

REPUBLIC OF KENYA
MACHAKOS COUNTY ASSEMBLY

OFFICIAL REPORT

Third Assembly – Second Session

*(Third Assembly established by Proclamation - Legal Notice
No. 11008 dated 14.09.2022))*

Wednesday, 18th October, 2023

ADDRESS BY THE SENATOR OF MACHAKOS COUNTY

*The County Assembly met at thirty minutes past Two o'clock
at County Assembly Building on Tuesday, 18th October, 2023, it
being the first day of the Second Session.*

ARRIVAL OF THE SENATOR OF MACHAKOS COUNTY

*[The Senator of Machakos County (Sen. Agnes Kavindu Muthama) escorted
by the Speaker (Hon. (Mrs.) Anne Kiusya, Nine Senators and accompanied by the Mace of the
County Assembly entered the Chamber at thirty minutes past Two o'clock]*

[The Senator of Machakos County (Sen. Agnes Kavindu Muthama) took the Senator's Chair]

(The Mace of the County Assembly was placed on the Table)

PRAYERS

Hon. Speaker:

Hon. Agnes Kavindu Muthama, the Senator of Machakos County
Hon. Members of this Assembly
Visitors in the public gallery
Ladies and gentlemen
Good afternoon and welcome all to this sitting.

COMMUNICATION FROM THE CHAIR

ADDRESS BY THE SENATOR OF MACHAKOS COUNTY

I have the following communication to make. Hon. Members, Standing Order 21(1) provides that the Speaker may, in consultation with the Leader of the Majority Party and the Leader of the Minority Party, allow the Senator of the County or a visiting Governor or other such visiting dignitary, to address the Assembly on occasions as may be appropriate.

Pursuant to these provisions, the Office of the Speaker did invite Hon. Agnes Kavindu Muthama, the Senator of Machakos County Vide a letter dated 5th October, 2023 and referenced MKSCA/ADM/GA/ VOL.2/20.

Accordingly and pursuant to Standing Order 21(1), Hon. Agnes Kavindu Muthama, the Senator of Machakos County is here with us this afternoon to address the Third Assembly.

(Applause)

Hon. Members, Standing Order 21(3) with the necessary modifications provides that when delivering an address to the Assembly, the Senator shall be heard in silence and the address shall not be followed by any comment or question.

Hon. Members, before I invite the Senator to address the Assembly, I would like to acknowledge the presence of the following Hon. Senators who have accompanied our Senator Hon. Agnes Kavindu Muthama on this special day when she is making her first address to the Third Assembly of Machakos County: To the Senators, when I call out your name, kindly just stand up to be seen.

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| (i) Sen. Eddie Oketch | - Migori County |
| (ii) Sen. (Prof) Margaret Kamar | - Nominated, UDA |
| (iii) Sen. Beth Kalunda Syengo | - Nominated, ODM |
| (iv) Sen. Betty Montet | - Nominated, ODM |
| (v) Sen. Beatrice Ogola | - Nominated, ODM |
| (vi) Sen. Miraj Abdulahi | - Nominated, UDA |
| (vii) Sen. Mariam Omar | - Nominated, UDM |

I extend a warm welcome to you all.

(Loud consultations)

Oh sorry.

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| (viii) Sen. Shakila Abdallah | - Nominated, WDM-K |
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(Applause)

- | | |
|--------------------------|------------------|
| (ix) Sen. Hamida Kibwana | - Nominated, ODM |
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(Applause)

Thank you. Any other Senator I have left out please. I therefore extend my warm welcome to the Senators. Feel most welcome to this Assembly. Thank you very much. May I now invite Agnes Kavindu Muthama, the Senator of Machakos County to address us? *Karibu* Senator.

THE SENATOR'S ADDRESS

Sen. Agnes Kavindu Muthama: Thank you, Madam Speaker, for this opportunity to address the Third Assembly of the County Assembly of Machakos. Madam Speaker, Hon. MCAs and all guests around. Madam Speaker, let me first take this opportunity to thank you so much together with the County Assembly for inviting me and accepting that I come to address this Assembly.

