

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



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**(THIRD ASSEMBLY)**

**REPORT OF THE SELECT COMMITTEE INVESTIGATING THE PROPOSED  
REMOVAL FROM OFFICE OF MR. JOSEPH MUTISYA LABAN FROM THE  
POSITION OF CLERK OF COUNTY ASSEMBLY**

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**DECEMBER 2023**

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## **LIST OF ABBREVIATIONS AND ACRONYMS**

CASB/Board	-	County Assembly Service Board
CA	-	County Assembly
CASA	-	County Assemblies Sports Association
PPRA	-	Public Procurement Regulatory Authority
PPADA	-	Public Procurement and Asset Disposal Act No. 3 of 2015
PFMA	-	Public Finance Management Act
ADP	-	Annual Development Act
SO	-	Standing Orders
CIT	-	Contract Implementation Team
HOD	-	Head of Department
SRC	-	Salaries and Remuneration Commission

## FOREWORD

Hon. Speaker, the County Assembly Service Board of Machakos (CASB) is established pursuant to Section 12 (3)(d) of the County Governments Act, No. 17 of 2012 and Part III of the County Assembly Services Act, No. 24 of 2017.

The functions of the Board are to direct and supervise the Assembly Service and to ensure exemplary delivery of service to the public in strict observance of the values and principles of public service set out under Article 232 (1) of the Constitution and the values and principles of governance set out under Article 10 of the Constitution.

Pursuant to a resolution of the Board in a meeting held on 14th November, 2023 and in line with the provisions of Section 22 of the County Assembly Services Act, No. 24 of 2017 as read together with Section 23 of the Act and the other applicable laws, the Board suspended Mr. Joseph Mutisya Laban for 14 days, from discharging the duties of the office of the Clerk of the County Assembly of Machakos, as part of a disciplinary process on grounds of:

- a. Gross misconduct or misbehavior;
- b. Incompetence;
- c. Violation of the provisions of the Constitution, including Chapter Six of the Constitution;
- d. Violation of the provisions of the County Assembly Services Act, No. 24 of 2017.

The Board invited Mr. Joseph Laban Mutisya to reply to the suspension letter that contained a schedule of charges within 14 days and appear before the board on 28<sup>th</sup> November, 2023 at 10:00am. However, Mr. Mutisya did not reply to the charges nor appear before the Board as advised.

Pursuant to Section 23(2) of the County Assembly Services Act, if the Clerk does not furnish the Board with a reply to the charges within the period specified or if in the opinion of the Board the Clerk fails to exculpate himself or herself, the Board shall submit a notice of a motion to the Speaker seeking that the County Assembly revokes the appointment of the Clerk.


Pursuant to Section 12(7) of the County Governments Act, 2012 as read together with Section 23 of the County Assembly Services Act No. 24 of 2017, a notice of motion seeking that the County Assembly revokes the appointment of the Clerk dated 28<sup>th</sup> November, 2023 was tabled before the House by the Vice Chairperson, County Assembly Service Board (**Annex 1**) and approved on the same date recommending to the House the Constitution of a Select Committee of the Assembly

consisting of eleven (11) members to investigate the proposed removal from office of Mr. Joseph Mutisya Laban from the Office of Clerk, County Assembly of Machakos.

Pursuant to Section 23 (4) of the County Assembly Services Act, No. 24 of 2017 and upon moving and adoption by the House of the Notice of Motion provided for under Section 23(3) of the same Act, the Speaker referred the matter to a Select Committee of the Assembly consisting of eleven (11) members and established in accordance with the Standing Orders of the Assembly to investigate on the matter and report back to the House within ten (10) days of receipt of the Motion.

The Select Committee is grateful to the Offices of the Speaker and the Acting Clerk of the County Assembly for the support accorded to it during the accomplishment of this duty. I wish to express my appreciation to the Honorable Members of the Committee and the Secretariat for their dedication and participation in this exercise.

On behalf of the Select Committee and pursuant Section 23 of the County Assembly Services Act, 2017; it is now my duty and privilege to present to the House, the report of the select committee investigating the proposed removal from office of Mr. Joseph Mutisya Laban from the position of clerk of county assembly

SIGN.....

DATE .....05/12/2023

**HON. NICHOLAS NZIOKA**  
**CHAIRPERSON - SELECT COMMITTEE INVESTIGATING THE PROPOSED**  
**REMOVAL FROM OFFICE OF MR. JOSEPH MUTISYA LABAN FROM THE**  
**POSITION OF CLERK OF COUNTY ASSEMBLY**

## **1.0 PREFACE**

### **1.1 Establishment and Mandate of the Committee**

In accordance with Section 23(4) of the County Assemblies Services Act as read together with Standing Order 163A, a Select Committee comprising of the following members appointed on the basis of relative majorities of the seats held by each of the Assembly parties was constituted:

- |     |                        |                  |
|-----|------------------------|------------------|
| 1)  | Hon. Nicholas Nzioka   | Chairperson      |
| 2)  | Hon. Judas Ndawa       | Vice/Chairperson |
| 3)  | Hon. Francis Kitaka    | Member           |
| 4)  | Hon. Mercy Njagi       | “                |
| 5)  | Hon. Loyd Mutua        | “                |
| 6)  | Hon. Francis Kavyu     | “                |
| 7)  | Hon. Annastacia Mutevu |                  |
| 8)  | Hon. Rose Benjamin     |                  |
| 9)  | Hon. Justus Mutuku     |                  |
| 10) | Hon. Rosina Kanini     |                  |
| 11) | Hon. Winfred Mutua     |                  |

The Select committee draws its mandate from Section 23 (4) of the County Assemblies Services Act, to investigate a notice of motion moved by the Vice-Chairperson County Assembly Service Board, seeking that the County Assembly revokes the appointment of the Clerk Mr. Joseph Mutisya Laban from the Office of Clerk, County Assembly of Machakos; and report back to the Assembly.

### **1.2 Committee Secretariat**

The Committee was facilitated by the following secretariat members:

- |     |                    |                         |
|-----|--------------------|-------------------------|
| (1) | Mr. Mathew Muange  | - Head of Secretariat   |
| (2) | Ms. Louisa Kamau   | - Senior Hansard Editor |
| (3) | Mr. Brian Muthusi  | - Legal Counsel I       |
| (4) | Ms. Susan Kiluva   | - Clerk Assistant II    |
| (5) | Ms. Mercy Ndambuki | - Clerk Assistant II    |
| (6) | Mr. Miriam Nthoki  | - Commissionaire        |

## 2.0 INTRODUCTION

### 2.1 Background and Legal Framework

Pursuant to Section 12(7) of the County Governments Act, 2012 as read together with Section 23 of the County Assembly Services Act No. 24 of 2017, and in accordance with Standing Order 163(A) (*with necessary modifications*), a notice of motion dated 28<sup>th</sup> November, 2023 was tabled before the House by the Vice Chairperson, County Assembly Service Board (**Annex 1**) and approved on the same date recommending to the House the Constitution of a Select Committee of the Assembly consisting of eleven (11) members to investigate on the proposed removal from office of Mr. Joseph Mutisya Laban from the Office of Clerk, County Assembly of Machakos.

