



NAIROBI CITY COUNTY ASSEMBLY

OFFICIAL REPORT

First County Assembly – Fifth Session

Tuesday 14th March, 2017

The House met at 2.30 p.m.

(Hon Speaker (Mr. Alex Ole Magelo) on the chair)

PRAYER

COMMUNICATION FROM THE CHAIR

VISIT BY DELEGATION FROM JUBA LAND REGIONAL ASSEMBLY, REPUBLIC OF SOMALIA AND A DELEGATION FROM SIAYA COUNTY ASSEMBLY, REPUBLIC OF KENYA

Hon. Speaker: Good afternoon Hon. Members once again, today's sitting is graced by delegation from Juba land Regional Assembly, Republic of Somalia and a delegation from County Assembly, Siaya Kenya. Both delegations are here visiting with us to share experiences and lessons. Hon. Members I recognize first and foremost the:

1. Hon. Speaker of Juba land regional Assembly the Hon. Abdi Mohammed Abdirahman

(Applause)

2. The first Deputy Speaker Hon. Aden Kalif Haji Yussuf

(Applause)

3. The second Deputy Speaker Hon. Abdi Balle Hussein (*Applause*)
4. The Chief Whip Hon. Bashir Mohammed Bahley (*Applause*)
5. The Deputy Chief Whip Hon. Hussein Yussuf Hassan (*Applause*)
6. All chairpersons, deputy and Members of the committee of the regional Assembly of Jubaland and the Assembly itself (*Applause*)

I wish to also specifically recognize head of delegation and Early Recovery from Amisom Dr. Opiyo Odonda, all Amison officers and other members of the delegation present today here (*Applause*).

Hon. Members similarly I would like to recognize the presence of Select Committee on Public Accounts and Investments from the County Assembly of Siaya led by the Chairperson of the Committee Hon. William Akul, MCA. His Deputy Hon. Fred Ouda, and the esteemed members of the delegation (*Applause*).

Hon. Members on my behalf and on behalf of the Nairobi City County Assembly I warmly welcome the two delegation and wish them a wonderful stay in Nairobi City County. It is my hope that this visit gives you sufficient experience to help you better the execution of mandates back at home and help us also improve in areas we will learn from you. Exchanges such as these are crucial to enhance the undertaking of our legislative mandates. *Karibuni Nairobi na asanteni sana kwa kututembelea*. Once again enjoy your stay in Nairobi City County, I thank you.

STATEMENTS

Hon. Speaker: Hon. Members several statements were slated for today, one for Hon. Michael Obonyo, Hon. Elkana Mauti and Hon. George Ochola but apparently the members did not come to sign so they are dropped.

MOTION

ADOPTION OF THE REPORT OF THE SELECT COMMITTEE ON PUBLIC ACCOUNTS ON THE REPORT OF THE COMPTROLLER OF BUDGET ON THE COUNTY GOVERNMENT BUDGET IMPLEMENTATION REVIEW FOR THE FIRST 5 MONTHS FINANCIAL YEAR 2015/16

Hon. Speaker: The Hon. Chairperson for Select Committee on Public Accounts.

Hon. Member for Embakasi West Ward (Mr. Robert Mbatia): Thank you Mr. Speaker. I beg to move that this Assembly adopts the report of the Select Committee on Public Accounts Committee on the report of the Comptroller of Budget on the County Government budget implementation review for the first 5 months financial year 2015-2016 laid on the table of this Assembly on Wednesday 1st March 2017. Hon. Speaker my Committee's mandate is to examine the accounts of the County showing the appropriation of the sum voted by the County Assembly to meet the public expenditure and of such other accounts laid before the County Assembly as the Committee may think fit.

Hon. Speaker, the Committee's main objective is therefore to ensure that the Nairobi City County public funds are well utilized and the public realizes value for money in all government's expenditure. Hon. Speaker, Article 228 (6) of the Constitution, requires the Comptroller of Budget --- I seek your protection Mr. Speaker.

Hon. Speaker: Order Hon. Members!

