

REPUBLIC OF KENYA



| | |
|--------------------|-----------------------------|
| Paper Laid | |
| DATE | 25/05/2021 |
| TABLED BY | Chair, Devolution Committee |
| CLERK AT THE TABLE | Samuel |

TWELFTH PARLIAMENT (FOURTH SESSION)

THE SENATE

STANDING COMMITTEE ON DEVOLUTION AND
INTERGOVERNMENTAL RELATIONS

REPORT ON THE
IMPASSE ON THE BUDGETARY ESTIMATES FOR FINANCIAL
YEAR 2020/2021 FOR KIRINYAGA COUNTY BETWEEN THE
COUNTY EXECUTIVE AND THE COUNTY ASSEMBLY

Clerk's Chambers
First Floor,
Parliament Buildings,
NAIROBI.

Approved
24/5/2021

Rt. Hon. Speaker
You may approve for
tabling 24/5/21

Recommended & Forwarded
for processing for approval
24/05/2021

MAY 2021

FDR: DC-EG

TABLE OF CONTENTS

| | |
|--|----|
| <i>Preface</i> | 3 |
| <i>Adoption of the Report</i> | 7 |
| <i>Chapter 1: Establishment, mandate, and membership of the Committee</i> | 8 |
| <i>Chapter 2: Genesis of the Request for Intervention</i> | |
| Background | 9 |
| <i>Chapter 3: Chronology of the Mediation Process</i> | |
| Hearing of the Kirinyaga County Governor's Submissions | 11 |
| Hearing of the County Assembly's Submissions | 14 |
| Technical and Expert Advice Rendered by the Office of the Controller of Budget | 17 |
| <i>Chapter 4: Committee Findings and Recommendations</i> | |
| Committee Findings | 20 |
| Committee Recommendations | 28 |
| <i>List of Annexes</i> | 30 |

PREFACE

Mr. Speaker,

The Standing Committee on Devolution and Intergovernmental Relations is established pursuant to Senate Standing Order 218 and mandated to: -

'consider all matters relating to devolution, intergovernmental and inter-county relations, governance and management of county governments, cities, towns and urban areas.'

The Committee is comprised of the following members: -

- | | |
|-------------------------------------|--------------------|
| 1) Sen. Moses Kajwang', MP | - Chairperson |
| 2) Sen. Anuar Loitip, MP | - Vice Chairperson |
| 3) Sen. Kipchumba Murkomen, EGH, MP | - Member |
| 4) Sen. Aaron Cheruiyot, MP | - Member |
| 5) Sen. Isaac Mwaura, CBS, MP | - Member |
| 6) Sen. Rose Nyamunga, CBS, MP | - Member |
| 7) Sen. Cleophas Malalah, MP | - Member |
| 8) Sen. Victor Prengei, MP | - Member |

Mr. Speaker,

By a letter dated 10th July, 2020, Her Excellency the Governor of Kirinyaga County wrote to the Speaker of the Senate, notifying the Senate of an impasse that had emerged between the County Executive and County Assembly on the passage of the Budget Estimates for Financial Year 2020/21. Because of this impasse, the Governor in this same letter requested for the Senate to intervene, in line with its mandate of representing counties and serving to protect the interest of counties as provided in Article 96 of the Constitution.

The letter further provided detailed information on the County Assembly's consideration and approval of the Budget estimates, in contravention of major provisions outlined in law.

Mr. Speaker,

The Committee proceeded to consider the request pursuant to its mandate as provided in the Standing Orders of the Senate. In this regard, the Committee, by a letter dated 16th July 2020, invited the Governor and County Assembly to appear before the Senate Standing Committee on Devolution and Intergovernmental Relations in order to resolve the impasse and ensure that the Kirinyaga County Appropriation Bill 2020 is enacted on time and that the Budget Estimates for 2020/2021 are operationalized.

Mr. Speaker,

The Committee played a mediatory role in ensuring that the inter-county arms of Government came to an agreement, and in the process also sought to get to the root of the problem. The Committee considered whether it had jurisdiction to consider the matter, in view of the fact that Her Excellency the Governor of Kirinyaga County had also sought redress from the Courts.

Furthermore, the Committee considered the position of the County Executive, which accused the County Assembly in summary of sabotaging its efforts; the position of the County Assembly which in turn accused the Governor of high-handedness and highlighted her refusal to work with the County Assembly; and if both parties were justified in their arguments against each other.

Mr. Speaker,

Having extensively deliberated on the matter, the Committee arrived at the following findings. That –

- i) That there arose a matter of jurisdiction as to whether the Committee could consider the matter and play a mediatory role;
- ii) That the question of sub judice pursuant to Standing Order 98 was considered as the matter was also before the High Courts in Nairobi and Kerugoya;
- iii) That both parties acted in bad faith;
- iv) That the manner in which they conducted themselves displayed a blatant lack of fiscal responsibility;
- v) That there might be a need to reconsider the Departmental Vote Ceiling which is set at 1% in accordance with the Public Finance Management Act;
- vi) That the issue of Separation of Powers with regards to the Court issuing orders against a Parliamentary Process that had not yet been concluded arose; and
- vii) Whether an appropriations bill could or could not be enacted as a result of a court order.

Mr. Speaker,

Arising from its observations on the matter, and through deliberations on a way forward, the Committee recommends: -

- i) That, That the Senate ensures that there is a proper Compliance List drawn up, in conformity with the provisions of the relevant laws and in collaboration with the Office of the Controller of Budget, that may be used by all County Executives and County Governments in the passage of their Budgetary Estimates, to ensure parties operate within the ambit of the Law;
- ii) That the Senate should, through the various intergovernmental forums, discourage inter-county arms of government from suing each other due to its effect of making the working relationship strenuous, and the unnecessary legal fees incurred, which would be better spent paying workers and improving facilities within the counties ; and

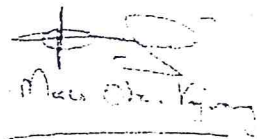
- iii) That there is an apparent need for the Senate and the County Assemblies Forum to deliberate on increasing the Departmental Vote Ceilings from 1% to a higher percentage; and
- iv) That the Senate, through this Committee, should present itself as a Mediator for issues pertaining to inter-county government disputes, as the Protector and Overseer of Devolution.

Mr. Speaker,

The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to it during consideration of this Request.

Mr. Speaker,

It is now my pleasant duty, pursuant to Standing Order 232(2), to present the Report of the Standing Committee on Devolution and Intergovernmental Relations on the impasse on the budgetary estimates for financial year 2020/2021 for Kirinyaga County between the county executive and the county assembly. I thank you, Mr. Speaker.



Sen. Moses Kajwang

Signed.....

17/05/2021

Date.....

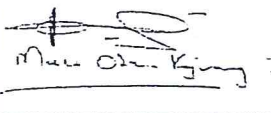


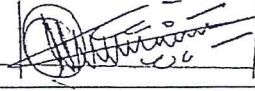
SEN. MOSES KAJWANG', MP

CHAIRPERSON

**STANDING COMMITTEE ON DEVOLUTION AND INTERGOVERNMENTAL
RELATIONS**

**ADOPTION OF THE REPORT OF THE STANDING COMMITTEE ON
DEVOLUTION AND INTERGOVERNMENTAL RELATIONS ON THE
IMPASSE ON THE BUDGETARY ESTIMATES FOR FINANCIAL YEAR
2020/2021 FOR KIRINYAGA COUNTY BETWEEN THE COUNTY
EXECUTIVE AND THE COUNTY ASSEMBLY**

We, the undersigned Members of the Standing Committee on
Devolution and Intergovernmental Relations, do hereby append our
signatures to adopt this Report-

| | | |
|----------------------------------|-------------------|---|
| Sen. Moses Kajwang', MP | -Chairperson |  |
| Sen. Anuar Loitiptip, MP | -Vice-Chairperson | |
| Sen. Kipchumba Murkomen, EGH, MP | -Member | |
| Sen. Aaron Cheruiyot, MP | -Member | |
| Sen. Isaac Mwaura, CBS, MP | -Member |  |
| Sen. Rose Nyamunga, CBS, MP | -Member |  |
| Sen. Cleophas Malalah, MP | -Member |  |
| Sen. Victor Prengei, MP | -Member | |

The Senate Standing Committee On Devolution And Intergovernmental Relations

NB - The late Sen Kabasa
was present during the meeting
as depicted in the minutes
but then passed on
24/05/2021

CHAPTER ONE

ESTABLISHMENT, MANDATE AND MEMBERSHIP OF THE COMMITTEE

The Standing Committee on Devolution and Intergovernmental Relations is established pursuant to Senate Standing Order 218 and mandated to: -

‘consider all matters relating to devolution, intergovernmental and inter-county relations, governance and management of county governments, cities, towns and urban areas.’

The Committee is comprised of the following members: -

- | | |
|-------------------------------------|--------------------|
| 1) Sen. Moses Kajwang’, MP | - Chairperson |
| 2) Sen. Anuar Loitip, MP | - Vice Chairperson |
| 3) Sen. Kipchumba Murkomen, EGH, MP | - Member |
| 4) Sen. Aaron Cheruiyot, MP | - Member |
| 5) Sen. Isaac Mwaura, CBS, MP | - Member |
| 6) Sen. Cleophas Malalah, MP | - Member |
| 7) Sen. Rose Nyamunga, MP | - Member |
| 8) Sen. Victor Prengei, MP | - Member |
| 9) Sen. Boniface Kabaka, MP | - Member |

The Committee secretariat comprises: -

- | | |
|--------------------------|---------------------------|
| a) Mr. Crispus Njogu | - Second Clerk Assistant |
| b) Ms. Sylvia Adera | - Second Clerk Assistant |
| c) Mr. Jeremy Chabari | - Legal Counsel |
| d) Mr. Washington Otiato | - Media Relations Officer |
| e) Ms. Farhiya Ali | - Serjeant-at-Arms |

CHAPTER TWO

SUMMARY OF THE GENESIS OF THE REQUEST FOR INTERVENTION

2.1 Background

By a letter dated 10th July, 2020, Her Excellency the Governor of Kirinyaga County wrote to the Speaker of the Senate, notifying the Senate of an impasse that had emerged between the County Executive and County Assembly on the passage of the Budget Estimates for Financial Year 2020/21. Because of this impasse, the Governor in this same letter requested for the Senate to intervene, in line with its mandate of representing counties and serving to protect the interest of counties as provided in Article 96 of the Constitution.

The letter further provided detailed information on the County Assembly's consideration and approval of the Budget estimates, in contravention of major provisions outlined in law.

The Committee, by a letter dated 16th July 2020, invited the Governor and County Assembly to appear before the Senate Standing Committee on Devolution and Intergovernmental Relations in order to resolve the impasse and ensure that the Kirinyaga County Appropriation Bill 2020 is enacted on time and that the Budget Estimates for 2020/2021 are operationalized.

CHAPTER THREE

CHRONOLOGY OF THE MEDIATION PROCESS

The Committee, through its letter dated 16th July, 2020, invited Her Excellency the Governor of Kirinyaga County, the County Assembly and the office of the Auditor General to present their submissions before the Committee on 21st July, 2020.

In attendance for all the meetings was the Senator, Kirinyaga County, who was present in his capacity as the Senator of the County, and as the Chair of the Senate Standing Committee on Finance and Budget. The Committee noted that the Committee on Finance and Budget was also requested to resolve the impasse alongside the Committee on Devolution and Intergovernmental Relations. However, due to the Chairperson of Finance and Budget Committee's interest as the Senator of the embattled County, it was deemed prudent for the Committee on Devolution and Intergovernmental Relations to take the lead on this matter.

As a preliminary point of note, the Committee was informed that the County Assembly, which was not represented at the first meeting, had responded to the invitation from the Senate to appear before the Committee via a letter dated 20th July, 2020, in which the County Assembly requested the following:

- i) that the meeting be rescheduled to 27th July, 2020,
- ii) that parties to the impasse and the Committee have a physical meeting rather than virtual meeting; and
- iii) that they be allowed to invite more members who are relevant to the situation to attend the meeting, specifically:
 - Hon. David Kinyua Wangui- representing Kirinyaga Central;
 - Hon. Joel Wagura- representing Ndia;
 - Hon. John Baptist Kanga - representing Mwea West; and

- Hon. Gudson Muchina- representing Mwea East.

The Committee, having considered this request, and taking into account the constraints in the form of timelines prescribed by law in the passage of Budget estimates via an Appropriation Bill, decided to re-invite the County Assembly to present their submissions on Wednesday 22nd July, 2020, and allowed for the additional Members of the County Assembly to attend the meeting.

Upon dispensing with the preliminary issues, the Committee then proceeded to consider the Governor's submissions.

1. Hearing of the Kirinyaga County Governor's Submissions

The Governor presented her submissions, highlighting the following issues for the Committee's consideration:

- a) **Variation of Departmental Vote Ceilings**: on this, she submitted that S. 37(1) of the Public Finance (County Governments') Regulations 2015 limits the County Assembly variation of the budget expenditure votes to 1% of the vote ceilings , and this provision was flouted by the County Assembly as tabulated in her letter.
- b) **Variance on Staff Salaries** : that the County Assembly caused a variation on staff salaries by reducing salaries of staff across departments, which would inevitably lead to significant job losses. She particularly noted the reduction on salaries of Doctors and Nurses in the Health Department, which would result in job losses of over 200 county staff and over 500 health care workers and a complete grounding of healthcare provision in the County.

In addition, she recalled that during the last Financial Year wages of Casual workers were reduced, resulting in salaries being unpaid for

three months. This is a serious issue as the overall effect would be that hospitals would not be kept clean or sanitary for use by County residents.

