

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



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**THIRD ASSEMBLY  
(THIRD SESSION)**

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**REPORT OF THE DEVOLUTION AND INTERGOVERNMENTAL RELATIONS  
COMMITTEE  
ON**

**INQUIRY ON THE STATUS OF TRANSFER OF OWNERSHIP OF WATER  
COMPANY ASSETS TO THE COUNTY GOVERNMENT OF MACHAKOS**

**NOVEMBER 2024**

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## EXECUTIVE SUMMARY

1. Hon. Speaker, this inquiry report on Status of transfer of the County water company assets and documents was informed by the requirements of the provision of Section 83 of the Water Act, 2016 that stipulates that ownership of the assets of the Water Service Providers shall rest with the respective Water Service Provider that will hold it in trust of the public/ its citizens. The report was also informed by a committee agenda held on 22<sup>nd</sup> June 2024 where it was confirmed that ownership of water assets and documents for water service providers in Machakos County were never surrendered to the County Government of Machakos since the onset of devolution over 10 years ago.
2. Hon. Speaker following this information the committee prepared terms of reference and resolved to do an inquiry report on this matter through inviting the respective Departments to provide information related to this subject matter. The Committee invited the Chief Officer Department of Water. Managing Director Machakos Water Company and the CEO Tanathi Water Works Agency.
3. The Committee analyzed the submissions from the above persons and observed that all the stated assets and corresponding ownership documents are currently under the custody of Tanathi Water Works Agency. Further, these assets are reflected in the books of account of the county water service providers and this has made it difficult for the companies to have a true reflection of the financial position due to valuation challenges. The failure has continuously raised audit queries by the office of the Auditor general as submitted by the Managing Director of Machakos Water Company Limited. It was also noted that this failure to transfer the assets is denying the County Government of Machakos opportunities that go with possession of these assets such as securing donor funding and job opportunities.
4. The Committee recommended that the Department of Water should undertake a serious engagement with the CEO Tanathi Water Works Agency and any other agency that is in custody of water company assets contrary to Section 83 of the Water Act, 2016 to release those assets and related ownership documents to the County Government of Machakos among other recommendations.

## 1.0. INTRODUCTION

5. Hon. Speaker, the passage of the 2010 Constitution of Kenya had a wide set of implications to the Water Sector. Primarily, the Constitution acknowledges access to clean and safe water as a basic human right and assigns the responsibility for water supply and sanitation service provision to the County Governments.

6. The objective of the 2016 Water Act is to align the water sector with the Constitution's primary objective on Devolution. The act recognizes that water related functions are a shared responsibility between the National and the County government. Section 77 of the Act establishes County Water Service Providers with the sole mandate of provision of water and development of water assets for water service provision.

### 1.1. Establishment and Mandate of the Committee

1. Honorable Speaker, the Devolution and Intergovernmental Relations committee is established pursuant to Standing Order 189 to undertake the following functions;
  - a. Liaise with Institutions of the National Government on matters of devolution
  - b. Liaise with Institutions of the National Government on non-devolved functions.
  - c. Coordinate activities of the Assembly with the County Assemblies Forum
  - d. Coordinate activities of the Assembly with International Bodies
  - e. Promote Inter County relations on matters of common interest
  - f. Promote intergovernmental relations.

### 1.2 Committee Composition

2. Honorable Speaker, the committee as currently constituted comprises of the following members;
  1. Hon. Phoebe Koki - Chairperson
  2. Hon. Peninah Kisangai -Vice Chairperson
  3. Hon. Jeremiah Kaloi - Member
  4. Hon. Daniel Ndwiki ”
  5. Hon. Everlyne Nzeki ”
  6. Hon. Fredrick Kitetu ”
  7. Hon. Rose Benjamin ”

## **2.0. RELEVANT LEGAL FRAME WORK RELATED TO WATER SERVICE PROVISION IN THE COUNTY.**

**a). County Government functions on water Services.** The Fourth Schedule (part 2) of the Constitution mandates the County Government to undertake functions of water and sanitation.

