

## COUNTY GOVERNMENT OF LAMU



## THE COUNTY ASSEMBLY OF LAMU

### THE HANSARD

Wednesday, 13<sup>th</sup> November, 2024

*The Assembly met at the  
Main Chambers, at 10:30 a.m.*

**[The Deputy Speaker (Honorable Paul Kimani Njuguna) in the Chair]**

### PRAYERS

**Deputy Speaker (Honorable Paul Kimani Njuguna):** Next Order.

**Clerk-at-the-Table:**Paper.

### PAPER

**MCA Beatrice Wamaitha Munge(Nominated):** Thank you Mr. Deputy Speaker.

Mr. Deputy Speaker Sir, allow me to lay the following paper on behalf of the Chairperson, County Public Investment and Account Committee;

1. County Public Investment and Accounts Committee Report on the Financial Operations of the Lamu County Disability Fund for the Year ended 30th June 2023.

**Deputy Speaker (Honorable Paul Kimani Njuguna):** Next Order.

**Clerk-at-the-Table:** Statement.

**STATEMENT***CURRENT STATUS OF HINDI MARKET.*

**MCA James Njaaga Kariuki(Hindi):** Thank you mr. Deputy Speaker.

**Mr. Deputy Speaker Sir,** I rise to Pursuant to Standing Order 41(2)(C) to seek a Statement from the Chairperson of the Departmental Committee on Trade, Tourism, Information and Cooperatives regarding the current status of Hindi Market.

**Mr. Deputy Speaker Sir,** Hindi Market was initiated during the first term of the County Government from 2013 to 2017; however, it unfortunately remains incomplete and non-operational. At present, traders are dispersed throughout the Hindi area, resulting in significant congestion in the town and its surrounding vicinity.

**Mr. Deputy Speaker Sir,** as we are now in the third term of the County Government, it is concerning that there has been little progress on this critical market. When I seek information from the relevant department, I am usually directed to the Municipality, which subsequently refers me back to the department.

**Mr. Deputy Speaker Sir,** in light of these matters, I respectfully request a statement from the Chairperson of the Departmental Committee on Trade, Tourism, Information, and Cooperatives that addresses the following inquiries:

1. What are the reasons for the protracted delay in the market's development?
2. When is the anticipated completion date for Hindi Market?
3. What factors have contributed to this delay?
4. Who holds responsibility for ensuring the market's completion?

**Deputy Speaker (Honorable Paul Kimani Njuguna):** Next Order.

**Clerk-at-the-Table:** Motion

## MOTION

**MCA Beatrice Wamaitha Munge(Nominated):** Thank you Mr. Deputy Speaker.

**Mr. Deputy Speaker Sir,** allow me to table the following motion on the floor of the House;

**Mr. Speaker Sir,** on behalf of the County Public Investment and Accounts Committee (CPIAC) it is my pleasant privilege and honor to present to this house this report of the Committee on the financial operations of the Lamu County Disability Fund for the year ended 30 June, 2022.

**Mr. Speaker Sir,** the County Public Investment and Accounts Committee as currently constituted include the following Members:

- |                                |                  |
|--------------------------------|------------------|
| 1) MCA Atwaa Salim Mohamed     | Chairman         |
| 2) MCA Beatrice Wamaitha Munge | Vice-Chairperson |
| 3) MCA John Mburu Gitonga      | Member           |
| 4) MCA Rebecca Wambui Wainaina | Member           |
| 5) MCA Husuni Alawy Mohamed    | Member           |
| 6) MCA Fahd Dini Adnan         | Member           |
| 7) MCA Hope Wanjiku Mwaura     | Member           |

**Mr. Speaker Sir,** Committees of the County Assemblies are a creation of the County Governments Act through section 14(1) of the County Governments Act which empowers each county assembly to establish Committees and make Standing Orders (SO) for the orderly conduct of its proceedings, including the proceedings of its Committees.

## MANDATE OF THE COUNTY PUBLIC INVESTMENTS & ACCOUNTS COMMITTEE

The County Public Investments and Accounts Committee is established under Standing Order 185(2) and is mandated to:

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(a) the 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 County Assembly as the Committee may think fit.

(b) the examination of the reports, accounts and workings of the County Public Investments;

(c) the examination, in the context of the autonomy and efficiency of the County Public Investments, whether the affairs of the County Public Investments, are being managed in accordance with sound financial or business principles and prudent commercial practices:

The primary mandate of County Public Investments and Accounts Committee is therefore to oversight the expenditure of the County public funds by departments to ensure value for money and adherence to County Government Financial regulations and procedures.