- c) That the County Assembly reallocated the above salary cuts to the development projects which included Building of the County Assembly Headquarters Complex, MCA ward offices and projects from the previous financial year such as construction of power houses and renovation of a canteen, rather than reinforcing the County's efforts towards combatting the Pandemic.
- d) On Conditional Grants, S. 138(1) (b)(iii) of the Public Finance Management Act 2012 (herein the PFM Act) provides that the grant recipient is required to act in accordance with any terms or conditions specified in a grant agreement. In other words, such a grant is not discretionary but allocated for specific use. However the County Assembly proceeded to make changes in the following manner:
- i) by itemizing Kshs. 126 million being a conditional allocation financed by a grant from the Kenya Roads Board (KRB) for Roads Maintenance Fuel Levy (RMFL), which itemization was not in line with the Annual Work Plan submitted to the Kenya Roads Board and thus contrary to S 138(1)(b)(iii) of the PFM Act.
 - ii) by removing Kshs. 146,608,512.00, which is a conditional allocation financed by a grant from the World Bank for the Kenya Devolution Support Programme (KDSP), which is contrary to S 138(5) which requires grants and donations be appropriated before they are expended.
 - iii) by removing Kshs. 5.5 Million which is the County's contribution required to access the Agricultural Sector Development Support Programme (ASDSP II grant); and additionally removing Kshs. 6.5

Million which is the County contribution required to access the National Agriculture and Rural Inclusive Growth Project credit. The Assembly also removed Kshs. 26 Million which is the County's matching contribution as a requirement to access conditional grant for development of youth polytechnics.

- e) **On Statutory payments**, the County Assembly removed Kshs. 58 Million allocated for settlement of statutory payments to Kenya Revenue Authority (KRA). The implication of this removal is that KRA shall place an agency notice on the County's Revenue Fund (CRF). In case of such an eventuality, the county's operation will be grounded as the notice causes the suspension of all financial transactions on the account. Furthermore, the removal of Kshs. 30 Million for payment of recurrent Pending Bills means that pending bills for recurrent items will not be settled, which is against the Presidential directive and strict enforcement directive by the National Treasury. She noted this as a point of great concern as the National Treasury has been strict in enforcing compliance with the Presidential directive to the extent of withholding exchequer releases for counties.

- f) **Various Contraventions to the PFM Act** which include:

- i) Section 129(3) of PFM Act 2012, which states that "each County Assembly Clerk shall prepare and submit to the County Assembly the budget estimates for the County Assembly and a copy shall be submitted to the County Executive Committee Member for Finance" which was not submitted as required by the Act.
- ii) Section 129 (4) of the PFM Act which states that "the County Executive comments on the budget estimates presented by the County Assembly Clerk, which was not done as the County

Assembly did not allow the CEC to make comments on the budget.

- iii) Section 131(1) of the PFM Act which states that “the County Assembly shall consider the County Government Budget estimates with a view to approving them, with or without amendments, in time for the relevant appropriation law and any other laws required to implement the budget to be passed by 30th June in each year.” The County Assembly frustrated compliance in this section by approving the estimates on 30th June, 2020.
- iv) Section 129(7) of the PFM Act which states that “Upon approval of the budget estimates by the county assembly, the County Executive Committee member for finance shall prepare and submit a County Appropriation Bill to the County Assembly of the approved estimates”, of which the County Assembly prepared the bill contrary to this provision and without consultation with the CEC Member for Finance.

In addition, the Governor informed the Committee that she had gone to court against the County Assembly’s Appropriation Bill 2020 under certificate of urgency. The Court, certified the matter urgent and granted interim orders staying all processes that would lead to the enactment of the Bill.

2. Hearing of the County Assembly’s Submissions

On Wednesday 22nd July, 2020, the County Assembly representatives appeared before the Committee to give its Submissions. The following were in attendance:

- The Speaker, County Assembly of Kirinyaga;
- The Majority Leader, County Assembly of Kirinyaga;
- Hon. Mathenge- Chairperson Budget and Appropriations Committee;

- David Kinyua Wangui- representing Kirinyaga Central;
- Hon. Joel Wagura- representing Ndia;
- Hon. John Baptist Kanga - representing Mwea West; and
- Hon. Gudson Muchina- representing Mwea East.

The County Assembly took cognizance of the Senate Committee's mediatory role, and proceeded to make the following submissions:

- a) **Conduct of the Governor:** On the Governor's conduct, the County Assembly raised their concern that the Governor operates under the belief that the role of the County Assembly is to approve whatever it receives from the County Executive, without consideration or necessary amendments and that if the County Assembly operated in such a manner, it would be relegated to the role of being a mere rubberstamp, and therefore fail in discharging its constitutional mandate.
Furthermore, the County Assembly noted that the Governor has on previous occasions refused to either assent or refer Bills back to the County Assembly as required by Section 24 of the County Governments Act, and this demonstrates the contempt with which this Governor holds the legislative authority of the County Assembly.
- b) **On the current dispute regarding the Kirinyaga County Appropriation Act, 2020 and the Kirinyaga County Supplementary Appropriation (No. 2) Act, 2020,** the County Assembly noted the following:
 - i) that firstly, the Governor is not seeking the intervention of the Senate in good faith, and this is demonstrated by her suit against the County Assembly in two different High Court Stations and obtaining interim conservatory orders on the subject matter before inviting the intervention of the Senate;

- ii) Secondly, that pursuant to Section 21(1) of the County Governments Act, the legislative power of the County Assembly is exercised through Bills passed by the County Assembly and assented to by the Governor. The process of exercising this legislative power is outlined in the County Government Act.

For the Kirinyaga County Appropriation Act, 2020 and the Kirinyaga County Supplementary Appropriation (No. 2) Act, 2020, the process has reached a stage where pursuant to Section 24(5) of the County Government Act, assent by the Governor is mandatory, and the law does not allow the County Assembly to consider a second Memorandum from the Governor.

The County Assembly, in view of the foregoing, held that the only recourse, if the Governor and the Assembly reached any agreement from the negotiations, would be to amend the already passed appropriation law using a supplementary appropriation law. However this cannot happen if the previous legislative process is not completed by assent and publication in the Kenya Gazette.

The County Assembly stated that for the negotiations to be deemed to have been carried out in good faith, the Governor had to meet the following demands:

- a) That she should withdraw or cause the withdrawal of the two constitutional petitions filed at the High Court of Kenya in Kerugoya and the High Court of Kenya at Nairobi;
- b) That the Governor assents to and causes the publication in the Kenya Gazette of the Kirinyaga County Supplementary (No. 2) Act 2020;
- c) That the Governor assents to and causes the publication in the Kenya Gazette of the Kirinyaga County Appropriation Act, 2020; and

- d) That negotiations to address the Governor's concerns should be carried out within the context of a proposed supplementary appropriation law after extensive consultation and concurrence by the two parties.

In their submissions, the County Assembly also asserted that they had made several attempts to have the County Executive involved in the Budget making process and even furnished letters between both parties in support of this assertion. They therefore concluded their submissions by reiterating that if their demands were met, this would pave way to strengthening their relationship in the future.

3. Technical and Expert Advise Rendered by the Office of Controller of Budget

The Controller of Budget attended all meetings to render her expert opinion on the Budget Estimates for FY 2020/2021 for Kirinyaga County. She held the position she had given through her Correspondence to the Governor (and copied to all relevant leadership of the County Assembly) on their Draft Budget Estimates via a Correspondence dated 10th June, 2020, and therefore submitted as follows:

- a) That Section 12 of the Second Schedule of the PFM Act requires the County Governments to implement **Programme Based Budgets** (PBB) from the Financial Year 2014/2015. The PBB approach links available resources to the achievement of set objectives and outcomes, she noted that the Draft Budget of the County for FY 2020/2021 did not adopt the PBB framework;
- b) That a conditional allocation described as Kenya Devolution Support Project (KDSP) Level 2 of Kshs. 146,608,512/= had been included in the DBE as source revenue. This allocation is however not contained in the County Allocation Revenue Bill, 2020, and therefore her office advised the County to ensure the revenue estimates are revised for

- compliance with allocations contained in the County Allocation Revenue Bill, 2020 to avoid any possible budget deficit;
- c) That Regulation 25(1)(b) of the Public Finance Management (County Governments) Regulations, 2015 sets a limit on the County Government's expenditure on wages and benefits at 35 per cent of the County's total revenue. A review of the Draft Budget Estimates indicates that allocation to personnel emoluments is Kshs. 2.97 Billion, translating to 56.2 per cent of the total revenue and is above the ceiling provided in law. The office of the Controller of Budget therefore advised the County to ensure compliance with the legal limit on personnel emoluments expenditure;
- d) That information on geographical location of development projects is necessary in ascertaining equity in resource allocation across the County. The FY 2020/2021 Draft Budget Estimates did not provide information on the project to be undertaken and their geographical location for the expenditure items as indicated in the letter such as a Kshs. 50 Million Capital grant to Semi- Autonomous Government Agencies that was allocated for County matching Contributions towards the National Government Coffee Revitalization Programme. The Office of the controller of Budget advised that the County provide sufficient information on the location of all projects in the Budget to enhance openness and accountability in line with Article 201 of the Constitution;
- e) That the Budget allocation to some departments deviates from the ceiling contained in the County Fiscal Strategic Paper (CFSP) 2019 adopted by the County Assembly and advised the County to ensure that the budget complies with the ceilings in the approved CFSP 2020. It was noted that any deviations should be appropriately explained in line with Section 130(1)(iii) of the PFM Act;
- f) That Sections 110, 112 and 113 of the PFM Act allow counties to establish and administer an Emergency Fund of up to 2 per cent of its

last audited revenue in a single year to cater for any unforeseen occurrences. The draft budget estimates contains an allocation of Kshs. 2 Million to the emergency kit, which is 0.04 per cent of the total revenue. The County is advised to enhance the allocation to the Emergency Fund to at least 2 percent of the last audited financial statements of revenue to ensure adequacy in line with Section 113 of the PFM Act, 2012; and

- g) That the draft budget estimates of Kshs. 5.28 Billion allocates Kshs. 4.33 Billion (81.1 per cent to recurrent expenditure and Kshs. 998.41 Million (18.9 per cent) to development expenditure. The allocations contravene Section 107 of the PFM Act which requires a minimum allocation of 30 per cent for development activities.

The Controller of Budget noted that these views she made on the draft Budget Estimate still applied to the current contentious Budget Estimates for FY 2020/2021. She therefore agreed with the submissions of the Governor on the indicated variances that were contrary to the law, and on the County Assembly's submissions on the Governor not working together with the County Assembly to remedy the underlying issues.

CHAPTER FOUR

COMMITTEE FINDINGS AND RECOMMENDATIONS

4.1 Committee Findings

Having considered the submissions of the County Governor and the County Assembly on the Budget Estimates for the FY 2020/2021, and upon considering the technical advice rendered by the Controller of Budget, the Committee, together with the Senator, Kirinyaga County, made the following observations:

1. As a preliminary issue, the Committee considered whether it had jurisdiction to mediate over the matter. Article 96(1) of the Constitution of Kenya proved instructive in this consideration, providing as follows:

“The Senate represents the counties and serves to protect the interests of the Counties and their governments.”

This provision gives the Senate impetus to protect the interests of the Counties by all means necessary, and in this particular case, by playing a mediatory role in order to protect the interests Kirinyaga County.

Article 125 of the Constitution further vests quasi-judicial powers upon the Committee by giving either Houses of Parliament or any of its committees the power to summon persons, receive documents, and examine or cross-examine witnesses. This mandate, in and of itself, may be interpreted as enabling this Committee to conduct a Mediatorial role over arising issues in inter-county arms of government. The Committee therefore has the jurisdiction to mediate over the matter.

2. In addition to the Committee's considerations on its jurisdiction, to help resolve the impasse, the Committee observed that this issue was a subject matter before the High court in Nairobi, and in Kerugoya. In light of this, the Committee questioned whether they should mediate or await the Court's Judgment, as the Committee could not ignore the *sub judice* principle as provided in the Senate Standing Order No. 98.

Recommendation of the Committee

The Committee carefully considered this issue and noted that its mediatory role in resolving the impasse would not prejudice its fair determination in Court, and therefore would not be contrary to Senate Standing Order No. 98(2).

Furthermore, the Committee noted that Standing Order No. 98(5) gives the Chairperson of the Committee, through the Speaker, discretion to decide whether the Committee can deliberate on or make reference to the impasse. Consequently, **the Committee asserted that it has the discretion to mediate between the County Executive and County Assembly of Kirinyaga County.**

3. The Committee thereafter observed that both parties did not act in good faith towards each other, as they made it difficult to consider the Budgetary Estimates for the County, and this proved detrimental to the people of Kirinyaga County, who they ultimately serve.

Recommendation of the Committee

On this issue, the Committee therefore recommended that even as they try to help the County Executive and County Assembly of Kirinyaga County overcome the Impasse, both arms of Government should try to work in unison to advance the interests of the People of Kirinyaga County.

4. That from the submissions given, the Committee noted that fiscal responsibility was not observed by both the County Executive and the County Assembly in the drawing up the Budget Estimates for FY 2020/2021.

Recommendation of the Committee

On this issue, the Committee recommended that the Office of the Controller of Budget draw up a check list to ensure certain parameters are put in place as guidelines on observance of fiscal responsibility. This Checklist would act as guideline that would avoid such stalemates, and would be applicable to all County Governments for avoidance of any future Impasse.

The Committee also recommended that both the County Assembly and County Executive refer to the PFM (County Government) regulations 2015, which offer solutions to the variations given, so as to remedy arising issues such as the variations to the wage bill.

Based on this, the County Executive could formulate a Compliance plan that should be presented to the County Assembly.

5. That Timelines prescribed by law in the Budget making process were not observed, and this was yet again a Compliance Issue.

Recommendation of the Committee

The solution offered by the committee would be again for both the County Executive and County Assembly to institute a comprehensive Compliance plan when it comes to drawing of Budgetary Estimates that would be in conformity with the PFM Act, and the PFM (County Government) Regulations.

6. That the County Assembly seems to struggle with the provision requiring it to not exceed 1 per cent of the Vote's Ceilings when approving any changes in the annual estimates of budget under section 131 of the Act that would lead to an increase or reduction in expenditure of a Vote.

Recommendation of the Committee

The Committee recalled that the Senate had previously considered adjusting Budget Variations from the 1 per cent ceiling to 10 per cent. The Committee therefore recommended that they would propose the Senate liaising with the County Assemblies Forum, so as to review the adequacy and appropriateness of the limit in place.

7. The Committee also observed that the Court orders issued to the County Governor staying any action taken in passing the Bill from being enacted were irregular. In its considerations, the Committee noted that the Court may only interfere with any Parliamentary process (including legislative processes such as enactment of a Bill) once it is *functus officio*. Thereafter, should anyone challenge the process once concluded, the Court may interrogate and prosecute the manner in which it was concluded.

