

REPUBLIC OF KENYA
COUNTY ASSEMBLY OF MACHAKOS

OFFICIAL REPORT

Tuesday, 5th December, 2023

The House met at 10.50 a.m.

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

PRAYERS

PAPER LAID

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: May I invite Hon. Nicholas Nzioka to come forward and lay the Paper.

Hon. Nicholas Nzioka (Machakos Central, WDM-K): Thank you, Hon. Speaker. Hon. Speaker, I wish to lay the following Paper on the Table of the Assembly today Tuesday, 5th December, 2023; 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. Thank you, Madam Speaker.

(The Paper was laid on the Table)

Hon. Speaker: Thank you, Hon. Member.

NOTICE OF MOTION

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: May I invite 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. Proceed, Hon. Nicholas Nzioka.

Hon. Nicholas Nzioka (Machakos Central, WDM-K): Thank you, Madam Speaker.

Hon. Speaker, that aware that the select committee investigating the proposed removal from office of Mr. Joseph Mutisya Laban from the position of the clerk of the County Assembly is established under Section 23(4) of the County Assembly Services Act of 2017;

Further aware that 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, the County Assembly Service Board suspended Mr. Joseph Mutisya Laban for 14 days, 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.

Cognizant that, 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;

Aware that a notice of motion seeking that the County Assembly revokes the appointment of the Clerk dated 28th November, 2023 was tabled before the House by the Vice Chairperson, County Assembly Service Board 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 and reports back to the House within 10 days;

Hon. Speaker, I wish to give notice of motion that, this House discusses and approves the report of the select committee investigating the proposed removal from office of Mr. Joseph Mutisya Laban from the position of the clerk of the Machakos County Assembly.

Thank you, Hon. Speaker.

Hon. Speaker: Thank you, Hon. Member.

STATEMENT

BUSINESS FOR THE HOUSE FOR 5TH DECEMBER, 2023

Hon. Nicholas Nzioka (Machakos Central, WDM-K): Hon. Speaker, the House Business Committee met on Tuesday, 5th December, 2023 to prioritize business for the House as forwarded by Committees and Hon. Members pursuant to the provisions of the Standing Order 151(6)(d) . The Committee balloted business as follows:

Tuesday, 5th December, 2023

Morning at 10.00 a.m.

- (a) 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 by Hon. Nicholas Nzioka, Chairperson, Select Committee Investigating Allegations on Revocation of the Appointment of the Clerk of the County Assembly.
- (b) Motion on Alteration of the Calendar of the Assembly and Adjournment of the House by Hon. Nicholas Nzioka-Leader of Majority Party/MCA Machakos Central Ward.

Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Member.

SPECIAL MOTION

APPROVAL 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: May I invite Hon. Nicholas Nzioka, Chairperson Select Committee to come forward and take us through.

Hon. Nicholas Nzioka (Machakos Central, WDM-K): Thank you, Madam Speaker.

Hon. Speaker, that aware that the select committee investigating the proposed removal from office of Mr. Joseph Mutisya Laban from the position of the clerk of the County Assembly is established under Section 23(4) of the County Assembly Services Act of 2017;

Further aware that 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, the County Assembly Service Board suspended Mr. Joseph Mutisya Laban for 14 days, 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.

Cognizant that, 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;

Aware that a notice of motion seeking that the County Assembly revokes the appointment of the Clerk dated 28th November, 2023 was tabled before the House by the Vice Chairperson, County Assembly Service Board 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 and reports back to the House within 10 days;

Hon. Speaker, I wish to move the motion that, this House discusses and approves the report of the select committee investigating the proposed removal from office of Mr. Joseph Mutisya Laban from the position of the clerk of the Machakos County Assembly.

Thank you, Hon. Speaker. I wish to call the Vice-Chair of the Select Committee to second.

Hon. Mbili Ndawa (Matuu, M CCP) seconded.

Hon. Speaker: Thank you, Hon. Vice-Chair.

(Question proposed)

Before I invite members to debate, let me call the move of the motion to come forward and take the House through the highlights of the report. Hon. Nicholas.

Hon. Nicholas Nzioka (Machakos Central, WDM-K): Thank you, Madam Speaker. With your permission, I would want to read the foreword and then a brief introduction and then I would go maybe to a case of how we undertook our investigations and then the recommendations.

Hon. Speaker: You don't think it is important to go through the Committee investigations?

Hon. Nicholas Nzioka (Machakos Central, WDM-K): I could go through. Well-guided, Madam Speaker.

Hon. Speaker: Okay.

Hon. Nicholas Nzioka (Machakos Central, WDM-K): So this is the report of the Select Committee investigating the proposed removal from office of Mr. Joseph Mutisya Laban from the position of the clerk of the County Assembly.

