

# Kitui County Assembly

## THE HANSARD

First County Assembly - Second Session

Wednesday 1<sup>st</sup> July, 2015

The County Assembly met at 2:46 PM

(The Deputy Speaker {Hon. Titus Mbiti} entered the Chamber at fourteen minutes to three O'clock accompanied by the Mace)

### PRAYERS

(The Deputy Speaker recited the prayer and proceeded to the Chair)

(The Mace was placed on the Table)

**The Deputy Speaker (Hon. Titus Mbiti):** Next Order.

**The Deputy County Assembly Clerk (Ms. Lucy Waema):** Order No. 1, Administration of Oath.

**The Deputy Speaker:** Next Order

**The Deputy County Assembly Clerk:** Order No. 2, Communication from the Chair.

**The Deputy Speaker:** Next Order

**The Deputy County Assembly Clerk:** Order No. 3, Messages.

**The Deputy Speaker:** Next order.

**The Deputy County Assembly Clerk:** Order No. 4, Petitions.

**The Deputy Speaker:** Next Order

**The Deputy County Assembly Clerk:** Order No. 5, papers.

**The Speaker:** Next order.

**The Deputy County Assembly Clerk:** Order No.6, Notices of Motions.

**The Deputy Speaker:** Next order.

**The Deputy County Assembly Clerk:** Order No.7, Statements.

**The Deputy Speaker:** Next Order

**The Deputy County Assembly Clerk:** Order No. 8-Motion and Bills-commencement of business- motion on adoption of the report by the committee on public accounts and investments on consideration of the audited accounts of the defunct councils of Kitui for the 2011/2012 financial year and the financial operations of the County Government of Kitui for the period from 1<sup>st</sup> January to 30<sup>th</sup> June, 2013- chairperson committee on Public investments and accounts committee.

**The Deputy Speaker:** Hon. Mativo and it's a resumption of debate deferred on the morning sitting of July 1<sup>st</sup> 2015, you can continue Hon. Chair.

**Hon. Robinson Mativo (PIC/PAC Chair):** Thank you Mr Speaker Sir for this opportunity...

**The Deputy Speaker:** Sorry Hon. Chair order! I want to correct what I have said that there is a mistake I have made, not resumption of the debate but the chair is moving the motion, so you can continue.

**Hon. Robinson Mativo (PIC/PAC Chair):** Thank you Mr Speaker Sir for this opportunity to with the motion on adoption of the committee recommendations on the motion of the auditor general of the defunct county councils of Kitui for the 2011/2012 financial year and the financial operations of the County Government of Kitui for the period from 1<sup>st</sup> January to 30<sup>th</sup> June, 2013.

Mr Speaker Sir, I think by yesterday we were just starting the County council of Kitui on the financial year 2011/2012. Mr Speaker Sir, I think...

**The Deputy Speaker:** That is page 33 Hon. Chair?

**Hon. Robinson Mativo (PIC/PAC Chair):** Yes page 33 Mr Speaker Sir...

## **COUNTY COUNCIL OF KITUI-2011/2012**

As stated earlier in this report, the two Accounting Officers namely Mr Samuel Otieno Owande, the former County Clerk and Mr Daniel Mutuku Twala, the former treasurer did not respond to any of the following audit queries directed at them by the Auditor-General.

They were also very uncooperative with regard to attending the sittings possibly due to the fear of being in relation to the financial malpractices cited in the audit report. It was only after the county secretary sought help from the CID that the two witnesses opted to face the committee.

### **Mr Speaker Sir the audit queries about Accuracy of the Financial Statements**

The audit revealed the following;

As previously reported, the Council has not prepared and submitted for audit financial statements for twelve (12) years from 1982 to 1992/1993. The Council has therefore continued to be in breach of the law. In absence of certified financial statements for 1992/1993 and prior years, the source and accuracy of the opening balances as at 1 July 1993 for the 1993/1994 statements, and for the subsequent years, including 2011/2012 could not be confirmed.

The process of sharing of assets and liabilities between the Council and the County Council of Mwingi had not been completed by 30 June 2012. Consequently, accuracy of the Council's financial statements for the year ended 30 June 2012 could not be confirmed.

The Committee noted the following;

- i. That the reluctance by the Accounting Officers to appear before the committee for questioning until they were forced to do so by the CID and their subsequent refusal to respond to the audit queries despite repeated warning by the committee on the legal implication of failing to do so amounted to self-incrimination or admission of guilt on the financial malpractices highlighted by the Auditor-

General. It implied that the two officials might have presided over serious scandals for which they did not want to talk about lest they implicated themselves.

- ii. That failure by the Accounting Officers to prepare financial statements for such a long period amounted to gross negligence of duty.

**Mr Speaker Sir the Committee recommends that;**

**That the Ethics and Anti-Corruption Commission (EACC) should carry out further investigation into this matter with a view to holding suspects accountable should misappropriation of public funds be affirmed and to have the lost amounts recovered.**

#### **Non-current assets**

The Non-Current Assets balance increased from Kshs. 667, 500,275.00 as at 30 June 2011 to Kshs. 685, 318,084.00 as at 30 June 2012. However, relevant supporting documents including, an updated Fixed Assets Register, ownership documents and valuation reports for various parcels of land and buildings were not made available for audit verification.

Further, logbooks for motor vehicles were not registered in the official name of the Council. In the circumstances, it was not possible to confirm the accuracy and ownership of the Non-Current Assets balance of Kshs. 685, 318,084.00 as at 30 June 2012.

**The Committee noted the following:**

- i. That the increase of the Non-Current assets balance from Kshs. 667, 500,275.00 to Kshs. 685, 318,084.00 could not be ascertained owing to the failure by the Accounting Officers to avail the supporting documents for audit verification.
- ii. That the unavailability of the supporting documents could have been masterminded to cover up for fraud.

**The Committee recommends that;**

**The Ethics and Anti-Corruption Commission (EACC) should carry out further investigation into this matter with a view to having appropriate legal action taken against the culpable should misapplication...**

**The Deputy Speaker: Order! Order! Hon. Chair is that misappropriation or misapplication?.**

**Hon. Robinson Mativo (PIC/PAC Chair): That should be misappropriation of public assets be confirmed and to have the properties which might have been acquired illegally recovered.**

**Receivables/ debtors.**

The Receivables/ Debtors balance increased from Kshs. 135, 453,080.00 as at 30 June 2011 to Kshs. 146, 729,651.50 as at 30 June 2012. However, the relevant supporting documents including debtors' ledger and related schedules were not made available for audit verification.

Included in the debtors balance are long outstanding staff imprests amounting to Kshs. 5, 008,454.00.

Staff imprests amounting to Kshs. 1, 343,997.00 were written off without the approval of the full Council and authorization of the Minister. The Council made a general provision for bad and doubtful debts of Kshs. 7, 708,976.00 as per Council's policy, but this was contrary to the approved template requirement of a specific approval.

The Council disclosed Contribution In Lieu of Rates (CILOR) of Kshs. 46, 375,764.00 in the financial statements, while the supporting schedule reflected a balance of Kshs. 44, 046,296.00, resulting to unreconciled or unexplained difference of Kshs. 2, 329,468.00.

**The Committee noted the following;**

- i. That the increase of the Receivables/Debtors balance from Kshs.135,453,080.00 to Kshs.146, 729,651.50 could not be authenticated owing to failure by the Accounting Officers to avail the supporting documents for audit verification.
- ii. That the government had lost substantially on account of imprest defaulting and attributed the situation to laxity, negligence and or failure by Accounting Officers to enforce clear government regulations and procedures on imprests.
- iii. That the Accounting Officer violated financial regulations by writing off the staff imprests without the approval of the full Council and authorization of the then Minister for local government.

**The Committee recommends that;**

- i. That the County Government should maintain up-to-date records of debtors and ensure measures are put in place to collect revenue from the outstanding debtors
- ii. That Chief Officers/ Accounting Officers serving the County Government should ensure strict adherence to government regulations and procedures on imprests to guard against malpractices.
- iii. That as the overall Accounting Officer for the County Government, the County Secretary should follow up on this matter and ensure that all the outstanding imprests are fully recovered from the beneficiaries within a period of two (2) years from the date of adoption of this report. In cases where he is unable to justify non-recovery within the stipulated period, he should recommend to the

county treasury for surcharging of the Accounting Officer responsible for issuing the imprests. The CS should also direct the county treasury to put in place adequate control measures to check against future imprest defaulting.

- iv. That the two former chief officers namely Mr Samuel Otieno Owande and Mr Daniel Mutuku Twala are unfit to hold public office for negligence of duty and abetting corrupt practices.

