

**COUNTY ASSEMBLY OF BUNGOMA**

**COUNTY ASSEMBLY DEBATES**

**DAILY**

**HANSARD**

**TUESDAY 25<sup>TH</sup> JANUARY, 2022**

**Afternoon Sitting**

# COUNTY ASSEMBLY OF BUNGOMA

## HANSARD OFFICIAL REPORT

TUESDAY 25<sup>TH</sup> JANUARY, 2022

The House met at 2:30 p.m.

(Mr. Deputy Speaker [Hon. Stephen Wamalwa] in the Chair)

### PRAYER

### COMMUNICATION FROM THE CHAIR

I have a communication to make Honourable Members. With us in the Plenary we have a School: Milo Friends High School from Webuye in Sitikho Ward. In attendance, are two teachers: I will call the names of teachers as they be upstanding!

Madam Beatrice Atwang,

Mr. Simiyu Dickson plus the entire students' fraternity stand up.

*(Teachers and students stood in their places)*

*(Applause)*

Thank you. During the appropriate time at statements hour, I will accord the area MCA of that particular area who is not with us and other two members: a male and a female to give short remarks about the School then we encourage them.

### PAPERS

The following Paper was laid on the Table of the County Assembly:

A report by the Committee on Health on functionality of the distributed generators among 7 Health facilities in the County laid by Hon. Sophie Marumbu (*Member, Health*).

**Mr. Deputy Speaker:** Honourable Members, a report by the Committee on Health having been procedurally laid before this House is now the property of this Honourable Assembly.

### NOTICE OF MOTION

The following Notice of Motion was issued:

That this House adopts the report by the Sectorial Committee on Health on the functionality of the distributed generators among seven Health facilities in the County by Hon. Sophie Marumbu (*Member, Health*).

**Mr. Deputy Speaker:** Honourable Members, a notice of Motion having been issued in accordance with the law, I thus direct that it be circulated to all Honourable Members of this House for their critical perusal and in-depth consumption for it will form part of the business to be considered by this Honourable Assembly.

## STATEMENTS

TENTATIVE WEEKLY PROGRAMME FOR THE WEEK COMMENCING TUESDAY 25<sup>TH</sup>-27<sup>TH</sup> THURSDAY, JANUARY, 2021.

**Hon. James Mukhongo (Member, HBC):** This is tentative weekly programme of the business of the County Assembly pursuant to the Standing Order no. 36, week commencing Tuesday 25th which is today up to 27th Thursday January 2021.

We have been taken through for the business of today, but because of the learners, let me go through it once more.

1. Administration of Oaths

2. Communication from the Chair

3. Messages

4. Petition

5. Papers which has already been Tabled. Report by the Sectorial Committee on Health on the functionality of the distributed generators among seven Health facilities in the County by the Chairperson, Committee on Health.

6. A Notice of Motion

That this House adopts the report by the Sectorial Committee on Health on the functionality of the distributed Generators among the seven Health facilities in the County.

7. Statements

Pursuant to the provision of Standing Order no.41(2) a, a statement informing the County Assembly of the weekly business coming before the House from today Tuesday the 25th to Thursday the 27th January 2022.

8. Motions

That this House adopts the report by the Standing Committee on Public Accounts on special report regarding the legality of the expenditure of Ksh. 58,660, 400.57 paid to the County department of Roads, Public Works and Infrastructure on 10th of February 2020 certificate no.2 Of 10th February, 2020 in respect to the dual carriage way project by the Chairperson, Public Accounts Committee.

26<sup>th</sup> January 2021 at 9:30 a.m.

Order of Business will be:

Prayers

1. Administration of Oaths
2. Communication from the Chair
3. Messages
4. Petition
5. Papers

Report by the Sectorial Committee on Gender and Culture on the Bungoma County Fourth quarter financial statements in respect to the Department of Gender and Culture.

6. Notices of Motion

That this House adopts the report by the Sectorial Committee on Gender and Culture on the Bungoma County fourth quarter financial statements in respect to the department of Gender and Culture.

7. Statements

8. Motions

That this House adopts the report by the sectorial Committee on Health on the functionality of the distributed generators among seven Health facilities in the County by the Chairperson, Health Committee.

Wednesday 26<sup>th</sup> January 2021 at 2:30 p.m.

The Order of Business will be:

1. Administration of Oaths
2. Communication from the Chair

### 3. Messages

### 4. Petition

### 5. Paper

Report by the sectorial Committee on Tourism, Environment, Water and Natural Resources on the Bungoma County fourth quarter financial statements in respect to financial statements of Tourism, Environment, Water and Natural Resources which will be tabled by the Chair .

### 6. Notices of Motion

That this House adopts the report by the sectorial Committee on Tourism, Environment, Water and Natural Resources on the Bungoma County Fourth quarter financial statements in respect to the department of Tourism, Environment, Water and Natural Resources

### 7. Statements

### 8. Motion

That this House adopts the report by the Public Accounts Committee on the compendium of the fifth Session of the Second County Assembly by the Chair of the Committee.

Thursday 27<sup>th</sup> January 2021 at 2:30 p.m., the Order of business will be:

### 1. Administration of Oaths

### 2. Communication from the Chair

### 3. Messages

### 4. Petition

### 5. Paper

Report by the Sectorial Committee on Agriculture, Livestock Irrigation and Cooperative development on the key achievements in the Agriculture sector for the financial year 2020/2021

### 6. Notices of Motion

That this House adopts the report by the sectorial Committee on Agriculture, Livestock, Fisheries Irrigation and Cooperative Development on the key achievements of Agriculture sector for the financial year 2020/2021

### 7. Statements

### 8. Motion

That this House adopts the report by the Sectorial Committee on Gender and Culture on the Bungoma County fourth quarter financial statements in respect of the department of Gender and Culture.

That is the business of this week.

**Mr. Deputy Speaker:** Thank you, Hon. Barasa Mukhongo. Honourable Members, that is the tentative programme of the business of the County Assembly for the period stated but take note that we had a communication from the Leader of Majority and the entire Committee on Budget that the Business of the same which is being awaited by this House maybe included in the programme on the Order Paper because it is an item of County Importance as we are aware.

Honourable Members, at this moment I want to allow a Member representing the area MCA of Sitikho make remarks about Milo Friends High School plus other two Members, a male and a female Honourable Member.

**Hon. Rebah Wabwile:** Thank you. I want to begin by thanking the Administration of Milo Boys High School for having thought of visiting the County Assembly of Bungoma. My name is Hon. Rebah Wabwile, a nominated member of the County Assembly from Webuye West Constituency specifically, Bokoli Ward.

I want to inform this House that Milo Boys High School is one of the Schools in Webuye West Constituency besides the big schools like Lugulu Girls in Misikhu Ward, Chebosi boys that is found in Bokoli Ward, Namawanga Girls found in Bokoli Ward and Bokoli Boys itself.

Milo Boys High School is a school that has set records right and cannot belabor so much on that because as you compare the enrollments of the school and the performance, it speaks for itself.

