

COUNTY GOVERNMENT OF BUNGOMA

COUNTY ASSEMBLY OF BUNGOMA

COUNTY ASSEMBLY DEBATES

THE DAILY HANSARD

THURSDAY 30TH NOVEMBER, 2023

Afternoon Sitting

COUNTY ASSEMBLY OF BUNGOMA

THE DAILY HANSARD

THURSDAY 30TH NOVEMBER, 2023

The house met at 2:30 p.m.

(Mr. Deputy Speaker [Hon. Emmanuel Situma] in the Chair)

PRAYER

COMMUNICATION FROM THE CHAIR

ELECTION OF HON. BERNARD KIKECHI AS THE CHAIRPERSON

Honourable members, I wish to make the following communication; one is the election of Hon. Bernard Kikechi as the chairperson. The above matter refers to, I wish to bring to attention that Hon. Bernard Wekesa Kikechi was duly elected as on 21st of November 2023 as the chairperson, Committee on Trade, Energy and Industrialization following the adjustment of the committee membership by the Committee on Selection.

Attached find minutes for your action. From the Principal Clerk Assistant, signed Office of the Speaker and also the Clerk accordingly.

Honourable Members, in our today's Order Paper, the second motion will be taken out from today's Order Paper and be rescheduled on Tuesday 5th of December 2023 2:30 p.m.

PROGRESS REPORT FROM THE COMMITTEE ON AGRICULTURE, LIVESTOCK, FISHERIES AND COOPERATIVE

Secondly, the chair on the Committee on Agriculture, Livestock, Fisheries and Cooperative was to give us a progress report on a question sought by Hon. Jerusa Aleu and the same committee was given permission to be out of the House. So the same is scheduled for next week on Tuesday because if they can't give a response, this statement will die a natural death. The moment you go for recess and come back in February.

So the Chair be informed that Tuesday 2p.m, you must give us the response as sought by the Hon. Jerusa Aleu of Milima Ward.

QUESTIONS AND STATEMENTS

BUSINESS OF THE WEEK COMMENCING 5TH TUESDAY 7TH THURSDAY DECEMBER 2023

Mr. Speaker: Hon. Psero, you Step in and proceed and give us the weekly statement of next week as planned by the HBC.

Hon. Everton Nganga: Thank you, Hon. Speaker. I would like to know if Hon. Vitalis Wangila if he is sitting where he is supposed to sit

Mr. Speaker: Hon. Vitalis, there are some specific seats reserved for the said Honourable Members especially the House Leadership. If you are the Minority Deputy Whip, you don't become the Minority Leader in the absence of the Minority Leader. You are very comfortable. I want to show where they say some seats are reserved and Specifically Standing Order NO. 257. I will be able to get it out for you so that you understand it clearly.

Sitting in a chamber there shall be reserved seats in the chamber of the County Assembly for the exclusive use by each of the following; Deputy Speaker, Leader the Majority, Leader with the Minority, members with dilatability. The Speaker may designate seats in the chamber for members of the Speakers Panel, Deputy Leader of Majority, Leader of parties, Chairpersons of committees, Leader of Majority and Minority Party Whips.

So Hon. Nganga, I do agree with you that Hon. Vitalis Wangila was sitting at a wrong place not set aside for him. So since he is already curing the mischief by vacating he should sit at his reserved area. That one has no response. Even if you are told that you will be acting, you sit in your reserved. So Hon. Vitalis do the necessary and seat in your seat Deputy Minority. Let's proceed

(Laughter)

(Applause)

Hon. Jacob Psero: Thank you, Mr. Speaker. Allow me to present the weekly programme for the business of the County Assembly Pursuant to Standing Order No.47 weekly commencing Tuesday 5th to Thursday 7th December 2023.

On Tuesday 5th December, 2023, 2:30 p.m.

Papers

- i. Report by the Budget and Appropriation Committee on the Bungoma County government 1st Supplementary Budget for the year 2023/2024
- ii. Report by the Budget and Appropriation Committee on the Bungoma County government Budget Review Outlook Paper financial year 2022/ 2023

Notice of motion

- i. That the House notes the report by the Budget and Appropriation Committee on the Bungoma County government 1st supplementary budget for the year 2023/2024
- ii. That the House adopts the report by the Budget and Appropriation Committee on the Bungoma County government Budget Review Outlook Paper financial year 2022/ 2023

On Wednesday 6th December, 2023, 9:30 a.m.