Section 22 of the County Assembly Services Act No. 24 of 2017 provides that, the Clerk of County Assembly may be suspended or removed from office—

- (a) *Inability to perform the functions of the Office, whether arising from infirmity of body or mind;*
- (b) *Gross misconduct or misbehavior;*
- (c) *Incompetence*
- (d) *Bankruptcy*
- (e) *Violation of the provisions of the Constitution including Chapter six of the Constitution ; or*
- (f) *Violation of the provisions of this Act*

Section 23 of the County Assembly Services Act No. 24 of 2017 provides for the procedure of removal of the Clerk. It states;

- (1) Where the Board considers it necessary to remove the Clerk under Section 22, the Board shall-
  - a) Frame a charge or charges against a Clerk;
  - b) Forward the statement of the said charge or charges to the Clerk together with a brief statement of the allegations in support of the Charges:
  - c) Invite the Clerk to respond to the allegations in writing setting out the grounds on which the Clerk relies to exculpate himself or herself; and
  - d) Invite the Clerk to appear before the Board, either personally or with an advocate as he or she may opt, on a day to be specified, to exculpate himself or herself.

- (2) If the Clerk does not furnish a reply to the charge or charges within the period specified, or if in the opinion of the Board the Clerk fails to exculpate himself or herself, the Board shall submit a

notice of a motion to the Speaker seeking that the County Assembly revokes the appointment of the Clerk

(3) A motion under subsection (1) shall specify-

- a) The grounds set out in section 22 in which the Clerk is in breach; and
- b) The facts constituting that ground

(4) Upon notice of the motion under subsection (2), the Speaker shall refer the matter to a select committee of the assembly consisting of eleven members and established in accordance with the Standing Orders of the Assembly to investigate the matter within ten days of receipt of the motion.

(5) The select committee shall, within ten days, report to the Assembly whether it finds the allegations against the Clerk to be substantiated.

(6) The Clerk shall have the right to appear and be represented before the select committee during its investigations.

(7) The Assembly shall consider the report of the select committee and resolve whether to approve the motion.

(8) If the Assembly approves a motion filed under this section, the Clerk against whom the motion was filed shall be deemed to have been removed from Office from the date the motion was approved.

Pursuant to Section 23 (2) of the County Assemblies Services Act as read together with Standing Order 151, a motion was tabled in the House Business Committee on 28<sup>th</sup> November, 2023 at 10.45 am and balloted to be tabled in the House on the same day.

The notice of motion was given on 28<sup>th</sup> November, 2023 in the morning sitting and the motion placed in the Order Paper for discussion on the same day 28<sup>th</sup> November, 2023 during the afternoon sitting.

### **3.0 PREPARATIONS FOR THE INVESTIGATIONS**

#### **3.1 Election of the Chairperson and Vice Chairperson of the Select Committee**

The Select Committee held its first meeting on Wednesday, 29<sup>th</sup> November, 2023. At the meeting, the committee elected Hon. Nicholas Nzioka and Hon. Judas Ndawa as the Chairperson and Vice



Chairperson respectively, after being proposed by Hon. Rosina Kanini and seconded by Hon. Francis Kavyu.

### **3.2 Committee work plan**

1. Following the election of the Chairperson and Vice Chairperson, the Committee considered an indicative programme of events for the Committee guided by Article 196 of the Constitution and Section 23 of the County Assembly Services Act No. 24 of 2017.
2. Section 23 (4) and (5) of the County Assemblies Services Act, provides that the select committee has ten (10) days to report to the Assembly whether the allegations against the Clerk are substantiated .
3. The following order of activities was adopted by the Committee;
  - i. Scrutiny and analysis of charges
  - ii. Clarification of charges by the mover of the motion, the Vice-Chairperson CASB, Hon. Felix Ngui
  - iii. Hearing of Mr. Joseph Mutisya Laban
  - iv. Hearing of the Board (CASB)
  - v. Hearings of witnesses
  - vi. Report writing
  - vii. Tabling of the report before the House

### **3.3 Invitation to appear before the Select Committee**

Section 23(6) of the same Act provides that the Clerk shall have the right to appear and be represented before the select committee during its investigations.

Section 18(1) of the County Assemblies Powers and Privileges Act, 2017, provides that *a county assembly or its committees may invite or summon any person to appear before it for the purpose of giving evidence or providing any information, paper, book, record or document in the possession or under the control of that person and, in this respect, a County Assembly and its committees shall have the same powers as the High Court as specified under Article 195 of the Constitution.*

Standing Order 171 of the County Assembly of Machakos Standing Orders provides that, *Committees shall enjoy and exercise all the powers and privileges bestowed on Assembly by the Constitution and statute, including the power to summon witnesses, receive evidence and to request for and receive papers and documents from the Government and the public.*

Pursuant to Section 23 (6) of the County Assemblies Services Act and Section 18 of the County Assemblies Powers and Privileges Act, 2017 as read together with Standing Order 171 of the

Standing Orders, Mr. Joseph Mutisya Laban was invited to appear before the Committee on 1<sup>st</sup> December, 2023 via a letter Ref. No. MKSCA/ADM/SELCOM/Vol.1/01 dated 29<sup>th</sup> November, 2023 (**Annex 2**). Further, the invitation letter was served to him in person, through his last known email address (**Annex 3**) and a process server was instructed to serve the letter and do a return of service through an affidavit of service. (**Annex 4**)

The Committee also invited the CASB to appear on 30<sup>th</sup> November, 2023 vide letter Ref. No. MKSCA/ADM/SELCOM/Vol.1/02 dated 29<sup>th</sup> November, 2023 (**Annex 5**) to clarify on the charges and provide evidence on the notice of motion tabled for the proposed removal from office of the Clerk, Mr. Joseph Mutisya Laban. The Committee invited the CASB again via a letter Ref. MKSCA/ADM/SELCOM/Vol.1/03 dated 30<sup>th</sup> November, 2023 (**Annex 6**) to appear before the committee for further interrogation on the Charges presented.

The following witnesses were also invited before the committee;

- 1) Ms. Nancy Wangai, HOD, Supply Chain via a letter dated 1<sup>st</sup> December, 2023, Ref. No MKSCS/ADM/SELCOM 1/4 (**Annex 7**)
- 2) Mr. Justus Musuma, HOD, Human Resources and Administration via a letter dated 1<sup>st</sup> December, 2023 Ref. No MKSCS/ADM/SELCOM 1/5(**Annex 8**)
- 3) Mr. Shadrach Mbithi, Fiscal Analyst via a letter dated 1<sup>st</sup> December, 2023 Ref. No. MKSCS/ADM/SELCOM 1/6 (**Annex 9**)
- 4) Mr. Benson Mulinge, HOD, Finance via a letter dated 1<sup>st</sup> December, 2023 Ref. No. MKSCS/ADM/SELCOM/1/7 (**Annex 10**)

#### **4.0 COMMITTEE INVESTIGATIONS.**

**Hon. Speaker,**

Pursuant to Section 23 (6) of County Assemblies Services Act which provides that the Clerk shall have the right to appear and be represented before the Select Committee during its investigations as read together with Article 50 of the Constitution on fair hearing, the committee accorded the clerk an opportunity to appear before it on 1<sup>st</sup> December, 2023 at 9am to exculpate himself. However, the clerk did not show up as expected.