The Committee executes its mandate on the basis of annual and special audit reports prepared by the Kenya National Audit Office (KENAO).

#### ACKNOWLEDGEMENTS

**Mr. Speaker Sir**, first and foremost, on behalf of this Committee I wish to express our gratitude to the offices of Speaker and the Assembly Clerk for the support received as it discharged its mandate of examining the financial statements of the Lamu County Disability Fund for the year ended 30 June, 2022.

Further, I wish to express my appreciation to the Honorable members of the committee who traded off their time to participate in the activities of the Committee and whose dedication and fortitude saw the completion of this report.

Special appreciation also goes to the Secretariat to the Committee who, on several occasions, had to go beyond the normal call of duty. The commitment and devotion to duty of all those involved in this noble task made the work of the Committee and production of this report a success.

Mr. Speaker Sir, on behalf of the County Public Investment & Accounts Committee Members, it is my pleasant duty and privilege, to table this report of the Lamu County Disability Fund for the year ended 30 June, 2022, to this House for adoption with the recommendations contained therein.

## DEFINITION OF TERMS

### *Unqualified Opinion*

This arises when the Auditor General is satisfied with documentation presented for review. It implies that there are no major problems with documentation and information and the financial statements reflect a true and fair value of the organization.

### *Qualified Opinion*

This arises when the Auditor General has ascertained that proper records and books of accounts have been kept but they do not reflect a true and fair view of the organization. The auditor received all the information required for audit. However, after review the audit reveals there are some gaps in adherence and compliance to legal procedures.

### *Adverse Opinion*

An adverse opinion occurs when the Auditor General is able to review the entity's documentation supplied for audit purposes and the final audit reveals problems that are widespread and pervasive and will require considerable changes to remedy. This is where the Auditor has ascertained that the required information was either not disclosed, or (if disclosed) was inadequately disclosed or was inaccurate.

### *Disclaimer*

A disclaimer is when the auditor is unable to review fully an entity's documentation because there is a substantial amount of information that is missing. The absence of information makes it hard and difficulty for the Auditor General to make an opinion

because records and financial statements were not availed for audit purpose. This is a serious lapse in compliance and should be of concern to oversight bodies.

### Legal Framework

The Constitution of Kenya under Chapter 12, Article 201 outlines the principles of public finance management to be observed at both levels of government.

The following principles shall guide all aspects of public finance in the Republic –

(a) there shall be openness and accountability, including public participation in financial matters;

(b) the public finance system shall promote an equitable society, and in particular –

(i) the burden of taxation shall be shared fairly;

(ii) revenue raised nationally shall be shared equitably among national and county governments;

(iii) and expenditure shall promote the equitable development of the country, including by making special provision for marginalized groups and areas;

(c) the burden and benefits of the use of resources and public borrowing shall be shared equitably between present and future generations;

(d) public money shall be used in a prudent and responsible way; and

(e) financial management shall be responsible, and fiscal reporting shall be clear.

Further, to enforce this accountability, the Constitution sets various institutions at the national and county levels to ensure promotion of accountability, and openness for prudent and responsible financial management.

**Auditor – General’s responsibilities for the Audit of the financial statements of the Lamu County Disability Fund for the year ended 30 June, 2022.**

The Audit objectives of the Auditor General is to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatements, whether due to fraud or error and to issue an audit opinion in accordance with the provisions of section 48 of the public Audit Act, 2015 and submit the Audit report in compliance with Article 229(7) of the Constitution of Kenya.

229 (1) There shall be an Auditor-General who shall be nominated by the President and, with the approval of the National Assembly, appointed by the President.

(2) To be qualified to be the Auditor-General, a person shall have extensive knowledge of public finance or at least ten years’ experience in auditing or public finance management.

(3) The Auditor-General holds office, subject to Article 251, for a term of eight years and shall not be eligible for re-appointment.

(4) Within six months after the end of each financial year, the Auditor-General shall audit and report, in respect of that financial year, on –

(a) the accounts of the national and county governments;

(b) the accounts of all funds and authorities of the national and county governments;

(c) the accounts of all courts;

(d) the accounts of every commission and independent office established by this Constitution;

(e) the accounts of the National Assembly, the Senate and the county assemblies;

(f) the accounts of political parties funded from public funds; (g) the public debt; and

(h) the accounts of any other entity that legislation requires the Auditor General to audit.

(5) The Auditor-General may audit and report on the accounts of any entity that is funded from public funds.

(6) An audit report shall confirm whether or not public money has been applied lawfully and in an effective way.