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 Mutisya Laban to reply to the suspension letter that contained a schedule of charges within 14 days and appear before the board on

28th November, 2023 at 10.00 a.m. 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 28th 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 Hon. 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.

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 28th 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 28th November, 2023 at 10.45 a.m. and balloted to be tabled in the House on the same day.

The notice of motion was given on 28th November, 2023 in the morning sitting and the motion placed in the Order Paper for discussion on the same day 28th November, 2023 during the afternoon sitting. With your permission I would wish to go to investigations; which is on page 11.

Hon. Speaker: You may do that.

Hon. Nicholas Nzioka (Machakos Central, WDM-K): Thank you, Madam Speaker.

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 1st December, 2023 at 9.00 a.m. to exculpate himself. However, the Clerk did not show up as expected.

The committee took note of a letter dated 30th November, 2023 (Annex 25) presented at 12.05 p.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 by failing to observe transparency or responsibility and obtained an unauthorized loan facility at the State Bank of Mauritius (SBM) on 13th February, 2023, amounting to Ksh. 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 13th February, 2023 requesting SBM Bank a facility of Ksh. 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 16th March, 2023 approving a loan of Ksh. 157,000,000 to the County Assembly. (Annex 12)
- iii. Letter from SBM bank dated 14th 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 13th February, 2023 requesting SBM bank for a loan and the bank responded approving a loan of Ksh. 157,000,000.
2. The bank in a letter dated 14th June, 2023, wrote to the Clerk with concern that they were yet to receive payment instalments and that the facility was in arrears of Ksh. 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 authorize short term borrowing by county government entities for cash management purposes only.
- (2) Any borrowing under subsection (1) may not exceed five per cent 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 Ksh. 182,720,000 but the bank approved Ksh. 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(2)(d), 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 (Revised 2022). Further, Section 103 of the Public Procurement and Asset Disposal Act, 2015 (Revised 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 29th 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 8th 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 27th 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 27th June, 2023 (Annex 19)

Witness Statement

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 30th June, 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 Ksh. 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 27th June, 2023 for all the 10 vehicles of the County Assembly and Certificates of Insurance commencing on 1st July, 2023 and expiring on 31st 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(2)(d) 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 (Revised 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 (2)(d) 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 20th 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 12th July, 2023, way past the expected deadline of 30th 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 20th June, 2023 presenting the tabling and approval of the Machakos County Appropriation Bill, 2023 (Annex 20)
- ii. HANSARD report dated 12th 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 17th July, 2023 (Annex 22)
- iv. HANSARD report dated 23rd 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 12th 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 23rd 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 Hon. 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 Ksh. 25,521,905 relating to recurrent expenses of Finance and Economic Planning was to be substituted thereof with a figure of Ksh. 40,521,905.
- ii. Where a figure of Ksh. 552, 936,479 relating to recurrent expenditure of finance and Economic Planning was to be substituted thereof with a figure of Ksh. 567, 936,479.
- iii. Where a figure of Ksh. 22,051,545 relating to recurrent expenditure in revenue management was to be substituted thereof with a figure of Ksh. 37,051,545.
- iv. Where a figure of Ksh. 268,835,562 relating to recurrent expenditure in revenue management was to be substituted thereof with a figure of Ksh. 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 was availed;

- i. Letter from the Clerk dated 13th February, 2023 requesting SBM Bank a facility of Ksh. 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 16th March, 2023 approving a loan of Ksh. 157,000,000 to the County Assembly. (Annex 12)
- iii. Letter from SBM dated 14th 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 3rd January, 2022 (Annex 26)
- ii. Letter of appointments for Shadrach Mbithi dated 11th 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 1st July, 2020 (Annex 29)

Witness Statement

Mr. Shadrack 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 Resource, 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. Shadrack 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 Ksh. 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 3rd January, 2022, he was appointed to the position of Fiscal Analyst II Scale 7 effective 1st February, 2022 on permanent and pensionable basis.

In the second letter of appointment for Shadrack Mbithi dated 11th February, 2022, he was appointed to the position of Fiscal Analyst I but still in Scale 7, effective 1st February, 2022. The terms of service were a three-year contract from 1st February, 2022 to 31st 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 Ksh. 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 Ksh. 182,720,000 from SBM bank for motor vehicle reimbursement for Hon. Members.

The letter from SBM bank dated 14th June, 2023 Ref No. Public Sector/MCG/14062023 stated that the Account was in arrears of Ksh. 56,715,000. The agreement according to the letter was that the facility was to be cleared by 31st 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 8th October, 2021 to end on 10th December, 2021 for Mutituni ward and 27th March 2023 to 30th 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 2nd 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 29th 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 8th 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 7th 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 correspondence 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 18st August, 2023 on extension of contract regarding the Modern Chamber (Annex 38)
- iii. Correspondence from Scope Design Systems dated 21st August, 2023 on extension of contract regarding the Modern Chamber (Annex 39)
- iv. Correspondence dated 11th 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, 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 5th 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 8th October, 2021 and was to be concluded on 10th 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.

