department from the lapses. I put it to you that you're blaming other players. Is that correct?

Ms. Wangai: First Mr. Chairman, I would want to correct you that I am not blaming anyone because if you have gone through my whole submission, I'm able to show what procurement is doing. In fact, before I addressed the allegations, I took some time to explain to the Clerk how procurement is done. I know he knows.

Hon. Njagi: Through the Chair, we are kindly asking that she uses the mic. We really are straining over here; we really can't hear what she's saying.

Ms. Wangai: I'm sorry for that. Mr. Chairman I was saying, if you look at the preliminary stage of my report, I'm taking the Clerk through the procurement process. There is that which cannot be put upon the procurement department's responsibility. We are not accountable for things that happen outside procurement. If now you look at the particular case, we have demonstrated where time got lost. There is no single item that took beyond a day in procurement. If it is a requisition that comes, we seek approval to publish the same day. Once we are given approval, we publish either the same day or the following day. It could not have been done earlier than that, so if there is time that is lost outside procurement, then it's only fair to point it without necessarily blaming but actually pointing out the truth that time has been lost; it's not lost in procurement, but the fact is that we need to correct that, and I think that is what I did in the paragraph that you referred me to.

Hon. Chairperson: OK, thank you. I think Members, unless... you're ok. Thank you Mrs. Wangai for your responses. In case we need further clarification, we will invite you back. Thank you.

Hon. Kavyu: Maybe Mr. Chair before she leaves, thank you for your time. What are some of the recommendations that you will make to this committee that maybe we can give as a recommendation that will improve the process in the future?

Hon. Ndawa: Mr. Chair, I think that question is not proper because it will appear that the committee was dictated on what to recommend. Kindly.

Hon. Chairperson: I feel the same. Because she has given us the information and we have something written. Mheshimiwa vice Chair, I would kindly request that you sit in for me for a few minutes. You may leave.

Ms. Wangai: Thank you very much.

The Committee adjourned at 4:04 p.m.

RECORD OF SELECT COMMITTEE OF THE ASSEMBLY INVESTIGATING THE ALLEGATIONS LEVELLED BY THE COUNTY ASSEMBLY SERVICE BOARD AGAINST THE CLERK, MR. J.L. MUTISYA HELD ON FRIDAY, 1ST DECEMBER, 2023 AT THE COUNTY ASSEMBLY CHAMBER

MEMBERS PRESENT

- | | |
|---|--------------------|
| 1. Hon. Nicholas Nzioka (Majority Leader) | - Chairperson |
| 2. Hon. Mbili Ndawa (Minority Leader) | - Vice Chairperson |
| 3. Hon. Francis Kavyu (MCA, Kinanie) | - Member |
| 4. Hon. Francis Kitaka (MCA, Ndalani) | - Member |
| 5. Hon. Winfred Mutua (MCA, Nominated) | - Member |
| 6. Hon. Rosina Kanini (MCA, Nominated) | - Member |
| 7. Hon. Justus Mutuku (MCA, Wamunyu) | - Member |
| 8. Hon. Anastasia Mutevu (MCA, Nominated) | - Member |
| 9. Hon. Mercy Njagi (MCA, Nominated) | - Member |
| 10. Hon. Lloyd Mutua (MCA, Nominated) | - Member |
| 11. Hon. Rose Wavinya (MCA, Nominated) | - Member |

WITNESSES

Mr. Benson Mulinge Mutua - Head of Department, Finance & Accounting

SECRETARIAT

- | | |
|------------------------|---------------------------|
| 1. Mr. Matthew Muange | - Head of the Secretariat |
| 2. Ms. Louisa Kamau | - Senior Hansard Editor |
| 3. Mr. Brian Muthusi | - Legal Counsel I |
| 4. Ms. Susan Kiluva | - Clerk Assistant |
| 5. Ms. Mercy Ndambuki | - Clerk Assistant |
| 6. Ms. Mirriam Musembi | - Commissionaire |

The Committee convened at 4:27 p.m.

PRAYERS

Hon. Chairperson: Who is next, secretariat? Benson? Please invite the witness.

(The Oath was administered on Benson Mutua)

Hon. Chairperson: Mr. Mutua, welcome to this committee, the select committee that is investigating the charge that was brought up against Clerk Mutisya who is on suspension. We have called you in here because in the course of our investigation, we have seen that you interacted with part of the normal work. Why we have called you here is to seek clarification on a matter that we believe that you are in good space and good position to guide us or clarify. It is part of the documentation that we thought you or your office can clarify, and I will ask the secretariat to provide Mr. Mutua with any relevant document that he can refer to. I'm guided that the document that Mr. Mutua needs to see should first of all be admitted to this Select committee. There are several documents and I'm going to read, and these documents are supplied by the County Assembly Service Board, that is payment voucher to Madison Insurance dated 27th June 2023, Memo from Head of Human Resource to the Clerk on third-party cover for motor vehicle general insurance, there is an invoice worth Kshs. 44,700 from Madison Insurance, there is SRC Circular on implementation of the job

evaluation results for Phase IV salary review for the County Government employees at the assemblies and there are two payslips for the months of October and November, 2023 for Mr. Shadrach Nzioki Mbithi.

We have unanimously agreed to admit the documents because they are just helping our work.

Hon. Ndawa: Yes, I propose we admit the documents

Hon. Lloyd seconded.

Hon. Chairperson: *(To Mr. Benson Mutua)* That document is returnable. Just to ask, have you ever seen that document before? The voucher?

Mr. Benson Mutua: Yes, Chair.

Hon. Chairperson: In the voucher, in the part of authorization, is that your signature?

Mr. Mutua: Yes, Chair.

Hon. Chairperson: And that signature authorizes payment?

Mr. Mutua: Yes, Chair.

Hon. Chairperson: To mean that without that signature, the payment might not go through?

Mr. Mutua: Chair, it's a standard practice that the person who is in charge of finance also signs payment before it is paid.

Hon. Chairperson: Is it a practice or does your signature carry any meaning?

Mr. Mutua: It matters.

Hon. Chairperson: Would anyone sign?

Mr. Mutua: No, so it matters.

Hon. Chairperson: Would the payment be paid without the signature?

Mr. Mutua: No.

Hon. Chairperson: So it's under authority. Before you make any payment, like in that case you were paying for insurance, what would trigger you to make the payment?

Mr. Mutua: The documentation that is provided to support the relevant payment.

Hon. Chairperson: In this case of payment, what were you paying for?

Mr. Mutua: We were paying for insurance for motor vehicles.

Hon. Chairperson: What kind of insurance?

Mr. Mutua: Third-party insurance for the motor vehicles.

Hon. Chairperson: What documentation would be required before the start of payment?

Mr. Mutua: Before the start of the payment, there must be a debit note to support that from the insurance and there must also be some documentation to support that the procurement process has been done.

Hon. Chairperson: The debit process from insurance, internally what would you require?

Mr. Mutua: The procurement process must have been followed to facilitate the payment.

Hon. Chairperson: And what would that process be? And if you don't know you have a right to say you don't know.

Mr. Mutua: Chair, there must be a requisition and thereafter the requisition goes to procurement, the procurement process is done then a professional opinion is done and it's taken to the Clerk for approval.

Hon. Chairperson: Were those documentations availed to you?

Mr. Mutua: What was provided here was the instruction; some documentation from the user department to the Office of the Clerk instructing us now to process the payment.

Hon. Chairperson: Who instructed you to process the payment?

Mr. Mutua: The documents that we used were approved by the Clerk.

Hon. Chairperson: Who instructed you to make the payment?

Mr. Mutua: I'm saying that Mr. Chair, the documents that were provided to us were approved by the then Clerk, Mr. Joseph Mutisya.

Hon. Chairperson: What was he approving?

Mr. Mutua: We pay the third party for the motor vehicle insurance.

Hon. Chairperson: So, it's against these instruction, are you confirming to the committee, minus this instruction you would not have made the payment?

Mr. Mutua: Yes.

Hon. Chairperson: That you paid because you were instructed to pay?

Mr. Mutua: Chair, on the same I'm saying we processed the payment based on the documentation that were approved by the Clerk to process the payment, in this case, the memo from the human resource plus the debit note.

