



NAIROBI CITY COUNTY ASSEMBLY

OFFICIAL REPORT

Second County Assembly – Fifth Session

Tuesday 23rd November 2021

The House met at 2.30 p.m.

[Hon. Temporary Deputy Speaker (Ms. Immapet Kemunto) in the Chair]

PRAYER

Hon. Temporary Deputy Speaker: Leaders from different coalitions, you can tell your Members to log. Sergeant-at-Arms you can ring the bell for 10 minutes.

(Quorum bell was rung for 10 minutes)

PAPER

Hon. Millicent Okatch: Thank Madam Speaker, pursuant to Standing Order 191 I beg to lay the following Paper on the Table of the Assembly today Tuesday, 23rd November 2021: The report on Sectoral Committee on Planning and Housing on the consideration of the Nairobi City County Eviction Resettlement and Demolition Bill, 2020. Thank you.

(The Paper was laid on the Table of the Assembly)

STATEMENTS

Hon. Temporary Deputy Speaker: Hon. Peter Imwatok! It seems he is not around. Next order!

MOTION

THE REPORT OF PUBLIC ACCOUNTS ON THE CONSIDERATION OF THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF NAIROBI COTY COUNTY EXECUTIVE FOR THE YEAR ENDED 30TH JUNE 2018

Hon. Wilfred Odalo: Thank you. Hon. Members, mine will be broad and I would like to ask for more time if you do not mind. I beg to move that the Assembly adopt the report of the Select Committee on Public Account on the consideration of Audit General Report on the financial statement of Nairobi City

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County Executive for the year ended 30 June 2018, tabled on this Assembly on Tuesday 9th November 2021.

Hon. Speaker, the primary mandate of my committee is to oversight expenditure of public funds of Nairobi City County entities to ensure the value for money under there to the Government finance regulations and procedures.

The committee further aims to ensure that the Nairobi City County Public Funds are prudently and effectively utilized. The committee executes its mandate based on annual and special Audit reports prepared by the Kenya National Audit Office.

Hon. Speaker, following the committee of the Audit General report as required under Article 229 of the constitution, the committee interrogated various accounting officers and witnesses and written submission. In the scrutiny the Committee was concerned in determining whether in the year under review accounting officers observed key principles of public finance management namely value for money, efficiency and effectiveness in public spending.

Hon. Speaker, due to leadership challenges that the Assembly faced during the time under review and the outbreak of the COVID19 pandemic, the committee could not prepare its report within the statuaries timeline provided for in the constitution. In addition, during the time under view, the PAC minority wing withdrew all its membership following the challenges that were seen on that we could not submit this report within time.

Hon. Speaker the committee upon careful examination of the evidence brought before it Identified various issues raised by Auditor General during the period under review that hampers service delivery in the County. The issues include:

1. A weak county Treasury.

Hon. Speaker, Section 103 of PFM Act 2012 establishes the County Treasurer comprising of CEC Member for Finance, Chief Officer for Finance, department responsible for Finance and fiscal matters.

The CEC Member for finance is the Head of County Treasury; among other duties, the County treasury has the responsibility of ensuring proper management and control and accounting for finance of the county government and its entities to promote efficient and effective use of the county budgetary resources.

The Auditor-General reported cases where the treasury officials committed errors such as paying to wrong accounts, paying incorrect entities, executing payments outside the established system such as integrated finance management system. Failure to prepare and keep accounting documents in addition, the regime kept on changing the officeholders in the county treasury making it very impossible to determine who will be held to account.

To this end, the Committee has recommended that the CEC member of finance should take a personal interest in the management and running of the county treasury and ensure that the officers working under the treasury are fully capacitated to enable them to perform optimally.

2. Poor accounting for expenditure and dealing with Auditor General

Hon. Speaker, Pursuant to section 149 of the PFM Act of 2012 it is the responsibility of each accounting officer to account for finances and resources under their custody. The accountability Include

repairing and keeping accounting records documents such as payment vouchers, IFMS reports and financial statements.

In addition, Section 149 (2) (k) of the said Act, requires each accounting officer to not later than three months after the end of each financial year prepare annual financial statement for the financial year and submit them to the Auditor General for audit with a copy of the County Treasury.

In the year under review, Hon. Speaker, the accounting officer failed to submit the financial statement and records during the statutory period. But later on, emerge with record when the Committee was interrogating the final audit report. We can assume that this means the officers were trying to either evade being audited or conceal misappropriation of funds.

To this end, Madam Speaker, the Committee has recommended that, All the accounting officers should institute measures to ensure that the County Treasury always act in time when dealing with the Auditor General to avoid these queries. Failure to which, they be sanctioned for breach of Section 149 (2) (k) of the PFM Act, 2012.