Hon. Stephen Mwanthi (Ekalakala, WDM-K): Point of order, Madam Speaker.

Hon. Speaker: Yes. Point of order taken.

PROCEDURAL MOTION
EXTENSION OF SITTING TIME

Hon. Stephen Mwanthi (Ekalakala, WDM-K): Madam Speaker, I am rising under Standing Order 27.

Aware that Standing Order 27(2) provides that the Speaker shall interrupt business at 12.30 p.m. for the morning sitting;

Aware that Standing Order 27(3) provides that the House may resolve to extend its sitting time;

Aware that Standing Order 27(4) requires the motion to extend sitting time to be moved at least 30 minutes before the time apportioned for the adjournment;

I beg to move the motion that this House resolves to extend its sitting time until the business at hand is concluded.

Thank you, Madam Speaker. I call upon Hon. Mheshimiwa Brian to second.

Hon. Speaker: Hon. Brian Kisila.

Hon. Brian Kisila (Makutano/Mwala, M CCP): I second.

Hon. Speaker:

(Question proposed)

(Question put and agreed to)

(Applause)

Hon. Nzioka, you may proceed with the report.

Hon. Nicholas Nzioka (Machakos Central, WDM-K): Thank you, Madam Speaker and I also want to thank the Hon. Deputy Speaker who has saved me a lot. I was cracking up here---

Hon. Speaker: You have gotten a break?

Hon. Nicholas Nzioka (Machakos Central, WDM-K): Yes, I needed a break, Madam Speaker. I will start with Committee observations.

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 8th October, 2021 and was to be concluded on 10th 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 27th March 2023 to end on 30th 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 8th October, 2021 to end on 10th 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 Ksh. 1,821,556.80 and;
 - b. Ndalani Ward amounting to Ksh. 1,821,556.80

The Committee observed that these amounts totaling to Ksh. 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 29th 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 30th 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.

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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 2nd November, 2023. The advert stated that the ADP 2024-25 could be downloaded from the County assembly website www.machakosassembly.go.ke; the ADP was uploaded on 6th November, 2023, four days after the advert and three days to the public participation which was scheduled for 9th and 10th November, 2023

On failure to plan on time on procurement of air tickets

In a letter dated 5th November, 2023 written and signed by Hon. Paul Wambua, Hon. Dee 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 Ksh. 413, 380 for each member. This is way above the normal price as compared to Ksh. 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.

(Hon. Speaker left the Chair)

(The Deputy Speaker [Hon. Stephen Mwanthi] took the Chair)

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 correspondence 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

Failure to implement the County Assembly Service Board resolutions

Hon. Speaker, 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.

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 29th 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 8th 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 30th October, 2023 (Annex 47)
2. Letter dated 28th 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 7th 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 26th 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 21st July, 2023, contract signed on 28th August, 2023 and LPO issued on the same day. This was far too late since the CASA games began on 18th and ended on 27th August, 2023.

In the letter by Ms. Nancy Wangai to the Clerk dated 8th 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.

(The Deputy Speaker [Hon. Stephen Mwanthi] left the Chair)

(Hon. Speaker took the Chair)

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 28th 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.

Hon. Speaker, the Committee adopted the report by signing a schedule as attached in the final page. I thank you, Madam Speaker.

(Applause)

Hon. Speaker: Thank you very much, Hon. Member and Chair of the Select Committee. I now invite Members to debate this motion. Members it is your turn. Hon. Brian Kisila and then Hon. Deputy Speaker.

Hon. Brian Kisila (Makutano/Mwala, MCCP): Madam Speaker, I will be very brief because the report is very conclusive and it is very detailed. First, I would like to start by thanking the Select Committee for a job well done and for burning the midnight oil to ensure that we have the report in good time. Madam Speaker, I stand here to fully support this report and I support it on the basis that I have listened carefully to the committee findings and recommendations.

What guided me in my decision to support the committee report is; one, was the due process followed. Did the County Assembly Service Board follow the due process and secondly, was Joseph Mutisya Laban given opportunity to defend himself and thirdly were the charges substantiated. Madam Speaker, on the first issue I think the County Assembly Service Board worked within its mandate and did what was necessary including giving Joseph Mutisya an opportunity to defend himself. He did not find it necessary or in his ignorance or arrogance, he did not see any need to defend himself.

Secondly, the Assembly acted within its mandate to appoint the Select Committee and follow the right process to come to the appointment.

