

COUNTY GOVERNMENT OF KITUI



COUNTY ASSEMBLY
SECOND ASSEMBLY- THIRD SESSION

COMMITTEE ON LANDS, INFRASTRUCTURE AND URBAN DEVELOPMENT

REPORT ON THE INQUIRY INTO:

- i. THE MOTION ON THE BUSH CLEARING EXERCISE,
 - ii. THE TARMACKING OF THE TWO KILOMETRE STRETCH ROAD FROM OIL LIBYA TO JUBILEE COLLEGE,
 - iii. THE FUEL CONSUMPTION FOR THE PERIOD OF 1ST MARCH, 2018 TO 31ST MARCH, 2019.
-

CLERK'S CHAMBERS
COUNTY ASSEMBLY BUILDINGS,
KITUI.

JUNE, 2019

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ABBREVIATIONS

CGA	County Government Act
CO	Chief Office
EACC	Ethics and Anti-Corruption Commission
LIUD	Lands, Infrastructure and Urban Development
LIHUD	Lands, Infrastructure, Housing and Urban Development
PPADA	Public Procurement and Asset Disposal Act

ANNEXES

Annex 1- Adoption of Report

Annex 2- Marked **NK & JM** are copies of Young Creativehands Enterprise registration certificates

Annex 3- Marked **LIHUD- II** is a copy of the correspondence from the ministry on forwarding of the fuel consumption documents.

Annex 4- Sample response from the Ministry of LIHUD on involvement of village administrators in the bush clearing exercise **MARKED LIHUD III**

Annex 5- response from the Ministry of LIHUD on the forwarding of all documents relating to the tarmacking of the two kilometre stretch road from oil Libya to Jubilee College to EACC **MARKED LIHUD I**

ANNEX 6- marked **LIHUD- IV** is a summary of all the companies that applied for the quotations.

Annex 7- Adoption minutes

1.0 PREFACE

Mr. Speaker Sir,

It is my pleasant pleasure to present the report of the Committee on Lands, Infrastructure and Urban Development on the inquiry into the motion on the bush clearing exercise, tarmacking of the two kilometre stretch road from oil Libya to jubilee college, fuel consumption for the period of 1st march, 2018 to 31st march, 2019 under the Ministry of Lands, Infrastructure, Housing and Urban Development.

1.1 COMPOSITION OF THE COMMITTEE

The Committee on Lands, Infrastructure and Urban Development was constituted on 11th October, 2017 via a resolution of the House and elected its Chairperson and Vice Chairperson on 18th October, 2017. It is composed of the following members:-

- | | |
|--------------------------------|--------------------|
| 1. Hon. Boniface Katumo | – Chairperson |
| 2. Hon. Geoffrey Mwalimu | – Vice-chairperson |
| 3. Hon. Colleta Koli Kimanzi | – Member |
| 4. Hon. Eunice Katheke | – Member |
| 5. Hon. Charles Maema | – Member |
| 6. Hon. Jehoshephat Nzamba | – Member |
| 7. Hon. Alex Mbili | – Member |
| 8. Hon. Alex W. Mwangangi | – Member |
| 9. Hon. David Thuvi | – Member |
| 10. Hon. John Kisangau Mbaki | – Member |
| 11. Hon. Anthony Ndooh Mwanzia | – Member |

1.2 COMMITTEE'S MANDATE

The Committee is established under Standing Order 190(1). Pursuant to Standing Order 190(5), the mandate of the Committee is to:

- 1. Investigate, inquire into and report on all matters relating to the mandate, management, activities, administration, operation and estimates of the assigned department;**

2. Study programs and policy objectives of departments and the effectiveness of the implementation;
3. Study and review all county legislation referred to it;
4. Study, assess and analyse the relative success of departments as measured by the results obtained as compared with their stated objectives;
5. **Investigate and inquire into all matters relating to the assigned departments as they may deem necessary, and as may be referred to them by the County Assembly;**
6. To vet and report on all appointments where the constitution or any law requires the County Assembly to approve, except those under Standing Order 185(Committee Appointments); and
7. Make reports and recommendations to the county assembly as often as possible, including recommendation of proposed legislation.

