# COUNTY GOVERNMENT OF KISUMU

## COUNTY ASSEMBLY OF KISUMU

## THE HANSARD

*Official Report*

**THIRD ASSEMBLY – SECOND SESSION**

**Thursday 12th October, 2023**

**House met in the Main Chamber at 2:30 p.m.**

**(The Temporary Speaker (Hon. Careen Ajwang') in the Chair)**

**PRAYER**

**The Temporary Speaker** (Hon. Ajwang', MCA, Kaloleni/Shaurimoyo Ward): Honourable Members, I want to request that pursuant to the provisions of Standing Order No. 32 (2) of the Kisumu County Assembly Standing Orders that the Serjeant-at-Arms rings the quorum bell for the first five minutes.

*(Quorum bell rung for five minutes)*

**The Temporary Speaker** (Hon. Ajwang', MCA, Kaloleni/Shaurimoyo Ward): Hon. James Omollo, kindly confirm if we have the quorum.

**Hon. Omollo** (Hon. MCA, West Nyakach Ward): Thank you Madam Speaker. There is quorum.

**The Temporary Speaker** (Hon. Ajwang', MCA, Kaloleni/Shaurimoyo Ward): Mr. Clerk, please take us through the Order Paper of today.

**The Temporary Speaker** (Hon. Ajwang', MCA, Kaloleni/Shaurimoyo Ward): Next order!!

# PETITIONS

**The Temporary Speaker** (Hon. Ajwang', MCA, Kaloleni/Shaurimoyo Ward): Honourable Members, the County Assembly is in receipt of a petition by Retirees of Defunct Ahero, Nyando and Muhoroni Local Authorities regarding the Verification of Pending Claims and it reads as follows. This petition is addressed to the Clerk of the County Assembly of Kisumu.

We write on behalf of the Retirees of the Defunct Ahero and Nyando Local Authorities.
We are aware that the County Assembly did a report to the County Executive as a result of a petition by the Retirees of the Defunct Kisumu Municipal Council. The report and the petitioners did not capture the retirees from other local Authorities which include Nyando, Ahero, and Muhoroni County Councils. We therefore write to seek the indulgence and the authority of the Assembly to be added to the list of those who should be considered for payment as per the Town Council of Ahero handing over and taking over report to the County Government of Kisumu dated 18h September, 2013.

We ask the Assembly to consider forwarding our names as per this report for the County Executive to process our payment. Attached find a copy of the Handing Over/Taking Over Report by Town Council of Ahero to the County Government of Kisumu dated 18th September 2023 and list of County Council of Nyando staff Salary Arrears from 1999 to 2008.
Thank you for your support and consideration into this matter.

Honourable Members, allow me to guide the House in line with Standing Order No. 206 and I read, *Comments on Petitions. The Speaker may allow comments, observations or clarifications in relations to a Petition presented or reported and such total time shall not exceed thirty minutes.*
I will therefore give you a chance to comment.

**The Temporary Speaker** (Hon. Ajwang', MCA, Kaloleni/Shaurimoyo Ward): Yes, Hon. Eunice Alando.

**Hon. Alando** (Nominated Member): Thank you Madam Speaker. I want to urge this House to support this Petition because you are all aware that the petitioners are retirees and they have been walking to the relevant offices to address their plight and that has not been possible. It is therefore in order for this House to intervene because I am afraid some of the retirees might pass on without the dues. Thank you.

**The Temporary Speaker** (Hon. Ajwang'): Hon. James Omollo.

**Hon. Omollo** (Hon. MCA, West Nyakach Ward): Thank you Madam Speaker. I rise to support the Petition. These petitioners having worked in the Local Authority, these members ought to have gotten their arrears because devolution started in 2013 and we are in 2023. I was here in

2013 to 2017 and we were paid all our arrears before 2022 elections. So, I wonder very loud that it is really taking so much time for these people who were working in the mentioned councils. The members worked then and still alive, then I know they are suffering. As an Assembly we must put this matter to rest. The retirees must have their money paid. We are the watchdog of the Kisumu County Government. Whatever decision we make should be to the best interest of the populace of this County. It is not a favor. It is their right. I support that this petition should be given the respective Standing Committee of Labour and Social Welfare and they give a recommendation to the Executive. Thank you Madam Speaker.

**The Temporary Speaker** (Hon. Ajwang', MCA, Kaloleni/Shaurimoyo Ward): Hon. Bill of Kobura Ward.

**Hon. Bill** (MCA, Kobura Ward): Thank you Madam Speaker. I also rise to support the petition. I have been with this people and it is so sad because of these issues that are back-dates in 1999. I met them before coming to the Assembly this morning I can confirm that they are very frustrated. They worked but they were never paid. They have been having meetings in town and I want to urge this Honourable House to support these petitioners so that they can be paid. I want to urge the responsible House Committee that will be given this task to move with speed and deliver a just report to this House. Thank you.

**The Temporary Speaker** (Hon. Ajwang', MCA, Kaloleni/Shaurimoyo Ward): Hon. Were representing Nyalenda "B" Ward..

**Hon. Were** (Nyalenda "B" Ward): Thank you Madam Speaker. I also rise to add my voice on this matter. These are petitioners who had rendered their service to this County. They did their level best and it is the right time to step in as an oversight body and ensure that their claims are processed. Thank you Madam Speaker.

**The Temporary Speaker** (Hon. Ajwang', MCA, Kaloleni/Shaurimoyo Ward): Yes, Hon. Benny Oiko Pete Member rep[resenting Kabonyo Kanyagwal Ward.

**Hon. Oiko** (MCA, Kabonyo Kanyagwal Ward): Madam Speaker, this kind of petition was there in the Second Assembly, it was deliberated but I don't know what transpired thereafter. Whether they were paid or not, we need to find out. That kind of Petition was handled by the Labour and Social Welfare Committee during the Second Assembly. Madam Speaker, the records were jumbled up. The Executive was dragging its feet and there was no clear indication that they were concerned about the welfare of our people under the Municipalities. First, we need to go and find out what happened to that Petition. Have they been paid? Or was it thrown away by the Executive?

Madam Speaker, as more Petitions come up, we need to take the Executive to task to give us the record that they inherited from the Local Authority. If there were such cases, who were to be paid? What kind of record did they get? How many people were paid? How many people did not get their payments? And what were the reasons for not getting their payments? Remember, there was a government at that time. And these workers were also there at that time. During the time of transition, they were aware they ought to have been paid their terminal benefits or did they forget about their benefits and they are now realizing that they ought to have asked for it? Or are they giving us the picture that the then government was hostile to them?

Madam Speaker, the most important matter is that, we need to ask the Executive to give us records relating to this matter. When the County government started, how did they handle the workers under the Municipality or under the County Council, who had retired by that time and who were not paid their benefits? With this kind of information, we shall be handling a matter that we understand. I remember at that time when we were handling the Petition, some officials from the Executive came to this House. They were in darkness. They were asking us where we got the records from. You find that those members were doing calculations themselves of what was due to be paid to them. When a former staff calculates his benefits and the relevant office does not have those records; that is the scenario where we are.

Madam Speaker, let the matter be committed to the relevant House Committee. The Clerks at the Table should advise us appropriately how we should handle this matter, so that we do not just get Petitions from every corner. Let the Executive be aware there are complaints. Let them go to their old records and give us what they inherited from the Local Authority. This is a matter that we should face head on. I hope the Clerks have taken note of that, and that, after the Session, we be advised accordingly. The Executive should know that we are interested in finding out exactly what happened in relation to this matter. Thank you.

**The Temporary Speaker** (Hon. Ajwang', MCA, Kaloleni/Shaurimoyo Ward): Honourable Members, our time is up. We only had thirty minutes to deliberate on the Petition. Having read and deliberated upon this Petition and as per Our Standing Orders No. 217 (2), I want to commit this Petition to the Labour and Social Welfare Committee for consideration. The committee has six days to consider this Petition and submit a report as appropriate.

Honourable Members, I equally want to inform you that we had two Petitions. The other one is from Nyalenda "A" and "B" neighbourhood Planning Association. It has been addressed to Kisumu County Assembly. The Petition reads as follows.

Petition to Kisumu County Assembly Committee of Water, Environment and Natural Resources on intended Increase of Water Tariffs with disregard to Public Participation Act, Millennium Development Goal 6, and more so on of Master Operators turning into cartels.