Hon. Robert Mbatia: Article 228 (6) of the Constitution requires the Controller of Budget to submit a report on the implementation of budget of the National and County governments to each House of parliament every four months. It is on this basis that this report was tabled and subsequently committed to the PAC Committee. The report covers the period between July 2015 to March 2016 and views budget implementation status of each of the 47 County governments. Hon. Speaker the Controller of Budget report is based on analysis of approved County budgets financial and nonfinancial reports submitted by the County Treasuries information obtained during continuous monitoring of the budget implementation and reports generated from the Integrated Financial Management Systems (IFMIS).

Hon. Speaker with respect to the Nairobi County, the Controller of Budget has identified the following as the key challenges that continue to hamper effective budget implementation:

1. Persistent utilization of some of the locally collected revenue at source contrary to Article 207 of the Constitution of Kenya and Section 109 of the Public Finance Act (PFM) which stipulates that all funds raised or collected on behalf of the County government should be deposited in the County Revenue Fund account which is maintained at the Central Bank of Kenya.
2. Failure by the County to fully adopt the Integrated Financial Management Systems (IFMIS) in processing financial transaction
3. Lower absorption of development funds.

Hon. Speaker, the Committee agreed with the Controller of Budget views and observed that spending at source has a potential of being abused since payments are not processed through IFMIS platform neither is authority to withdraw sought and approved by the Controller of Budget as provided by in law. Mr. Speaker, the CEC Finance assertion that the County Executive has been making Standing Orders from time to time to settle outstanding debts to its creditors as a reason for the utilization of locally collected revenue, is not justifiable in any situation. In addition Mr. Speaker, no administrative action has been taken to resolve the standing order payments to conform to the provisions of the law.

Hon. Speaker, this Committee recommends that the Treasury should immediately stop spending at source and allow all monies collected to be remitted to the County Revenue Fund account and all payments be made through the Integrated Financial Management Systems (IFMIS) platform. Two, the Committee recommends that the County Executive should urgently review agreements with the concerned parties on settling of debts so as to conform to the provisions of Article 207 of the Constitution of Kenya and

Section 109 of the Public Finance Management Act 2012 requiring that all monies be deposited in the County Revenue Fund account and approval of the Controller of Budget be sought before any withdrawal.

Three, the Committee recommends any state or public officer who contravenes the provisions of this Constitution of Kenya and any other statutes with regards to usage of public funds should be held liable for breach of the law. Mr. Speaker the Committee also recommends that the Auditor General do conduct a special audit to determine the extent to which the County Executive has spent locally collected revenue at source. The Auditor General also to establish all payments made outside the laid down procedures.

Four, the Auditor General is to ascertain whether the County has lost any funds as a result of the spending. Mr. Speaker as I finish I want to thank the Committee which went through this and for the sake of our visitors who are here, I would like to very first recognize the membership of the Committee:

1. Hon. Andrew Mbau
2. Hon. Shadrack Juma
3. Hon. Rose Ogonda
4. Hon. Moses Ogeto
5. Hon. Tabitha Juma
6. Hon. Julius Mwaniki
7. Hon. Stephen Murathi Kambi
8. Hon. Jackson Mwangi Ngare
9. Hon. Martin Waweru Gichuhi
10. Hon. Njuguna Mwangi
11. Hon. Martin Mugo Kanyi
12. Hon. Peter Owera
13. Hon. David Mberia
14. Hon. Asha Abdi Sosso
15. Hon. Akuk Maurice
16. Hon. Maurice Gari
17. Hon. Daniel Mutiso, and,
18. Hon. Robert Mbatia

Mr. Speaker, I urge Members to support this report, and as I move, I would call upon my very able friend, Hon. Alex Ouda to second the Motion. Thank you.

Hon. Speaker: Thank you, Hon. Chairperson for Public Accounts Committee.