The committee took note of a letter dated 30<sup>th</sup> November, 2023 (**Annex 25**) presented at 12.05p.m making reference to a court order in which the County Assembly of Machakos is not a party. The committee considered the contents of the letter and resolved that the court order had not been directed to the Assembly and hence had no implication to the business of the Committee.

#### **4.1 SCRUTINY AND ANALYSIS OF CHARGES**

##### **A. VIOLATION OF THE PROVISIONS OF THE CONSTITUTION, THE COUNTY ASSEMBLY SERVICES ACT, NO. 24 OF 2017 AND OTHER LAWS**

##### ***1. Acting without the authority of the Board and in breach of the Law***

**Hon. Speaker,**

The first charge stated that the Clerk breached the Constitution of Kenya and the principles of public finance, as outlined in Section 12 of the Public Finance Management Act (PFM Act) by failing to observe transparency or responsibility and obtained an unauthorized loan facility at the State Bank of Mauritius (SBM) on 13<sup>th</sup> February, 2023, amounting to one hundred and fifty seven million shillings (Kshs. 157,000,000) without authority from either the Assembly Service Board and approval of County Assembly which exposed the Assembly to a huge liability.

##### **Evidence**

In support of the allegations, the Mover of the motion made reference to the following documents which were provided before the committee;

- i. Letter from the Clerk dated February 13<sup>th</sup> 2023 requesting SBM Bank a facility of one hundred and eighty two million, seven hundred and twenty thousand shillings (Kshs.182, 720,000) to facilitate the disbursement of Loans/Motor Vehicle Reimbursement Benefit to the Members of County Assembly. (**Annex 11**)
- ii. Letter from SBM bank dated 16<sup>th</sup> March, 2023 approving a loan of one hundred and fifty seven million shillings (Kshs. 157,000,000) to the County Assembly. (**Annex 12**)

- iii. Letter from SBM bank dated 14<sup>th</sup> June, 2023 giving the details and the status of repayment of loan advanced to Machakos County Assembly(**Annex 13**)

#### **Committee observations**

1. The committee observed that the Clerk had indeed written a letter dated 13<sup>th</sup> Feb, 2023 requesting SBM bank for a loan and the bank responded approving a loan of Kshs 157,000,000
2. The bank in a letter dated 14<sup>th</sup> June, 2023, wrote to the clerk with concern that they were yet to receive payment instalments and that the facility was in arrears of fifty six million, seven hundred and fifteen thousand shillings (Kshs 56,715,000)

#### **Committee findings**

Section 17 (1) (e) of the County Assemblies Services Act, 2017 provides that the Clerk as the Secretary of the Board is responsible for-

- i. The execution of the decision of the Board; and
- ii. Assignment of duties and supervision of the staff of the Board;

Article 212 of Constitution as read together with Section 140 to 142 of the Public Finance Management Act No. 18 of 2012 and Part XIV of PFMA regulations provide for the obligations and restrictions with respect to County Government borrowing and borrowing by County Government entities respectively.

Article 212 provides that a County Government may borrow only-

- a) If the National Government guarantees the loan; and
- b) With the approval of the County Government Assembly

Section 140 of the Public Finance Management Act No. 18 of 2012 on authority for borrowing by county governments provides;

(1) A County Executive Committee member for finance may, on behalf of the county government, raise a loan for that Government's purposes, only if the loan and the terms and conditions for the loan are set out in writing and are in accordance with—

- (a) Article 212 of the Constitution;
- (b) sections 58 and 142 of this Act;
- (c) the fiscal responsibility principles and the financial objectives of the county government set out in its most recent County Fiscal Strategy Paper; and

(d) the debt management strategy of the county government over the medium term.

(2) A loan may be raised either within Kenya or outside Kenya.

Section 141 on obligations and restrictions with respect to county government borrowing provides;

(1) In borrowing money, a county government shall ensure that its financing needs and payment obligations are met at the lowest possible cost in the market that is consistent with a prudent degree of risk, while ensuring that the overall level of public debt is sustainable.

(2) A county government may borrow money only in accordance with this Act or any other legislation and shall not exceed the limit set by the county assembly.

(3) A county government may borrow money in accordance with section 58, and only for purposes that are prescribed by regulations made under this subsection.

(4) A public debt incurred by a county government is a charge on the County Revenue Fund, unless the County Executive Committee member for finance determines that all or part of the public debt that would otherwise be a charge on that Fund shall be a charge on another public fund established by that county government or any of its entities.

(5) The County Executive Committee member for finance shall pay the proceeds of any loan raised under this Act into the County Revenue Fund or into any other public fund established by the county government or as the County Executive Committee member for finance may determine.

(6) A County Executive Committee member for finance may establish such sinking fund or funds for the redemption of loans raised under this Act for the purposes of the county government or any of its entities as the County Executive Committee member for finance considers necessary.

(7) A County Executive Committee member for finance may in accordance with national legislation on public procurement and disposal of assets—

(a) appoint advisers, agents and underwriters for the purposes of raising loans; and

(b) enter into agreements with those advisers, agents and underwriters as to the role to be undertaken by them and the remuneration to be paid to them.

(8) Any expenses incurred in connection with borrowing by a county government shall be a charge—

(a) on the County Revenue Fund; or

(b) on such other county public fund established by the county government or any of its entities as the County Executive Committee member for finance may determine in accordance with regulations approved by the county assembly.

(9) The costs, interests and principal payments made by the national government on behalf of the county concerning loans to the county government shall, together with the principal amount, be reimbursed to the national government by the county government.

Section 142 on borrowing by county government entities provides;

(1) The County Assembly may authorise short term borrowing by county government entities for cash management purposes only.

(2) Any borrowing under subsection (1) may not exceed five percent of the most recent audited revenues of the entity.

(3) A county government entity that has any such borrowing shall ensure that the money borrowed is repaid within a year from the date on which it was borrowed.

Hon Speaker, based on the availed evidence, the committee noted there were no documents showing that the County Assembly had approved any borrowing as provided in law.

There was no resolution of the County Assembly Service Board on such borrowing.

The Committee therefore finds this Charge to have been substantiated that the Clerk single handedly, without a resolution of CASB and the approval of the Assembly, borrowed one hundred and eighty two million, seven hundred and twenty thousand shillings (Kshs 182,720,000) but the bank approved one hundred and fifty seven million shillings (Kshs 157,000,000) which was disbursed into the fund.