Hon. Chairperson: In the memo that I believe you have, dated 27th June 2023, there are two instructions. Instruction number one is process and instruction number two is accounts, deal. Are those sufficient instructions to make a payment?

Mr. Mutua: The first one, Mr. Chair, from the Clerk then is telling us now to process the payment, then the second instruction, that is from me telling the employees in the accounts section to process this payment.

Hon. Chairperson: So the instruction to pay indeed came from the Office of the Clerk?

Mr. Mutua: It originated from the Office of the Clerk.

Hon. Chairperson: Thank you.

Hon. Lloyd: Chair, he has told us the documentation is what guides them during the payment and the procurement document is part of it. Without that document from the procurement to show that it was duly procured, are you still allowed the payment without that documentation from procurement office?

Mr. Mutua: It depends, Chair, on the circumstances.

Hon. Lloyd: And what circumstances would these be, because we don't have the procurement documentation?

Mr. Mutua: In this case the documents from the procurement department were not provided to support the payment. We only relied on the memo from the HR department and the approval that we got from the Office of the Clerk.

Hon. Lloyd: Ok.

Hon. Kavyu: Through the Chair, the memo that you are hanging on as the reason as to why you were comfortable making the payment, in an ideal situation where the due process has been followed, is the memo that came from the user department by Justus Musuma, this communication, is it supposed to come to you to make payment or this memo should have been raised to provoke the procurement department or the Clerk to notify the department, so does it mean, let's say, for example, if someone in procurement department just raises a memo and it comes to you and it has been approved by the Clerk, don't you feel you have an obligation as an accountant and head of finance to question on why the due process has not been adhered to?

Secondly, the letter was done on 27th June 2023. The user department is indicating that the insurance contract was expiring on 30th June the same month. Don't you feel, as the person in charge of finance, you are encouraging some user departments not to follow instructions and that could be the reason they were comfortable coming to you without sufficient supporting documents for the payment to be done?

Mr. Mutua: Mr. Chair, as a department, that's finance and accounts, we normally make sure that all the payments are supported by the relevant documents before any payment is processed. That's our role, to make sure those payments are fully supported as per the law.

Hon. Kavyu: What was unique with this particular case that the procurement process had not been followed? What gave you the comfort to proceed and make the payment despite knowing very well that there was some documentation that was missing?

Mr. Mutua: Mr. Chair, there was a running contract on the same that was expiring on 30th June and because the other evaluation was not concluded by then, that's basically why we relied on this instruction to process that payment, because there was already a running

contract that was coming to an end on 30th and the procurement process to identify a new service provider was almost being concluded. That's why we relied on this instruction to process the payment.

Hon. Kavyu: Were you privy to the details of the contract that was expiring, and if yes, were the two the same? The one that was due for expiry on 30th June, was it also a third party contract?

Mr. Mutua: No, it was not.

Hon. Kavyu: So we agree it was not a continuation and they were not similar? It was totally a different request that should have gone through the normal procurement process?

Mr. Mutua: Thank you.

Hon. Chairperson: Yes, Mheshimiwa.

Hon. Ndawa: Mr. Chair, thank you. Part of what I wanted to ask has been asked but I will go in another route. Bwana Benson, do we have exemptional clauses or exemptional needs that would not require procurement in this County Assembly?

Mr. Mutua: No, Chair.

Hon. Ndawa: Ok. Was the matter extremely urgent such that we don't have to go through the normal process.

Mr. Mutua: I think it was not that urgent to avoid the process.

Hon. Ndawa: Ok. So now, an insurance cover has commencement date and it has expiry date. Why this last minute rush and I believe there is somebody who is supposed to advice on when vehicle covers are going to expire. Why wait until the last minute?

Mr. Mutua: Mr. Chair, with all due respect, I'm not in a good position to answer on Mheshimiwa Minority's question because that purely lies with another department. For us we come towards the tail end of the process. We come when all those other processes have been done; we come at the last stage when we are processing the payment.

Hon. Ndawa: From where you sit, was this transaction proper?

Mr. Mutua: There were some gaps---

Hon. Ndawa: Say yes, it was proper or it was not proper.

Hon. Chairperson: Mheshimiwa Vice Chair, I would ask him to answer just yes or no. If it was proper, it was proper; if it was not proper, it was not proper.

Mr. Mutua: It was not proper.

Hon. Chairperson: Thank you.

Hon. Ndawa: The other question, if it was not proper, why did you pay? Because you are not knowing today that it was not proper; from that time you could tell whether it was proper or not. Why did you pay that payment which had not followed the due process?

Mr. Mutua: Chair, by that time there was the need to have the insurance policies in place, so as to facilitate the movement of the vehicles. That was basically the major consideration when we were processing the payment, although it was not proper, but our intentions were to facilitate the movement of the vehicles for one month before the other cover comes in.

Hon. Ndawa: Procurement is a process and it emanates from the user department that places a need, up to the end where you make the payment. All those steps, who slept on his job? Because each officer has his/her duties that he/she is supposed to play. From the user department who is supposed to raise the need, up to the end whereby approval is done and you pay, all that route, who did not do what he/she was supposed to do, or who did what he was not supposed to do?

Mr. Mutua: Mr. Chair, I need some time to establish where the gaps were in the whole process.

Hon. Ndawa: *Haya*. The last one, after now realizing that you have seen and maybe because of the undue influence, because the request has been approved by the accounting officer, you went ahead and paid, after noting that anomaly, what action did you take, either to correct the anomaly or to prevent a repeat of the same.

Mr. Mutua: Mr. Chair, the Assembly has always done comprehensive insurance for its motor vehicles and this one was exceptional, because in the subsequent cover we have comprehensive insurance for the motor vehicles.

Hon. Ndawa: Did you take your time to ask why are we going to the third party and as our tradition, since the inception of this House, we are always on a comprehensive cover? Why are we moving? Why this shift? Did you ask that?

Mr. Mutua: No Chair, because I've said we normally come towards the end of the process and by the time we were coming on board, the covers were already in place.

Hon. Ndawa: The last question, Mr. Chair, why did you keep quiet after witnessing a felony being committed? Why did you keep quiet after witnessing a felony being committed?

Hon. Chairperson: I will put it to you, did you make the payment under duress?

Mr. Mutua: No Chair, we just followed the instructions that were provided and the documents that were provided.

Hon. Chairperson: At the point of payment you knew that the proper documents were not there?

Mr. Mutua: Yes, to some extent.

Hon. Chairperson: But you went ahead and paid, right?

Mr. Mutua: Yes.

Hon. Chairperson: Is it under duress or you decided to just break the law?

Mr. Mutua: Chair, we acted on the best interest, to make sure that the motor vehicles at least have some covers.

Hon. Chairperson: I put it to you, the best interest would not be a third-party cover; it would have been a comprehensive cover, as you had done all the time. I would not think you were actually doing it in the best interest, because one, it was risking the life and even the property of the County, so it could not have been in the best interest of the vehicle or even the people who are using the vehicle, to downgrade the cover, and I'm putting it to you, is it under duress? Were you doing the payment under duress?

Mr. Mutua: I didn't do it under duress, Chair, but we just complied with the instructions that we were given by the accounting officer on the same.

Hon. Lloyd: It doesn't add up to me how the payments were done, some documentation were missing and he can't confirm that it was under duress. Anyway, that's not the question; is it your duty, because now after everything has been done, the last phase of the payment is the one that comes to you after they have followed all the processes, which the finance department need to verify before they pay, now, is it in your docket to question, whether the insurance is comprehensive or third-party, are you supposed to ask a question or you pay anything that comes as far as it has followed the process?

Mr. Mutua: We pay as long as the process has been adhered to. The decision to have insurance, comprehensive or third-party is not made in the department; it's made elsewhere.

Hon. Lloyd: Are you able to confirm which department that is usually made?

Mr. Mutua: Basically it is the accounting officer.

Hon. Lloyd: Alright.

Hon. Chairperson: *Mheshimiwa* Kasanga.

Hon. Justus Mutuku: You've told this committee, through the chair, that there are some documents which are required to be followed before you do any payment. Is it so?

Mr. Mutua: Yes, yes.

Hon. Mutuku: In that, you went further, knowing that a debit note is needed and a procurement document is needed, you paid, knowing there is a lacuna of some documents missing? Finance officer, did you do so?

