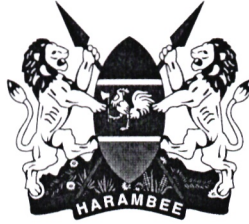


REPORT ON
PETITION
Finance

REPUBLIC OF KENYA



PARLIAMENT

THE SENATE

Paper laid on the
table of the Senate
by Sen. Billon Kenow
on 3/12/2015
TK

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ELEVENTH PARLIAMENT - THIRD SESSION

REPORT OF THE SENATE STANDING COMMITTEE ON FINANCE,
COMMERCE & BUDGET ON THE PETITION

BY

SOME MEMBERS OF THE KIAMBU COUNTY ASSEMBLY CONCERNING
THE PASSAGE OF THE KIAMBU COUNTY SUPPLEMENTARY
APPROPRIATION BILL, 2015 (BILL NO.3 OF 2015) WITH RESPECT TO
FUNDS ALLOCATED FOR PURCHASE OF VEHICLES BY THE KIAMBU
COUNTY GOVERNMENT

2 APPROVED
M M M M M
3/12/2015

Hon. Speaker
You may approve for tabling.
02/12/15

PARLIAMENT BUILDINGS
NAIROBI

December 2015



Senate Standing Committee on Finance, Commerce & Budget |

3 Mr. Mbayi
pls facilitate for tabling
this afternoon. Later, transmit
to Mr. Amos to facilitate
submission of report to the
Pet. Panel.
3/12/15

PREFACE

Mr. Speaker Sir, on behalf of the Members of the Finance, Commerce and Budget Committee and as required under the Senate Standing Orders, I hereby present to this House, the Committee's Report on the petition by some members of the Kiambu County Assembly, concerning the passage of the Kiambu County Supplementary Appropriation Bill, 2015 tabled, debated, passed and assented to by the county governor H.E William Kabogo that was presented to the Senate by Sen. Paul Kimani Wamatangi the Senator for Kiambu County.

The petition was brought to the attention of the Senate by the Senator for Kiambu County on behalf of a section of members of the Kiambu County Assembly as per the attached schedule. The petition was then tabled in the Senate on 20th May, 2015 and thereafter, committed to the Standing Committee on Finance, Commerce and Budget for consideration and determination.

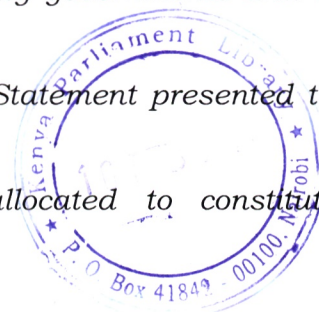
Mr. Speaker Sir, it is significant to mention that the purpose of the approval of this report is to protect and enhance the process of enacting legislations in the County Governments and set the benchmarks for developing a shared vision in the management of public finance.

Further, the County governments should appreciate the importance of development planning and budgeting in meeting the increasing demands in service delivery and limited resources. The committee hopes that this report will assist in entrenching the independence of county assemblies in performing their functions of representation, legislation and oversight as espoused in Section 9 of the County Governments Act, 2011.

Mr. Speaker Sir,

The Standing Committee on Finance, Commerce and Budget is established pursuant to Standing Order No. 208 and is mandated, to investigate, inquire into and report on all matters relating to coordination, control and monitoring of the county budgets and to:

- a) *Discuss and review the estimates of County governments and make recommendations to the Senate;*
- b) *Examine the Medium term Budget Policy Statement presented to the Senate;*
- c) *Examine and report on the Budget allocated to constitutional commissions and independent offices;*
- d) *Examine bills related to the Counties;*
- e) *Examine the Budget, including the Division of Revenue Bill; and*
- f) *Examine and consider all matters related to resolutions and Bills for appropriations, share of national revenue amongst the counties and all matters concerning the National Budget, including public finance, monetary policies and public debt, trading activities and commerce, tourism, investment and divestitures policies, planning and development policy.*



Mr. Speaker Sir,

The Committee on Finance, Commerce and Budget was constituted by the House on Thursday 13th March 2014 during the Second Session of the Eleventh (11th) Parliament and as currently constituted, comprises the following members:

1. The Hon. Sen. Billow Kerrow, MP. -Chairperson
2. The Hon. Sen. (Eng.) Peter Ole Mositet, MP.-Vice -Chairperson
3. The Hon. Sen. G. G. Kariuki, EGH, MP.
4. The Hon. Sen. Moses Wetang'ula, EGH, MP.