Allow me with great pleasure, to congratulate all Hon. Members here present for being elected, re-elected and nominated in this third edition of Machakos County Assembly. Like many of you, I am equally humbled and honoured to be part of this third setting of the Assembly as your County Senator.

Let me congratulate our Governor H. E Wavinya Ndeti, her Deputy H. E Francis Mwang'angi and other elected leaders of parliament in absentia for emerging victorious in the last election. Allow me Madam Speaker, to thank all Hon. Members of County Assembly and their supportive staff for attending this function and thus giving the occasion the decorum it deserves.

Devolution signifies the handing over of power back to the people of Kenya and thereby acknowledging the sovereignty of the people as enshrined in our constitution. We should, therefore consider ourselves privileged to be part of this great moment in the history of our country. I can submit without fear of contradiction that, so far it is working.

Madam Speaker, I welcome and associate myself with the positive spirit exhibited and pronouncements made by our Governor where she had decided to change her strategy of engagement and decided to work more closely with the Senate, the National Assembly and the National Government.

Madam Speaker, the concept of devolution adopted in Kenya involves the creation of two levels of Government; the National and County Governments that are coordinate but not subordinate to each other. Both levels are created and protected by the constitution. The functions and resources for discharging the functions assigned to each level are clearly defined in the constitution and none of the level is an agent of the other.

The essence of this is that at the local level, the people through their county assemblies have the constitutional mandate to make decisions that are unique to themselves and their locality without interference from the National Government. However, at the national level, decision-making is shared since such decisions affect the whole Country. Through the Senate, each County will have one vote ensuring that the voice of each county is heard at the national level.

Madam Speaker, it is important to note that devolution is one of the celebrated and most spoken milestones of our Constitution. Some of the objectives of devolved governments that encompass legislation, oversight and representation include but are not limited to:

- Giving powers of self-governance to the people and enhancing the participation of the people in the exercise of the power of the state and in making decisions affecting them.
- Promoting social and economic development and the provision of proximate, easily accessible services throughout Kenya
- Facilitating the decentralization of state organs, their functions and services from the capital city of Kenya to the grassroots.

These objectives, as much as they are noble, cannot be achieved if the two arms of the county government do not work together in harmony. The great people of Machakos County have elected us to lead them as a demonstration of their confidence in our leadership. Our people have only one purpose in allowing us to lead them and that is we nurture and protect the well-being of the individual, the family, communities and finally the nation.

Indeed, Madam Speaker, the executive chapter puts emphasis on this concept of service for the welfare of the people and declares in Article 129(2) that “executive authority shall be exercised in a manner compatible with the principle of service to the people of Kenya and for their wellbeing and benefit.” This the Executive must uphold. It is important that Hon. Members of the Assembly also subscribe to the same concept while discharging their duties.

Madam Speaker, in the spirit of the separation of powers, the Constitution of Kenya has vested legislative authority in the County Assembly to make laws that are necessary for the effective performance of the functions and exercise of the powers of the County Government. However, once the Assembly has debated and agreed on any legislation, such legislation must be passed on to the Governor for assent before the legislation can become law.

Madam speaker, Article 183(1) bestows upon the executive as the only arm in the County Government responsible for implementing both County and National legislation within the County as well as the management and coordination of the functions of the County administration and its departments.

This is an important paradigm shift in Governance at the grass root level. In the past, MCAs would directly be involved in the actual implementation of projects and programmes but henceforth, Hon. Members of the Assembly will be involved in monitoring and evaluating and exercising oversight over the executive organs. The significance of this shift is to ensure that those implementing Government agenda are not at the same time monitoring and evaluating themselves.