#### **Cash and cash equivalents**

The Cash and Cash Equivalents balance decreased from Kshs.10, 880,855.00 as at 30 June 2011 to Kshs.5, 401,784.00 as at 30 June 2012. However, relevant supporting documents, including updated main cashbook and monthly bank reconciliation statements were not made available for audit verification.

The statement of cash flows reflects Cash and Cash Equivalents of Kshs.53, 609,556.00, while the statement of financial position shows a balance of Kshs.5, 401,784.00 as at 30 June 2012, resulting to unreconciled or unexplained difference of Kshs.48,207,772.00.

The Council underbanked revenue amounting to Kshs.28, 483,952.00 during the year.

As a result, it has not been possible to ascertain the accuracy of the Cash and Cash Equivalents balance of Kshs.5, 401,784.00 as at 30 June 2012.

The Committee Mr Speaker noted the following;

- i. That the decrease of the Cash and Cash Equivalents balance from Kshs.10, 880,855.00 to Kshs.5, 401,784.00 could not be corroborated due to failure by the Accounting Officers to avail supporting documents for audit verification.
- ii. That the unavailability of the supporting documents could have been masterminded to cover-up for fraud
- iii. That the following irregularities pointed to the possibility of public funds having been misappropriated;
  - The under banking of revenue by the council to the tune of Ksh. 28, 483,952.00.
  - The unexplained difference of the Ksh. 48,207,772.00 arising from citing of the varying figures of Ksh53,609,556.00 and Ksh. 5,401,784 in the statement of cash flows and the statement of financial position respectively with regard to the Cash and Cash Equivalents.

The Committee recommends that;

- i. The Ethics and Anti-Corruption Commission (EACC) should carry out further investigation into this matter with a view to ensuring justice is done should misappropriation of public funds be confirmed and to have the lost amounts recovered.

### **Payables/ creditors, accruals and provisions**

The Payables/Creditors, Accruals and Provisions balance increased from Kshs.22,836,237.00 as at 30 June 2011 to Kshs.45,832,500.00 as at 30 June 2012. However, the relevant supporting documents, including an updated creditors' ledger and related schedules were not made available for audit verification.

Statements of account from creditors reflected balances which differed with the financial statements balances.

The Council did not make a provision for audit fees in the statement of financial performance for the year.

Consequently, the accuracy of the payable/creditors, Accruals and Provisions balance of Kshs.45, 832,500.00 as at 30 June 2012 could not be confirmed.

**The Committee Mr Speaker observed the following;**

- i. That the increase of the Payables/Creditors, Accruals and Provisions balance from Kshs.22, 836,237.00 to Kshs.45, 832,500.00 could not be ascertained following failure by the Accounting Officers to avail supporting documents for audit verification.**
- ii. That the Accounting Officers presided over accounting irregularities which might have occasioned misappropriation of public funds**

**The Committee Mr Speaker recommends that;**

- i. The County Government should always maintain up-to-date records of creditors with relevant supporting documents on all payments made.**
- ii. Also, the County Government should not pay any creditor without firstly establishing that a service/good was rendered/delivered to the council/county government.**
- iii. That the Ethics and Anti-Corruption Commission should carry out further investigation into this matter with a view to taking appropriate legal action against the culpable in the event loss of public funds is confirmed and to have the lost amounts recovered**

### **Net assets/capital and reserves**

The Net Assets/Capital and Reserves balance increased from Kshs.785, 416,506.00 as at 30 June 2011 to Kshs.786, 617,019.50 as at 30 June 2012. However, the relevant supporting documents, including the ledgers, analyses or schedules were not made available for audit verification.

Under the circumstances, the accuracy and validity of the Net Assets/Capital and Reserves balance of Kshs.786, 617,019.50 as at 30 June, 2012 could not be confirmed.

**The Committee noted the following;**

- i. That the unavailability of the supporting documents could have been masterminded to cover-up for fraud**
- ii. That increase of the Net Assets/Capital and Reserves balance from Kshs.785, 416,506.00 to Kshs.786, 617,019.50 could not be ascertained following failure by the accounting officers to avail supporting documents for audit verification.**

**The Committee recommends that;**

**The Ethics and Anti-Corruption Commission (EACC) should carry out further investigation into this matter with a view to taking appropriate legal action against suspects should misappropriation of public funds be affirmed and to have the lost amounts recovered**

### **Financial Improprieties**

The Council paid hardship allowances totaling Kshs.1, 113,000.00 during the year, but the same had not been approved in the terms and conditions of service.

The Council paid Country Side General Merchants Kshs.4, 099,654.00 for repair and servicing of the Council's grader. However, procurement records indicating how the supplier was identified and subsequently awarded the tender were not provided for audit review. Further, service mechanical report was not provided for audit confirmation of actual work done.

Consequently, the Council was in breach of the financial regulations and the propriety of the above payments could not be confirmed.

**The Committee observed the following;**

- i. That government incurred a loss of Ksh 1,113,000.00 as a result of the Accounting Officer approving irregular payment of hardship allowance to staff of the council**
- ii. That the Accounting Officer should be held accountable for the misappropriated funds.**
- iii. That the Ksh. 4,099,654.00 paid to Side General Merchants under dubious circumstances amounted to outright theft of public funds.**

**The Committee recommends the following;**

- i. That the County Secretary should use all means at his disposal to ensure that the former Chief Officer who is still in public service**

and working for the County Government of Kitui is surcharged for the loss of the Ksh. 1,113,000.00.

- ii. That the Ethics and Anti-Corruption Commission (EACC) should carry out further investigation into this matter with a view to holding suspects accountable should siphoning off public funds be confirmed and to have the lost amounts recovered

### **Renewals Funds**

Mr Speaker section 219 of the Local Government Act, Cap 265 requires the Council to create and set aside adequate renewals funds to cater for the partial or entire replacement of some or all of its assets, which, owing to depreciation or other cause will require at some future date to be replaced.

The statement of financial position reflects a renewals funds balance of Kshs.6, 228,791.00 as at 30 June, 2012. However, the amount is not represented by a similar amount in the bank, as the bank account showed an amount of Kshs.2, 858,761.00.

Further, the amount invested was inadequate to finance the Council's non-current assets worth Kshs.685, 318,084.00 as at 30 June 2012. It was also not clarified how the Council intends to finance future replacement of its depreciable non-current assets in the absence of adequate and tangible renewals funds.

**Mr Speaker Sir the Committee noted the following;**

- i. That the Accounting Officers breached the law by failing to provide enough for the Renewals Fund
- ii. That the difference of Ksh 3, 370,030.00 arising from the varying figures of Ksh 6, 228,791.00 and Ksh 2, 858,761.00 reflected in the statement of financial position and in the bank /account respectively in respect of the balance for the Renewals Fund was suspicious

**The Committee recommends that;**

**The Ethics and Anti-Corruption Commission (EACC) should carry out further investigation into this matter with a view to having appropriate legal action taken against the culpable should embezzling of public funds be affirmed and to have the lost amounts recovered**

Mr Speaker Sir we are now moving to the Town Council of Mwingi financial year 2011/2012

### **COUNTY COUNCIL OF MWINGI-2011/2012**

#### **Accuracy of the financial statements**



The audit revealed the following;

As previously reported, the Council prepared and submitted for audit financial statements for the years 1999/2000 and 2000/2001, which were not supported by the relevant books of accounts and other records.

The process of sharing assets and liabilities between the Council and the County Council of Kitui had not been concluded as at 30 June 2012. Amended copies of the financial statements for 2011/2012 have not been submitted to date.

Consequently, accuracy of the financial statements for the year ended 30 June 2012 could not be confirmed.

Replying, the former County Clerk admitted the Auditor-General's observation regarding lack of supporting documents for the Financial Statements and submitted that it was his predecessors who failed to make the documents available for audit verification. He said it was not possible for him to produce the documents later as they were destroyed when a mysterious fire gutted the office block on 29<sup>th</sup> of May 2009.

Mr Speaker, he said the process of sharing Assets and Liabilities between the County Council of Mwingi and the County Council of Kitui was yet to be determined due to a court dispute involving the Motor Grader KAB 306 Q. The dispute pitted the Kenya Commercial Bank (KCB) Vs the County Council of Kitui over defaulting on repayment of a loan secured by the Council to purchase the grader. The County Council of Mwingi was cited as second respondent for having custody of the grader at the time.

He said amended copy of the Financial Statement was prepared but it was overtaken by events as the audit certificate was already out by the time it was ready.