## ***2. Breach of procurement law and processes***

**Hon Speaker,**

The second charge stated that the Clerk single-handedly sourced a Third-Party insurance cover for the Assembly motor vehicles without due procurement procedures contravening Section 149 (2d), the Accounting Officer is obligated to ensure that all contracts entered into are lawful and should be complied with. This responsibility is further outlined in Section 44 of the Public Procurement and Asset Disposal Act, 2015 (Rev. 2022). Further, Section 103 of the Public Procurement and Asset Disposal Act, 2015 (Rev. 2022) outlines conditions where a public entity may engage in

direct procurement of goods and services. Section 104 of the same Act outlines the procedure with respect to direct procurement.

### **Evidence**

In support of the allegations, the Mover of the motion made reference to and provided the following documents;

- i. A show cause Letter from the Clerk to Nancy Wangai dated 29<sup>th</sup> August, 2023 in regard to procurement of a Third-Party Insurance Cover for the Assembly motor vehicles. (**Annex 14**)
- ii. Letter from Nancy Wangai to Clerk dated 8<sup>th</sup> September, 2023 responding to the Clerk on purchase of Third Party Insurance. (**Annex 15**)
- iii. Quotation for third party Insurance from Madison General Insurance Kenya LTD for 10 vehicles (**Annex 16**)
- iv. Payment voucher from the County Assembly of Machakos to Madison General Insurance Kenya dated 27<sup>th</sup> June, 2023 (**Annex 17**)
- v. Third Party Insurance Certificates from Madison General Insurance Kenya LTD. (**Annex 18**)
- vi. Internal Memo from HOD-Human Resource and Administration to the Clerk dated 27<sup>th</sup> June, 2023 (**Annex 19**)

### **Witnesses Testimonies**

#### **Mrs. Nancy Wambui Wangai, HOD-Supply Chain**

Mrs. Nancy Wangai indicated to the committee that she became aware that there was a third-party cover that had been purchased when she was served with a show cause letter and that she did not know who had purchased the third-party insurance cover.

#### **Mr. Benson Mulinge Mutua- HOD-Finance**

The Head of Finance made it clear in his submissions that the procurement process had not been followed in this particular case due to its unique circumstances. Specifically, there was a running contract on the same that was set to expire on June 30<sup>th</sup>, and since the other evaluation for comprehensive insurance had not been completed by then, he decided to rely on the instruction from the Clerk to process the payment because the insurance covers needed to be in place in order to facilitate the movement of the vehicles. Although it was improper, this was essentially the main

factor taken into account when processing the payment, and the primary objectives were to allow the vehicles' movement for a month until the procurement of a comprehensive cover is finalized.

### **Mr. Justus Musuma- HOD, Human Resource and Administration**

The Head of Human Resource and Administration, in his oral submission, confirmed that under the directions of the Clerk, he wrote a memo requesting an amount of Kshs 44,700 for payment of a third party cover for the vehicles. This memo was consequently approved by the Clerk.

### **Committee Observations**

- i. That third party insurance cover was purchased on 27<sup>th</sup> June, 2023 for all the 10 vehicles of the County Assembly and Certificates of Insurance commencing on 1<sup>st</sup> July 2023 and expiring on 31<sup>st</sup> July, 2023 were provided as evidence. **(Annex 18)**
- ii. That the payment of the Insurance was authorized by the Clerk as the Accounting Officer. **(Annex 19)**

### **Committee Findings**

The committee confirmed that the Third Party Insurance Cover was purchased for the Assembly vehicles.

Section 149(1) of PFM Act provides that an accounting officer is accountable to the county assembly for ensuring that the resources of the entity for which the officer is designated are used in a way that is— (a) lawful and authorized; and (b) Effective, efficient, economical and transparent. Section 149 (2d) of PFM Act provides that the Accounting Officer is obligated to ensure that all contracts entered into are lawful and should be complied with.

**Section 44 of the Public Procurement and Asset Disposal Act, 2015 (Rev. 2022) provides that an accounting officer of a public entity shall be primarily responsible for ensuring that the public entity complies with the Act**

Section 103 (2) of Public Procurement and Asset Disposal Act, 2015 provides that a procuring entity may use direct procurement if any of the following are satisfied—

- i. the goods, works or services are available only from a particular supplier or contractor, or a particular supplier or contractor has exclusive rights in respect of the goods, works or services, and no reasonable alternative or substitute exists;
- ii. due to war, invasion, disorder, natural disaster or there is an urgent need for the goods, works or services, and engaging in tendering proceedings or any other method of procurement would therefore be impractical, provided that the circumstances giving



rise to the urgency were neither foreseeable by the procuring entity nor the result of dilatory conduct on its part;

- iii. owing to a catastrophic event, there is an urgent need for the goods, works or services, making it impractical to use other methods of procurement because of the time involved in using those methods;
- iv. the procuring entity, having procured goods, equipment, technology or services from a supplier or contractor, determines that additional supplies shall be procured from that supplier or contractor for reasons of standardization or because of the need for compatibility with existing goods, equipment, technology or services, taking into account the effectiveness of the original procurement in meeting the needs of the procuring entity, the limited size of the proposed procurement in relation to the original procurement, the reasonableness of the price and the unsuitability of alternatives to the goods or services in question;
- v. for the acquiring of goods, works or services provided by a public entity provided that the acquisition price is fair and reasonable and compares well with known prices of goods, works or services in the circumstances.

Section 103 (3) of the Public Procurement and Asset Disposal Act, 2015 provides that, a public officer who contravenes the provisions of subsection (2) commits an offence.

Section 104 (2) of Public Procurement and Asset Disposal Act, 2015 provides that an accounting officer of a procuring entity shall adhere to the following procedures with respect to direct procurement—

- (a) Issue a tender document which shall be the basis of tender preparation by tenderer and subsequent negotiations.
- (b) appoint an *ad hoc* evaluation committee pursuant to section 46 to negotiate with a person for the supply of goods, works or non-consultancy services being provided;
- (c) ensure appropriate approvals under this Act have been granted;
- (d) ensure the resulting contract is in writing and signed by both parties

*Section 15 of the Public Officers Ethics Act No. 4 of 2003 states that a public officer shall take all reasonable steps to ensure that property that is entrusted to his care is adequately protected and not misused or misappropriated and that a person who contravenes Section 15 (1) of the Act shall be personally liable for losses resulting from the contravention*

In view of the above provisions, the Committee noted that the Clerk contravened Sections 149 (1) and (2d) of PFM Act and Section 103 (2) and 104 (2) of Public Procurement and Asset Disposal Act, 2015 as well as Section 15 of the Public Officers Ethics Act No. 4 of 2003 and therefore found the charge to have been substantiated for failing to safe guard the property of the Assembly.

### ***3. Amendment of the Budget without Approval of the County Assembly***

Hon. Speaker,

The Clerk is charged with altering an Appropriations Act and a proposed County Budget without the authority of the Assembly. In particular, the Machakos County Appropriation Act (No.2) of 2023 was altered without the approval of the Assembly.

The same was passed on 20<sup>th</sup> June 2023, but as a result of the amendments, which were done without following due process, the Governor was forced to bring a memorandum to the Assembly which led to delays in implementation of the County programmes, as the memorandum was considered in a special sitting held on 12<sup>th</sup> July, 2023, way past the expected deadline of 30<sup>th</sup> June 2023, as prescribed in Law. This amounts to gross misconduct and violation of the provision of the Constitution of Kenya, including Chapter 6 on leadership and integrity.