**b). Establishment and functions of Water Service Providers.** Section 77 and 78 (1) of the Water Act, 2016 establishes County Water Service Providers with the sole mandate of provision of water and development of water assets for water service provision.

**c). Ownership of assets for water service providers.** Section 83 of the Water Act, 2016 stipulates that ownership of the assets of the Water Service Providers shall rest with the respective Water Service Provider that will hold it in trust of the public/ its citizens.

**d). Water permit applications.** Section 12(d) of the Water Act, 2016 mandates the Water Regulatory Authority to receive water permit applications for water abstraction, water use, recharge and enforce the conditions of those permits;

## **3.0. BACKGROUND INFORMATION IN RELATION TO THE INQUIRY REPORT**

7. Hon. Speaker, the subject matter on ownership and status of devolution of assets for water service providers in Machakos County was informed by a committee discussion dated 22<sup>nd</sup> July 2024 on the agenda on un-devolved functions in the water sector as provided under Standing Order 189 that mandates this committee to liaise with Institutions of the National Government on matters of devolution and on non-devolved functions.

8. The committee noted that part two of the Fourth Schedule of the Constitution assigns the function of water and sanitation to the County Governments. However, it was confirmed by the committee that ownership of water assets and documents for water service providers in Machakos County were never surrendered to the County Government of Machakos since the onset of devolution over 10 years ago. These water assets include water treatment plants, sewerage treatment plants and water reservoirs (dams) together with the respective ownership documents ie title deeds and related ownership documents. The committee confirmed that the said water assets and related ownership documents for Machakos Water Service providers (water

companies) are still under the custody of Tanathi Water Works Agency which is a National government entity.

9. Hon. Speaker, Section 83 of the Water Act, 2016 stipulates that ownership of the assets of the Water Service Providers shall rest with the respective Water Service Provider that will hold it in trust of the public/ its citizens. Pursuant to this provision, Tanathi Water Works Agency has since the onset of devolution illegally held under its custody County water company assets and documents.

10. This state of affairs has made it difficult for Water Company assets determine valuation of its assets which are indicated in their asset registers since the corresponding ownership documents are not with the water companies but are under custody of Tanathi Water Works Agency. It has also been difficult for the water companies to secure donor funding and also renewal of registration certificate. The Committee further confirmed that there has been unwarranted audit queries from the office of Auditor General on undisclosed company asset valuation every year.

11. This Committee pursuant to Standing Order 189 that mandates the committee to discuss and liaise with institutions of National Government on matters of devolution and un-devolved functions picked up the matter and resolved the following issues;

- a). Inquire if water assets and related ownership documents of County water service providers were devolved to the County pursuant to Section 83 of the Water Act, 2016.
- b) Use Machakos Water and Sewerage Company as the case study on the matter under inquiry.
- c). Request for information from the Chief Officer, Department of Water on the status of devolution of water company assets and documents.
- d). Invite the Chief Executive Officer, Tanathi water works Agency for submissions
- e). Invite the Managing Director, Machakos Water Company for submissions in relation to the matter under inquiry.

#### **4.0. SUBMISSION OF INFORMATION ON STATUS OF DEVOLUTION OF WATER COMPANIES ASSETS AND RELATED DOCUMENTS**

##### **4.1. Submission by the Chief Officer, Department of Water.**

12. Hon. Speaker, the Chief Officer on receipt of the letter submitted to the committee as follows;

i). That the Department of Water has undertaken an asset audit of all the infrastructure and facilities held by Tanathi Water Works Development Agency within the county.

ii). That the assets reflected in the books of account of the county water service providers suggest that the companies owe the initial cost of development of these asset's to the Tanathi Water Works Agency and this has made it impossible to have a true reflection of the financial performance of these companies because of valuation challenges.

iii). That the key assets that relate to Machakos water companies include; dams, treatment plants, water kiosks, boreholes and office spaces and that ownership of these assets are implied in title deeds.

iv). That the following assets are not reflected in the asset register of Machakos water company and have not been devolved to the County government of Machakos;