Mr. Mutua: Mr. Chair, the debit note was provided; it is attached, it was there.

Hon. Mutuku: That is where I'm coming now; that was a requirement?

Mr. Mutua: Yes.

Hon. Mutuku: Number two, you've told this committee that procurement documents are part of the documents required for you to do any payments; is that so?

Mr. Mutua: Yes.

Hon. Mutuku: And the procurement documents were not there?

Mr. Mutua: In this case they were not there.

Hon. Mutuku: They were not there?

Mr. Mutua: Yes.

Hon. Mutuku: And you went further to append your signature in a document whereby that office is required to have that procurement document, Benson, is it?

Mr. Mutua: Yes.

Hon. Mutuku: My last question, can you determine, because that office of yours received many procurement papers from different departments in this Assembly, can you identify whether these procurement papers followed the correct channel from your office?

Mr. Mutua: Mr. Chair, I have not gotten the question right.

Hon. Mutuku: I mean, from your office, can you determine whether the process that was used in procurement was ideal?

Mr. Mutua: On this one, I said Chair, there was a gap in the whole process.

Hon. Mutuku: Are we in agreement that as the finance officer, you misled this Assembly in endorsing and appending your signature in a document whereby there is a requirement needed, despite you getting a command from elsewhere, and paid money for this Assembly illegally?

Mr. Mutua: No, Chair. The payment that we processed was for the third-party covers and the approval of the accounting officer then, who is mandated to incur expenditure on behalf of the Assembly, and basically we acted on the supporting documents that he approved to support the payment.

Hon. Mutuku: Which documents?

Mr. Mutua: The memo requesting for the use of the third party and the debit note that supported that memo.

Hon. Mutuku: Between a memo and a procurement document, which has weight?

Mr. Mutua: The procurement documents.

Hon. Mutuku: Thank you, Chair.

Hon. Francis Kitaka: When you look at the letter which is attached here, from one Justus Musuma, who is the Head of Human Resource and administration, Chair it is notable that this is the user department. Finance officer, can you confirm that?

Mr. Mutua: Yes, Chair.

Hon. Kitaka: The request that is being done, when you look at the subject, is third-party cover for motor vehicle general insurance. Correct?

Mr. Mutua: Yes, Chair.

Hon. Kitaka: Then the one Justus Musuma, in the request, says the current contract in place expires on 30th June 2023 and the letter is dated 27th June. I would want to ask, do you have any information, before Justus did this letter requesting for the third party, was the normal requisition process for the comprehensive insurance in process or had it been started by the time this request was being made?

Mr. Mutua: Mr. Chair, I'm not quite sure of the same.

Hon. Kitaka: Ok. Chair, one, we would want to know the reasons as to why one, Justus Musuma, requested for a third-party, because the letter emanated from his department. He is the originator of the third-party request, so I think the committee should also take this into consideration. Thank you, Chair.

Hon. Ndawa: Thank you. Bwana Benson, from where you sit, Chair allow me to ask, from where you sit, was this payment within the law or there was a breach of procurement law?

Mr. Mutua: Outside, Mr. Chair.

Hon. Ndawa: OK, thank you. The other question is, regarding the third-party cover and comprehensive cover, the comprehensive cover that was expiring, the person we are requesting to give the third-party cover is the same supplier, is that true?

Mr. Mutua: I have not gotten your question.

Hon. Ndawa: The contract that was expiring is for the same person whom we are requesting to give us the third-party cover.

Mr. Mutua: Chair, what happened, the service provider who was providing the cover which was expiring on 30th June was still Madison, the same person who extended the cover by third-party.

Hon. Ndawa: So now if he is the one who gives comprehensive and he's the one who gives the third-party, why opt to go for third cover and since the person is the one who had given us the covers that are expiring and it is required by law, because comprehensive insurance you need to do a valuation, if there is no sufficient time for valuation to be done, you go with the previous value for one month, you get a cover for one month as you do the valuation, why did you opt to go for that cover? Instead of comprehensive cover, you go for a third party and you're dealing with the same person who knows you very well?

Mr. Mutua: Chair, I was not involved in the process that made that decision to go to third-party covers.

Hon. Ndawa: Who negotiated this deal to arrive at this figure of Kshs. 44,700?

Mr. Mutua: Chair, I'm not quite sure.

Hon. Ndawa: So, if we say as a committee that you are an accomplice of what transpired, are we going to be wrong? Or you conspired?

Mr. Mutua: No, Chair. I said before that the user department and the accounting officer maybe were in talks with the service provider to get the figure of Kshs. 44,700; I think that is where it came from, so we came toward the tail end of the process once the stickers were already in the vehicles.

Hon. Ndawa: How many other cases have you handled of this nature?

Mr. Mutua: This is the only case, Chair.

Hon. Lloyd: Through the Chair, I want to know from our Head of Finance, if there are exemptions, where procurement is needed in this facility and approval, comes from the accounting officer and there is no process of procurement, does that approval from the accounting officer overpass other documents that are needed? Because in this case, it happened with only the approval from the accounting officer, so we need to know whether there are exemptions that allow such an instance in your accounting profession.

Mr. Mutua: They are not there, Chair.

Hon. Lloyd: Ok.

Hon. Ndawa: To conclude this matter, you told the committee, or you have said there earlier that you acted on instructions and one issue which gave you that power to pay is the approval by the accounting officer. Are you telling us any item that comes from the accounting officer, whether it has documentation or not, you go ahead and pay?

Mr. Mutua: No Chair, that's not the case.

Hon. Ndawa: I think now let's come---

Hon. Mutuku: Chairman, between the finance officer and the accounting officer, you've told this committee again that your signature must appear in any document when you're paying, is it so?

Mr. Mutua: Yes, Chair.

Hon. Mutuku: So, there is another powerful signature that you acted upon in this payment?

Mr. Mutua: No Chair, because we normally sign around four officers, because there is examination and there is also voting in the vote book, and also those signatures are a must before the payment is processed.

Hon. Mutuku: And all of them did as you did?

Mr. Mutua: Yes.

Hon. Ndawa: OK. So we can conclude that the process of procurement from the first stage to

the last stage, we can omit all these other stages as long as the signature of the appointing authority is there, the deal is ok? Can you confirm that? Procurement is a process.

Mr. Mutua: It's true, Chair

Hon. Ndawa: It has step one, step two up to the last step---

Mr. Mutua: To the last one, yes.

Hon. Ndawa: And the last step is the payment.

Mr. Mutua: The payment.

Hon. Ndawa: The second last is the approval by the Clerk, is that the case?

Mr. Mutua: Yes.

Hon. Ndawa: So now, if all other steps are omitted, omitted, omitted, omitted, then the document lands on your desk with the signature of the accounting officer with nothing else, you go ahead and pay?

Mr. Mutua: No, Chair. Chair on this matter, there was a running contract that was expiring on 30th June then there was this decision to get the third-party covers. There should have been a process there to support the identification of the service provider to give the third party cover, and that is what was missing in this case now.

Hon. Ndawa: Who is mandated in issue of entering into contracts with other suppliers and who has the power to terminate or extend contracts?

Mr. Mutua: It's the accounting officer, Mr. Chair, who is the Clerk.

Hon. Ndawa: Him alone?

Mr. Mutua: Yes, nobody else.

Hon. Ndawa: Mr. Chair, I think we have concluded this matter and I want to hand over the Chair to you.

Hon. Chairperson: Thank you, Vice Chair. I think we've concluded with Mr. Mutua. Mr. Mutua thank you very much for honoring the invitation and answering sufficiently some of the issues that have been raised. We want to thank you. Please you can exit.

Mr. Mutua: Thank you, Chair.

The Committee adjourned at 5:11 p.m.