It is important to realize from the outset, that for the County to effectively discharge its functions, there must exist a mutual and symbiotic relationship between the Executive and the Assembly. If we allow confrontational politics to prevail, then neither the Executive nor the Assembly will be able to carry out its functions and the people of Machakos County will be the end losers.

Madam Speaker, the pledge and commitment by our Governor and other leaders to intensify the fight against corruption in their respective roles is highly commendable. Kenyans are looking forward to a new dawn and expect our MCAs to aggressively defend devolution and County Governments better. We must ensure devolution works for the people and more accountability is exercised.

Madam Speaker, the primary mandate of the Senate is to represent the counties and their governments and protect the interests of the Counties and hence the successful implementation of devolution. Our core role involves law-making by considering, debating and approving Bills concerning Counties and determining the allocation of revenue among Counties, exercise oversight over the national revenue allocated to the Counties and participate in the oversight of state officers by considering and determining any resolution to remove Governors, the President and Deputy President from office.

Madam Speaker, the Senate is the bastion of devolution which is a game changer and has significantly transformed Kenya. The County Governments are currently receiving billions of shillings courtesy of the Senate intervention to finance various development programs and provide essential services that are aimed at improving the well-being and welfare of the Kenyan people.

Madam Speaker, massive infrastructural projects have been built throughout the country, including roads, educational and health facilities as well as housing projects. Local entrepreneurs, youths and women have additionally benefitted by securing business and employment opportunities.

Madam Speaker, I call upon and encourage members of this Hon. House to address emerging contentious legislative challenges and resolve them within stipulated mediation frameworks while adopting collegiate approaches noting that these processes are intended to serve the best interest of the people. This is how tangible and progressive milestones will be realized by this honorable assembly.

Madam Speaker, elections come and go. We concluded the electoral phase and must now proceed to the critical transitional and development phases after the delicate ballet of dance of

politics. We have to overcome and begin to heal from challenges borne out of divisive political alignments. I urge and call upon our people to re-focus, embrace unity and move forward.

To Hon. Members of the County Assembly, some of the loopholes of corruption in County funds include tender allocations, contractors, ghost workers and faulty revenue collection systems. I therefore urge you to audit both Machakos County revenue collections and National allocations to Machakos County, creating necessary county legislations to help the Assembly monitor both human resource and development programs in the County. You are the eyes of wananchi and therefore you have a responsibility to ensure county revenue allocations to Machakos County are properly utilized.

Madam Speaker, the financial position of the County Executive of Machakos as at 30 June, 2020 and its financial performance and its cash flows for the year that ended, in accordance with International Public Sector Accounting Standards (Cash Basis), the Public Finance Management Act, 2012 and the County Governments Act, 2012, the following cannot be ignored.

Madam Speaker, on the Matters of pending bills, the financial statements reflected pending accounts payables, staff payables and other payables totaling Ksh. 3.0 Billion is on the higher side for Machakos County. Examination of account payables records indicated that some of the bills had been outstanding for significantly long durations with some dating as far back as 2013/2014 financial year.

I do not want to dwell on this so much because those are the pending bills and they originate from the former regime that had Ksh. 2.7 billion pending bills and the current regime has that extra amount to make it Ksh. 3 billion. I have a list of stalled projects but because those are listed here and because of time factor I do not want to dwell on the list because I am going to leave you with the Address. We have them from Masinga sub-county, Yatta sub-county and I will not read each but I will leave you with the Address so that you can go through the same.

When I was doing my campaigns, you heard me talk so much about stalled projects and pending bills and I will speak a little bit after I finish my speech.

Madam Speaker, the above stalled projects in different sub-counties, among others which are captured in the Auditor Report should be completed so as the public can get value for their money.

Madam Speaker, on the issue of National Government Affirmative Action Fund (NGAAF), I wish to draw your attention and that of the members of this Hon. Assembly to the Fund that is usually given by the National Government to all the 47 Counties through their respective County MPs or Women representatives. I have a breakdown here and I will also leave it with you. It is upon us because that is part of our oversight to make sure that that money has done what it is meant to do for the County.