The Second Schedule of the Standing Orders requires the Committee to: consider

- a. Development of County policy Development formulation and legislation on Lands, Infrastructure and Urban Development,
- b. all matters related to county transport, including county roads(including development, maintenance and rehabilitation), County housing, street lighting, traffic and parking, public road transport and ferries and harbours, excluding the regulation of international and national shipping and matters related thereto;
- c. County public works and services including storm water management systems in built-up areas and water and to facilitate and promote sustainable urban and pre-urban development, electricity and gas reticulation, public works, planning development and maintenance of public buildings, promotion of sustainable built environment and clean urban set up, implementation of relevant national policies, develop county transport information database and managing land in liaison with National Land Commission, land survey and mapping,.

1.3 ACKNOWLEDGEMENT

The Committee is thankful to the Offices of the Speaker and the Clerk of the County Assembly for the logistical support accorded to it during the entire process of the inquiry and report writing.

I wish to express my appreciation to the Honorable Members of the Committee for their resourceful input that informed the content of this report. My sincere gratitude also goes to the Secretariat for his dedication towards compiling this report.

It is therefore my pleasant duty and privilege, on behalf of the Sectoral Committee on Lands, Infrastructure and Urban Development to table this report to the Assembly for deliberation and subsequent adoption.

SIGNED.....

HON. BONIFACE KATUMO, M.C.A. KYANGWITHYA WEST

CHAIRPERSON, COMMITTEE ON LANDS, INFRASTRUCTURE AND URBAN
DEVELOPMENT

DATE.....

2.0 BACKGROUND

Mr Speaker Sir,

On 6th December, 2018, Hon. David Thuvi, the Mca from kwa mutonga ward tabled a motion of County Importance relating to the bush clearing exercise.

The motion read as follows:

AWARE that the County Government of Kitui is said to have undertaken a bush clearing exercise for the county roads in all the sub- counties within the county to pave way for grading works;

FURTHER AWARE that the said exercise is alleged to have been undertaken by private companies who tendered for the work and were awarded even though members of this assembly had been informed that the bush clearing would be undertaken by ward residents as a way of empowering them;

CONCERNED that, even though private companies were contracted to undertake the exercise, it has come to the knowledge of the members of this assembly that it is the ward administrators in the specific wards who identified where the bush clearing was to be done casting doubt on whether the said exercise was reasoned before the tendering was done as the areas for bush clearing should have been identified long before the tendering Was done;

FURTHER CONCERNED that even though the bush clearing exercise was undertaken by private companies, the village administrators were responsible for supervising the exercise and this casts doubt on what the county government will be paying if it has not already paid the private companies for if it was undertaking the duties that it had contracted private companies to undertake.

NOTING that to date the members of this assembly have little information if at all that supports the claims that private companies undertook the work that they have now been paid for or await to be paid for;

This House hereby resolves that;

- a) The matter of bush clearing be thoroughly investigated by the relevant house committee as to determine whether the procurement of the said services was done in accordance with the Public Procurement and Asset Disposal Act, 2015;
- b) In the event that the law was not adhered to in procuring the said services, the anti-corruption commission to take up the matter with a view of investigating it further and recommending prosecution to the director of public prosecution of those that are culpable.
- c) That no payment should be made in respect of bush clearing to the following companies until the matter is fully investigated by all the relevant assembly committees and any other public agency and payments thereof cleared.

The Motion was adopted by the House and the Committee on Lands, Infrastructure and Urban Development was tasked by the House to investigate the matter amongst others and thereafter table a report for consideration.

2.1 OBJECTIVES OF THE INQUIRY

Mr. Speaker Sir,

The Committee sought to:

- i) Examine and inquire into the above matters and any other relevant matter and report to the County assembly;
- ii) Examine whether there was compliance to the Public Procurement and Disposal Act during the tendering process of the projects by the ministry of LIHUD;
- iii) Make recommendations on the findings as to adherence to the law, amongst other relevant issues.

2.2 COMMITTEE PROCEEDINGS

Mr. Speaker Sir,

In its inquiry, the Committee through the office of the clerk requested for some documents from the Ministry of Lands, Infrastructure, Housing and Urban Development whereby upon the receipt of the documents, the committee proceeded to Mwingi cottage on 9th to 13th April, 2019 for interrogation of the documents.

