



OFFICIAL HANSARD REPORT

COUNTY ASSEMBLY OF BOMET

THIRD COUNTY ASSEMBLY

ASSEMBLY DEBATES

Vol. 2 NO. 85

DAILY HANSARD

The Assembly met at the Main Assembly Chamber,

Dr. Joyce Laboso Centre at 2:30 p.m

Third County Assembly - Second Session

Wednesday Afternoon 4th October, 2023

(The Assembly met at 2:30 p.m. in the

County Assembly Mini Chamber at County Assembly Buildings)

[Hon. Speaker (Hon. C. Korir) in the Chair]

PRAYER

Hon. Temporary Speaker (J. Kipkirui): Welcome Hon. Members, in the public gallery we have 19 learners from Tagaruto Primary School who are accompanied by their teachers. You are highly welcome and you are required to follow the proceedings. I hope you will be able to learn from that. Thank you.

PAPERS

Hon. C. Langat (Boito Ward, UDA): Thank you very much, Hon. Temporary Speaker. I beg to lay the following Papers on the table of the county assembly today Wednesday 4th October 2023, the County Public Investments and Accounts Committee report on the examination report of the auditor general on the Bomet Water Company Limited for the financial year ended 30th June 2021. I beg to lay.

Hon. Temporary Speaker (J. Kipkirui): Proceed.

NOTICES OF MOTIONS

Hon. C. Langat (Boito Ward, UDA): Hon. Temporary Speaker I beg to give notice of the following motion that pursuant to Standing Order 198, 2 this county resolves to adopt the county Public Investments and Accounts Committee report on the report of the Auditor General on the Bomet Water Company Limited for the financial year ended 30th June 2021, I beg to lay.

Hon. Temporary Speaker (J. Kipkirui): Proceed. I direct that the Assembly Rules and Procedures Committee slot time for debate of the motion by Hon. Charles Langat chairperson Public Investments and Accounts Committee.

(Point of order)

Hon. B. Langat (Merigi Ward, Independent): Hon. Temporary Speaker, how can we continue this way without the order paper on our table?

Hon. Temporary Speaker (J. Kipkirui): I believe we have the order papers ready. Honourable members, can you check the Order Paper on your gadgets?

MOTION

Hon. C. Langat (Boito Ward, UDA): Hon. Temporary Speaker, pursuant to the mandate of the County Public Investments and Accounts Committee and on behalf of the members of the committee, I beg to present the report of the committee on the issues raised in the report of the auditor general on Bomet Water and Sanitation Company for the period ending 30th June 2023. The committee's objective was to ascertain whether the systems formulated and applied by the company were reliable for the management of its resources in delivering its mandate. The auditor covered the company's expenditure for the period commencing 31st June 2019 to 30th June 2020. Upon concluding the audit, the auditor general prepared a report touching on the following areas; report on the financial statement, report on the lawfulness and effectiveness in the use of public resources, report on the effectiveness of internal control risk management and governance.

This report is more similar to what we have deliberated upon earlier on and the status of the report is a qualified report. The issues are more or less the same but only the financial year differs. The committee noted that the auditor general upon auditing the Financial Statements of the County Executive which comprises the statement of financial position as of 30th June 2020, statement of profit and losses and other comprehensive income, statement of changes in equity, statement of cash flows and statements of comparison of budget and actual amounts for the year then ended, and a summary of significant accounting policies and other explanatory information in accordance with the provisions of Article 229 of the Constitution of Kenya and section 35 of the Public Audit Act, 2015, was able to express Qualified Opinion.

The committee was concerned that the management of the company did not have a clear plan on how long outstanding trade receivables particularly owed by the customers will be collected. It was also noted that as of April 2023, the amount owed to the company had risen to Kshs 203 Million. The committee was not satisfied with the response and thus this matter is marked as unresolved. The committee recommends that the Auditor General should undertake a special audit on this issue since this is the most significant aspect affecting the turnover and health of the Company.

