

# PARLIAMENT OF KENYA

## THE SENATE

### THE HANSARD

**Wednesday, 19<sup>th</sup> September, 2018**

*The House met at the Senate Chamber,  
Parliament Buildings, at 2.30 p.m.*

*[The Deputy Speaker (Sen. (Prof.) Kindiki) in the Chair]*

**Sen. Olekina:** That is okay, Mr. Deputy Speaker.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Thank you.

*(Sen. Pareno consulted Sen. Outa)*

Order Sen. Pareno.

Hon. Senators, pursuant to Standing Order No. 226(1), the Petition should be committed to the relevant Standing Committee for its consideration. In this case, I direct that the Petition be committed to the Standing Committee on National Cohesion, Equal Opportunity and Regional Integration.

In terms of Standing Order No. 226(2), the Committee is required, in not more than 60 days from the time of reading the prayer, to respond to the Petitioner by way of a report addressed to the Petitioner and laid on the Table of the Senate.

Thank you.

*(The Petition was referred to the Standing Committee  
on National Cohesion, Equal Opportunity and  
Regional Integration)*

Let us move on to the next Order.

We do not have Notices of Motion or Statements. Let us move to the next Order.

## MOTION

### APPROVAL OF REPORT ON THE COUNTY GOVERNMENTS CASH DISBURSEMENT SCHEDULE FOR FY 2018/2019

THAT, pursuant to Standing Order 183, the Senate approves the Report of the Standing Committee on Finance and Budget on the County Governments Cash Disbursement Schedule for Fiscal Year 2018/2019, laid on the Table of the House on Thursday, 13<sup>th</sup> September, 2018.

*(Sen. (Eng.) Mahamud on 18.9.2018)*

*(Resumption of Debate interrupted on 18.9.2018)*

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. Hon. Senators, we are now continuing with the debate on the item appearing under Order No. 8 which relates to the Approval of Report on the County Governments Cash Disbursement Schedule for the Fiscal Year 2018/2019. Those who did not contribute yesterday have an opportunity to do so today and hopefully, we should be able to dispose this agenda within this afternoon.

Could we hear from Sen. Wetangula?

**Sen. Wetangula**: Mr. Deputy Speaker, I already spoke on this.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Okay, thank you.

**Sen. Olekina**: Thank you, Mr. Deputy Speaker, for giving me an opportunity to contribute to this Motion on the Cash Disbursement Schedule for the Fiscal Year 2018/2019.

This Motion would not have come at a better time than now, when we, in the country, are alive to the fact that Kenyans are concerned about the collection of taxes, specifically on the imposition of the eight per cent Value Added Tax (VAT). This is a conversation that all Kenyans should be having at the moment. When we sit in this House and talk about the Division of Revenue Bill which then sets out the amount of money that each county should be able to get, it is important for us to have a Schedule that can be followed effectively to ensure that counties receive their monies on time.

I commend the Committee on Finance and Budget for having done a very good job in pointing out where there were typographical and mathematical errors. For us to develop as a country, the county governments must receive their money when they are supposed to receive it. Going through the Report which was adopted by five Members of the Committee, I am concerned that certain aspects were not there and this has to do with the release of the Kshs9.1 billion which is supposed to pay for the medical equipment.

It is imperative for the National Treasury to clarify when these funds will be released to the counties for us not to have to come up with an amendment. The Constitution is very clear that when funds are being released to the county governments, it should be done without any unnecessary delay. Although I support this Schedule, for I want the people of Narok County to receive their money on time, this House approves this Schedule every year, but the question is: Do counties receive their money when they are supposed to receive it? If they did, we would not be having a problem of unpaid bills.

I know that the other Senators who spoke about this Motion yesterday including Sen. Omogeni and Sen. Kiburu raised questions regarding the Integrated Financial Management System (IFMIS). Everyone blames the IFMIS for the delay in the disbursement of money. I see it differently. I think that we must come out and be honest by telling Kenyans that the problem is that we have one payment system where the National Treasury controls when the money will be released. It is embarrassing to find that County Executive Committee Members (CEC's) in charge of finance spend most of their time in Nairobi begging the National Treasury to release the money that they are supposed to receive.

