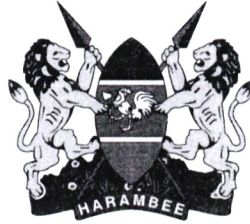


REPUBLIC OF KENYA



PARLIAMENT  
OF KENYA  
LIBRARY

PARLIAMENT  
THE SENATE

*Hon. Speaker  
You may approve  
for tabling.  
06/04/17*

-----  
ELEVENTH PARLIAMENT – FIFTH SESSION  
-----



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

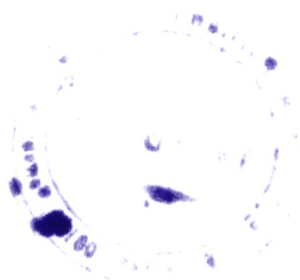
**BY MR. RICHARD KAVEMBA MUTINDA CONCERNING  
BREACH OF THE CONSTITUTION AND OTHER LAWS BY  
NAIROBI CITY COUNTY EXECUTIVE**

*Approved  
6.4.17*

**PARLIAMENT BUILDINGS  
NAIROBI**

**MARCH 2017**

Senate Standing Committee on Finance, Commerce & Budget



Q

Q

**TABLE OF CONTENTS**

PREFACE..... ii

CHAPTER 1 ..... 1

INTRODUCTION ..... 1

    1.1 Committee’s Proceedings..... 1

    1.2 Petitioners Prayers ..... 2

    1.3 Petitioners Prayers ..... 2

CHAPTER TWO ..... 3

    CONSIDERATION OF THE PETITION BY THE COMMITTEE ..... 3

CHAPTER THREE..... 4

    3.1 OBSERVATIONS ..... 4

    3.2 RECOMMENDATIONS ..... 4

## PREFACE

### **Establishment of the Committee**

The Standing Committee on Finance, Commerce and Budget was constituted by the House on Thursday, 13<sup>th</sup> March, 2014 during the Second Session of the Eleventh (11<sup>th</sup>) Parliament. The Standing Committee on Finance, Commerce and Budget is established pursuant to Standing Order No. 208 (1) which *inter alia* states that:-

*There shall be Select Committees to be designated Standing Committees which shall be nominated by the Rules and Business Committee in consultation with parliamentary parties at the commencement of every Parliament.*

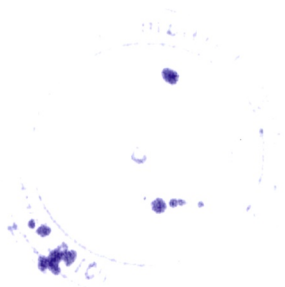
### **Mandate of the Committee**

The Committee is mandated under the Second Schedule of the Standing Orders 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.







## Membership of the Committee

The Committee is comprised of the following members:-

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

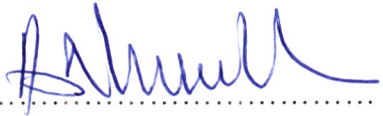
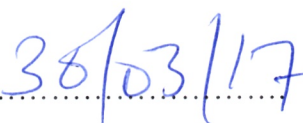
## Acknowledgement

**Mr. Speaker Sir,**

The Committee is grateful to Mr. Richard Kavemba Mutinda who submitted the Petition to the Senate for consideration.

The Committee is grateful to the Offices of the Speaker and the Clerk of Senate for the support received as it discharged its mandate. I also express my gratitude to my colleagues for their thoughtful input and engaged contributions to the matter.

**Mr. Speaker Sir,** on behalf of the Committee and pursuant to Standing Order 227 (2) it is now 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 Petition to the Senate by Mr. Kavemba Mutinda a resident of Nairobi City County concerning breach of the constitution and other laws by the Nairobi City County Executive.

Signed.......... Date..........

**SEN. BILLOW KEROW, M.P.**

**CHAIRPERSON FINANCE, COMMERCE AND BUDGET COMMITTEE**

## CHAPTER 1

### INTRODUCTION

The right of Kenyan citizens to petition public authorities and Parliament is a right conferred by the Constitution under Articles 37 and Article 119 of the Constitution. The right to petition is an essential citizen participatory tool that allows for direct intervention by Parliament on issues relating to the promotion and protection of the rights of citizens.