The Committee attributed the outbreak of mysterious fires which hit many Local Authorities countrywide to corrupt Chief Officers who were keen on destroying evidence linking them to financial scandals.

Regarding the sharing of Assets and Liabilities between the two Local Authorities, the Committee expressed optimism that the matter would be sorted out by the Sub-Committee formed by the County Government to address the matter as well as the one constituted by the Transitional Authority to oversee the exercise countrywide.

**The Committee noted the following;**

- i. That the outbreak of the mysterious fires which rocked many councils previously was a deliberate scheme by rogue former Chief Officers who sought to destroy evidence linking them to financial scandals**
- ii. That the outbreak of the mysterious fire was regrettable as it destroyed records/documents which were relevant to the investigation.**

**The Committee recommends the following;**

**That the County Government should do the following;**

- Ensure that all key public buildings/installations are fitted with firefighting equipment including smoke detectors and fire extinguishers for use during emergencies.
- Install data storage devices/backups in public offices to safeguard against total loss of crucial information in the event of fire outbreak.

### **Non-current assets**

The audit revealed the following;

The Council's Non-Current Assets balance increased from Kshs.125, 064,889.00 as at 30 June 2011 to Kshs.129, 075,162.00 as at 30 June 2012. However, relevant supporting documents including, an updated Fixed Assets Register and ownership documents for various parcels of land and buildings were not made available for audit verification.

Further, logbooks for motor vehicles Reg. Nos. KBJ 746 U and KAW 703 Z and motorcycle KBL 001 G were not registered in the official name of the Council. In the circumstances, it was not possible to confirm the accuracy and ownership of the Non-Current Assets balance of Kshs.129, 075,162.00 as at 30 June 2012.

While replying, the former County Clerk said it was true the Council did not have an updated Fixed Assets Register which he attributed to lack of a valuation report. He said the Council carried out a valuation of its assets on 10<sup>th</sup> December, 2012 to facilitate updating of its Assets Register. He told the Committee that the register was ready and available for examination.

He attributed lack of the ownership documents for certain parcels of land to the adjudication exercise which was going in some parts of Mwingi at the time. However, he said with time, the Council managed to get some title deeds for the following parcels of land; Mwingi/Ngoo/1092, Migwani/Kyamboo/592 and Tseikuru A /315. He referred the Committee to appendix viii and ix where listing of all the parcels with and without titles was appended.

He admitted that the motor vehicles Reg. Nos. KBJ 746U and KAW 703 Z and motorcycle KBL 001 G were erroneously registered under Mwingi County Council instead of County Council of Mwingi and attributed the anomaly to an oversight committed during the gazettelement of the Council way back in 1989. He explained that he attempted to correct the error when he assumed office and wrote a letter to the then Minister for Local government and the Kenya Government Printer but his request could not be considered without a resolution of the Council. The Committee pointed out that the council risked legal complications due to the erroneous registration of the motor vehicles.

**The Committee noted the following;**

- i. That updating the Fixed Assets Register did not require a valuation report as the Accounting Officer submitted.
- ii. That the value of the fixed Assets was cast in doubt owing to use of erroneous procedure in updating the Fixed Assets Register.

The Committee Mr Speaker recommends that;

- i. The County Government of Kitui should put in place systems to facilitate accurate recording of all the assets belonging to the former County Council and also ensure their security.
- ii. The Ethics and Anti-Corruption Commission (EACC) should carry out further investigation into this matter with a view to having appropriate legal action taken against the culpable should misappropriation of public resources be affirmed and to have any public property which might have been acquired illegally recovered

### Cash and cash equivalents

The audit revealed the following;

The cash and cash equivalents balance increased from Ksh. 7,102,112.00 as at 30<sup>th</sup> June 2011 to Ksh. 29,211,707.00 as at 30<sup>th</sup> June 2012. However, the balances reflected in the financial statements were derived from the bank statements instead of cashbook balances.

Consequently, the accuracy of the cash and cash equivalents balance of Ksh. 29,211,707.00 as at 30 June 2012 could not be ascertained.

Replying the former County Treasurer admitted the observations by the Auditor-General's that the balances reflected in the financial statement were derived from the bank statements instead of cashbook balances.

He said the Accounts Department was grappling with heavy workload due to shortage of staff. He said the department was being served by only one accountant at the time which slowed accomplishment of most assignments. He said while he was designated as the treasurer, he sometimes was forced to perform the duties of the accountant to make things move. However, he said bank reconciliation was carried out later following recommendations by the auditors.

Mr Speaker Sir the Committee;

Observed that the Cash Book was not being updated regularly as required hence occasioning doubt as to whether all the revenue collected was being banked intact as required

The Committee recommends that;

Accounting Officers must always ensure that accurate, comprehensive and up to date accounts are prepared and submitted for audit before statutory deadlines.

## **Receivables/debtors**

The audit revealed the following;

The receivables /debtors balance increased from Ksh. 39,982,917.00 as at 30 June 2011 to Ksh. 41,595,714.00 as at 30 June 2012. However, the balance reflected in the financial statements under Contribution In Lieu of Rates (CILOR) OF Ksh. 4,235,138.00 differs with Ksh. 5,143,999.00 shown in the Council's records.

Further, the council charged provision for bad and doubtful debts of Ksh. 993,268.00 in the statement of financial performance while notes 3 to the financial statements reflected a figure of Ksh. 160,017.00. The variance of Ksh. 833,251.00 has not been reconciled or explained.

In the circumstances, the accuracy and recoverability of the receivables/debtors balance of Ksh. 41,595,714.00 as at 30 June 2012 could not be confirmed.

The former County Clerk Mr Elijah Mutambuki attributed the difference of balance reflected in the financial statements versus that shown in the Council records to an error performed in the book of accounts. He said reconciliation was carried out after the audit resulting in the correct balance of Ksh. 4,235,138.00.

He said the observations by the Auditor-General regarding the provision for bad and doubtful debts were correct and that changes made in respect of the same were included in the amended copy of the financial statement.

He said the Council charged the provision for bad and doubtful debts at 3 per cent at the time in line with the policy emanating from a resolution of the Council. He further noted that most doubtful debts involved unpaid plot rents. To him, most debts incurred by the Central Government could not be treated as bad debts since it had the capacity to clear the liabilities without challenges.

## **The Committee;**

**Observed that this matter would not have appeared in this report as an audit query had the Accounting Officer ensured timely action in rectifying the error**

## **The Committee;**

**Holds the Accounting Officer responsible for the delay in resolving this matter and recommends that in future, he must ensure that matters capable of being resolved with the Auditor-General are resolved promptly failure to which he be sanctioned by the appointing authority.**

## **Payables/creditors, accruals and provisions**

The audit revealed the following;

The payables /creditors, accruals and provisions balance decreased from Ksh. 6,871,005.00 as at 30 June 2011 to Ksh 4, 749,734.00 as at 30 June 2012. However, a balance of Ksh. 811,867.00 relating to Mwingi famous station was not reflected in the creditor's ledger.

Further, the council did not produce for audit confirmation, creditors' statement to support Kangama contractors' balance of Ksh. 1,634,285.00. Also, the council did not make a provision for audit fees in the financial statements. Consequently, the accuracy of the payable/creditors, accruals and provisions balance of Ksh. 4,749,734.00 as at 30 June 2012 could not be confirmed.

Responding the former County Clerk said the queries were to do with policy issues and at that juncture invited his former accountant to continue with explanations. The latter said the balance of Ksh. 811,867.00 not reflected in the Creditors' Ledger was to do with a statement by the creditors. He said reconciliation was carried out after the auditors recommended the same earlier resulting in the correct balance of Ksh. 775,650.00 which was reflected in the amended account.

Further, he said the balance of Ksh. 1,634,285.00 relating to Kangama contractors was obtained after the audit. He termed the failure to provide for audit fees as an error that was rectified in the amended copy.

#### **The Committee;**

**Heard evidence that this matter had been resolved as the Accounting Officers had acted on the anomalies in question to the satisfaction of the Auditor-General**

**Nonetheless, the Committee recommended the following;**

- i. The County Government should maintain up-to-date records of creditors with relevant supporting documents on any payments made to them.**
- ii. Also, no creditor should be paid without it being established first that a service/good was rendered/delivered to the council/the county government**

#### **Renewals Fund.**

Mr Speaker section 219 of the Local Government Act Cap 265 of the laws of Kenya requires the council to create and set aside adequate renewables fund to cater for the partial or entire replacement of some or all of its assets which owing to depreciation or other cause will require at some future date to be replaced.