Motion

1. Report by the Budget and Appropriation Committee on the Bungoma County government 1st Supplementary Budget for the year 2023/2024

On Wednesday 6th December, 2023 at 2.30 p.m.

Papers

1. Report by the committee on Appointments on the vetting of the nominee for appointment to the position of County Secretary and Head of Public Service

Notices of motion

1. That the House approves the report by the committee on Appointment on the vetting of the nominee for appointment to the position of County Secretary and Head of Public Service.

Motion

1. A report by the Budget and Appropriation committee on the Bungoma County government budget review outlook paper financial year 2022/23.

Bills

The Bungoma County 1st supplementary appropriation Bill Financial year 2023/24

Committee of the Whole House

Committee on supply on Bungoma county 1st Supplementary appropriations Bill Financial Year 2023/24

Thursday 7th December, 2023 at 2:30 p.m.

Petitions

A petition by integrated and Chebui Cafe Dwellers Community based on organization on the need to assist IDPs and evacuate 11 families from Chebui cave.

Motions

1. A report by the committee on Appointment on the vetting of the nominee for appointment to the position of County Secretary and Head of Public Service.
2. Bungoma County 1st Supplementary appropriations Bill Financial year 2023/24

I beg to table

Mr. Speaker: You table it, you don't retain it because you are giving a tentative weekly business.

Hon. Jacob Psero: Thank you Mr. Speaker for that, I table it now.

(Tentative weekly business paper tabled by Hon. Jacob Psero)

Mr. Speaker: Thank you, Hon. Jacob Psero for giving us the tentative weekly programme of next week starting on Tuesday the 5th of December to Thursday 7th of December 2023 in our normal sittings of the House, let's proceed to the next item

QUESTIONS

RESPONSE IN RELATION TO BINYENYA AND LUKHUNA WATER BOREHOLES UPGRADE WITHIN TONGAREN/KIMININI WARD

Mr. Speaker: Yes honourable member, you are giving a response? I am seeing the owner of the statement Hon. Ipara is not yet in, has he been around? In his absence you cannot be able to give response so the same is pushed to Tuesday afternoon session.

Next item,

MOTION

REPORT BY PUBLIC ACCOUNTS AND INVESTMENT COMMITTEE ON AUDITOR GENERAL'S REPORT ON FINANCIAL STATEMENTS OF BUNGOMA COUNTY TRADE AND DEVELOPMENT FUND FOR THE PERIOD ENDED 30TH JUNE, 2021

Mr. Speaker: The honourable member who has the honour this time to move the report, yes Hon. Chikati, proceed

Hon. Timothy Chikati: Thank you, Mr. Speaker. First of all, I register my apologies on behalf of Public Accounts and Investments Committee members for the anomalies that were in our report, we have moved to correct and we also thank you for giving us time to do the same.

Mr. Speaker: Thank you, it is in order we proceed

Hon. Timothy Chikati: I stand to move a motion for PAIC on Auditor Generals' report on the financial statement of Bungoma County Trade and Development Fund for the period ended 30th June, 2021.

Page 2 is table of content, page 3 is mandate of committee, we had gone through membership I don't see the need to go through it because it is on HANSARD, and you allow me go to acknowledgement which is on page 9.

Acknowledgement

The Committee wishes to express its gratitude to the Offices of the Speaker and the Clerk of the County Assembly for the support rendered to it in the quest of discharging its mandate and compiling of this report.

The Committee further wishes to thank the Fund Administrator and the Chief Officer for dutifully appearing before it and also for their cooperation.

Allow me, Honourable Speaker, to applaud each single Honorable Member and the secretariat of this key Committee for their dedication and exemplary work which made the interrogation of the said financial statements and production of this report a success.

I congratulate you all, distinguished Colleagues!

On behalf of the Public Accounts and Investments Committee, I now wish to table this report and urge this Honourable House to adopt it and the recommendations therein. The report is signed by Honourable Everton Nganga, MCA East Sang'alo Ward and chairperson Public Accounts and Investment committee.

Report of the Auditor general on the financial statements of Bungoma County Trade Development Loans Fund for the year ended 30th June, 2021.

