

COUNTY GOVERNMENT OF NAIROBI CITY



*Paper paid by
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NAIROBI CITY COUNTY ASSEMBLY

FIRST ASSEMBLY - THIRD SESSION

REPORT OF THE COUNTY ASSEMBLY BUDGET AND
APPROPRIATIONS COMMITTEE

ON

THE REQUEST TO RESCIND APPROVAL OF LOAN FACILITY

FEBRUARY 2015

Mr. Speaker Sir, as Hon. Members may recall this Assembly, on the 23rd of October 2014, through a motion tabled by the Leader of Majority Party approved the request for approval of loan facility of Kshs. 4billion. Further it is worth reminding Members that the approved loan request was meant to be utilized for development projects and to provide a buffer to the intermittent revenue inflows thereby ensuring that County Staff and Members of this House receive their salaries in a timely manner.

Mr. Speaker Sir, the provisions of Article 212 (b) of the Constitution of Kenya and Sections of the Public Finance Management (PFM) Act, 2012 are explicit that any loan request by the County Government has to be ratified by this Assembly. It is based on the above provisions of the law that the earlier message from the Governor was delivered by the Speaker and committed to the Budget and Appropriations Committee. The Budget and Appropriations had only one responsibility once in receipt of any loan request; to consider the loan request and either approve or reject it. Whereas the request was rightfully submitted to the Budget Committee, the Committee never got a chance to consider it and table its report to this Assembly.

That notwithstanding, it is worth noting that the County Assembly Standing Orders have not made any provisions on how to undertake the consideration of any loan requests hence the deliberations of the Budget and Appropriations Committee are only guided by the PFM Act, 2012 and the Constitution.

Mr. Speaker, it is the untiring desire of the Budget and Appropriations Committee to see to it that the County achieves its priority objectives but more so to ensure that the law remains our shield and defender in that endeavor.

In reviewing the request to rescind the decisions of the Assembly, the Committee held a total of three sittings, requested for submissions from the County Treasury. In this regard, the Committee would be proud to report that the County Treasury and by extension County Executive was accorded adequate airtime to air their views in support of the request.

Mr. Speaker, I would like to thank Members of the Budget and Appropriations Committee for their dedication that was imperative in enabling us complete this herculean task.

Mr. Speaker Sir, the Committee is utmost grateful to the Office of the Speaker and the Office of Clerk of County Assembly for the support received during deliberations on the loan request.

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 the House for adoption.

SIGN.....

DATE..... 25th Feb. 2015

Hon. Michael O. Okumu, MCA Chairman

SCRUTINY OF THE REQUEST

A. Introduction

- 1. Mr. Speaker Sir,** the Nairobi City County Appropriations Act, 2014 had appropriated a sum of **KSh.28,762,590,000** which was meant to carter for various projects in addition to personnel emoluments. However, as at December 2014 the County had only realized 33.2% of the revenue target translating to about **KSh.4billion** deficit making it difficult to influence the discretionary expenditures. Out of these amounts the County had anticipated to commit in excess of **KSh.9billion** for capital expenditures while another **KSh.600million** meant for debt repayments. In light of the revenue shortfalls and the need to maintain development of the County, the County Executive requested the County Assembly to acquire a loan facility of **KSh.4billion** out of which **KSh.2.5billion** was meant for capital projects and **KSh.1.5billion** to be treated as bank overdraft. The County Treasury was supposed to acquire the loan from any commercial bank at competitive rates.
- 2. Mr. Speaker Sir,** the loan having been approved by this Assembly, procedures notwithstanding, the onus was now on the County Treasury to source for banks from where to borrow as well as identify the exact development projects to be financed with the **KSh.2.5billion**. However, some members of the public and indeed of this Assembly were not convinced that there had been fidelity to the law in the process of approving the loan request and therefore chose to seek legal redress, a matter that remains before the courts today, and any discussions on the same would amount to sub-judice.
- 3. Mr. Speaker Sir,** Nairobi County has an outstanding debt of about **KSh.30billion** according to the LAFT Annual Report a fact confirmed in the draft Debt Management Strategy Paper which was tabled before the Committee during deliberation on this request. It is worth recording from the very beginning that debt management was a major deterrent to the forward progress of most of the defunct councils and how the same is handled within the devolved systems of government would be instrumental in determining the success or otherwise of most counties.

4. **Mr. Speaker Sir**, Article 212 (a) of the Constitution dictates that counties can only borrow if the national government has undertaken to guarantee the loan. Whereas it has been the thinking within some quarters that this may inflict counties with the big brother syndrome, it is aimed at ensuring that counties at best live within their means and at all cost avoid imprudent ways of resource use. This safeguard is also meant to ensure that counties only borrow to the extent that they are able to repay the loans and any accrued interest thereof. Such finances must be captured in the debt management strategy papers for the county for the medium term and also in the financing plans for the county as enumerated in the County Fiscal Strategy Paper.