In support of this assertion, the Committee noted that this view is supported by the constitutionally entrenched doctrine of Separation of powers and carefully considered the following Authorities:

- a) The South African case, ***State v. Makwanyane & Another (CCT3/94) (1995) ZACC3 [para.262 – per Mahomed, J.]*** which held as follows: “*The Court cannot supervise the workings of Parliament. The institutional comity between the three arms of government must not be endangered by the unwarranted intrusions into the workings of one arm by another.*”

- b) Under the doctrine of separation of powers & the principles enunciated by the **Court of Appeal in Civil Appeal No. 157 of 2009 John Harun Mwau vs Dr. Andrew Mullei & Others & restated by the Supreme Court of Kenya in Justus Kariuki Mate & another v Martin Nyaga Wambora & another [2017] eKLR**, it was held that the courts ought to refrain from judicial interference in parliamentary proceedings. The Court of Appeal stated as follows:

"In our analysis and with the foregoing provisions in mind, one of the primary functions of Parliament is to debate and pass resolutions freely on subjects of its own choosing. This is one of the cornerstones for parliamentary democracy. The performance of this function is secured by the members of Parliament each having the right to say what they will (freedom of speech) and discuss what they will (freedom of debate). These freedoms, the single most important parliamentary privilege are the cornerstone to Sections 4 and 12 of the National Assembly (powers and Privileges) Act, Chapter 6 of the Laws of Kenya. The privilege embodies the concept of parliamentary immunity. In practical terms, the freedom of speech and debates in Parliament ought not to be impeached or questioned in any court or place out of Parliament. Tied to this concept is the doctrine of parliamentary sovereignty and separation of powers which means that the law does not allow judicial review of parliamentary proceedings except in few cases where parliamentary legislation is contrary to the Constitution and rule of law.

As a general principle, a person wronged by parliamentary proceedings cannot apply for judicial review except where an Act of Parliament is unconstitutional. Consequently, statements made in Parliament may not be used to support a cause of action arising out of proceedings in Parliament. (See *Prebble vs Television New Zealand* (1995) 1 AC 321. The privilege and immunity conferred to parliamentary proceedings is wide and absolute – it is not excluded by the presence of malice or fraudulent purpose. In the Kenyan context, all proceedings in parliament are covered by parliamentary privilege and the absolute immunity. Proceedings in Parliament include ‘everything done by a member in the exercise of his functions as a member in a committee of either House, as well as everything said or done in either House in the transaction of parliamentary business.’ (See *First Report from the Select Committee on the Official Secrets Acts HC (1937-38) 173; Report from the Select Committee on the Official Secrets Act HC (1938-39) 101*)”

- c) More recently, ***the Supreme Court of Kenya in Justus Kariuki Mate & another v Martin Nyaga Wambora & another [2017] eKLR*** made the following resounding statement of principles with regard to the doctrine of separation of powers and the extent to which courts can interfere with parliamentary processes that are still underway:

“From the course of reasoning emerging from such cases, it is possible to formulate certain principles, as follows:

- *each arm of Government has an obligation to recognize the independence of other arms of Government;*
- *each arm of Government is under duty to refrain from directing another Organ on how to exercise its mandate;*
- *the Courts of law are the proper judge of compliance with constitutional edict, for all public agencies; but this is attended with the duty of objectivity and specificity, in the exercise of judgment;*
- *for the due functioning of constitutional governance, the Courts be guided by restraint, limiting themselves to intervention in requisite instances, upon appreciating the prevailing circumstances, and the objective needs and public interests attending each case; and*
- *in the performance of the respective functions, every arm of Government is subject to the law.”*

The import of these provisions is that the Court should not have interfered with the processes of the County Assembly, which is also a Legislative Arm of Government.

The Question that then arises is as follows: what happens if the Court orders that were issued staying the passage of the Kirinyaga County Appropriation Bill 2020 are irregular? Is the bill automatically enacted after the lapse of 14 days of the assent and publication stage, or does the County Government pass the Bill afresh?

In-depth contemplation of these questions led the Committee to Regulation 36 of the Public Finance Management (County Governments) Regulations, 2015 on vote on account which states as follows:

“ (a) where the County Appropriation Act is not assented to or is not likely to be assented to before the first working day of the financial year, the Speaker to the County Assembly, with approval of County Assembly, shall communicate to the County Executive Committee Member grant of authority to withdraw from the County Revenue Fund of monies of an amount not exceeding one-half of the amount included in the estimates in accordance with section 134 of the Act;

(b) moneys withdrawn under paragraph (a) shall be for the purpose of meeting expenditure on the county government's programmes and activities in respect of the financial year—

- i) up to fifty (50%) percent of the estimates of budget for the financial year submitted to the County Assembly;*
- or*
- ii) until such a time the Appropriation Act is assented to, whichever is earlier.”*

Recommendation Offered:

It is the Committee's considered view that the Bill shall automatically come into force by operation of law due to the effluxion of time (which shall occur on Friday 24th July, 2020).

In the event that the County Executive decided to challenge the Constitutionality of the Act, which would result in further delay, then the Vote-on Account as provided for in Section 134 of the PFM Act and regulation 36 of the PFM (County Governments) Regulations 2015 kicks in to ensure continuity of operations within the County at usage of 50 per cent of the County Allocations, while the matter undergoes due process in Court. This would offer some form of reprieve to the People of Kirinyaga County, as a short term solution, while allowing the County Assembly and County Executive to iron out their issues.

4.2. Conclusion of the Matter:

The County Executive and County Assembly of Kirinyaga opted to have their matter concluded in a process outside of the purview of the Senate. However, this Committee decided to report on this matter for posterity reasons, and so as to have a process on record, in the event that yet another County faces such challenges.

From the foregoing, the Committee on Devolution and Intergovernmental Relations therefore advises as follows:

- 1. That the Senate ensures that there is a proper Compliance List drawn up, in conformity with the provisions of the relevant laws and in collaboration with the Office of the Controller of Budget, that may be used by all County Executives and County Governments in the passage of their Budgetary Estimates, to ensure parties operate within the ambit of the Law;*
- 2. That the Senate should, through the various intergovernmental forums, discourage inter-county arms of government from suing each other due to its effect of making the working relationship strenuous, and the unnecessary legal fees incurred, which would*

be better spent paying workers and improving facilities within the counties ; and

- 3. That there is an apparent need for the Senate and the County Assemblies Forum to deliberate on increasing the Departmental Vote Ceilings from 1% to a higher percentage; and*
- 4. That the Senate should better present itself as a Mediator for issues pertaining to inter-county disputes, as the Protector and Overseer of Devolution.*

LIST OF ANNEXES

- Annex 1:** Confirmed Minutes of Deliberations on the Matter.
-
- Annex 2:** Copy of the Request for Intervention by the Governor, Kirinyaga County.
- Annex 3:** Copies of Submissions by the County Assembly, Kirinyaga County.
- Annex 4:** Copy of Submissions by the Controller of Budget.
- Annex 5:** Copy of the Court Order in Petition No E217 of 2020: County Government of Kirinyaga Vs The Speaker of the County Assembly of Kirinyaga and the Controller of Budget and National Treasury.

Annex 1



TWELFTH PARLIAMENT | FOURTH SESSION

MINUTES OF THE EIGHTEENTH SITTING OF THE SENATE STANDING COMMITTEE ON DEVOLUTION AND INTER-GOVERNMENTAL RELATIONS HELD ONLINE ON THE ZOOM MEETING PLATFORM ON WEDNESDAY 15TH JULY, 2020, AT 10.00 A.M.

PRESENT

- | | |
|-----------------------------|--------------------------|
| 1. Sen. Moses Kajwang', MP | - Chairperson (Chairing) |
| 2. Sen. Anuar Loitiptip, MP | - Vice Chairperson |
| 3. Sen. Rose Nyamunga, MP | - Member |
| 4. Sen. Boniface Kabaka, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|-------------------------------------|----------|
| 1. Sen. Kipchumba Murkomen, EGH, MP | - Member |
| 2. Sen. Isaac Mwaura, CBS, MP | - Member |
| 3. Sen. Aaron Cheruiyot, MP | - Member |
| 4. Sen. Cleophas Malala, MP | - Member |
| 5. Sen. Victor Prengei, MP | - Member |

SECRETARIAT

- | | |
|-----------------------|------------------------------------|
| 1. Mr. Crispus Njogu | - Clerk Assistant |
| 2. Ms. Sylvia Adera | - Clerk Assistant (Taking Minutes) |
| 3. Mr. Jeremy Chabari | - Legal Counsel |

DEV-IR. MIN. NO. 100/2020 PRAYER

The sitting commenced with a word of prayer by the Vice Chairperson.

DEV-IR. MIN. NO. 101/2020 ADOPTION OF THE AGENDA

The Committee adopted the agenda of the Sitting, having been proposed by Sen. Anuar Loitiptip, MP and seconded by Sen. Boniface Kabaka, MP.

DEV-IR MIN. NO. 102/2020 MINUTES OF THE PREVIOUS MEETING

The Committee opted not to go over the previous minutes and proceeded to consider the work plan.

DEV-IR. MIN. NO.103 /2020 WORKPLAN

The Committee considered and adopted its work plan for the period of 22nd July, 2020 to 26th August, 2020.

From the foregoing, Members made the following resolutions:

- (a) That with respect to the judgement on NMS (*ELRC Petition No. 52 of 2020: Okiya Omtatah Vs NMS, PSC, The Hon. AG and Others*), Legal Counsel and Litigation department shall be given more time to digest the matter, and prepare a comprehensive brief, to be presented before the Committee at its next meeting. Legal Counsel was also instructed to share a copy of the judgment with the Committee Members as soon as possible.;
- (b) That the Secretariat should confirm the status of the Council of Governors' leadership, and ensure they are not due for leadership transfer any time soon, so as to avoid arranging a meeting with outgoing leadership.
- (c) That the Secretariat should confirm whether the Council of Governors and the Legislative summit have submitted their Annual End of Financial Year and Audit reports with the Senate, as they are obligated to do so statutorily. Members emphasized that the Committee should be in direct contact with the Council of Governors Secretariat so as to enhance synergies with them and emphasize the mandate of the Committee. If the reports had not been submitted, Secretariat was instructed to draft correspondences on the same.
- (d) That the Secretariat shall arrange for a collaboration between the Roads Committee and Dev-IR on mapping a way forward on overseeing the Conditional Grants received through the Kenya Urban Support Programme, and further prepare a matrix capturing input from stakeholders on public participation of all Bills; and
- (e) That the Secretariat should organize a county visit to Kiambu (and all other counties that have undergone the impeachment process recently) in order to ensure compliance with the Senate resolutions on the impeachment of the Governors through their implementation. The Chair noted that Members should be ready for many County visits as this forms part of the Committee's mandate.

DEV-IR. MIN. NO. 104/2020 REVIEW OF THE PENDING STATEMENTS REQUESTED FROM THE COMMITTEE

The Committee considered the two pending statements which are:

1. Statement on fires from Sen. Abshiro - Members were informed that correspondences had been written to the relevant Counties on management of emergencies and responses to fires, and as such Members resolved as follows:

- (a) that the correspondences should be dispatched as soon as possible; and
- (b) that the Committee shall give the Counties 14 days to respond. Secretariat to follow up.

2. Statement from Sen. Ochillo Ayacko on starting of townships and municipalities- Members were informed that the Correspondences to the County were done and dispatched. They were also informed that the 14 days given to allow the Counties to respond had since lapsed. As such, Members resolved:

- (a) that the Secretariat should prepare a reminder to the county government; and
- (b) should they not respond despite the reminder, the Committee should summon them.

DEV-IR. MIN. NO. 105/2020 REVIEW OF THE REPORT ON NAKURU MUNICIPALITY'S REQUEST FOR CONFERMENT OF CITY STATUS

The Committee noted that the report was vast and therefore resolved as follows:

- (a) that the committee shall have a meeting in which the only agenda shall be consideration of the report. The Committee slated the meeting for **Wednesday 21st July, 2020** at 10.00am; and
- (b) that the Secretariat shall invite the Senator, Nakuru County and all other Senators that may have an interest in the matter, to give their views on the conferment.

DEV-IR. MIN. NO.106 /2020 ANY OTHER BUSINESS

1. The Committee proposed that the Secretariat schedule a meeting with the Governor of Nairobi County, and the Cabinet Secretary, Devolution on **Wednesday 29th July, 2020**, once the Members have had a chance to extensively discuss and digest the court judgment on Okiya and NMS, as this shall inform the agenda of the meeting.
2. The Committee noted that Governor, Kirinyaga County, Hon. Anne Waiguru, wrote to the Senate requesting for this Committee and the Committee of Finance and Budget to resolve an impasse that had risen on the submitted Budgetary estimates for the Financial Year 2020/2021. It was further noted that the Governor thereafter wrote to the Senate withdrawing her request. Members deliberated on this and noted that even though the Governor decided to withdraw her request for intervention, the Senate still had the discretion to look into the matter *suo motu* and initiate an investigative process. Just because the Governor withdrew does not mean the issues raised have disappeared. From the foregoing, Members resolved to acknowledge receipt of the Governor Kirinyaga County's correspondences, and request for details on what has been done to resolve the impasse and enhance amicability in coming up with the County Budget for Financial Year 2020/2021. Should the Governor's response prove unsatisfactory, the Committee shall decide on whether to take up the matter or not.
3. Lastly, it was noted that Senator of Nyamira County had asked the Committee to consider the request by Nyamira County to be considered as a recipient of additional funds to facilitate building of their official County headquarters. Members resolved that the report on this issue shall be considered and the Senator shall be invited to give his views on the same.

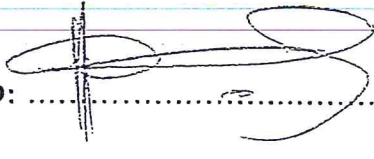
DEV-IR. MIN. NO.107 /2020 DATE OF NEXT MEETING

The next meeting will be held on **Tuesday 20th July, 2020 at 11.30 am.**

DEV-IR. MIN. NO.108 /2020 ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at Fifteen Minutes past Eleven O'clock.