For the last four consecutive years, the school has posted good results that have seen quite a number of boys joining Universities. I only want to urge the teachers of this School to work extra hard so that we move from the C- that was posted the other year and I'm happy to know that last year we had tremendous improvement to C plain but we would wish to move to C+ and above and I'm sure the boys sitting here are capable of giving us these results.

Mr. Speaker Sir, Milo Boys is a School that has already put in place a Strategic Plan 2022/2026 and the main issues addressed in the Strategic Plan are the physical infrastructure and academic excellence.

I'm happy to note that under the leadership of the able principal Mr. Emmanuel Sirengo, and the BOM chair Mr. Peter Mulimi, the school is going to ensure that the strategic Plan is implemented to the latter so that they are able to compete favorably not only in Bungoma County but in the Country at large.

I don't want to flower my school with a lot of points but I want to say that with the Vision of Quality Education for the Future, the boys sitting in this Assembly today are going back not the same but a better lot so that we benefit as a Constituency, as a Ward as a County and as a Country at large.

I would wish to take this opportunity specifically to wish all success in their upcoming exams that are just around the corner in March this year. Hon. Grace Sundukwa is not with us today and she had requested that I stand in for her and I'm sure I'm equally capable even in Sitikho.

*(Applause)*

**Mr. Deputy Speaker:** Thank you, Hon. Rebah for standing in for Hon. Grace Sundukwa who is out on official duty working on County Budget. She is a member of the Budget Committee and she is therefore out of this Assembly on official duty. As students and teachers you should not wonder where your MCA is. She is sent out to represent the Assembly on a very important duty.

**Hon. Bethwell Mwambu:** Thank you. Happy New Year, Mr. Speaker.

**Mr. Deputy Speaker:** Happy New Year, Hon. Fwamba

**Hon. Bethwell Mwambu:** Mr. Speaker, you know I cannot address the guests. So anytime I feel that I want to address them properly and closer to me, I address you. So I was asking you on their behalf.

I also want to stand in and say congratulations my colleagues, the teachers, to have chosen for this very good day this new year, a year of change that you find it fit in your schedule of execution out of the School that no other place was suitable for you but the County Assembly of Bungoma.

I want to appreciate you so much and as my first speaker has said, I just want to echo that and say in future; she started by talking about excellent results, which takes your learners to Universities. However, she said the mean grade is C.

That language is not very good for this Assembly. We just want to ask that when we look at your children, they are not the level of C but they are of the level of B and so forth. So we are asking the learners who are watching us today that please, can you move away from your comfort zone and turnabout and be able to see the horizon and build a future in your mind.

Here we say, those who are not having any hope in life, they look as good as grave. We just want to ask you that may you rise up and see the world and anything good in the World to be suitable for you. I'm afraid to say that those who don't have hope and they are not focused in life will look at burning schools. Those are people who never wanted the society.

When you look at the gracious ladies in the House, and you look at the gentle men in the House, the Honourable Members sitting here, they simply desire that when we leave this positions we are in today, those who are to occupy should not come from elsewhere, but they should come from amidst these boys sitting with us today.

We are asking if you burn a school, you will never get a chance to sit where we are sitting because you are going to be a curse in the society. All chances given to you will never come your way.

Lastly, those who have gone to school will say, chances always will favor a prepared mind.

Please prepare your mind for the chances to come your way. If you want to become a lawyer, work very hard. If you want to become a Speaker, you can see how our Speaker is addressing us. And you can see the humility in us because you see where he is sitting and where we are sitting.

His position is higher and we are lower. We are humbled with this humble places we are sitting so we are asking you and those who are sitting up there. You are not any senior because you are higher but you are simply there by design. I wish you could be able to open your heart and say, from today, I don't want to be like those who are down here, I will remain higher forever. Thank you for coming and may God bless you.

*(Applause)*

**Mr. Deputy Speaker:** Thank you, so much. I made a directive that we will have a male and a female so we have had a male and therefore we must have a female. That Honourable Members speaking is not a female. I want a female member and we know who they are.

**Hon. Sophie Marumbu:** I rise to appreciate the boys in the gallery from Milo boys and more so I would like to appreciate the area MCA Hon. Grace Sundukwa who is out on official duty and I want to thank the people of Sitikho for having elected the youngest MCA to this House.

I appreciate you. Thank you very much for having trust in her and I want to assure you that she has equally served up to the task, very competent above board and I think she is an example to you that even as you prepare for your exams. You need to aim higher because they used to say the sky is the limit but these days you can surpass the sky.

The ball is in your hands, hard work pays and as it is always quoted, and your dreams are valid from whatever village you come from. Go for it, work hard and we wish you all the best.

**Mr. Deputy Speaker:** Thank you for your remarks Honourable Members, they are very important to the students and I know when they go back, of course they know they have seen around the Assembly and they know everything and the directive that I made stands and therefore we move to the next item on the Order Paper.



*(Applause)*

I made a ruling. Be orderly Honourable Members.

## **MOTION**

A SPECIAL REPORT BY PUBLIC ACCOUNTS COMMITTEE REGARDING THE LEGALITY OF THE EXPENDITURE OF KSH 58,660,400.50 PAID BY THE COUNTY DEPARTMENT OF ROADS, PUBLIC WORKS AND INFRASTRUCTURE

**Hon. Tony Barasa** (*Chairperson, PAC*): Thank you. The journey of this report is 22 pages report and it begins now.

A special report by Public Accounts Committee regarding the legality of the expenditure of Ksh 58,660,400.50 paid out by the County department of Roads, Public Works and Infrastructure on 10th February 2020 vide Certificate number 22 of 10/02 of 2020 in respect to the dual carriage project.

Preface

### 1.1 ESTABLISHMENT OF THE COMMITTEE AND ITS MANDATE

Mr. Speaker Sir,

The Public Accounts Committee is a Select Committee established under Standing Order No. 186 of the Bungoma County Assembly standing orders and is responsible for-

(i) The examination of the accounts showing the appropriation of the sums voted by the County Assembly to meet public expenditure and of such other accounts laid before the County Assembly as the committee may deem fit.

Article 195 of the Constitution of Kenya, 2010 provides that -

*(1)A County Assembly or any of its committees has power to summon any person to appear before it for the purposes of giving evidence or providing information.*

*(2)For the purpose of clause (1), an Assembly has the same powers as the High Court to-*

*(a)Enforce the attendance of witnesses and examining them on oath, affirmation or otherwise;*

*(b)Compel the production of documents; and*

*(c)Issue a commission or request to examine witnesses abroad.*

In this regard, it must be emphasized, in no uncertain terms, that the oversight function of this House as carried out through Committees elevates it to a status akin to that of a High Court. The

exercise of this unique quasi-judicial function is expected to strictly adhere to and apply the principles of natural justice and fair hearing, and that every process or action taken by the House or its Committees must be seen by all to be above board taking into account the fact that decisions of this House bear the element of finality.

Section 19 of the County Assemblies Powers and Privileges Act, 2017 on examination of witnesses states that;

Where a County Assembly or a Committee requires that any information be verified or otherwise ascertained by the oral examination of a witness, the County Assembly or the committee may-

- (a) Cause such witness to be examined on Oath; and
- (b) Require the witness to produce any document, paper, book or record in the possession or under the control of the witness which may have a bearing on the subject of the inquiry.