Madam Speaker, since this money is used to transform the lives of Kenyans directly in one way or the other, I urge the Assembly to look into it for the benefits of our people.

Madam Speaker, on the issue of unsatisfactory implementation of projects, the County Government in January, 2019 awarded contracts for construction of Masii and Mavoko Stadiums to a local firm at contract sums of Ksh. 49,045,478 and Ksh. 44,616,635 respectively. However, audit verification carried out in November, 2020 indicated that construction works at both stadiums had stalled and the contractor had abandoned the respective sites.

Madam Speaker, on these stalled projects, it is the work of the County Assembly and MCAs to supervise, evaluate and make sure that you follow up on every project to make sure it is completed because that is taxpayers money and should not be left to go to waste. That is the responsibility of MCAs.

Madam speaker, as Senate it is our sole responsibility to conduct audit of cash spent by the County Governments and also summoning the respective Governors to explain how those funds

were used. It is therefore crystal clear that Governors are mandated to report all sources of County revenue including tax money and any additional cash acquired through donations.

Documentations regarding the transfer of funds from the National Governments to various County Governments will be used as evidence.

Madam Speaker, for the record and for the future reference, I would like to comment the report of OCoB for the financial year 2021/22.

The following were noted in regards to Annual County Budget Implementation

Key observations, Madam Speaker, in the course of overseeing and reporting on the implementation of the County budget, the OCoB identified the following challenges which hampered effective budget implementation:

1. Low absorption of development funds as indicated by the expenditure of Ksh. 1.36 billion in FY 2021/22 from the annual development budget allocation of Ksh. 4.04 billion. The development expenditure represented 13.2 per cent of the annual development budget.
2. A high wage bill which accounted was 61.9 per cent of the annual realized revenue of Ksh. 10.34 billion in FY 2021/22 thus constraining funding to other programmes.
3. The underperformance of own-source revenue at Ksh. 1.12 billion against an annual projection of Ksh. 1.68 billion representing 66.5 per cent of the annual target.
4. Failure by Fund Administrators to submit quarterly financial and non-financial reports to the CoB, which is against the requirement of Section 168 of the PFM Act, 2012. The reports for the Staff Car loans, MCA Car loans, Staff Mortgage and Emergency Fund were not submitted to the Controller of Budget.
5. High level of pending bills which amounted to Ksh. 809.52 million as of 30th June, 2022.
6. Late submission of financial reports by the County Treasury to the Controller of Budget which affected the timely preparation of the budget implementation report.

Further, the submitted report was incomplete as it excluded a report on Budget Execution by Programmes and Sub-programmes for recurrent expenditure. The report was submitted on 29th July, 2022.

Recommendations

Madam Speaker, the County should implement the following recommendations to improve budget execution:

1. The County should identify and address issues causing delays in implementing development projects.
2. The County Public Service Board should establish an optimal staffing structure to ensure expenditure on personnel emoluments complies with Regulation 25(1)(b) of the Public Finance Management (County Governments) Regulations, 2015.
3. The County should address its revenue performance to ensure the approved budget is fully financed.
4. The CECM Finance should follow up to ensure Fund Administrators prepare and submit statutory reports in line with the PFM Act, 2012.

5. The County leadership must take charge of the worsening pending bills situation to ensure genuine bills are paid without delay in the coming financial year.
6. The County Treasury should ensure timely preparation and submission of financial reports to the Office of the Controller of Budget in line with Section 166 of the PFM Act, 2012. The County Treasury should ensure that complete reports are submitted in line with recommended templates.

OVERSIGHT BY MCAs

Madam Speaker, MCAs are supposed to oversee all programs and projects in the county according to Article 185 of the Kenyan constitution which states their roles and responsibilities. This will ensure anything approved in the Assembly through the CIDP is translated into the Annual Development Plans, budgeted for and is actually done.