Audit query

1. Undisclosed material uncertainty relating to sustainability of services

The statement of financial position reflects a balance of Kshs. 115,679,790 in respect to current portion of long term receivables from exchange transactions arising from loan disbursements to beneficiaries since 2014 when the fund was established. However review of the schedules supporting the amount revealed that the last time loans were issued was in 2019.

At that time, there were outstanding loans amounting to Kshs 104,189,595 which were expected to have been repaid by the end of 2020. This indicates that the fund is not in a position to disburse new loans and that there are challenges in effecting recoveries. This has not been disclosed in the financial statements.

In the circumstances, continued sustainability of the fund is doubtful.

Management Response

We do acknowledge the concerns made concerning the going concern of the fund .We are however trying our level best to insure the funds regulation is gazette within this financial year. We have also organized a round table stakeholders meeting to review the strategy on enforcement of loan recovery .We however suffered a major setback when the government offered amnesty for loan repayment during the covid19 period as many of the of the business had been closed down.

Committee's Observations

The Committee observes that Management had failed to recover outstanding loans dating back from 2014 since they became due for recovery amounting to Kshs. 104, 189,595 as reported in the report of the Auditor General.

It was also observed that failure to recover the loans that are outstanding since they became due for recovery as indicated in the audit report and as agreed to by management, implied that the amount of funds available for further loaning to qualified borrowers during the said period were adversely affected.

Committee's Recommendations

1. That for the purposes of the fund sustaining service delivery for trade development loans, through disbursement of low interest loans to qualified borrowers which is its core business, the Management through the Accounting Officer should as a matter of urgency scale up recovery efforts of all loan repayments that are due as indicated in the audit

report; and a corresponding compliance report be submitted to the County Assembly within 60 days from the date of adoption of this report.

2. The CECM to evaluate and assess the long-term receivables with a view of ascertaining bad and doubtful debts in order to make a provision for the same in the financial statements; to mitigate the effects of uncertainty in recovering the amounts. Data validation exercise for the verification of the loans to be concluded in three months from the adoption of this report and a report on the same submitted for confirmation to the County Assembly sector committee.
3. The CEC Member should fast track the review of regulations to consider provision of securities for loans advanced and insurance of the loan facilities. Loan repayments enforcement to be enhanced.

2. Unsupported property, plant and equipment.

The statement of financial position and as disclosed in Note 6 to the financial statements reflects property, plant and equipment balance of Kshs 297,297 as at 30th June 2021. However, ownership documents for the assets were not provided for audit review. Further, although management explained that the assets were acquired by the county Executive of Bungoma through the Department to date, it was explained why the assets are being reflected in the financial statements of the fund.

Further the balance was not supported by a fixed asset register showing details relating to nature or type of asset, date of acquisition, cost, supplier, unique identification number, current value, current location, user, accumulated depreciation and net book values,

In the circumstances, the accuracy, ownership, valuation, and completeness of the property, plant and equipment net book value of Kshs 297,297 could not be confirmed.

Management response

The assets listed were not acquired by the county trade loan fund as mentioned neither are they managed by the fund. The assets are yet to be handed over to the fund. The only reason why they are listed as assets of the fund is because they are mostly used by the funds. We have however requested the ministry to transfer the ownership of the assets to the fund as recommended and put up an asset register as well.

Committee Observations

1. No ownership documents for the ICT equipment were provided to the committee for verification

2. The ICT equipment was acquired by the County Ministry of Trade, energy and industrialization and has not been transferred to the fund.

Committee Recommendations

The ICT equipment should be reflected in the county executive financial statements and not the funds unless when the same will be officially transferred with ownership documents to the fund.

3. Intangible Assets

The statement of financial position, and as disclosed in note 7 to the financial statements, reflects an intangible assets balance of Kshs 8,484,228.

However, although management has indicated that the assets were acquired in 2018/2019 by the county executive through the department of trade, it was not explained why the assets are reflected in the financial statements of the fund instead of financial statements of the county executive.

Management response

These intangible assets were acquired by the department and issued to the fund for usage, they still remained as the assets of the ministry until when the fund will be able to maintain them because they have an annual software assurance which currently the fund cannot finance.

We are also in the process of data validation to ensure the loan management system is fully deployed to all wards since it is web based, we however captured the existence of the intangible assets as a fund asset since its majorly used by the fund.