During the year under review the council opened a Renewals Fund account and set aside Ksh 600,000 which had an interest of Ksh 32,861.

However the amount invested appear inadequate to finance Non-Current Assets worth Ksh 129, 075,162.

It was also not clarified how the council intends to finance the future replacement of its depreciable Non-Current assets in absence of adequate Renewals Fund.

Responding, Mr Mutambuki admitted to the Auditor-General's observation on the inadequacy on the provision for the Renewals Fund which he attributed to budgetary constraints which the Council faced at the time.

He said revenue collection was very low compared to the expenditure. For example, he said 2 per cent of the revenue collected was to cater for training levy, 10 per cent of the recurrent allocation was channeled to maintenance, 65 percent catered for service delivery and 35 percent was spend on personnel ratio which totaled 100 per cent of the budget from which the provision for the renewals fund was to be considered.

He said he did his best as far as providing for the renewals fund was concerned in view of the resources available and the conditionality of the Local Authority Transfer Fund.

**The Committee made the following observations;**

- i. That while appreciating that the Accounting Officer observed the law by creating and setting aside Ksh.600, 000.00 for Renewals Fund; he nonetheless failed to meet the requirement of ensuring the fund was adequately provided for as envisaged under Section 219 of the Local Government Act, Cap 265. This is considering that enough funds were required to adequately cater for the many Non-Current assets owned by the council whose value stood at Ksh. 129, 075,162.**
- ii. That failure by the Accounting Officer to clarify how future replacement of the Non-Current assets would be catered for implied that the council operated without a policy on the same contrary to regulations.**
- iii. That savings to the Renewals Fund would have increased significantly had the former Chief Officers been making regular provisions to the account as required by the law.**

**Mr Speaker Sir the Committee recommends the following;**

- i. That Accounting Officers serving the County Government must always abide by the legal provisions governing management of public funds failure of which the recommended sanctions should be applied on them.**
- ii. The County Government must come up with a policy on how replacement of its depreciating assets will be funded/financed**

**Net assets, capital and reserves**

The Net assets, Capital and Reserves balance increased from Ksh 165,278, 913 as at 30<sup>th</sup> June 2011 to Ksh 195,132,848 as at 30<sup>th</sup> June 2012. However the relevant supporting documents including the ledgers, analysis and schedules were not made available for audit verification.

Under the circumstances, the accuracy and validity of the Net assets, Capital and Results balance of Ksh 195,132,848 as at 30<sup>th</sup> June 2012 could not be confirmed.

The former County Clerk admitted the observations by the Auditor-General that the supporting documents were not provided for audit verification. However, he said the ledger was later prepared and was available for verification. He admitted that the failure to prepare the document on time was an oversight on his part and apologized for the omission. He said reconciliation on the figures in question had been done and the same was indicated in the final statements of the Council's accounts.

The Committee maintained that its ultimate duty was to ensure prudent use of public resources.

**Mr Speaker the Committee;**

**Noted with concern that had the Accounting Officer ensured timely action in availing the Creditors Ledger and the schedules for audit verification, this matter would not have appeared in this report as an audit query**

**The Committee;**

- i. Holds the accounting officer responsible for the delay in resolving this matter and recommends that in future, he must ensure that matters capable of being resolved with the Auditor-General are resolved promptly failure of which he be sanctioned by the appointing authority**
- ii. Accounting Officers must ensure that accurate, comprehensive and up to date accounts are prepared on time and submitted for audit before the statutory deadlines.**

## **TOWN COUNCIL OF MWINGI -2011/2012**

### **Accuracy of the financial statements**

The audit revealed the following;

As previously reported, the process of division of Assets and Liabilities between the Council and the County Council of Kitui had not been completed by 30 June 2012.

Further, the source and accuracy of the opening balances for the 1997/1998 financial statements as at 01 July 1997 and for the subsequent years, including 2011/2012, could not be confirmed in the absence of audited and certified accounts for the previous years.

In addition, amended financial statements for 2011/2012 have not been submitted to date. Consequently, it was not possible to confirm the accuracy and completeness of the council's financial statements for the year ended 30 June 2012.

Mr Speaker Sir replying to the observations, the former town Clerk said it was true the division of Assets and Liabilities between the Council and the County Council of Kitui had not been completed by 30 June 2012.

He said the exercise was entrusted to a team which operated under the Chairmanship of the former Permanent Secretary for the extinct Ministry of Local Government who were not through with the task as at the time of the audit. He said he was not in a position to amend the accounts for he had already handed over office to the Town Administrator by the time the financial statements for the 2011/2012 Financial Year were received on 22<sup>nd</sup> September, 2014,

The Committee emphasized the need for division of the Assets and Liabilities between the two former Local Authorities to be carried out, the lapse of time notwithstanding and considering that the transition period was still unfolding to enable the County Government which inherited them to put its records in order.

In that regard, the Committee welcomed the decision by the County Government to form a Sub-Committee to oversee the exercise as well as the national Committee constituted by the Transitional Authority to spearhead the same task countrywide.

However, the Committee stated that its main concern was examining the amended accounts which were to be handed over to the County Government but were not made available for audit verification. It noted that the amended figures were doubtful for not having been verified by the auditors.

It was feared that there could be material differences on the amended accounts which might affect the financial position of the County Government in relation to the 2013/2014 audit report.

**The Committee observed the following;**

- i. That the former Ministry of Local Government should have hastened the process on division of Assets and Liabilities between the Town Council of Mwingi and the County Council of Kitui to enable the County Government which inherited the properties to up-date its records accordingly.**
- ii. That there is need for the concerned state organs to ensure the pending exercise is concluded as a matter of urgency to enable the County Government to up-date its records and secure the assets in the interest of the public.**
- iii. That the effort spearheaded by both the County Government and the Transitional Authority to finalize the process was most welcome.**

**The Committee Mr Speaker recommends that;**



**The Transitional Authority should work in collaboration with the County Government to expedite the division of the assets and liabilities for the two former Local Authorities to enable the County Government have proper records of the same.**

### **Non-current assets**

The Non-Current Assets balance increased from Kshs.105, 059,689.00 as at 30 June 2011 to Kshs.114, 277,557.00 as at 30 June 2012. However, the appended Fixed Assets schedule under Note 7 does not clearly show how the balance increased from Kshs.105, 059,689.00 to Kshs.114, 277,557.00.

The fixed assets register was not updated and it omitted the accumulated depreciations.

Land ownership documents were not made available for audit verification. The Council also did not provide a schedule of buildings amounting to Kshs.34, 105,000.00 before depreciation of Kshs.2, 647,625.00 as at 30 June 2012.

In the circumstances, the ownership and accuracy of the Non-Current Assets balance of Kshs.114, 277,557.00 as at 30 June 2012 could not be confirmed.

In reply, the former Town Clerk attributed the rise of the Non-Current Assets balance to the purchase of additional office equipment's in the course of the year. He said the fixed assets register had not been prepared at the time of the audit hence explaining why the accumulated depreciations were omitted in the document.

He admitted that land ownership documents were not availed for audit verification because they could not be processed before completion of adjudication exercise which was in progress then.

However, the official was able to produce three copies of title deeds which he said were processed after the audit exercise was concluded.

But the Committee insisted that its main interest was examining the missing ownership documents for the other parcels of land...

**The Deputy Speaker:** Order! Hon. Members, Hon. Members consult in low tones to allow the chair move his motion, continue.

**Hon. Robison Mativo (Chair PIC/PAC):**

**The Committe noted the following;**

- i. That the increase of the Non-Current Assets balance from Kshs. 105, 059,689.00 to Kshs.114, 277,557.00 could not be ascertained owing to unavailability of supporting documents. In addition, the Accounting Officers failed to give credible explanation on how the increase came about.**
- ii. That the inclusion of some office equipments in the Fixed Assets Register yet they dont fall under that category might have been intended at covering-up for fraud.**
- iii. That the two former Chief Officers namely Mr Antony Naunga -the former Town Clerk and Mr Oscar Ojwang'-the former Treasurer neglected their duty by failing to maintain an updated Fixed Assets Register which was a necessary task.**

- iv. That failure by the Accounting Officers to avail the land ownership documents for audit verification aroused suspicion on the existence, whereabouts and security of the assets.
- v. That the Accounting Officers presided over accounting omissions/irregularities which might have been aimed at facilitating embezzling of public funds.