Madam Speaker, was Mr. Mutisya was given opportunity to express himself and defend himself in the Select Committee; I think it is confirmed that he was given that opportunity and in his ignorance or arrogance, he decided not to defend himself.

Now on the charges against him some of them are very grievous and I have followed all the charges and Madam Speaker, without wasting a lot of time I fully agree with the Select Committee recommendation that all charges against the Clerk Mr. Joseph Mutisya on grounds of violation and provisions of the constitution, the County Assembly Services Act 24 of 2017 and other laws, incompetence and gross misconduct or misbehavior having been substantiated.

He cannot act without the authority of the Board including borrowing funds for this Assembly. He cannot go and procure services and air tickets which are exaggerated Madam Speaker, and I find those charges very serious; some of them bordering on criminality and Madam Speaker, on that I fully stand here to support the report of revocation of appointment of Mr. Joseph Mutisya Laban. Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Member. Hon. DS.

Hon. Stephen Mwanthi (Ekalakala, WDM-K): Thank you, Madam Speaker. I am here to support the Select Committee on the job that we had given them and they have presented the report on time, Madam Speaker. Madam Speaker, I will base my accusation to one Joseph Mutisya on two things; incompetence and the other one on gross misconduct. Madam Speaker, it is in black and white that during the First Assembly there are several things that were undertaken by the then administration including repairing of this chamber,

construction of the current office block and the parking and many other things that were done by the First Assembly.

During the Second Assembly, the administration also managed to furnish the office block, construction of several ward offices in our various wards and many other things. Madam Speaker, it is unfortunate, before we thought the Board was failing us now it is one and a half years down the line Madam Speaker, and there is too little that we can show based on development of this County Assembly. Now that the Board has distanced itself with such issues, the ball falls under one Mutisya Joseph who ought to have done several things based on development.

It is very bad Madam Speaker, to have..... (inaudible). Thank you. It is so bad Madam Speaker, for Assembly that has been checking on the Executive to make sure development has been done then you find that as an Assembly so little or almost nothing has been done. Madam Speaker, I think the Clerk has failed the Assembly terribly even including payment just of simple projects that had been undertaken by his predecessor paying the contractors has been a challenge and yet Madam Speaker, we know there has been enough allocation in our budget to pay such contracts.

It has painted our Assembly badly, and Madam Speaker, it is a challenge now to get a contractor to come and work with this Assembly simply because we have been labeled as an institution that does not pay contractors after they work. It has also been very hard for him and the administration to get contractors; Madam Speaker, some of the projects that have not been done in the wards, the issue has always been contractors....when we advertise for projects, the response from the Clerk has been it was non-responsive. Reason being as an Assembly we have not been paying the contracts that have already been done.

Madam Speaker, on the issue of misconduct, as an Assembly we identified some Members who represent us Members in the CASB, one Hon. Johana Munyao and one Hon. Felix Ngui and they are Members whom we trust and so when they saw some of these issues that as Members we have been raising, they called...after suspending one Mr. Mutisya and after giving him an opportunity to come and respond to the issues, he failed to show up and to me that is gross misconduct because that is just like failing to come and meet the entire House for such and that means Madam Speaker, it is hard or to me that is gross misconduct, failing to come and respond to issues that have been levelled on him.

So, Madam Speaker, many things have been said as read by the Chair. Some of them, including acquiring third party insurance to government vehicles including, Madam Speaker, the one that carries you. I have realized that it was also using third-party insurance and that is endangering lives Madam Speaker, of Hon. Members and the Speaker herself. Madam Speaker, I think now with that failing to issue comprehensive insurance to the government vehicles, I think Mr. Mutisya must go.

Madam Speaker, for hiking air tickets from Ksh. 132,000 to Ksh. 413,000 Madam Speaker, is unheard of and by so doing one Mr. Mutisya must go.

(Applause)

Madam Speaker, on issues of development, Hon. Johana being a commission he has never enjoyed the services he is supposed to enjoy in his ward just because of contracts have been levelled against one Mr. Mutisya. If you go to Kivaa ward, the contractor is complaining. I have seen the ward office for Kivaa, I have seen the contract for Ndalani and Kangundo North and so Madam Speaker, and by failing to do that Mutisya must go.

Madam Speaker, one Mr. Mutisya for failing to provide the Assembly with the CASA uniforms, he must go. Madam Speaker, he also failed to pay contractors who have always been moving around the Assembly corridors at least to get what is duly theirs and close to a year failing to pay such contractors. Madam Speaker, I think one Joseph Mutisya must go. Thank you, Madam Speaker.

(Applause)

Hon. Speaker: Hon. Ndawa.

