

COUNTY GOVERNMENT OF NAIROBI CITY



*Paper paid  
on 12/8/14  
by Chairperson  
of Budget  
Committee  
J. J. J. J.  
CCA  
12/8/14*

NAIROBI CITY COUNTY ASSEMBLY

FIRST ASSEMBLY - SECOND SESSION

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REPORT OF THE SELECT COMMITTEE ON BUDGET AND  
APPROPRIATIONS

ON

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CONSIDERATION OF THE REPORT OF THE CONTROLLER OF BUDGET ON  
THE COUNTY BUDGET IMPLEMENTATION, 3<sup>RD</sup> QUARTER, FISCAL YEAR  
2013/14



AUGUST 2014

**Mr. Speaker Sir**, the Office of the Controller of Budget (COB) is one of the many constitutional commissions that were born as a result of the promulgation of the Constitution of Kenya in 2010. Article 228 of the Constitution sets up the Office and mandates it to oversee implementation of National and County budgets with the onus being in the Office to ensure prudent utilization of public resources. From this background and in line with the provisions of the Public Finance Management Act, the Office prepares quarterly reports to highlight to the public the status of budget implementation in the counties. Standing Order 187 establishes the Budget & Appropriations Committee with a specific mandate which is to:

- a) *Investigate, inquire into and report on all matters related to coordination, control and monitoring of the of the county budget;*
- b) *Discuss and review the estimates and make recommendations to the County Assembly;*
- c) *Examine the County Fiscal Strategy Paper presented to the County Assembly;*
- d) *Examine Bills related to the county budget, including Appropriations Bills; and*
- e) *Evaluate tax estimates, economic and budgetary policies and programs with direct budget outlay*

**Mr. Speaker Sir,**

Based on the provisions of Article 228 (6) of the Constitution and Section 39 (8) of the Public Finance Management Act 2012, the report of the CoB for the third quarter covering the period between July 2013 and March 2014 was submitted to the Office of the Clerk and subsequently laid on table of the Assembly on the 17<sup>th</sup> July 2014. After being tabled in the Assembly, the chair directed that the report be committed to the Budget and Appropriations Committee to consider and make a report to this Honourable Assembly with any recommendations thereof in fourteen days' from the date of tabling.

**Mr. Speaker Sir**, the County Assembly Budget & Appropriations Committee comprises of the following 19 Members:

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|--------------------------------------|----------------------|
| 1. <b>Hon. Michael O. Okumu, MCA</b> | <b>Chairman</b>      |
| 2. <b>Hon. George Ochola, MCA.</b>   | <b>Vice Chairman</b> |
| 3. Hon. Alfred Ambani, MCA.          |                      |
| 4. Hon. Maurice O. Akuk, MCA         |                      |
| 5. Hon. Oscar Lore, MCA              |                      |
| 6. Hon. Osman Adow Ibrahim, MCA.     |                      |
| 7. Hon. Jackson KiamaGikandi, MCA.   |                      |
| 8. Hon. Kenneth ThugiMuroki, MCA     |                      |

9. Hon. David Njoroge Kairu, MCA
10. Hon. Petronilla Nafula, MCA
11. Hon. Herman Azungu, MCA
12. Hon. Emmaculate Musya, MCA
13. Hon. Joash Omwenga, MCA
14. Hon. Kennedy Oduru, MCA
15. Hon. Isaac N. Ngige, MCA
16. Hon. Ngaruiya Chege, MCA
17. Hon. Samuel Irungu, MCA
18. Hon. Benedette Wangui, MCA
19. Hon. Victoria Alali, MCA

**Mr. Speaker Sir,** Members will agree that this particular report had been of interest to this Assembly and its consideration needed a lot of due diligence from all stakeholders to ensure that facts are delineated from rumors and innuendos. It is worth recording from the very onset that the report from the CoB covers the initial period when County Governments started the process of implementing their budgets as well realizing many milestones including local management of payrolls. During the period, Nairobi County has taken major steps to strengthen its capacity with regard to issues of public finance management. It is indeed commendable that the report has taken notice of the very many strides that this baby called devolution has managed to take towards full maturity.

**Mr. Speaker Sir,**

In the course of the deliberations on the Report from the COB, the Budget Committee held a total of five (5) sittings. During this undertaking, the Committee took time and received submissions from the Office of the Controller of Budget, the County Treasury and the Clerk of the County Assembly. The discussions helped the Committee come up with independent views on the assertions in the report as well make conclusions that would form part of this report.