We will however request the ministry to officially hand over the fund as advised.

Committee Observations

1. No ownership documents for the intangible asset were provided to the committee for verification.
2. The Intangible Assets were acquired by the County Ministry of Trade, energy and Industrialization and has not been transferred to the fund even though is fully used by the fund.

Committee Recommendations

The intangible Assets should be reflected in the County Executive financial statements main Account and not the funds unless when the same will be officially transferred with ownership documents to the fund.

4. Current portion of long term receivables from Exchange Transactions

The statement of financial position and as disclosed in Note 5 to the financial statements reflects a balance of kshs.115,775,298 relating to current portion of long term receivables from exchange transactions which comprises of kshs.13,770,097 and kshs.102,005,201 relating to interest receivable and current loan repayments due respectively.

However, the amounts differ with those reflected in the supporting delinquency reports as shown below;

Description	Amounts in the Financial Statements (Kshs)	Amounts in supporting Reports (Kshs)	Variance (Kshs)
Interest receivable	13,770,097	7,948,057	5,822,040
Current loan repayments due	102,005,201	102,569,040	(563,839)
Total	115,775,298	110,517,097	5,258,201

In addition, analysis of the delinquency reports revealed that 5,865 loan beneficiaries loaned an amount of Kshs 139,781,991 were in arrears amounting to Kshs. 110,517,098 as at 30th June 2021, despite the loans having matured as at that date. No explanation was provided on why management did not invoke the default and breach of terms clause in Regulations 21(1)(a) of the Bungoma County Trade Development Loans Fund Regulations ,2014 which empowers management to institute recovery as a civil debt.

Further analysis of the list of defaulters revealed that one hundred and eighty –eight (188) defaulters are staffs of the County Executive of Bungoma, who collectively were in arrears amounting to Kshs.4, 728,004.

Management Response

We acknowledge the variance as stated .This is due to the fact that there was an error from the delinquency report obtained from the system .This is due to the missing data in the system upon migration to the automated process .We are however carrying out an intensive data validation exercise in all the wards to ensure all the loan beneficiaries details are captured correctly.

Some of the reasons were duplicate loan account, erroneous ID numbers which are the unique identities, incorrect loan balances recorded.

Committee Observations

1. The department availed a sample of loan repayment arrears list which showed that most of the businesses have since been closed, with others not traceable after relocation to other areas. The recoverability of the loans is in doubt since the rate of repayment is at a very slow rate with most of the loans almost doubtful.

2. The fund administrator has not reconciled the material differences between the manual and the system loan balances thus the variances of Kshs. **5,258,201** cannot be resolved.
3. It was observed that management did not table evidence for committee verification on failure to institute recovery measures against 188 County Executive staff who benefited from the loans through check-off system

Committee Recommendations

1. A data validation exercise for reconciliation of the loan variances between the manual and system balances to be concluded within a month's time, and a report on the reconciliation of Kshs. 5,258,201 to be provided to the Assembly oversight committee on Trade energy and industrialization for scrutiny and further verification.
2. Regulation 21 of the Bungoma County Trade Development Loans Fund Regulations, 2014(revised) 2019 stipulates that-

If in the opinion of the unit there has been or is likely to be any breach of or failure to comply with any condition or term of repayment in respect of a loan, the unit may forthwith;-

- a) Recover the loan from the beneficiary as a civil debt under the Debts (summary recovery) Act, Chapter 42 of the Laws of Kenya, the amount of the loan or the amount then remaining unpaid together with interest thereon.
- b) Enforce or realize any security relating thereto

The committee therefore recommends that the department carries out a thorough data validation exercise so as to know the possible recoverable amount and institute recovery through civil debts. Employees of the County Government who were beneficiaries to the trade loans to be recovered immediately from the payroll. A corresponding compliance report to be submitted to the County Assembly within 60 days from the date of adoption of this report.

3. The CECM to evaluate and assess the long-term receivables with a view of ascertaining bad and doubtful debts in order to make a provision for the same in the financial statements; to mitigate the effects of uncertainty in recovering the amounts.
4. The CEC Member should fast track the review of regulations to consider provision of securities for loans advanced and insurance of the loan facilities. Loan repayments enforcement to be enhanced.