The Parliament (procedure) Act No. 22 of 2012 makes provisions for the procedure for the exercise of the right to petition and also defines the format of petitions to be addressed to the Senate or National Assembly.

Pursuant to the Senate Standing Order No. 220 (1) (a) and 225 (2) (b) the Speaker of the Senate on 15<sup>th</sup> February, 2017, reported a public petition to the Senate on behalf of the Petitioner Mr. Richard Kavemba Mutinda, a resident of Nairobi City County, concerning breach of the constitution and other laws by the county executive of Nairobi.

#### **1.1 Committee's Proceedings**

The guiding principle in the Committees' approach to the petition was to reply to the prayers of the petitioners conclusively. The Members of the Committee analyzed the issues to be determined from the prayers of the petitioner and identified the necessary action to be taken.

In the exercise of its mandate, the Committee invited the petitioner and requested for evidence to support the allegations raised.

The Committee reviewed the allegations in the Petition and noted that the issues raised were pending in High Court.

## **1.2 Petitioners Prayers**

### **Petition concerning the alleged breach of the Constitution and other laws by the Nairobi City County Executive.**

The petition draws the attention of the Senate on the failure by Nairobi City County Executive to bank locally collected revenue in the County Revenue Fund (CRF). The Petition stated that since 2013, County Government had failed to bank locally collected revenue in the County Revenue Fund as required by Article 207 of the Constitution and Section 109 of the Public Finance Management Act No.18 of 2012. The petitioner noted that the allegations were supported by the Reports of the Controller of Budget and the Auditor-General for the Financial Years 2013/2014 and 2014/2015.

## **1.3 Petitioners Prayers**

### **The petitioners prayed that the Senate;-**

- (a) Urgently investigates the matters and recommend appropriate action which should include but not limited to ordering a special audit.
- (b) Request Ethics and Anti-Corruption Commission (EACC) to conduct speedy and thorough investigations and recommend prosecution of all those found culpable.

Pursuant to Standing Order No. 227, the petition stood committed to the Standing Committee of the Senate on Finance Commerce and Budget.

## CHAPTER TWO

### CONSIDERATION OF THE PETITION BY THE COMMITTEE

The Committee met with the petitioner, Mr. Kavemba on 14<sup>th</sup> March, 2017. He informed the Committee that:

1. Since 2013 the Nairobi City County Executive had failed to bank locally collected revenue in the CRF as stipulated in Article 207 of the constitution and Section 109 of the Public Finance Management Act.
2. The reports by the Controller of Budget were evidence to the matters raised in the petition.
3. The reports of the Auditor General raised a query on issue of spending locally collected revenue at source.
4. The spending of revenue at source hampered proper oversight by the relevant authorities.
5. A similar petition was presented to the court in December 2015 and was yet to receive substantive hearing.

He requested the Senate to-

1. investigate the matter and recommend the Auditor General to conduct a special audit; and
2. recommend to the EACC to investigate and recommend prosecution of the officers found culpable.

The Committee resolved to request the Nairobi City County Governor to respond to the allegations raised in the petition.

The Governor responded through a letter indicating the revenue collected in the past four Years. He also indicated that the matter on remitting locally collected revenue to County Revenue Fund was pending in court as constitution petition 540 of 2015.



## CHAPTER THREE

### OBSERVATIONS & RECOMMENDATIONS

#### 3.1 OBSERVATIONS

The Committee observed that-

- a) the response from the Governor failed to indicate whether revenue collected was remitted to the CRF.
- b) the substance of the petition was a matter pending in court as constitution Petition 540 of 2015.
- c) the Senate Standing Orders No. 92 (2) states that matter shall be considered to be sub judice when it refers to active criminal or civil proceedings and the discussion of such matter is likely to prejudice its fair determination.
- d) the Senate Standing Orders No. 92 (3) (c) states that a civil proceedings shall be deemed to be active when arrangements for hearing, such as setting down a case for trial, have been made, until the proceedings are ended by judgment or discontinuance;

#### 3.2 RECOMMENDATIONS

In light of the observations the Committee made the following determination-

That-

- (a) in the understanding of the context of the matters *sub judice* the petition is dropped;
- (b) the Speaker may invoke Standing Order 92(5) to allow the Committee prosecute the matter, otherwise the petition is hereby dispensed and
- (c) in the event the petitioner won't be satisfied with the determinations given in the court, he may petition the Senate to consider the same.