Mr Speaker the Committee recommends that;

That the Ethics and Anti-Corruption Committee (EACC) should carry out further investigation into this matter with a view to holding suspects accountable should misappropriation of public resources be confirmed and to have any lost property recovered

### Renewals Fund

The audit revealed the following;

Section 219 of the Local Government Act, Cap 265 requires the Council to create and set aside adequate renewals funds to cater for the partial or entire replacement of some or all of its assets, which, owing to depreciation or other causes, will require at some future date, to be replaced.

However, the Council did not set aside any renewals funds during the year, against the Council's Non-Current Assets balance of Kshs.114, 277,557.00 as at 30 June 2012. The Council was therefore in breach of the law.

Mr Speaker further, it has not been clarified how the Council intends to finance future replacement of its depreciable Non-current Assets in absence of renewals funds.

In reply, the former Town Clerk denied that the Council did not set aside a provision for the Renewals Fund. He said contrary to the observation, the Council had made a provision of Ksh. 99,760 for the kitty. However, he said it became untenable for the Council to provide for the fund due to unavailability of funds. But referring to the balance sheet, the Committee acknowledged that the Ksh. 99,000 was actually reflected but the bank statement from the Kenya Commercial Bank (KCB)-Mwingi branch showed the account had nothing.

The former Treasurer chipped in with a different version of story by informing the Committee that some money for the purpose was being deposited at another account held by the Council at the Cooperative Bank Mwingi branch

But the Committee disapproved the official by citing the written response to the audit queries which showed that the Council had only one bank account for the Renewals Fund No. 1103981800 held at the local branch of the KCB....

**The Deputy Speaker:** Hon. Members please, order Hon. Chair, Hon. Members please and I use the word please for the first time give us room, continue Hon. Chair.

**Hon. Robison Mativo (Chair PIC/PAC):** Thank you Mr Speaker. The encounter prompted the former Treasurer to change tune and submitted that the Council had two bank accounts for the Renewals Fund with one at the KCB and the other at the cooperative bank. He offered to bring bank statements as evidence for the existence

of the two bank accounts but he failed to do so on 28<sup>th</sup> November, 2014 as he had promised.

**Mr Speaker Sir the Committee made the following observations;**

- i. While appreciating that the council did open a bank account for the Renewals Fund, the same was not adequately provided for as required by law.
- ii. That the Accounting Officers attempted to mislead the committee by submitting the following;
  - That the council made a provision of Ksh. 99,760.00 for the Renewals Fund yet the bank statements did not reflect such information.
  - That the council operated an extra bank account for renewals fund held at the Cooperative Bank, Mwingi branch where provisions for the fund were also being deposited by the council yet he was unable to avail details of the bank and bank statements for audit verification and to prove existence of the account as he promised the committee. In addition, after making reference to the written response submitted by the two accounting officers, the committee discovered that the council operated only one bank account for renewals fund No. 1103981800 held at the local branch of the KCB.
- iii. Thus the two officials contravened Chapter six (6) of the Constitution (2010) on leadership and integrity by presenting misleading information to the committee while on oath.

**Mr Speaker Sir the Committee made the following recommendations;**

- i. That the two former Chief Officers who are still in public service are unfit to hold public office for violating Chapter 6 of the Constitution on leadership and integrity.
- ii. That Accounting Officers must always abide by the legal provisions governing management of public funds.
- iii. The County Government must come up with a policy on how replacement of its depreciating assets will be funded/financed

### **Cash and cash equivalents**

The audit revealed the following;

The Cash and Cash Equivalents balance decreased from Kshs.7, 205,757.00 as at 30 June 2011 to Kshs.1, 931,418.25 as at 30 June 2012. However, the Council did not maintain the main cash books and as a result, the sources of the cash books balances used to prepare bank reconciliations were unclear...

*(Hon. James Munuve member for Kanziku stood in his place)*

**The Deputy Speaker:** What is it Hon. Munuve?

**Hon. James Munuve** (Member for Kanziku Ward): We want clarification from the Chair, from the Speaker sorry, whether Hon. Chairman for PAC can be assisted by the vice, because as it seems he is very tired and the report is very long. So can you guide us from that?

**The Deputy Speaker:** Hon. Munuve I will come to you later, so Hon. Chair continue.

**Hon. Robison Mativo** (Chair PIC/PAC): Mr Speaker in the circumstances, it was not possible to confirm the accuracy and validity of the Cash and Cash Equivalents balance of Kshs.1, 931,418.25 as at 30 June 2012.

The former Town Clerk admitted to the observations by the Auditor-General and submitted that the cash books were later updated and reconciliation done. He said he was in possession of the two documents which he managed to get the previous day and offered to present them for audit review. He said he had previously struggled to secure the documents in vain.

The Committee stated that it was more interested in examining the main cash books with a view to confirming if the balances reflected therein were correct.

Regarding the bank reconciliations, the Committee expressed satisfaction with the response tendered by the former Town Clerk and declared that the matter had been resolved.

**Mr Speaker the Committee noted the following:**

- i. That preparing and maintaining the main cash book was a necessary task as the document was supposed to help the council in realising the following;
  - Recording receipts and payments of cash including transactions relating to bank
  - Knowing the balance of cash in hand and at bank at any point of time
  - And to minimize fraud on petty cash
- ii. That the reference data used by the council to prepare the bank reconciliations was questionable since the main cash book which should have been relied on was not available..

**The Committee recommends that;**

- i. Accounting Officers must ensure that account staffs deployed in county ministries always prepare accurate, comprehensive and up to date accounts which should be submitted for audit before statutory deadlines.
- ii. The Ethics and Anti-Corruption Commission (EACC) should step in and carry out further investigation into this matter with a

**viewing to holding suspects accountable should embezzling of public funds be confirmed and to have the lost money recovered**

**Mr Speaker Sir we move to receivables/debtors**

The Receivables/Debtors balance increased from Kshs.11, 768,707.00 as at 30 June 2011 to Kshs.13, 734,939.00 as at 30 June 2012. However, debtors' ledgers were not maintained.

Further, the financial statements reflects under note 5 imprests balance of Kshs.2,037,839.00 and salary advances amount of Kshs.123,860.00 although, the underlying records produced for audit verification showed balances of Kshs.1,561,146.00 and Kshs.172,900.00 for imprests and salary advances respectively

In addition, debtors' age analysis and provision for bad and doubtful debts were not made during the year.

In the circumstances, it was not possible to confirm accuracy and recoverability of the Receivables/Debtors balance of Kshs.13, 734,939.00 as at 30 June 2012.

Replying, the former Town Clerk admitted the observations by the Auditor-General regarding the increase of the Receivables/Debtors balance and non-maintenance of the Debtors' Ledger.

However, he said the imprests and salary advances were fully recovered by 28<sup>th</sup> February, 2013 and the Debtors Register was also updated.

But the Committee faulted the witness for missing the point while responding on the imprests balance and salary advances. It clarified that the main issue highlighted by the Auditor-General regarding the two issues was the variance of the figures involved; that is Kshs.1, 561,146.00 for the imprests balance and Ksh. 172, 900.00 for the salary advances as shown in the financial statements vis-à-vis the underlying records produced for audit verification but not the recovery of the money alone as the witness appeared to suggest.

The Accounting Officer admitted to not having handed over the office properly as stipulated by regulations.

The Committee underscored the need for the records submitted by the witnesses during the proceedings to be subjected for audit review to confirm if they adhered to the directive by the Auditor-General to amend the accounts to reflect the correct balances.

**Mr Speaker the Committee observed the following;**

- i. That the increase of the Receivables/Debtors balance from Kshs.11, 768,707.00 to Kshs.13, 734,939.00 could not be ascertained owing to unavailability of supporting documents which could have been masterminded to cover-up for fraud.**
- ii. That maintaining the Debtors 'Ledger was a necessary task as it was where detailed information about customers who dwelt with**

- the council on credit terms was to be posted. Thus, the Accounting Officers disregarded an important duty.
- iii. That failure to keep the Debtors Ledger exposed the council to the risk of incurring losses through bad debts. This is because without up-to-date information on the debtors, the council lacked the mechanism for monitoring/ pursuing defaulters.
  - iv. That cash flow is the lifeblood of any organization, and so it stood that irregular flow of finances could have spelt potential disaster for the council if it failed to implement appropriate systems and processes necessary to maintain a healthy flow of funds.
  - v. That there could have been an element of fraud regarding the difference on the imprests balance and salary advances amount which in the financial statements are reflected as Kshs.2,037,839.00 and Kshs.123,860.00 respectively but shown as of Kshs.1,561,146.00 and the Ksh 172,900.00 respectively in other records hence creating confusion.