Hon. Mbili Ndawa (Matuu, MCCP): Thank you, Madam Speaker. I will start by applauding the Chair together with the Committee Members for spending many hours working on this document. I sat in that committee and before we started handling the issue, we requested each and every Member to drop his/her interests so that we can have impartiality in what we are doing. I want to confirm here that Members were working without any malice and partiality. We were neither supporting the Board nor supporting Mutisya because we wanted to come up with something which is fair enough according to the evidence.

According to the charges which were labelled against Mutisya Laban, one of the charge is the issue of incompetence. Another word for incompetence, Madam Speaker, is ineptitude and a clear definition of that is a situation where one lacks ability or skills to undertake a task given to him. Hon. Speaker, that charge was substantiated because we called upon the witnesses who have been mentioned in the report and we found that the delay and blame was lying squarely on one Joseph Mutisya Laban.

Hon. Speaker, incompetence lies in what we call law of tort on the issue of negligence and it can be either of omission or commission. If you are assigned to do a certain task and you do it wrongly, that is negligence, or you fail to do it, that also amounts to negligence. We have seen instructions given by the Board which manages the Assembly to Laban Mutisya and him failing to act on the instructions.

Again, there is an issue of obtaining a loan facility from a bank without the approval of the Board. That is contrary to Section 357 of the Penal code; making documents without authority and the remedy for that charge is imprisonment not exceeding three years. So, Hon. Speaker and the House we only dealt with the civil matter because the committee had no mandate to handle the criminal part of the charges. That is why in our recommendations, we have said, the Board to liaise with the investigative organs to pursue the issues of criminal nature because we have seen issues of criminal nature here.

Coming to the issue of insurance, Third Party Hon. Speaker, in this House we have different departments and each has its roles and duties. The action of Mutisya has caused what we call redundancy in Human Resource. Redundancy is a situation whereby somebody's services are no longer required. Hon. Speaker, we have a procurement department which is mandated by the Sections quoted in this report to procure items and services to this Hon. House. We called one Nancy who is in charge of procurement department in this Assembly and we asked her to tell the committee what transpired on this issue of the Third-Party insurance cover.

Hon. Speaker, the officer made it very clear to the committee that she learned about the existence of that Third-Party cover when she received a show cause letter. That means somebody else caused redundancy posing that lady not to do her duty and the officers below her. We went ahead and called one Musuma who is in charge of HR and the one who manages

the issues of motor vehicles. Hon. Speaker, one Musuma is on record confirming before the Committee that he was just instructed by word of mouth by one Mutisya Joseph Laban to do a memo. He is on record; we can get the HANSARD and that is now the memo which was used to purchase that Third Party Insurance. So, Hon. Speaker, purchasing a Third-Party Cover---

Hon. Peter Kilonzo (Mbiuni, UDA): Point of information.

Hon. Mbili Ndawa (Matuu, MCCC): Hon. Speaker, I do not want any information and let each Member wait for his turn.

(Applause)

Again Hon. Speaker, the point of information you are hearing here, these are the people who are messing the reputation of this House. I want to draw to your attention and the attention of the House that as of yesterday, a meeting was held somewhere were Mheshimiwa PK from Mbiuni was given some funds by the accused to distribute to Members. So, Hon. Speakers---

(Loud consultations)

Hon. Speaker, this is a protected area and any Member has a right to say what he feels.

Hon. Speaker: Hon. Member, restrict yourself to the matters before the House.

(Loud consultations)

Hon. Mbili Ndawa (Matuu, MCCC): Thank you, Madam Speaker. The reason why I am saying so, I was called by one Member who was promising to give me Ksh. 30,000 to come and shoot down the motion before the House and that is enough confirmation, I do not need to explain any further.

(Loud consultations)

On the other issue of---

Hon. Speaker: This is a House of order Hon. PK; you cannot talk like that. Members, please let us respect this House.

(Loud consultations)

I have not given you permission. Proceed, Hon. Ndawa.

Hon. Mbili Ndawa (Matuu, MCCC): Thank you, Hon. Speaker.

Hon. Speaker: You have to respect a Member when they are on their feet; I have informed the Hon. Member to restrict himself which he has done. Proceed, and restrict yourself to the matters before the House.

(Applause)

Hon. Mbili Ndawa (Matuu, MCCC): Well-guided, Hon. Speaker. Coming back to the business before the House, the issue of collecting a small anomaly in a letter of appointment of an employee is taking about a year plus. Something which can be handled by the HR department is being handled by the Clerk. Hon. Speaker, we called that witness and he took us through the process that he went through so as to be admitted in this Assembly. Hon. Speaker, the position that the staff applied for, he was given another scale not the one he was interviewed for. He raised the matter about a year ago and up to date the matter has not yet been resolved.