We the undersigned are bonafide residents of Nyalenda "A" and "B" Wards in Kisumu County with rights of access to clean, safe and reliable water within the Ward. Recognizing the national values and principles of good governance, the Water Act of 2002, and Millennium Development Goal No. 6. Exercising our right to Petition authorities, under Article 37 Section 15 and County Government Act 2012 Section 88. Considering the authority vested on the County Assembly under the Constitution 2010, do herein; draw your attention to the following issues raised by Water consumers, vendors, kiosk owners and domestic users.

Tariffs, we need clarity on the tariffs as follows

a) Domestic users
b) Commercial
c) Kiosks
d) Communal

Tariffs: Kisumu Water and Sanitation Company (KIWASCO) is a non-profit making organization whose mandate it to serve the community. Is that their objective? And why do they involve a third party (Master Operators?) which law supports that? Water Act of 2002 recognizes only KIWASCO to manage water on behalf of county government of today formerly municipal councils.

Billing: 90 per cent in the informal settlements do not know how to calculate their billing. How do they protect their clients from overcharging? Do they involve the clients during reading of the bills? Almost all are now charged with domestic tariff without recognition of kiosks and stand pipes which serve the public.

Delegated Management Model: The idea of having Master Operators run by Community Groups was excellent. But it has now been turned into individual enterprises for profit making, hence exploitation of community members through rogue billing. Example: A Kiosk being billed as Domestic Kshs. 75 per unit instead of Kshs. 35. Master Operators applying selection in awarding, making water very expensive, leading to closure of water.

We therefore request that the County Assembly, through the Speaker and the relevant committees to:

i. Discuss and define the aspects mentioned in the Petition for summoning KIWASCO to explain the criteria for identification of water kiosks and commercial taps, and their said tariffs especially for low income areas
ii. Investigate the alleged flaws in billing by Master Operators and address them.
iii. Engage directly with water vendors/ kiosks operators to bridge the gap in information and communication that is slept over by Master Operators
iv. Remind KIWASCO that it is the mandate of KIWASCO through the Water Act 2002 for provision of clean, affordable and quality water.

We therefore pray that our concerns and issues raised here be addressed within the next 14 days to give clarity before billing is done. The Petition is signed by Nyalenda neighbourhood Planning Association.

Honourable Members, I will give you thirty minutes to give your views and reactions concerning the Petition.

**Hon Were** (MCA, Nyalenda "B" Ward): Thank you Madam Speaker. I want to comment on the Petition presented by Nyalenda "A" and "B" residents. It is true that the Master Operators who have been mandated by KIWASCO to run water services within Nyalenda "A" and "B" slums are extorting money from clients. Madam Speaker, something has to be done so quickly so that we have control over them. They have been allowed to make some small profit but not to extort our people. This House should put a lot of pressure on KIWASCO so that they can suggest modalities of how charges levied on water are done. This will guarantee a uniform way of reading meters so that our people cannot be overcharged.

Madam Speaker, our people are currently overcharged and water has become very expensive. They are discouraging our people from using KIWASCO water, going back to streams, which is very dangerous, Madam Speaker. I, therefore, support that something must be done. Thank you.

**The Temporary Speaker** (Hon. Ajwang', MCA, Kaloleni/Shaurimoyo Ward): Yes, Hon. Benny Pete Oiko of Kabonyo-Kanyagwal.

**Hon. Oiko** (MCA, Kabonyo-Kanyagwal Ward): Madam Speaker, the petition has come at the right time when the audited account of Kisumu Water and Sanitation Company (KIWASCO) is also before this House. Let us look at the petition and reflect on what the audit report will tell us. You will find that the complaints of the public are genuine. I would also like to alert the Members that it is not only KIWASCO where members of the public are complaining against. It is a national complaint against the Water Regulatory Agencies that have been mandated to manage water in the counties.

Madam Speaker, the Council of Governors (CoG) has also raised their voice on this matter. There are two Water Regulatory Bodies in Kenya that regulate the water agencies at the counties, Water Resources Authority and Water Services Regulatory Board (WASREB). They do come up with their tariff that has made the cost of water become exorbitant for the common man. When you come to the audited accounts, we are being informed that they are non-profit making organizations, and the levies that the members of the public are paying are heavy for them. Those other small agencies that they have created in the estates in communities to manage water; as you have heard from the petition, that the rate has increased from Ksh. 35 to Ksh 75; that is a Ksh. 40 increase. This shows that something has to be done to help the members of the public.

Madam Speaker, water is life but when water becomes too expensive for the common man, it means our life is in danger because there is no moment that we shall do without water. This is not the time that we can encourage our people to go for surface water, when we know KIWASCO was established and has been funded by a lot of donor funds, to supply water to the common man.

This petition should be looked into keenly, and when the report for KIWASCO comes before us like this one of its audited accounts we should examine whether they are making profits. Is it a profit-making organization or a window dressing cover-up while doing business? I know a lot will come up from this audited account. However, I pray that when such matters come in the Assembly, it should make their pronouncement so that the Council of Governors should take action because the common man is crying on the ground. The cost of water has become exorbitant. It is not a matter we should take lightly, thank you.

**The Temporary Speaker** (Hon. Ajwang', MCA, Kaloleni/Shaurimoyo Ward): Yes, Hon. James Omollo.

**Hon. Omollo** (MCA, West Nyakach ward): Thank you, Madam Speaker. I also want to echo my sentiments on this issue on this matter. Every year, the regulators of this County in terms of water do gazette the tariffs for all the cities, and it is my belief that KIWASCO is one of them. Every year they have to give KIWASCO the tariffs they should use in any place they operate on be it the rural, city or slums. Madam Speaker, if in any case there is 'the master operators' as they call it, but if they breach that Act then they should be liable. No biller should come up with their own billing system or tariffs because it comes from the regulators. Just like electricity is regulated by a regulator, it also applies to water companies.

Madam Speaker, the reason for having KIWASCO is to enable people have clean, and affordable water supply in this city. It is their right to have clean and affordable water in this city. So, if there is infringement of that right, then those parties involved should be put to task. I am wondering whether the master operators are using different tariffs from the ones given to them by the regulator. If so, then, they belong to jail because it is not allowed in this country and that is the reason for the regulations. The regulator has to do its work every year.

Madam Speaker, Kshs. 75 per unit cubic meter is quite high and it is a cry against every water regulatory body in this county and not only KIWASCO. This cuts across all counties because the regulator seemingly doesn't consider so many factors. The Council of Governors should really intervene in this. The rates then in 2013 were quite low but I really believe that it has increased highly, that is why there are lots of hues and cries. That is a national phenomenon and we are only begging the national government step up like which includes the Council of Governors to intervene with the regulators and bring these tariffs down.

Madam Speaker, you know that KIWASCO gets funding from development partners, and they are doing work that they should not accrue profit, and even get whatever investments they had put. In essence, they are not there for profit making and we need to know what is going on and if people are feeling the pinch, then it seems that someone is making profits somewhere. We should know why the rates are becoming quite unaffordable because this is a company owned by the county government and a public utility. It is not private in any way, there is no profit it should be making, and therefore should make water affordable at all points with or without master operators. They should really give the people of Kisumu clean and affordable water supply at all times. So, if in any case there is a collusion somewhere then the relevant committee on water should stamp their authority to ensure that they get to the bottom of this. There are lots of cries from Nyalenda, Nyamasaria areas and I happened to have overheard what is going on there.

Madam Speaker, in addition, the criteria with which they select these master operators need to be scrutinized because maybe, it is a conduit in which they swindle money from the public. So, the billing should be fair for everybody not just a few individuals and cartels who are making profits. Otherwise, I would like to stop there, thank you Madam Speaker.