##### **a). Water sources**

- i. Maruba Dam, next to Machakos People's Park
- ii. Office Borehole in the County Water Offices
- iii. Nguli Borehole in Kathome
- iv. Mavoko Borehole in Kithini
- v. Plant A 3No in Ilyini Stream, Mukalala
- vi. Kimutwa Borehole in Kimutwa River next to the bridge
- vii. Miwani Borehole in Miwani next to the Deputy Governor's Office

##### **b). Water Treatment Plant**

- i. Vertical Treatment Works in the downstream of Maruba Dam
- ii. Composite in the downstream of Maruba Dam
- iii. Horizontal Treatment Works in the downstream of Maruba Dam

c). Sewerage Treatment Plants

- i. Mitheu Sewer Treatment Plant, Along Mitheu River next to Governor's Office
- ii. Sewerage Pump Station in Grogan

e). Water Reservoir Tanks

- i. Katoloni found in Katoloni, next to Machakos Water Office
- ii. Kiima Kimwe in Kiima Kimwe area
- iii. Iveti Tank A, in Mukalala
- iv. Elevated Steel Tank next to Police Headquarters
- v. Kimutwa Masonry Tank in Kimutwa Secondary School

Further, the Chief Officer stated that an MOU has since been developed for signing between the CECM for water and the CEO of Tanathi on transfer of the said assets in line with the Water Act, 2016. However, he added that negotiations are still underway on a few unresolved issues.

#### **4.2. Submission by the Managing Director, Machakos Water Company**

13. Hon. Speaker, the Committee via a letter Ref: MKSCA/PCS/CMM/DEV/VOL.1/49 dated 16<sup>th</sup> August 2024 wrote to the Managing Director, Machakos Water and Sewerage Company requesting for information in relation the stated water company assets and documents as indicated under Section 83 of the Water Act, 2016. The Managing Director submitted as follows;

1. That water related assets, infrastructure and associated documents were to be transferred from the National Government through Tanathi Water Works Development Agency to the County Governments to facilitate effective water service delivery after which the County Governments were to assign the assets to the respective water service providers. As such the Machakos Water Company is yet to receive the list of the specific assets and documents meant to be transferred from Tanathi Water Works Agency.

2. That the Company engaged the CEO Tanathi Water Works together with the CECM, Water, Environment and Climate Change Department to establish the status of transfer of the said assets and they submitted that the process of transfer is still ongoing.

3. That the delayed transfer of the said assets and documents has resulted to challenges such as;  
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i). Lack of ownership and control since the company lacks formal ownership over key infrastructure resulting in interruptions in service delivery and delays in addressing operational inefficiencies.

ii).Funding constraints since the company does not have full ownership of assets hence unable to secure external funding for infrastructure development. This state of affairs has severely impacted on the area of investments on water and infrastructure projects as well as securing for operational support when there are cash flow challenges.

#### **4.3. Submission from the CEO, Tanathi Water Works Agency.**

14. Hon. Speaker, pursuant to Standing Order 195 (5) the Committee via a letter Ref. MKSCA/PCS/CMM/DEV/VOL.1/38 dated 15<sup>th</sup> July 2024 and letter Ref; MKSCA/PCS/CMM/DEV/VOL.1/46 wrote to the Chief Executive Officer, Tanathi Water Works Agency seeking information on the status of transfer of the said assets to the County Government of Machakos. The CEO, via an email dated 26<sup>th</sup> August 2024 responded to the Assembly as follows;

i). That the Agency is in the process of preparing and pursuing for transfer documents ie title deeds for all water infrastructures including for other companies such as Mavoko and Yatta Water Companies

#### **5.0. COMMITTEE OBSERVATIONS AFTER THE INQUIRY PROCESS**

15. Hon. Speaker, pursuant to Section 18(1) of the County Assemblies Powers and Privileges Act, 2017, the Committee invited and received information from the respective entities as per the committee terms of reference. After analyzing the submissions the committee observed as follows;

1. That over 10 years after the onset of devolved government, the National Government through its respective water agencies and more specifically Tanathi Water Works Agency has never implemented the provisions of Section 83 of the Water Act, 2016 that required all water company assets and ownership documents be devolved to respective County Water Service

Providers. These assets include water sources (dams), reservoirs (tanks), water treatment and sewerage treatment plants (*specific details on page 5 and 6*).