**RECORD OF SELECT COMMITTEE OF THE ASSEMBLY INVESTIGATING THE
ALLEGATIONS LEVELLED BY THE COUNTY ASSEMBLY SERVICE BOARD
AGAINST THE CLERK, MR. J.L. MUTISYA HELD ON FRIDAY, 1ST DECEMBER,
2023 AT THE COUNTY ASSEMBLY CHAMBER**

MEMBERS PRESENT

- | | |
|---|--------------------|
| 1. Hon. Nicholas Nzioka (Majority Leader) | - Chairperson |
| 2. Hon. Mbili Ndawa (Minority Leader) | - Vice Chairperson |
| 3. Hon. Francis Kavyu (MCA, Kinanie) | - Member |
| 4. Hon. Francis Kitaka (MCA, Ndalani) | - Member |
| 5. Hon. Winfred Mutua (MCA, Nominated) | - Member |
| 6. Hon. Rosina Kanini (MCA, Nominated) | - Member |
| 7. Hon. Justus Mutuku (MCA, Wamunyu) | - Member |
| 8. Hon. Anastasia Mutevu (MCA, Nominated) | - Member |
| 9. Hon. Mercy Njagi (MCA, Nominated) | - Member |
| 10. Hon. Lloyd Mutua (MCA, Nominated) | - Member |
| 11. Hon. Rose Wavinya (MCA, Nominated) | - Member |

WITNESSES

- | | |
|---------------------|------------------|
| Mr. Shadrach Mbithi | - Fiscal Analyst |
|---------------------|------------------|

SECRETARIAT

- | | |
|------------------------|---------------------------|
| 1. Mr. Matthew Muange | - Head of the Secretariat |
| 2. Ms. Louisa Kamau | - Senior Hansard Editor |
| 3. Mr. Brian Muthusi | - Legal Counsel I |
| 4. Ms. Susan Kiluva | - Clerk Assistant |
| 5. Ms. Mercy Ndambuki | - Clerk Assistant |
| 6. Ms. Mirriam Musembi | - Commissionaire |

The Committee convened at 5:17 p.m.

PRAYERS

(The Oath was administered on Mr. Shadrach Mbithi)

Hon. Chairperson: Mr. Mbithi, welcome to this session. As you are aware, this is a Select Committee of the Assembly that is looking into the matter of the Assembly Clerk, Mr. Joseph Mutisya, who is on suspension, and the committee, during its investigations, came across some documents that required you to come in and make some clarification to the committee, so I urge you to answer the questions precisely. It's for the purpose of aiding the work of the committee.

I'll go straight to the question and ask you to introduce yourself when and how you joined the institution and what is your position.

Mr. Shadrach Mbithi: Thank you for inviting me to the committee. My name is Shadrach Mbithi, Fiscal Analyst I, working in the budget section under the Department of Finance. I joined the Assembly on 1st February 2022 as a Fiscal Analyst I. However, my appointment letter indicated Fiscal Analyst II. Thank you.

Hon. Chairperson: Did you make an application for the job?

Mr. Mbithi: Yes, I did.

Hon. Chairperson: What prompted you to make the application?

Mr. Mbithi: I did the application because wherever I was working I was trying to shift and I felt that the position was better for my personal development.

Hon. Chairperson: How did you know that a position existed?

Mr. Mbithi: Through an advert in the Daily Nation.

Hon. Chairperson: You saw an advert?

Mr. Mbithi: Yes, sir.

Hon. Chairperson: And the advert was for which position?

Mr. Mbithi: Fiscal Analyst I

Hon. Chairperson: And you applied for Fiscal Analyst I?

Mr. Mbithi: Yes, sir.

Hon. Chairperson: Were you invited for an interview?

Mr. Mbithi: Yes, sir.

Hon. Chairperson: And you were interviewed for the job of Fiscal Analyst I?

Mr. Mbithi: Yes.

Hon. Chairperson: And then?

Mr. Mbithi: I was confirmed to be successful; I received an appointment letter which was for Fiscal Analyst II.

Hon. Chairperson: Did you ask why you had applied and attended an interview for Fiscal Analyst I and then received a letter for Analyst II?

Mr. Mbithi: I did, sir. When I reported in February 2022, we were taken through the induction program by the HR office in the County Assembly of Machakos and I raised the issue with the HR officers who were taking us through because I had done an interview for Fiscal Analyst I and my appointment letter is Analyst II, so I did ask.

Hon. Chairperson: Was it through writing?

Mr. Mbithi: No.

Hon. Chairperson: And what was the response?

Mr. Mbithi: They informed me that there is no problem; that was the response.

Hon. Chairperson: Have you ever raised that matter again to any other office in the Assembly?

Mr. Mbithi: Yes, I did. After they had confirmed to me that there was no problem with the letter, I felt that was ok. Of course, being new, I was satisfied by the officer who responded to me with that. Then after six months after the probation period was over and it was time for the confirmations, the Director, of HR, called me to his office and informed me that my letter had an issue that needed to be corrected, so he requested the original appointment letter which I gave him to correct.

Hon. Chairperson: Did he correct?

Mr. Mbithi: He did correct and I was given another letter. My first appointment letter was dated 3rd January 2022; the second appointment letter is dated 11th February 2022. It was corrected, however the reporting date remained as 1st February 2022 and the scale remained for Fiscal Analyst II, so I also raised another query with him and he told me that he will pursue the matter with the high offices and he will come back to me.

Hon. Chairperson: Did he? Has he ever come back to you?

Mr. Mbithi: Since then, not yet.

Hon. Chairperson: So since you were employed, you have been remunerated as a Fiscal Analyst II, yet the letter is Fiscal Analyst I?

Mr. Mbithi: Yes, sir.

Hon. Chairperson: OK, thank you. Any further questions?

Hon. Kavyu: I have one, Mr. Chair. The advert that prompted you to apply, was the position on a contract basis or a permanent basis?

Mr. Mbithi: The advert was on a contract basis.

Hon. Kavyu: Ok. Thank you.

Hon. Ndawa: Maybe the last question that we may ask him because we have another witness Hon. Chair is on the issue of the regulation. Is what you're being paid as Fiscal Analyst II, the same as what you're supposed to be paid as Fiscal Analyst I or there is a difference? And if there's a difference, how much?

Mr. Mbithi: Thank you Hon. Member. I know there is a difference because they are two different scales, the amount I'm not certain.

Hon. Chairperson: I want to take you back. Who signed your letter of appointment?

Mr. Mbithi: The first one is signed by Mbiuki F.G.

Hon. Chairperson: And he signs as who?

Mr. Mbithi: The Secretary/CEO

Hon. Chairperson: Of what?

Mr. Mbithi: It's not stated, but I take to be the Secretary to the CASB and the CEO to the County Assembly.

Hon. Chairperson: What about the second letter?

Mr. Mbithi: The second letter is signed by Mutisya J.L.

Hon. Chairperson: As?

Mr. Mbithi: The Acting Secretary/CEO.

Hon. Chairperson: Of the same Board?

Mr. Mbithi: It's not stated, but I take it to be referring to the same institution.

Hon. Chairperson: Thank you.

Hon. Lloyd: I want to ask a question. He has said that after the Human Resource pursued his issue, they brought a letter as Analyst II. In my case I thought that they received a confirmation from Mutisya, confirming his appointment which has now been corrected from permanent and pensionable to contract, Analyst I, and not II, my issue was, is it an issue of the letter or the payments, because you have confirmed the letter you received still has an error of the Job Group?

Mr. Mbithi: The second letter retained the Job Group as Fiscal Analyst II and then as I also said, the date is dated 11th February, but to report by 1st February.

Hon. Lloyd: Chair, are we having the wrong one or I'm reading the wrong one? Because this one says "letter of offer for appointment for the position of Fiscal Analyst I." The one I have here.

Mr. Mbithi: On contractual terms.

Hon. Lloyd: On contractual terms for three years. So the scale remains the same?

Mr. Mbithi: Yes.

Hon. Lloyd: Alright.

Hon. Chairperson: So, Mheshimiwa, there's an issue of underpayment. He earns less money; while he's supposed to be earning for Fiscal Analyst I, he earns for Fiscal Analyst II. If I can say, there are normal increments annually and you know the salaries were also reviewed by SRC, so at the point of him being paid, now there is a review by SRC and annual increment.

Hon. Kavyu: Mr. Chair, from what he has explained, It's clear that the appointment letter that was issued to him doesn't align with the job that he was interviewed for because he was interviewed for Fiscal Analyst I but at the point of appointment, he got a different letter for Fiscal Analyst II, so that is what is leading to the underpayment.

Hon. Chairperson: Thank you, Shadrach for honoring the invitation and also for answering the questions from the committee. You may exit.