**The Temporary Speaker** (Hon. Carren Ajwang'): Yes, Hon. Ken Ouko.

**Hon. Ouko** (MCA, West Kisumu Ward): Madam Speaker, I believe that it is important to note that where there is smoke there is fire. We cannot dismiss this petition until it is heard accordingly. You will realize that there is a regulator who is regulating what KIWASCO is doing. KIWASCO is an entity being financed by and owned by the County Government of Kisumu. This entity is given the opportunity to serve the people without making any profits but now you find out that some people are put there to collect money on their behalf. It is very clear that we must help our people and we are representing them in this House. We must get into these matters exhaustively so that by the time we are getting back to the people, everything is back to normal. There are lots of cries. Although it is not part of the audited queries but…

**Hon. Oraro** (MCA, Central Kolwa Ward): A point of information Madam Speaker.

**The Temporary Speaker** (Hon. Ajwang', MCA, Kaloleni/Shaurimoyo Ward): Yes, Hon. Kelvin Oraro

**Hon. Oraro** (MCA, Central Kolwa ward): (*On a Point of Information*) Thank you, Madam Speaker. I would at least want to come out clearly on the issue that KIWASCO is funded by the County government. It was just recently, when we were doing the Water Bill, and we can mirror KIWASCO as a parastatal and it has various sources of funds. So, if you say that it is fully funded by the County government then this beats logic. Madam Speaker, I would want the Member to expand on that. Another issue of master operators is also critical and this House should be informed well so that any member contributing should understand the limit of their

knowledge of KIWASCO being funded fully by the County government. That they should understand how KIWASCO works, thank you Madam Speaker.

**The Temporary Speaker** (Hon. Ajwang', MCA, Kaloleni/Shaurimoyo Ward): Please proceed Hon. Ken Ouko.

**Hon. Ouko** (MCA, West Kisumu Ward): Thank you, Madam Speaker. If we don't get into the bottom of this matter and with an open mind, we are going to lose the point. As a Chair of PIC/PAC Committee, I have learnt a lot on several other issues and we know very clearly that according to the Water Act, all regulatory bodies such as KIWASCO should be fully owned by the County Government of Kisumu. That is why we are doing the auditing to these bodies because we give them money just like we do to the City Board. So, it is important that even if they have never complied with the requirement of the law, they should do that immediately.

Madam Speaker, remember that there was a time when we were at the Senate in Nairobi, it was very clear that they are answerable to the state. It means therefore that they are being funded fully. In case there is any money that they have received, just like the County Government is given some money from the World Bank, they should account for that money. That is what the law requires. We should come up very clear and nail these people. Additionally, we should also involve a regulator so that when they want to lie to us, probably the committee, the regulator should stand firm and explain what all these master operators are met within the structure of distribution of water. Once again, I support this, it should come out very clear so that we check on it and come up with a resolution. Thank you.

**The Temporary Speaker** (Hon. Ajwang', MCA, Kaloleni/Shaurimoyo Ward): Honourable Members, I only gave you thirty minutes and it is my belief that our time is up. So, Hon. Oraro, try to be brief.

**Hon Oraro** (Kolwa Central Ward): Thank you Madam Speaker. I was lucky to have been present during public participation on the Water Bill. This is the last one that we did. In fact, that day I was lucky such that whoever was conducting the event of the public participation is one of our clerks seated next to you and at least, the public reacted. One of the areas that they were concerned about was the tariffs and that is why when I talk about KIWASCO and their operation then I understand it well. Reason, because the bill was clearly trying to address and highlight how KIWASCO operates.

Madam Speaker, the issue of master operator, I believe we will direct the Water, Environment, Natural Resources and Climate Change Committee to do a follow up. But, after interacting and knowing a little bit about master operator and how KIWASCO were operating, many organizations today are trying to reduce the operation cost by reducing the number of their workforce. For that reason, they tend to partner with the local community so that with their

assistance, they can gain or get access to water and the community can also be assisting them back by doing their other duties.

Madam Speaker, in this case, a master operator is one person, maybe a group of women or even any self-help group that can take the initiative by depositing a certain amount of money, then, they are the ones doing a follow-up in terms of collection of money, meter reading and actually doing the operation cost and they are getting something small on top. To some extent, this is very effective because, with water, you cannot apply something like a prepaid meter like Kenya Power.

Madam Speaker, the question about the tariffs is not directly connected to master operator but it should not be assumed that there is a standard regulator handling that. I believe that water tariffs in Nairobi and Kisumu is slightly different. The reason may be is that the way you may make water and distribute it in Kisumu is totally different from the one in Nairobi. If you look at the Bill which I know will come later, you will realize that Kisumu has noticed that KIWASCO is doing well and the County is now trying to introduce KRWASCO because they have seen the good work that is being done by KIWASCO although they are not perfect.

Madam Speaker, in my considered opinion, and from the Bill, you will understand that County Government is only doing the piping if there is any project connecting County and KIWASCO but KIWASCO are the owners of the water. It is like Ken Gen and Kenya Power. So, if there is such a petition in this House, I would bring your attention that the best thing we can do is to find out from the concerned bodies. That is because KIWASCO is in one way or the other under Department of Water, Environment, Natural Resources and Climate Change and there are other duties that they are supposed to be reporting to that same department. They should come out and share how they ended up reaching up to the level of charging tariffs and the varied increase. So, this petition is not abreast with this changes and I think as the chair, just give direction so that the committee concerned can do something very fast and by the time we will be having Water Bill and they connect the two, they will come to understand where and how we should approach this issue Madam Speaker. Thank you.

**The Temporary Speaker** (Hon. Ajwang', MCA, Kaloleni/Shaurimoyo Ward): Honourable Members, I will refer to the provisions of Standing Order No. 217 (2) of the Kisumu County Assembly Standing Orders and I will therefore commit this Petition to Water, Environment, Natural Resources and Climate Change Committee. The Committee has six days to consider this petition and make a report as a appropriate.

**The Temporary Speaker** (Hon. Ajwang', MCA, Kaloleni/Shaurimoyo Ward): Next Order!!

## STATEMENTS

**The Temporary Speaker** (Hon. Ajwang', MCA, Kaloleni/Shaurimoyo Ward): Hon. Members, it is Statement hour.

**The Temporary Speaker** (Hon. Ajwang', MCA, Kaloleni/Shaurimoyo Ward): Yes, Hon. Mildred Ajumbo, Central Seme Ward.

**Hon. Ajumbo** (MCA, Central Seme Ward): Thank you Madam Speaker. I rise to make a Statement on Standing Order No. 41 (2) (b) requesting the Chairperson of the Standing Committee on Infrastructure, Energy and Public Works on the matter of Machine-based Programme.

Madam, Speaker, I wish to inform this Honourable House that currently the Department of Infrastructure, Energy and Public Works operates on Machine-Based Programme to manage its roads and infrastructures to maintain its functions. While the Machine-based Programme has had its own weaknesses, challenges and strength, there is no outlined programme of operations from the department in regards to the machine based programme Madam Speaker.

I therefore wish to seek a Statement from the Chairperson of Committee on Infrastructure, Energy and Public Works to provide a response on the following matters.

i) Whether there is an operational workplan for the Machine-based Programme detailing the manner of operations of the machines in terms of Sub-counties and Wards.
ii) The procedure for requesting and applying for the utilizations of the machines within the wards particularly to mitigate disasters.

Thank you, Madam Speaker.

**The Temporary Speaker** (Hon. Ajwang', MCA, Kaloleni/Shaurimoyo Ward): Thank you Hon. Mildred Ajumbo. Honourable Members, I confirm receipt of the Statement by Hon. Mildred Ajumbo, the MCA for Central Seme Ward. I want to commit this Statement to committee on Infrastructure, Energy and Public Works and provide a response within fourteen Calendar Days and bring back the feedback to the House. I am able to see Hon. Rakwach who is the Chairperson of the said House Committee on his feet. Maybe you have something to inform this House, proceed.

**Hon. Rakwach** (MCA, Kolwa East Ward): Thank you Madam Speaker, I rise to respond to the Statement that has just been sought by my good friend Hon. Mildred Ajumbo, the MCA for Central Seme Ward.

Madam Speaker, we are all aware that Machine-based Programme under the Department of Infrastructure, Energy and Public Works was introduced to supplement our normal County Revenue Fund programmes which are being carried out on every Financial Year. I therefore,

have to state under Statement of Facts that there are some works that had been done in some wards and there are also some which are on-going in other wards and I believe that there are wards whereby work is yet to begin like Central Seme Ward and even West Nyakach in Nyakach Sub-county.