Hon. Member for Mugumoini Ward (Mr. Alex Ouda): Thank you, Mr. Speaker sir. As I support this, recommendation 1 (i) says, *“The County Treasury should immediately stop spending at source and allow all monies collected to be remitted to the County revenue fund account and all payment be made through the Integrated Financial Management Information System (IFMIS).”*

Mr. Speaker, I tend to think that the Nairobi City County has qualified financial managers and we are guided by PFM Act. I wonder why the County should use money at source in pretext that they are

honouring the Standing Order. The Standing Order is not a reason to allow them to use money at source because when you use money at source, there is lack of accountability. Therefore, in my own opinion, I tend to think this is just a deliberate move and it should stop forthwith. If there is any disciplinary action to be taken for the repeat of the same, that should be immediate.

I would also like to thank the Committee for having done a good job and urge fellow colleagues to support this report. I second, Mr. Speaker, thank you.

Hon. Speaker: Very well, Hon. Alex Otieno.

(Question proposed)

Hon. Member for Eastleigh North Ward (Mr. Osman Adow): Thank you, Mr. Speaker. I rise to support the Motion and thank the Committee for the job well done. But it is very clear that the laws and the Constitution as been contravened and the mechanism to identify the actual officers doing the offence, has not been captured in the report so that it is not repeated. That needs to be improved on. Otherwise it is a good report and I do support it, thank you.

Hon. Speaker: Hon. Mbau.

Hon. Member for Mlango Kubwa Ward (Mr. Andrew Mbau): Thank you, Mr. Speaker. I rise to support this Motion because our County is known for that. Siphoning of public funds is because of the contravening of Article 207 of the Constitution of Kenya and the Public Finance Management Act. Mr. Speaker, I do support the Motion and would like all those recommendations that have been made to be adhered to by the County Government and that will stop siphoning of our funds. Thank you.

Hon. Speaker: Hon. Alexina.

Hon. Alexina Mudi (Nominated Member): Thank you, Mr. Speaker sir. Mr. Speaker, it is quite interesting that the Hon. House of the Nairobi County Assembly is no longer at a toothless when it comes to finances. These are able Members, this is an able Institution that can actually take good care of their finances and make sure that all goes down as per the Constitution of the House and the Executive side. It is so unfortunate that the Treasury is still hampering and not actually taking full effect as it is supposed to be done so that the tenders and the staff---

The financial year has been done and read out and people like the staff are not being paid. This is not because of the County Assembly Members or anybody failing from the County Assembly and therefore I am here to support the report and to make sure that even the coming in of others in the House it will no longer be business as usual but at least the County Assembly should be left with its own respective accounts and there are able accountants to run the accounts. Thank you, Mr. Speaker.

Hon. Speaker: Hon. K'Otieno.

Hon. Member for Sarangombe Ward (Mr. Pius Otieno): Thank you, Mr. Speaker. Indeed, I want to acknowledge the Committee and appreciate them for the good work they have done and one thing that the Hon. Members need to understand and the people living in Nairobi in particular, Kenyans were very decisive. Mr. Speaker, in the year 2010 when they woke up very early in the morning to cast their votes for the new Constitution of 2010 and they were doing that knowing very clearly where they had come from. They were coming from a past of misappropriation, a past ravaged by exorbitance and a past full of non-accountability and that is why if you look clearly in the Chapter of this Constitution that talks about public finance there are clear principles and guidelines that have been enshrined in this Constitution so that any public officer or public office holder who is dealing with pecuniary issues must adhere and conform to the said principles.

Mr. Speaker, having heard the Chairperson of Public Accounts read out his report I am shocked because the Chair has alluded to the fact – and this is one thing that I have always been afraid of – that probably these monies that are being spent at source are not done in openness. This process is clouded in a lot of darkness and a lot of opaqueness. One of the principles in that Constitution is about openness, accountability and including public participation to determine the people who ought to be involved and to determine if those monies that we are paying are really genuine monies that actually went into genuine projects. If people living in Nairobi can be involved and the membership of this House is also involved to determine the authenticity of these payments I know we shall be doing the people living in Nairobi a very good service.

