

REPUBLIC OF KENYA
COUNTY ASSEMBLY OF MACHAKOS

OFFICIAL REPORT

Tuesday, 19th March, 2024

The House met at 3.07 p.m.

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

PRAYERS

Hon. Speaker: We can commence our afternoon. Good afternoon, Members, and I welcome you to this afternoon session. We proceed with our work. Honorable Kisila, what is it?

Hon. Brian Kisila (Makutano/Mwala, MCCP): Madam Speaker, of serious concern, we still do not have quorum. What is worrying me more, Madam Speaker is that the DS and the Majority Leader have become the Whips when that is not their work. The Minority Whip is not here, Majority Whip is not here, their deputies are not here and it is a very serious issue, Madam Speaker. So Madam Speaker, the Standing Orders are very clear. Standing Order 31 and 32. So, Madam Speaker, I bring to your attention that we do not have a quorum. Thank you, Madam Speaker.

Hon. Speaker: I understand we only do not have one member to make it 20 but I am also aware that we can proceed that way. Perhaps the only thing I will not be able to do is put the question. The law allows... am I not right? No, I cannot be wrong. I cannot be wrong. Which law are you referring to? Clerk, you are the advisors of the Speaker. Am I wrong or am I right?

(The Clerk at the Table advised the Speaker)

I want to clarify the point that I had raised that I was right. The Speaker is always right. Okay, we have quorum Members, we can commence without any hitch. You want to appeal against the decision of the Speaker?

Hon. Brian Kisila (Makutano/Mwala, MCCP): Yes, Madam Speaker. You know, if you say that you are always right, we respect that opinion but Madam Speaker, if you want to go against the Standing Orders and we proceed without quorum, it is not right. So I am just saying that let the rules stand. At least now we have quorum.

Hon. Speaker: This is what the rules say.

Hon. Brian Kisila (Makutano/Mwala, MCCP): What does it say?

Hon. Speaker: That if, and I don't want to dwell on this issue, Mheshimiwa Brian, it cannot be the Speaker is wrong. The Speaker is always right. What I mean is that the Speaker follows the law to the letter. There is no other strict adherent of these rules than the Speaker. What I said is that whenever there is a hitch of quorum and we have business to transact, the same law says that we can transact but the Speaker will not put the question. That is what the law says. But now that we are quorum, we should... read the law properly, the Standing Orders; they are very clear. So, let us proceed.

Brian, we are not going to continue exchanging with you. Yeah, yes, you can clarify at your own point, at your own time. The ruling has been made.

STATEMENT

BUSINESS FOR THE HOUSE FROM 19TH MARCH TO 9TH APRIL, 2024

Hon. Speaker: At this point may I invite Hon. Nicholas Nzioka to come forward and make those statements. Proceed Hon. Nzioka.

Hon. Nicholas Nzioka (Machakos Central, WDM-K): Thank you, Madam Speaker. Hon. Speaker, the House Business Committee met today, 19th March, 2024, to prioritize business for the House as forwarded by committees and Hon. Members pursuant to the provision of Standing Order 151(6)(d). The Committee balloted business as follows:

Tuesday, 19th March 2024

Afternoon at 2.30 p.m.

Report of Auditor General and Receiver of Revenue, Financial Statements for Financial Year 2021/2022 by the Hon. Philip Ndolo, which is continuation of debate.

Wednesday, 20th March, 2024

Morning at 10.00 a.m.

Report of the Finance and Revenue Collection Committee on Inquiry on the State of Revenue Collection within the County by the Hon. Francis Kitaka.

Afternoon at 2.30 p.m.

- a. Response to a statement on safety of employees at Golden Africa Kenya Limited by the Hon. Joshua Mwonga.
- b. Motion on establishment of youth centres and sports incubation centres by Hon. Anastasia Mutevu.
- c. Motion on adjournment of the House by the Hon. Nicholas Nzioka.

Tuesday, 9th April 2024

Morning at 10 a.m.

Report of Auditor General on the financial statements of Machakos County Bursary Fund for the year ended 30th June, 2022 by Hon. Philip Ndolo.

Thank you, Madam Speaker.

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

MOTION

REPORT OF FINANCIAL STATEMENTS ON
RECEIVER OF REVENUE FOR 2021/2022

(Hon. Phillip Ndolo on 21.02.2024 in Afternoon Sitting)

(Resumption of Debate interrupted on 21.02.2024 in Afternoon Sitting)

Hon. Speaker: At this point, I want to invite Hon. Philip Ndolo, Chairperson, Public Accounts and Investment Committee, to come forward and take us through this motion. Previously before the motion was interrupted last time, the motion had been moved and seconded. Now we were going to have the mover to proceed and highlight on the report. I believe Hon. Ruth, you are the one holding brief for Hon. Philip? You can proceed, but you will proceed from highlighting the report. Proceed.