(7) Audit reports shall be submitted to Parliament or the relevant county assembly.

(8) Within three months after receiving an audit report, Parliament or the county assembly shall debate and consider the report and take appropriate action.

The reports, once tabled, stand committed to the County Public Investment & Accounts Committee.

### **Sittings of the Committee**

The Committee held one meeting in the month of May 2024, where it considered the report of the Auditor General on the financial statements of the Lamu County Disability Fund for the year ended 30 June, 2022.

### **Issues for Determination**

The main issues for investigation and determination were the various Audit queries contained in the report of the Auditor General on the Financial statements of the Lamu County Disability Fund for the year ended 30 June, 2022.

### **Guiding Principles**

Where any breach of law has an attendant remedy, consequence or penalty in law, recommendations of this report do not preclude any liability that may arise as a result of any legal action within the breach of the prescribed law.

In execution of its mandate afore-stated, CPIAC is guided by core Constitutional and statutory principles on Public Finance Management, as well as established practices and usages. This principle includes the following:

### *Constitutional principles on Public Finance*

Article 201 enacts fundamental principles that “.... **shall guide all aspects of public finance in the Republic....**” The Principles are that:

201(a) there shall be openness and accountability, including public participation in financial matters;

201(d) Public money shall be used in a prudent and responsible way; and

201(e) financial management shall be responsible and fiscal reporting shall be clear.

County Public Investments and Accounts Committee places a premium on these Principles, among others, and has been guided by them in the entire process that has culminated in this report.

### *Direct Personal Liability*

Article 226 (5) of the constitution is emphatic that “if the holder of a public 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”.

County Public Investments & Accounts Committee has hoisted high this constitutional provision on the basis for holding each individual Accounting Officer and other public officers directly and personally liable for any loss public funds under their watch.

The committee has and will continue to invoke this provision to its recommendation to hold those responsible personally accountable. This is also intended to serve as a deterrent measure.

## **REPORT ON THE FINANCIAL STATEMENTS OF THE LAMU COUNTY DISABILITY FUND FOR THE YEAR ENDED 30 JUNE, 2022.**

The Committee noted the Auditor General had audited the Financial statements of the Lamu County Disability Fund for the year ended 30 June, 2022 and issued a basis of qualified opinion because the financial statements present fairly, the financial position of the Lamu County Disability Fund as at 30 June, 2022, and of its financial

performance and its cash flows for the year then ended, in accordance with International Public Sector Accounting Standards (accrual basis) and comply with the Lamu County Persons with Disability Act, 2018 and the Public Finance Management Act, 2012.

### **Basis of Qualified Opinion**

#### **1. Inaccuracies in the Statement of Changes in Net Assets**

##### **Auditor General observations**

- The statement of changes in net assets reflects deficit for the year of Kshs. 2,996,947 which was at variance with the statement of financial performance amount of Kshs. 3,002,446, resulting in an unexplained difference of Kshs. 5,499. In addition, the statement reflects net assets balance of Kshs. 7,510,417 which was at variance with the statement of financial position balance of Kshs. 3,510,417 resulting to unexplained unreconciled difference of 4,000,000.
- In the circumstances, the accuracy and completeness of the statement of changes in net assets could not be confirmed.

##### **Management Response**

- *Ksh. 5,499 and Ksh. 4,000,000 was typographical error made in the initial financial statements submitted on 30<sup>th</sup> September, 2022. However, during the audit those errors were rectified and updated in the amended financial statements submitted on 2<sup>nd</sup> March 2023 but the office of Auditor General did not take into consideration on the same.*

*Appendix 1: (Amended Financial Statements dated 2<sup>nd</sup> March, 2023)*

##### **Committees observations & recommendations**

- Members recommended training of the accounting officer and be vigilant when posting.
- Members recommended collaboration and team work i.e to work as a team and counter checking work before submitting it when requested.
- Members recommended submission of document/report within the timeline.

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## 1) Variances Between the Trial Balance and the Financial Statements

### Auditor General observations

- The balances reflected in the trial balance varies with those reflected in the financial statements as shown below;

Description	Trial Balance (Kshs.)	Financial Statements Balance (Kshs.)	Variance (Kshs.)
Grant Disbursement	6,507,364	6,512,863	(5,499)
Disability Fund	8,507,364	9,000,000	(492,636)

- In the circumstances, the accuracy and completeness of balances reflected in the financial statements could not be confirmed.