Mr. Mbithi: Thank you sir; thank you the team.

Hon. Chairperson: Secretariat, invite the other witness, please.

The Committee adjourned at 5:29 p.m.

**RECORD OF SELECT COMMITTEE OF THE ASSEMBLY INVESTIGATING THE
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AGAINST THE CLERK, MR. J.L. MUTISYA HELD ON FRIDAY, 1ST DECEMBER,
2023 AT THE COUNTY ASSEMBLY CHAMBER**

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| 10. Hon. Lloyd Mutua (MCA, Nominated) | - Member |
| 11. Hon. Rose Wavinya (MCA, Nominated) | - Member |

WITNESSES

Mr. Justus Musuma - Head of Department, Human Resources & Administration

SECRETARIAT

- | | |
|------------------------|---------------------------|
| 1. Mr. Matthew Muange | - Head of the Secretariat |
| 2. Ms. Louisa Kamau | - Senior Hansard Editor |
| 3. Mr. Brian Muthusi | - Legal Counsel I |
| 4. Ms. Susan Kiluva | - Clerk Assistant |
| 5. Ms. Mercy Ndambuki | - Clerk Assistant |
| 6. Ms. Mirriam Musembi | - Commissionaire |

The Committee convened at 5:31p.m.

PRAYERS

(The Oath was administered on Mr. Justus Musuma)

Hon. Chairperson: Mr. Musuma, welcome to this select committee. As you're aware, this select committee is the creation of the Assembly to look into the matter of Joseph Mutisya, who is the Assembly Clerk on suspension.

During our investigation into this matter, we came across information that needed clarification from you as the Head of Human Resources. We will just engage on the same. Please be free, answer the questions as you will be asked by the committee Members. I open the floor for questions now.

Hon. Francis Kavyu: Thank you Chair. My first question relates to the procurement of third-party insurance and---

Hon. Chairperson: Give Mr. Musuma relevant documents for ease of reference. Please, you need to introduce yourself, your name, and what you do in the Assembly, and then we proceed.

Mr. Justus Musuma: Thank you Chair and Members of the committee. My name is Justus Musuma. I'm the head of Human Resources and Administration for the County Assembly of Machakos. Thank you very much for having me on this committee to shed more light on the subject matter.

Hon. Francis Kavyu: Through the Chair, Mr. Justus, some of the HR role, of them includes talent management, compensation and employee benefits, training and development and the other role is to ensure compliance and safety of employees. I want to major on the last one where as the head of HR, it is your duty and responsibility to ensure the safety of all the parties in the Assembly is guaranteed and also all safety standards are complied with.

On 27th June 2023, I have a letter that was addressed to the Clerk of the County Assembly by you, reference, third party cover for motor vehicles' general insurance. It reads the above matter refers. The contract in place for the provision of motor vehicles' general insurance expires on 30th June 2023. The Assembly wishes to extend the contract for a period of one month on a third-party basis. The purpose of this letter is to seek approval for the finance department to spend Kshs. 44,700 as per the attached to facilitate the same.

This is my question, one, the insurance was expiring on 30th June. As the Head of the HR department, the letter you did requesting for extension was done on 27th June, three days before the expiry of the contract. What led to the lapse, because I understand you understand the entire procurement process that if a contract is expiring on the 30th, as the user department you ought to have initiated the process in advance to ensure that there is no lapse?

Maybe you can explain to the committee what led to the delay and number two, don't you think procuring a third-party cover for the Assembly motor vehicles that are used by staff and Members of the County Assembly on a day-to-day operation, was not a risk and exposure to the Assembly and the users of the said vehicles?

Mr. Justus Musuma: Through the Chair, it's true that I have a key responsibility to manage insurance, both medical and general insurance. My key role is actually facilitation. Regarding these two, the requisition was done on time for medical insurance and for general insurance, and as a user department, our responsibility in that process stops at the point where the requisition is approved by the accounting officer, the Clerk, and this was actually done and approved. Once it's approved, the next process is procurement process, which I do not have a key role to play.

In this particular case for the third party, I went to the Clerk to ask about the position because I was concerned that we don't have insurance in place and the current was expiring on the 30th of June, which I had brought to the attention of the Clerk many times and I was instructed to do a letter which I did, this is the letter, for approval, for finance to incur this expenditure. I was requested to do it for the Clerk's approval for this amount to be spent, which I actually did, and about the amount that is reflected here, I was shown the invoice, which I quoted here, and that was my responsibility in this.

Hon. Kavyu: So, from your explanation, you have indicated that the requisition for procurement of the insurance cover for the vehicles was done in good time. Can you give the committee the exact time when the requisition was done and what made it not be approved while the medical scheme was approved on time? Can you explain to the committee when you say it was done early enough, when was that?

Secondly, you also clarify, when you were asked to do the letter, was there clear instruction that you request a third party or was it a request for you to do a letter for extension of the existing, because normally the standard procedure would be, if you have a policy that is running and you're not able to do the valuation in good time for renewal, you can use the previous valuation to have it extended for a period of one month as you conclude the other

process. Were there specific instructions for you to write a letter requesting for a third-party insurance cover?

Mr. Musuma: Through the Chair, the requisition for the motor vehicles, precisely was done on 11th May and---

Hon. Chairperson: So that we follow, communication between government offices would require you to write and get back. When you say communication, was it verbal or written?

Mr. Musuma: The requisition was written and I signed then I took it to the Clerk for approval which was approved, and in that case, the process took the direction of procurement. On the second part of the question---

Hon. Lloyd: Through the Chair, which one are you talking about here? The general one or the one we are talking about now?

Mr. Musuma: I'm referring to the general.

Hon. Lloyd: Alright.

Mr. Musuma: In the second part of the question, I had some clear instructions on this as even reflected in the letter. Around that time, I would say that would not be the best option to take. Of course, there was a gap, but given that the process of the extension was not done on time within that period, it could have been a challenge to initiate an extension for one month for the current insurance, and around that time, the process of procuring for general insurance had already begun.

Hon. Kavyu: As I finish Mr. Chair, you have indicated that the requisition was done on 11th May 2023 and approval granted to the same effect. Just a clarification, once you have raised a requisition as a user department, who has the responsibility, is it the Clerk or it's the user department that has to follow up and make sure it has reached the procurement department? Where does your role stop? Is it your responsibility, once a document has been approved, to deliver it to procurement for action or it's the accounting officer or Clerk who delivers it to the procurement department?

Mr. Musuma: Normally, there is an officer in my department who is tasked to initiate the process for general insurance. Once it is done it comes to my office for my signature after I go through then from there we forward it to the Clerk for approval. Once it's approved by the Clerk, now it's forwarded to procurement for the procurement process to continue. My responsibility stops at the point where the Clerk approves the requisition.

Hon. Kavyu: Once it's approved by the Clerk, who is supposed to forward it to the procurement department? Is it your department or the Clerk?

Mr. Musuma: It is the Office of the Clerk. The document does not come back to my office.

Hon. Kavyu: OK, thank you.

Hon. Lloyd: Chair, the question on the third party, he has said he got instructions from the Office of the Clerk to do whatever he did here. We had a question on how the figures originated. The figures still originated from that office. Was the instruction verbal or there is documentation to the same effect?

Mr. Musuma: The instruction was verbal.

Hon. Kitaka: Chair, Mr. Justus, from your indication and what you've narrated to this committee, the requisition for procurement of another comprehensive cover was raised from your department on 11th May. Correct?

Mr. Musuma: That's correct.

Hon. Kitaka: That is approximately seven weeks to the expiry of the cover that was in place at that time. I want you to confirm to us, what is the expected period, putting into consideration all the processes that need to be taken, and how long does it take for the department to accomplish or for another cover to come in place, because it appears that if on 27th June the process was not complete, then it means there was need probably for the requisition to be done earlier than the time it was done. Can you tell us, maybe how long does it take, or how long did it take the Assembly to acquire the new cover that is in place now? And on the same note, who is to be blamed for the delays?

Mr. Musuma: The process of procurement for a service normally takes between 45 days to 60, and I want to believe that this was within that threshold. If the process had been done efficiently, it could have been completed on time to have general insurance in place, just the same way we had for the medical. Thank you.