The Committee recommends that;

- i. The county government should maintain accurate and up-to-date records of debtors and ensure that measures are put in place to collect revenue from the outstanding debtors
- ii. The County Secretary should follow up the matter and ensure that the two former Chief Officers namely Mr Antony Naunga and Mr Oscar Onyango who are still in public service are recalled to do proper handing over as required and for accountability purpose.
- iii. That the Ethics and Anti Corruption Commission (EACC) should step in and carry out further investigation into this matter with a view to taking appropriate legal action against suspects should misappropriation of public funds be confirmed and to have the lost amounts recovered

#### Payables/creditors, accruals and provisions

The Payables/Creditors, Accruals and Provisions balance increased from Kshs.2,852,691.00 as at 30 June 2011 to Kshs.5,321,528.00 as at 30 June 2012. However, the creditors' ledgers were not updated.

Further, the Council did not produce statements or invoices to support creditors' balances totaling Ksh. 2,704,412.00. In the circumstances Mr Speaker, the accuracy of the Payables/Creditors Accruals and Provisions balance of Kshs.5,321,528.00 as at 30 June 2012 could not be confirmed.

The former Town Clerk admitted the observations by the Auditor-General regarding the increase of the Payables/Creditors, Accruals and Provisions balance from Ksh.2,852,691.00 as at 30 June 2011 to Ksh.5,321,528.00 as at 30 June 2012 and the creditors' ledgers not being updated. However, he submitted that the

Creditors' Ledger was later updated and the correct balances handed over to the County government.

But he did not explain why the Council did not produce statements or invoices to support creditors' balances totaling Ksh. 2,704,412.00 which was of more interest to the Committee with a view to subjecting them to audit review.

The former Treasurer gave an undertaking to avail the supporting documents on 28<sup>th</sup> November, 2014 which he did not.

**The Committee made the following observations Mr Speaker;**

- i. That the increase of the Payables/Creditors, Accruals and Provisions balance from Kshs.2,852,691.00 to Kshs.5,321,528.00 could not be ascertained as the Accounting Officer failed to produce creditors registers, original contract agreements, invoices, delivery notes, statements, schedules and payrolls to justify the rise as he promised the committee during the proceedings. In addition, the Accounting Officers were not updating the creditors' ledger as required which would have provided relevant information on how the increment on the creditors balance was recorded.
- ii. That maintaining the creditors ledger whose purpose was to provide knowledge about which suppliers the council owed money, and how much was a necessary task which the Accounting Officers chose to ignore hence exposing the council to the possibility of being swindled.
- iii. That failing to maintain proper records of the creditors could have been masterminded to facilitate or cover up for fraud

**The Committee recommends that;**

- i. The County Government should do the following;
  - Not to pay any creditor without first establishing that the service/good for which the claim is made was rendered/delivered to the former councils/or the County Government.
  - Should always maintain up-to-date records of creditors with relevant supporting documents for payments made.
- ii. That the Ethics and Anti Corruption Commission (EACC) should step in and carry out further investigation into this matter with a view to taking appropriate legal action against suspects should misappropriation of public funds be confirmed and to have the lost amounts recovered .

**Mr Speaker Sir now we are at LATF projects**

The audit revealed the following;

During the year, the Council received a sum of Kshs.39, 431,035.00 LATF grants from the Central Government. However, the Council did not implement projects worth Kshs.3, 896,435.00. The Council therefore breached the LATF guidelines besides denying the local residents the intended services.

It was therefore not possible to confirm the funds earmarked for the projects have been properly accounted for as at 30 June 2012.

The former Town Clerk admitted to the observations by the Auditor-General and submitted that Ksh. 3, 896,435.00 not spent on the intended projects was diverted to pay staff salaries. He said the Council was experiencing a cash crunch at the time as a result of the sharp decrease in revenue collection occasioned by the unexpected ban on sand harvesting business hence the reason the project funds were diverted to curtail a looming crisis over delayed payment of salaries.

The Committee sought to know what effort the Council put in place to boost collection of and ensure the projects whose implementation was halted after the allocated funds were channeled to another purpose were carried out later. Responding, the former Town Clerk said the issue which occurred in 2011/2012 had been overtaken by events since the issue of cess collection had been handed over to the County Government.

The former Town Treasurer admitted that diverting the Ksh. 3, 896,435.00 million to pay salaries was a breach of the law.

However, in a bid to step up revenue collection, he said the Council teamed up with the Provincial Administration to sensitize the community against haphazard sand harvesting practices in a bid to have the ban lifted.

**The Committee made the following observations;**

- i. That the Accounting Officers violated the LATF guidelines by diverting the kshs. 3,896,435.00 meant for development projects to pay staff salaries**
- ii. That it was not clear if the diverted amount was used on paying the council staff as the Accounting Officer failed to produce evidence to that effect**

**The Committee Mr Speaker recommends that;**

- i. The County Government should always ensure that funds earmarked for public projects are properly spent and accounted for.**
- ii. That the Ethics and Anti Corruption Commission (EACC) should step in and carry out further investigation into this matter with a view to taking appropriate legal action against suspects should misappropriation of public funds be confirmed and to have the lost amounts recovered**

**Mr Speaker Sir we are at Financial Improprieties**



An amount of Kshs.32, 176.00 meant for Kalisasi Secondary School Project was used to pay fees for the area councilor who was pursuing a certificate course in County Governance at the Jomo Kenyatta University of Agriculture and Technology (JKUAT), contrary to the financial regulations requirements.

The Council paid M/s Mwingi Hardware Kshs.149, 404.00 for supply of building materials for construction of a classroom at Kyethani Secondary School. However, at the time of the audit the materials had not been delivered.

In the circumstances Mr Speaker, the propriety of the expenditure totaling Kshs.181, 580.00 incurred by the Council during the year could not be confirmed as a proper charge to public funds.

Responding, the former Town Clerk said it was true that Ksh. 32,176 meant for a project at Kalisasi secondary school project was used to pay fees for the area councilor who was pursuing a certificate in county governance at JKUAT contrary to the financial regulations. However, he said the amount was fully recovered from his allowances and the Committee was satisfied with his submission.

Mr Speaker he also said there was evidence to proof that M/s Mwingi hardware later delivered building materials worth Ksh. 149,440.00 to Kyethani secondary school contrary to the observation by the Auditor-General that the materials were not delivered after the Council paid the supplier in advance. He said it was only that the supplier had not acted by the time the audit was carried out beginning from 1<sup>st</sup> of February, 2013.

But the Committee stated that it was only communication from the school confirming delivery of the building materials that would convince it that the supplier honored his obligation.

The Committee questioned the motive by the Accounting Officer to pay for the materials before they were delivered on site which contravened the procurement procedures.

The former Town Treasurer maintained that the council adhered to the normal procurement procedures when tendering for the supply of the building materials.

**The Committee made the following observations;**

- i. That the Accounting Officer contravened procurement regulations by making advance payment of Kshs. Kshs.149, 404.00 in respect of non-existent M/s Mwingi Hardware for goods which had not been delivered.**
- ii. That making the advance payment to the fictitious supplier was a ploy to fleece public funds.**
- iii. That in processing the payment, the Accounting Officer may have used fake documents which amounted to a criminal act**
- iv. That the Accounting Officer did not produce evidence to proof that the supplier eventually delivered the building materials to Kyethani secondary school as he submitted.**
- v. That the Accounting Officer breached financial regulations by diverting the Kshs.32, 176.00 meant for a project at Kalisasi**

**Secondary School to payment of college fees for the area Councilor.**

**Mr Speaker Sir the Committee recommends that;**

- i. The County Government should ensure that goods, works or services should be procured in accordance with the Public Procurement and Disposal Act, 2005 and related regulations of 2006.**
- ii. That the Ethics and Anti Corruption Commission (EACC) should step in and carry out further investigation into this matter with a view to taking appropriate legal action against suspects should misappropriation of public funds be confirmed and to have the lost amounts recovered.**
- iii. The Accounting Officer is unfit to hold public office for abetting corrupt practices.**

Mr Speaker Sir, now we are at the findings and recommendations of the financial operations of the County Government of Kitui and defunct local authorities for the period from 1<sup>st</sup> January to 30<sup>th</sup> June 2013. Mr Speaker Sir if I may start with;  
**Introduction.**

This report covers the operations of County Government of Kitui comprising the Executive, the Assembly, the defunct Municipal Council of Kitui, County Council of Kitui, and defunct County Council and Town Council of Mwingi. These Local Authorities ceased operations with the enactment of the County Government Act, 2012 which repealed the Local Government Act, Cap 265.