5. The Hon. Sen. Beatrice Elachi, CBS, MP.
6. The Hon. Sen. Mutahi Kagwe, EGH, MP.
7. The Hon. Sen. (Dr.) Boni Khalwale, MP.
8. The Hon. Sen. (Prof.) Peter Anyang' Nyong'o, EGH, MP.
9. The Hon. Sen. Zipporah Kittony, MP.
10. The Hon. Sen. James Mungai, MP.
11. The Hon. Sen. Catherine Mukite Nabwala, MP.
12. The Hon. Sen. Mutula Kilonzo Junior, MP.
13. The Hon. Sen. (Prof.) John Lonyangapuo, CBS, MP.
14. The Hon. Sen. Paul Njoroge Ben, MP.
15. The Hon. Sen. (Dr.) Wilfred Machage, MGH, MP.
16. The Hon. Sen. (Dr.) Agnes Zani, MP

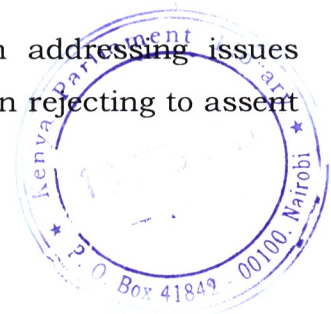
PRAYERS OF THE KIAMBU COUNTY ASSEMBLY PETITIONERS

Pursuant to provisions Article 119 of the Constitution of Kenya and part XXIV of the Senate Standing Orders, the petitioners sought answers to the following prayers -

- a) Provide recommendations on measures to protect public funds at the county level, including enacting appropriate legislations to insulate the budget making and appropriation process at the county; and
- b) The pronouncement on what kind of expenditure may be incurred through supplementary appropriations bills at the County level, particularly where the proposed expenditure has not been disclosed. The committee resolved to find out and report to the Senate on the following -
 - i. The effects of the Kiambu County Supplementary Appropriations Act, 2015 on the efficiency of service delivery with regard to budgetary reallocation;
 - ii. Whether adequate public participation was conducted in the enactment of the Kiambu County Supplementary Appropriation

Act, 2015 pursuant to the provisions of Article. 196 of the Constitution and section 87 of the County Governments Act, 2012;

- iii. How the Senate can help County government to enhance the relationship with the citizenry on matters of public finance management;
- iv. How the Senate can participate in ensuring that the legislative role of the County Assemblies do not affect the ease of doing business in the county; and
- v. Appreciate the process that was utilized in addressing issues raised by the Governor in his memorandum in rejecting to assent the Supplementary Appropriations Bill, 2015.



Committee sittings

In deliberating on issues affecting the Kiambu County with regard to the enactment, passage and implementation of the County Supplementary Appropriations Act, 2015 committee held a total of four (4) sittings and received both oral and written submissions from the petitioners, the Senator Kiambu county Deputy County Governor and the County Executive Member for Finance and Economic Planning.

Committee Recommendations

The committee having considered the matters in the petition noted that;

1. The Kiambu County Government should provide adequate information concerning the prioritization in the budget process and that the public should be involved in the identification of projects and programmes;
2. There is need for the County Government to harmonize their priorities within the budgeting and planning process;
3. There is urgent need for the County Government to harmonize its annual development plan and the county fiscal strategy paper (CFSP) with its annual budget to ensure that funds are spent on those priorities that have been identified in the planning documents;
4. The County Executive and County Assembly to consider strengthening the adoption of programme based budgeting with clear targets and outputs for any fiscal year to enhance resource utilisation and guarantee value for money;
5. The petitioners should be able to pursue their concerns on value for money and procurement of the vehicles through their respective committees in the County Assembly. It is important to note that the County Assembly is also vested with fiduciary oversight over the use of County resources through the County Assembly committee on Public Accounts and Investment;
6. The County Executive to adhere to the provisions of Section 135 (1) of the Public Finance Management Act, 2012 and Public Finance Management Regulations in the preparation of supplementary appropriation bills. Supplementary budgets shall not be used by the Executive to circumvent annual budgetary process to introduce new expenditures that have not been subjected to public participation and have not been factored in the fiscal strategy paper; and
7. There is urgent need for the Senate to fast track the enactment of the public participation bill to improve the procedure and methodology of

conducting public participation in the county governments on legislations and policies.