#### **Evidence**

In support of the allegations the following evidence was provided;

- i. Hansard report dated 20<sup>th</sup> June, 2023 presenting the tabling and approval of the Machakos County Appropriation Bill, 2023 (**Annex 20**)
- ii. Hansard report dated 12<sup>th</sup> July, 2023 presenting a communication on Governor's memorandum to the Machakos County Appropriation Bill, 2023 (**Annex 21**)
- iii. Machakos County Appropriations Act, 2023 dated 17<sup>th</sup> July, 2023 (**Annex 22**)
- iv. Hansard report dated 23<sup>rd</sup> May, 2023 presenting the tabling and approval of the Machakos County Supplementary Appropriation Bill (No 2), 2023 (**Annex 23**)
- v. Machakos County Supplementary Appropriation Act No. 2 of 2023 dated 12<sup>th</sup> June, 2023 (**Annex 24**)

#### **Witness testimony**

The County Assembly Service Board clarified that the Machakos County Appropriation Act (No.2) of 2023 as captured in the schedule of charges was in error and that the charge referred to the Machakos County Supplementary Appropriation Act No. 2 of 2023.

### **Committee observations**

The Committee observed that the Hansard report dated 23<sup>rd</sup> May, 2023 presenting the tabling and approval of the Machakos County Supplementary Appropriation Bill (No 2), 2023 shows that amendments done and approved by this Honorable House in schedule R004 of the Machakos County Supplementary Appropriation bill, 2023 were altered in the final published Machakos County Supplementary Appropriation Act, 2023 where the amendments that had been proposed in the House were not captured.

The amendments approved in the House as shown in the Hansard report were as follows:

#### Schedule R004

- i. Where a figure of Kshs 25,521,905 relating to recurrent expenses of Finance and Economic Planning was to be substituted thereof with a figure of Kshs 40,521,905
- ii. Where a figure of Kshs 552, 936,479 relating to recurrent expenditure of finance and Economic Planning was to be substituted thereof with a figure of Kshs 567, 936,479
- iii. Where a figure of Kshs 22,051,545 relating to recurrent expenditure in revenue management was to be substituted thereof with a figure of Kshs 37,051,545
- iv. Where a figure of Kshs 268,835,562 relating to recurrent expenditure in revenue management was to be substituted thereof with a figure of Kshs 283,835,562

Upon approval of the amendments by the Assembly, it was upon the Office of the Clerk to publish the Act as approved by the House. However, these amendments were not captured in the Machakos County Supplementary Appropriation Act, 2023.

After scrutinizing allegations on alteration of the Machakos County Appropriation Bill No. 1 of 2023, the committee observed that there was no evidence to show that the delay in passing of the Bill had been occasioned by the Clerk.

### **Committee findings**

The Committee finds the Charge relating to alteration of the Machakos County Supplementary Appropriation Act (No 2), 2023 to have been substantiated as the Act was altered under Clerk's watch. This is in contravention Chapter 6 of the constitution on leadership and integrity and Section 131(3) of the Public Finance Management Act, No. 18 of 2012 which provides that an

amendment to the budget estimates may be made by the county assembly only if it is in accordance with the resolutions adopted regarding the County Fiscal Strategy Paper and if— (a) any increase in expenditure in a proposed appropriation, is balanced by a reduction in expenditure in another proposed appropriation; and (b) any proposed reduction in expenditure is used to reduce the deficit

On the matter of occasioning delay in passing the Machakos County Appropriation Bill No 1, 2023, the committee found the charge not to have been substantiated.

#### ***4. Abuse of office***

Hon Speaker,

The particulars of the Charge were;

1. That the Clerk single handedly borrowed money from the Bank without the consent of the Board and the approval of the County Assembly.
2. That the Clerk failed to issue an employee with the correct contract twenty two (22) months after appointment by the Board despite the employee's repeated efforts to have the same resolved.

#### **Evidence**

In support of the allegations of single handedly borrowing money from the Bank, the following evidence were availed;

- i. Letter from the Clerk dated February 13<sup>th</sup> 2023 requesting SBM Bank a facility of Kshs182, 720,000 to facilitate the disbursement of Loans/Motor Vehicle Reimbursement Benefit to the Members of County Assembly. (**Annex 11**)
- ii. Letter from SBM bank dated 16<sup>th</sup> March, 2023 approving a loan of Kshs 157,000,000 to the County Assembly. (**Annex 12**)
- iii. Letter from SBM dated 14<sup>th</sup> June, 2023 giving the details and the status of repayment of loan advanced to Machakos County Assembly (**Annex 13**)

In support of the allegations of failing to issue an employee with the correct contract letter, the following documents were availed:

- i. Letter of appointment for Shadrach Mbithi dated 3<sup>rd</sup> January, 2022 (**Annex 26**)
- ii. Letter of appointments for Shadrach Mbithi dated 11<sup>th</sup> February, 2022 (**Annex 27**)
- iii. County Assembly job advertisement containing the job description and terms of service for Fiscal Analyst 1, Job Grade CASB 6 (**Annex 28**)

- iv. SRC Phase IV salary review for County Government employees at the Assembly effective date 1<sup>st</sup> July, 2020 (**Annex 29**)

#### **Witnesses testimonies**

##### **Mr. Shadrach Mbithi- Fiscal Analyst 1**

Mr. Shadrack Mbithi indicated that he was invited for an interview for Fiscal Analyst 1 on contract basis but was given an appointment letter for Fiscal Analyst 2. During the induction, he raised the issue verbally with the Head of Human Resource and was advised that the issue would be tackled. Six months later, the HOD- Human Resource, called him to his office and informed him that his letter had an issue that needed to be corrected. His original appointment letter was recalled by the HOD, Human Resource and replaced with another which still had errors. After raising the issue again with the HOD, Human Resources, he was informed that the matter would be pursued with the clerk. To-date, nothing has been done on the matter.

##### **Mr. Justus Musuma-HOD, Human and Resource**

The Head of Human Resource and Administration informed the committee that he received a complaint from Mr. Shadrach Mbithi and verbally discussed the matter with the Clerk to act in resolving the matter. The Clerk advised him that he would discuss the matter with the affected officer and advice on the way forward. The matter remains unresolved to-date.

#### **Committee Observations**

On the issue of the Clerk single handedly borrowing money from the Bank, the committee observed that, there was no resolution of the Board or approval by the Assembly regarding the borrowing of one hundred and eighty two million, seven hundred and twenty thousand shillings (Kshs.182, 720,000) from SBM bank for Loans/Motor Vehicle Reimbursement Benefit to the Members of County Assembly.

On failing to issue an employee with the correct contract letter, the Committee observed that, in the first letter of appointment for Shadrach Mbithi dated 3<sup>rd</sup> January, 2022, he was appointed to the position of Fiscal analyst II Scale 7 effective 1<sup>st</sup> February 2022 on permanent and pensionable basis.