**Mr. Speaker,** I would like to thank Members of the Budget and Appropriations Committee for their dedication, untiring commitment and valuable contributions. It is because of their dedication that we have been able to complete this demanding task. These are indeed difficult times for County Assemblies and it is commendable that these Members closed their ears to the entire hullabaloo around and focused on their oversight role.

**Mr. Speaker Sir**, the Committee is grateful to the Office of the Speaker and the Office of Clerk of County Assembly for the support received as it discharged its mandate of considering the report.

**Mr. Speaker Sir**, It is therefore my pleasant duty and privilege, on behalf of the Budget & Appropriations Committee to table this report and recommend it to this Assembly for adoption.

**SIGN**.......... **DATE**.....11/8/14.....

**Hon. Michael O. Okumu, MCA**

**Chairman, Budget & Appropriations Committee**

**SCRUTINY OF THE COUNTY BUDGET IMPLEMENTATION REVIEW REPORT,  
THIRD QUARTER**

**A. INTRODUCTION**

1. **Mr. Speaker Sir**, the report reviews the 3<sup>rd</sup> quarter of the 2013/14 budget for Nairobi City County which was to the tune of Kshs. 25.2billion out of which Kshs. 17.6 billion was meant to be directed towards recurrent expenses. However, it is imperative to note this report is based on the original budget which had since been amended due to the successful passage of the Supplementary Appropriations Act, 2014 sometime this year. During the period under review the County had managed to raise Kshs. 14.3billion shillings in revenue out of which Kshs. 6.5billion was a direct transfer from the national government. The COB notes that during this period, the total amount which had been released to the County in line with Section 109 (6) of the Public Finance Management (PFM) Act, 2012 totaled Kshs.7.2billion.
2. **Mr. Speaker Sir**, as members may have realized, the report records that during the first nine months of the financial year 2013/14, the County had spent to the tune of Kshs. 11.8billion with only Kshs. 1.2 billion having been directed towards development expenditures. Out of the recurrent expenditure, huge chunk of the County resources had been earmarked for personnel emoluments at Kshs. 7.1billion with 55.1million spent on domestic and foreign travels, 68.5million on conferences and hospitality. Further under the development vote a total of Kshs. 341million had been utilized for purchase of motor vehicles.

**B. MATERIAL BREACHES RAISED IN THE CONTROLLER OF BUDGET REPORT**

3. **Mr. Speaker Sir**, this third quarter report raised a number material breaches that it alleged the County had committed during the period under review. In this regard, the Budget Committee took upon itself to employ rule of natural justice in areas where individuals were mentioned in addition to using its own discretion to address the issues raised. This part of the Committee report will try to cover the specific issues raised in the COB report and highlight the observations of the Budget Committee.

**i. In the matter of failure by the County to comply with circulars/directives from Constitutional Commissions/ Independent Offices on use of public finances in the County.**

**4. Mr. Speaker Sir,** the Budget Committee and indeed all Members appreciate the critical role played by commissions and Independent Offices that were set up by the Constitution and empowered to steward this ship called devolution. Their advice and guidance is at all times welcome since we all recognize that none of us is in competition with one another and further that we are all interested in performing our legal obligations in the best way we know how. However, **Mr. Speaker** there has been an alarming trend from some of these Commissions and Independent Offices that this County and indeed all counties must guard themselves against. It remains the understanding of the Budget and Appropriations Committee that most of these offices have overstepped their mandates and resorted to performing duties without any legal underpinning. The Budget Committee regrets that there are signs that the very institutions which were set up to protect devolution remain the greatest threat to devolved systems of government. Indeed the Committee failed to comprehend the rationale for limiting the jurisdiction of some of these advisories to counties while letting the national government, where there is bulk of resources, off the hook.

**5. Mr. Speaker Sir,** this County as the center of devolution and the beacon of hope for its success must not allow itself to be cowed into submitting to offices and individuals that try to babysit counties thereby returning the very ill of the big brother syndrome that we were trying to cure through devolution. Nairobi County remains open to all manner of advice, because none of us imagines being all-knowing but we must insist that pieces of advice remain just that, advice. The attention of the Committee was alarmingly drawn to the circular by the Commission on Revenue Allocation that purported to set budget ceilings for County Executives and County Assemblies. The Committee was hard pressed to understand the provisions of the law from which the Commission drew this power since this is neither enumerated in Article 216 of the Constitution nor the Public Finance Management Act, 2012.