The Committee received and interrogated the following documents:

1. Tendering documents for the bush clearing exercise;
2. Local purchase orders (LPOs) both existing and cancelled for fuel consumption from the period of 1st March, 2018 to 31st March, 2019.

The committee never received tendering documents for the tarmacking of two kilometer stretch road from oil Libya to Jubilee College from the concerned ministry as they alleged that the documents are in the custody of EACC. **(Annexed and marked LIHUD-1 is a copy of the correspondence between EACC and the Ministry)**

Therefore the committee resolved not to inquire into the matter on the two kilometer road from oil Libya to Jubilee College as indicated in the attached letter from the concerned ministry that the matter is under investigation by EACC.

Mr. Speaker Sir,

Upon interrogation of the documents provided, the committee resolved to further request for the following documents;

- i. Letters of tender award for the bush clearing project.
- ii. Appointment letters for members of the evaluation committee for the bush clearing exercise.
- iii. Notification of intention to enter into contract for the bush clearing exercise with the awarded contractors.
- iv. Quotations request letters for the bush clearing exercise.
- v. Certificates of completion for the bush clearing exercise.
- vi. Payment vouchers for the bush clearing exercise.
- vii. Appointment letters for members of the tender opening committee for bush clearing exercise.
- viii. List of plant machineries and vehicles fueled in the period of March, 2018 to date.
- ix. List of works undertaken in the period of March, 2018 to date.
- x. Duly signed work tickets for the period of March, 2018 to date.
- xi. Fuel requisition orders for the period of March, 2018 to date.

A letter referenced CAK/9/4/VOL. III/64 and dated 16th April, 2019 was written to the ministry through the office of the clerk to provide the committee with the above stated

documents within a period of seven days. Upon expiry of the seven days period a further letter referenced CAK/9/4/VOL. III/65 and dated 3rd May, 2019 was done reminding the chief officer to avail the initially requested documents. The chief officer responded via a letter referenced: KTI/LIHU-D-CO/ROADS/VOL.II/2018-2019/3 dated 8th May, 2019 that the fuel documents requested have been submitted to the EACC therefore becoming impossible for them to submit the same to this committee, however the ministry never submitted any documentary evidence between them and the EACC to that effect (**Annex and Marked LIHUD- II is a copy of the correspondence from the ministry**).

Mr. Speaker,

The Committee further retreated to Mwingi Cottage on 14th to 17th June, 2019 to compile its report. The outcome of the meetings held at Mwingi cottage on the interrogation of the bush clearing documents and any other documents received on the matters in question form the basis of the Committee's findings and recommendations as outlined in this Report.

3.0 INTERROGATION OF DOCUMENTS

3.1 INTRODUCTION

Mr. Speaker Sir,

Standing Order No. 190(5) (e) requires the Committee to Investigate and inquire into all matters relating to the assigned departments as they may deem necessary, and as may be referred to them by the County Assembly.

This part records the key evidence submitted by the Ministry of Lands, Infrastructure, Housing and Urban Development as outlined earlier in this Report. Therefore this forms the basis of what transpired during the meetings held at Mwingi Cottage on 9th to 13th April, 2019 on the interrogation of the documents in receipt by the Assembly on the subject matters in question.

3.2 COMMITTEE FINDINGS PER SUB COUNTY ON THE BUSH CLEARING EXERCISE

The tenders in question were issued by the Chief Officer ministry of LIUD in conformity with the opinion of the head of supply chain management services pursuant to section 47 and 84 of the Public Procurement and Asset Disposal Act.

The procurement method for the said project was by the use of request quotation pursuant to section 105 of the PPADA.

Tendering of the project was done under open quotation whereby there were various development projects for the year 2018-2019 aimed at improving community livelihoods at local levels. The quotations were closed and opened on 5th September, 2018, 1200 Noon at the Ministry of LIHUD offices quotation box.

The following were the companies alleged to have been awarded the quotations for the bush clearing exercise per Sub County:

3.2.1 KITUI CENTRAL SUB COUNTY

In kitui central five contractors submitted their quotation whereby the undermentioned is said to have qualified for award of the quotation.