SIGNED:

 Moses Okoro Kanyang
(CHAIRPERSON)

DATE:

06 October 2020



TWELFTH PARLIAMENT | FOURTH SESSION

MINUTES OF THE NINETEENTH SITTING OF THE SENATE STANDING COMMITTEE ON DEVOLUTION AND INTER-GOVERNMENTAL RELATIONS HELD ONLINE ON THE ZOOM MEETING PLATFORM ON TUESDAY 21ST JULY, 2020, AT 9.00 A.M.

PRESENT

- | | |
|-------------------------------------|-----------------------------------|
| 1. Sen. Moses Kajwang', MP | - Chairperson (Chairing) |
| 2. Sen. Kipchumba Murkomen, EGH, MP | - Member |
| 3. Sen. Isaac Mwaura, CBS, MP | - Member |
| 4. Sen. Aaron Cheruiyot, MP | - Member |
| 5. Sen. Cleophas Malala, MP | - Member |
| 6. Sen. Rose Nyamunga, MP | - Member |
| 7. Sen. Boniface Kabaka, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|-----------------------------|--------------------|
| 1. Sen. Anuar Loitiptip, MP | - Vice Chairperson |
| 2. Sen. Victor Prengei, MP | - Member |

IN ATTENDANCE:

1. Sen. Charles Reubenson Kibiru- Senator Kirinyaga County and Chairperson Finance and Budget Senate Standing Committee
2. Governor Anne Waiguru
3. Dr. Margaret Nyakango - Controller of Budget.
4. Mr. Moses Maina - CEC Finance and Economic planning, Kirinyaga County
5. Ms. Sellah Bogonko - Chief of Staff, Kirinyaga County
6. Mr. Lawrence Muchira - Director of Budget Kirinyaga County

SECRETARIAT

- | | |
|---------------------------------|---|
| 1. Mr. Crispus Njogu | - Clerk Assistant |
| 2. Ms. Sylvia Adera | - Clerk Assistant (Taking Minutes) |
| 3. Mr. Jeremy Chabari | - Legal Counsel |
| 4. Mr. Washington Otiato Andayi | - Media Relations Officer |

DEV-IR. MIN. NO. 109/2020 PRAYER

The sitting commenced with a word of prayer by the Chairperson.

DEV-IR. MIN. NO. 110/2020 ADOPTION OF THE AGENDA

The Committee adopted the agenda of the Sitting, having been proposed by Sen. Rose Nyamunga MP and seconded by Sen. Kipchumba Murkomen, EGH, MP.

DEV-IR. MIN. NO. 111/2020 INTRODUCTIONS

The Chair led all in attendance through a round of introductions. It was noted that members of the County Assembly were not in attendance and had written to the Clerk of the Senate making the following requests:

- a) that the meeting be rescheduled to 27th July, 2020,
- b) that parties to the impasse and the Committee have a physical rather than virtual meeting; and
- c) that they be allowed to invite more members who are relevant to the situation to attend the meeting.

There was therefore non-attendance from the County Assembly.

The Committee reflected on the request from the County Assembly, noting that there are strict timelines prescribed by law on the Budgetary process (Section 24 of the County Government's Act). It also took into account the Governor's views on the request which were that the Committee commence deliberations and if need arises, a follow up meeting should be held on Thursday, so that the Senate can help them conclude the matter amicably.

As such, the Committee resolved as follows:

- a) It is critical for both parties to be present in order to help them overcome the impasse, and therefore both parties must be given a hearing by the Committee. However, due to time constraints, the meetings must occur within the week;
- b) That it would listen to the Governor's submissions today, listen to the County Assembly tomorrow (Wednesday 22nd July 2020) and conclude the matter on Thursday 23rd July, 2020; and
- c) That the Committee shall mediate the matter impartially but still urge the County Executive and Assembly to find a way of working together.

DEV-IR MIN. NO. 112/2020 MEETING ON THE IMPASSE ON THE BUDGET ESTIMATES FOR FY 2020/2021 OF THE COUNTY OF KIRINYAGA

The Governor of Kirinyaga county gave her submissions as follows:

1. Governor of Kirinyaga

She began by stating that the Budget estimates drawn by the County Assembly was done in bad faith and with the intention of grounding County Government operations. She noted that the issues arise from questions of law and furthermore there are also political undertones.

She then took the Committee through the chronology of events, with specific dates and the processes that were undertaken in coming up with the Budget estimates for FY 2020/2021.

The Governor then submitted her concerns before the Committee as follows:

- a) The changes made in the budget included variations of departmental ceilings that are contrary to the law, which stipulates that these variations should not exceed 1% of the ceiling.
- b) She noted that Salaries had been reduced by approximately Four Hundred Million and she stated that this is not permissible in law. The slash in salaries especially with Health Workers will completely ground the Health Care Service of the County. Furthermore, Wages of Casual workers were reduced, and she recalled that during the last Financial Year this occurred, resulting in Casual workers not being paid for three months. This is a serious issue as they keep the hospitals clean and make them sanitary for use by County residents.
- c) On Conditional Grants, the Governor noted that these are not discretionary and therefore money that has been allocated for a specific use cannot be reallocated for another function, which is what the County Assembly has done.
- d) She also highlighted issues of statutory payments: she noted that there was a backlog from 2017 owed to KRA by Kirinyaga County. Instead of honoring their payment to KRA, and the money allocated to pending bills, the County Assembly decided that these debts were not crucial and reallocated these funds to their development fund.
- e) Another issue with the proposed Budget estimates by the County Assembly is the reallocation of funds that were to be given to Electoral Wards, which is contrary to the provisions of Article 201 of the Constitution.
- f) The Roll over amount of 790 million from the last financial year was suspiciously changed to Four Hundred Million.
- g) The County Assembly also significantly slashed the budget of the County Governor and reallocated the funds to Deputy Governor.
- h) The County Assembly expenditure should not exceed an amount prescribed by law, and yet they have moved funds from the County Executive Vote and reallocated them to the County Assembly Vote, which is contrary to the law.

The Governor noted that the County Assembly has taken money from salaries and reallocated to building the County Headquarters, which in her view is not a priority right now, as they have not finished building hospitals in light of the pandemic, and there is an urgent need to ensure salaries are paid.

She further noted that the Bill the County Assembly seeks to enact is contrary to the PFM Act, which is not permissible in law, and therefore necessitated their rush to court, which issued an injunction staying the enactment of the Bill. If she had not taken this step, and the County Executive would have been bound by the enacted law and therefore be forced to implement an illegal Budget.

She concluded by calling upon the Senate to look into the matter objectively, and hoped that the Senate would observe the rule of Law and resolve the issues as the situation is untenable. She also affirmed that the only new information she had submitted regarding this impasse is the chronology of events, together with annexures.

2. Controller of Budget

She began describing their role, which is to analyze budgetary estimates in line with the County Strategic Plan in order to establish the County Departmental Ceilings, and thereafter ensure that these are in line with the PFM Act.

She highlighted the following issues:

- a) That the Development Allocations were contrary to Section 107 of the PFM Act. She stated that her office did communicate this anomaly to the County Assembly, which in turn attempted to cure this issue, by preparing a different budget that did not come from the CEC Finance of Kirinyaga County and had allocations contrary to the law.
- b) That there were a lot of variations within the irregular budget that were contrary to Section 37(1) of the PFM Act, which specifically states that the variations shall not exceed 1%.
- c) That the most affected allocations are Personnel Salaries which resulted in a steep reduction that went outside the parameters given in law.
- d) She concurred that the allocations on the Conditional Grants were changed and had an overall negative effect on other allocations;
- e) She concurred with the Governor on there being allocations removed from Pending Bills and Statutory payments.
- f) She did note that County Assembly expenditures had been increased.
- g) Finally, she pointed out to the Committee that the Appropriation Bill was prepared without consultation with the County Executive and the relevant CEC, which is an illegality as the law requires them to prepare the Budget jointly.

She noted with concern that a Vote-on account cannot be triggered without an Appropriation Bill, as per Section 134 of the PFM Act, and such account must be passed by the County Assembly.

The Committee deliberated on the submissions given and made the following observations:

- a) that the vote-on account is a solution worth considering: however this can only be deliberated on if both parties are on board to come up with a solution and to come with clean hands and an open mind;
- b) the Governor is appreciated for attempting to have the impasse resolved by seeking the Senate to intervene and mediate over the issues raised, and that ultimately the law must be followed;
- c) that despite the obvious acrimony between both parties, the County Executive and County Assembly must come to the table in order to overcome their differences and pass the Budget Estimates for FY 2020/2021;
- d) that though there is an ongoing court matter on this impasse, a political issue requires a political solution and mediation by the Senate would best apply

The Committee therefore resolved as follows:

- a) that it is of paramount importance that the views and submissions of the County Assembly also be heard by the Committee;
- b) that the Controller of Budget should also be present for the hearing of the County Assembly's submissions and further contemplate the implications of Section 134 of the PFM with the regulations that arise from it; and

- c) that the Secretariat should promptly invite the County Assembly for an urgent meeting tomorrow, in order to observe the timelines prescribed by law on passing Budget Estimates for the next Financial Year.

DEV-IR. MIN. NO. 113/2020 ANY OTHER BUSINESS

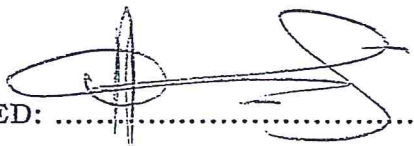
The Committee noted that they should extend their role beyond mediating this impasse and go behind the scenes and reach out to the County Assembly Speaker and Members to ensure they come to the mediation table with the right mind-set in order to resolve the impasse. Much as the Governor is on the right side of the law, the budget cannot be passed without the approval of the County Assembly. For the good of the people of Kirinyaga County, all parties should agree.

DEV-IR. MIN. NO. 114/2020 DATE OF NEXT MEETING

The next meeting will be held on Wednesday 22nd July, 2020 at 11.00 am.

DEV-IR. MIN. NO. 115/2020 ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at 11.20am.

SIGNED:  Moses Okemo Kojwang
(CHAIRPERSON)

DATE: 06 October 2020



TWELFTH PARLIAMENT | FOURTH SESSION

MINUTES OF THE TWENTIETH SITTING OF THE SENATE STANDING COMMITTEE ON DEVOLUTION AND INTER-GOVERNMENTAL RELATIONS HELD ONLINE ON THE ZOOM MEETING PLATFORM ON WEDNESDAY 22ND JULY, 2020, AT 11.00 A.M.

PRESENT

- | | |
|-------------------------------------|--------------------------|
| 1. Sen. Moses Kajwang, MP | - Chairperson (Chairing) |
| 2. Sen. Anuar Loitip, MP | - Vice Chairperson |
| 3. Sen. Kipchumba Murkomen, EGH, MP | - Member |
| 4. Sen. Isaac Mwaura, CBS, MP | - Member |
| 5. Sen. Cleophas Malala, MP | - Member |
| 6. Sen. Rose Nyamunga, MP | - Member |
| 7. Sen. Victor Prengei, MP | - Member |
| 8. Sen. Boniface Kabaka, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|-----------------------------|----------|
| 1. Sen. Aaron Cheruiyot, MP | - Member |
|-----------------------------|----------|

IN ATTENDANCE:

1. Sen. Charles Reubenson Kiburu- Senator Kirinyaga County and Chairperson Finance and Budget Senate Standing Committee
2. Dr. Margaret Nyakang'o - Controller of Budget.
3. Hon. Anthony Gathombi - Speaker Kirinyaga County Assembly
4. Deputy Speaker, Kirinyaga County Assembly
5. Mr. Kamau Aidi - Clerk, Kirinyaga County Assembly
6. Hon. James Murango - Leader of Majority, Kirinyaga County Assembly
7. Hon. David Munyi Mathenge -Chairperson, County Budget and Appropriations Committee
8. Hon. David Kinyua Wangui- MCA representing Kirinyaga Central
9. Hon. Joel Wagura - MCA representing Ndia
10. Hon. John Baptist Kanga - MCA representing Mwea West
11. Hon. Gudson Muchina- MCA representing Mwea East
12. Mr. Moses Maina - CEC Finance and Economic planning, Kirinyaga County
13. Ms. Sellah Bogonko - Chief of Staff, Kirinyaga County
14. Mr. Lawrence Muchira - Director of Budget Kirinyaga County

SECRETARIAT

- | | |
|----------------------|-------------------|
| 1. Mr. Crispus Njogu | - Clerk Assistant |
|----------------------|-------------------|

- | | |
|---------------------------------|------------------------------------|
| 2. Ms. Sylvia Adera | - Clerk Assistant (Taking Minutes) |
| 3. Mr. Jeremy Chabari | - Legal Counsel |
| 4. Mr. Washington Otiato Andayi | - Media Relations Officer |

DEV-IR. MIN. NO. 116/2020 PRAYER

The sitting commenced with a word of prayer by Sen. Rose Nyamunga, MP.

DEV-IR. MIN. NO. 117/2020 ADOPTION OF THE AGENDA

The Committee adopted the agenda of the Sitting, having been proposed by Sen. Boniface Kabaka MP and seconded by Sen. Kipchumba Murkomen, EGH, MP.

DEV-IR. MIN. NO. 118 /2020 INTRODUCTIONS

The Chair led all in attendance through a round of introductions.

He then took the County Assembly members through the genesis of this sitting and went over their request to reschedule. He informed them that the Committee resolved to meet with the Governor yesterday and hear their submissions today. He was grateful for their availability and willingness to resolve the matter at such short notice. He mentioned the criticality of meeting the timelines of the process.

He assured the Members that they did not make any resolutions on the impasse yesterday. He noted that the Committee cannot make any decision or resolutions without hearing both parties. He affirmed that they cannot take the side of the Executive or the Assembly without hearing all parties fully and taking into account the technical and legal advice of the Controller of Budget. He assured the Members of the County Assembly that they shall be objective in fulfilling their mandate, that they are not going to assign blame or define culpability, but the Committee's mandate is to ensure that continuity of County Government operations and longterm to make relevant amendments to the relevant law to ensure such an impasse does not arise.

Consequently, the Committee requested the MCAs to give the following information while giving their submissions:

- a) The Committee requested for a Chronology of events from their perspective;
- b) The Committee requested that the members respond to the issues raised by the Governor; and
- c) That the members attempt to provide a proposed solution or way forward.