I think that we have to ask ourselves a question as Kenyans: Are all these expenses and development projects, including the Big Four Agenda, really necessary at this point? They are very good on paper but in reality, are people getting money? Yesterday, we sat here and discussed the issue of Pumwani Hospital. We gave our views on what should have happened. When I stood it was rather unfortunate that I had only two minutes.

When I went home I thought about the whole issue of health having been devolved. Should the county governor have come out and told us that he had uncovered all those things or should he have gone there to fix that problem? Or is it that he does not have any money? Is it that when we approve this schedule, the money is not disbursed to the county government on time for them to come up with plans?

Mr. Deputy Speaker, Sir, as we sit here as a House, it is important that we not only approve this schedule but we also come up with a mechanism of ensuring that we can oversight the funds that we release to the county governments. Everything looks very good on paper. I dare say that in Kenya, we are continually benefitting and relying heavily on donor funds rather than the equitable share. Those are conditional grants which are given on certain projects. Should we cut down on our expenditure? There is this debate on 8 per cent VAT; I really pity the President. I feel bad that we as Kenyans have to pay more but I also see where the President is coming from in terms of how he has to pay off these loans.

As I support this, I encourage this House to start thinking more on how we will follow up to ensure that these county governments receive their money. The Public Finance Management (PFM) Act and the regulations are very clear; that, the county governments must do reconciliation on a monthly basis. Should this reconciliation only be for the expenses or should it also be for the money that they receive from the national Government? We can spend a lot of time but until the time that this Senate will have its own kitty, then they can follow up to ensure that the county governments receive money from the national Government on time. When they spend the money, they can give the reconciliation accounts on a monthly basis.

The biggest problem we have in the Committee that I sit in; the County Public Accounts and Investments Committee (CPAIC), is that when governors appear before us they say, we have not received the money. When we call the National Treasury, they tell us there is no reason as to why these county governments should say they have pending bills because we sent money when they were supposed to receive money. So, who is telling the truth?

Mr. Deputy Speaker, Sir, Clause 7 of this Bill provides for the publishing of monthly reports by the national Government on actual transfers of all allocations to county governments. I am of the opinion that this Clause ought to be amended to include reconciliation from the county government to show the money that they have received so that we can know who is not doing their job.

On the other issue, I was quite pleased to see that there will be a lot of money which will be disbursed out to take care of agriculture and help farmers to improve on their products. I am quite happy to note that Narok County will receive a lot of money to help improve agriculture. The only way that we can ascertain value for money is if this House goes in and carries out an audit to ensure that whatever is sent out really benefits the farmers.

Mr. Deputy Speaker, Sir, with those few remarks, I beg to support the Committee report fully. I hope that the amendments which have been proposed by the Committee which has done a very good job, will be put in place; especially on the issue of the Kshs9.1 billion which is supposed to be released to counties to take care of the issues of health.

**The Deputy Speaker** (Sen. (Prof.) Kindiki): Very well. Thank you.

**The Temporary Speaker** (Sen. Nyamunga): Sen. Olekina.

**Sen. Olekina:** Thank you, Madam Temporary Speaker. I rise to second the Motion that this House adopts the Report of the Senate Sessional Committee on County Public Accounts and Investment on the inquiry into the financial operations of Nakuru County Executive for the Financial Year 2013/2014 which runs from 1<sup>st</sup> July 2013 to the 30<sup>th</sup> June 2014.

Madam Temporary Speaker, from the outset, this Committee is really doing a very good job in trying to expedite the adoption of these reports. When we looked at our legacy report, the previous House had not done a lot of work. From the amount of time we put into these reports, I concur with my good brother and Chairperson of this Committee, Sen. M. Kajwang', that for any subsequent report that we submit, particularly for the Financial Year 2013/2014, we will not be wasting our time in submitting individual reports. This is because if we continue with that trend, by the time we are out of this House in five years' time, we will not have had an opportunity to even consider the reports of the Auditor General for the time we, as Senators, are serving in this House.

Madam Temporary Speaker, a few things were noted during the inquiry into this matter. First, the amount of liability that the new county governments inherited from defunct councils was quite vast, most of which had not been verified. I know that the Transition Authority (TA) has really tried to do its work, but we noted that it was abolished at the time they were just trying to pull up their socks to expedite the work.