Quotation No. CGOKTI/LIHUUD/Q023/2018-2019

Company Awarded the Quotation: M/S WAVINGEAGLE ENTERPRISES, P.O. BOX 144
KITUI

Business No. BN-6GCPB3G

Name of Directors: Rhoda Musyoka

Quoted Sum: Ksh. 3, 002, 080.00

3.2.2 KITUI WEST SUB COUNTY

In kitui west sub county five contractors submitted the quotation whereby the undermentioned is said to have qualified for award of the quotation.

Quotation No. CGOKTI/LIHUUD/Q026/2018-2019

Company Awarded the Quotation: M/S SELOCOM ENTERPRISES, P.O. BOX 39 KITUI

Business No. BN-DBCYQXX

Name of Directors: SELINA KOMU

Quoted Sum: Ksh. 2, 402, 592.00

3.2.3 KITUI EAST SUB COUNTY

In kitui east sub county five contractors submitted the quotation whereby the undermentioned is said to have qualified for award of the quotation.

Quotation No. CGOKTI/LIHUUD/Q027/2018-2019

Company Awarded the Quotation: M/S CEDAR FIELDS ENTERPRISES, P.O. BOX 144
KITUI

Business No. BN-7ZCVPQY

Name of Directors: NDOLO KOMU

Quoted Sum: Ksh. 3, 602, 496.00

3.2.4 KITUI SOUTH SUB COUNTY

In kitui south sub county five contractors submitted the quotation whereby the undermentioned is said to have qualified for award of the quotation.

Quotation No. CGOKTI/LIHUUD/Q033/2018-2019

Company Awarded the Quotation: M/S DERILIOUS TECHNOLOGIES LTD, P.O. BOX 15, Mutha

Business No. PVT-8LU2RBJ

Name of Directors: FELISTUS MUSINZI MWANDUKA

Quoted Sum: Ksh. 3, 605, 000.00

3.2.5 KITUI RURAL SUB COUNTY

In kitui rural sub county five contractors submitted the quotation whereby the undermentioned is said to have qualified for award of the quotation.

Quotation No. CGOKTI/LIHUUD/Q024/2018-2019

Company Awarded the Quotation: M/S WAYMAKERS ENTERPRISES, P.O. BOX 215, Kitui

Business No. BN-JRCKE27

Name of Directors: CHARLES MUA

Quoted Sum: Ksh. 2, 401, 664.00

3.2.6 MWINGI NORTH SUB COUNTY

In Mwingi North sub county five contractors submitted the quotation whereby the undermentioned is said to have qualified for award of the quotation.

Quotation No. CGOKTI/LIHUUD/Q022/2018-2019

Company Awarded the Quotation: M/S NOBLESTART ENTERPRISES, P.O. BOX 215, Kitui

Business No. BN-VDCREYL

Name of Directors: NDOLO KOMU

Quoted Sum: Ksh. 3, 003, 240.00

3.2.7 MWINGI WEST SUB COUNTY

In Mwingi West sub county five contractors submitted the quotation whereby the undermentioned is said to have qualified for award of the quotation.

Quotation No. CGOKTI/LIHUUD/Q028/2018-2019

Company Awarded the Quotation: M/S VIDMUS SUPPLIERS, P.O. BOX 319, Kitui.

Business No. BN-KYC6RKZ

Name of Directors: PAUL MUTUA MWANZIA

Quoted Sum: Ksh. 2, 398, 880.00

3.2.8 MWINGI CENTRAL SUB COUNTY

In Mwingi Central sub county five contractors submitted their quotations whereby the undermentioned is said to have qualified for award of the quotation.

Quotation No. CGOKTI/LIHUUD/Q025/2018-2019

Company Awarded the Quotation: M/S YOUNG CREATIVE HANDS ENTERPRISES, P.O. BOX 144, Kitui.

Business No. BN-GVCRB35

Quoted Sum: Ksh. 3, 601, 104.00

Mr. Speaker Sir,

The committee failed to establish which business company name in Mwingi central Sub County was awarded the quotation. This is because the committee noted that the business name **M/S Young CreativeHands Enterprises** was owned by two different persons having the same business name registration certificate no. BN-GVCRB35, **(attached and marked NK and JM are copies of the business registration certificates).**

The names of the persons for the two business names “Young CreativeHands Enterprises” are **Ndolo Komu** and **Jane Musau** who are not partners in the said business name therefore an obvious case of forgery.