DEV-IR MIN. NO. 119/2020 MEETING ON THE IMPASSE ON THE BUDGET ESTIMATES FOR FY 2020/2021 OF THE COUNTY OF KIRINYAGA

1. The Hon. Majority Leader of the County Assembly

He gave his introductory remarks and recognized the role of the Committee of as a Mediator. He further recognized that the County Assembly had a legislative mandate and was not subject to questioning on fulfilment of its legislative role.

He then gave a Chronological Account of the Budget making process. and stated that the Governor had started this process in bad faith and that she is Litigious.

He then suggested that the Governor should do the following:

- a) Withdraw all her (2) Petitions on the matter in High court;
- b) The Governor assents to and publishes the Appropriation Act;
- c) That negotiations of the Governor's concerns should be carried out within the parameters of the relevant laws.

2. Hon. Mathenge

He noted that the Budget circular was approved in February 2020, and the ADP was approved on 4th March 2020. The Fiscal Strategy Paper was approved in February 2020 with the necessary amendments. There was no dispute on the Cfsp as passed at that time, nor were there recommended amendments or changes. Approval of Cfsp was done jointly with the Executive and Assembly, and there are even correspondences to prove this position. Therefore there was no dispute between the County Executive and the County Assembly.

He noted that the Budget estimates tabled before the assembly had an issue, the hard copy sent in was different from the soft copy. However they were able to resolve this.

He proceeded to make his submissions in depth on the cfsp and showed that the Executive and the Assembly were working together on this, despite the allegations of the Governor.

He noted that the Vote-On account was not done because they thought the Governor would assent to the County Appropriations Bill. He stated that she is in total contempt of what the Assembly is doing

On the issue of Health workers, they were in receipt of a letter from the CEC of Health, clearly indicating that the Health care was saving 104 Million Shillings because of employing new employees under new cadres and job groups, whose salaries would be less as they would earn less.

3. Hon. Wangui

He stated that the Budget process should be a negotiated process and involve all parties. The Hansard can confirm that the County Executive was not involved at every step of the process, and the Budget that was presented to the County Assembly by the County Executive was illegal in every sense.

He refuted that the accusation of the Governor on Conditional Grants, and invited the Committee to come to the ground and see how things are actually being done.

4. Speaker County Assembly

He noted that the County Assembly had the prerogative to prepare their own budget, and they prepare their budget from the proposals from the various committees and members, and they adhere to the ceilings that have been set. They did public participation and to know which funds to prioritize. He noted that the County Executive wants to control the projects that the County Assembly should focus on which should not be the case.

it was noted by Hon. Mathenge that the Governor allocated the monies for the Assembly, as guided by the CARA Bill and noted that at the time the Governor, the County Executive and the County Assembly were in agreement.

5. Controller of Budget

She considered the submission of the County Assembly and made the following comments:

- a) She appreciated the County Assembly of Kirinyaga's assessment of the letter her office wrote to them on the 10th of June, 2020 and only received their response 10th of July which resulted in a delay in the cure being administered to the problems.
- b) There was delays in responses from the County Executive is true.
- c) She recommended that the County Executive officially submits the County Based Programmes to the County Assembly for approval.
- d) She noted that the Executive needs to work with the given timelines prescribed by law in the budget making process.

The Committee deliberated on the submissions given and made the following observations:

- a) that the Committee was carrying out a mediation exercise and in order for this to be successful, all parties involved have to come in good faith;
- b) that both parties have strong cases and as such, an equilibrium needs to be struck in order to ensure the impasse is resolved. Some members proposed that the Controller Budget come up with a technical need list that will guide the process and thereafter parties can go by the list to cede ground and come to an agreement - the Senate should not micromanage the situation;
- c) that the issues go deeper than the Budget and technicality and really goes to the heart of issues arising between the County Executive and County Assembly. The law cannot cure disagreements between parties; however the Committee needs to go to the heart of the issues before proceeding with mediation;
- d) that this is not the first instance where the County Assembly and County Executive have been at logger heads, and both parties should separate their differences from their official mandate: in this instance the Budget making process should not be delayed from their disagreements; Parties were asked whether they can put aside their difference and remain faithful to implementing the County Budget;
- e) Committee will only give an advisory in the areas that can help avert the situation and move forward.
- f) If there are areas of law that require legislative amendments that shall make the process smooth in future, then parties should let the Committee know so that they can ensure the issues are covered adequately: the Controller of Budget struggled to give a clear timeline on when budget making process should be clearly provided, hence the need to amend the provisions in the PFM Act.
- g) there is a general problem with the wage bill and quality of employees, especially within the health care sector, and so an audit needs to be done in order to rectify the situation.

The Majority Leader closed by reiterating that the Governor should meet their demands, which are as follows:

- a) that the Governor pass the budget as is;
- b) that thereafter a supplementary Budget can be drawn

On the rising wage bill, he noted that there are Directorships being duplicated and earning the same salaries, which indicate a problem with wage bill because the Governor cannot work with people she did not come in with.

They also note that their Governor is extremely litigious and is suing everything and everyone that is sueable.

The Chair Budget stated that they have a proper Budget in place, due process was indeed followed and on the wage bill, there is a correspondence confirming that the wage bill as it stands will save the County money in the millions. The Bill is already at the Vellum stage and all that is left is her assent.

It was also alleged that the CEC Finance has no power and the Governor is the person who does the Budget herself. That there Hansard recordings that prove this.

The Governor does not give documents that would assist in coming up with the Budget. There also very many pending projects that need to be finalized within the County. As the pending bills are being considered, let the pending projects also be considered.

The Majority leader (Murango) ended the meeting by stating that there needs to be talks between both the Executive and Assembly, because they have a stalemate to the level whereby the County Assembly cannot do their oversight role because when they summon CECs they cannot appear before they Assembly.

He also stated that the Governor needs to take the Assembly seriously and she needs to be more reasonable rather than dictatorial.

He finalized by stating that they are willing to sit with the Governor and agree on issues instead of constantly disagreeing. If she is acting in good faith, then she should completely withdraw the cases that

They will await their directions and be advised accordingly.

The Chair proceeded to thank the County Assembly for coming to the table with the intention of resolving the problems that have arisen. He noted that even though we have a duty to oversight the counties, the Committee is coming in as a mediator to guide both parties.

He observed that some parties in the Executive slept on the job. However he was glad that everyone agreed to come down from their perches to resolve the issues. He agreed with the parties that the ongoing petitions in court need to be resolved as they are a big part of having a rift between the parties.

He noted that both parties have been communicating via the media which is not constructive in the process. He noted the implication of section 24 of the County Government Act shall be deeply contemplated in resolving these issues.

He affirmed that both parties shall be asked to give their list of demands, and both parties can meet within a middle ground that would be beneficial to both parties, and therefore beneficial to the people of Kirinyaga County as a whole.

The Committee therefore resolved that the Parties shall be met tomorrow at 11am in order to see if mediation will work. (however the Senate shall have a special sitting to conclude on the revenue sharing formula). The Committee noted that after resolving

this impasse, that the Committee shall revisit the Committee to ensure the Senate Resolutions on the impeachment process shall be implemented.

The Committee suggested that a consent be filed in Court between the County Executive and the County Assembly

DEV-IR. MIN. NO.120 /2020 ANY OTHER BUSINESS

The Committee had in camera consultations and noted that the County Assembly was upset with the impression that the Senate was supporting the view of the Governor.

The Committee noted that there is a need to come up with draft resolutions before the meeting, and they noted that we need to take into account the provisions of the law to prescribe a process that shall bring peace between all parties and ensure the Budget process is concluded.

From the foregoing, the Committee resolved that the Secretariat come up with a draft framework that can be used by the Committee to guide the mediation process.

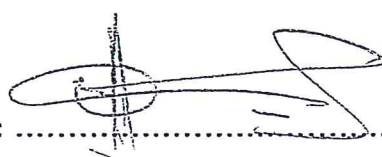
The Committee noted that they should extend their role beyond mediating this impasse and go behind the scenes and reach out to the County Assembly Speaker and Members to ensure they come to the mediation table with the right mind-set in order to resolve the impasse. Much as the Governor is on the right side of the law, the budget cannot be passed without the approval of the County Assembly. For the good of the people of Kirinyaga County, all parties should agree.

DEV-IR. MIN. NO.121 /2020 DATE OF NEXT MEETING

The next meeting will be held on Wednesday 22nd July, 2020 at 11.00 am.

DEV-IR. MIN. NO. 122 /2020 ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at 11.20am.

SIGNED:  Moses Okero Kojwang
(CHAIRPERSON)

DATE: 06 October 2020



TWELFTH PARLIAMENT | FOURTH SESSION

MINUTES OF THE TWENTY-FIFTH SITTING OF THE SENATE STANDING COMMITTEE ON DEVOLUTION AND INTER-GOVERNMENTAL RELATIONS HELD ONLINE ON THE ZOOM MEETING PLATFORM ON TUESDAY 8TH SEPTEMBER, 2020, AT 11.30 A.M.

PRESENT

- | | |
|-------------------------------|--------------------------|
| 1. Sen. Moses Kajwang', MP | - Chairperson (Chairing) |
| 2. Sen. Isaac Mwaura, CBS, MP | - Member |
| 3. Sen. Rose Nyamunga, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|-------------------------------------|--------------------|
| 1. Sen. Anuar Loitiptip, MP | - Vice Chairperson |
| 2. Sen. Kipchumba Murkomen, EGH, MP | - Member |
| 3. Sen. Aaron Cheruiyot, MP | - Member |
| 4. Sen. Cleophas Malalah, MP | - Member |
| 5. Sen. Victor Prengei, MP | - Member |
| 6. Sen. Boniface Kabaka, MP | - Member |

SECRETARIAT

- | | |
|--------------------------|------------------------------------|
| 1. Ms. Emmy Chepkwony | - Principal Clerk Assistant II |
| 2. Ms. Sylvia Adera | - Clerk Assistant (Taking Minutes) |
| 3. Mr. Jeremy Chabari | - Legal Counsel |
| 4. Ms. Farhiya Ali | - Serjeant- At- Arms |
| 5. Mr. Washington Otiato | - Media Relations Officer |

DEV-IR. MIN. NO.152 /2020 PRAYER

The sitting commenced with a word of prayer by Sen. Isaac Mwaura, MP.

DEV-IR. MIN. NO.153 /2020 ADOPTION OF THE AGENDA

The Committee adopted the agenda of the twenty-fourth sitting, having been proposed by Sen. Isaac Mwaura, MP and seconded by Sen. Rose Nyamunga, MP.

DEV-IR. MIN. NO. 154/2020 CONFIRMATION OF MINUTES

The Committee opted not to go through the minutes of the previous meeting

DEV-IR. MIN. NO. 155/2020 CONSIDERATION OF THE DRAFT REPORT ON THE
KIRINYAGA IMPASSE

The Committee considered the draft report and recommended the following:

1. That the County Governor, Kirinyaga and the County Assembly, Kirinyaga County be formally communicated with in order to establish the exact conclusion of the matter and if the issues were resolved.
2. That thereafter, the Committee may include these details in its report; and
3. That the Committee Consider using the provisions of Senate Standing Orders 43 and 44 to issue messages to the County Assembly and County Governor from the Speaker of the Senate.

DEV-IR. MIN. NO. 156/2020 ANY OTHER BUSINESS

Legal Counsel was reminded by the Committee to look into any amendments/or Bill on the Assumption of Office of the Governor Act, specifically on the office of the Deputy Governor.

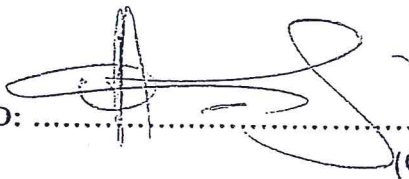
DEV-IR. MIN. NO. 157/2020 DATE OF NEXT MEETING

The next meeting will be held on Tuesday, 15th September, 2020 at 11.30am.

DEV-IR. MIN. NO. 158/2020 ADJOURNMENT

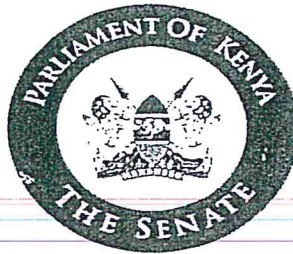
There being no other business, the Chairperson adjourned the meeting at 12.25 pm.

SIGNED:

 Moses Okoro Kijwang
(CHAIRPERSON)

DATE:

06 October 2020



TWELFTH PARLIAMENT | FOURTH SESSION

MINUTES OF THE THIRTY-FIRST SITTING OF THE SENATE STANDING COMMITTEE ON DEVOLUTION AND INTER-GOVERNMENTAL RELATIONS HELD AT THE WHITESANDS HOTEL, MOMBASA COUNTY ON SATURDAY 17TH OCTOBER, 2020, AT 9.00 A.M.

PRESENT

- | | |
|-------------------------------|-----------------------------------|
| 1. Sen. Moses Kajwang', MP | - Chairperson (Chairing) |
| 2. Sen. Isaac Mwaura, CBS, MP | - Member |
| 3. Sen. Cleophas Malala, MP | - Member |
| 4. Sen. Rose Nyamunga, MP | - Member |
| 5. Sen. Boniface Kabaka, MP | - Member |

ABSENT WITH APOLOGY

- | | |
|-------------------------------------|--------------------|
| 1. Sen. Anuar Loitip, MP | - Vice Chairperson |
| 2. Sen. Kipchumba Murkomen, EGH, MP | - Member |
| 3. Sen. Aaron Cheruiyot, MP | - Member |
| 4. Sen. Victor Prengei, MP | - Member |

SECRETARIAT

- | | |
|-----------------------|---|
| 1. Mr. Crispus Njogu | - Clerk Assistant |
| 2. Ms. Sylvia Adera | - Clerk Assistant (Taking Minutes) |
| 3. Mr. Jeremy Chabari | - Legal Counsel |
| 4. Mr. Phillip Kemboi | - Audio Officer |

DEV-IR. MIN. NO.194/2020 ADOPTION OF THE AGENDA

The Committee adopted the agenda of the twenty-ninth sitting, having been proposed by Sen. Cleophas Malala, MP and seconded by Sen. Boniface Kabaka, MP.