The steps of oversight can be summarized as follows:

1. The development of the CIDP

At this stage, MCAs should attend the public participation forum to oversee that the desires and needs of the people are included in the five-year plan. After the CIDP is done, MCAs are supposed to read and know what is in the plan for their people. MCAs approve the Annual Development Plan every year. At this point, they ensure what the people put in the CIDP is put in the plan.

2. Budgeting stage

Madam Speaker, during the budget preparation MCAs should ensure the budget has captured the desires of the people in the CIDP and Annual Development Plan. This is also oversight as you oversee proper budgeting as you legislate. Ensure budgets are fair to all and enough money is allocated to projects and programs.

3. Project and Program implementation

Madam Speaker, MCAs' oversight is heaviest at this stage. You must oversee all projects that have been approved and budgeted for. The Executive must be monitored to ensure projects are done on a timely basis and to the right quality. You must question any delays and poor quality.

(Applause)

You have a right, to demand the appearance of a CECM responsible for any docket to come and explain any shortcomings.

(Applause)

Madam Speaker, as I conclude, I want to talk about the issue of demolitions of houses at Portland, Athi River. Madam Speaker, Article 43(b) of the Constitution is very clear and states that “each person is entitled to have access to adequate housing and reasonable standard of sanitation.” Madam Speaker, what happened at Athi River was inhuman and I want condemn it in the strongest words ever. Having said that, I wish to call up the National Government to rise to the occasion and see how these squatters and those who had bought land there will be compensated and resettled.

(Applause)

Madam Speaker, in conclusion, I wish to remind us all that the people of Machakos County have very high expectations from us. They need services delivered to them urgently. They cannot wait to start enjoying the fruits of devolution. The time has come when we must roll up our sleeves and start working for our people.

Madam speaker, may I again congratulate you and our Governor in *absentia* and Hon. Members for your election victories and wish you well as you carry out the business of this Hon. Assembly and the Great County of Machakos. *Bwana Asifiwe*.

What I can say now on my own is that we are all elected to serve. The pending bills must be history and it must never happen again. If the MCAs who were there then were doing oversight and evaluating projects and following up so that they are delivered in the right time, we could not be having as many stalled projects as we are having.

You all agree with me and I challenge you now that the current House, please take up your mandate and do your oversight work, evaluate projects and make sure they are completed on time because when you pass the budget here for certain projects and programmes and if they are not done, you have all the rights to summon the CECMs to the House and question them.

If they do not appear, write to the Governor and if the Governor does not comply, write to the Senator who is here to work with you. We are here to work together and hold together so that we can move as one and deliver the mandate we are given by the people of Machakos.

(Applause)

Thank you very much and may God bless Machakos County. May God bless Kenya and bless us all. Thank you very much and God bless us.

(Applause)

What I did not go through here in the speech, you will go through it and implement.

(Applause)

Hon. Speaker: Thank you very much, Senator Agnes Kavindu Muthama for that very much, Senator Agnes Kavindu Muthama for that very important speech you have made. As communicated earlier, this spec his supposed to be read in silence and there is no question or comment. Thereafter so we shall be left discussing it subsequently. For now I only wish to say that I am grateful and so we shall adjourn. At this point, the House adjourns---

Sen. Agnes Kavindu Muthama: If you have any question, call me and we sit down and discuss and share and sharpen one another and work.

(Applause)

Hon. Speaker: Thank you very much, Hon. Senator.

DEPARTURE OF THE SENATOR OF MACHAKOS COUNTY

Hon. Speaker: At this point, I just wish to adjourn this House then we can move out and take a photo all of us then we release the Senators because they are going back for work at the Senate. Thank you.

ADJOURNMENT

Hon. Speaker: The House is adjourned to Tuesday, 24th October, 2023 at 10.00 a.m. Thank you very much.

(Hon. Members rose in their places while Sen. Agnes Kavindu Muthama and nine Senators left the Chamber)

The House rose at 3.19 p.m.