Mr. Speaker sir,

The accounting officer is provided for in section 63(1) (i) of the PPADA to terminate or cancel procurement or asset disposal proceedings at any time, prior to notification of tender award where there is any subsequent evidence of engagement in fraudulent or corrupt practices by the tenderer and report the same to the concerned Authority within

fourteen days pursuant to section 63(2) of the PPADA, of which it never happened in this scenario.

NB: Annexed and marked LIHUD- IV is a summary of all the companies that applied for the quotations.

4.0 COMMITTEE FINDINGS AND OBSERVATIONS

Hon Speaker,

From the documented evidence submitted, the Committee made the following general observations and findings-

1. The committee noted forgery in the awarding of quotation no. CGOKTI/LIHU/Q025/2018-2019 to **M/S Young Creativehands Enterprises** in Mwingi central contrary to Section 62 of the Public Procurement and Asset Disposal Act which requires the contractors to declare that they will not engage in any corrupt or fraudulent practice. According to the documents provided it was evidenced that the same business name was registered by two different persons having the same certificates of registration yet they are not partners in the said business, therefore an obvious case of forgery. **(Annexed and marked NK and JM are copies of the business' registration documents)**. Further there is a presumption of non-existence of the companies awarded tenders for the bush clearing exercise therefore calling for a verification of all the companies.
2. There was total involvement of village administrators in the recruitment of personnel for the bush clearing exercise noting that the same project is said to have been contracted to private companies to undertake it, **(Annexed and marked LIHUD- III is a copy of the response from the Ministry conceding to the same)**.
3. It is quiet doubtful if at all the so called contractors even visited the ground either to do the work or supervise it.
4. The chief officer of the Ministry verbally indicated during a meeting held at Mwingi on sectoral consideration of the proposed budget estimates 2019/20 that Some of the local youth and women could have been paid their dues and further indicated that they will make sure that all of them are paid.

5.0 RECOMMENDATIONS

Mr. Speaker Sir,

Based on the documented evidence received and observations, the Committee makes the following recommendations that:

1. The Committee on Public Service and Administration together with the Committee on labour and social welfare should seize the matter and inquire into the involvement of village administrators in the recruitment of personnel for the bush clearing exercise noting that the exercise was contracted to private companies.
2. This committee notes that it does not have the requisite capacity and necessary competency to thoroughly investigate the matter. It is for this reason that they recommend that a copy of this report be forwarded to the office of the Ethics and Anti-Corruption Commission and the Directorate of Criminal Investigation (DCI) to take up the matter with a view of investigating further and recommending prosecution to the director of public prosecution (DPP) for appropriate cause of action to any person found culpable in accordance with the law.
3. Sanctions, debarment and disqualification should be imposed against contractors who have been mentioned in this report and in any other investigations to have not performed according to professionally regulated procedures, contractual agreement or legislation pursuant to Article 227(2) (c) & (d) of the Constitution of Kenya, 2010 as read together with section 41 & 66 of the Public Procurement and Asset Disposal Act.
4. Bush clearing should be going hand in hand with grading, this is to avoid growing back of bushes before grading of roads takes effect leading to wastage of public resources.
5. To avoid conflict of interest, village administrators or any civil servant should not be allowed to participate in a contracted work in neither recruitment nor mobilization of personnel.

6.0 CONCLUSION

Mr. Speaker sir,

The bush clearing exercise should be a youth and women empowerment program which should be contracted at village level in order to benefit the local people. This should be done by open tendering in order to encourage many people to participate in a fair and transparent manner.

(This Report was compiled by: David Manzi- Clerk Assistant)

ADOPTION SCHEDULE

The Members of the Committee on Lands, Infrastructure and Urban Development hereby append their signatures adopting this report.

S/NO.	NAME	DESIGNATION	SIGNATURE
1	Hon. Boniface Katumo	Chairperson	
2	Hon. Geoffrey Mwalimu	V/Chairperson	
3	Hon. Colleta Kimanzi	Member	
4	Hon. Anthony Ndooh	Member	
5	Hon. Alex Mwangangi	Member	
6	Hon. Charles Maema	Member	
7	Hon. John Kisangau	Member	
8	Hon. David Thuvi	Member	
9	Hon. Eunice Katheke	Member	
10	Hon. Alex Mbili	Member	
11	Hon. Jehoshaphat Nzamba	Member	