When we look at the issue of assets and liabilities, it cuts across all counties. It is extremely difficult for even the County of Narok, for instance, to know how many assets and liabilities there are. This was the same in Nakuru County. However, I am happy that this is the process that is ongoing and the Intergovernmental Relations Technical Committee (IGRTC) has engaged the county governments and county assemblies in ensuring that they expedite the process of verifying these assets and liabilities.

Madam Temporary Speaker, one of the things that we noted in terms of the Auditor General's report was that there were issues that ought to be dealt with by the county assemblies. We discussed and deliberated heavily on the kind of audits that this House should be looking at. We should not be looking at issues of reconciliation because it is something that takes a lot of time. Although it is provided for in the Public Finance Management (PFM) Act; that all county governments and assemblies have to carry out their monthly reconciliation and send the report to the Auditor General, it is something that with a little induction, the county assemblies can take care of. The work of this House and particularly our Committee, is to try and look at the value for money audits.

Madam Temporary Speaker, as I support this Motion, I reiterate that the Committee, as currently constituted, will table all reports, particularly for the Financial Year 2013/ 2014, in fact, within three weeks. We will not waste our time. We will also

submit reports for the Financial Year 2014/2015. We were deliberating on whether to submit regional reports, because these auditors are given about six or seven counties to go through.

Sometimes when we go through all those issues, we find that there are issues that we should not waste time on. Some of the issues that were very clear in the Nakuru County Report had to do with internal audit committees. These are things that cut across all other counties. I even suggested to our Chairperson that all we need to do is to write to our counterparts at the county assemblies and ensure that they give us an update on whether those internal audit committees have been established by the county governments. This is because once they do that, it will put us in a position where we can tell Kenyans that out of the amount that was sent to the counties, “X” amount was used prudently and “X” amount was misappropriated. The people on the ground will come out and tell us whether we are right.

It is a complete waste of time when we now go back to look into post mortem reports; things that happened in the Financial Year 2013/2014, when we are in the 2018. However, the reality is that, that is the way the law is. That is the work we are supposed to be doing. Of course, we need to bring in some creativity in ensuring that governors are accountable for the money sent to them. This will help reduce on the wastage of public funds.

Madam Temporary Speaker, as I wind up, I wish to reiterate one issue that the Chairperson spoke about on the penalties which were charged to these county governments, particularly Nakuru, by the Kenya Revenue Authority (KRA). This is something that should not be happening. The national Government, the county governments and all these agencies should be working together. However, when we have pending bills---

Earlier on we were talking about approval of a Schedule for that money to be sent. I hope that my dear sister, the Senator for Nakuru, is taking notes, so that she can follow up and say: “Alright, we approved the Schedule and we are discussing about the audit reports for the previous year. There were penalties by KRA. Why did these penalties come in place? Was the money there?”

For instance, if the national Government deducted about Ksh1.4 billion and the explanation was that this money was used to pay for salaries of staff that had been forwarded, then it is important for us to know whether when they were deducting that, they also remitted the money to KRA, so that the burden is not sent to the County Government of Nakuru.

Madam Temporary Speaker, with those few remarks, I beg to second.

*(Question proposed)*

Thank you, Madam Temporary Speaker.

**Sen. Olekina:** Thank you, Madam Temporary Speaker, for giving me an opportunity to second this Motion. From the outset, I am still baffled. I want to be clear that even though I am a Member of the Committee and, by default, I should own this Report, I think some of the audit queries would have been dealt with in a different way.

As I said earlier, I have always aspired to be an extremist when it comes to freedom, liberty and fighting for fiduciary responsibility. I have gone through the Report

and I hope that this House will adopt recommendation of the committee that sat then – which I discussed in detail with Sen. Wako – and implement them to the fullest. I hope that the Senator for Homa Bay, who is the Chair of the Committee, but in his capacity as the Senator for Homa Bay, will ensure that these recommendations are implemented.

Madam Temporary Speaker, the fact that we do not have an implementation committee should not limit our ability to follow through and ensure that recommendations of this House are implemented. Where there are instances of unlawful expenditures, the Committee recommended that those officers should be surcharged and the money recovered. That does not require an implementation committee. Even the EACC and the Director of Public Prosecutions (DPP) should follow through; they should get this Report and ensure that those funds are recovered. As an extremist for freedom and liberty, money is being misused without proper accountability.