Madam Speaker, just to be specific in answering question Number One in that Statement, there is a programme with the Sub-county Engineers. There are roads that were identified within the wards and the list is with the Sub-county Engineers. Each and every Sub-county has got Sub-county Roads Engineers. So, the programme is there and I think the Members can liaise with them a as well…

*(Hon. Oiko rises on his feet)*

**Hon. Oiko** (MCA, Kabonyo Kanyagwal Ward): Madam Speaker, Point of Order!!

**The Temporary Speaker** (Hon. Ajwang', MCA, Kaloleni/Shaurimoyo Ward): Yes Hon. Bennie Oiko Pete.

**Hon. Oiko** (MCA, Kabonyo Kanyagwal Ward): Madam Speaker, it is belittling the House when a Statement is raised by Honourable Member then the Chairperson stands up and refers the Members to the Sub-county Engineer. That is unethical. You go out, find the records and table it here. We do not rely on hearsay once a Statement has been raised on the floor of the House Madam Speaker. In case the Chairperson does not have the answers which I know that they do not have. You go to the Department, and then you bring something that is authentic. Madam Speaker, how I wish that you could advise the Chairperson of the said House Committee to go and bring a report from the department.

**Hon. Rakwach** (MCA, Kolwa East Ward): Hon. Speaker, I think I was still on my feet and I was interrupted. It is only that our Hon. Members do not want to wait because they are not patient. I said that the records are with the Sub-county Engineers. So, those who can get them from there can do so. My next statement was coming out in that I can also go to the department and get the consolidated workplan of roads from all the Sub-county Engineers and bring to this Assembly. It is only that I could not be allowed to finish my statement. Sometimes, we should learn to be patient.

Madam Speaker, at the same time, my response to the second question is that the Machine-based Programme was not introduced to mitigate disasters. It was introduced for the maintenance of and opening up of our virgin road that are in the maps. So I believe that for the purposes of disasters, that one is left for the Department of Special Programmes and the Disaster Directorate. Otherwise, for the work plans, I will get it within two weeks not longer than but not longer than that so that Honourable Members can access them from the Assembly, but they are within Sub-counties engineers as well. Thank you Honorable Speaker.

**The Temporary Speaker** (Hon. Ajwang', MCA, Kaloleni/Shaurimoyo Ward): Honorable Members. I think I'd made a ruling on this statement. So we are going to proceed. Honorable Chair for Infrastructure, Energy and Public Works, bring the reports to this Honorable House within 14 calendar days. Thank you.

**The Temporary Speaker** (Hon. Ajwang', MCA, Kaloleni/Shaurimoyo Ward): Next order!!

## MOTION

ADOPTION OF THE REPORT BY PIC/PAC COMMITTEE ON THE CONSIDERATION OF THE AUDITOR GENERAL'S REPORTS ON THE FINANCIAL STATEMENTS OF KIWASCO FOR THE YEAR ENDED 30TH JUNE, 2020.

BY

HON. KEN OUKO, MCA, WEST KISUMU WARD

(CHAIRPERSON, PIC/PAC COMMITTEE)

**The Temporary Speaker** (Hon. Ajwang', MCA, Kaloleni/Shaurimoyo Ward): Yes, Hon. Ouko, Chair, PIC/PAC.

**Hon. Ouko** (MCA, West Kisumu Ward: Thank you Madam Speaker and Honourable Members. Madam Speaker, on behalf of the Public Accounts and Investments Committee (PICPAC), and Pursuant to Kisumu County Assembly Standing Orders 188, I wish to present to this House the report of the Committee on the audited financial statements of Kisumu County Water and Sanitation Company Limited, financial year 2021/2022.

The County Assembly exercises oversight over County Government entities/investments and their expenditure Pursuant to Article 185(3) of the Constitution of Kenya 2010, through the Public Accounts and Investments Committee which, in turn, derives its mandate from the County Assembly Standing Orders.

It's instructive that Article 229 (8) of the Constitution of Kenya, 2010, requires the County Assembly, within three months after receiving an audit report, to debate, consider the report and take appropriate action.

The Committee held 3 sittings during which it received both written and oral evidence from the Accounting Officer on audit queries raised by the Auditor-General on the financial statements of KIWASCO FY 2021/2022.

Honorable Speaker, I wish to register my appreciation to fellow Honorable Members of the Committee, the Offices of the Speaker and the Clerk of the Assembly, Committee Secretariat and

the Office of the Auditor General for facilitation and technical support that made the production of this report possible.

I also thank the management of KIWASCO for honoring committee invitations and timely submission of responses.

Honorable Speaker, on behalf of the Public Accounts and Investments Committee, I now wish to table the report on the consideration of the Auditor General's report on the Financial Statements of the Kisumu Water and Sanitation Company Limited for the year ended 30, June 2022 and urge this Honorable House to adopt it.

Establishment and Mandate of the Public Accounts and Investments Committee

Hon. Speaker, the Public Accounts and Investments Committee is established under Standing Order No. 188 of the Kisumu County Assembly Standing Orders and is mandated to undertake the following functions;

i). Examination of the accounts showing the appropriations of the sum voted by the County Assembly to meet the public expenditure and of such other accounts laid before the House as the committee may think fit;
ii). Examination of the working of the Public Investments
iii). Examine the reports and accounts of the Public Investments and,
iv). Examine in the context of the autonomy and efficiency of the public investments, whether the affairs of the public investments, are being managed in accordance with sound financial or business principles and prudent commercial practices.

Composition of the Public Accounts and Investments Committee
The Committee as currently constituted comprises of the following Honorable Members,

*Table 1: Committee Membership as at September, 2023*

| | NAME | POSITION |
|---|---|---|
| | MEMBERS | |
| 1. | Hon. Ken Ouko | Chairperson |
| 2. | Hon. Geoffrey Warindu | Vice Chairperson |
| 3. | Hon. Seth Okumu | Member |
| 4. | Hon. Nancy Matara | Member |
| 5. | Hon. Rueben Rakwach | Member |

| | | |
|---|---|---|
| 6. | Hon. James Were | Member |
| 7. | Hon. James Omollo | Member |
| | SECRETARIAT | |
| 1. | Austine Ochieng | Committee Clerk |
| 2. | Chrispine Oguta | Clerk Assistant |
| 3. | Wycliffe Owade | Research Officer |
| 4. | Patrick Okoyo | Hansard Reporter |
| 5. | CPA Naboth Odero | Internal Auditor |
| 6. | Faith Judith | Serjeant-at-Arm |

LEGAL FRAMEWORK & GUIDING PRINCIPLES

Legal Framework

Hon. Speaker, the Committee was guided by the following legal instruments;

1. Constitution of Kenya 2010: Article 229 (4) of the Constitution of Kenya, 2010 requires the Auditor General, within a period of six months after the end of each financial year, to audit and report, in respect of that financial year, on;
    i. The accounts of the National and County governments,
    ii. The accounts of all funds and authorities of the National and County governments,
    iii. Accounts of all courts,
    iv. The accounts of every commission and independent office established by this constitution,
    v. The accounts of National Assembly, the Senate and the county assemblies,
    vi. The accounts of the political parties funded from the public funds,
    vii. The public debt and
    viii. The accounts of any other entity that legislation requires the Auditor General to Audit

    Article 229(8) further states that "within three months after receiving an audit report, parliament or county assembly shall debate and consider the report and take appropriate action".

2. Article 226(5) of the Constitution of Kenya, 2010 provides that if the holder of a public office, including a political office, directs or approves the use of public funds contrary to law or instructions, the person is liable for any loss arising from that use and shall make good the loss, whether the person remains the holder of the office or not.

3. Public Audit Act 2015; Section 7 of Public Audit Act 2015 mandates the Auditor General to: (i) Give assurance on the effectiveness of internal controls, risk management and overall governance at National and County Government; (ii) Undertake audit activities in state organs and public entities to confirm whether or not public money has been applied lawfully and in an effective way

4. Public Finance Management Act, 2012: Section 149 (1) of the Public Finance Management Act, 2012 states 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 –
    a) (a) Lawful and authorized; and
    b) Effective, efficient, economical and transparent"

Guiding Principles

Hon. Speaker, in the execution of its mandate, the Committee was guided by core Constitutional and statutory principles on Public Finance Management.

These principles include the following;

1. Constitutional Principles on Public Finance: Article 201 of the Constitution of Kenya 2010 provides for fundamental principles aimed at guiding all aspects of Public Finance. It states that the principles are; inter alia;
    i). Openness and Accountability including public participation in financial matters;
    ii). Public money shall be used in a prudent and responsible way; and
    iii). Financial management shall be responsible and fiscal reporting shall be clear.