3. Weakness in the management of county assets.

It is a requirement under Section 149 of the PFM Act, 2012 for accounting officer to prepare an asset register as part of accountability mechanism. However, for a long time, the County Government has lacked comprehensive fixed asset register, thus putting the County assets, especially land in exposed situation for theft through fraud. The process of updating and preparing digital assets register has taken too long, and one can conclude that it is a deliberate scheme not to document County assets.

Accordingly, the Committee has recommended that, the CEC Member for Finance and economic Planning, takes a personal interest into this matter and ensure that the County Government prepare a comprehensive digitalized fixed asset register and table a report on the same in the County Assembly within three months after adoption of this report.

4. Disconnect of the stalled projects in the county framework

Madam Speaker, as reported in the previous Committee report, the Auditor General still pointed a disconnect of the stalled projects in the County framework.

To this end, the Committee has recommended that, before engaging a service provider, especially contractors for capital projects, the County Executive must at all times undertake due diligence and determine whether the service provider has the requisite financial capacity, technical expertise, and demonstrate experience to perform the work. in addition, the company which underperforms should be blacklisted. And in the report they are listed so that Nairobians can realize their work.

5. Outstanding KCB Bank loan

Madam Speaker, the outstanding KCB Bank loan, which was initially taken from Equity Bank but later transferred to KCB Bank, has been a thorny issue that continues to adversely impact on the finances of the County. By the end of financial year 2016/2017, the bank loan stood at Kshs. 4, 273, 000,000. This amount has kept increasing as the interest accrued. During the period under review, the KCB Bank account was overdrawn by Kshs.3.7 billion. Accordingly, the matter of the KCB Bank Loan requires urgent policy intervention to avoid further loss of public funds through interest.

The Committee has therefore recommended that, the CEC Member for Finance and Economic Planning should take personal interest in this matter of KCB Bank Loan and within three months of adoption of this report, table a comprehensive paper before the County Assembly on how the loan should be cleared to avoid further loss of public funds.

Issues that should be subjected to further investigative agencies.

Madam Speaker, there are number of issues that the Committee has invited the state investigative agencies such as Ethics and Anti-Corruption Commission, Director of Criminal Investigations, and Director of Public Prosecutions to conduct further investigation and prosecution of those found culpable. This is because there was either failure by the accounting officers to provide the requested document for their own reason or evidence of misappropriation of funds. The areas include:

- i. Acquisition of assets; and
- ii. Confidential expenditure amounting to Kshs.14 million.

In conclusion, Madam Speaker, I would like to thank all the accounting officers and witnesses who appeared before my Committee and provided response which provide valuable insight in the issues raised by the Auditor General.

I wish also to appreciate my fellow Hon. Members of the Committee, the Office of the Speaker, the Office of the Majority Leader, the Clerk of the County Assembly, and the Office of the Auditor General for their steadfast support. Special appreciation also goes to the members of the Committee secretariat, who have had to go beyond the normal call of duty on numerous occasions. Hon. Speaker, I beg to call upon Hon. Ogeto to second the Motion. Thank you, Madam Speaker.

Hon. Moses Ogeto: Thank you, Madam Speaker, first I want to thank my Chair for bringing such a serious report before this Assembly. I would also want to thank the committee for making sure that the report has been tabled before this House for deliberation.

Hon. Speaker, as stated in the report and as a Member of the Public Account Committee, I have heard the chair saying that the issue of further prosecutions should be intended to be done. Therefore, we are urging the office of the Ethics and Anti- Corruption Commission to move with speed and ensure that the prosecutions have been done since there is a loss of public money as the Chair stated it is around shs 14 million and others.

Hon. Speaker, it has also been stated that the CEC of Finance should bring some submissions of a policy paper, and without blinking an eye, that should be submission before this Assembly for purposes of ensuring that we do not incur the interest, which will occur in future, which may make the county to suffer losses.

Hon. Speaker on the digital platform of ensuring that assets have been digitalized in this Assembly, I believe that the Chair who has presented a paper before this House should be the one so that the timeline which the chair has requested from PAC that the same report, which is tabled here before this Assembly and the same asset and digital system for the county to ensure that all the data is captured which comprises all public utilities and public institutions.

This is to ensure that the county does not lose its revenue because of the rates, which we incur, including the vehicles, which may go out of service. We may need those assets so that they can be disposed of at a good market rate, which the county may recover.

Hon. Speaker, you saw the other day when the Governor was in a very good car known as Rolls Royce and we appreciate her. One time I asked a friend who happens to be the deputy Speaker of this House when was this car bought and he said it was bought in 1970 something and I appreciated the staff of Nairobi County for keeping it under good condition.