ACKNOWLEDGEMENT

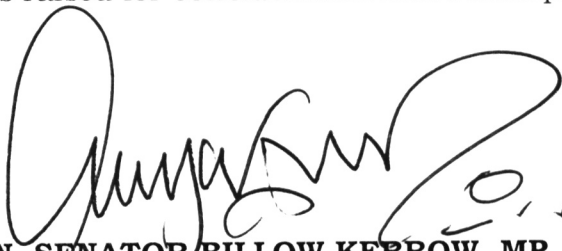
Mr. Speaker Sir,

The Committee is grateful to the Petitioners, the Kiambu County Senator, County deputy Governor, County Executive Committee Member of Finance who appeared before the Committee to share on their roles and the how their actions have impacted on the enactment and adoption of the Kiambu County Supplementary Appropriations Act, 2015 and also serve to provide remedial actions to expeditiously resolve the problem in the county management of resources and leadership.

The Committee is also particularly grateful to the Offices of the Speaker, the Clerk of Senate for the support received as it discharged its mandate. I wish to thank the Senators who participated in the process to ensuring that the Committee completes its report.

Mr. Speaker Sir,

On behalf of the committee, and pursuant to standing order 203(6), It is therefore my pleasant and honourable duty to present and lay on the table of the house the report of the Finance, Commerce and Budget Committee regarding the Kiambu County Supplementary Appropriations Act, 2015 and the issues raised for consideration and subsequent adoption.



THE HON. SENATOR BILLOW KERROW, MP

CHAIRMAN, FINANCE, COMMERCE AND BUDGET COMMITTEE

Date: December, 2015

III. INTRODUCTION

3.1 Brief on the Kiambu Petition

The Petition details the displeasure of members of the Kiambu County Assembly on the enactment of the County supplementary appropriations Bill, 2015. The petitioner argues that the Supplementary Appropriations Bill, 2015 provided for an amount of 221 million for the purchase of 72 vehicles that were not budgeted for in the County annual development plan and the county fiscal strategy paper (CFSP).

The petitioners therefore, challenged the procedure employed by the county government to budget for 72 vehicles and the costing associated to the huge recurrent expenditure demands.

The petitioners further contest that the actions by the county governor to purchase the seventy two vehicles to be utilized by one county department was abrogation of the law since the county assembly had passed the supplementary appropriations bill, 2015 in amended version

1.1.2 Prayers of the Petitioners

The petitioners' prayer was that the Senate of the Republic of Kenya intervenes and: -

- i. Urgently investigates the matters raised in this petition and come up with appropriate recommendations to protect public funds at the county level, including enacting appropriate legislation to insulate the budget making and appropriation process at the county level from by Governors ; and
- ii. Pronounces itself on what kind of expenditure may be incurred through Supplementary Appropriations Bills at the County level, particularly where the proposed expenditures have not been disclosed.

1.1.3 Key issues to be addressed in the petition

- 1)** Whether due process and procedure of enacting the Supplementary Appropriations Bill, 2015 was followed as documented in the Public Finance Management Act, 2012;
- 2)** In determining the number of vehicles required to improve service delivery, was a needs assessment conducted by the procuring department to ascertain the importance and level of deficit to be corrected;
- 3)** That, the items listed in the county Supplementary Appropriation Bill, 2015 include the vote on account for purchase of Seventy two (72NO) vehicles at a cost of ksh. 221 million to be utilized by a single county department;
- 4)** The role of the County Executive member of Finance and Economic planning in developing the supplementary budget estimates;
- 5)** Whether the County Executive and County Assembly conducted public participation appropriately to ascertain the level of need by the county departments and priority issues by the county government;
- 6)** The process of considering the governors memorandum reverting the county supplementary appropriations bill, 2015 back to the County Assembly for further amendment to accommodate his wishes; and
- 7)** How the County Assembly budget committee interrogated the Supplementary Appropriations Bill, 2015 and whether their views and recommendations were adopted by the committee of the whole.