Hon. Ruth Wanjiru (Nominated, CCU): Thank you, Madam Speaker. I am Ruth Wanjiru, standing in for the Chair, Public Accounts and Investments Committee, Hon. Philip Ndolo. With your guidance and permission, I will read just parts of the report. The report of the Auditor General on Receiver of Revenue financial statements for the financial year 2021/2022.

Background Information

Hon. Speaker, the Audit Report on Financial Statements of Receiver of Revenue for the year ended 30th June, 2022 was received in the Assembly on 22nd May of 2023, pursuant to Article 229(7) of the Constitution that states that audit reports shall be submitted to Parliament or the relevant County Assembly. It is good to note that the report was received five months late, contrary to Section 48, subsection 1 of the Public Audit Act, 2015, that requires the Auditor General to audit and report on accounts audited six months after the end of the fiscal year in question. On receipt of the audit report, it was committed to the Public Accounts and Investments Committee, pursuant to Standing Order 185(2)(b) and (c) and the report is a qualified opinion. This means the financial statements present fairly and comply with the Public Finance Management Act of 2012 and the County Governments Act of 2012.

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

Committee General Observations

Hon. Speaker, after considering the specific queries on misstatement of bank balance and confirmed opening balances and the late submission of the revenue statements, this Committee made the following observations.

1. That this audit on the receiver of the revenue was the first reporting and the audit circular that was to guide its preparation was received late in the month of September. Section 47, subsection 1 of the Public Audit Act requires financial statements to be submitted to the Auditor General three months after the end of the fiscal year. That would have been 30 September.
2. That there was erroneous posting of figures in the financial statements, which led to the inconsistencies in the figures captured in the statement, of financial assets and liabilities compared to the ones with the bank balances.
3. That the statement on receiver of revenue was the first one and so there were no comparative figures to use in the preparation of the financial statement. However, the statement used to form part of the consolidated financial statements of the County Executive and the particular comparative figures are included in the previous audited financial statement of the County Executive.
4. That during the time of audit, the accounting officer did not provide the audited consolidated financial statements to support the source where the comparative figures were cited from.
5. That pursuant to section 47(1) of the Public Audit Act, the financial statements required under the Constitution, the Public Finance Management Act of 2012, No. 18 of 2012, and any other legislation, shall be submitted to the Auditor General within three months after the end of the fiscal year to which the accounts relate. The financial statements in question were received on 1st February 2023, four months late after the statutory timelines.

This is in contravention of the above provision of Section 47(1) of the Public Audit Act and also Section 62(1)(c) of the same Act that states that a person shall not,

without justification, fail to provide information within reasonable time that is required under this Act.

6. That the response by the management did not explain the justification for late submission as required under Section 62(1)(c) of the Public Audit Act, 2015. However, during the interrogation time, the Accounting officer provided the justifications leading to late submission of the financial statements as below:
 - i) That this statement on receiver of revenue was the first one to be received by the Executive and that there were no guidelines from the Public Sector Accounting Standards. The guidelines were received few days to the expiry of submission timelines of 30 September as stated under Section 47 (1) of the Public Audit Act, hence there was hardly no sufficient time to prepare the Statements.
 - ii) That the CEC Finance was also required to appoint a Receiver of Revenue as per the same guidelines to sign the prepared statements and all this was constrained by timelines.

Committee General Recommendations

Hon. Speaker, after considering the general observations stated above, the committee made the following general recommendations:-

1. That the Department of Finance should prepare an amendment on the Statement on bank balance and correct the misstatements raised in the query using the guidelines provided in the received circular, then forward to the auditor general for verification.
2. That the Department of Finance should also amend the Statement on Opening balances by incorporating the comparative figures as sourced from the audited consolidated statements of the County Executive then forward the amended statement to the Auditor General for verification and subsequent closure of the query.
3. That the Accounting Officer, for the purposes of future reports, should submit financial statements within the statutory timelines provided under Section 47(1) of the Public Audit Act in order to enable both the Auditor General and the County Assembly to undertake their legal mandates related to audit reports as provided under Section 48(1) of the Public Audit Act 2015 and Article 229(8) of the Constitution respectively.
4. That Pursuant to the provisions of Section 53(1) of the Public Audit Act of 2015, the Accounting Officer should, within 90 days after approval of this report, take the relevant steps to implement the recommendations in this report or give an explanation in writing to the Assembly why the report is not implemented.