### 1.1 Guiding Principles

In the execution of its mandate aforesaid, the committee has always been guided by core constitutional and statutory principles on Public Finance Management, as well as established customs, traditions, best practices and usages. These principles include:-

- 1) Constitutional Principles on Public Finance
- 2) Direct Personal Liability
- 3) Obligations of Accounting Officers designated to County Government entities

Section 149(1), of the PFM Act, 2012 stipulates that: “An accounting officer is accountable to the County Assembly for ensuring that the resources of the entity for which the officer is designated are used in a way that is lawful and authorized; effective, efficient, economical and transparent.”

This provision also obligates accounting officers designated as such to various County Government entities to appear before the Public Accounts Committee of the County Assembly to respond to queries relating to their respective departments.

Section 156 of the PFM Act, 2012 provides that;

Among other issues,

- (b) Refer the matter to be dealt with in terms of the statutory and other conditions of employment applicable to that public officer.

On behalf of the Members of the Public Accounts Committee, I now hereby present to this House, the Committee’s report on the investigations into the legality of the expenditure of

Ksh.58, 660,400.57 paid out by the County Department of Roads, Public Works and Infrastructure on the 10th February, 2020 vide payment certificate No.2 of 10/02/2020 in respect to the Dual carriage way road project.

### 1.3 Committee Membership

The Public Accounts Committee as currently constituted comprises of the following members:

- |                            |                  |
|----------------------------|------------------|
| 1. Hon. Tony Barasa        | Chairperson      |
| 2. Hon. Joseph Magudah     | Vice-chairperson |
| 3. Hon. Tindi Manasseh     | Member           |
| 4. Hon. Isaiah Sudi        | Member           |
| 5. Hon. Martin Pepela      | Member           |
| 6. Hon. Everlyne Mutiambu  | Member           |
| 7. Hon. Erick Wapang'ana   | Member           |
| 8. Hon. Winnie Nyambok     | Member           |
| 9. Hon. Jerusa Aleu        | Member           |
| 10. Hon. Mitrine Nangalama | Member           |
| 11. Hon. James Chesibok    | Member           |

### 1.4 CONFIDENTIALITY UNDERTAKING BY MEMBERS OF THE COMMITTEE AND ITS SECRETARIAT.

To enhance the integrity of the committee and its work, members of the Public Accounts Committee have signed a confidentiality undertaking in accordance with the provisions of Bungoma County Assembly Standing Order No. 82. In this regard, Honourable Members and members of the secretariat have undertaken that they will not disclose any matter relating to the proceedings of the committee that is classified as confidential which shall include any evidence or documents presented to the committee and any information under discussion or deliberation at its meetings relating to the subject matter.

### 1.5 TERMS OF REFERENCE

Mr. Speaker Sir, vide a resolution of the this Committee in its meeting held on Monday, 19th April, 2021 in the Tent, at the County Assembly Buildings, the committee on its own motion (suo-moto), resolved to inquire into and report to the County Assembly on the following issue;

1. To investigate the legality including the procedure followed regarding the expenditure of a sum of Ksh.58, 660,400.57 which amount was paid out by the County department of Roads, Public Works and Infrastructure on the 10th February, 2020 in respect to the Dual carriage way road project vide Certificate No.2

Mr. Speaker Sir, the Public Accounts Committee retreated from 18th to 23rd. November 2021, at Kika Hotel, Kisumu to write and compile this report.

## EVIDENCE TAKEN

- (i) Mr. Huang Hwa Cang' (the site manager-Dual carriage road project)
- (ii) Mr. Michael Busienei (Site Engineer)
- (iii) Mr. Moses Wamalwa (Resident Engineer)

The above mentioned officers appeared before the committee on the 26th April, 2021 and were tasked to;

-Avail/table the contract agreement dated 15th January, 2019 entered into by the County Government of Bungoma (referred to as the Employer) and M/S Zhongmei Engineering Group Ltd (referred to as the contractor

-State whether there were any advance payments made by the County Government to the contractor and if yes, how much?

- Give an explanation regarding the current status of the project.
- The number of certificates raised to date and the balance of the contract sum that remains payable to the contractors

### Submissions

Mr. Speaker Sir, the site manager Mr. Huang Hwa Cang' submitted that they were in receipt of a letter warranting them to commence the works on the 12th of July 2019 although they real works began in October, 2019.

Nevertheless, they were non-committal on tabling the contract agreement since it was domiciled in the office of the Chief Officer, Roads whom they requested the committee to request him to avail. The same was later availed for committee scrutiny.

He averred that they had received 10% of the contract sum as an advance payment translating to Ksh. 138Million.

He finally submitted that despite being behind schedule for reasons beyond their control occasioned by heavy rains; they were still determined to fulfill the contract agreement obligation and complete the road by July 2021. He went on and stated that the scope of works done were already at 60% with a tarmac of 3 kilometers.

On the number of certificates raised, the site manager stated that they had raised four certificates at the time of the interrogation.

## **SUBMISSIONS FROM THE COUNTY SECRETARY AND HEAD OF PUBLIC SERVICE (MR. W. J WAMBATI) & THE COUNTY ATTORNEY (MR. CYRIL WAYONG'O)**

The County Secretary and Head of Public service appeared before the Committee on the 7<sup>th</sup> May, 2021 alongside the County Attorney to jointly respond to the following issues which also constituted the terms of reference.

The committee had sought for the duo to avail for interrogation purposes the following documents;

- (1) List of all pre-qualified Law firms that had been pre-qualified to provide legal services to the County Executive of Bungoma during the FYs 2018/19-2019/2020
- (2) Invoice from the law firm of M/s Kuloba & Wangila Advocates dated 29<sup>th</sup> April,2021
- (3) Advocates(Remuneration)(Amendment)Order,(Gazette Supplement No.42 of 11<sup>th</sup> April,2014)
- (4) Computation and justification for the legal fees
- (5) Payment voucher No.6458 amounting to Ksh.13, 000,000 being payment for legal fees in favour of A.S Kuloba and Wangila Advocates and the justification for the payment of the said amount out of Ksh.35 Million.
- (6) The Advocates practicing certificates (pc) for the years 2019,2020 and 2021
- (7) A legal brief giving an update on the status of the case.
- (8) Copy of Bungoma HC Constitutional Petition No.4 of 2019(Raphael Makokha Were & John Wekesa Khaoya –vs- Hon.Wycliffe Wangamati, Governor, Bungoma County & 7 others.
- (9) Replying affidavit sworn by the Chief Officer,Roads and Public Works on the 23<sup>rd</sup> July,2019.

The said officers however sought for more time to enable them table the requested documents and also to be able to tender oral submissions in defense of the said documents which request was granted by the committee.

Their appearance was thus rescheduled to 24<sup>th</sup> May, 2021.

**SUBMISSIONS FROM THE COUNTY EXECUTIVE COMMITTEE MEMBER FOR ROADS, PUBLIC WORKS AND INFRASTRUCTURE (Mr. COLLINS MUKHONGO) AND THE CHIEF OFFICER – ROADS AND PUBLIC WORKS (Eng. MAURICE MARANGO).**

The officers appeared before the committee on 30<sup>th</sup> April, 2021 and submitted as follows;

They averred their knowledge on the dual carriage way that had a contract term of 24 months that commenced in October 2019 to October 2021 at a total sum of Ksh. 571 Million but the real works commenced in October 2020.