2. Obligations of the Accounting officer;
    i). Article 262(2) of the Constitution of Kenya 2010 which provides that; The Accounting officer of a national public entity is accountable to the national assembly for its financial management and the accounting officer of a county public entity is accountable to the county assembly for its financial management.
3. Section 203(1) of the Public Finance Management Act, 2012 enacts that; a public officer is personally liable for any loss sustained by a County Government and is attributed to; (i) The fraudulent or corrupt conduct, or negligence of the officer or, (ii) The officer's having done any act prohibited by Sections 196, 197, and 198

The Committee considers these legal provisions as the basis for holding accounting and public officers directly and personally liable for any loss of Public Funds that may occur under their watch.

REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE KISUMU WATER AND SANITATION COMPANY LIMITED FOR THE YEAR ENDED 30, JUNE 2022

Hon. Speaker, Mr. Thomas Odongo, KIWASCO Managing Director and the Accounting Officer appeared before the Committee on 31st August 2023 at 11.00am to adduce evidence on the Audited Financial Statements of the Kisumu Water and Sanitation Company Limited for the year ended 30, June 2022. The following officials accompanied him;

1. Nicholas Moseti – Head of Finance
2. Jason Ochola - Head Commercial

The following officers represented the Office of the Auditor General in the meeting of 31st August 2023;

1. Simon Ondigo -Head of Audit
2. Kennedy Ongoi – Deputy Director, Audit
3. Margaret Moronge – Principal Auditor

Basis for Qualified Opinion

3.11 Inaccuracies in the Financial Statements

The Statement of profit or loss account and other comprehensive income reflects maintenance expense amount of Kshs. 191,902,457 as disclosed in Note 13 to the financial statements which differs with the ledger balance of Kshs. 191,785,467 resulting to an unexplained and unreconciled variance of Kshs. 116,990

Management Response:

Total maintenance expense is Kshs. 191,902,457 as has been correctly observed and explained in note 13 of the amended financial statements. The figures have been supported and derived from the ledger balances hence there are no differences in the figures presented.

Committee Observations

The Management had corrected the inaccuracy in the amended financial statements.

Committee Recommendations

1. That this matter is resolved
2. That going forward, the management must put in place appropriate measures to avoid recurrent of the same audit issue

3. 12 Non-recognition of tax liability from operations
The statement of financial performance reflects a profit before taxation amounting to Kshs.90, 456,704. The company is a trading entity and therefore subject to taxation. The last time the company declared income tax was the financial year 30 June 2020. In the circumstances, the accuracy and completeness of the profit for the year amounting to Kshs.90, 456,704 could not be confirmed.

Management Response:
The company realized operational loss in the period hence could not recognize tax liability. Taxes are declared based on operational profits not on losses. The profits realized as observed below were as a result of Conditional Liquidity Support Grants from the Government of Kenya through the Water Sector Trust Fund towards priority areas for short-term COVID-19 emergency response interventions in informal and low-income settlements. Article 4 and 5 of the Grant Agreement shows the purpose of the grant.

Committee Observations
That during the financial year 2021/2022, the company realized operational losses and could therefore not recognize tax liability

Committee Recommendations
That this matter is resolved

3.13 Unsupported Write-offs of Bad Debts
The statement of financial position as disclosed in note 28(a) to the financial statements reflect a balance of Kshs.270,661,636 which includes a provision of doubtful receivables of Kshs.24,378,040. However, in the movement in the provision reflects a write-off in provision of Kshs.48, 986,667 all related to prior year provision. The write-off was not supported by approval from County Executive Committee member – Finance of the County Government of Kisumu.

In the circumstances, the regularity of the write-off of the doubtful receivables amounting to Kshs.49, 986,667 could not be confirmed.

Management Response:
As rightfully observed, the Kshs.24,378,040 reflects specific bad debts provision for the year 2022 while Kshs.48,986,667 (not Kshs.49,986,667) relates to last financial year ended June 2021 amount which was approved by the Board of Directors of the Company. The amounts were approved for write-off by the Finance and Commercial committee of the Board and the full Board of Directors as per attached minutes dated 21st September 2022 and 28th September 2022.

It is worth noting that the County Executive Committee Member (CECM) for Finance is a member of the Board of Directors of Kisumu Water & Sanitation Company and was part of the

approval of the same. However, we were not aware of this requirement but have since requested for the said letter from the CECM – Finance and will present it to you once we have obtained it.

Committee Observations

1. That writing off of bad debts amounting to Kshs 48, 986,667 by Management was approved by the Finance and Commercial committee of the Board and the full Board of Directors
2. That the Management failed to provide evidence of approval of write-off of bad debts by the County Executive Committee member for Finance and Economic Planning.
3. That the Management admitted that they did not sort for approval from the County Executive Committee Member (CECM) for Finance and Economic Planning because the CEC member was at that time a member of the board which resolved the write off of the bad debts amounting to Kshs 48, 986,667

Committee Recommendations

1. That this issue is resolved
2. That going forward, the Management must ensure that any write off of bad debts is approved by the County Executive Committee member for Finance, Economic Planning and ICT

3.14 Tax Recoverable (VAT)

The statement of financial position and as disclosed in Note 29 of the financial statements reflect a balance of Kshs.28,761,122 relating to tax recoverable (VAT) which has been outstanding for more than four years. The management has not explained the efforts to recover the amount and could not be confirmed.

Management Response:

The VAT recoverable above was as a result of Input VAT from February 2018 to June 2018 when Water services were zero-rated. This however changed with the Finance Act of 2018 that reviewed the status of water and sewerage services from Zero-rated to Exempted. The Company has been making efforts directly and indirectly through our Tax Consultant to recover the VAT refundable to no avail. The Public Sector Division of Kenya Revenue Authority (KRA) have been involved in the audit of the claim in the year 2020 and 2021 but to date no response has been given despite assurance that the claim was genuine and recoverable.

Attached are copies of the claims and our correspondences with KRA on the efforts made to recover the debts including communications from our Tax Auditors, M/S Otieno & Associates.

Committee Observations

1. The management provided evidence of communication to the Kenya Revenue Authority to initiate the recovery of the amount of Kshs.28,761,122 relating to tax recoverable (VAT)
2. The Kenya Revenue Authority was yet to provide any response on the same as at the time

of committee deliberations

Committee Recommendations

1. That the Management continue making efforts to recover the amount of Kshs.28,761,122 relating to tax recoverable (VAT) from the Kenya Revenue Authority
2. That this issue remains unresolved

3.15 Unsupported Customer deposits

The statement of financial position and as disclosed in Note 39 of the financial statements reflect trade and other payables – noncurrent liabilities balance of Kshs.168,083,250 out of which a balance of Kshs.141,422,854 was in respect of customer deposits. However, no detailed analysis of who owed what amounts has been provided for audit.

In the circumstance, the accuracy and completeness of the customer deposit balance of Kshs.141, 422,854 could not be confirmed.

Management Response:

We provided all the details and schedules of the customer deposits totaling to Kshs.141,422,854, additions during the year totaling to Kshs. 19,510,958 and the total refunds to customers totaling to Kshs. 6,229,704 resulting in to a net increase of Kshs.13,281,254 in the year under review as shown in the statement of cash flows. Ledger KWSC: 005a (hard copy) and List KWSC: 005b (Soft copy)

Committee Observations

1. As at the time of committee deliberations, the balance of Kshs. 141,422,854 had been supported with the details showing the amounts owed to individuals.

Committee Recommendations

1. That this matter is resolved
2. That going forward, the management must ensure that supporting documents are provided as at the time of audit to avoid committing an offence Pursuant to Public Audit Act Section 62(b) and (c)

3.16 Unsupported County Government Contribution

The statement of financial position and as disclosed in Note 39 of the financial statement reflects trade and other payables – noncurrent liabilities balance of Kshs.168, 083,250 out of which a balance of Kshs.26, 660,396 is in respect of the County Government contribution. However, the details of what the amount relates to were not provided for audit.

In the circumstance, the accuracy and completeness of the County Government contribution balance of Kshs.26, 660,396 could not be confirmed.

Management Response:
The liability was as a result of indebtedness reconciliation between Kisumu Water & Sanitation Company Ltd and the County Government of Kisumu in the year 2017. The liability has been crystalizing over time the latest being a setoff reconciliation done in the year 2017 between the two entities as shown in the attached report. Additionally, we have attached the signed minutes of the indebtedness reconciliation meeting and a letter from the then County Executive Committee Member for finance and Economic planning dated 7th July 2017 confirming the liability of Kshs.26,660,396. This figure has therefore remained as a long-term liability to the company as the County Government had considered capitalizing the amount.