**6. Mr. Speaker Sir,** in summary the Committee agrees with the decision of the County Assemblies Forum and the Governor's Council to obtain legal interpretation from the courts in some of these legal hurdles.

**ii. In the matter of failure by the County to comply with Section 109 (2) of the PFM Act, 2012**

7. **Mr. Speaker Sir**, Section 109 (2) of the PFM Act, 2012 provides that the County Treasury for each County Government shall ensure that all money raised or received by or on behalf of the County Government **is** paid into the County Revenue Fund.
8. **Mr. Speaker Sir**, the report extensively asserts that Nairobi County has been notorious for failing to transfer revenues collected by the County to the County Revenue Fund. It is worth reminding members that Section 109 (2) of the PFM Act, 2012 is straightforward that each county government shall ensure that all money raised or received on behalf of the county government shall be paid to the County Revenue Fund. This Assembly must not condone incessant breach of the law by any county government entity and more so the County Treasury.
9. **Mr. Speaker Sir**, during the meeting with the Controller of Budget and the County Executive Committee Member for Finance, the Budget Committee confirmed that the County Treasury had indeed failed to comply with the mandatory provisions of this section of the law. The report has recommended that the Cabinet Secretary for National Treasury should invoke the provisions of Article 225 (3) of the Constitution and Section 96 of the PFM Act, 2012 which would culminate in stoppage of funds release to Nairobi County due to material breach of its financial obligations. This indeed would be a hefty price to pay due to negligence of a few officers who are reluctant to comply with basic requirements of the law. The Budget Committee is not ready to permit Nairobi County go down in history as the first County that has met the wrath of these statutory sanctions.
10. In this regard therefore **Mr. Speaker**, the Budget Committee has insisted on the Controller of Budget to ensure that all revenues are swept into the County Revenue Fund and the bank statements must be submitted to the Budget Committee on a monthly basis for perusal. The Committee learnt during its deliberations with the Controller of Budget and the County Executive Member for Finance that there have been great measures aimed at abiding with the set provisions of the law. The CECM for Finance indeed informed the Committee that he had written to all banks *vide* a letter dated 12<sup>th</sup> June 2014 directing them to swipe all cash deposits to the County Revenue Account held at the Central Bank of Kenya. The Committee

therefore came to the conclusion that enough measures have been put in place to correct the noted breach and hence would not be recommending any additional sanctions in this report.

11. Going forward, the Committee insists that no officer shall be indispensable in this mission of ensuring that we remain a law abiding County. Further, the Committee invites the Assembly to resolve that in case of failure to comply with the provisions of the PFM Act, 2012 the relevant authorities should be invited to take action. It is important to record that Section 199 of the PFM Act, 2012 dictates that a person who is found guilty of committing an offence under the Act for which no other punishment is given is liable to conviction to a term not exceeding five years or a fine not exceeding ten million or to both.
12. However **Mr. Speaker**, the formulators of the law were alive to the fact there may be peculiar cases when it is not possible to transfer money to the County Revenue Fund before spending hence the exemptions outlined in Section 109 (2) (a) (b) and (c) of the PFM Act, 2012. In this regard therefore the Committee has weighed in on the County Treasury to ensure that all money not payable to funds approved by this Assembly is paid into the County Revenue Fund until this County Assembly or the National Parliament passes a law to the contrary.

**iii. In the matter of considerable expenditure through imprests**

13. **Mr. Speaker Sir**, the Public Procurement and Disposal Act, 2005 makes illegal massive purchase using imprests. The Committee recommends that going forward all purchases above the legally allowed threshold should be undertaken through open tendering and this should commence immediately. The County Treasury has indeed put in enough measures to ensure that all outstanding imprests are accounted for.

**iv. In the matter of excess amounts paid for MCAs sitting allowances**

14. **Mr. Speaker Sir**, if there is any single matter in this entire report that has touched on the heart of honorable Members of this Assembly it is the issue of sitting allowances. It is indeed a dangerous precedence when offices that are anticipated to act with most decorum and highest level of competence resort to populist moves that would only benefit the advocates of anti-devolution campaign.