Mr. Speaker, it is important for us to also understand that public money must be used in the interest of the common *mwananchi* and that is why the terminology of prudence comes in. Prudence is a terminology in economics or financial matters that basically tend to protect the people from misappropriation and exorbitance. Mr. Speaker, the bureaucrats or the employees of Nairobi County, their other name is misappropriation or imprudence because it is like they are competing to steal. Everybody wants to have a big house in Nairobi and those people are living a lavish life, I think even Cabinet Ministers of Uhuru's Government do not live such a life. They are people who could be junior but those people are the ones calling serious shots in this County.

Hon. Pius Otieno....I think, we have gone through Public Finance Management Act, it is also important for us now to cascade to the level of Nairobi City County so that we can increase the level of financial prudence. Just sometime the Constitution contemplates other lose or what would be known as subsidiary legislation.

I am also imploring that committee on Public Accounts Committee or even the general Membership of this House to think outside the box and start looking into those ways, those innovative ways and innovative tools that would see to it that the Executive is held to an account, and we are not joking with

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them so that the people living in Nairobi can also walk with their heads high and their shoulders tall that at least in as far as the business of oversight is concerned those people who are living in that white house or sitting in County Assembly of Nairobi are doing their work.

If you look at the recommendation it says that the County Executive has received several Court orders, compelling the County to pay pending bills dating back to the defunct County Council, with immediate effect. This has forced the County to spend locally collected revenue at source. Let us not use probably court ruling or injunctions to create illegality.

An illegality cannot cure and illegality, what we need to understand even if the court in its own wisdom has said that we pay this people, the Executive needs to maintain a database that, even if the Public Account Committee while scrutinizing its books can ask them to show them those people whom they have paid at source. What did they do and what amount of money were they paid so that we can clearly come up with a matrix, that Otieno and sons was paid Sh. 20 million and the Public Committee can go to the ground and actually establish that work was done and supplied. If these things are done in an opaque manner like this, I am telling you that this revolution is not going to achieve its objectives.

Mr. Speaker sir, the reason as to why Kenyans were waking up very early in the morning it's because they were desirous of development. But five, six years down the line after the enactment of this new Constitution we are still far from realizing what we thought we would realize. That is why even at the last conference of Governors to me it was a flop because it was like a bureaucratic top show where Governors only want to have their own cake and eat it alone.

Nobody was even involved in the panelist - there was no MCAs- even if there could have been probably those are MCA who have been compromised by the Council of Governors. Those people who are known to be radical cannot be given opportunities to critic the work of the Governor, so I want to support this report and say that in future we must go beyond what it is in this report and ensure that the legislation or oversight tools that we were using are water tight enough that can make somebody be jailed. Thank you, Mr. Speaker.

Hon. Member for Hospital Ward (Mr. George Ochola): Thank you Mr. Speaker sir, and I rise to support and I want to thank the Committee of PAC for a good job well done. Mr. Speaker in my view having thanked them, I think if I was to give a credit of 100% I would slash it to 90% because what I was expecting from the PAC Committee actually has not been as at the end of the comma indicated.

Mr. Speaker, I didn't expect PAC to follow only what the Controller of budget has said, but I wanted it to go deep to the ocean and investigate and tell us who these culprits are, who are misusing our fund or resources.

Mr. Speaker, I sit in budget and in many occasions and in any meetings be it in Naivasha or wherever, we have been saying this issue of spending at source. This issue of spending at source has

become like a disco song in a club. We are not in a club but in Assembly and I want to say like what another Member said "that we don't have teeth to bite".

Mr. Speaker, I beg for your direction from this report that the PAC Committee has forwarded to you that if it was me, I would have returned the report so that they can go and put the culprits names on the report and bring us a full complete report, so that we know the mistake has happened where the funds are been used at source but by who? So that at this particular juncture there is no need we leave this Assembly without turning the stone upside down.