In the second letter of appointment for Shadrach Mbithi dated 11<sup>th</sup> February, 2022, he was appointed to the position of Fiscal Analyst I but still in Scale 7, effective 1<sup>st</sup> February, 2022. The terms of service was a 3 year contract from 1<sup>st</sup> February, 2022 to 31<sup>st</sup> January, 2025. Despite the

change in designation from fiscal analyst II to Fiscal Analyst I, the officer continued to receive the same remuneration.

### **Committee findings**

Hon Speaker,

#### **On borrowing a loan without a CASB resolution and approval of the County Assembly;**

The Committee finds that the Charge amounts to abuse of office and power by the clerk since he single handedly, without a resolution of the CASB and the approval of the Assembly, borrowed Kshs 157,000,000 which was disbursed into the fund.

#### **On failure to issue an employee with the correct contract letter,**

The Committee found that, despite numerous attempts, the office of the clerk has not resolved the matter to date. The officer has lost earnings for being appointed to a designation lower than what he had applied for, against his legitimate expectation.

On both issues, the committee finds the charge of abuse of office, contrary to Section 46 of the Anti-corruption and Economic Crimes Act, No. 3 of 2003 which amounts to an offence under Section 48 of the same Act, to have been substantiated.

### ***5. Breach of the Constitution and statutory duty***

Hon. Speaker,

The Clerk is charged with breaching his obligations as a Clerk by borrowing money without the knowledge and approval of the Board and the County Assembly leading to exposure of the institution to great financial embarrassment which could have grounded the operations of the Assembly.

### **Committee observations**

There was no resolution of the Board regarding the borrowing of the Loan of Kshs 182,720,000 from SBM bank for motor vehicle reimbursement for Hon Members.

The letter from SBM bank dated 14<sup>th</sup> June, 2023; Ref No. Public Sector/MCG/14062023 stated that the Account was in arrears of Kshs. 56,715,000. The agreement according to the letter was that the facility was to be cleared by 31<sup>st</sup> August, 2023

## **Committee findings**

The Clerk contravened Article 212 of Constitution as read together with Section 140 to 142 of the Public Finance Management Act No. 18 of 2012 and Part XIV of PFMA regulations and therefore the committee finds this charge to have been substantiated.

### **B. INCOMPETENCE AND INACTION**

#### ***6. Mismanagement of development projects and incompetence.***

**Hon. Speaker,**

On this Charge;

- 1) The Clerk is charged with failing to manage development projects causing the County Assembly loss in terms of money and time. Among the projects cited are construction of Mutituni-Ngelani and Kangundo North ward offices where the contractors have continued working beyond the contract period with no requests for extension or proposals for termination being presented to the Board for consideration. According to the contract documents for the above two ward offices, the contract period began on 8<sup>th</sup> October, 2021 to end on 10<sup>th</sup> December, 2021 for Mutituni ward and 27<sup>th</sup> March 2023 to 30<sup>th</sup> June, 2023 for Kangundo North ward office. In other ward offices, specifically Kivaa and Ndalani wards, the contractors completed the projects and presented completion certificates from the Department of Public Works to the Clerk's office but no payment has been made to date or a report with reasons for non-payment presented before the Board for consideration.
- 2) The Clerk has failed to act on correspondences meant for the Board's information and action on the Modern Chamber which are procedurally sent through the clerk's office. Some of the correspondences have not been presented to the Board for guidance.
- 3) The Clerk has failed to ensure performance contracts are signed on time in the financial year 2022-2023 and in ensuring that the Assembly has a third strategic plan on time.
- 4) The Clerk has failed to plan on time hence delaying procurement processes like procurement of air tickets which has caused the Assembly loss of funds for buying expensive air tickets.
- 5) The Clerk has been inept in handling the Assembly's mandate to the public. Case in point, the Assembly put up an advertisement on 2<sup>nd</sup> November, 2023 for public participation in the consideration of the Annual Development Plan (ADP) 2024/2025. The advertisement advised members of the public to download the ADP in the assembly website. However, the ADP was not uploaded on the website until four days later, which inconvenienced members of the public, who were relying on the document to give their views during the public participation.

## **Evidence**

### **On mismanaging of development projects the following evidence was provided**

- i. Contract for construction of Kangundo North Ward Office (**Annex 30**)
- ii. Contract for construction of Mutituni ward Office (**Annex 31**)
- iii. Contract for construction of Kivaa Ward Office (**Annex 32**)
- iv. Contract for construction of Ndalani Ward Office (**Annex 33**)
- v. Show cause Letter from the Clerk dated 29<sup>th</sup> August, 2023 directing Ms Nancy Wangai Director Procurement; to respond on procurement of a third party Insurance, Delay in procurement of CASA games and inaction causing delay in the completion of construction the of the ward offices. (**Annex 14**)
- vi. A letter by Ms. Nancy Wangai to the Clerk dated 8<sup>th</sup> September, 2023 responding to issues raised on procurement of a third party Insurance, Delay in procurement of CASA games and inaction causing delay in the completion of construction the of the ward offices. (**Annex 15**)
- vii. Extract of Minutes from CASB dated 7<sup>th</sup> November, 2023 in regard to response by Ms. Nancy Wangai to issues raised on procurement of a third party Insurance, Delay in procurement of CASA games and inaction causing delay in the completion of construction the of the ward offices. (**Annex 34**)
- viii. Complaint by Free drop Co. Ltd contractor to PPRA on non-payment of the construction of Ndalani and Kivaa Ward offices (**Annex 35**)

### **On failing to act on correspondences meant for the Board's information, the following evidence was availed**

- i. Letter from the Clerk appointing the inspection and acceptance committee under Section 48 of PPADA (**Annex 37**)
- ii. Correspondence from SCOPE design Systems dated 18<sup>st</sup> August, 2023 on extension of contract regarding the Modern Chamber (**Annex 38**)
- iii. Correspondence from Scope design Systems dated 21<sup>st</sup> August, 2023 on extension of contract regarding the Modern Chamber (**Annex 39**)
- iv. Correspondence dated 11<sup>th</sup> September, 2023 from Scope design systems (**Annex 40**)

### **On failure to upload the Annual Development Plan 2024-25 in the Assembly Website the following evidence was availed;**

- i. Advert for public hearings on the Annual Development Plan 2024-2025 (**Annex 41**)



- ii. A screenshot of the Machakos County Assembly Website, [www.machakosassembly.go.ke](http://www.machakosassembly.go.ke), indicating the date of uploading the ADP 2024-2025 (**Annex 42**)

**On failure to plan on time on procurement of air tickets, the following evidence was provided;**

- i. Letter dated 5<sup>th</sup> November, 2023 from MCAs on overpriced air ticket for a trip to the UK (**Annex 36**)