Committee Observations
1. The Management failed to provide the documents to support the County Government Contributions during the time of audit
2. The documents had been provided as at the time of committee deliberations

Committee Recommendations
1. That the issue is resolved
2. That going forward, the management must ensure that supporting documents are provided during the time of audit

3.17 Inaccuracies in Outstanding Levies Due to Lake Victoria Water Works Development Agency
The statement of financial position and as disclosed in Note 43 to the financial statements reflects trade and other payables -current liabilities balance of Kshs.275,032,075 which includes a balance of Kshs.17,100,538 payable to Lake Victoria South Water Works Development Agency. However, the financial statements for the agency reflect a balance of Kshs.11, 059,625 resulting in unexplained variance of Kshs.6, 040,913.

In the circumstance, the accuracy and completeness of the outstanding levies balance of Kshs.17,100,538 could not be confirmed.

Management Response:
We hereby confirm that the amount owed to Lake Victoria South Water Works Development Agency was Kshs.17, 100,538 as shown in the attached schedules. Additionally, the Agency carried out a Debtors' circularization and we confirmed the above amount as true balance. As a company, we may not exactly know how the Agency has arrived at the figure of Kshs.11, 059,625 but we can categorically confirm that the amount is erroneous.

Attached are the ledgers and schedules of payments from the last two financial years with accompanying debtor's circularization letter from the Agency.

Committee Observations

1. That the management insisted that they owed Lake Victoria South Water Works Development Agency Kshs.17,100,538 and not Kshs 11,059,625 they (Lake Victoria South Water Works Development Agency) reported in their books of accounts

Committee Recommendations

1. That the KIWASCO management immediately pay the Lake Victoria South Water Works Development Agency the amount of Kshs. 11,059,625 that is reported by the Office of the Auditor General and a report on the same be submitted to the Office of the Auditor General and copied to the County Assembly
2. That the issue remains unresolved

3.18 Unaccounted for Lease Fees

The statement of financial position and as disclosed in Note 43 to the financial statements reflects trade and other payables -current liabilities balance of Kshs.275, 032,075 which includes a balance of Kshs.21, 793,650 in respect of lease fee payable which is a running balance from the amount reported in the previous year less settlement of Kshs.3, 000,000 during the year under review. However, lease expenditure for the current year has not been accounted for in the financial statement.

In the circumstances, the accuracy and completeness of the lease fees payable balance of Kshs.21,793,650 could not be confirmed.

Management Response:
The lease fees to the County Government of Kisumu was noted to be contravening Section 131(2) of the Water Act 2016 as indicated by the attached communication (KWSC: 008) from the Regulator (WASREB). The lease expenditure was therefore abolished as advised by the regulator following the implementation of Water Act 2016 hence not accounted for in the current year ended June 2022 and the previous year 2020/2021. What is shown in Note 43 is the outstanding liability of Kshs.21, 793,650 and not the fee as shown in the attached schedule.

Committee Observations
That the management did not account for lease fees during the financial year in question because it was contravening Section 131(2) of the Water Act 2016.

Committee Recommendations
That this matter is resolved

3.18 Inaccuracies in Property, Plant and Equipment

The statement of financial position reflects an amount of Kshs.304, 445,566 under property, plant and equipment as disclosed in Note 20 to the financial statements. However, although the assets register was maintained, it had not been updated to include the accounting code of the Asset, Identification number of the asset, location of the asset, Insurance certificate number of the insurable assets, cost of each item of asset, depreciation rate, accumulated depreciation, depreciation charge for the year and net book value of the asset. The net book values reported could not therefore be reconciled with the asset register.

In addition, Leasehold improvements were reported at a net book value of Kshs.707, 113. However, no register was maintained nor a listing provided to help ascertain the make-up of assets under this category.

In the circumstances, the accuracy and completeness of the property, plant and equipment balance of Kshs.304, 445,566 could not be confirmed.

Management Response

We have provided an updated fixed asset register for your review which contain reasonable details as per the treasury template with figures reconciling with the Net Book values. The details include; the asset class, code, date of purchase, Asset Tag number, department (location), insurance policy number, cost, accumulated depreciation and Net book values.

List of leasehold improvement are the capitalized cost of rehabilitations and improvements on leased buildings handed over to the Company at the inception of the company from the defunct Municipal Council of Kisumu. These improvements were done in Kajulu Water Treatment Plant in the year 2003 when the company begun operations.

Committee Observations

As at the time of committee deliberations, the management had provided the updated register with reasonable details as per the treasury template with figures reconciling with the net book values

Committee Recommendations

That this issue is resolved

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

4.1 Accounting for Non-Revenue Water

Review of Water Production and consumption by the Company revealed that the company produced 10,497,618 cubic meters of water valued at Kshs.230, 941,596 but only billed 7,196,567 cubic meters of water resulting to a loss of 3,301,051 cubic meters of water at a cost of Kshs.72, 623,122 which represent 31% of the total production.

The non- revenue water amount quantity is above the 25% loss allowable by the Water Services

Regulatory Board. In the circumstance, the management was in breach of the law.

Management Response

In the KIWASCO strategic plan (2017-2022 revised to bridging period 2022-2023) strategic priority No.2 "Operational Efficiency" has includes Non-Revenue Water (NRW) management. This was initially to reduce NRW from 37% to 20%. Strides have been made and the system loss reduced to 31%, which complies with the Gazetted Tariff condition on service delivery for the year 2021/2022. See attached Tariff on KWSC 002 page 6797. The company has identified the following strategic initiatives to manage NRW but are not limited to:

a) Active leak detection
b) Pressure management
c) Enhance speed and quality of works and repairs
d) Enhance asset management
e) Network asset management plan
f) Improve customer meter accuracy
g) Manage Illegal consumptions
h) DMA management
i) Eliminate Data handling and accounting Errors
j) Review NRW reduction framework

KIWASCO has since revised the technical department to have a NRW department separately with much focused interests, led by a NRW Manager and support staff seconded from different departments and sections of technical services department. The NRW structure is being reviewed with exclusive TORs, and staffing structures (supported by SEURECA E.A. HR expert).

i. Under the LVWATSAN project, the company has on board a consulting team (SEURECA E.A. - CONTRACT No. LVSWWDA/C/RFP/5/2017-2018) currently undertaking implementation of plans for 42 months since August 15, 2022
ii. KIWASCO has engaged with partners under WATERWORX project to implement NRW management initiatives, which include DMA isolation and NRW management (CBD DMA), CIS (CBD Service area), meter management initiatives, and other accompanying measures.

Additionally, KIWASCO is receiving Technical assistance from the WATERWORX short-term expert support, and different studies towards efficiency in management of water supply, and NRW management. These includes pumping efficiency audits (completed), and hydraulic modelling and network zonation (ongoing) together with the SEURECA E.A.

iii. KIWASCO overhauled a total of 11.25Km of waterlines in the year 2021-2022 in an effort to reduce physical losses. We additionally embarked on replacing brass meters with composite meters (ongoing) to curb theft of meters, and replacement of volumetric

meters with multi-jet meters to deal with high number of static meters within specific service areas.

iv. Leak detection and control has been enhanced through both equipment procured for the same (especially Leak Correlator and clamp-on UFM meters), and capacity building. Other technologies adopted include water reservoir level sensors to manage overflows from the tanks real-time.

v. KIWASCO leaks & Burst repairs, illegal cases, intermittent supply and related cases handling workflow processes are now managed through the ERP and CRM to ensure minimum possible turn-around-time

vi. We have adopted data management tools e.g. KOBO collect, MIS tool, and other excel-based monitoring tool to improve efficiency in NRW management.

All data management has on boarded GIS in the process and we undertake GIS-based analyses for preventive measures, and long-term mitigation measures from historical manifestations

vii. KIWASCO has NRW-Oversight committee and a weekly all-staff meeting (One-Bee Meeting) that are focused on NRW management. Initiatives include actions on gaps found in monthly reports, and bi-weekly inspections carried out by line managers together with committee members to root out perpetual challenges in efficiency management and NRW management.