They cited that the delay was occasioned by challenges surrounding the material tests as the contractor was given a radius within which to source for the materials. The chief officer affirmed that the crusher had stalled but once it is fixed it will resume the works uninterrupted.

The officers stated that there was a variation of 20 Million which would still be recovered in the contract sum of Ksh. 571 Million. The CECM confirmed the variation stating that variations are always done by the employer and in this case it was done by the County Government of Bungoma through the Department of Roads and Public Works.

On the progress of the works, the CECM confirmed that so far the certificates raised on the road were totaling to a sum of Ksh. 400 Million and the works were at 63 percent complete. The works included construction of culverts and stone pitching on some parts of the road that the contractor deemed had unstable soils and thus needed reaffirmation. To this effect, the 400 Million remains a claim since it had not yet been signed by the resident engineer to warrant the payment. A status report was then laid to the committee.

In his submissions, the Chief Officer stated that by the time of the interrogation, only four (4) certificates had been paid at a total of Ksh. 505 Million excluding the advance payment to the contractor.

The Ksh. 58,660,400.57 in question was as a difference in payment between the drawn initial payments of Ksh. 161,911,116.60 from the available funds of Ksh. 103,250,766 that were appropriated in the fiscal year.

The Ksh 58 million was drawn from the Department's vote on Supplier of Credit after a supplementary budget was done and adjusted downwards after the approval since the contractor was due for payment of Ksh. 271 Million.

The Chief Officer confirmed that this payment was done pursuant to Article 210 (d) of the Constitution of Kenya 2010. And that that the decision made was reached at in line with prudent financial management and protection of public funds from accrual of interest and penalties to the county government. That sourcing money within the department to foot the deficit was done prudently to avert accruals of interests; which is allowed under the PFMA, 2012.

The Chief Officer, Engineer Marango indeed affirmed that the aforementioned sum of Ksh. 58,660,400.57 was not appropriated by the County Assembly in the fiscal year but his decision was in line with prudent financial management, a matter that the Sectorial Committee on Roads and Public Works had questioned imploring that it was a violation of Section 149 of the PFMA

2012. In his defense, he cited Section 151 of the PFM Act, 2012 alluding that it gave him the guidance and the powers to the expenditure.

He went further and stated that any documents approved by the Assembly without an appropriation allows him to expend money on the implementation of that program and report later to the County Assembly. In lieu of the foregoing therefore, the expended amount was flagged out from the quarterly report submitted to the County Assembly from the Department.

He cited Section 154 of the PFM Act, 2012 that gives the limitation on expenditure on funds that have not been appropriated as stated below;

- i. That the funds cannot be transferred to another County Entity/person; which allows them to source the funds from the department as was the case.
- ii. That they do not spend funds that have not been appropriated from capital to recurrent and in that case, they spend money on supply of credit on capital expenditure to another capital expenditure,
- iii. Not to reallocate on wages

That as the accounting officer, he was in compliance with the provisions of Section 154 of the PFM Act, 2012 after consultations and concurrence with his CECM and the County Treasury since he foresaw that the amount in the Supply of Credit could not be spend within the financial year, thus prompted for a reallocation request which was granted in the Supplementary Budget.

In his last remarks, the CECM affirmed that the progress on the construction of the dual carriage was on course and that the contractor had done so much compared to the payments received from the employer. He stated that at 63% completion, it translates that the contractor ought to have been paid close to 900 Million which was not the case.

He assured the Committee to alley any fears and emphasized that the road would be completed as per the contract agreement.

**EVIDENCE/ORAL SUBMISSIONS BY THE COUNTY ATTORNEY MR.CYRIL WAYONG'O & THE CHIEF OFFICER, OFFICE OF THE COUNTY SECRETARY (DR.SIMIYU CHRIS)**

The abovementioned officers appeared before the committee on 24<sup>th</sup> May, 2021 and the Chief Officer, Office of the County Secretary sought for leave of the committee to be allowed to stand in for his boss reason being that the County Secretary was indisposed.

When asked whether he witnessed the contract as the County Attorney or the Legal Advisor, the County Attorney responded that by the time the contract agreement between the County Government of Bungoma and M/S Zhongmei Engineering Group Limited was being executed on the 15<sup>th</sup> January,2019 vide contract No. BGM/CNTY/OT/RPW/184/2018-2019 contract sum being Ksh.1, 382,442,975.76, he was serving as a legal advisor.



When asked to explain to the committee what informed him to oversee the said transaction involving the two parties; the County Attorney stated that when he was appointed in the position of the legal advisor in the year 2019, it was realized that the county government was losing a lot of money by giving every county department a leeway to hire advocates to represent the county entities in legal matters thus it was resolved as a cabinet resolution that his office should in conjunction with the Office of the County Secretary be allowed to handle all legal matters.

When asked whether the Ksh.13 Million legal fee payment out of the Ksh.35 Million was justifiable under the circumstances. The Chief Officer, Office of the County Secretary submitted that the same was paid out of vote heads of legal fee and also that his Office usually consults and works very closely with the Office of the County Attorney on legal matters before any payments are done. He further submitted that the said amount was paid out pursuant to the fee notes which had been submitted by the law firm in question.

When asked to state at what point was it resolved that the matter be handled by his office more particularly the issue of effecting the payment of Ksh.13 Million. The chief officer sought for more time to avail relevant documentary evidence in respect of the matter. He further submitted that, after consulting the legal advisor; it was established that the fee notes submitted were within the provisions of the Advocates (Remuneration) (Amendment order), vide Gazette Supplement No.42 of 11<sup>th</sup> April, 2014.

On his part, the County Attorney concurred with the submissions of the Chief Officer, Office of the County Secretary and he further added that when he was appointed in the year 2019, a vote-head known as legal fees was in existence and he then advised that all legal fees vote heads scattered across the county departments be merged and pooled under one office hence the Ksh.13 Million was paid from the said merged vote heads domiciled in the Office of the County Secretary. The County Attorney also stated that once the final fee note is received after the conclusion of the court case, the balance will then be cleared.

## **SUBMISSIONS MADE BEFORE THE COMMITTEE**

### **CEC-M FINANCE AND ECONOMIC PLANNING**

The CECM, Esther Nasipwondi Wamalwa appeared before the committee as per the letter of invite on the 8<sup>th</sup> day of September 2021 accompanied with the Chief Officer for Finance. The process of taking an oath was duly conducted before cross examination by the committee members.

The CEC Member in responding to the matter (Dual Carriage) made the following submissions in response to issues raised by the committee members;

She appreciated the work being done by the committee in line with their constitutional mandate of oversight to the County Executive.



On inquiry into the reallocation approvals sought from the Department of Roads, Infrastructure and Public Works, the CECM submitted that indeed she received an application for reallocation that was dated 3<sup>rd</sup> February 2020 but was received in her office on 4<sup>th</sup> February 2020 which she duly approved on 5<sup>th</sup> February 2020. She further added that the reallocation was from vote code; 2410104 (Supplier for credit) to vote code 3110601 (Overhaul of Roads).