#### **Kitui County Executive and Assembly**

##### **Improper Handing Over/Taking Over from the Defunct Local Authorities**

There was no proper handing over/ taking over of the defunct Local Authorities' assets and liabilities by the Transition Authority as required by Ministry of Local Government circular of 18<sup>th</sup> February, 2013. This is because the Transition Authority only directed the former Council's officials to only hand over official documents, assets and office equipment in their possession.

**Mr Speaker the Committee noted the following;**

- i. That the then Interim County Secretary Mr Fredrick Martin Muli failed to enforce an efficient and transparency handing over/taking over process as per the guidelines issued by the Transitional Authority which he represented.**
- ii. That the Transitional Authority did not give the exiting councils clear communication on how they were required to hand over their assets and liabilities to the County Government.**
- iii. That the lack of proper handing over/taking over implied that the custody of the assets and liabilities belonging to the defunct councils**

was not officially transferred to the county government which compromised their security as the latter was not under any obligation to safeguard them. Thus there was real risk of assets like public land, vehicles, computers and other equipment being stolen due to lack of accountability recorded during the handing over/taking over process.

Mr Speaker the Committee recommends that;

- i. To assist the County Government obtain correct closing balances of assets and liabilities transferred from the defunct Local Authorities, Transition Authority should ensure that proper handing over by the former chief officers is done as per the above circular.
- ii. That the Ethics and Anti Corruption Commission (EACC) should step in and carry out further investigation into this matter with a view to delivering justice should misappropriation of public resources be affirmed .

### Current Assets and Liabilities

#### (i) Cash and Bank Balances

During the period under review, the former Local Authorities operated several bank accounts. The Interim Principal Finance Officer wrote to the clerks of the former Councils vide letter dated 03 May 2013 referenced CGK/SCMU/ADM/Vol. 1/ (07) , advising them to close the bank accounts and transfer the balances to the County Revenue Account held at Kenya Commercial Bank.

However, the following observations were made from the examination of the Council bank records to determine whether Section 28 of the County Governments Public Finance Management Transition Act, 2013 was complied with.

#### County Council of Mwingi

	Bank	Account	Balance as per latest statement(Ksh.)
1	KCB	LATF	Balances as at 06 July 2013 Kshs.20, 744,626.35. Kshs.20,742,426 transferred to County Government Current account on 24.07.13
2	Equity	Salaries	Balance as at 13 June 2013 Kshs.2, 335,272. No evidence of closure and transfer of funds to the revenue fund account.
3	Equity	GRF	Balance as at 13 June 2013 Kshs.1.005, 248. No evidence of closure and transfer of funds to the revenue fund account.

4	Equity	LATF	Balance as at 22 May 2013 Kshs.53, 565.85. No evidence of closure and transfer of funds to the revenue fund account.
5	KCB	Savings/ Renewals	Details not available
6	KCB	KRB	Details not available
7	KCB	EU	Details not available
8	KCB	GRF	Details not available

### County Council of Kitui

	Bank	Account	Comments
1	Equity Bank	Local Authority Transfer Fund	Balance as per latest bank statement as at 31 March 2013 Kshs.1, 044,997.15. No evidence of closure and transfer of funds to the revenue fund account.
2	National Bank	Local Authority Transfer Fund	
3	National Bank	Poverty Reduction	Balance as per latest bank statement as at 30 April 2013 Kshs.0.00
4	National Bank	General Rate Fund	Balance as per latest bank statement at 30 June 2013 Kshs.17, 457.37. No evidence of closure and transfer of funds to the revenue fund account.
5	Co-Operative	Local Authority Transfer Fund	Balance as per latest bank statement) as at 30 June 2013 Kshs.15, 022. No evidence of closure and transfer of funds to the revenue fund account.
6	Equity Bank	Salaries	Balance as per latest bank statement as at 14 May 2013 Kshs.94, 872.15. No evidence of closure and transfer of funds to the revenue fund account.
7	Family Bank	Local Authority Transfer Fund	Details not available
8	Equity Bank	<i>Kazi Kwa Vijana</i>	Balance as per latest bank statement as at 24 August 2013 Kshs.23, 770. No evidence of closure and transfer of funds to the revenue fund account.

**Municipal Council of Kitui**

	Bank	Account	Balance as per latest statements (Ksh)
1	KCB	LATF	Balance as 16 May 2013 Kshs.900, 629.60. Amount transferred to County Government Recurrent account Kshs.898, 829.60 on 20 May 2013.
2	Equity	<i>Kazi kwa Vijana</i>	Balance as at 30 September 2013 Kshs.1, 045 No evidence of closure.
3	National Bank	GRF	Balance as at 30 April 2013 Ksh.(2,000). No evidence of closure and transfer of the deficit to County revenue fund account.
4	Co-operative Bank	Renewals Account	Balance as at 14 January 2013 Kshs.169, 448.60. No evidence of closure and transfer of funds to the revenue fund account.
5	KCB	KRB	Balance as at 14 January 2013 Ksh. (11,458.85). No evidence of closure and transfer of deficit to County revenue account.
6	Equity	GRF	Balance as at 30 June 2013 Kshs.1, 100,729. No evidence of closure and transfer of funds to the revenue fund account.
7	KCB	EU	Details not available
8	KCB	GRF	Details not available

**Town Council of Mwingi**

	Bank	Account	Balance as per latest statement(Ksh)
1	KCB	General Fund Rate	Balance Ksh. (19,531.85). No evidence of Closure and transfer of funds to the revenue fund account.
2	KCB	Salaries	Kshs.838,010.15 Transferred to Revenue account on 24 July 2013
3	KCB	LATF	Kshs.1,615,474.50 Transferred to Revenue account on 24 July 2013

4	KCB	Kenya Board Roads	Ksh.(2,627.60) Transferred to Revenue account on 24 July 2013
5	KCB	Kazi kwa Vijana	Balance as at 30 June 2013 Kshs.9, 600 No evidence of closure and transfer of funds to the revenue fund account.
6	Equity	Operations and Maintenance	Balance as at 29 June 2013 Ksh (747.90) No evidence of closure and transfer of the deficit to County revenue account.
7	Equity	Salaries	Details not available. No evidence of closure of account
8	Co-Operative	Renewal Fund	Balance as at 4 July 2013 Kshs.106, 007.80. No evidence of closure and transfer of funds to the revenue fund account.

Mr Speaker, It was further observed that no board of survey was constituted to establish the correct cash on hand and bank account balances for the defunct local authorities, which would subsequently form the opening balances for County Government. Cash books were also not ruled off in order to form a distinct boundary between the incoming authority and the former Councils.

**Mr Speaker Sir, the Committee noted the following;**

- i. **That the Accounting Officers violated the law/financial regulations regarding the following;**
  - **Spending revenue to the tune of Ksh 121,065,001 contrary to the clear directive by the Ministry of Local Government which required them to ensure that all the revenue collected during the transition period was banked intact in the General Rates Fund (GRF) account as required by law. It is worth to note that Mr Speaker that happened even though the national government had disbursed a total of Ksh 273,681,740.00 to the County Government to cater for operational costs while at its infancy. The funds were released between 24<sup>th</sup> April to 1<sup>st</sup> July, 2013.**
  - **Failure to comply with the interim Principal Finance Officer's directive to shut the bank accounts and transfer the balances thereof to the County Revenue Account which derived its weight from section 28 of the County Governments Public Finance Management Transition Act, 2013.**
- ii. **That failure to constitute a Board of Survey and to rule off the cash books as required may have been a deliberate move aimed at covering up for fraud.**

Mr Speaker the Committee recommends that;

- i. The County treasury should ensure that any bank account operated by the defunct councils which might still be active is closed forthwith and the balances therein transferred to the County Revenue Account as required by law.
- ii. The Ethics and Anti Corruption Commission (EACC) should carry out further investigation into this matter with a view to holding suspects accountable should embezzling of public funds be confirmed and to have any lost amounts recovered.
- iii. Mr Speaker the concerned Accounting Officers who might still be in public service are unfit to hold public office for violating the law contravening clear government directives and regulations on financial management.