Let it be known that all public assets be protected, and not only should the office of the Governor protect a Rolls Royce. All assets including the vehicles should also be protected. General Badi came must be reminded that this report is for him so that he can ensure that all the assets especially the vehicles, which he repaired at minimal cost, should be brought into books and be digitalized. This is to enable us to know how many of these vehicles were repaired and how many of them are value for money.

I believe that those who of us who will come back including Hon. Wanyoike - I do not know if he is going to vie for a Member of Parliament - that in the scrutiny of that report they will not tell us that it was a military person who was heading an institution and he is not supposed to be audited.

Hon. Speaker, public funds is public money and an accounting officer who misappropriates that fund during that time will be culpable.

With those few remarks, I want to thank the chair and his secretariat for bringing such a recommendable report before this House, which will ensure at least our oversight under the constitution, Article 195 is recognized and ensuring that the oversight role is taken into consideration. With those few remarks, I beg to support.

(Question proposed)

Hon. Temporary Deputy Speaker: Any Member? Hon. Jagero

Hon. Millicent Jagero: Thank you, Mr. Speaker.

Hon. Temporary Deputy Speaker: Sorry!

Hon. Millicent Jagero: Thank you Madam Speaker. I am sorry about that. I am fond of seeing a male chair. I want to congratulate the Chair Hon. Odallo for the good job done with the Public Accounts Community. I was once a Member and I know how meticulous he was on matters deliberations and witnesses. It is an evidence based committee and I believe in the report and urge the PIC committee to ensure that the recommendations---

Hon. Temporary Deputy Speaker: I beg your pardon; it is the PAC committee and not PIC

Hon. Millicent Jagero: I am talking about the PIC committee who are responsible for implementing this to ensure that every recommendation stated is implemented to the later. I rise to support.

Hon. Temporary Deputy Speaker: Hon. Millicent Okatch

Hon. Millicent Okatch: Thank you Madam Speaker. I would like to support the Chair of PAC and the committee for a job well done.

Hon. Temporary Deputy Speaker: Hon. Wanyoike

Hon. Peter Wanyoike: Thank you Madam Speaker. I rise to support the Motion that has been comprehensively done by our PAC Chairman Hon. Odallo and urge the Implementation committee to take up the recommendations that have been put in place by the committee. Thank you Madam Speaker.

Hon. Temporary Deputy Speaker: Mover

Hon. Wilfred Odallo: Thank you Members, Leader Wanyoike for being present and ensuring that we handle these matters, Hon. Jagero for the support and Hon. Millicent Okatch for supporting the Motion and lastly Mheshimiwa Ogeto. Madam Speaker, this was not a walk in the park and at some point, the Chair was out for three months but that notwithstanding, I beg to reply.

(Question put and agreed to)

Hon. Temporary Deputy Speaker: What is your point of order? Under what Standing Order?

Hon. Peter Wanyoike: Thank you Madam Speaker. I rise on Standing Order 92 with regard to the content of speeches and I need your direction regarding this matter for the sake of the future conduct of this House. The House will recall that this morning Hon. Peter Imwatok MCA rose on the floor of the House on the question of privilege under Standing Order 50(H) but instead of prosecuting the issues of privilege he veered off to the conduct of the state of officer not present to defend themselves.

Hon. Speaker, I ask for this because Standing Order 92 provides that we cannot discuss adversely among other things the conduct of any judge or person performing judicial functions except upon a substantive Motion

Hon. Temporary Deputy Speaker: Order Hon. Member!

Hon. Peter Wanyoike: I beg to finish Madam Speaker

Hon. Temporary Deputy Speaker: The Member is not on Zoom or physically present to confirm your sentiments.

Hon. Peter Wanyoike: I am aware that he is on Zoom.

Hon. Temporary Deputy Speaker: I have checked and he is not on Zoom. It will be prudent if you raised those issues when he is present.

Hon. Peter Wanyoike: Madam Speaker, this is a House of rules and procedures---

Hon. Temporary Deputy Speaker: I understand you. Let it not look like we are biased, he needs to be present to defend himself.

Hon. Peter Wanyoike: There is nothing to defend here Madam Speaker. We are following the Standing order

Hon. Temporary Deputy Speaker: Let me guide you Hon. Wanyoike. Bring the matter to the House as a statement so that we pick it from there. Next order

ADJOURNMENT

Hon. Temporary Deputy Speaker: Members, there being no other business we adjourn till Thursday this week. I wish you well and be blessed.

The House rose at 3.35 p.m.