Scrutiny of the Request to Rescind Approval of Loan Facility

5. **Mr. Speaker Sir**, the Constitution and other laws of Public Finance Management have placed onus on the Budget and Appropriations Committee to ensure that budget related documents submitted to this Assembly have complied with the statutory regulations as outlined in the Public Finance Management Act, 2012 and other statutes.

6. **Mr. Speaker Sir**, it is in this regard that the Committee dedicated a lot of time to interrogate how far the request had complied with the provisions of the law. The Committee took cognizance of Standing Order 46 which dictate that:

❖ *No motion may be moved which is the same in substance as any question which has been resolved (either in the affirmative or negative) during the preceding six months in the same session.*

❖ *Despite paragraph (1)-*

- *A motion to rescind the decision on such a question may be moved with the permission of the Speaker;*
- *A decision to rescind the decision on a question on a Special Motion shall not be allowed*

7. **Mr. Speaker Sir**, in the above Standing Orders members need to take keen interest in only three phrases namely **Same Session, with the permission of the Speaker and Special Motion**. The Budget Committee would wish to confirm that the request was properly submitted to the Assembly and by extension to the Budget Committee since the Sessions have changed (whereas the original motion was approved in the Second Session, the Assembly has now entered its third Session), for the request to be tabled in this Assembly it implies it got the nod of the Speaker and the original motion was not a Special Motion by definition of our Standing Orders.

8. **Mr. Speaker Sir**, the Committee considered the reasons for rescinding the decisions of the Assembly and noted that there were a number of important information necessary for effective oversight of the utilization of the approved

amount which had not been submitted before the initial loan request was approved by the County Assembly. Some of these critical pieces of information that were missing include:

- i. Details of the banks from which the loan was to be borrowed including how the same was arrived at, rate of interest among other related matters;
- ii. How the proposed loan married with the financing plans as enumerated in the Debt Management Strategy Paper and County Fiscal Strategy Paper;
- iii. The Debt Ceiling for the County which needed to be submitted to the Assembly for approval prior to forwarding the loan request for consideration;
- iv. How the amounts requested related to the most recent audited accounts noting Sections 107 (3) and 142 (2) of the Public Finance Management(PFM)Act 2012, requires that short term borrowing does not exceed five percent of the most recent audited revenues of the County;
- v. The County Assembly was yet to pronounce itself and approve the County ratio of debt: revenues as required by Section 107 (4) of the PFM Act, 2012
- vi. A detailed breakdown of the projects to be financed by the KSh.2.5billion to be borrowed and the return on investment for each of the projects noting that all the development projects in the 2014/15 budget had a clear financing plan;
- vii. How the proposed loan related to the fiscal responsibility principles for the current and coming financial years; and
- viii. The financial position of the County with regard to stock and composition of public debt, debt management and repayment plan taking into account interest payments.

9. **Mr. Speaker**, the Committee takes cognizance of the fact that these were important data that this Assembly was greatly out of order to overlook and therefore it is commendable that we have a second bite at the cherry and this time we need to ensure that we get the biggest chunk. The Budget and Appropriations Committee will not surrender in its urge to have this Assembly follow its own rules and procedures.

10. **Mr. Speaker Sir**, after consideration of the above factors and in light of the new submissions by the County Treasury, the Budget and Appropriations Committee was persuaded that there is need to disapprove the earlier decision of the County Assembly so as to ensure that, in addition to addressing the above concerns, there is adequate public input before any new request is considered. The Committee hence recommends that before submitting any other request for approval of loan facility to this Assembly, the County Treasury shall in future ensure that:

- ❖ There is adequate public participation;
- ❖ The request is accompanied with details of banks from which the loan is to be borrowed including how the same was arrived at, rate of interest among other related matters;
- ❖ An analysis of how the proposed loan marries with the financing plans as enumerated in the Debt Management Strategy Paper and County Fiscal Strategy Paper of the respective financial year;
- ❖ There is debt ceiling for the County. In this regard, the Budget and Appropriations Committee wishes to invite the Select Committee on County Delegated Legislation to follow up and ensure that all financial regulations required to be submitted for approval are presented without any further delay;
- ❖ There is a breakdown of how the amounts requested relate to the most recent audited accounts as anticipated in Sections 107 (3) and 142 (2) of the Public Finance Management(PFM)Act 2012;
- ❖ There is an approved County ratio of debt: revenues as required by Section 107 (4) of the PFM Act, 2012
- ❖ A presentation of a detailed breakdown of the projects to be financed by the KSh.2.5billion to be borrowed and the return on investment for each of the projects;
- ❖ How the proposed loan relates to the fiscal responsibility principles for the current and coming financial years; and
- ❖ The financial position of the County with regard to stock and composition of public debt, debt management and repayment plan taking into account interest payments.

COMMITTEE'S RECOMMENDATIONS

Mr. Speaker Sir, in conclusion and pursuant to the provisions of Article 212(b) of the Constitution, Section 142 of the Public Finance Management Act 2012 and Standing Order 46 (2) (a) the County Budget and Appropriation Committee recommends that:

“This County Assembly resolves to rescind its motion passed on the 23rd of October 2014 on the question to approve the loan facility of KSh.4billion”