Hon. Speaker, I do not want to waste a lot of time on this matter because as committee members, every charge we have given the relevant sections which have been contravened for ease of reference. So, I request Members to consult the said Sections and Acts so that they can know why the committee is approving the motion that was seeking to have Mutisya removed from the position of the Clerk of this County Assembly and I support that Mutisya is not competent enough to manage this County Assembly. Thank you, Hon. Speaker.

Hon. Speaker: Hon. Mwonga.

Hon. Joshua Mwonga (Masinga Central, WDM-K): Thank you, Madam Speaker for catching my eye. I have carefully listened to the Chair of the committee which was approved by this House and I do not want to go to the allegations one by one but, I find one Joseph Mutisya to have been unfit to hold that office.

(Applause)

Madam Speaker, even if we argue here until the evening, the goose is cooked. One Joseph Mutisya is guilty as charged. We need not to labour a lot, Madam Speaker. The Gospel of Luke 12:48 talks about; to whom much is given, much is expected. Madam Speaker, we had a person who was holding a bigger office but could not offer the services equal to that office. Madam Speaker, let us not labor a lot. The mood of this House is that one Mutisya be discharged from office and Madam Speaker, let us not waste a lot of time. Let us put the question that is the mood of the majority of these Members. Thank you, Madam Speaker.

Hon. Speaker: Hon. Maeke.

Hon. Musyimi Maeke (Kalama, CCU): Thank you, Madam Speaker. I want to start by thanking the committee through the leadership of the Chair---

Hon. Speaker: Point of information taken.

Hon. Mbili Ndawa (Matuu, MCCC): Thank you, Hon. Speaker. I want to inform the House including the Clerk that the Member you have given chance to speak is on this report as an interested party. So I do not think whether he is fit because he is the one.....we have a letter in the file of him and other Members complaining so what we are addressing, they are interested parties; those who signed that letter.

Hon. Musyimi Maeke (Kalama, CCU): Thank you, Madam Speaker, for giving me this opportunity. I want to start by thanking the Chairman and the committee that sat down and brought to this Hon. House the report concerning the expulsion of the Clerk and I must say that several allegations have been put across and I do not want to be led by emotions or by anything or anxiety; somebody have tried to whisper but I want to go with facts. One of the gross allegations as put was that one Mutisya borrowed money, my question would be when he borrowed the money, the issue was the process of borrowing the money and borrowing the money he never informed CASB but it is in the public domain including this House that every step that included---

Hon. Speaker: Point of information taken. Hon. Maeke, take your seat.

(Hon. Maeke took his seat)

Hon. Francis Kavyu (Kinanie, MCCP): Thank you, Madam Speaker. I would wish to inform the Hon. Member that there is a very clear laid down process on what should be followed when making any borrowing and as he also contributes; he needs to understand what the Clerk undertook. It is the person in charge of the County Treasury who should have triggered the process then the Clerk to inform the board, then the board will make a resolution that will come to this Hon. House. The intention might have been good but for the sake of the future and also to set a precedence that we will not wake up one day even after we have left this Hon. House we see on the news that somebody holding that office has borrowed money.

The intention might have been good but what we are discussing is the process; if you do not follow the process, Madam Speaker, you can even steal food because you are hungry or you are on the verge of dying but if you are taken to the court you will be prosecuted because you stole and it doesn't matter what the intention was. The process is what justifies the means. Thank you, Madam Speaker.

(Applause)

Hon. Speaker: This is the ruling of the Speaker on that matter, Hon. Maeke. That the process of borrowing has been properly given in the report and the allegation is on the process of borrowing it has properly been given in that report by the Chair of the Select Committee that there was no permission from the Board and there was no approval from the Assembly. So that is done and you cannot proceed on that matter concerning borrowing.

Hon. Musyimi Maeke (Kalama, CCU): Thank you very much, Madam Speaker. I was trying to ventilate on the issue brought up before because every Member and the issues that have been brought one has to support or oppose depending on my input. It is not about what the report saw because we are ventilating on a report, Madam Speaker, even though I stand guided because the reason and the purpose of bringing the report to the House is for us as Members to make a decision because this was a committee that sat down and it has brought an issue. I was not saying---

Hon. Speaker: That is why I gave the ruling that what you are trying to ventilate and saying that the process was not followed, the process was followed as per the---

Hon. Musyimi Maeke (Kalama, CCU): No. I was not saying that unless somebody is reading my mind wrongly because I had just stated that way and I actually saying that was wrong but now you are already reading my mind.

Hon. Speaker: That matter is concluded, Hon. Member.

Hon. Musyimi Maeke (Kalama, CCU): On what?

Hon. Speaker: That I have made a ruling. Have a seat.

Hon. Musyimi Maeke (Kalama, CCU): I have not exhausted my two minutes.

Hon. Speaker: You have and I have made ruling.