She added that the total amount under the code 2410104 for supplier for credit was Ksh. 471,912,595 and approved the request based on provisions of PFM Act section 154 (1)(b) and Sec 154 (2)(a).

On inquiry into the provisions of the PFM Act Section 154 (2) (c) on limited powers to reallocate funds, which states that the total of all reallocations made to or from a program or Sub-Vote does not exceed ten percent of the total expenditure approved for that program or Sub-Vote for that year, the CECM recorded that the reallocation did not exceed 10% since the Department only had four programs as hereunder;

- i) Transport and infrastructure
- ii) Public Safety
- iii) Building and construction
- iv) General administration and planning.

The 1<sup>st</sup> program of Transport and Infrastructure where the dual carriage road is domiciled had a budget of Kshs. 1,449,032,320 whose 10% would be Kshs. 144,903,232 and thus the reallocated amount of Kshs. 58,660,400 was only 4% of the program in total compliance to the provisions of the Public Finance Management Act.

The committee requested the CECM to avail the itemized budget; program based budget and written submissions to confirm the submissions by the County Executive Committee Member for Finance.

## **CHIEF OFFICER – FINANCE**

In response to a letter of invite from the County Assembly, the Chief Officer- Finance, Ms. Dinah Naswa Makokha appeared before the committee accompanied with the CECM Finance on 8<sup>th</sup> September 2021.

An oath was administered to Ms Dinah Naswa Makokha, the Chief Officer-Finance before commencement of the interrogation.

The Committee wanted to know whether the Chief Officer knew why she was before the committee. The officer responded by informing the committee that she was present before the committee to respond to issues of expenditure and reallocation surrounding the dual carriage way as invited by the Public Accounts Committee.

She concurred with the CECM that indeed the reallocation was approved in total compliance to the provisions of the Public Finance Management Act and specifically section 47 (1)(2) and (4) of PFM Regulations, 2015 which provides that;

For purposes of section 154(3) of the Act, Accounting Officers, may authorize reallocation of funds within programmes or sub-votes provided that;

1(a) This does not affect the total voted provision;

(b) The provisions in the budget of the programme or sub-vote from within which the funds are to be transferred are unlikely to be utilized;

(c) Reallocation is in accordance with donor conditions in the case of reallocation impacting on donor-funded expenditure;

(d) The reallocation does not affect the voted provisions from wage to non-wage expenditure or from capital to recurrent expenditure; and

(e) Allocations earmarked by the County Treasury for a specific purpose may not be used for other purposes, except with Treasury's approval

(2) Accounting Officers shall keep a register of all budgetary allocations...

Allow me go to analysis of the submissions from CEC-M and Chief Officer for Finance

## **ANALYSIS OF THE SUBMISSIONS FROM CEC-M AND CHIEF OFFICER FOR FINANCE**

Mr. Speaker Sir, The dual carriage way road project from Sang'alo junction to Kanduyi was initiated in the financial year 2018/2019. The County Assembly has been allocating funds towards implementation of the said project in every financial year.

The tender for construction of the said road was advertised in the year 2018 vide tender no. BGM/CNTY/OT/RPW/184/2018-2019 and Tender name being, Kanduyi-Sang'alo Junction Dual Carriage Way Road.

The contract between the County Government of Bungoma (Employer) and M/S ZHONGMEI ENGINEERING GROUP LIMITED (Contractor) was signed on the 15<sup>th</sup> January, 2019.

The total contract sum for the project is **Ksh. 1,382,442,975.76**. The County Assembly has appropriated a cumulative total of Ksh. 591,495,064 upto the FY 2020/21, representing 42.8% of the contract sum. However, a total of Ksh. 941,495,064 has been appropriated upto and including FY 2021/22.

The County Government still needs to allocate a total of Ksh. 440,947,911.76 in the Financial Year 2022/2023 budget estimates for the project to be completed and be operational. This represents 31.90% of the total contract sum.

The total amount of money appropriated to the project to-date is as tabulated below;

**A) BUDGET ALLOCATION**

		<b>FY 2018/19</b>	<b>FY 2019/20</b>	<b>FY 2020/21</b>	<b>FY 2021/22</b>	<b>TOTALS</b>
<b>1</b>	Printed Estimates	70,000,000	271,912,595	350,000,000	350,000,000	<b>1,041,912,595</b>
<b>2</b>	Supplementary Adjustments	68,244,297	(168,661,828)	0		<b>(100,417,531)</b>
<b>3</b>	Approved Budget Estimates	138,244,297	103,250,767	350,000,000	350,000,000	<b>941,495,064</b>

**B) ACTUAL PAYMENTS**

The department made payments towards some payment certificates as shown below;

	<b>Payment certificate No.</b>	<b>Date of Payment</b>	<b>Amount paid</b>
<b>1</b>	Certificate 1	04/10/2019	138,244,297.58
<b>2</b>	Certificate 2	10/02/2020	58,660,400.57
<b>3</b>	Certificate 2	10/02/2020	103,250,766.00
<b>4</b>	Certificate 3	22/09/2020	193,191,449.75
<b>5</b>	Certificate 4	22/12/2020	150,447,814.10
	<b>TOTAL</b>		<b>643,794,728.00</b>

The total amount paid in the financial year 2020/21 is Ksh. 343,639,263.85 against a total allocation of Ksh. 350,000,000. There is still Ksh. 6,360,736.15 in the approved budget allocated for payment of the project.

It's noted from the above data, that the total payment is above the appropriated amount as per the approved budget. The source of the extra Kshs. 58,660,400.57 paid on 10/02/2020 vide certificate No. 2 is the one the committee investigated.

The Chief Officer for Roads, Infrastructure and Public works in his response letter dated 5<sup>th</sup>, May, 2020 to the County Assembly on the expenditure on Dual carriage way, indicated that there was a duly approved re-allocation of the excess in appropriated figure of Ksh. 58,660,400. A letter seeking approval of the reallocation was sent to the CEC-M for Finance and Economic Planning dated 3<sup>rd</sup>, February, 2020. The same was approved on 5<sup>th</sup>, February, 2020. (Letter and Application for reallocation form attached).

It's noted from the approved first supplementary budget for FY 2019/20 that Ksh. 390,748,282 was allocated towards pending bills which did not include Dual Carriage way project. This amount was appropriated to pay the following as indicated in the approved programme based budget for FY 2019/20;

a) Roads pending development programmes	- Ksh. 55,596,818
b) Pending Ward Based Projects for FY 2018/19	- Ksh. 297,625,168
c) Pending Ward Based Projects for FY 2017/18	- Ksh. 36,926,295
<b>Total</b>	<b>Ksh. 390,148,281</b>

The total amount appropriated on supplier's credit vote was Ksh. 390 million, whose 10% translates to Ksh. 39 million. The Ksh. 58 million re-allocated is therefore beyond the 10% threshold by 4.9%.

Section 154(2) of the Public Finance Management Act, 2012 states as follows;

It is there...

Allow me take some water. I am feeling like...I do not have water!