Hon. Kitaka: So, you exonerate yourself from this, because if normally it takes 45 to 60 days, when I check on when you did the requisition, you have like 50 days or so, which you believe is sufficient? Is that the case?

Mr. Musuma: That's the position.

Hon. Kitaka: On the same note---

Hon. Chairperson: Mheshimiwa, just a minute. You are the author of the letter dated 27th June 2023 requesting third-party cover for motor vehicle general insurance. Do you have a copy of this letter?

Mr. Musuma: I do have it here.

Hon. Chairperson: You have it? And you're the author?

Mr. Musuma: Yes.

Hon. Chairperson: You authored because you're the user department?

Mr. Musuma: Yeah, I got concerned that the current policy by then was getting to the end and I was concerned that the members and the staff would be exposed.

Hon. Chairperson: I'm talking about this particular one for motor vehicles.

Mr. Musuma: Yes.

Hon. Chairperson: You were concerned because you are the user department? You are a consumer of this service?

Mr. Musuma: Absolutely, Chair.

Hon. Chairperson: How then, as the user could you have waited until 27th June when the contract was ending on 30th June, yet you've told the committee, that procurement of a service would take between 45 and 60 days? Why did you wait for such a delay?

Number two, you confirm the previous cover was comprehensive. What happened that you were not seeking an extension by one month of a comprehensive cover and why did you downgrade to a third party?

Mr. Musuma: Chair, I could not have anticipated that in a month, the process that we had initiated for procurement of general insurance would not be successful by that time. It dawned on me that it was not taking place as the days came to the end of the insurance that we had. If I had in mind that perhaps within one month to the lapse of what we had we would not have insurance in place, I would have advised for further extension of the existing insurance.

Hon. Chairperson: Why the downgrade from comprehensive to third party?

Mr. Musuma: Chair, I confirm to you that's a lapse, but it was not my decision.

Hon. Chairperson: Whose decision was it?

Mr. Musuma: I cannot say; my role here I was just instructed to write a letter for approval.

Hon. Chairperson: Who instructed you?

Mr. Musuma: Chair it's the Office of the Clerk.

Hon. Chairperson: Thank you. *Mheshimiwa* Kitaka you had not finished.

Hon. Ndawa: Hon. Chair, we are in a committee and we'll not allow one Member to dominate the whole committee, so allow other Members to contribute.

Hon. Chairperson: I am trying to be as fair as possible.

Hon. Ndawa: Thank you, thank you. I am starting where you have stopped on this note, Bwana Musuma you are on record saying that you were instructed. Are you confirming to us that you were dictated on what to put on paper?

Mr. Musuma: That's not the correct position on that matter and I was guided to do a letter for approval.

Hon. Ndawa: Where did you get these figures, Kshs. 44,700?

Mr. Musuma: There is an invoice that was already in place, so I used the invoice as a basis to put it in that letter.

Hon. Ndawa: Ok. You are on record telling us on 11th May you raised a requisition for comprehensive insurance. At what stage did it change from comprehensive to third-party?

Mr. Musuma: On 11th May, the requisition that my department, the user department did, was for comprehensive insurance.

Hon. Ndawa: You said your role ends once your request is approved by the Clerk; the issue of procurement, is none of your business.

Mr. Musuma: That's the position, but as the user, I normally fast track the process, but my role as the user department stops when the requisition is approved, because now once approved it's forwarded to procurement for the process to continue.

Hon. Ndawa: Thank you Chair, I'll allow Mr. Kitaka to conclude if you allow him.

Mr. Musuma: And Chair if you may allow me, as the user department, when we raised the requisition, there was no complaint around that time which was put to the user department on the same.

Hon. Ndawa: Where would you have expected the complaint to come from?

Hon. Chairperson: You speak through the Chair.

Hon. Ndawa: Sorry Chair, but the question is at home. Where would you expect the complaint to come from?

Mr. Musuma: Through the Chair, there was this question on when we did the process and if perhaps from the user department there was some challenge or something that we did not do, someone would have raised the red flag; either the procurement department, because they're also very key in procuring the service and besides, they're also key in advising even the user department, we need to do this and that about this service.

Hon. Ndawa: Thank you.

Hon. Chairperson: Mheshimiwa Mercy.

Hon. Mercy Njagi: Mr. Musuma, considering you're the head of Human Resources, I'm curious as to the mode of communication; do you usually receive and give out instructions verbally in your department, and just to follow up on what you've just said on red flags, did you feel a bit of concern when you were writing this memo requesting for third party insurance, knowing very well that third party insurance doesn't work in public service?

Mr. Musuma: On communication, sometimes the communication might be verbal, depending on the subject matter, but ideally in most cases it's done in writing; I do agree with you on that.

On the second part of it about the third party, I do agree that there was a gap; I was reluctant on this but it was done as a fix, I would say, because we did not have comprehensive insurance in place.

Hon. Kitaka: Chair, there's an item that I wanted to get clearly; Mr. Justus, you've said that there was an invoice that was amounting to Kshs. 44,700. I would want to understand, or this committee seeks to understand, how we arrive at Kshs. 44,700, because one, before an insurance company gives you an invoice, there was a request, so did this request emanate from the user department directly to the insurance or did it emanate from the Clerk directly to

the insurance, because by the time you were writing this letter, you already had the amount in place. How was the process done?

Mr. Musuma: Chair, I did not participate in the process of getting this invoice. I got the invoice and it's from the invoice that I generated the letter.

Hon. Kitaka: Can you confirm where you got the invoice from?

Mr. Musuma: I got it from the Clerk.

Hon. Kitaka: Thank you.

Hon. Lloyd: On the same, Chair, the invoice, and your request, normally, which one should come first?

Mr. Musuma: It should have been the request.

Hon. Chairperson: Thank you. I have a second question, but on the matter of the third-party insurance, are we done, I don't want us to get back there.

I want to go to the next question. I want to ask you another question regarding the employment of one of the staff. There's a letter of employment of Mr. Shadrach Nzioki Mbithi. There's one letter that is dated 3rd January 2022, there's also another letter dated 11th February 2022 and there's I think job description for the position of Fiscal Analyst I.

The committee was made to understand that Mr. Shadrach Mbithi saw an advert that was placed in the local media and applied for the position of Analyst I, but the first letter of 3rd January 2022, he was given a letter of appointment for Fiscal Analyst II on permanent and pensionable basis, yet the advert was contractual. The same was corrected on 7th February. During the advertisement, the positions of Fiscal Analyst I and Fiscal Analyst II, scales are different; he's been offered a lower scale in the second letter. Are you aware of this matter, and what have you done about it as the Head of HR and what have you done about it?

Mr. Musuma: I'm aware of this matter. I got to know about this matter from Mr. Shadrach Mbithi. If you allow me Chair I take the committee back to the advert, this advert was done some time back in April. The letter I have is signed 29th April 2021, and I would like to make a disclaimer, Chair, that I had not joined the Assembly by then, and when I joined the Assembly, the affected staff came to my office and explained to me about the matter, in very good faith, that he had been issued with a letter for permanent and pensionable, but he was aware that his position was on contract for three years, which I discussed with the staff and immediately escalated the matter to the Clerk, and upon discussion, he requested me to request the staff to recall the letter, which I called the staff and we discussed and he brought the letter to me, the one for permanent and pensionable, and the staff was issued with a letter for the contract.

I would like this committee to note that there was a mistake which started from the advert. Job Group 'N' is supposed to be CASB 6, that's how the position here is, and Job Group 'M' is CASB 7. The starting salary for Job Group 'N' when an officer is entering into the service, we have a maximum and minimum and the officer starts at the minimum, which in that case is Kshs. 56,370. We do also have other allowances that accompany that, that is Job Group 'N' which is Kshs. 56,370, then a house allowance for Kshs. 16,500 and commuter allowance of Kshs. 8,000. I confirm to this committee that the benefits for Job Group 7 and 8, are the same. The difference is the salary.

When the mistake that was made came to my attention, we recalled the letter and issued a new letter of appointment and the matter rested at that particular point. Later, I can't

remember precisely the dates, the staff came to me and told me that there was a problem with his appointment letter which he pointed out and I looked at the matter and went to discuss the same with the Clerk. The Clerk advised me that he would discuss it with the staff, that is Mr. Shadrach, and advise me on the way forward.