5. Cash and Cash equivalents

The statement of financial position reflects cash and cash equivalents balance of Kshs 3,931,515 which includes Kshs 341,717 relating to mobile money transfer balances not recorded in the cash book. However, the reconciling item has remained outstanding since 2019/2020, contrary to Regulation 90(3) of the PFM Act, 2015, which requires accounting officers to ensure that any discrepancies noted during bank reconciliation exercises are investigated immediately and appropriate action taken, including updating the relevant cash books. In the circumstances the accuracy and completeness of the cash and cash equivalents balance of Kshs 3,931,515 could not be confirmed.

Management Response

The said amount remained outstanding during the transfer of funds from M-pesa collection Account from the utility to working account which is a mirror/settlement account for the collection account. We evidenced and availed the email correspondence to Safaricom requesting for the statement for the same during audit since we were informed that we couldn't access the M-pesa statements for the fund beyond 6 months. We are however yet to receive the working account.

Committee Observations

The M-pesa statements were provided to the Committee for verification on the Kshs 341,717. Regulation 90(3) of the PFM Act, County government Regulations, 2015, requires Accounting officers to ensure that any discrepancies noted during bank reconciliation exercises are investigated immediately and appropriate action taken, including updating the relevant cash books. The fund administrator is therefore urged to always ensure this is done timeously before final accounts are concluded.

6. Unresolved prior year Audit Matters

In the audit report of the previous year, a number of issues were raised. However, management has not resolved the issues nor disclosed all the prior year matters as provided by the Public Sector Accounting Standards Board template.

Management response

No management response

Committee's observation

The Committee observes that the department did not provide a status report of the implementation of prior year matters for the year ended June 2021 as reported by the Auditor General. This amounts to negligence by the Accounting Officer.

Committee's recommendations

The Committee notes that Section 53 of the Audit Act obligates the relevant Accounting Officer of a state organ or public entity to within three months after Parliament has considered and made recommendations on the audit report, to—

(a) Take the relevant steps to implement the recommendations of parliament on the report of the Auditor-General; or

(b) Give explanations in writing to the Parliament on why the report has not been acted upon.

(2) Failure to comply with the provisions of subsection (1), the Accounting Officer shall be in contempt of Parliament or County Assembly and upon determination by Parliament or relevant County Assembly, Parliament or relevant County Assembly may recommend administrative sanctions such as removal as the Accounting Officer, reduction in rank among others.

The Committee thus directs the Fund Administrator to provide to the County Assembly a report on the implementation of the prior year audit matters to date, within a period of one 30 days from the date of adoption of this report.

7. Failure to gazette the Funds Regulations

The county Government of Bungoma Established the Bungoma County Trade development loans fund vide County Assembly approval in a special sitting of 15 December, 2014. However although procedural requirements had been obtained up to the passage of the regulations by the county assembly, the regulations had not been gazette by the time of the Audit to give effect to the establishment of the fund. This is contrary to Article 199(1) of the constitution which provides that county legislation does not take effect unless published in the gazette. In the circumstances the management was in breach of law.

Management Response

The department has made tremendous effort in ensuring the regulations have been gazetted as evidenced by the revised copy of the regulation submitted to the Kenya Law reforms and the Controller of Budget. This process has however been majorly hampered by lack of funds to carry out stakeholders engagement and public participation as required before the amendment of the regulation we are however in the tail end of the gazettelement since we have already done the stakeholders engagement and submitted the regulation back to the controller of budget for concurrence before its forwarded to the Assembly for ratification and finally to the government printers for gazettelement. We do hope to finalize on the gazettelement of the regulation before the end of the current financial year.

Committee observations

The committee observes that the fund operated without gazetted regulations rendering its activities not anchored in law during the year under review. The committee further notes efforts that have been put in place to gazette the regulations and plans to review the same so as to address the problems of loan recovery among others.

Committee recommendations

Article 199 (1) of the Constitution, mandates all county legislation to only take effect once gazetted in the Kenya gazette. The Public accounts committee urges the sectorial committees of the Assembly to be vigilant in their oversight roles in ensuring implementation of programs within ministries operate within requisite legal provisions.

The department on trade, energy and industrialization should halt operations until the reviewed trade loan regulations are gazette.