## COMMITTEE OBSERVATIONS

The Committee made the following observations;

1. That the department made a payment of Ksh. 58,660,400.57 towards certificate no 2 (a) of 10<sup>th</sup> February, 2020 out of funds that were not appropriated to the project, contrary to the provisions of Section 149 sub-sections (1) and (2 (a)) of the Public Finance Management Act, 2012.
2. That the department procedurally made a re-allocation of Ksh. 58,660,400.57 by following all the approval procedures. Its however, noted that the re-allocation was made out of a vote that was meant for payment of pending bills (Supplier credit- code 2410104) which is always given first charge during the budgeting process. A schedule of all the certified and verified creditors which did not include outstanding payments towards Dual carriage way was submitted to the Budget committee by the Department of Roads and Public Works for approval.

3. It was further, noted from the re-allocation forms, that Ksh. 58, 660,400.57 re-allocated from the supplier's credit budget line under (code 2410104) exceeded the 10 % provision by 4.9% contrary to the provisions of Section 154 (2) of the Public Finance Management Act, 2012.
4. The said reallocation in the vote balloons the pending bills in the county. This committee considers that the actions constitute fiscal indiscipline.

## COMMITTEE RECOMMENDATIONS

Section 196 (1) and (3) of the Public Finance Management Act, 2012 states that:

*(1) A public officer shall not spend public money otherwise than authorized by the Constitution, an Act of Parliament or County legislation.*

*(3) A public officer shall not enter into any obligation that has financial implications for the national government budget or county government budget unless the obligation is authorized by the Constitution, an Act of parliament or an Act of a County Assembly.*

*Section 9 of the Public officer Ethics Act, 2003 provides that:*

*A Public officer shall-*

*(a) Carry out his duties in a way that maintains public confidence in the integrity of his office.*

1. The committee finds the Chief Officers in charge of Roads, Public Works and Infrastructure(Eng. Maurice Marango) and his Finance counterpart(M/s Dinah Naswa Makokha) responsible for the erroneous reallocations and thus recommends that the Office of the Director of Criminal Investigations (DCI) in conjunction with the Office of the Director of Public Prosecutions (DPP) to take up the matter and carry out further investigations with a view to bringing all responsible officers to book depending on culpability. The committee awaits implementation report from the relevant committee of the County Assembly within (60) days from the date of adoption of this report.
2. To forestall recurrent of similar anomalies in future, the committee recommends strict adherence to budgetary provisions by the County Treasury as approved by the County Assembly pursuant to the requirements of Regulation 42 (1)(b)&(d) of the Public Finance Management (County Governments) Regulations, 2015.
3. The committee further recommends that the relevant County department should as a matter of urgency, consider capacity building all accounting officers on matters Public Procurement and Assets Disposal and the Public Finance Management Acts and any other relevant laws.

## 5.0 ACKNOWLEDGEMENT

Mr. Speaker Sir, allow me to commend each and every single Honourable Member of this Committee for their commitment and exemplary work which made the investigation into the legality of the expenditure of Ksh.58, 660,400.57 paid out by the County department of Roads, Public Works and Infrastructure on the 10<sup>th</sup> February, 2020 vide certificate No.2 of 10/02/2020 towards the Dual carriage way project and the production of this report a success.

I applaud you all, distinguished Colleagues!

However, the Committee wishes to register its displeasure against some of the officers from the County Executive whom time and again sought for unnecessary adjournments which in turn affected the time within which this exercise ought to have been concluded.

Further, the Committee is grateful to the Offices of the Speaker and the Clerk to the County Assembly for the support received as the Committee discharged its mandate.

The Committee is greatly indebted to the Secretariat for their overwhelming participation in the entire process. It is as a result of their commitment and dedication to duty that the work of the Committee and production of this Report came to be a success.

Mr. Speaker Sir, it is therefore my pleasant duty and privilege, on behalf of the Public Accounts Committee, to table this report for deliberation and adoption by the House.

Allow me welcome Hon. Sudi Busolo to second the report.

**Mr. Deputy Speaker:** Thank you, very much Hon. Tony Khaoya Barasa for the wonderful, eloquent presentation of the report to the Assembly.

**Hon. Isaiah Sudi:** Honourable Speaker, I second the report and I want to urge members that they have listened very keenly because my Chair has read it very well so let us have members input. Let them deliberate and approve the report with its recommendations and I urge the Chair, Implementation to take up and ensure that the recommendations which are in that report are followed so that we get the results.

I second the report.

**Mr. Deputy Speaker:** Thank you, Hon. Isaiah Sudi Busolo. Honourable members, a motion having been moved and duly seconded, I now propose the question that this House adopts the report by the standing committee on Public Accounts on the special report regarding the legality of the expenditure of 58,660,457 cents paid by the County department of Roads, Public Works

and Infrastructure on 10<sup>th</sup> February, 2020 vide certificate number 2 of 10<sup>th</sup> February, 2020 in respect to the dual carriage way road project.

I propose.

*(Question proposed)*

**Hon. James Barasa:** Mr. Speaker, I rise in support of the report and I have the following; since we started our second Assembly this is a very wonderful report from the PAC committee that we have ever seen.

It has given us the truth and nothing but the truth and members who remained behind can also bear witness. If indeed we look at the observations and recommendations and follow, we will find the same Government that is walking round the entire county saying we have never stolen anything. You can now see the observations and recommendations.

This is a very bad government, and indeed it is now if the members will adopt this report, it is now the duty of implementation committee and we even urge the Implementation Committee to do the same and you have given them 60 days. You could have said 30 days because time is not on our side. *Hawa watu ni wezi...*I rest my case.

**Mr. Deputy Speaker:** Hon. Mukhongo before you rest your case, when you say it should have been 30 and not 60 days, are you making a proposal just like that or what are you insinuating?

**Hon. James Mukhongo:** Mr. Speaker, that is just my contribution, but let us go by the recommendations as they are and the observations because the report is self-explanatory.

**Mr. Deputy Speaker:** Very well.

**Hon. Francis Chemion:** Mine is very brief, Hon. Mukhongo is leaving, let him sit because we have heard from him; he has broken the Standing Orders by using two different languages at the same time. You know he has said "*hawa watu ni wezi*" For us who are following him in English could not understand him because we don't understand Kiswahili, unless he wanted to use sign language.

*(Laughter)*

Mr. Speaker we thank the committee for the good work they have done. I am very sure they dug into details of what has been disturbing us as a House and they have come up with a report and very good recommendations.

I thought Hon. Mukhongo could have proposed amendments, I don't know if you have proposed so that we can second it.



I want to propose that we amend that recommendation so that we give the Implementation Committee to act on this report maybe within 30 days. Although our Standing Orders if you look at the mandate of the Implementation Committee, they are mandated to look into what has been approved 60 days after. That is what the Standing Order says; but the Speaker has a way if he could be allowed under Standing Order number one to direct that the recommendation is amended to allow the Implementation Committee headed by the Hon. Bethwell Mwambu to act on this report after 30 days. I have proposed, if there is a seconder can come up to second so that this report is what is worked on before we have a lot of activities out there.