II.SUBMISSION FROM PARTIES

In establishing facts, the committee invited and met with the Petitioners, the County Senator, the Deputy Governor Kiambu County and the County Executive committee member of Finance and Economic Planning.

Submission by the petitioners

The petitioners appeared before the committee on 24th June, 2015 to make their presentation with regard to the contents of the petition before the committee.

The petitioners requested the Finance committee of the Senate to look into the prayers of the petition and exhaustively provide a mechanism to empowering the Kiambu County Assembly in delivering on their mandate as provided in the Constitution of Kenya and the County governments Act, 2011.They submitted that:

- i.** The recommendations of the County Assembly of reducing the vehicles to be purchased from seventy two(72) to fifteen(15) under the County department of Public Service was rejected by the governor, hence declining to assent to the county supplementary appropriations bill, 2015;
- ii.** The County Assembly conducted adequate public participation and the views of the public taken into consideration in determining the required number of vehicles to be purchased, this therefore culminated into reduction of the budgeted vehicles from seventy two (72) to fifteen (15);
- iii.** The governor declined to assent to the Supplementary appropriations bill, 2015 forwarded to him by the county Assembly Speaker citing the reduced number of vehicles to be purchased, he forwarded the Supplementary appropriations bill,2015 back to the County Assembly with a memorandum indicating his wishes for further consideration and passage by the county Assembly;

- iv. The memorandum was detailing the number of vehicles to be purchased at forty two (42) a reduction from the initial seventy two (72); and
- v. The memorandum was therefore, committed to the house for debate and adoption. This needed the house to raise two-thirds to pass the memorandum in its form as forwarded to the county Assembly.

Submission by Sen. Kimani Wamatangi - Senator Kiambu County

The Senator submitted to the committee as the sponsor of the petition as follows:

- i. That the committee to determine where the funds to purchase seventy two vehicles (72) have been reallocated from in the initial county budget;
- ii. That in the current county budget for the fiscal year 2015/16 there is an allocation of one hundred and two million Kenya Shillings(Kshs. 102 Million) towards the purchase of vehicles; and
- iii. That the committee pronounce itself on the need to determine the extent to which the county Executive can re allocate budget items under the supplementary appropriations bills and also ensure that county governments adhere to the provisions of Section 135 of the public finance management Act, 2012.

Submission by Mr. Gerald Githinji - Deputy Governor Kiambu County

The Deputy Governor began by delivering apologies of the Governor, County Government of Kiambu, Hon. William Kabogo stating that he wasn't able to appear before the Committee due to prior engagements in the County. Thus, the Governor requested his deputy governor to represent him. He further clarified that, should there be anything that would need clarification by the Governor himself, the Governor would commit to appear before the Committee

The committee was informed as follows:-

- i.** The county government needed the vehicles to facilitate service delivery and enhanced efficiency;
- ii.** The department of public service purchased the 12 vehicles (Land Rovers) and allocated them to other departments particularly the revenue department;
- iii.** The procurement process in the county government was followed when purchasing the approved 12 vehicles; and
- iv.** The original County Fiscal Strategy Paper did not have the number of vehicles and their necessity and therefore the county Treasury had documented 72 vehicles in the Supplementary Appropriation Bill, 2015.

The Deputy Governor concluded his submissions by requesting the County Executive Committee member of Finance and Economic Planning, Ms. Mary Nguli to make presentation on behalf of the Governor's office.