*(Hon. Peter Mutemi rose in his place)*

**The Deputy Speaker:** What is it Hon. Mutemi?

**Hon. Peter Mutemi (Member for Kiomo/Kyethani Ward):** Mr Speaker i dont knwo whether we still have the quorum.

**The Deputy Speaker:** Order! Order members, Clerk can you ascertain that?

**The Clerk:** We have a quorum.

**The Deputy Speaker:** Hon. Chair you can continue, Hon. Mutemi there is a quorum.

**Hon. Peter Mutemi (Member for Kiomo/Kyethani Ward):** Despite the quorum Mr Speaker....

**The Deputy Speaker:** Hon. Mutemi, what is it?

**Hon. Peter Mutemi (Member for Kiomo/Kyethani Ward):** Mr Speaker beside the quorum which is confirmed is there, i am hearing members murmuring that they are tired and the energy to listen and make follo-up of this important document may be affceted and so they were requesting the chair with due respect and guidance you grant them opportunity such that you can adjourn the house until tomorrow.

**The Deputy Speaker:** Hon. Mutemi i will not agree with you because you have not quoted any standing order. So i will allow the honourable chair to continue. Hon. Chair you can continue and Hon. Mutemi hold your horses.

**Hon. Robinson Mativi ( Chair PIC/PAC):** Hon. Speaker before interuption we had reched debtors balances;

**(ii) Debtors Balances**

The former Councils prepared statements of all debtors as at 28 February 2013 but these were not taken over, confirmed and recorded in the County Government records. The Councils continued to collect revenue and bank the same in their bank accounts. In the circumstances, there was no clear cut off point for confirmation of any movements which could have taken place on debtors taken over.

The County Government did not carry out any procedures to ensure completeness, accuracy or correctness of the list of debtors handed over. The debtors indicated in the handing over report prepared by the defunct local authorities are as listed below:

<b>Former Local Authority</b>	<b>Amount (Ksh)</b>
Town Council of Mwingi-	13,611,079
County Council of Mwingi-	41,755,731
County Council of Kitui-	158,096,600
Municipal Council of Kitui-	<u>55,139,957</u>
<b>Total</b>	<b><u>268,603,367</u></b>

The Committee observes the following;

- i. That the debt figure of Ksh. 268,603,367.00 which the former Local Authorities transferred to the County Government could not be authenticated owing to the failure by the County Government to perform the required procedures to ensure correctness of the list of debtors handed over. In addition, no supporting documents including debtors' registers, copies of invoices and demand notices were availed for audit verification.
- ii. That the Transitional Authority abdicated its responsibility by failing to ensure the handing over/taking over process was efficient and transparent. This was more to do with confirmation of the debtors' records/details and fixing the same in the County Government records for the accountability purpose.
- iii. That the debtors' records/details were left open to manipulation by fraudsters as a result of the omission.
- iv. That the high debt figures portrayed laxity/negligence on the part of the former Chief Officers in collecting revenue.

The Committee makes the following recommendations;

- i. That the county government should not pay any debtor before establishing beyond doubt that a service/good was rendered/delivered to the council/county government.
- ii. That the County Government should always maintain debtor's ledgers capturing all specific details of the debtors and ensure cut-off procedures are performed and circularization of the debtors done whenever the need arises to seal loopholes which corrupt public officers could rely on to embezzle public funds. Also, a board of survey should be formed to confirm the debtors' balances.
- iii. That the Ethics and Anti Corruption Commission (EACC) should carry out further investigation into this matter with a view to holding suspects accountable should misappropriation of public funds be affirmed and to have any lost amount recovered.

*(Hon. Mary Mbandi stood in her place)*



**The Deputy Speaker:** Hon. Mbandi

**Hon. Mary Mbandi (Nominated Member):** Mr Speaker Sir, I don't think we have a quorum.

**The Deputy Speaker:** Clerk, you can ascertain that.

**The Clerk:** Mr Speaker we have no quorum

**The Deputy Speaker:** Hon. Whips, the Majority, the Minority...

**Hon. Mwendwa Munyoki (Chief whip):** Mr Speaker I was out and it's as if members have gone home...

**The Deputy Speaker:** Hon. Whip I will not allow that, I will give you 5 minutes to make sure that there is quorum. Together with your deputies I will give you 5 minutes to make sure there is quorum. So you make the necessary arrangements. Hon. Whip this is for you and your deputy and the minority. You make sure within 5 minutes we have quorum. So you can relax honourable members and be consulting for 5 minutes as we look for quorum.

*(Both whips matched out to look for more members)*

**The Deputy Speaker:** Hon. Munuve it's not in record, so what are you trying to say?

**Hon. James Munuve (Member for Kanziku ward):** Ok according to our standing orders which we have amended today, I think the bell should be rung, is it true Mr Speaker Sir?

**The Deputy Speaker:** Hon. Munuve I know you are out of order. I have ruled on that. So why are you trying to raise an issue which has been ruled on...

**Hon. James Munuve (Member for Kanziku ward):** Mr Speaker Sir, we normally follow rules and procedures of this house and I have really quoted the standing order.

**The Deputy Speaker:** Hon. Munuve I think you want to entertain us, you can continue because we have given the whips time to do what they are doing. So the 5 minutes you can relax around.

**Hon. Mwendwa Munyoki (Chief whip):** Yes Mr Speaker Sir, Mr Speaker I have gone round, I have used all the mechanism that I can use to see whether I can bring the members back...

*(Hon. James Munuve stood in his place)*

**The Deputy Speaker:** What are you trying to say Hon. Munuve?

**Hon. James Munuve (Member for Kanziku ward):** You have given the whip 5 minutes and actually he has used less than a minute. Is he in order?

**The Deputy Speaker:** Hon. Munuve you are right. Whip I will not allow that, take this issue seriously that we are giving you 5 minutes to look for members.

Otherwise it will be proving that you are incompetent on that. So I don't want to go to that direction. And I can see your deputies there. So you go and do the necessary because the 5 minutes are still...

**Hon. Mwendwa Munyoki (Chief whip):** Mr Speaker, Mr Speaker...

**The Deputy Speaker:** Hon. Whip...

**Hon. Mwendwa Munyoki (Chief whip):** Mr Speaker we were out with the deputy, we have gone round and Mr Speaker I think Hon. Munuve is joking. You see this is a honourable house...

**The Deputy Speaker:** Order! Order honourable...

**Hon. Mwendwa Munyoki (Chief whip):** So we should portray all the ethics Mr Speaker...

**The Deputy Speaker:** Honourable...

**Hon. Mwendwa Munyoki (Chief whip):** Mr Speaker I am a Hon. Member. I was out, I have gone round, I have even used my phone calling members and they have gone Mr Speaker. What do you want me to do Mr Speaker?

**The Deputy Speaker:** Honourable whip, I think you are not taking this one seriously there is a ruling that you must use your 5 minutes to look for members. Probably you are saying the way you are doing now you are looking for members. I can agree on that but I have given you 5 minutes to look for members. So probably when you are trying to raise issues with Hon. Munuve probably you are looking for quorum. May it be like so. I am waiting for 5 minutes and then you can raise your issue after that.

So Hon. Munuve is in order. You are the one who is out of order

*(Hon. Peter Kilonzo member for Athi stood in his place)*

**The Deputy Speaker:** What is it Hon. Kilonzo?

**Hon. Peter Kilonzo (Member for Athi Ward):** Mr Speaker according to standing order No. 32 which was not amended today paragraph 2 says that if on the account under paragraph one which talks about quorum, does not appear to be present the Speaker or the chair person shall cause a division bell to rung and if no quorum is present at the expiration of 8 minutes then;

- a) If the Speaker is in the Chair, the Speaker shall adjourn County Assembly until the next sitting without question put.
- b) If the County Assembly is in committee, Mr Speaker I think I should stick to paragraph 2 (a).

So instead of just look as if we are chasing the whip, the bell should go ringing for like 5 minutes and if not so without putting any question Mr Speaker unless guided the standing order No. 1. Thank you.

**The Deputy Speaker:** Hon. Kilonzo, the point you are raising, you are raising it first of all at the wrong time because we are looking for quorum for now very serious issue.

Second there was a resolution that we, or this Assembly we resolved that we should not ring a bell since we are in a foreign I may call it country or what for you explanation, there was a communication here from the chair that we will be using this method. So we are in order. Order Honourable members, Madam Clerk is there any quorum?

**The Clerk:** Mr Speaker we have no quorum.

**The Deputy Speaker:** Order Hon. Kilonzo, Hon. Members I will take note on that, that there is no quorum and probably I may agree with Hon. Mutemi. I am persuaded by that because he happens to be a member of this committee and the report they are giving is very serious document/ report. I understand that we need to follow it keenly. So I will be persuaded to call for adjournment at this moment.

*(Members stood in their places)*

**The Deputy Speaker:** Hon. Members the house stands adjourned until tomorrow Thursday 2<sup>nd</sup> of July 2.30 pm.

**The County Assembly rose at 5.03 pm**