DEV-IR. MIN. NO.195/2020 CONSIDERATION OF THE REPORT ON THE IMPASSE ON BUDGETARY ALLOCATIONS FOR FINANCIAL YEAR 2020/2021 IN KIRINYAGA COUNTY

The Committee went through the Report with a great emphasis on the Committee findings and recommendations.

The Committee, in its considerations made the following observations:

From the onset, the Committee noted that the present membership did not undertake the physical exercise and considerations in the compilation of the report. The Committee, however, recognized that two of their current Members were part of the previous membership and sought their guidance as they considered the report.

In its considerations, the Committee made the following observations:

1. That the body of the report should be changed to adopt past tense narrative;
2. That in the fifth observation, the observation is not about changing the law but rather on compliance;
3. That in observation 6, the Senate should liaise with CAF and COG and this should be about reviewing the adequacy and appropriateness of the limit set;

The Committee resolved that with those few and minor editorial amendments, the report be hereby considered adopted and should be signed by all Members with a view to tabling the report once the House resumes in February, 2021.

DEV-IR. MIN. NO. 196/2020 ANY OTHER BUSINESS

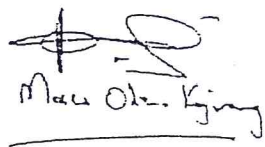
There was no AOB.

DEV-IR. MIN. NO.197/2020 DATE OF NEXT MEETING

The next meeting will be held on **Tuesday, 27th October, 2020 at 11.30am.**

DEV-IR. MIN. NO.198/2020 ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at 12.00 pm.



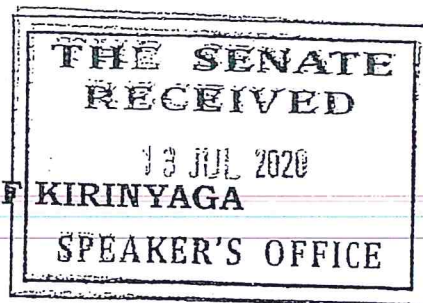
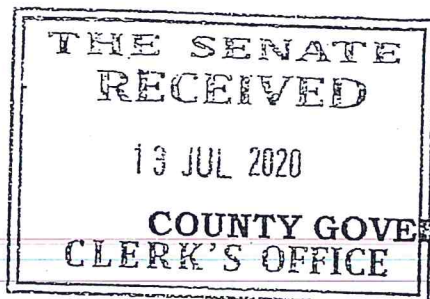
Ma Olu King

SIGNED:
(CHAIRPERSON)

10TH MARCH, 2021

DATE:

Annex 2



14 JUL 2020

OFFICE OF THE GOVERNOR

Telephone: +254 - 020-8010181

FAX: +254 - 020-2582237

Email: info@kirinyaga.go.ke

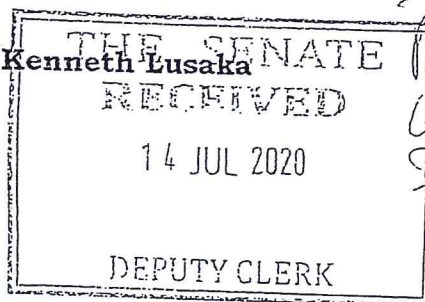
When replying please quote

County Headquarters,
P.O. Box 260 -10304
KUTUS

REF: CGK/GVN/FIN/SENATE/002/03

10th July, 2020

Hon. (SEN). Speaker **Kenneth Lusaka**
The Speaker- Senate
Parliament Buildings
NAIROBI



① Clerk.

Please forward to the
Committee of Devolution and
Inter Governmental Relations to
deal urgently. *[Signature]*
13/7/2020

Dear Speaker,

**REQUEST FOR SENATE INTERVENTION ON THE BUDGET ESTIMATES FOR
FY 2020/2021**

Article 96 (1) of the Constitution of Kenya assigns the Senate the role of representing the counties, and serving to protect the interests of the counties and their governments. Kirinyaga County is having an *Impasse* on the passage of the Budget Estimates for FY 2020/2021. This *impasse* is connected to the impeachment proceedings that were handled by the august house and whose particulars are detailed below:

Kirinyaga County Treasury submitted budget estimates for the year 2020/2021 to the County Assembly on the 30th April 2020 as laid out by section 129(2) (a) of PFMA, 2012. The county assembly proceeded to consider and approve the Budget Estimates in contravention of the following major provisions as outlined in the law:

DC (EG)

②

Please deal
14/07/20

Clerk Assistants
Devolution Committee

Finance Committee to note

Please deal

14/7/2020

③ Dlam

Kindly deal.

14/07/20

- i. **Variation of Departmental Vote Ceilings.** S. 37(1) of the Public Finance (County Governments) Regulations 2015 which limits the County Assembly variation of budget expenditure votes to 1% of the vote ceilings. The County Assembly altered the departmental vote ceilings as tabulated below:

| RECURRENT EXPENDITURE ANALYSIS OF APPROVED BUDGET ESTIMATES FOR FY 2020/2021 | | | | | |
|--|--|--|--|---|--------------------------|
| VOTE | DEPARTMENT | PROPOSED BUDGET 2020/2021FY (Column A) KSHS | APPROVED BUDGET FY2020/2021 (Column B) KSHS | VARIANCE BETWEEN APPROVED BUDGET & SUBMITTED BUDGET FY 2020/2021 (Column C) KSHS | PERCENTAGE VARIATION-C/A |
| 3961 | County Assembly | 569,393,333 | 569,393,333 | - | 0% |
| 3962 | County Executive | 458,990,441 | 333,680,850 | (125,309,591) | -27% |
| 3963 | Finance and Economic Planning | 527,613,951 | 400,294,539 | (127,319,412) | -24% |
| 3964 | Agriculture, Livestock and Fisheries | 215,103,939 | 182,003,939 | (33,100,000) | -15% |
| 3965 | Environment, Water and Natural Resources | 102,089,239 | 91,089,239 | (11,000,000) | -11% |
| 3966 | Education | 202,844,623 | 281,944,729 | 79,100,106 | 39% |
| 3967 | County Health Services | 2,001,934,097 | 1,677,282,757 | (324,651,340) | -16% |
| 3968 | Lands, Housing and Urban Development | 28,968,028 | 27,968,028 | (1,000,000) | -3% |
| 3969 | Transport and Infrastructure | 77,478,285 | 71,666,285 | (5,812,000) | -8% |
| 3970 | Trade, Co-operatives, Tourism Industrialization and Enterprise Development | 38,327,339 | 27,353,627 | (10,973,712) | -29% |
| 3971 | Gender and Youth | 38,168,210 | 35,752,210 | (2,416,000) | -6% |
| 3972 | Sports, Culture, Children and Social Services | 20,608,017 | 30,608,017 | 10,000,000 | 49% |
| | GRAND TOTAL | 4,281,519,502 | 3,729,037,553 | (552,481,949) | |

- ii. **Variation on staff salaries leading to significant job losses.** The County Assembly reduced salaries of staff across departments. Of particular note is the reduction of salaries for doctors and nurses in the health department. This will result in job losses of over 200 county staff and over 500 health care workers and a complete grounding of healthcare provision in the county.

Also, Personal emoluments are non-discretionary expenditure items and they constitute a first-charge item on the county revenues. The reduction on salaries is outlined below:

| TABLE SHOWING SALARIES REDUCTION IN APPROVED BUDGET ESTIMATES FOR FY 2020/2021 | | | | |
|---|--|----------------------|----------------------|----------------------|
| VOTE | DEPARTMENT | SUBMITTED BUDGET | APPROVED BUDGET | REDUCTION |
| 3961 | Office of the Governor(County Secretary, HR, Legal, Enforcement and ICT) | 283,366,284 | 253,366,284 | (30,000,000) |
| 3963 | Finance & economic planning | 241,288,593 | 213,306,298 | (27,982,295) |
| 3964 | Agriculture & livestock | 180,633,435 | 160,633,435 | (20,000,000) |
| 3965 | Environment, water & natural resources | 52,855,839 | 42,855,839 | (10,000,000) |
| 3967 | Health | 1,582,621,527 | 1,282,621,527 | (300,000,000) |
| 3969 | Transport & infrastructure | 58,068,285 | 57,068,285 | (1,000,000) |
| 3970 | Trade & co-operatives (KIDA) | 10,473,712 | - | (10,473,712) |
| | TOTAL | 2,409,307,675 | 2,009,851,668 | (399,456,007) |

- iii. **County Assembly reallocated the above salary cuts to the following expenditure items.** The above amount moved from the salaries has been allocated to expenditure that is not geared towards the county's efforts in battling the COVID-19 Pandemic. Specifically, the County Assembly has allocated itself Kshs. 631M to the following projects:

| COUNTY ASSEMBLY DEVELOPMENT BUDGET FOR FY 2020/2021 | | | | |
|---|--|-----------|-------------|--------------------|
| VOTE | DEPARTMENT | SUBMITTED | APPROVED | VARIANCE |
| 3961 | COUNTY ASSEMBLY | | | |
| A | NEW PROJECTS IN FY 2020/2021 | | | |
| 1 | County Assembly Headquarters Complex | - | 250,284,021 | 250,284,021 |
| 2 | MCA Ward Offices | - | 240,000,000 | 240,000,000 |
| 3 | Child Care Centre | - | 30,000,000 | 30,000,000 |
| | Total of New Projects | | | 520,284,021 |
| B | PROJECTS FROM FY 2019/2020 | | | |
| 1 | Construction of Administration offices(HQ) | | 13,060,717 | 13,060,717 |
| 2 | (1) Construction of Perimeter wall around the county Assembly Offices (2) Installation of Electrical fence (3) Installation of CCTV (4) Installation of Biometric System | | 25,700,000 | 25,700,000 |
| 3 | Construction of power house and Renovation of canteen | | 14,600,000 | 14,600,000 |
| 4 | Installations of Hansard and purchases | | 27,500,000 | 27,500,000 |
| 5 | Supply and installation Back-up Generator | | 20,000,000 | 20,000,000 |
| 6 | County Assembly -Development and refurbishments- Chambers | | 10,000,000 | 10,000,000 |
| | TOTAL OF DEVELOPMENT PROJECTS= (A+B) | | | 631,144,738 |



iii) **Conditional grants.** S. 138 (1) (b) (iii) of the Public Finance Management Act (PFMA), 2012 states that the grant recipient is required to act in accordance with any terms or conditions specified in a grant agreement. The County Assembly made changes to the following conditional grants.

- a) The County Assembly itemized Kshs. 126 Million being a conditional allocation financed by a grant from the Kenya Roads Board (KRB) for Roads Maintenance Fuel Levy (RMFL). This itemization is not in line with the Annual Work Plan (AWP) submitted to the Kenya Roads Board and thus contrary to S. 138 (1) (b) (iii) of the PFMA, 2012
- b) The County Assembly removed from the budget estimates Kshs. 146,608,512; the conditional allocation financed by a grant from the World Bank for the Kenya Devolution Support Program (KDSP). This removal is contrary to S.138 (5) of the PFMA, 2012 which requires grants and donations be appropriated before they are expended.
- c) The County Assembly removed Kshs 5.5 Million which is the county's contribution required to access the Agricultural Sector Development Support Programme (ASDSP II) grant. In addition; the Assembly removed Kshs. 6.5 Million which is the County Contribution required to Access the National Agricultural and Rural Inclusive Growth Project (NARIGP) credit. The Assembly removed Kshs 26 Million which is the County's matching contribution as a requirement to access conditional grant for development of youth polytechnics.

These removals are contrary to S. 138 (6) (a) which states that,

*"If a project that is being financed by a grant or donation from a development partner requires **county government funding**, (emphasis supplied) the project may only be started when the required funding has been appropriated in accordance with this Act or is otherwise authorised by legislation."*

iv) **Statutory Payments.**

The County Assembly removed **Kshs. 58 Million allocated for settlement of statutory payments to Kenya Revenue Authority (KRA)**. The implication of the removal of this amount is that KRA will place an agency notice on the County's Revenue Fund (CRF). In case of such an eventuality the county's operation will be grounded as the notice causes the suspension of all financial transactions on the account

The removal of **Kshs. 30 Million for payment of recurrent Pending Bills** means that pending bills for recurrent items will not be settled. This is against the presidential directive and further strict enforcement of the directive by the National Treasury. Previously, the National Treasury has been strict in enforcing the compliance with the presidential directive to the extent that it has been withholding exchequer releases for counties and our county being no exception

v) **Other contraventions of the PFMA, 2012**, The County Assembly in addition to the already cited contraventions went against these further stipulations of the PFMA, 2012

- a) Section 129(3) of PFMA, 2012 which states that "each County Assembly Clerk shall prepare and submit to the County Assembly the budget estimates for the county assembly and a copy shall be submitted to the County Executive Committee Member for Finance" the County Assembly did not submit the said budget as required by the Act.
- b) Section 129(4) of PFMA, 2012 which states that "The County Executive comments on the budget estimates presented by the county assembly clerk", this was not adhered as the County Assembly did not allow comments of the CEC member for Finance on the budget.
- c) Section 131(1) of PFMA, 2012 which states that "the County Assembly shall consider the County Government budget estimates with a view to approving them, with or without amendments, in time for the relevant appropriation law and any other laws required to implement the budget to be passed by the 30th June in each year". The County Assembly frustrated compliance to this section by approving the estimates on the 30th, June 2020.

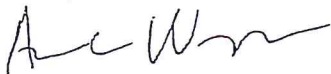


- d) Section 129(7) of PFMA, 2012 which states that "Upon approval of the budget estimates by the county assembly, the County Executive Committee member for finance shall prepare and submit a County Appropriation Bill to the County Assembly of the approved estimates" the County Assembly prepared the bill contrary to this provision and without consultation with the CEC Member for Finance.

I have since then forwarded to the speaker of the County Assembly of Kirinyaga a memorandum rejecting the approved budget estimates and further, I have written to the Controller of budget requesting that she exercise her authority under the PFMA, 2012 and the regulations to allow the County access funds for operations.

Considering that this *impasse* is unlikely to be resolved immediately, I am requesting you to urgently direct the Committees of Devolution and Intergovernmental Relations and that of Finance and Budget to assist in resolving this situation to allow Kirinyaga County to get back on delivering its mandate to its residents.