### Management Response

- The Variance noted between the Trial Balance and Financial Statements were rectified in the financial statement submitted on 2<sup>nd</sup> march 2023 and the trial balance was also amended to support the correct amended financial statements.*

***APPENDIX 1: (Amended Financial Statements Report FY 2021-2022 and Trial Balance)***

### Committees observations & recommendations

- Members recommended real time update of records. Additionally, members recommend the internal auditor to do regular snap check.

## 2) Unsupported Expenditure – Use of Goods and Services

### Auditor General observations

- The statement of financial performance reflects use of goods and services expenditure of Kshs 5,002,446 which includes an expenditure of Kshs 4,665,499 in respect to grant and disbursement. However, supporting documents for

payment amounting to Kshs 154,000 were not provided for audit. Further, there was an unexplained variance of Kshs 95,499 between the balance reflected in the financial statements and the supporting ledgers.

- In addition, the grants applications were not approved by the County Chief Officer or County Executive Committee Member in charge of the department as provided in the application forms and the Lamu County Persons with Disability Act, 2018.
- In the circumstances, the accuracy and validity of grant and disbursement of Kshs. 4,665,499 could not be confirmed.

### **Management Response**

- *Please find the attached payment voucher worth Kshs. 154,000 for your reference. The unexplained variance of Kshs. 95,499 was rectified in the correct Financial statements submitted on 2<sup>nd</sup> March 2023 in line with the supporting Ledger. The grant was approved on 10<sup>th</sup> January 2022 as per the attached approved minutes and attendance list. Appendix 2. (payment Voucher, Approved Minutes for the Applicants, Application forms signed by the Board and Supporting Ledgers).*

### **Committees observations & recommendations**

- Members cleared the query. However, members recommend timely preparation of payment vouchers and supporting documents going forward.

### **3) Budgetary Control and Performance**

#### **Auditor General observations**

- The statement of comparative budget and actual amounts reflects final expenditure budget and actual on comparable basis of Kshs. 8,507,364 and Kshs. 4,996,947 respectively resulting in under absorption of Kshs. 3,510,417 or 41% of the budget.
- The under absorption may have affected the planned activities impacting negatively on service delivery to the public.

**Management Response**

- *The under absorption was due to the following reason  
Covid-19 corona virus which affected the board not to vet and disperse the grant in good time.  
Late disbursement of kshs.2000,000 from the county executive.*

**Committees observations & recommendations**

- Members recommended the management to put measures in place to ensure budgeted resources are fully utilized.

**4) Failure to Constitute Fund Administration Committee****Auditor General observations**

- Section 10 of the Lamu County Persons with Disability Act, 2018 states that the committee shall consist of chief officer of the department in charge of Disabilities as chair, chief officer in charge of finance, director in charge of department as secretary, three persons with disability appointed by executive, three other persons with disability from different constituencies and different gender. The Fund had only four instead of nine required.
- Management was in breach of the law.

**Management Response**

- *The committee is lawfully constituted as per the section 10(d) of Lamu County Persons with disability Act, 2018*

**Committees observations & recommendations**

- Members recommended the team to Constitute a nine-member committee according to section 10(d) of Lamu County Persons with disability Act, 2018. And submit the same by 15<sup>th</sup> January 2025.

**5) Lack of Risk Management Policy and Strategy****Auditor General observations**

- The Fund did have a risk management policy, strategies, and risk register to mitigate against risk. It was therefore not clear how the Management managed

risk exposures. This was contravention of Regulation 158 (1)(a) and (b) of the Public Finance Management (County Governments) Regulations, 2015 which requires the accounting officer to ensure that the county government entity develops risk management strategies, which include fraud prevention mechanism and system of risk management and internal control that builds robust business operations.

- In the circumstances, the Fund may be exposed to adverse effects due lack of risk management policy, strategies, and risk register.

### **Management Response**

- *The Lamu County has adopted for use (with appropriate changes) the Lamu County Risk Management Policy).*

### **Committees observations & recommendations**

- Members recommended all county government entities to adopt the Lamu County Risk Management Policy.

Thank you.