8. Lack of budget for the fund

The Management did not provide a budget for the fund to support the balances in the statement of comparison of budget and actual amounts. Consequently, the source of the balances reflected in the statement of comparison of budget and actual amounts could not be confirmed. This is contrary to section 149(2)(h) of the PFM Act 2012, which states that in carrying out a responsibility imposed by subsection (1) an accounting officer shall in respect of the entity concerned, prepare estimates of expenditure of the entity in conformity with the strategic plan. In the circumstances management was in breach of law.

Management response

The fund activities are mainly carried out as budgeted in the main budget of the department after presentation of our estimates during the budget making process. This is due to the fact that the fund has not yet attained self-sustainability. Most of the expenses such as staff cost, office Rent, Stationery, Fuel for field activities, insurance & maintenance for motor vehicle, capacity building of both the staff & entrepreneurs, review of regulations, and annual software assurance is still being budgeted in the main ministry since the 3% administrative fee is not sufficient to facilitate for all this expenses.

We are however allowed to spend on the general administration of the fund from time to time as approved by the committee and other authorities when need arises for betterment of the fund operations .

Committee's Observations

The Fund didn't have approved budget estimates to guide its operations during the year, neither did the fund have an active fund management committee that is supposed to approve this estimates. The Public Accounts committee notes governance gaps in the management of the fund during the year under review.

Committee's Recommendation

The Funds Administrator should always ensure that there are program budget estimates for the fund to be approved by the County Assembly. The Accounting officer, pursuant to the provisions of section 149(2) (h) of Public Finance Management Act, 2012 should always prepare budgets as guided by the National treasury and County Treasury.

Attached is adoption schedule signed by members and also the relevant annexures supporting this report.

At this moment, allow me to call upon Hon. Ken Wanyama to second the report.

Mr. Speaker: Hon. Ken Wanyama, you do have the honor of seconding the report accordingly.

Hon. Kennedy Wanyama: Thank you, Mr. Speaker. I rise to second the motion on the Financial Statements of Trade and Development Fund for the year ended 30th June 2021.

The purpose of this fund was to offer subsidized loans to Bungoma residents and the nature of the fund is that it's supposed to be revolving in that repayments are supposed to be used to give loans to those other people that deserve to get the loans.

For a long time we noted that the fund was operated without gazetted regulations which was against the provisions of the law but I also want to note that this has since been fast-tracked by the committee on Trade, Energy and Industrialization and the same was tabled in this House and deliberated upon. We have long outstanding receivables of about 104,000,000 which is a colossal amount of money being that this is supposed to be revolving so you realize that there are a lot of deserving cases out here who are not able to get these loans because of the long outstanding receivables.

For the executive to be able to recover these loans, there is a need for them to carry out data validation so that they can be able to achieve two things; One, they need to identify any possible bad and doubtful debts so that they can make the relevant provisions in the Financial Statements to mitigate the effects of uncertainty of collecting the debts.

Once that validation has been done then management can scale up recovery efforts and collect the balances so that other deserving people can access the funds. I second.

(Applause)

Mr. Speaker: Thank you, Hon. Ken. Honourable members, a motion has been moved and seconded that this House does adopt the report by the Public Accounts and Investment committee on the Auditor General's report on the Financial Statements of the Bungoma County Trade and Development Fund for the period ending 30th June 2021 laid on the table of the House on 28th November 2023. I propose!

(Question proposed)

Thank you, Honourable members. Hon. Chikati, you have no right of reply if there is no contribution so you just sit.

(Loud Consultation)

Honourable members, if there is no contribution you reply to what has been said so if there is no contribution there is no reply so we proceed.

Honourable members, a motion as I have said has been moved and seconded that the House does adopt the report by the Public Accounts and Investment Committee on the Auditor General's report on the Financial Statements of the Bungoma County Trade and Development Fund for the period ending 30th June 2021 laid on the table of the House on 28th November, 2023.

(Question put and agreed to)

I see the side effect of going for health break early enough.

(Laughter)

(Applause)

Thank you. Honourable members, the report plus its observations and recommendations are hereby adopted by the House accordingly.

(Applause)

Honourable members that was the last item on our Order Paper so we do adjourn our sitting and resume our sitting on Tuesday 5th December, 2023 in our 2.30 p.m. sitting.

(House Adjourns)