Hon. George Ocholla: Mr. Speaker, it is high time that we turn the stones upside down. This is by impeaching or chasing away those whom we will find have misused our funds. This is not somebody's business but the taxpayer's money and it is very sad to find out that contractors are not being paid hence the road and hospital projects have stalled because that money is being used at source Mr. Speaker. I request that you give a directive so that even if the Assembly can adjourn indefinitely to discuss this matter, we do so and chase away these Executive officers who think this money is theirs. Mr. Speaker, kindly give directions on this. Thank you

Hon. Speaker: Hon. George, I agree with you in totality. I believe that you should have brought an amendment earlier on this. The Chairperson of the Public Accounts Committee PAC has heard you and that it is very important that we address this issue but not here at the Assembly. It is important for us to agree and come as an Assembly to discuss this issue as a full subject. I personally agree with the Hon. Chairperson on the conclusions and recommendations, however, we have made these recommendations time and again. We should therefore sit down and come up with a solution because these people must be punished. I thank you.

Hon. Member for Nairobi West Ward (Mr. Maurice Gari): Thank you Mr. Speaker. Kindly protect me from Hon. Mumo. I rise to support this Motion as a member of the Committee. We came up with the recommendation from the report by the Controller of Budget. We have the Audit Report of the year 2014-2015 of which I cannot disclose its contents here but all those items are in the report. I hope that my able Chair for Budget will assist us when we get to table the report because all the malpractices and finances lost are in the 2014/2015 report. At times we should not crucify people without facts and if the facts are there then we will do so. Come 2015-2015, I hope there will be fireworks. I urge Members to support this Motion awaiting the report which is coming in a few weeks to come. Thank you.

Hon. Nominated Member (Ms. Leah Mumo): Thank you Hon. Speaker. I rise to support this Motion and congratulate the PAC Committee. I have an issue with Hon. Kotieno, I do not think that the problem is with President Uhuru's Government. Instead you should tell us what you as a County Government has done---

Hon. Speaker: Order

Hon. Leah Mumo: It is not about Uhuru's Government and you should not even mention the President

Hon. Speaker: Order Hon. Bishop! Hon. Leah Mumo, Hon. Kotieno do not discuss about the President.

Hon. Speaker: Order! I want to correct that. And I think you should pay attention. He said "even members of Cabinet" - the members of Uhuru Muigai's Government. He did not say that they had done anything wrong. He is saying that our Clerks here live better than them. It is an example. A minister is supposed to live better.

(Loud consultations)

Order! Order! Order Bishop! Hon. Mumo! I want to call the mover of the Motion to reply.

Hon. Deputy Speaker (Mr. Ken Ngondi): Mr. Speaker, I hope it is not sabotage in a way. Hon. Speaker, I raise in support of this Motion but I have a reservation. I don't know whether the Members will be in agreement with me. That the Motion before the Plenary today would actually require input of Hon. Members, if not all but some of which could be close to half of three quarters of Members. Mr. Speaker, the report of PAC has been read out and it entails the magnitude, in my opinion, of the preferences that are more of benefit to this Assembly and generally to the Members of this County if not residents of Nairobi. In light of the same, I suspect most of the Members were not privy to what was contained in the Order Paper for today. For that reason, I kindly request you under Standing Order no. 50 (3) that you may defer putting the question on this Motion so that we can get an opportunity as a House to further the debate on the said Motion tomorrow. Thank you Hon. Speaker. That is my request.

Hon. Speaker: Very well. Hon. Members, the Hon. Deputy Speaker and the Chairperson of the Liaison Committee has come with a proposal.


(Question put and agreed to)

Hon. Members, that this Assembly adopts the report of the Select Committee on Public Accounts on the report of the Controller of Budget and on the County Governments Budget implementation review for the first 9 months 2015/16 laid on the Table of the Assembly on Wednesday, 1st March 2017 will now be placed on the Order Paper of Thursday 2:30 p.m. I thank you. I said Thursday so as to allow us to whip more Members to be with us on that particular day. Thank you Hon. Deputy Speaker.

ADJOURNMENT

Hon. Members, the House Business Committee meets after the rise of the Assembly. Hon. Members, the Assembly is adjourned until tomorrow, Wednesday, 2:30 p.m. I thank you.

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(The House rose at 3.38 p.m.)