Conclusion and Acknowledgement

Hon. Speaker, the report on financial statements of Receiver of Revenue for the year ended 30th June, 2022 is Qualified Opinion. This implies that the report fairly represents the financial position of the Receiver of Revenue Financial statements in the year in question. It indicates that if the matters raised by the Committee are considered in addition to proper internal controls, compliance and observance of disclosure of information, a positive shift in preparation of good financial statements will be realized.

Hon. Speaker, the Committee on Public Accounts and Investments is grateful to your office for facilitating this committee to undertake its mandate, the County Secretary and County Executive

Committee Member, department of Finance for honoring committee invitation to respond on queries raised, the Office of the Auditor General for the advisory given and Members of the Committee and the Secretariat for commitment and effort throughout the process of report writing. It is therefore my privilege and pleasure, on behalf of Public Accounts and Investments Committee, to table before this Hon. House the report on Financial Statements of Receiver of Revenue for the Financial Year 2021/2022 for discussion and adoption. Thank you Honorable Speaker.

Sorry, Madam Speaker, please allow me to read a verse that has been written there from Luke 12:48 that says that to whom much is given, much is expected. Thank you, Madam Speaker.

Hon. Speaker: Thank you very much, Hon. Ruth, for that highlight. Now, members, it's time to debate this motion and I invite all of you to make your contributions. Hon. Helen Ndeti.

Hon. Helen Ndeti (Nominated, WDM-K): Thank you, Madam Speaker. I congratulate my colleague, Mheshimiwa Wanjiru, for her well-written report. Without wasting a lot of time on this report, I think we have all heard the irregularities and the Department of Finance has been given 90 days to correct, so what I would request the Committee of PAC is to ensure that those irregularities are corrected. Thank you, Madam Speaker.

Hon. Speaker: Thank you very much, Hon. Ndeti. More contributions, Members. Hon. Majority Leader.

Hon. Nicholas Nzioka (Machakos Central, WDM-K): Thank you, Madam Speaker. Madam Speaker, I think I'll agree with the Hon. Mheshimiwa Helen that the audit report is in black and white and it gives the Executive some timelines to follow and I would think that we should give them the schedule so that they report back to the Assembly. Again, I also want to commend them because they seem to be, you know, not the audit query that is, I would say they are proposing corrective measures not like they want to condemn. They are proposing corrective measures, which is what we all need to do, so that we promote the good work of the county. Thank you, Madam Speaker.

Hon. Speaker: Thank you very much, Majority Leader. Any other contribution? Hon. Mwonga.

Hon. Joshua Mwonga (Masinga Central, WDM-K): Thank you, Madam Speaker. I want to applaud the Chair and the Committee for bringing such a report. Madam Speaker, the work of auditors is to pinpoint the grey areas and to give advice and as the Leader of Majority has said, actually the office concerned should work on the points which were highlighted by the Auditor General so that next time we should not have a repeat of such issues. Thank you, Madam Speaker.

Hon. Speaker: Thank you very much, Hon. Member. Hon. Brian Kisila.

Hon. Brian Kisila (Makutano/Mwala, MCCP): Thank you, Madam Speaker. I think we have a lot of reports which come to the floor of the House and Madam Speaker, we need the Secretariat of the Assembly to come up with a checklist of how the recommendations which are being given by various committees, the timelines and status of the implementation. For example, we have 90 days here, in the morning, we had health, tomorrow, we have finance. Every committee is making very serious good recommendations.

With your ruling, Madam Speaker, how do you ensure that whatever we are doing is being acted on and how does it come back to the Assembly so that we ensure the Executive is implementing what we are telling them to do? It is a kind of a question and I don't know if you're going to give us guidance on that.

Hon. Speaker: Yes, maybe before I make the ruling, can I ask Hon. Johana to make his contribution?

Hon. Johana Munyao (Mutituni/Ngelani, MCCC): Thank you, Madam Speaker. I also wish to applaud the committee for such a detailed report. Madam Speaker, it is evident from the committee's observations and also during the interrogation that this audit on the receiver of the revenue was the first reporting. And we are told that the circular which was to guide the preparation of such report, being the first of that nature, came late.

So that gives us some allowance to give some benefit of doubt. I would also wish to note that during the management responses, there are issues which were raised and according to what we are reading, some of the responses came late, therefore paving way for the omission of that response, maybe contributing to the report being qualified.