(Loud consultations)

Hon. Joshua Mwonga (Masinga Central, WDM-K): Point of information taken. Madam Speaker, I want to inform one Hon. Maeke that---

(Hon. Maeke spoke off record)

(Loud consultations)

Hon. Speaker: Hon. Maeke you have to take your seat. There is another Member---

Hon. Joshua Mwonga (Masinga Central, WDM-K): Madam Speaker, I wanted to inform the Member that when the Speaker is addressing the House no member should be standing so you will take note maybe next time. Thank you.

Hon. Speaker: That is a matter I have addressed before that until the Speaker tells you to speak you cannot continue speaking. You are out of order, Hon. Maeke. You cannot continue talking when the Speaker has told you not to continue speaking.

Hon. Musyimi Maeke (Kalama, CCU): On a certain matter, Madam Speaker.

Hon. Speaker: You want to exchange? Are you exchanging with me? You want to continue exchanging with me? I have made a ruling. May I invite the mover of the motion to come forward and reply?

(Applause)

(Loud consultations)

Hon. Nicholas Nzioka (Machakos Central, WDM-K): Thank you, Hon. Speaker.

(Several Members stood in their places)

Hon. Speaker: Members, I order that you have your seats. Proceed, Hon. Member, and make your response.

Hon. Nicholas Nzioka (Machakos Central, WDM-K): Thank you, Madam Speaker. I would want to take this opportunity Hon. Speaker to thank your office. First of all, I want to thank the committee members who were given a task---

(Loud consultations)

Hon. Speaker: You cannot continue talking; I will ask the Serjeant at Arms to throw you out. We cannot talk all of us.

Hon. Nicholas Nzioka (Machakos Central, WDM-K): Thank you, Madam Speaker. I would want to thank the Hon. House for having listened to our committee report and ventilated effectively on the issues and I want to thank first of all my committee that I chaired for making sure we handled the task at hand with a lot of dedication. I want to confirm to you, Madam Speaker and the House, we worked overboard. We worked sometimes up including at night because as Mheshimiwa Minority Leader have said, we wanted to bring a credible report in this House and what we have before this House is a credible report substantiated in law and anyone can check with the sections of the Law that we have quoted against each charge, anyone can check with all the annexures that we have attached in the report and I know this committee has set the bar very high in as far as preparing a report bringing it in the House for consideration.

I want to applaud Members of my committee because you have done something that I have witnessed not being done in this House. You have kept the information that we were deliberating within the membership of the committee until the report found itself here so members of the Select Committee congratulations.

(Applause)

Madam Speaker, I want to thank you because we were facilitated by both your office and the Office of the Clerk and that is why we were able to bring this report. Otherwise, I would say that this matter, emotive as it is, we must put the County Assembly of Machakos first because this is what the public demands. Thank you, Madam Speaker.

(Applause)

DIVISION

(Question put and the House divided)

Hon. Speaker: You may sit Hon. Ngunga because I want to take a Roll Call for Division.

(Loud consultations)

Can we have silence? I want to read to you Standing Order 68. Once a question is put and the Speaker pronounces a decision on the voting, any Member who is dissatisfied with the decision may claim a division by standing.

Order, Hon. Members! I want to take Members through the process then we can take that direction.

Standing Order 68

- (1) Once a question is put and the Speaker pronounces a decision on the voting, any Member who is dissatisfied with the decision may claim a division by standing.
- (2) When a member claims division under (1), and at least five Members stand in support of the Member, the Speaker shall direct a roll call vote to be taken if least at five Member stand in support of the member and the Speaker considers that there is a reasonable doubt as to the outcome of the vote in question.
- (3) When the Speaker directs that division voting be taken, the Division Bell shall be rung for not more than ten minutes and if there is quorum the Assembly shall proceed to a vote. If there is no quorum at expiry of the ten minutes, the bell shall be rung for further five minutes.
- (4) The Speaker shall direct a division to be taken in every instance where the Constitution or national legislation lays down that a fixed majority is necessary to decide any question.

So that is the procedure and at this point, I now order for the Division Bell to be rung. Serjeant at Arms, proceed and ring the Quorum Bell.