**Mr. Deputy Speaker:** Thank you, Hon. Masai. Honorable members for any amendment to be done on this report, then a written submission must have been done. So we cannot amend it now courtesy of that provision that there could have been a written submission so that it can warrant the amendment to this report to be worked on within sixty days. Sixty days is on any day between what you want but within 60 days.

Nevertheless, that should have been done as per Standing Order 182. Honorable members be guided accordingly as we move along.

**Hon Luke Opwora:** Thank you, Honorable Speaker. I wanted to stand and also support this wonderful report from the Public Accounts Committee. We live in very dangerous times and I have read these recommendations and I am a very worried man. Is it possible that this government relies on flagship projects to extort public funds? Is it possible that this County Government relies on flagship projects to embezzle public funds? Those are the questions we should ask ourselves. I am trying to imagine what the 58 million would have done. As we speak right now, I am not even sure if this county government through the treasury is going to avail for me 15 million for the policies and yet they can take 58 million and pocket for their own families. I will come back to recommendation one and I am happy that the chairman of Implementation Committee is here. Can we this time round do the right thing as an Honorable House.

There is nothing important as reading these reports here and going on HANSARD and no action is taken! I want to support this report fully, if we can have an amendment that the timelines on this report be reduced to 30 days the better because we live in dangerous times and it is good for the people of Bungoma to know how the County is running.

I hope and pray that the report we are waiting from the budget committee is going to capture funds for the policies, else I will look into this supplementary budget especially on the department of roads with a deeper eye and let no one come and start telling us here that these are the government's flagship projects! We will not allow! Because this is very painful that these resources have been lost and my plea let us as a house stamp our authority in terms of oversight and ensure that the rightful thing is done for the people of Bungoma.

**Mr. Deputy Speaker:** Thank you, Hon. Opwora, speaking with authority and passion.



**Hon. Henry Majimbo:** Mr. Speaker, I stand to support the motion and submit as follows. First, I want to laud the committee for the report and the able leadership of Hon. Tony Barasa Khaoya MCA Lwandanyi and not leaving out the seconder of the motion who happens to have recalled his troops back to the battalion in this last stretch.

I want to laud him and my expectation is that the other brigadier who is the chairman of Implementation committee will do the needful and accomplish the mission. This mission is not impossible. I want to correct this information on the narrative that this dual carriage way is in Khalaba ward. This dual carriage way is on a no man's land

*(Laughter)*

It is neither in township nor Khalaba. So the narrative that has been advanced in many quarters that Khalaba is a beneficiary of the dual carriage, I want to make a disclaimer that Khalaba is a beneficiary. In fact, Khalaba people are suffering more now on the construction of the dual carriage way. I have residents who are taking their vehicles to garages on a weekly basis due to the bad state of the so called dual carriage way. It was a brilliant idea to have this project but the way it has been implemented leaves a lot to be desired. You cannot come up with a mega project without secured funding. You cannot depend on an equitable share from the treasury to implement a project of this magnitude. What perturbs me the most is the fact that this 54 plus million shillings was meant for suppliers' credit, it was supposed to pay the suppliers and contractors and this house had approved the 54 million to go towards the suppliers' credit. The executive has a tendency of overlooking all the resolutions, approvals of this House. They have never taken seriously any approvals by this Honorable House; they forget that this House has the constitutional mandate to appropriate funds towards various programs and projects. The CECM is the chairperson of the County Treasury.

I don't know why the CECM was left out of this. Because the accounting officer for the department of Finance is the Chief Officer Finance who also happens to be the secretary to the County Treasury and that is according to the Public Finance Management Act. So for any approval of this magnitude, a CECM must have been in picture. County Executive officer for finance and economic planning, because she is the chairperson of the treasury, so I don't know why she was left out of this. I don't want to cast any aspersions. I have a lot of respect for this committee, but maybe it was an oversight but as the chairperson of the county treasury, the buck also stops with her.

This matter was raised in the roads committee where Hon. Sudi and I are members and that is why we recommended that this matter should be pursued further by the committee on Public Accounts which has executed it very ably. My concern is that this exercise started way back in May but when I was looking and listening to the report, some members appeared in September. I hope the chairman is going to explain to me like a kindergarten kid to understand what were the challenges in and the longevity of this exercise from May and then September and it being tabled

today. The chair, I think will explain because if a report takes such a long period, it loses what we want to achieve and I have made a disclaimer that I do not want to cast any aspersions on the committee. This is my opinion that the chairman and able chairman aka OCS aka DCIO will respond to it. Thank you for the opportunity, I support.

*(Applause)*

**Hon Bethwell Mwambu:** Mr. Speaker, first I wish to also in accordance to what my colleagues have said pass my accolades to the members of this committee but most importantly the chairperson and the seconder of the motion as well said by Hon. Majimbo and the rest of my colleagues. I want to bring to notice, you made it very clear within 60 days it doesn't mean we have to go to the ceiling day, it is within and therefore I would wish to ask that what Hon. Mukhongo was proposing is quite in order.

If you look at the clock, it is not very friendly to us, it is ticking very fast and if we don't do it within the time we are active in office, we will let it go and eventually will be counted as part of the culprits because we do not do what is required of us in good time and therefore I would wish that at the end of this particular presentation, if with your discretion you will accord us some time to look at the areas which are very important. If we don't amend, we may look for the outcome which may not come as it is.

First, as the chairperson for Implementation I am happy that my committee is being tasked with my colleagues to make sure that what has been directed in this report must see the light of day but Hon. Majimbo as it is, I will be glad to report back at the lapse of these days. Whether the DCI or DPP would have taken up the matter, mine will be to come back to report whether they are going to be behind bars or the process will be ongoing because that is how it is. But I want to look my colleagues in the eye and say why do we become very tough on recommendation number one and that is what we are supposed to be. But as we go down to recommendation number three, I want to take my colleagues there seriously; we are not very keen on what we want to be done. The committee further recommends that the relevant county department should as a matter of urgency consider capacity building.

*(Laughter)*

Honorable Speaker and colleague members are we really serious! When these guys were appearing before us, those holding very serious positions like the CEC and Chief Officers, you could look at their credentials and Hon. Majimbo will attest to this that when they are appearing before the appointments committee, our vetting questions were not limited to not asking them whether they understand the law within which they are going to operate and they claim to be very conversant and they answered questions very well to our satisfaction and that is why we recommended them to those offices. So it is piteous when you say these people are supposed to

be apprehended for mistakes they have committed and you go ahead and you say, don't take them behind bars, after all they did not have knowledge of the law.

I can see Hon. Majimbo has become very keen, we made a mistake in the first place that we are simply saying they should not be arrested; after all, they didn't have knowledge on what they were supposed to do. Graduates!

Those people have been in office for about five years! Now we are comfortable saying they are supposed to be capacity build and we are saying with a lot of urgency. You mean another amount of money if this colossal amount of money has not been directed to the right use and today we are saying another amount should be found for capacity building. My chairperson, Public Accounts Committee, what are we saying? Are we speaking from either sides of the mouth?