Therefore, I would ask whoever is concerned to make sure that such responses are done in time so that we can have a report which actually reflects the real position of the financial reporting of whatever department is reporting. I also see that there were issues to do with erroneous posting. That one may have nothing to do with the format which was given in the guideline, so because we have employed competent officers, to me issues of erroneous posting should be a thing of the past.

Otherwise I want to applaud the committee for the nice report and as indicated by others, whatever recommendations have been given, they adhere to the timeline so that we can have the amendments forwarded to the auditors in preparation for other better audit reports. We can move from qualified to unqualified. That one I am sure we can head to that because we have employed competent people. Thank you.

Hon. Speaker: Thank you Hon. Member. Hon. Dee.

Hon. Dee Kivuva (Nominated, WDM-K): Thank you, Madam Speaker. Mine will be slightly different from the committee and you can rule it together with what Mheshimiwa Brian has asked. For legal reasons, I don't know whether it is proper for a member of audit to serve in finance committee. Thank you.

Hon. Speaker: Thank you very much, Hon. Dee. Two questions have been put by Members. The first one has been put forward by Hon. Brian Kisila concerning what is the process of the resolutions we make here as a House. How do they get to the departments concerned and get implemented? Was that your question? Yes. I have been guided that once we make resolutions here like we do our debates and we make a resolution at the end of the debates or a motion has been tabled here, whatever directives we give at the end of the day, they are communicated to the departments concerned by our secretariat.

Once the report is sent to the departments in the Executive, to the concerned departments and CECs, of course who will maybe forward to the COs concerned, then within 60 days for all the other departments except the PAC, they are supposed to have our resolutions implemented; within 60 days. For the PAC, there is an exception because we give them 90 days to implement on the resolutions we make in this House.

Therefore, it is possible for us to track whether the implementation is taking place or not. We just need to know that we forwarded the reports or the resolutions this particular day, we given them, and I am sure even in those reports that are conveyed to the departments concerned, we have the timelines written there. Within 60 days from today, we expect a report to check whether the implementation has taken place. It is easy to track whatever we are doing.

It is now the duty of our secretariat to make sure that implementation is done, conveying of the information concerned is done within the right period of time and within 60 days we need to see whether implementation has been done. Thank you, Members. I think Hon. Member you are answered.

Now I invite Hon. Ruth Wanjiru to come and...Sorry. Hon. Dee Kivuva you had also asked for whether it is okay for a member of Audit Committee to serve in the Finance Committee, and I have been asked to defer this and respond later, maybe tomorrow, so that you can get proper facts about it. Thank you very much members. So at this point, I invite Hon. Ruth Wanjiru to come forward. You had a question? Okay.

Hon. Brian Kisila (Makutano/Mwala, MCCP): Madam, since you have answered me, I'm well answered, but also we have a Committee on Implementation, which sits in this House and I think one of the roles of Committee on Implementation is to follow up all these issues. Madam Speaker, you know, now we have known each other very well and we have known the competencies of each other. It is the high time we start holding each other accountable now, that people are not just sitting in committees with their Chairmen and Vice-Chairmen and we are not seeing fruits of committees.

Hon. Speaker: I agree with you, 100 per cent. So, if there is a Committee on Implementation, that committee is represented here; you should now settle down and do your work. It is that committee to give us reports, am I right, Clerk? Then the committee should do its work. We have the committee here; do you know yourselves? Who are the Members of the Implementation committee? Hon. Mutie, Hon. Lloyd, *mmepatikana leo*. Who is the Chair? Hon. Dominic Maitha, who is not present today. Members of his committee will give him the report on what this House has given today. Let them do their work and bring us reports. We are going to be expecting reports.

Initially I used to keep track, personally. I was recording in my diary, because I am very strict about timelines, but I think I lost touch somewhere. I am going back to my old operations and I will be able to track it, but meanwhile, let Hon. Maitha be told that we have given him work; let him do his work with his committee. Without more interruption, can I call Hon. Ruth to come and reply to that information?

Hon. Ruth Wanjiru (Nominated, CCU): Thank you, Madam Speaker. Mine is to thank the Members for your input and also to urge us to be attending the sittings because these reports that we bring to the House contain most of the answers that we seek. Let us not be asking for answers out there; we have the answers in these reports. Thank you, Madam Speaker.

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

(Question put and agreed to)

ADJOURNMENT

Hon. Speaker: The House adjourns to Wednesday, 20th March, 2024 at 10.00 a.m. in the morning. See you tomorrow, Members.

The House rose at 3.43 p.m.