Hon. Chairperson: Has he so far advised you on the way forward?

Mr. Musuma: Chair, I've not been advised on the way forward on the same.

Hon. Chairperson: I will ask you again, as Mheshimiwa Mercy Njagi asked you, in normal practice, and you as an HR practitioner, these things should be documented that you indeed had a meeting with Shadrach and you document whatever anomalies and point them to the Clerk through a letter. Do you have any correspondence to show that you informed the Clerk?

Mr. Musuma: Chair, once we had a formal discussion, I had put it in writing

Hon. Chairperson: So, you put it in writing and you have those documents?

Mr. Musuma: The appointment letter that changed from the permanent to the contract, I had done the letter.

Hon. Chairperson: The letter is there, but you're telling us Shadrach came back to you with a problem in terms of payment; that the second letter had problems in payments. Have you sorted that matter?

Mr. Musuma: Chair, that matter hasn't been sorted.

Hon. Chairperson: I'm asking you, did you capture that matter in writing to the Clerk?

Mr. Musuma: I have to check with the documents, Chair, but I can't remember whether it was put in writing.

Hon. Chairperson: OK.

Hon. Lloyd: Through the Chair, because now this is the difference for, I think a year or so, that Shadrach has not been earning, I want to ask you, whose responsibility is it to make sure that the second appointment letter aligns with the remuneration?

Mr. Musuma: The second appointment letter actually was informed by the way the advert is. The candidate applied for this position and if this was mainly picked from the career progression for county assemblies, which didn't tally well with the SRC pronouncement, 2020.

Hon. Lloyd: I don't think you've gotten my question right. What I want to know is, this letter for the Fiscal Analyst I that is written by the then Acting Clerk, or the Secretary and the CEO, Bwana Mutisya, what I want to know is, to effect this letter for payment, is it your department or the Clerk must instruct you do it?

Mr. Musuma: It must get approval from the Clerk instructing me to implement.

Hon. Lloyd: Now, in that case, still I will go to the question the Chair was asking, why didn't you see it necessary to do it in writing so that now in the correspondence you have proof that you offered this professional advice and it was not adhered to.

Mr. Musuma: Chair, what I do is whenever there's a staff matter, I normally take the file for the affected staff which acts as the source document.

Hon. Chairperson: So, in the staff file, there is some correspondence to the Clerk saying that even after you corrected the letter from permanent and pensionable to contractual, there was yet another mistake in terms of placement. You did place Shadrach on CASB 6 instead of CASB 7? Do we have that correspondence?

Mr. Musuma: Chair, I can't remember that precisely.

Hon. Chairperson: Because what was approved by the Board is Fiscal Analyst I and that would lie on CASB 6 yet he was placed in CASB 7. At what point did what was captured in the advert and what Shadrach applied for change? Who authorized the change? The advert speaks of Fiscal Analyst I, Job Group CASB 06, but the letter, which you say you advised the Clerk to sign, is for Fiscal Analyst I on a contract basis, right? You have it, right?

Mr. Musuma: Yes I do.

Hon. Chairperson: But the salary you offered to pay the Fiscal Analyst I is not for Job Group 6, it's for Job Group 7, which is less. My question then is, who decided to pay the Fiscal Analyst I Job Group 7 instead of Job Group 6?

Hon. Kavyu: Chair, I think it's the other way round.

Hon. Chairperson: No, it's just like that.

Hon. Kavyu: Mr. Chair, is the staff earning a salary of Job Group 6 as opposed to what he was supposed to earn?

Hon. Chairperson: According to the letter that he received on 11th February, he was supposed to have gotten Job Group CASB 06, if I go by your description of Job Groups, that Fiscal Analyst I lies in Job Group 6. Is that right?

Mr. Musuma: Chair, that is the position.

Hon. Chairperson: Fiscal Analyst I, is it job group CASB 06?

Mr. Musuma: Yes Chair, that is the position.

Hon. Chairperson: According to SRC, the starting salary for Job Group CASB 06 is how much?

Mr. Musuma: It should be Kshs. 56,370.

Hon. Chairperson: In the letter, you actually offered salary for CASB 07, the letter which you say you advised the Acting Clerk to sign then, and the starting salary for 07 is?

Mr. Musuma: It should be Kshs. 49,000

Hon. Chairperson: My question is, why did you offer Fiscal Analyst I salary for Job Group 7 and not Job Group 6 as it was supposed, and who gave the authority?

Mr. Musuma: This decision was informed by the advert that was done in April and I could not make a decision; I could only advise but I was told to use the advert that the applicant applied.

Hon. Chairperson: What did the advert say?

Mr. Musuma: The advert, I don't know whether you have copies of the same, but I can share what I have.

Hon. Chairperson: According to your advert, Fiscal Analyst...

Mr. Musuma: Chair, we are on page 8, that's where we have---

Hon. Chairperson: Yes, Mheshimiwa, go ahead.

Hon. Kitaka: Chair, I think this is a matter that we need to bring to rest because when we look at the Fiscal Analyst I, Job Group M, CASB 6, that's a wrong post. Correct?

Hon. Chairperson: Yeah.

Hon. Kitaka: So, this was not an error by the candidate. This was the Assembly's error, and the candidate should not be punished or should not fail to get what he's supposed to get because of the failure. Why am I saying this? Probably, the candidate knows very well how to translate what it means by CASB 1,2,3 up to the last CASB, correct? So the job group should be something that could have been sorted out by the HR and the accounting officer.

Hon. Chairperson: That's why I'm asking Mr. Musuma, who decided that CASB 6 is going to earn a salary for CASB 7. Who authorized that?

Mr. Musuma: Chair, as I said, I didn't have hands on this process, because I was relatively new in the Assembly.

Hon. Chairperson: As the head of HR, for the Assembly to get out of this mess, what would you have advised?

Mr. Musuma: I would have advised that since the first thing that I did when I got to this matter, we corrected the first challenge and we got a solution, then on the second case, there was a problem and I brought the matter to the attention of the accounting officer and we had a discussion on the Job Group that the employee needs to belong to and the matter did not move from that point, so my responsibility, in that case, I brought the matter to the attention immediately it came to my attention.

Hon. Chairperson: And the accounting officer has not taken action this far, right?

Mr. Musuma: The action has not been taken because he has the current letters. He has not taken action on the second letter.

Hon. Chairperson: My question is, why did you offer Fiscal Analyst I salary for Job Group 7 and not Job Group 6 as it was supposed, and who gave the authority?

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Hon. Chairperson: And the accounting officer has not taken action this far, right?

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Hon. Kitaka: Chair, just to mention something on that so that it goes on record, I'm seeing a series of errors in both contracts. There was an error in the first contract, in the advert, there was an error in the first letter of offer, then when you were correcting that, there was also another error. It doesn't beat logic, and probably if the Job Group was supposed to be CASB 7, during the time of re-doing the offer letter, that should have been communicated very well to the candidate that he could be in a position to refuse the offer or to accept. When we still have the contract indicating CASB 6, then the matter looks deliberate.

Hon. Kavyu: Through the Chair, Mr. Justus, at the point when the issue of the terms of service was raised to you, did it come to your attention at that point that the candidate had been placed in the wrong job group and was not receiving an equivalent pay?

Mr. Musuma: What came to my attention was about the problem of---

Hon. Kavyu: It's a yes or no. Did you notice that the candidate had been placed in the wrong Job Group?

Mr. Musuma: Yes.

Hon. Kavyu: What stopped you, at the point you went to the Clerk to have the terms of service corrected, why were the two anomalies not corrected at that point? Why was it easy to revoke the permanent and pensionable letter and overlook the fact that he was not being remunerated as expected, based on the letter that you had given to him and also based on the advert? Why was that aspect of him not getting what he was supposed to earn ignored? Was it deliberate?

Mr. Musuma: Chair, I want to confirm to this committee that it could not have been deliberate, for that matter.

Hon. Ndawa: Chair, and maybe this is the last question because we only have got one nini---

Hon. Chairperson: Hon. Member, you cannot say the last question.

Hon. Ndawa: It is from me, not any other person. I'm asking, Bwana Musuma, are you confirming to us that this Assembly has incompetent officers, starting with the Human Resources department and also the accounting officer who cannot correct a small anomaly that doesn't even require approval from the Assembly or from the CASB?