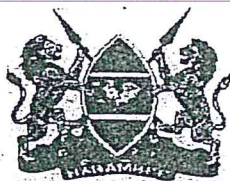
Yours,



H.E Anne Waiguru EGH, OGW
GOVERNOR

Annex 3

REPUBLIC OF KENYA



COUNTY ASSEMBLY OF KIRINYAGA

PRESENTATION TO THE SENATE COMMITTEE OF DEVOLUTION AND
INTERGOVERNMENTAL RELATIONS

Honourable Chairperson, Honourable Members of the Committee of Devolution and Intergovernmental Relations, Honourable Senators;

I would like to submit the following on behalf of the County Assembly of Kirinyaga;

1. THE COUNTY ASSEMBLY OF KIRINYAGA

The County Assembly of Kirinyaga is established by Article 176 (1) of the Constitution of Kenya. Article 185(1) of the Constitution vests the legislative authority of the county in the County Assembly. This constitutional provision further directs that the legislative authority of the County shall be exercised by the County Assembly.

The matter that this Committee has been invited to intervene, is a legislative matter that falls within the legislative authority of the County Assembly of Kirinyaga. In this regard, it is our humble view that it must be understood that no other institution or office can exercise the legislative authority vested in the County Assembly of Kirinyaga.

A handwritten signature in black ink, appearing to be 'J. K.', located at the bottom of the page.

2. THE SENATE

Honourable Senators,

In inviting the intervention of the Senate, the Governor of Kirinyaga County relied on Article 96(1) which assigns the Senate the role of representing the Counties, and serving to protect the interests of the Counties and their governments. Honourable Senators, the cited constitutional provision does not assign the Senate the role of directing or supervising the legislative authority of the County Assembly under Article 185 of the Constitution. Further, the same constitutional provision does not place an obligation on the County Assembly to defend or justify its legislative actions before the Senate.

In these premises, we can only interpret the role of the Senate in this matter as mediatory. In this regard, we also consider the purpose of today's meeting to be a mediatory meeting. We further, recognise the good offices of this Committee and the Senate and their ability to mediate in this matter.

3. THE CONDUCT GOVERNOR OF KIRINYAGA COUNTY

Honourable Senators,

It is important that this Committee and Honourable Senators understand the conduct and attitude of the Governor towards the legislative authority of the County Assembly.

This Governor operates under the belief that the role of the County Assembly is to approve whatever it receives from the county executive. That the County Assembly

should pass everything without consideration and necessary amendment. If the County Assembly was to operate in the manner aforesaid, not only would it be acting as a mere rubberstamp but it would also be failing to discharge its constitutional mandate.

Further, this Governor has on previous occasions refused to either assent or refer Bills back to the County Assembly as required by Section 24 of the County Governments Act. For instance, on the 4th March 2019, the Speaker of the County Assembly forwarded the Kirinyaga County Alcoholic Drinks Control (Amendment) Bill, 2019 to the Governor and on the 9th of July 2019 the Speaker forwarded to the Governor the Kirinyaga County Flags and Other Symbols Bill, 2019. The Governor neither assented to these Bills nor referred them back to the County Assembly with a memorandum. This, in our considered view demonstrates the contempt with which this Governor holds the legislative authority of the County Assembly.

4. THE CURRENT DISPUTE REGARDING THE KIRINYAGA COUNTY

APPROPRIATION ACT, 2020 AND THE KIRINYAGA COUNTY SUPPLEMENTARY APPROPRIATION (NO.2) ACT, 2020.

Honourable Senators,

As earlier stated we consider the proceedings today as those of mediation. The Governor has initiated these mediation proceedings. These negotiations just like any other negotiations must happen within the prevailing legal context and solutions emanating therefrom must be legally tenable.



In this regard, we would like to bring to the attention of Honourable Senators the following pertinent issues.

Firstly, the Governor is not seeking the intervention of the Senate in good faith. This is demonstrated by the fact that she has already sued the County Assembly in two different High Court Stations and obtained interim conservatory orders on the subject matter which she invites the intervention of the Senate.

Secondly, Honourable Senators, pursuant to Section 21(1) of the County Governments Act, the legislative power of the County Assembly is exercised through Bills passed by the County Assembly and assented to by the Governor. The process of exercising this legislative power is outlined in the County Governments Act. For the Kirinyaga County Appropriation Act, 2020 and The Kirinyaga County Supplementary Appropriation (No.2) Act, 2020 the process has reached the stage where, pursuant to Section 24(5) of the County Governments Act, assent by the Governor is mandatory. Further, the law does not allow the County Assembly to consider a second Memorandum from the Governor.

In light of the foregoing Honourable Senators, it means that the only recourse if the Governor and the County Assembly were to reach any agreement from negotiations would be to amend the already passed appropriation law using a supplementary appropriation law. This, Honourable Senators, cannot happen if the previous legislative process is not completed by assent and publication in the *Kenya Gazette*.

It is for these reasons that we contend that the Governor has not initiated these proceedings in good faith.

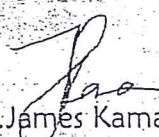
5. OUR PROPOSAL

As earlier stated, we recognise the good offices and ability of this Committee and the Senate to facilitate meaningful negotiations between the Governor and the County Assembly. However, such negotiations must be carried out in good faith. In this regard, and for any negotiations to proceed we demand as follows;

- (a) That the Governor withdraws or causes the withdrawal of the two constitutional petitions filed at the High Court of Kenya in Kerugoya and the High Court of Kenya at Nairobi;
- (b) That the Governor assents to and causes the publication in the Kenya Gazette of the Kirinyaga County Supplementary Appropriation (No.2) Act, 2020;
- (c) That the Governor assents to and causes the publication in the Kenya Gazette of the Kirinyaga County Appropriation Act, 2020;
- (d) That negotiations to address the Governor's concerns should be carried out within the context of a proposed supplementary appropriation law after extensive consultation and concurrence by the two parties.

Thank you

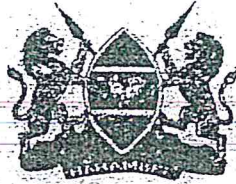
Dated the 22nd of July 2020


Hon. James Kamau Murango, MCA
Leader of the Majority Party

REPUBLIC OF KENYA

COUNTY ASSEMBLY OF KIRINYAGA

Telephone: 020-2008563/0790523397
Email: kirinyagacountyassembly@gmail.com
Please quote all replies to the Clerk,
County Assembly



CLERK'S CHAMBERS
Kirinyaga County Assembly
P.O. Box 55-10300
Kerugoya

OFFICE OF THE CLERK

REF: CAK/CEC/VOL.III/ 126

6TH MARCH, 2020

MR. MOSES MIGWI
CECM FINANCE
KIRINYAGA COUNTY
KUTUS

Dear 

RE: SCRUTINY OF THE COUNTY FISCAL STRATEGY PAPER(CFSP) 2020

The above subject matter refers.

The County Budget and Appropriation is in the process of finalizing scrutiny of the aforementioned document.

In light of the above, the Committee Members have unanimously resolved to invite you to a Consultative meeting on Wednesday 11th March starting at 10:00 am.

The agenda of the meeting shall be seeking your views with regard to the CFSP 2020.

Thank you for your continued support and cooperation.

Yours faithfully,

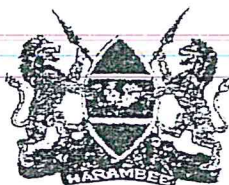
KAMAU AIDI

CLERK COUNTY ASSEMBLY

CC: H.E the Governor
Hon. Speaker
County Secretary
Leader of Majority Party
Chairperson Budget and Appropriation Committee

REPUBLIC OF KENYA
COUNTY ASSEMBLY OF KIRINYAGA

Telephone: 020-2008563/0790523397
Email: kirinyagacountvassembly@gmail.com
Please quote all replies to the Clerk,
County Assembly



CLERK'S CHAMBERS
Kirinyaga County Assembly
P.O. Box 55-10300
Kerugoya

OFFICE OF THE CLERK

REF: CAK/CAS /VOL 11/53

13TH MAY, 2020

MR. JOE MURIUKI
COUNTY SECRETARY
KIRINYAGA COUNTY

Dear

RE: 2020/2021 FY COUNTY BUDGET ESTIMATES CONSULTATIVE MEETING

The above subject matter refers.

That the County Assembly is in the process of scrutinizing the Submitted 2020/2021FY County Budget Estimates which were tabled on 4th May 2020 and as per now the Estimates stand committed to the Sectoral Committees.

In light of the above this letter serves to invite all County Executive Committee Members for a consultative meeting as per the attached program whereby each CECM will be expected to give highlights of His/ Her Sector Budget both recurrent and Development.

The meeting shall be taking place at the Assembly Parking lot in order to adhere to the Ministry of Health guidelines on social distance of 1.5 Metre.

Thank you for your continued support and cooperation.

Yours faithfully,


KAMAU AIDI
CLERK COUNTY ASSEMBLY

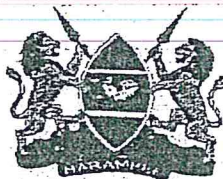
CC: H. E the Governor
Hon. Speaker
Leader of Majority Party
All CEC Members
Chairperson County Budget and Appropriation Committee

CONSULTATIVE PROGRAM

| DATE | TIME | CECM |
|----------------------|--------------------|---------------------------------------|
| TUESDAY 19/05/2020 | | |
| 19/05/2020 | 11:00-1:00 PM | CECM Gender and Youths |
| | | |
| 19/05/2020 | 3:30 PM-5:00PM | CECM-Sports Culture & Social Services |
| | | |
| WEDNESDAY 20/05/2020 | | |
| 20/05/2020 | 11:00 AM -1:00 PM | CECM TRADE & COOPERATIVES |
| | | |
| 20/05/2020 | 2:00 PM-4:00PM | CECM Medical Services and Health |
| | | |
| THURSDAY 21/05/2020 | | |
| 21/05/2020 | 9:00 AM – 11:00 AM | CECM Agriculture |
| | | |
| 21/05/2020 | 11:30 am – 1:00 AM | CECM Education |
| | | |
| 21/05/2020 | 2:00 PM-4:00 PM | CECM Environment |
| | | |
| FRIDAY 22/05/2020 | | |
| 22/05/2020 | 9:00 am-11:00 AM | CECM Transport |
| | | |
| 22/05/2020 | 11:30 am -1:00 PM | CECM Physical Planning |
| | | |
| 22/05/2020 | 2:00 pm -4:00 PM | CECM Finance |
| | | |

REPUBLIC OF KENYA
COUNTY ASSEMBLY OF KIRINYAGA

Telephone: 020-2008563/0790523397
Email: kirinyagacountyassembly@gmail.com
Please quote all replies to the Clerk,
County Assembly



CLERK'S CHAMBERS
Kirinyaga County Assembly
P.O. Box 55-10300
Kerugoya

OFFICE OF THE CLERK

REF: CAK/CEC/VOL.III/ 149

16TH JUNE, 2020

MR. MOSES MIGWI
CECM FINANCE AND ECONOMIC PLANNING
KIRINYAGA COUNTY
KUTUS

Dear 

RE: INCLUSION OF CONDITIONAL GRANT FROM NATIONAL GOVERNMENT
FOR COVID-19 RESPONSES IN THE FY 2020/2021 BUDGET ESTIMATES

The above subject matter refers.

The County Budget and Appropriation Committee deliberated on the letter from your office
REF: CGK/CEC/FIN/CAK/2019/20/VOL.III/157 dated 16th June 2020 requesting the
committee to include Ksh 116,356,000 as a source of revenue and allot the same amount on the
health sector development votes, the committee unanimously resolved;

1. That before inclusion of Ksh 116,356,000 in the budget your office to avail to the
committee the expenditures plans for utilization of the aforesaid amount.
2. That your office to address all issues raised by the Office of the Controller of Budget vide
letter REF: COB/KRG/002/2/1/(55) dated 10th June 2020 and more so the issue on project
location whereby your office is required to itemize all conditional grants and provide
details of location of various projects to be funded by conditional grants

Kindly treat the above matter as **URGENT** and arrange to provide the above information on or
before Friday 19th June 2020.

Thank you for your continued support and cooperation.

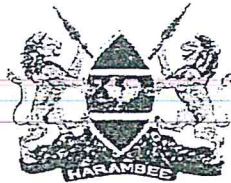
Yours faithfully,


KAMAU AIDI

CLERK COUNTY ASSEMBLY

REPUBLIC OF KENYA
COUNTY ASSEMBLY OF KIRINYAGA

Telephone: 020-2008563/0790523397
Email: kirinyagacountyassembly@gmail.com
Please quote all replies to the Clerk,
County Assembly



CLERK'S CHAMBERS
Kirinyaga County Assembly
P.O. Box 55-10300
Kerugoya

OFFICE OF THE CLERK

REF: CAK/ CEC/VOL.III/ 165

25TH JUNE, 2020

MR. MOSES MIGWI
CECM FINANCE AND ECONOMIC PLANNING
KIRINYAGA COUNTY
KUTUS

Dear

RE: ROLL OVER PROJECTS

The above subject matter refers.

The County Budget and Appropriation Committee deliberated on the List of Roll over projects from your office and resolved that the before the list is incorporated in the 2020/2021 FY Budget, your office should furnish the committee the following details;

- 1) Projects implementation status for the 2018/2019 FY and 2019/2020 FY
- 2) Extract of Central Bank development vote balances to confirm the roll over amount
- 3) Copies of cash book and imprest surrendered for the 2018/2019 FY and 2019/2020 FY

Kindly treat the matter as **URGENT** and avail the above documents on or before Monday 29th June 2020 at 10:00 am as the Committee intends to finalize the approval process of the 2020/2021 FY Budget on 30th June 2020 as per the provision of section 131(1) of the PFMA 2012

Thank you for your continued support and cooperation.