Madam Temporary Speaker, I have looked at this Report. One of the things that I hope it is now the right time to do is on the instances where procurement rules were not followed, but where goods and services were supplied as per the details of the requisition. This Report recommends that officers be reprimanded for not following the public procurement rules and regulations and a report be submitted to the Senate on administrative action and austerity measures taken to mitigate against committal of similar offences in the subsequent financial years. Given that this is an audit report for FY 2013/2014, this House should have been given a report on the actions taken in the FY 2014/2015.

Madam Temporary Speaker, it is a shame that we are the ones to table this Report. I noticed that it was signed by none other than Dr. Boni Khalwale, who was then the Chair of the Committee way back in 2015. I think there was nothing that stopped that Committee – even though the report had not been Tabled – to ensure that they follow through and even work together with the CPAIC in the county assemblies. I am still at a loss of words. Now that we are looking at the Financial Year 2013/2014, what happens to the subsequent years where similar recommendations are made? It is clear. We know that in the County Assembly of Homa Bay, there are certain officers who were arrested by the EACC. Maybe the EACC should have extended their arm and also looked at the Executive arm of the County Government of Homa Bay, because if this was happening in one office, there is no reason why it was not happening with the others.

Madam Temporary Speaker, I plead with the Senate to ensure that we put these reports out there in the public domain immediately after this. Let us upload them in the Senate website to give Kenyans from Homa Bay an opportunity to look at the Report. It does not matter whether the current Governor concludes his term in a few years to come in 2022, but the fact that money was lost, he should be responsible for it. There is something called fiduciary duty or responsibility. You cannot explain why people are still languishing in poverty.

Madam Temporary Speaker, I am not a very happy man today because the Tabling of this Report has come in when Kenyans are crying. They are saying “no, we do not want to be taxed.” But then, where are we going to get money from? I gave a similar analogy in the issue of Kilifi, but on this report, I seriously hope that my good friend, Sen. M. Kajwang, who is my able Chair, will now move us to combine all the reports for Homa Bay.

This will help the Committee to look at the reports for FY2015/2016 and compare them with reports of FY2013/2014, so that we see whether certain actions were put in place. If they were not, then nothing stops you or even our Committee from demanding that those offices be surcharged. That way, in the event that money was lost, that money is recovered. That is the only way we will achieve our objective and fulfill our duty as enshrined in Article 96(3) of the Constitution.

Madam Temporary Speaker, we must defend the interest of counties and their governments. It does not mean that one person is the Government; it means that future governments will come in place. If tomorrow, my good friend Sen. M. Kajwang' becomes the Governor for Homa Bay, he will inherit a lot of debt that he will not know how to pay. Everything which was being done in FY2013/2014 and, I bet, even today, was through restricted tender. How do you then come out and tell the people of Homa Bay that even though we used restricted tender, they got value for money?

Madam Temporary Speaker, I agree with Sen. Sakaja when he said that we need to change. I want to assure Sen. Sakaja and other Members of this House that this Committee now, when it is interrogating these matters---It is only that we could not reopen this file because it had already been adopted by the Committee Members and our work was just to table and debate it. However, just like Sen. M Kajwang' has said, nothing stopped this House from amending the reports. I want to reiterate that the Auditor-General must now look at the law. Section 62 of the Public Audit Act is very clear. Otherwise, this is going to be a never-ending cycle where we are talking about how the money is being misappropriated, when we are fighting the national Treasury because even in this Report, then national Treasury is blamed for releasing the money late. I would even support that the money be released late rather than releasing it early and then it cannot be accounted for.

Madam Temporary Speaker, we operate under the rule of law. The Public Finance Management (PFM) Act is very clear in terms of reconciliation and accountability. Therefore, there is no excuse why this House should not look at these reports. Any member can say, "Let us visit Homa Bay and look at what was said to have been done in 2013."

Madam Temporary Speaker, with those many remarks, I beg to second.

*(Question Proposed)*

**Sen. Wako:** Thank you, Madam Temporary Speaker, for giving me this