Mr. Musuma: That's not the true position.

Hon. Ndawa: If an officer is assigned some duties and he/she is not able to perform the duties as required, do you refer to that officer as being competent or incompetent? Very simple question. You're given a task to do and you're unable to do the task as required, are you competent or incompetent?

Mr. Musuma: Chair, to respond to that, we may need to look at the underlying factors for that matter, because you cannot use a single case to... perhaps I would say it could have been an oversight in my office by one of my officers and it's an oversight that can be corrected. I don't think it would reflect the true position that the officers are incompetent. Thank you Chair.

Hon. Ndawa: If the employee came to you and explained to you the anomaly which was there and you saw it and that mistake was not yours and you tried to correct the mistake and by correcting the mistake you also did your own mistake, are you sure, how do you feel, as the head of HR department, who is mandated to manage the Human Resource in the County Assembly, how do you feel when one or a number of your staff are not happy or are not getting what they're supposed to be getting, are you happy with that?

Mr. Musuma: I confirm that when the matter came to my attention, it disturbed me and I jumped to action, which I would say was partially solved, but the process also got into a challenge and the process can be corrected moving forward.

Hon. Kavyu: What is the challenge that you encountered?

Hon. Chairperson: Just, just, Mheshimiwa Kavyu, you said it was partially sorted.

Mr. Musuma: Yes.

Hon. Chairperson: Who was responsible for doing what was not done? Which officer or which office was supposed to make sure it is fully sorted, because you're telling us partially sorted.

Mr. Musuma: Chair, I said here that this matter we discussed at the Office of the Clerk, and I was advised to wait for further instruction.

Hon. Chairperson: Thank you. Mheshimiwa Kavyu, go ahead.

Hon. Kavyu: What I was asking, he said that he encountered some challenges, and Mr. Chair, I think there is an element of truth that Bwana Justus is not coming out clearly because from where I'm sitting, I think he and the Clerk were only keen on resolving the issue of where the letter had been issued on a permanent basis to cover the Assembly and once that was done, the employee was left on their own. That's why there has not been urgency.

I think it is a matter and it is not an omission. A matter only becomes an omission, Bwana Justus, if it is something that has not been brought to your knowledge. The staff has complained two times to you, so you cannot term it as an omission; it's a deliberate effort to ensure that he doesn't get justice, and also as a professional, some of the issues are not supposed to be discussed verbally.

We would say that you did your bit if you have documentation, letters that show that as the Head of the HR department, on the first instance when Shadrach came to you, this is the letter I did to the Clerk, it was never responded to. After this period, I did that. By the fact that you never did that and you're the only witness who can confirm whether indeed you did follow up, it means you're also an accomplice to the same and it's putting the Assembly at a risk because Shadrach can decide to sue. Where is the budget going to come from?

Hon. Chairperson: Thank you, thank you Mheshimiwa.

Mr. Musuma: Through the Chair, I want to confirm to this committee that this matter was handled in good faith and while I admit that there was a lapse in terms of the time that it took to settle the matter completely, it was handled in good faith but there was that delay. In my duty when I'm serving the Members and the staff, I try to be fair in all the cases as it should be.

Hon. Chairperson: Yes, Mheshimiwa. You could come forward.

Hon. Kitaka: Chair, just to mention something on that so that it goes on record, I'm seeing a series of errors in both contracts. There was an error in the first contract, in the advert, there was an error in the first letter of offer, then when you were correcting that, there was also another error. It doesn't beat logic, and probably if the Job Group was supposed to be CASB 7, during the time of re-doing the offer letter, that should have been communicated very well to the candidate that he could be in a position to refuse the offer or to accept. When we still have the contract indicating CASB 6, then the matter looks deliberate.

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Hon. Ndawa: As she comes, could you allow me to give one point?

Hon. Chairperson: Go ahead.

Hon. Ndawa: Hon. Chair, in the Law of Tort, there is the issue of negligence, and negligence Hon. Chair, can be either omission or commission. You are assigned to do a certain task and you fail to do it. That amounts to negligence. You are assigned to do a certain task and if you do it wrongly, that is also negligence, and for this matter, Hon. Chair, I can see there is an element of negligence and there are remedies for anyone who is neglecting his duties or is not doing the duties as advised. Again, the word used is incompetence, Hon. Chair, another word for incompetence is inept. Hon. Chair, inept is a situation whereby one lacks skills or ability to do what he/she is assigned to do. Thank you Hon. Chair.

Hon. Chairperson: Thank you. Mheshimiwa.

Hon. Njagi: Thank you, Chair. To Mr. Musuma, I'm curious about the turnaround time, because if the second letter was in February 2022 and we are in December, I'm actually wondering what, as an HR Head, is the turnaround time for handling your clients' issues, because imagine if you were the employee in this situation and it's now two years and there is no logical conclusion, also remembering that gratuity is calculated based on your basic earning, so you understand the torture that this employee has been facing all around, and it also brings me to my second question.

You said that this advertisement was put out before you came in. I wanted to know, when you came in, you were given your job description and the expectations on what you're supposed to do. Did you get that by the way and who is supposed to give that to you, and also do you give that to your other employees or is it your responsibility to give job descriptions and performance contracts to the people under you as the Head of HR?

Mr. Musuma: I confirm that when I joined the Assembly, I was given a job description and part of it was to implement a performance contract, which I can confirm that it's happening. Normally, when we begin every year, the PC is signed by the Speaker, then the Clerk signs with the Directors and then from there, we generate the departmental work plan which cascades down to individual work plans, and then we continue with the appraisal which ends on 30th June.

Hon. Kavyu: Mr. Chair, I think on the issue of performance contract, as part of the allegation that has been levied against the Clerk, I think performance contract evidence that was provided by the Board is that no single staff has a performance contract. Did the Board give a controversial position or what is the real position? Is there a performance contract in place for all the County Assembly staff?

Mr. Musuma: Chair, I confirm that in the financial year 2022/2023, I remember we signed a contract at the cafeteria and it was in place. When I looked at it before, it had not been signed for the previous years.

Hon. Chairperson: Mr. Musuma, I want to just refresh your mind and tell you we're in the financial year 2023/2024. You cannot refer to the performance contract for 2022/2023. We are asking, at your level, I'm aware that you're supposed to sign. You, as the Director of HR, performance contract between you and the Clerk, do you have one?

Mr. Musuma: Chair I confirm, and thank you for the correction, for the year that ended on 30th June, I signed a performance contract and all the Directors signed. Actually, it was an event that we---

Hon. Chairperson: What about the financial year 2023/2024?

Mr. Musuma: I confirm that there is no performance contract in place.

Hon. Chairperson: One of your delegated duties is to ensure every staff is on a performance contract, right?

Mr. Musuma: That's correct, Chair.

Hon. Chairperson: Who initiates the preparation of the contracts?

Mr. Musuma: Chair, you'll allow me to inform this committee that we generate performance contracts from a strategic plan, and our last strategic plan ended in June 2023. Currently, we don't have a performance contract in place because we do not have a strategic plan. With the five-year strategic plan, every year we extract the PC for each year to generate that.

Hon. Chairperson: Who is supposed to initiate the process of formulating a strategic plan?

Mr. Musuma: Chair, that's squarely in the office of the Clerk and I confirm that there is a committee in place which is chaired by a staff, that is Susan Kanini, for the strategic plan.

Hon. Chairperson: So the strategic plan that you're talking about is supposed to start which month, which year?

Mr. Musuma: The current strategic plan should have been in place from 1st July 2023 to 2028.

Hon. Chairperson: So, we do not have a strategic plan?

Mr. Musuma: Chair, I confirm to this committee that we do not have one in place, but we have one in progress.

Hon. Chairperson: Thank you. Ok, Mr. Musuma, we want to thank you for honoring our invitation. We also want to thank you for being open-minded with us and we find your answers very useful for the work we are doing. You may exit.

Mr. Musuma: Thank you Chair and Members.

Hon. Chairperson: Thank you very much. Members I want to thank everyone, everyone, for your patience, I want to thank the Secretariat for the work they're doing and now we need to end this session formally and then have five minutes or so to talk about the way forward. This session is formally adjourned.

The Committee adjourned at 6:45 p.m.