Yours faithfully,


KAMAU NJIRU

CLERK COUNTY ASSEMBLY

CC: Hon. Speaker
County Secretary
Leader of Majority Party
Chairperson Budget and Appropriation Committee ✓

Annex 4

OFFICE OF THE CONTROLLER OF BUDGET



Tel: 020 221 1068, 0738466721, 0709910000
Email: cob@cob.go.ke/info@cob.go.ke
Website: www.cob.go.ke



Bima House, 12th Floor
Harambee Avenue
P.O. Box 35616-00100
Nairobi Kenya

Ref. COB/KRG/002/2/1(55)

10th June, 2020

Gov. Ann Mumbi Waiguru, OGW, EGH
Governor
Kirinyaga County Government
KERUGOYA

Dear *Gov. Mumbi,*

RE: COMMENTS ON THE FY 2020/21 KIRINYAGA COUNTY DRAFT BUDGET ESTIMATES

The Office of the Controller of Budget (OCOB) is established under Article 228 of the Constitution of Kenya, 2010 to oversee and report on implementation of the budgets of both the national and county governments to each House of Parliament every four months. Further, Article 228 (5) of the Constitution requires the Controller of Budget not to approve any withdrawal from public funds unless satisfied that the withdrawal is authorized by law.

In line with the above, the OCOB has reviewed the FY 2020/21 Draft Budget Estimates (DBE) and other planning documents for conformity with the Public Financial Management framework. Our review has identified the following areas which should be addressed in order to enable timely approval of funds;

1. Section 12 of the Second Schedule of the Public Finance Management (PFM) Act, 2012 requires the County Governments to implement Programme Based Budgets (PBB) from FY 2014/15. The PBB approach links available resources to the achievement of set objectives and outcomes. The OCOB has noted that the Draft Budget Estimate for FY 2020/21 did not adopt the PBB framework.

We advise the County to fully adopt the PBB framework in line with the law.

2. A conditional allocation described as Kenya Devolution Support Project (KDSP) Level 2 of Kshs.146, 608, 512 has been included in the DBE as source of revenue. Nonetheless, this allocation is not contained in the County Allocation of Revenue Bill, 2020.

We advise the County to ensure the revenue estimates are revised for compliance with allocations contained in the County Allocation Revenue Bill, 2020 to avoid any possible budget deficit

3. Regulation 25 (1) (b) of the Public Finance Management (County Governments) Regulations, 2015 sets a limit on the County Government's expenditure on wages and benefits at 35 per cent of the County's total revenue. A review of the Draft Budget Estimates indicates that allocation to personnel emoluments is Kshs.2.97 billion, translating to 56.2 per cent of the total revenue and is above the ceiling provided in law.

We advise the County to ensure compliance with the legal limit on personnel emoluments expenditure.

4. Information on geographical location of development projects is necessary in ascertaining equity in resource allocation across the County. The FY 2020/21 Draft Budget Estimates did not provide information on the projects to be undertaken and their geographical location for the following expenditure items:-

Development expenditure items in the budget with insufficient information

| Item Description | Activity | Amount (Kshs) |
|---|--|---------------|
| County Executive | | |
| Ward Based Projects | | 200,000,000 |
| Capital Grants to Semi-Autonomous Government Agencies | County matching contribution towards the National Government Coffee Revitalization Programme | 50,000,000 |
| Finance and Economic Planning | | |
| Capital Grants to Semi-Autonomous Government Agencies | Other Capital Grants & Transfers (KDSP) | 146,608,512 |
| COUNTY HQS | Pending Bills | 70,000,000 |
| Agriculture, Livestock and Fisheries | | |
| Capital Grants to Semi-Autonomous Government Agencies | National and Rural and Agricultural Inclusive Growth Project (NARIGP) | 199,748,243 |
| Purchase of specialized materials | County contribution to support the NARIGP project activities | 96,050,000 |
| Education | | |
| Grants to Youth Polytechnics | Grants to Youth Polytechnics | 26,899,894 |
| Transport and Infrastructure | | |
| Access Roads | KRB | 127,349,086 |

We advise the County to provide sufficient information on the location of all projects in the Budget to enhance openness and accountability in line with Article 201 of the Constitution.

5. The budget allocation to some departments deviates from the ceiling contained in the County Fiscal Strategic Paper (CFSP) 2019 adopted by the County Assembly. The table below shows the variance;

Comparison of the Draft Budget Estimates with the CFSP ceilings

| Department | Expenditure Classification | FY 2020/21 Draft Budget (Kshs.) | FY 2020/21 CFSP Ceiling (Kshs.) | Deviation (Kshs.) | % Deviation |
|---|----------------------------|---------------------------------|---------------------------------|-------------------|-------------|
| | | A | B | C=B-A | D=C/B*100 |
| County Assembly | Recurrent | 569,393,333 | 569,393,333 | 0 | 0.0% |
| | Development | 0 | 780,000,000 | 780,000,000 | 100.0% |
| County Executive | Recurrent | 458,990,441 | 397,660,877 | -61,329,564 | -15.4% |
| | Development | 250,000,000 | 237,499,564 | -12,500,436 | -5.3% |
| Finance and Economic Planning | Recurrent | 527,613,951 | 244,714,386 | -282,899,565 | -115.6% |
| | Development | 216,608,512 | 15,499,913 | -201,108,599 | -1297.5% |
| Medical Services and Public Health | Recurrent | 2,001,934,097 | 1,734,768,597 | -267,165,500 | -15.4% |
| | Development | 70,000,000 | 56,998,779 | -13,001,221 | -22.8% |
| Education | Recurrent | 202,844,623 | 284,125,088 | 81,280,465 | 28.6% |
| | Development | 26,899,894 | 15,499,913 | -11,399,981 | -73.5% |
| Agriculture, Livestock and Fisheries | Recurrent | 215,103,939 | 152,946,491 | -62,157,448 | -40.6% |
| | Development | 295,798,243 | 61,999,651 | -233,798,592 | -377.1% |
| Gender, Culture, Children and Social Services | Recurrent | 38,168,210 | 30,589,298 | -7,578,912 | -24.8% |
| | Development | 0 | 7,749,956 | 7,749,956 | 100.0% |
| Youth and Sports | Recurrent | 20,608,017 | 30,589,298 | 9,981,281 | 32.6% |
| | Development | 0 | 15,499,913 | 15,499,913 | 100.0% |
| Cooperative Development Trade and Tourism | Recurrent | 38,327,339 | 30,589,298 | -7,738,041 | -25.3% |
| | Development | 0 | 54,249,695 | 54,249,695 | 100.0% |
| Environment and Natural Resources | Recurrent | 102,089,239 | 61,178,596 | -40,910,643 | -66.9% |
| | Development | 0 | 54,249,695 | 54,249,695 | 100.0% |
| Physical Planning and Housing | Recurrent | 28,968,028 | 30,589,298 | 1,621,270 | 5.3% |
| | Development | 0 | 38,749,782 | 38,749,782 | 100.0% |
| Transport and Infrastructure | Recurrent | 77,478,285 | 61,178,596 | -16,299,689 | -26.6% |
| | Development | 139,101,158 | 216,998,779 | 77,897,621 | 35.9% |
| TOTAL | | 5,279,927,309 | 5,183,318,796 | -96,608,513 | -1.9% |

We advise the County to ensure that the budget complies with the ceilings in the approved CFSP 2020. Any deviations should be appropriately explained in line with Section 130 (1) (iii) of the PFM Act, 2012.

- Sections 110, 112 and 113 of the Public Finance Management Act, 2012 allow Counties to establish and administer an Emergency Fund of up to 2 per cent of its last audited revenue in a single year to cater for any unforeseen occurrences. The draft budget estimates contains an allocation of Kshs.2 million to the emergency kit, which is 0.04 per cent of the total revenue. The County is advised to enhance the allocation to the Emergency Fund to at least 2 per cent of the last audited financial statements of revenue to ensure adequacy in line with Section 113 of the PFM Act, 2012.
- The Draft Budget Estimates of Kshs.5.28 billion allocates Kshs.4.33 billion (81.1 per cent) to recurrent expenditure and Kshs.998.41million (18.9 per cent) to development

expenditure. The allocations contravene the provision of Section 107 of the PFM, Act 2012 which requires a minimum allocation of 30 per cent for development activities.

We therefore advise the County to ensure allocation towards development expenditure is in line with the law.

Please address the above concerns in the finalised budget and revert by July 15, 2020 confirming adherence.

Yours *Sincerely,*
Margaret

Dr. Margaret Nyakang'o
CONTROLLER OF BUDGET

Copy to: The Speaker
Kirinyaga County Government
KUTUS

The Chairman
Council of Governors
NAIROBI

The Chairman
Commission on Revenue Allocation
NAIROBI

The Clerk
Kirinyaga County Assembly
KERUGOYA

The CECM – Finance and Economic Planning
Kirinyaga County Government
KUTUS

Annex 5

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. E217 OF 2020

IN THE MATTER OF ENFORCEMENT OF FUNDAMENTAL RIGHTS AND FREEDOMS

-AND-

IN THE MATTER OF THE CONSTITUTION OF KENYA, 2010 ARTICLES 1, 2, 3, 10, 20, 22,
23 35, 38, 41, 42, 43, 47, 50, 174, 185, 196, 224, 228, 258 and 259 OF THE CONSTITUTION

-AND-

IN THE MATTER OF THE COUNTY GOVERNMENTS ACT NO. 17 OF 2012

SECTIONS 2, 3(f), 21, 22, 23, 24, 25, 87(a), 87(b), 88 & 89

-AND-

IN THE MATTER OF THE PUBLIC FINANCE MANAGEMENT ACT NO. 18 OF 2012,
SECTIONS 117(1), (3), (7), 125 (1)(e), (f), (2), 129(2) (a), (3), (4), (5), (7), 131(1), (2),
135(7), & 138 (5), (6)

-AND-

IN THE MATTER OF THE PUBLIC FINANCE MANAGEMENT (COUNTY
GOVERNMENTS) REGULATIONS, 2015

REGULATIONS 26(3), 27(1) (a) (vii), 32(1)(b), 37(1), 38

-AND-

IN THE MATTER OF KIRINYAGA COUNTY BUDGET ESTIMATES FY 2020/2021

-AND-

IN THE MATTER OF KIRINYAGA COUNTY APPROPRIATIONS BILL 2020

-BETWEEN-

COUNTY GOVERNMENT OF KIRINYAGA.....PETITIONER

-VERSUS-

THE COUNTY ASSEMBLY OF KIRINYAGA.....1st RESPONDENT

THE SPEAKER OF THE COUNTY

ASSEMBLY OF KIRINYAGA.....2ND RESPONDENT

-AND-

THE CONTROLLER OF BUDGET.....1st INTERESTED PARTY

THE NATIONAL TREASURY.....2ND INTERESTED PARTY

IN CHAMBERS ON 20TH JULY 2020

BEFORE W. KORIR (DUTY JUDGE)

ORDER

UPON READING THE Application dated 17th July 2020 and filed on 20th July 2020 by Counsel for the Petitioner and brought (*Under Articles 19, 20, 21, 22, 23, 165 (4), 159 and 224 of the Constitution of Kenya, 2010; Rules 13 and 19 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, the provisions of the County Governments Act, the Public Finance Management Act & Regulations thereto and all enabling provisions of the Law*) and UPON READING THE supporting affidavit of MOSES MIGWI MAINA sworn on the 17TH JULY 2020 and the annexure's thereto AND WHEREAS THIS MATTER is coming up in chambers

IT IS HEREBY ORDERED

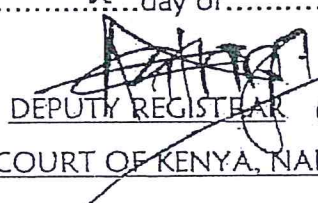
- 1) That the Notice of Motion dated 17th July 2020 be and is hereby Certified as Urgent.
- 2) THAT an interim Conservatory Orders be and is hereby issued suspending and staying the operations and/or the implementation of the impugned County Fiscal Strategy Paper 2020 as illegally and unilaterally amended and approved by the 1st Respondent pending the *inter-parties* hearing and determination of the instant Application and hearing and determination of the present Petition;
- 3) THAT an interim conservatory Orders be and is hereby issued suspending the operations and/or the implementation of the impugned Budget estimates for FY 2020/2021 as illegally and unilaterally amended and approved by the County Assembly pending the *inter-parties* hearing and determination of the instant Application and hearing and determination of the present Petition;
- 4) THAT an Interim Conservatory Orders be and is hereby issued preventing the assent and publication of Kirinyaga County Appropriation Bill 2020, pending the *inter-parties* hearing and determination of the instant Application and hearing and determination of the present Petition.
- 5) THAT an Interim Conservatory Order be and is hereby issued staying the publication of the Kirinyaga County Appropriation Bill 2020, pending the *inter-parties* hearing and determination of the instant Application and hearing and determination of the present Petition.

- 6) THAT an Interim Conservatory Orders be and is hereby issued suspending the operations and/or implementation of the Kirinyaga County Appropriation Bill 2020, pending the *inter-parties* hearing and determination of the instant Application and hearing and determination of the present Petition.
- 7) THAT an Order be and is hereby issued directing the 1st Interested Party not to authorize withdrawal from the County Revenue Fund based on the impugned and illegally approved Budget estimates and the Appropriation Bill passed on the 30th of June 2020
- 8) THAT an Order be and is hereby issued directing the 2nd interested Party not to authorize any withdrawals from the County Revenue Fund through the Integrated Financial Management System (IFMIS) which it operates by virtue of Section 12(1) e of the Public Finance Management Act 2012 on the basis of the impugned and illegally approved Budget estimates and the Appropriation Bill passed on the 30th of June 2020
- 9) That the Petitioner to file Skeletal Submissions on the Application and Petition and serve the same together with pleadings before the close of business on 24th July 2020
- 10) That the Respondents and Interested Parties will file and serve their Responses together with Skeletal Submissions in respect of the Application and petition before close of business 4th August 2020.
- 11) That the Petitioner will be at liberty to file and serve Further Affidavits and Supplementary Submissions before the close of business 7th August 2020
- 12) That highlighting of Submissions on the Application and Petition on 12th August 2020

GIVEN under my Hand and the Seal of this Honorable Court this 20TH day of July, 2020

ISSUED at Nairobi this.....^{20th} day of..... July..... 2020

DEPUTY REGISTRAR
HIGH COURT OF KENYA
MILIMANI - NAIROBI


DEPUTY REGISTRAR
HIGH COURT OF KENYA, NAIROBI

Petition E217/2020