(Quorum Bell rung)

(Question carried by 41 votes to 10)

AYES: Hon. Stephen Mwanthi, Hon. Nicholas Nzioka, Hon. Mbili Ndawa, Hon. Jackson Ndaka, Hon. Lucky Nzau, Hon. Francis Kavyu, Hon. Dee Kivuva, Hon. Fredrick Kitetu, Hon. Anastasia Mutevu, Hon. Benjamin Kinyungu, Hon. Catherine Kyee, Hon. Charles Mbuva, Hon. Constance Mbula, Hon. Daniel Muindi, Hon. Daniel Ndwiki, Hon. Dominic Ndambuki, Hon. Farhiya Abdi, Hon. Felix Ngui, Hon. Francis Kitaka, Hon. Grace Bahati, Hon. Helen Ndeti, Hon. Irene Mulu, Hon. Jeremiah Kaloi, Hon. Johana Munyao, Hon. Brian Kisila, Hon. Joseph Mulinge, Hon. Joshua Mwonga, Hon. Julius Munywoki, Hon. Justus Mutuku, Hon. Loyd Mutua, Hon. Herskovitis Muasya, Hon. Mercy Njagi, Hon. Paul Muli, Hon. Muoki wa Musila, Hon. Penninah Kisangai, Hon. Phillip Ndolo, Hon. Phoebe Koki, Hon. Rose Wavinya, Hon. Rosina Kanini, Hon. Vincent Mutie, Hon. Winfred Mutua.

NOES: Hon. Everlyne Nzeki, Hon. Aliphonce Mutinda, Hon. Anne Ndilo, Hon. Musyimi Maeke, Hon. Dickson Maundu, Hon. Douglas

Musyoka, Hon. Francis Ngunga, Hon. Margaret Ndalana, Hon. Paul Wambua, Hon. Peter Kilonzo.

ABSTAIN: Hon. Boniface Katiti, Hon. Caroline Mutuku, Hon. Dominic Maitha, Hon. Mary Kituku, Hon. Mathew Ndunda, Hon. Ruth Wanjiru.

ABSENT: Hon. Eric Musembi, Hon. Catherine Muia.

PROCEDURAL MOTION

ALTERATION OF THE CALENDAR AND ADJOURNMENT FOR LONG RECESS

Hon. Speaker: May I call Hon. Nicholas Nzioka to come forward and move the motion. Proceed Hon. Nicholas Nzioka.

Hon. Nicholas Nzioka (Machakos Central, WDM-K): Thank you, Madam Speaker. Hon. Speaker, that aware that the second Session of the Third Assembly commenced on 14th February, 2023;

Further aware that pursuant to Standing Order 25(1), the Assembly approved an Assembly calendar on 14th March, 2023 and altered it on 15th March, 26th April and 13th June, 2023 through House resolutions;

Aware that Standing Order 24(1) provides that except for the session commencing immediately after a general election, the regular sessions of the Assembly shall commence on the Second Tuesday of February and terminate on the first Wednesday of December;

Further aware that the House is scheduled to adjourn for its long recess on Wednesday 6th December, 2023 as per the approved Assembly Calendar;

Acknowledging that Standing Order 25(4) provides that despite the adjournment date as scheduled in the approved Assembly Calendar, the Assembly may by resolution, alter its Calendar or the adjournment date;

Aware that Members have been invited to participate in the National Kenya Music and Cultural Festival in Makueni County from 30th November to 10th December, 2023;

Hon. Speaker, I wish to move the Motion THAT notwithstanding the resolutions of the Assembly made on 14th March, 2023 (Approval of Assembly Calendar), 15th March, 2023, 26th April, 20th June and 9th August, 2023 (alteration of the Assembly Calendar) and pursuant to Standing Order No. 25(1), the Assembly resolves to alter its Calendar (Regular Sessions) for the Second Session of the Third Assembly to adjourn its sitting from today Tuesday, 5th December, 2023 and resume its regular sittings on Tuesday, 13th February, 2024 and that the Assembly Calendar (Regular Sessions) for the Second Session be altered accordingly.

I call on the Minority Leader to second my motion. Thank you, Madam Speaker.

Hon. Speaker: Thank you, Hon. Member. Hon. Minority Leader.

Hon. Mbili Ndawa (Matuu, MCCC): Thank you, Madam Speaker. I want to second the motion that we alter the Calendar and adjourn. Hon. Speaker, this marks the end of our plenary sittings this Session and come February, 2024, we have another Session and Hon. Speaker, I would request Hon. Members here to agree with that motion so that we can disperse, go meet with the electorate, get the needs of our electorates so that when we come here in February, 2024 we bring needs that are owned not by ourselves only but also owned by the electorate.

Again, Hon. Speaker, I would also wish to take this opportunity to residents of Matuu who elected me to this House and wish them a Merry Christmas and Happy New Year 2024. So, Hon. Speaker, I second and request Hon. Members to approve the motion immediately so that we can go and start working on our *shambas* because the rain is with us. Thank you, Hon. Speaker.

(Question proposed)

Hon. Speaker: May I invite Members to debate this motion.

(Question put and agreed to)

ADJOURNMENT

Hon. Speaker: The House adjourns to Tuesday, 13th February, 2024 at 10.00 a.m. Merry Christmas Members.

The House rose at 1.45 p.m.