**MINUTES OF THE 9<sup>TH</sup> SITTING OF THE SENATE STANDING COMMITTEE  
ON FINANCE, COMMERCE AND BUDGET HELD AT COUNTY HALL,  
GROUND FLOOR BOARDROOM, PARLIAMENT BUILDINGS ON TUESDAY,  
14<sup>TH</sup> MARCH, 2017 AT 10A.M.**

**PRESENT**

- |                                       |                   |
|---------------------------------------|-------------------|
| 1. Sen. Billow Kerrow                 | - Chairperson     |
| 2. Sen. Peter Ole Mositet             | -Vice Chairperson |
| 3. Sen. Moses Wetang'ula              | -Member           |
| 4. Sen. Paul Ben Njoroge              | -Member           |
| 5. Sen. Mutula Kilonzo Junior         | -Member           |
| 6. Sen. Beatrice Elachi               | -Member           |
| 7. Sen. (Dr.) Agnes Zani              | -Member           |
| 8. Sen. (Dr.) Boni Khalwale           | -Member           |
| 9. Sen. (Prof.) Peter Anyang' Nyong'o | -Member           |

**ABSENT WITH APOLOGY**

- |                                   |         |
|-----------------------------------|---------|
| 1. Sen. Aaron Kipkirui Cheruiyot  | -Member |
| 2. Sen. Catherine Mukite          | -Member |
| 3. Sen. Mutahi Kagwe              | -Member |
| 4. Sen. (Dr.) Wilfred Machage     | -Member |
| 5. Sen. Zipporah Kittony          | -Member |
| 6. Sen. (Prof.) John Lonyang'apuo | -Member |
| 7. Sen. G.G Kariuki               | -Member |

**IN ATTENDANCE**

1. Mr. Julius Masiva Obuga
2. Mr Kavemba Mutinda

**PETITIONERS**

**IN ATTENDANCE**

1. Mr. Boniface Lenairoshi
2. Mr. Victor Bett
3. Mr. Christopher Gitonga
4. Mr. Benjamin Ng'imor
5. Mr. Gorrd Abdi
6. Ms. Lucy Radoli
7. Mr. Eugene Luteshi
8. Ms. Paula Wanjiru

**SENATE SECRETARIAT**

- |                             |
|-----------------------------|
| - Principal Clerk Assistant |
| - Clerk Assistant           |
| - Clerk Assistant           |
| - Fiscal Analyst            |
| - Fiscal Analyst            |
| - Legal Counsel             |
| - Audio Officer             |
| - Intern                    |

**MIN NO.043/2017:**

**PRELIMINARIES**

The Chairperson called the meeting to order at 10 am. This was followed by a word of prayer.

**MIN NO.044/2017:**

**ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted having been proposed by Sen. Mutula Kilonzo Junior and seconded by Sen Peter Mositet.

**MIN NO.045/2017:**

**MEETING WITH PETITIONER, MR .JULIUS MASIVA  
OBUGA, ON ALLEGED MISUSE AND DIVERSION  
OF PUBLIC FUNDS BY VIHIGA COUNTY  
GOVERNMENT.**

After introductions, the chair welcomed Mr. Masiva to make his presentation in regard to his petition.

Mr. Masiva informed the Committee that he had approached the CEC in charge of finance in Vihiga County for information on the many issues he queried but the information was not forth coming. Thereafter, he sought the assistance of the Senate for address of his concerns. The areas of his concern regarding the County Government of Vihiga were as follows:

1. Failure to pay contractors and suppliers;
2. Governor and County Secretary's failure to honor sermons by the County Assembly Committee;
3. Misappropriations of Ksh. 1,646,616,000.00 in financial year 2014/2015 which was meant for development;
4. Misuse of the Vihiga Emergency fund;
5. Opening and operating bank account without approval by County Assembly;
6. Violation of Procurement law in purchasing of loader;
7. Awarding tenders to companies and firms owned by relatives of senior county officials;
8. Execution of projects which were outside the budget;
9. Overpricing of projects;
10. The executive bribing the County Assembly members to reject their own report; and
11. The executive organizing coup d'etat for the county assembly leadership.