2. That all the above stated assets and corresponding ownership documents are currently under the custody of Tanathi Water Works Agency and very little has been done by the entity to devolve these assets to the County Government of Machakos as required by Section 83 of the Water Act, 2016.

3. That as submitted by the Chief Officer, Department of Water, these assets are reflected in the books of account of the county water service providers suggest but the water Companies owe the initial cost of development of these assets to Tanathi Water Works Agency and this has made it difficult for the companies to have a true reflection of the financial position due to valuation challenges.

4. The inability of the water companies to determine the value of these water assets because of lack of ownership documents has continuously raised audit queries by the office of the Auditor general as submitted by the Managing Director of Machakos Water Company Limited.

5. The committee after analyzing the submissions from the CEO Tanathi, it was noted that the National Government is very reluctant to release these essential water assets to the County government hence denying the County Government of Machakos opportunities that go with possession of these assets such as securing donor funding and job opportunities.

6. That the County Government of Machakos through the Department of Water has done very little to engage the respective National Government entities to pursue for its water company assets and documents despite having an applicable law in force i.e. the provisions of Section 83 of the Water Act, 2016 and part 2 of the Fourth Schedule of the Constitution that assigns water and sanitation services function to the County Governments.

## 6.0. COMMITTEE RECOMMENDATIONS

16. Hon. Speaker after consideration of the submissions presented before the committee and the observations outlined above, the committee makes the following recommendations;

1. Pursuant to the provisions of Article 189 of the Constitution that emphasizes on cooperation between the National and the County governments, the Department of Water should undertake a serious engagement with the CEO Tanathi Water Works Agency and any other agency that is in custody of water company assets contrary to Section 83 of the Water Act, 2016 to release those assets and related ownership documents to the County Government of Machakos.

2. Further to the above recommendation, the Department of Water should also engage the Intergovernmental Relations Technical Committee which is established under Section 11 of the Intergovernmental Relations Act, 2012 to develop a formal plan with timelines on how to devolve water company assets and related ownership documents to Machakos County Government as provided under Section 83 of the Water Act, 2016 and part 2 of the Fourth Schedule of the Constitution.

3. The County Government of Machakos through the Department of Water should conduct a comprehensive audit of all water company assets with the aim of determining its current state and security to avoid loss to unsuspected individuals.

4. The Department of Water should forward to this Assembly the report of the Water facilities committee that was appointed by H.E, the Governor last year and which was assigned to inquire on the status of these water companies and related challenges so that respective committees of this Assembly can address the matters therein.

5. Pursuant to Standing Order 181, the Department of Water should after 60 days after approval of this report submit to this Assembly the status of implementation of these recommendations for the purpose of oversight.

## 7.0. CONCLUSION AND ACKNOWLEDGEMENT

17. Hon. Speaker, one of the objectives of the Machakos County Water Policy, 2018 is to strengthen governance in Water Service Providers (WSPs). This objective will only be achieved if matters of security of water assets and related documents are streamlined. In the context of this report, it has been noted that the provisions of Section 83 of the Water Act, 2016 has not been adhered to and this by a great extent will affect the operations of our water Service providers within the County. This therefore calls for the relevant entities to do their role as provided under Article, 189 of the Constitution, second part of the Fourth Schedule of the Constitution and other related laws.

18. Hon. Speaker, the Devolution and Intergovernmental Relations Committee is grateful to your office for facilitating the Committee to undertake its inquiry task for this report. I further want to thank members of the committee and the secretariat for their much devotion in compiling the report. We also want to acknowledge the CEO, Tanathi, Chief Officer Department of Water and the Managing Director, Machakos Water Company for providing information to the committee as requested.

19. It is therefore my privilege to table before this Honorable House the report of Devolution and Intergovernmental Relations Committee on inquiry on the status of transfer of ownership of water company assets to the County government of Machakos.

Thank you Hon. Speaker.

**HON. PHOEBE KOKI**



**CHAIRPERSON, DEVOLUTION AND INTERGOVERNMENTAL RELATIONS  
COMMITTEE**