If recommendation one is supposed to hold water, then recommendation three should be done away with absolutely! It should not be there. Otherwise, if it is there, Hon. Barasa Mukhongo I don't know if you are getting me. So if we go this direction, then we are simply mixing up ourselves and we are therefore saying nothing should happen. Every time these officers have appeared before us, I think we have done much more than is required of us to an extent that we give advisory notes to them. You know, I wish you knew what they say Mr. Speaker and the perception they have to us as honorable members. They say we are less educated or the schools which we went to are not recognized in the republic of Kenya or if they are, then they are having less recognition and at times they say the schools which we went to cannot measure to the required standards of the nation or to the institutions where we went to. So, I don't know why we want to belabor again and say we want to think they want to be capacity build when they simply perceive that we don't have enough academic stamina to challenge them.

I would wish if it goes like this, we would be doing a lot of disservice to the House and to the people we represent. Secondly, I would wish to recommend to the roads committee that thank you for being able to single out this anomaly. Today it is very clear that the dual carriage is not on any ward, it is on a no man's land. So we treat it from that particular perspective because 001 has said it on record. So when we are doing our work, let us do it. I thank God because finally we can face the enemy because on the homestretch, we are one; the beauty of nature.

*(Applause)*

*(Laughter)*

I was simply saying that the beauty of nature on the home stretch we are one and the enemy has nowhere to run to.

We must find a way of getting rid of this enemy and this enemy should not be anywhere walking in Bungoma County. It should be behind bars. That is what we are saying. You can imagine Tongaren constituency has not gotten anything- the big projects. I think my colleagues will agree

with me, in Kenya if you want to steal, you put it in details and therefore in Bungoma if you want to steal, you come up with a mega project with huge sums of money so that when Hon. Majimbo is following up to know how much you are spending and before he realizes, it will be the last year to election.

*(Laughter)*

That is what has happened and I know many other revelations will be coming next week. I want to ask the chairperson of Public Accounts Committee, please don't be tired. If you find any even on the last day because it was very clear and Hon. Mukhongo I think will smile on this one. He said, it was not Hon. Mukhongo but it is on record. Even if it is just one day, something will be done. So things are now unfolding, even on the last day, something can be done.

*(Applause)*

**Hon. James Mukhongo:** *(On a point of information)* Honorable Speaker, I wanted to inform the House that having looked at the recommendation that within 60 days, we now urge the Implementation Committee and before we urge them the task is with the committee clerks who are sited there and the Office of the Clerk.

They need to transmit this information to the relevant body immediately, because they might not be aware of what we are passing here and also inform the same executive so that they can fast track working on the recommendations. By so doing, the Implementation Committee, Hon. Bethwell Mwambu, we are at your mercy please. Within 15 days you start acting. Invite them to see how far they have reached and by so doing it will be so great for us. Otherwise that is what I wanted to inform the House.

**Mr. Deputy Speaker:** Are you proposing or something!

**Hon. James Mukhongo:** I am just informing using your discretion. You can now make...

**Mr. Deputy Speaker:** Now honorable members, looking at the mood of the House and with my discretion of rule one, I direct that the implementation period should be reduced from the 60 days to 21 days.

*(Applause)*

Also...

*(Loud Consultations)*

...Honorable members order! Hon. Tony will be given time appropriately to reply, there is no reason, there is no problem.

*(Laughter)*

*(Loud Consultations)*

Honorable members Order! Hon. Mukhongo, Hon. Tony, Hon. Mwambu order!

The House has veto powers over any committee! Be guided Honorable members.

I now call upon the Hon. Tony Barasa Khaoya to reply.

*(Applause)*

**Hon. Tony Barasa:** Thank you, Mr. Speaker. One, I want to thank my colleague honorable members for standing with this report and reiterate as follows:

**Mr. Deputy Speaker:** Hon. Tony you are an eloquent presenter and I know. So bear in mind the 21 days.

**Hon. Tony Barasa:** I have no problem in fact it could even come to ten days because we want this thing to be done with in the shortest time possible.

Why did we say that some Chief Officers should be taken for capacity building? If you check recommendation number one and I want to bring the attention of Hon. Fwamba to this. We have said categorically as the PAC that those culpable... I wish Hon. Fwamba could listen to the chairperson when he speaks, everybody should... Honorable Speaker we have said this...

**Mr. Deputy Speaker:** Hon. Opwora be orderly! Order Hon. Opwora, the honorable Chair is replying. He is making responses and he wants the attention of every contributor including yourself. Be orderly.

**Hon. Tony Barasa:** Thank you Speaker for that protection. I wish to start by acknowledging and applauding my honorable colleagues for standing with this report and I want to stand with Hon. Fwamba as to why we put recommendation three; remember we had trained and we normally allocate funds for training for these Chief Officers.

In point number one, we have said all those culpable, the Chief Officers that were culpable, that is the Chief Officers' Finance and Roads, should be taken to DCI and DPP so that they can follow and face the full force of the law. We are also seeing because we have more than one department, so that in future we cannot now have this other embezzlement.

These other Chief Officers because we normally allocate funds for training, it should be taken back to the law school, to the government schools to be trained about the PFM Act because it was very clear in their presentation, they did not know but the culpable ones must face the full force of the law.

The issue of DCI and DPP and I want the chairman for implementation to listen to me keenly, it is a very serious one and I wish that if the clerks are not going to submit this report to the DCI

and DPP, can you give the powers to the PAC chairperson! I can carry it myself to those offices because funds have been embezzled. So we want to take it seriously.

As to why and I want to thank Hon. Majimbo for the observation that you have seen about the CECM finance, we were looking at it and I think in future Hon. Majimbo we are going to be tough from both edges.

We thought it was well to first crucify the accounting officers, the ones who are responsible for day to day management of finances in our departments and that is why we said the two Chief Officers should go to jail.

Two, the issue of 60 days, I want to thank your office with the wisdom you have given that it now reduces to 21 from 60; 60 was on the higher side, it can be two days, 21 days and whatever.

One thing I want to promise here that the PAC will come to this house with its tracker. All the reports we have recommended to Implementation Committee and all the report we have recommended to DCI and DPP and have not been acted upon, we want to come with a tracker because we have got so many reports recommended and nothing has been done.

I want to also applaud Hon. Mukhongo for thanking this committee and I want to wish my chairperson, Implementation Committee that now we have brought you and the buck stops at your doorstep; please do not let this County Assembly down. Don't let the people of Bungoma down. God bless Kenya and God bless the County Assembly of Bungoma.

*(Applause)*

**Mr. Deputy Speaker:** Honorable members, I want to thank the Chairperson for the reply and now the motion having been moved and duly seconded, debate having ensued and a response made by the mover, I now put a question bearing in mind the amendment proposed therein that this House adopts the report by the standing Committee on Public Accounts on the special report regarding the legality of the expenditure of Kshs 58,660,457 paid by the County department of Roads, Public Works and Infrastructure on the 10<sup>th</sup> of February 2020 vide certificate number 2 of 10/02/2020 in respect to the dual carriage project with amendments.

*(Question put and agreed to)*

The Ayes have it!

*(Applause)*

Now, the Clerk must make prompt communication to the relevant offices and officers involved and not forgetting proper communication to the relevant mentioned state agencies with immediate effect.

*(Applause)*

Honorable members there being no other item on the Order Paper, the House stands adjourned to tomorrow 9:30 a.m.

*(House Adjourns)*