When the Committee requested for evidence, Mr. Masiva produced Auditor General's report for 2014/ 2015 on operations of Vihiga County executive, County Government Executive Pay roll and report of the Controller of Budget.

The Committee noted the following:

- a) The allegations by Mr. Masiva were similar to allegations by different group of petitioners (some members of County Assembly of Vihiga) which the Committee was considering.

- b) The evidence tabled by the petitioner was not adequate to substantiate the allegations.

The Committee advised the petitioner as follows:

- a) To forward more evidence in support of the allegations;
- b) That, queries raised in the Auditor General's report and Controller of Budget are normally considered by the Senate Public Accounts and Investment Committee; and
- c) Committee would consider allegations not contained in Auditor General's report, however adequate evidence supporting the allegations must be provided.

**MIN NO.046/2017: MEETING WITH PETITIONER, MR KAVEMBA MUTINDA, ON BREACH OF LAW BY THE NAIROBI CITY COUNTY EXECUTIVE.**

After introductions, the chair welcomed Mr. Kavemba to make his presentation in regard to his petition.

Mr. Kavemba informed the Committee that his petition was in breach of Article 207 (1) of the Constitution by Nairobi City County Executive regarding:

- a) payment to County revenue fund of all revenues collected locally since financial year 2013/ 2014.
- b) Consequently, the county government was spending public funds without the approval by the Controller of Budgets.

When the Committee requested for evidence Mr. Kavemba produced Auditor General's report for 2013/ 2014, 2014/2015 and Reports from the Controller of Budget quarterly reports.

The Committee noted -

- 1) that the issues raised in the petition were a subject before the Senate Committee on County Public Accounts and Investment.
- 2) that there was a petition in High Court regarding the same matter.

The petitioner replied that the petition in the court had taken long and he even wrote a letter to Chief Justice requesting for the court to expedite the matter, however, there was no response as at the time of the meeting.

Noting that the matter was pending in High Court, the Committee resolved to request information from the Governor on the issues raised by the petitioner.

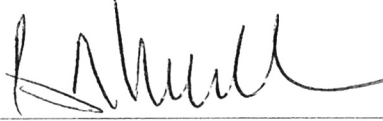


MIN NO.047/2017:

ADJOURNMENT

The Chairperson adjourned the sitting at 11: 50 am.

SIGNED



---

(CHAIRPERSON)

DATE

28 - 03 - 2017 ,

---

**MINUTES OF THE 11<sup>TH</sup> SITTING OF THE SENATE STANDING COMMITTEE  
ON FINANCE, COMMERCE AND BUDGET HELD AT COUNTY HALL,  
GROUND FLOOR BOARDROOM, PARLIAMENT BUILDINGS ON TUESDAY,  
28<sup>TH</sup> MARCH, 2017 AT 11. 00A.M.**

**PRESENT**

- |                                  |                   |
|----------------------------------|-------------------|
| 1. Sen. Peter Ole Mositet        | -Vice Chairperson |
| 2. Sen. Zipporah Kittony         | -Member           |
| 3. Sen. Paul Njoroge Ben         | -Member           |
| 4. Sen. Aaron Kipkirui Cheruiyot | -Member           |
| 5. Sen. (Dr.) Agnes Zani         | -Member           |

**ABSENT WITH APOLOGY**

- |                                       |               |
|---------------------------------------|---------------|
| 1. Sen. Billow Kerrow                 | - Chairperson |
| 2. Sen. G.G Kariuki                   | -Member       |
| 3. Sen. Moses Wetang'ula              | -Member       |
| 4. Sen. (Dr.) Wilfred Machage         | -Member       |
| 5. Sen. Mutahi Kagwe                  | -Member       |
| 6. Sen. (Prof.) John Lonyang'apuo     | -Member       |
| 7. Sen. (Dr.) Boni Khalwale           | -Member       |
| 8. Sen. (Prof.) Peter Anyang' Nyong'o | -Member       |
| 9. Sen. Catherine Mukite              | -Member       |
| 10. Sen. Mutula Kilonzo Junior        | -Member       |
| 11. Sen. Beatrice Elachi              | -Member       |

**IN ATTENDANCE**

**SENATE SECRETARIAT**

- |                            |                   |
|----------------------------|-------------------|
| 1. Mr. Christopher Gitonga | - Clerk Assistant |
| 2. Mr. Benjamin Ng'imor    | - Fiscal Analyst  |
| 3. Mr. Gorrd Abdi          | - Fiscal Analyst  |
| 4. Ms. Lucy Radoli         | - Legal Counsel   |
| 5. Ms. Fatma Abdi          | - Audio Officer   |
| 6. Ms. Paula Wanjiru       | - Intern          |

**MIN NO.053/2017:**

**PRELIMINARIES**

The Chairperson called the meeting to order at 11:25 am. This was followed by a word of prayer.