**Committee observations**

**On Mismanagement of development projects the committee observed;**

- i. That According to the contract documents for Mutituni-Ngelani, the contract period began on 8<sup>th</sup> October, 2021 and was to be concluded on 10<sup>th</sup> December, 2021. Within the contract document, and Abgale General Contractor, Clause 18 on renewal of contracts, states that the contractor acknowledges and understands that the contract carries no expectation or entitlement to renewal. This contract was never completed, neither terminated nor extended
- ii. That According to the contract documents for Kangundo North Ward, the contract period began on 27<sup>th</sup> March 2023 to end on 30<sup>th</sup> June, 2023. Within the terms of contract document, the County Assembly Service Board and Mbuyuyu LTD; Clause 18 on renewal of contract; states that the contractor acknowledges and understands that the contract carries no expectation or entitlement to renewal. This contract was never completed, neither terminated nor extended.
- iii. For Kivaa and Ndalani ward offices, the contracts were awarded to Free Drop Interior Designers LTD and were effective from 8<sup>th</sup> October, 2021 to end on 10<sup>th</sup> December, 2021. The Committee observed that the contractor completed the projects and presented final completion certificates from the Department of Public Works to the Clerk's office for;
  - a. Kivaa Ward amounting of Kshs 1,821,556.80 and;
  - b. Ndalani Ward amounting to Kshs 1,821,556.80

The Committee observed that these amounts totaling to **Kshs 3,643,113.60** owed to Free Drop Interior Designers LTD have never been paid to date or a report with reasons for non-payment presented before the Board for consideration.

**On failure to act on correspondences meant for the Board's information**

The committee observed that from the Minutes from CASB dated 29<sup>th</sup> May, 2023 (**Annex 43**) regarding inaction towards implementation of the Modern Chamber, that a meeting was held between the CASB and Arch. P.J Kuria, Scope Design Systems Ltd- the Consultant, Arch. Evans

Mugo – Scope Design Systems Ltd, Arch. Moses Okemwa, Amber Contractors Ltd – the contractor, and QS Joel Mumo, Amber Contractors Ltd, where the Board raised a concern regarding the construction of the Chamber.

When enquiries were made on whether Scope Design Systems Ltd had presented reports to the Client as required of them in the contract, the response by Arch P.J Kuria was 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 the beginning of May, 2023

**On failure to ensure that performance contracts are signed on time;**

The committee observed that in order to adhere to performance contracting, the assembly requires to have a strategic plan in place.

Further, performance contracts have not been signed for the financial year 2023/24.

**Witness testimony**

**Mr. Justus Musuma, HOD-Human Resource**

Mr. Musuma stated that performance contracts are generated from the strategic plan, and the last strategic plan expired on 30<sup>th</sup> June 2023. He confirmed that currently, the Assembly staff have not signed performance contracts in the current financial year because there is no strategic plan for 2023-2028.

**On failure to observe Assembly’s mandate to the public**

The Committee observed that the advert for public participation for the ADP 2024-25, appeared in the Nation Newspaper on 2<sup>nd</sup> November, 2023. The advert stated that the ADP 2024-25 could be downloaded from the County assembly website [www.machakosassembly.go.ke](http://www.machakosassembly.go.ke); The ADP was uploaded on 6<sup>th</sup> November, 2023, 4 days after the advert and 3 days to the public participation which was scheduled for 9<sup>th</sup> and 10<sup>th</sup> November, 2023

**On failure to plan on time on procurement of air tickets.**

In a letter dated 5<sup>th</sup> November, 2023 written and signed by Hon. Paul Wambua, Hon. Daniel Kivuva, Hon. Boniface Maeke, Hon. Francis Ngunga, Hon. Douglas Musyoka and Hon Erick Wambua, to the Speaker, the committee noted that the Assembly procured air tickets to an international trip to the UK at a cost Kshs 413, 380 for each member. This is way above the normal price as compared to Kshs 132,000 paid by Hon. Grace Bahati to the same destination during the same period. The amount paid by the County Assembly for the said tickets was way higher than that of Hon. Grace Bahati for a direct flight.

**Committee findings**

**Hon Speaker,**

### **On Mismanagement of development projects**

Section 15 of the Public Officers Ethics Act No. 4 of 2003 states that a public officer shall take all reasonable steps to ensure that property that is entrusted to his care is adequately protected and not misused or misappropriated and that a person who contravenes Section 15 (1) of the Act shall be personally liable for losses resulting from the contravention.

The Committee found that the Clerk mismanaged the above development projects and therefore the charge was substantiated.

### **On failure to act on correspondences meant for the Board's information**

Section 17 (2) of the County Assembly Services Act provides that the secretary shall be responsible to the chairperson of the Board and the Board for the general working and efficient conduct of business of the service.

Section 17 (3) of the County Assembly Services Act provides that the Board may delegate to the Secretary such of its functions that are necessary to carry out the day to day management of the Service and subject to such directions as may be given by the Board. Section 19(b) of the Act states that the Clerk as the Secretary of the Board shall be responsible for the day to day management and functioning of the County Assembly.

The operations of the Assembly have been adversely affected by the Clerk's inaction on payment of bills on time leading to poor service delivery. For instance disconnection of electricity, lack basic stationery, toiletries and drinking water which amounts to incompetence on his part. These anomalies have occasionally been witnessed in the County Assembly from time to time

### **On failure to ensure the signing of the performance contracts**

Section 149 (2)(g) of the Public Finance Management Act, 2012 provides that an accounting Officer shall prepare a strategic plan for the entity in conformity with the medium term fiscal framework and financial objectives of the county government. There is no strategic plan for the period starting from July 2023 ending July 2028 hence no performance Contracts signed.

### **On failure to plan on time on procurement of air tickets**

Section 17 (3) of the County Assembly Service Act provides that the Board may delegate to the Secretary such of its functions that are necessary to carry out the day to day management of the Service and subject to such directions as may be given by the Board. On this charge, the committee found the clerk failed to plan early so as to ensure prudent use of public resources.

### **On failure to observe Assembly's mandate to the public**

Section 19 of the County Assemblies Services, 2017 provides for the functions of the Clerk as;

- a) The administrative officer of the County Assembly; and
- b) Responsible for the day to day management and functions of the County Assembly

Section 20 of the same Act provides for the procedural functions of the Clerk to include;

- i. The rendering of expert, non-partisan and impartial advice to the members of the County Assembly on the legislative process, and parliamentary procedure and practice; and
- ii. The carrying out of such other duties and exercising powers as may be conferred on him or her by law or by the Standing Orders and practice of the County Assembly.

In view of the above laws; the Clerk contravened sections 19 and 20 of the County Assemblies Services Act, 2017 and therefore the charge on incompetence and inaction was substantiated.

### **C. GROSS MISCONDUCT OR MISBEHAVIOR**

#### ***7. Failure to implement the county assembly service board resolutions***

**Hon. Speaker,**

1. On this charge, the Clerk has constantly failed to implement the decisions of the County Assembly Service Board, which amounts to insubordination. For instance, he intentionally delayed the procurement of CASA uniform that was meant for Hon. Members and Members of staff of the County Assembly to enable them take part in the County Assemblies Sports Association games in August 2023.
2. The Board in the management of the Assembly modern chamber adopted a recommendation by the then contract implementation team that the project be managed by invoking Section 150 of the Public Procurement and Asset Disposal Act (PPADA). However, the Clerk appointed an inspection and acceptance committee under Section 48 of the PPADA knowing very well that the officers he had appointed lacked the necessary technical capacity to undertake the functions prescribed in that specific section of Law. This action resulted into a frustration of the contract and delay in the completion of the project contract with a resulting financial implication to the Assembly.