15. **Mr. Speaker Sir**, during discussions on the report the Committee was informed that the Office of the Clerk noted the erroneous figures and wrote to the Office of the Controller of Budget (COB) with the correct figures forwarding all documentation including Integrated Payroll and Personnel Database printout in a bid to set the records straight. However, it was the submission of the Controller of Budget that the Office had no legal mandate to receive reports directly from the Clerk of the County Assembly without passing through the County Treasury. The Committee, while fully appreciating the provisions of Section 104 of the Public Finance Management Act, 2012, would have expected the COB to countercheck the figures submitted by the County Treasury with the Assembly reports so as to ensure that the figures released to the public were beyond reproach. The Committee remains unconvinced that the COB is merely a robot that remains a stricter of rules at the expense of logic and common sense.
16. **Mr. Speaker Sir**, the County Executive Committee Member for Finance clarified that there may have been an inadvertent error on how the salaries and allowances for the County Assembly were classified in the records submitted to the COB without breaking them down to various components of personnel emoluments. However, the Executive has since written to the Office with the correct figures plus a plea that the Office takes appropriate measures to correct the impression thus far created. Going forward, the Committee recommends that the County Treasury must ensure that any figures and matters relating to the County Assembly are scrutinized by the Office of the Clerk before they are released to any external entities. The Committee would not permit negligence and lack of due diligence from any officer to work at the detriment of this County Assembly and its honorable members. Further the Committee has requested the County Budget Coordinator to take the extra initiative and have as annexures submissions from the Office of the Clerk on any reports on budget implementation.

**v. In the matter of funds requisitions by the County Treasury**

17. **Mr. Speaker Sir**, this Assembly has been greatly affected by intermittent cash flows from the County Treasury which has affected most of its undertakings. It was noted during deliberation on the Controller of Budget Report that the County Treasury has not been religiously remitting to the County Assembly its rightful share out of the County revenue basket. It was recorded that the County Treasury has been overzealous to requisition for funds in the name of the Assembly only to reallocate the same for other projects in the County Executive. The Committee was informed that the

County Assembly has not been submitting its work-plan to the Controller of Budget implying that requisitions for and on behalf of the County Assembly done by the County Treasury were abstract and not meant to help the Assembly finance its core activities.

18. **Mr. Speaker** the Committee would not wish that this habit continues and therefore has persuaded the County Budget Coordinator to approve only warrants that have been agreed upon between the County Treasury and the County Assembly. That notwithstanding, the County Treasury and the County Assembly are not in any competition and they have to work together towards ensuring the forward progress of this County. In this regard, the Committee recommends that the County Treasury must at all-time ensure it transfers the Assembly share to its account with all fidelity. The Committee further urges the Controller of Budget to ensure that all money released is spent as per the workplans and requisitions submitted.

### **C. RECOMMENDATIONS:**

**Mr. Speaker**, in summary and pursuant to the provisions of Section 149 (5) of the PFM Act, 2012 the Committee recommends that the Assembly resolves as follows:

- ❖ The County Treasury must ensure that all future figures and any other matters touching on the County Assembly are reconciled with the Office of the Clerk before being released to the public or other governmental institutions;
- ❖ The County Treasury must always release funds due to the County Assembly without any bureaucratic delays and wanton deductions and that such release must be based on the agreed ratio for sharing of revenue between the Assembly and the Executive and workplans submitted by the County Assembly when the Exchequer release is due;
- ❖ The CoB and the County Treasury must ensure that all the funds meant for the County Assembly are deposited into the County Assembly Account at the Central Bank;
- ❖ The County Treasury should henceforth ensure that all funds from local revenue are consistently swept into the County Revenue Fund as required the law;
- ❖ For monitoring purposes, the County Treasury must avail to the Assembly not later than 5<sup>th</sup> of every month, a report together with the bank statements of all the bank accounts maintained by the County Treasury indicating how much money has been received by the County Treasury from local sources and how much has been swept into the County Revenue Fund;
- ❖ In order to ensure transparency in the use of Funds, the County Treasury must ensure that all payments are made through the IFMIS platform; and
- ❖ All outstanding imprests should be accounted for with officers who have not surrendered imprests held to account for withholding public funds

**Mr. Speaker Sir, in conclusion and pursuant to the provisions of Sections 39 (8) and 149 (5) of the Public Finance Management Act 2012 the County Budget and Appropriation Committee recommends that:**

**This County Assembly adopts the Report of the Budget and Appropriations Committee on the consideration of the Report of the Controller of Budget on the County Budget Implementation, 3<sup>rd</sup> Quarter for the Fiscal Year 2013/14 tabled in the County Assembly on Tuesday 12<sup>th</sup> August 2014.**