**MIN NO.54/2017:**

**ADOPTION OF THE AGENDA**

The agenda of the meeting was adopted having been proposed by Sen. Aaron Kipkirui Cheruiyot and seconded by Sen. Zipporah Kittony.



**MIN NO.055/2017: CONFIRMATION OF MINUTES**

The minutes of the 9<sup>th</sup> sitting held on Tuesday 14<sup>th</sup> March 2017 at 10 am in County Hall, Ground Floor Boardroom, Parliament Buildings were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Paul Njoroge Ben and seconded by Sen. Peter Ole Mositet.

The minutes of the 10<sup>th</sup> sitting held on Tuesday 14<sup>th</sup> March 2017 at 11:55 am in County Hall, Ground Floor Boardroom, Parliament Buildings were confirmed as a true record of the proceedings of the Committee having been proposed by Sen. Paul Njoroge Ben and seconded by Sen. Peter Ole Mositet.

**MIN NO.056/2017: REVIEW OF PETITION REPORTS.**

- a) Petition by residents of Bukhayo Central ward, Busia County concerning utilization of Ward Development Fund for the Financial Year 2014/2015;

*The Committee resolved to invite the County Governor to respond to the issues raised in the report.*

- b) Petition by residents of Turkana County, concerning alleged embezzlement of funds, financial impropriety and skewed employment in Turkana County.

*The Committee resolved that the recommendations were in order and thus the report should be tabled.*

- c) Petition by residents of Vihiga County concerning various matters affecting the County Executive and County Assembly of Vihiga.

*The Committee resolved that the recommendations were in order and thus the report should be tabled.*

- e) Petition concerning various matters including and not limited to allegations on corruption and breach of law affecting the county government of Bungoma.

*The Committee resolved to amend the recommendations as follows:*

- a) *Delete the instruction to the Senate Committee on County Public Accounts and Investments Committee.*
- b) *Rewrite the recommendations on declaration of the governor not fit to hold office citing the appropriate article.*
- c) *Rewrite the recommendations on asset register by substituting with inventory records.*

*The Committee resolved to table the report once the corrections are made.*

**MIN NO.057/2017: PETITION BY MR. JULIUS MASIVA ON THE ALLEGED MISUSE AND DIVERSION OF PUBLIC FUNDS BY THE VIHIGA COUNTY GOVERNMENT**

The Committee was informed that the allegations in the petition are similar to the allegations raised in another statement by residents of Vihiga County. Thus, there was a draft report on the matter and the recommendations in both reports would be the same.

The Committee observed that each petition was supposed to be considered differently and thus the Committee resolved to invite the Governor of Vihiga County to respond to the allegations raised in the petition.

**MIN NO.058/2017: PETITION BY MR. KAVEMBA MUTINDA JULIUS CONCERNING BREACH OF THE CONSTITUTION AND OTHER LAWS BY NAIROBI CITY COUNTY EXECUTIVE**

The Committee was informed that:

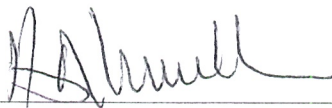
- a) The Governor had responded by indicating the revenue collected in the last four years but did not indicate that the revenue was banked with County revenue Fund.
- b) The petition was a live matter in court as Constitution Petition No. 540 of 2015.
- c) The Standing Order no. 92 would apply in consideration of the petition by the Committee.

The Committee resolved that since the matter was in court and pursuant to the Standing Order No. 92 (1) and 92 (3)(c) to report back to the House on the status of this petition.

**MIN NO.059/2017: ADJOURNMENT**

The Chairperson adjourned the sitting at 12.25pm.

**SIGNED**



(CHAIRPERSON)

**DATE**

30/03/17

2

7

Handwritten notes in blue ink, including a large number '4' and some illegible scribbles.

○

○