N/B: losses on Non-revenue water are calculated based on cost of production and not the sales price of water

Committee Observations

1. That for the year under review, non-revenue water was above the 25% loss allowable by the Water Services Regulatory Board

Committee Recommendations

1. That going forward, the Management must put more efforts in reducing the non-revenue water to the 25% loss allowable by the Water Services Regulatory Board
2. That the issue remains unresolved

4.2 Lack of quarterly reports on items procured through framework agreement

Review of documents revealed that the company procured various items through framework agreement. However, the head of procurement function did not provide quarterly reports with details such as analysis of pattern of usage, procurement costs in relation to the prevailing market rates and any other recommendations for audit verification. Further, there was no acknowledgement from the head of internal audit confirming receipt of the quarterly reports on items procured through framework contract.

In the circumstance, the management was in breach of the law.

Management Response
We prepare and submit to the Accounting Officer monthly reports for the procurement function. This report details the requirements above. This was not requested from us by the auditors. We have however availed copies of the said reports. It should be noted that the format we have adopted is even better, as instead of doing reports quarterly, we do the same reports monthly. (Copies of these monthly reports for end of every quarter, September 2021, December 2021, March 2022 & June 2022)

In addition, our Internal audit unit reviews procurement reports on a periodic basis through post-audit as detailed in the attached audit plan.

Committee Observations
That as at the time of the committee deliberation, management had provided the Office of the Auditor General with all the documents they had requested.

Committee Recommendations
That this matter is resolved

4.3 Failure to Observe One-Third Rule on Staff Composition
Review of the company's payroll revealed that out off three hundred and twenty-one (321) employees, 274 staff members were from the same ethnic community or approximately 85% were from a dominant community in the region. This is in contrary to Section 7(1) and (2) of the National Cohesion and Integration Act 2008, which states that, all public offices shall seek to represent the diversity of the people of Kenya in the employment of staff and that no public institution shall have more than one-third of its staff establishment from the same ethnic community.

In the circumstance, the management was in breach of the law.

Management Response
The company is making progress in managing the ethnicity aspects of staff which stood at 92 in 2019, 87% in 2020, 84% in 2021 for the dominant ethnic community respectively to the current 85% in 2022. When recruitments are being conducted and over 90% of interviewees are from the local dominant community from different counties then it goes without saying that there is a higher probability that the person recruited will be from majority ethnic group. In addition, recruitments are done based on competence and skills and not ethnicity. However, the company is progressively working on the above issues for future compliance.

Committee Observation
That by moving from 92% in 2019 t0 current 85% in 2022, the management demonstrated efforts

towards adhering to Section 7(1) and (2) of the National Cohesion and Integration Act 2008

Committee Recommendations

1. That this matter is resolved
2. That the management should continue putting more efforts towards adhering to Section 7(1) and (2) of the National Cohesion and Integration Act 2008

4.4 Gulf Water Company Limited and Nyanas Water Company Limited

As reported in the previous years, the Kisumu Water and Sanitation Company Limited was mandated to manage Gulf Water Company Limited and Nyanas Water Company Limited. However, Management of has not provided signed financial statements of the two companies for audit review to confirm the operations of the two companies. This is in contravention of section 164(4) of the Public Finance Management Act, 2012. It has not therefore been possible to confirm whether the operations of the two companies are within the law.

In the circumstance, the management was in breach of the law.

Management Response

The draft financial statements for the two utilities for the years ended 30th June 2022 were submitted to the County Government of Kisumu for consolidation, signing and subsequent submission to the office of the Auditor General as provided for in the Public Finance Management Regulation 2015 with copies sent to the Office of the Auditor General.
KWSC: 012

a) It is worth noting that KIWASCO does not have the legal mandate to sign the books of accounts as this is solely the responsibility of the owners i.e. the County Government of Kisumu. The PFM Act states as follows;
   i. Section 163 - County treasury mandated to consolidate the annual financial statements of all county entities by 31 Oct and submit the report to the Auditor General with copies to the National Treasury, COB, and CRA
   ii. Section 164 - County Government entities are required to prepare financial statements with respect to the entity by 30th September each year and submit the same to the auditor general with copies to the County Treasury, COB, and CRA, in case of a county corporation the same should be forwarded to the CECM for Finance by the CEC responsible for the entity.

Committee Observations

That the management is yet to submit the statements of Gulf and Nyanas Water Companies to the Office of the Auditor General

Committee Recommendations

1. That the County Executive Committee member for Finance, Economic Planning and ICT submit the financial statements of Gulf and Nyanas Water Companies to the Office of the Auditor General and copies to the Assembly within a period of 90days upon adoption of this report
2. That this matter remains unresolved

GENERAL OBSERVATIONS

Hon. Speaker, the following general observations were made;

1. That during the FY 2021/2022, despite making efforts to ensure compliance with the law on ethnic composition, the management was yet to meet the threshold set in Section 7(1) & (2) of the National Cohesion and Integration Act 2008, which stipulates that all public establishments shall seek to represent the diversity of the people of Kenya in the employment of staff and that no public establishment shall have more than one third of its staff from the same ethnic community
2. That in some occasions, the management failed to provide supporting documents during the time of audit as stipulated in Section 62 (b) and (c) of the Public Audit Act, 2015
3. That the management is yet to comply with the law on non-revenue water of 25% allowable loss by Water Services Regulatory Board
4. That during the FY 2020/2021, the Management of KIWASCO had not maintained an updated, accurate and available asset register as required by Public Finance Management Act, 2012, Section 149(2) (o)

GENERAL RECOMMENDATIONS

Hon. Speaker,

1. That going forward, the management of KIWASCO must continue making efforts to drive the entity towards achieving compliance with the law on ethnic composition as stipulated in Section 7(1) and (2) of the National Cohesion and Integration Act 2008
2. That going forward, the management must ensure that supporting documents are provided to the auditors during the time of audit in line with Section 62 (b) and (c) of the Public Audit Act, 2015
3. That going forward, the management must continue making efforts to comply with 25% allowable loss on non-revenue water as stipulated by Water Services Regulatory Board
4. That going forward, the management must adhere to the Public Finance Management Act, 2015, Section 149(2) (o) which requires an accounting Officer of a County Government entity to maintain an asset register that is current, accurate and available to the County Treasury or the Auditor General

CONCLUSION

Hon. Speaker, I hereby request that this House adopts this report of the Public Accounts and Investments Committee on the consideration of the Auditor General's Report on the Financial Statements of the Kisumu Water and Sanitation Company Limited for the year ended 30, June 2022. May I call upon honorable James Were to second?

**The Temporary Speaker** (Hon. Ajwang', MCA, Kaloleni/Shaurimoyo Ward): Yes Hon. James Were Member representing Nyalenda "B" Ward.

**Hon. Were** (MCA, Nyalenda "B" Ward): Thank you, Madam Speaker. I want to start by commending the committee for a job well done. Further, I equally want to praise Kisumu Water and Sanitation Company (KIWASCO) for having given all the answers to the queries that were raised by the auditors.

Madam Speaker, I just want to implore on our people to ensure that the committee recommendations are followed to the letter to ensure that the financial management system are adhered to and to ensure that they put their supporting documents as recommended by the committee to give the Auditors easy time.

Madam Speaker, going by recommendation three, that the management to continue making an effort means that they were positive that they have put measure in place to ensure that 25% of the loss that has been experience in the past is minimize. I therefore second. Thank you.

**The Temporary Speaker** (Hon. Ajwang', MCA, Kaloleni/Shaurimoyo Ward): Hon. Members, now that the report by Public Accounts and Investments Committee has been presented and seconded as per your Standing Orders. I want to propose a question and I propose that the report by Public Accounts and Investments Committee on the Financial Statement with Kisumu County Water and Sanitation Company Limited that is KIWASCO for the year ended 30th June is now open for debate.

**The Temporary Speaker** (Hon. Ajwang', MCA, Kaloleni/Shaurimoyo Ward): Yes Hon. Rakwach.

**Hon. Rakwach** (MCA, Kolwa East Ward): Thank you Madam Speaker. I rise to support the report by the committee. First I want to start by appreciating the members of the committee, the Secretariat for the good work which was done on time.

Secondly, I wish to appreciate the KIWASCO management. They have really tried to comply with the provisions of the Public Finance and Management Act of 2012 and that's why several issues were resolved. But, despite that Honorable Speaker, I wish to continue encouraging the KIWASCO management that they should be providing the documents when needed by the

Office of the Auditor General so that they don't wait until the Auditors raise queries and that is when they come up with the document during committee stage.