Submissions by the County Executive Committee Member Finance and Economic planning

The County Executive Committee Member of Finance informed the committee of the inconsistencies in acquiring of the motor vehicles in that-

- i.** The original budgeted number of vehicles to be purchased by the county government were seventy two (72) whereas the number forwarded by the County treasury to the county assembly was forty two (42) vehicles;
- ii.** That the county assembly had amended the Bill to allow for the purchase of only twelve (12) vehicles with no variations in the cost allocation;
- iii.** The County Governor did not assent to the supplementary appropriations Bill, 2015 as amended and passed by the County Assembly, and had submitted a memorandum to the county Assembly indicating the reasons for declining to assent to the supplementary appropriations bill, 2015; and

- iv.** That there was adequate public participation in the development, planning and appropriation of resources in the supplementary Appropriation Bill, 2015.

COMMITTEE OBSERVATIONS AND RECOMMENDATIONS

Committee Observations

- i. That the decision by the county government to purchase seventy two vehicles was not part of the annual development plan and county fiscal strategy paper priority item and therefore needed to be subjected to public participation;
- ii. That the county executive failed to harmonise its supplementary budget provisions with the County Fiscal Strategy Paper;
- iii. That the public participation conducted on the Supplementary Appropriations Bill, 2015, by the county government did not meet the minimum threshold as required by the county governments Act, 2011;
- iv. That the governor used his veto powers as provided in law to submit a memorandum on the number of vehicles to be purchased by the county government under the supplementary appropriations Act, 2015;
- v. That from the evidence submitted to the Committee it is clear that the county executive supplementary budget documents had a provision for purchase of seventy-two motor vehicles. However, the Executive wrote to the Assembly clarifying that the two hundred and twenty one million shillings was for the purchase of 42 vehicles in the 2014/15 financial year. The Committee is of the view that the county assembly was justified in expressing concern that the 221 million shillings was for 42 vehicles because of the confusion brought on by the supplementary budget working documents submitted by the county executive;
- vi. That the memorandum from the Governor reverting back the supplementary appropriations bill, 2015 to the county assembly was procedural;
- vii. That the county assembly in debating and voting to the adoption of the memorandum failed to achieve the two-thirds majority to overturn the

Governors memorandum and therefore the contents of the memorandum stands approved and subsequently adopted by the committee of the whole; and

- viii. That there was no evidence that the procuring department, which is the administration, bought the vehicles based on a needs assessment.

Committee recommendations

The committee having considered the matters in the petition recommends as follows:

- i. The Kiambu County Government should provide adequate information concerning the prioritization in the budget process and that the public should be involved in the identification of projects and programmes;
- ii. There is need for the County Government to harmonize their priorities within the budgeting and planning process;
- iii. There is urgent need for the County Government to harmonize its annual development plan and the county fiscal strategy paper (CFSP) with its annual budget to ensure that funds are spent on those priorities that have been identified in the planning documents;
- iv. The County Executive and County Assembly to consider strengthening the adoption of programme based budgeting with clear targets and outputs for any fiscal year to enhance resource utilisation and guarantee value for money;
- v. It is important to note that the County Assembly is also vested with fiduciary oversight over the use of County resources through the County Assembly committee on Public Accounts and Investment. The petitioners therefore may pursue their concerns on value for money and procurement of the vehicles through their respective committees in the County Assembly;
- vi. The county Executive to adhere to the provisions of Section 135 (1) of the Public Finance Management Act, 2012 and Public Finance Management Regulations in the preparation of supplementary appropriation bills. Supplementary budgets shall not be used by the Executive to circumvent

- annual budgetary process to introduce new expenditures that have not been subjected to public participation and have not been factored in the fiscal strategy paper; and
- vii. There is urgent need for the Senate to fast track the enactment of the public participation bill to improve the procedure and methodology of conducting public participation in the county governments on legislations and policies.

Conclusion

THAT there was inadequate public participation by the county government on the matter of purchasing seventy-two vehicles and the same was not included in the County Integrated Development Plan and the County Fiscal Strategy Paper.

THAT despite the concerns raised by the Petition the onus was on the county assembly to raise the required two-thirds (2/3) majority in the plenary to defeat the governors memorandum. This did not happen however and consequently the Supplementary Appropriation Act, 2015 was validly enacted.

THAT the inclusion of an amount of two hundred and twenty one million Kenya shillings for the purchase motor vehicles should have been provided for in the annual budget and THAT such a large expenditure through the supplementary estimates was contrary to the provisions of the PFM Act section 135 and PFM regulations.