*(seconded)*

*(Motion proposed)*

*(Members contributions)*

**MCA Fahd Dini Adnan(Minority Leader):** Asante Bwana Naibu Spika.

Nimesimama kuunga na kupitisha mswada ulioletwa hapa Bungeni na kamati husika. Kamati imeweza kufanya kazi nzuri ya kuchambua na kuweza kutambua kuwa kuna uzembe na utepetevu kutoka kwa wizara husika ya Gatuzi. Wahusika wanafaa kuwa makini sana wakishughulikia mambo ya bajeti. Tumeweza kutambua makosa kadhaa tulipoangalia kwa kina na kutambua kuwa kuweka idadi ya pesa ya milioni nne ni makosa kubwa sana. Tukikumbuka hapo nyuma iko wakati rais Kenyatta katika bajeti yake alikosea nambari moja tu na kusababisha kukataliwa kwa bajeti hilo. Kwa hivyo makosa kidogo inaleta tofauti kubwa katika bajeti. Kamati pia imegundua kuwa shilingi elfu tano mia nne tisini na tisia pia iliweza kugunduliwa kuwa imeekwa kimakosa. Ni lazima wahusika wawe macho zaidi. Sisi kama wabunge lazima tuwe makini na wapate kufahamu kuwa tuko makini na sisi. Kamati imependekeza kuwe na ufuatiliwa katika mambo na usimamizi wa hatari za Kaunti.

**MCA John Mburu Gitonga(Hongwe):** Asante Bwana Naibu Spika. Nimesisma kuweza kuchangia mswada ulioletwa na kamatii husika ya CPIAC. Ningependa kupongeza kamatii hii kwa kazi nzuri ya kuweza kuchambua na kujua makosa kadhaa. Hii itawalazimu kuweza kuajibika kwa wananchi na kufanya mambo inavyotakikana. Kwa hivyo ni kazi nzuri kamatii imefanya na vile kamatii imewapa muda ya kuweka vitu sawa natumai sahihi wametambua kuwa hata wabunge wako macho kuangalia kazi yao na nina imani wataweza kurekebisha vile inavyostahili. waziri au afisa mkuu walikuwa wameweka stakabadhi zisizo stahili na ilipogunduliwa na kamatii wameweza kuenda mbio na kuleta stakabadhi zinazofaa. Kwa hivyo kamati imefanya kazi nzuri na ningependa kuwahimiza waendeleo hivyo hivyo.

**MCA Hope Wanjiku Mwaura(Nominated):** Asante Bwana Naibu Spika kwa kunipa nafasi hii kuweza kuchangia mswada huu. msheshimiwa Spika naunga mkono mswada huu kama mwana kamati na ningeneda kusema tumefanya kikao na mkaguzi mkuu, waziri wa idara hii na tukaelekea kuikalia na kuichambua na tukatoa mapendekezo yetu. katika upekuzi wetu tumeweza kuona kuwa makosa yanajirudia. Kama hii makosa ya wahusika kukosa kunakili takwimu inayostahili ni kitu ambayo ingetambulika laiti wangechukua muda warudie kwa kina. Waliweza kutoa sababu ya kuwa wako wachache na kweli tulivyoona wako wachache ila hilo haliwezi kuwa sababu ya kutofanya kazi inavyostahili. Tuliwapea tarehe ya wao kuenda na kuweka mambo yao sawa na naomba ifuatiliwe kwa sababu pesa hizi ni za umma na walemavu ni watu muhimu katika jamii ambayo mambo yao inafaa kupewa kipaombele. tumependeza kama kamati serikali ya gatuzi iweze kutengenza usimamizi wa hatari za kaunti moja yenye itasimamia idara zote za kaunti.

**MCA Rebecca Wambui Wainaina(Nominated):** Asante Bwana Naibu Spika. Pia mimi naungana na wenzangu kuunga mkono ripoti hii ya Kamati kama mwana kamati. Ni vizuri wahusika waweze kufuatilia kwa kina maswala haya ya walemavu. Makosa mengi tulitambua ni ya kujirudia na mambo haya yanaweza kutatuliwa pindi wahusika watakuwa makini. Ni lazima watu wafanye kazi kama kikundi kwani hii itapunguza idadi ya makosa. Vile vile ni vyema wahusika wawe na ratiba ya kuwapa muongoza katika kazi yao. Naunga mkono mswada huu.

### **Mover's Response**

**MCA Beatrice Wamaita Munge(Nominated):** Thank you Mr. Deputy Speaker and distinguished members of the house for your significant contributions to the motion introduced by the CPIAC committee. Mr. Speaker, one central theme that has been consistently highlighted by many honorable members is the critical importance of teamwork. Effective teamwork not only alleviates individual workloads but also enhances overall efficiency and productivity. Furthermore, many errors that we encounter could be mitigated through the promotion of collaborative efforts.

Thank you.

### ADJOURNMENT

**Deputy Speaker (Honorable Paul Kimani Njuguna):** Honorable Members, there being no other business, the Assembly stands adjourned until today in the afternoon, 13<sup>th</sup> November, 2024 at 2: 30 p.m.

*The Assembly rose at 12:30 p.m.*