#### **Evidence**

**In support of the allegations Failure to implement the county assembly service board resolutions the following evidence was availed to the committee;**

- i. Screenshots of the County Assembly websites showing the date the advert for provision of security services was uploaded (**Annex 44**)

- ii. Screenshots of the County Assembly website showing the date the advert for supply and delivery of CASA uniforms equipment was uploaded (**Annex 45**)
- iii. Invitation to tender for supply and delivery of sports uniform and equipment and provision of security services (**Annex 46**)
- iv. Show cause Letter from the Clerk dated 29<sup>th</sup> August, 2023 directing Ms Nancy Wangai Director Procurement; to respond on procurement of a third party Insurance, Delay in procurement of CASA games and inaction causing delay in the completion of construction the of the ward offices.
- v. A letter by Ms. Nancy Wangai to the Clerk dated 8<sup>th</sup> September, 2023 responding to issues raised on procurement of a third party Insurance, Delay in procurement of CASA games and inaction causing delay in the completion of construction the of the ward offices

**On appointment of an inspection and acceptance committee under Section 48 of the PPADA contrary to the direction of the Board, the following evidence was provided**

1. Extract of minutes of CASB dated 30<sup>th</sup> October, 2023 (Annex 47)
2. Letter dated 28<sup>th</sup> August, 2023 appointing inspection and acceptance committee under Section 48 of Public Procurement and Disposal of Assets Act (PPADA) (Annex 37)

**Committee observations**

Hon Speaker,

The Committee observed that that there was a decision by CASB to advertise for supply of the following items, both with a return of tender date 7<sup>th</sup> July, 2023.

1. CASA uniform for both members of County Assembly and staff,
2. Security services

The committee observed that the clerk advertised for security services on 26<sup>th</sup> June, 2023 and omitted the CASA Uniform. The tender for Security Services was successfully awarded.

The committee further observed that the tender for CASA uniform was advertised almost a month later on 21<sup>st</sup> July, 2023, contract signed on 28<sup>th</sup> August, 2023 and LPO issued on the same day. This was far too late since the CASA games began on 18<sup>th</sup> and ended on 27<sup>th</sup> August, 2023.

In the letter by Ms. Nancy Wangai to the Clerk dated 8<sup>th</sup> September, 2023 responding to issues raised on procurement of a third party Insurance, Delay in procurement of CASA games and inaction causing delay in the completion of construction the of the ward offices the committee observed the following issues;

- 1) That there are lapses that need to be addressed to improve the procurement processes which have negatively impacted the performance of the procurement department.
- 2) That the officers in the department are always working under extreme pressure to meet unrealistic deadlines occurring due to delayed requests; for instance subjecting an officer to preparing a bid document in hours is extremely draining hence causing burnout on the officers.

Finally, in her response, she pointed out that she hoped that the findings of the said matter would be used to improve the way the Assembly conducts its procurement business. She further made a prayer that all Officers involved in procurement and Assets disposal processes shall bear responsibility for their actions and omissions as required under Section 45(5) of Public Procurement and Disposal Act.

#### **Committee findings**

Section 17 (1) (e) of the County Assemblies Services Act, 2017 provides that the Clerk as the Secretary of the Board is responsible for-

- i. The execution of the decision of the Board; and
- ii. Assignment of duties and supervision of the staff of the Board;

On delayed procurement of CASA uniform, this charge has been substantiated since the Clerk did not advertise the tender for supply of uniform and equipment on time as directed by the Board. The same have not been supplied to date.

On independently appointing an inspection and acceptance team despite contrary to the Boards decision, this charge has been substantiated since Clerk independently appointed an inspection and acceptance committee under Section 48 instead of a managing the project under Section 150 of *Public Procurement and Asset Disposal Act (PPADA)* as directed by CASB.

## 5.0 RECOMMENDATIONS

1. The Select Committee, having executed its mandate under Section 23 of the County Assembly Services Act No. 24 of 2017 finds all charges against the Clerk Mr. Joseph Mutisya Laban on grounds of violation of the provisions of the Constitution, the County Assembly Services Act, No. 24 of 2017 and other laws, Incompetence and Gross misconduct or misbehavior to have been substantiated and supports notice of motion dated 28<sup>th</sup> November, 2023 by Hon. Felix Ngui, Vice-Chairperson CASB, seeking that the County Assembly revokes the appointment of Mr. Joseph Mutisya Laban from the Office of Clerk, County Assembly of Machakos.


The committee further recommends that;


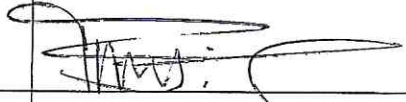




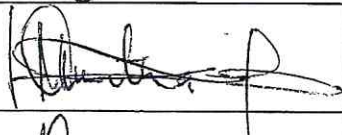


2. The Board invites the relevant investigative agencies to further investigate where there are possible offences that might have been committed.
3. The office of the clerk reviews and resolves all the pending issues relating to the appointment, remuneration and compensation for lost earnings of Mr. Shadrack Mbithi and reports back to the CASB within 14 days.
4. The office of the Clerk provides a report to the Board on the status of all contracts mentioned in this investigation within 30 days.
5. The office of the clerk becomes proactive in the day to day management of the Assembly Service by making sure that:
  - a. Any communication to or from the office of the clerk and inter departmental communication be done in writing and on the official letterhead of the assembly.
  - b. All contracts are lawfully entered into and managed as per the requirements of the law.
  - c. All procurement processes adhere to the relevant laws

### **Adoption schedule for the report of the select committee investigating the proposed removal from office of Mr. Joseph Mutisya Laban from the position of Clerk of County Assembly**

Hon. Speaker, the report was adopted by the following members:

**Date: 5<sup>th</sup> December, 2023**

	<b>Member</b>	<b>Signature</b>
1.	Hon. Nicholas Nzioka	

2.	Hon. Judas Ndawa	
3.	Hon. Francis Kitaka	
4.	Hon. Francis Kavyu	
5.	Hon. Annastacia Mutevu	
6.	Hon. Rose Benjamin	
7.	Hon. Justus Mutuku	
8.	Hon. Rosina Kanini	
9.	Hon. Loyd Mutua	
10.	Hon. Mercy Njagi	
11.	Hon. Winnie Mutua	

SIGN.....

DATE .....05/12/2023

**HON. NICHOLAS NZIOKA**

**CHAIRPERSON - SELECT COMMITTEE INVESTIGATING THE PROPOSED  
REMOVAL FROM OFFICE OF MR. JOSEPH MUTISYA LABAN FROM THE  
POSITION OF CLERK OF COUNTY ASSEMBLY**