Thirdly, I also want to observe that KIWASCO management have really tried on the law on ethnic composition because at some point it was at 92% but now they have reduced it to less than 85% and I can see that they are moving towards the positive direction when I know very soon they will comply fully.

Lastly, Honorable Speaker, I want to talk about the Non-revenue Water. The Non-Revenue Water is at now is 31% which is more than the allowable 25%. And I know maybe this is what is causing the problems on higher rates on tariffs because when the water has been lost and the operations also have to continue, then I believe that this results in high tariffs. So at the Committee stage, the management was very positive just as has been reported by the Honorable Were who is a member of the committee. Madam Speaker, even if there is a need to overhaul the system, which is the pipeline, so that the dilapidated pipes can be replaced by new ones to limit the loss of water within the line. Then, I believe that by doing that, it is really going to help in reducing the percentage of Non-revenue Water and that will go a long way with the lowering the tariffs. Otherwise, thank you very much Honorable Speaker. I support.

**The Temporary Speaker** (Hon. Ajwang', MCA, Kaloleni/Shaurimoyo Ward): Hon. Pete Oiko of Kabonyo Kanyagwal.

**Hon. Oiko** (MCA, Kabonyo/Kanyagwal Ward): Thank you Madam Speaker, I would also like to decipher this report to give my little contribution as per the report. Madam Speaker, when I look at page nine, Non-recognition of Tax Liability from the Operations 3.12, Madam Speaker, they are talking of the year ended 30th June 2020 When the income tax was declared and this financial report is for the year 30th June, 2022 and they are referring us to the 30th of June 2020 on income tax and before 30th June 2022. There is the 30th of June 2021. So, I'm wondering what kind of record the Auditor General is telling us here. This is because, if tax income was declared on 30th of June 2020 and 2022 it was not declared then, why refer us back to the last two years down the line. Madam Speaker, when you look at this report, KIWASCO is a big company spending huge sums of money. We are not seeing that it is a going concern making little profit that can sustain it. When there is no profit so made so far by the company Madam Speaker, when the company has a serious breakdown, how is the company going to survive? Will the County Government be expected to source for funds to save the company? Madam Speaker that is a matter that needs to be looked into and addressed.

Madam Speaker, when we go to page twelve, Unsupported County Government Contribution, when the county government made some contribution, this cannot clearly be captured on the record. What does it mean? Madam Speaker, We must know why a contribution from county government to KIWASCO cannot be captured properly in their record. The same issue applies

with NYANAS and the Gulf Water Companies whom their operations and responsibilities is yet to be run by KIWASCO, yet they were mandated to manage the two companies. They are saying they had prepared the documents submitted to the county government and it is now upon the County Government to submit that to the office of the Auditor General and the County Assembly. I am seeing the committee advising that the report be submitted to the office of the Auditor General and the County Assembly. Let it be known that a raw material of that nature will be of no use to this Assembly. It is not upon the committee to give a grace period when the lacking documents are supposed to be submitted to the Assembly. What is the Assembly going to do with the documents that were submitted to the office of the Auditor General? That is a matter that when there is laxity between the County Government and KIWASCO; since that matter of Gulf and NYANAS Water Supply have come up for a long time, let this matter be referred to the EACC so that proper investigation is done. This Assembly can only make recommendation as per the report presented. We cannot go out to conduct investigation.

Madam Speaker, another issue is that the money owed to Lake Victoria Water Works Development Agency; KIWASCO record is showing Kshs 17 million and the record of Lake Victoria Water Works Development Agency is showing Kshs 11 million. The committee is recommending that Kshs 11 million should be paid. The office of the Auditor General should have taken the two institutions to task to commit which record is correct as per their record and in this case if it is left that Kshs 11 million is what is to be paid then we will seek to ask if Lake Victoria Water Works Development Agency is in agreement with that.

Madam Speaker, when it comes to matters of employment in KIWASCO, there is an outcry of one community that dominates the institution. When the committee talks of a dominant community then we seek to ask ourselves which community is dominant here. We know as per the National Government it is 70% for the locals and 30% for the outsiders. A practice has been in place that the people in power become the dominant community. This matter should be referred to another House Committee that deals with labour related issues to find out what is meant by this dominant community since we are aware that the community in power is the one that is likely being referred to.

Madam Speaker, the report is given KIWASCO a clean bill of health but on the financial matters we are not being told that KIWASCO is doing well financially and this is dangerous for Kisumu County. Being an institution for Kisumu County charged with providing water which is an essential commodity for our people and considering the petition that has been tabled in this House today then, we need to open our eyes on to the matters of KIWASCO. Let us not just take the records for the sake of it. Thank you.

**The Temporary Speaker** (Hon. Ajwang', MCA, Kaloleni/Shaurimoyo Ward): Yes Hon. Ajumbo.

**Hon. Biko** (MCA, Central Seme Ward): Thank you Madam Speaker, I wish to call the mover to reply.

**The Temporary Speaker** (Hon. Ajwang', MCA, Kaloleni/Shaurimoyo Ward): Hon. Kenney Ouko, Chair, PIC/PAC Committee

**Hon. Ouko** (MCA, West Kisumu Ward): Thank you Madam Speaker, I beg to reply. From what we have here with us, it is very clear that KIWASCO is owned by the County Government of Kisumu and they may be having some shortfalls within their system. We realized that we are having a dominant community which is the Luo community in the context of the County which is Kisumu County and this is actually what they meant. So, when they say it is 85% then it is 85% of the Luo community. This percentage is actually impressive as compared to other Counties and I want to draw Members' to the attention that when we were in Nairobi, Kirinyaga had around 95% of the employees coming from the Kikuyu community. We have to appreciate KIWASCO and that is why we are encouraging them that they continue balancing so that we comply with the law.

Madam Speaker and Honourable Members, we have come to realize that recurrent issues concerning tax which was to be reclaimed back from the KRA by KIWASCO; this matter has not yet been resolved by KIWASCO because KRA is not ready to refund. We realized that refunding money from KRA is not easy. So it was also agreed that the Auditor General will escalate this matter with KRA so that they sought this matter out amicably.

Madam Speaker and Honourable Members, we also have the other issues of NYANAS and Gulf Water Companies which we dealt with. We realized that in the true sense as stated by Hon. Pete that KIWASCO was running away from their responsibility of reporting their financial strength. That is why we directed that we should also have a look at the copy of the financial audited accounts from Nyanas and Gulf Water Companies which are also sent to the Auditors. We are really trying as a committee and still agree that there are some loopholes that we need to rectify. I would like to appreciate the Members for being here to see to it that we are doing our work as law makers of Kisumu County. Thank you.

**The Temporary Speaker** (Hon. Ajwang , MCA, Kaloleni/Shaurimoyo Ward): Honourable Members, a report by PIC/PAC Committee on the consideration of the Auditor General's Reports on the Financial Statements of KIWASCO for the year ended 30th June, 2022 has been moved, seconded and debated upon. I therefore want to put a question on the adoption of the same.

***(Question put and agreed to)***

**The Temporary Speaker** (Hon. Ajwang, MCA, Kaloleni/Shaurimoyo Ward): Honourable Members, the report by PIC/PAC Committee on the consideration of the Auditor General's Report on the Financial Statements of KIWASCO for the year ended 30th June, 2022 is hereby adopted today Thursday, 12th October, 2023 at 16:46 hours.

Honourable Members, I want to direct that the recommendations of this report and the Hansard report be forwarded to the relevant authorities for purposes of implementation. I also direct that the Select Committee of Implementation undertakes a follow-up on the implementation status of the same.

**The Temporary Speaker** (Hon. Ajwang', MCA, Kaloleni/Shaurimoyo Ward): Next Order!!

## ADJOURNMENT

**The Temporary Speaker** (Hon. Ajwang, MCA, Kaloleni/Shaurimoyo Ward): Honourable Members, there being no any other business to transact, the House stands adjourned to Tuesday, 17th October 2023 at 2.30 p.m.

*(House rose at 04.47 p.m.)*

## ***Addendum***

## ***The Hansard Team***

*Zablon Otiende – Senior Hansard Reporter (Ag. Editor)*

*Edward Odanga – Hansard Reporter*

*Fanuel Okode – Hansard Reporter*

*Patrick Okoyo – Hansard Reporter*

*Jacklyne Otieno – Hansard Reporter*

*Jesca Otieno – Hansard Reporter*

*Vallery Achieng' – Hansard Reporter*