The statement of financial position reflects Kshs 92,005,784 for trade and other payables. However, the balance included a long outstanding payables amounting to Kshs 38,388,425 owed to other water agencies/bodies as detailed below;

1. Lake Victoria South Waterworks Development Agency –Kshs 8,241,949
2. Water Resources Management Authority-Kshs 4,686,671

The Accounting Officer noted that the long outstanding trade and other payables of Kshs 38,388,425 were caused by cash flow challenges occasioned by Government directive on non-

water disconnection due to the outbreak of Covid-19. He also stated that the management has so far reduced payables and is committed to settling the outstanding debts once the company is back to its stable financial position. Finally, the accounting officer averred that the Company has paid a total of Kshs 756,000 to WASREB Kshs 200,000, and cleared outstanding KPLC Electricity bills of Kshs 29 million. The management further submitted copies of payments schedule made to WASREB & KPLC for audit verification.

The committee was not satisfied with the response by the management and further noted that failure to settle long outstanding debts negatively affected the operations of the company was indicative of poor performance. The committee recommends that the management of the company must put in place clear strategies including timelines on debt collection within one month of adoption of this report. The Committee was satisfied with the response and the matter was marked as resolved.

Unsupported inherited community loan. The statement of financial position as at 30 June, 2022 reflects non-current liabilities of Ksh.444, 373 in respect of Kamureito Water Project Loan. The balance represents a community loan obtained from a Bank as per the letter of offer dated 19 December 2014 and taken over by the Company. However, the loan was supported by deed of transfer and no documents were provided to clarify the circumstances under which the water company took over the community project loan.

Further, the loan has taken too long to be settled and is in arrears since the company stopped remitting repayments in July 2017. The management also did not provide any reason or explanation for the failure to settle the loan and consequently, it continues to attract interest at 18.5% per annum. In the current circumstances, the validity and accuracy of the Kamureito water project loan balance of Kshs 443,373 as of 30 June 2020 could not be confirmed.

The Accounting Officer submitted that at the time of taking over, the project was experiencing a lot of challenges and was not able to serve the intended project area, as stated in the minutes. In that regard, the committee was concerned that failure by the company to service the loans with regards to the project inherited from the community since July 2017 has caused the liabilities to increase as a result of interests and penalties. It was also evident that there was laxity on the part of the management of the company to address the issue of settling the liabilities.

The Committee recommends that all the outstanding loans of Kamureito Water Project which was taken over by BOMWASCO should be serviced and cleared within the current financial year so as to avoid further costs in interests and penalties.

Note 17 to the financial statements discloses staff salaries deductions and June, 2020 salaries of Kshs. 21, 702, 761. Of this amount, Kshs. 18, 416, 098.50 relates to deductions not remitted to

Lap Trust from March 2018. The Company is therefore exposed to the risk of incurring penalties and litigation with the continued delay in remitting the deductions when they fall due. This is contrary to Section 19 (4) of the Employment Act 2007 which requires an employer who deducts an amount from an employee's remuneration to pay the amount so deducted in accordance with the time period and other requirements specified in the law. To the extent, the Company is in breach of the law.

The Accounting Officer submitted that during the year under review the company had unremitted statutory deduction of Kshs 21, 702, 761 as of 30th June 2020. That this was occasioned by the cash flow challenges faced by the Company related to default payments by our major customers that include Kericho County government which owed the company Kshs. 37, 445, 341.

The Accounting officer also stated that the company has put in place measures to enhance revenue collections and on 28th October 2019, the company made a payment of Kshs. 6, 000, 000 to LAPTRUST covering the period up to October 2018.

The management further submitted a copy of payment of Kshs. 6 M to LAPTRUST for audit Verification (Annex 4).

Committee observation

The committee observed;

- (i) That failure to remit statutory deductions from employees' salaries had far-reaching implications that negatively affected the employees of the company. The committee also noted that as of May 2023, salaries for five months had not been paid which subject employees to pecuniary embarrassment.
- (ii) That there have been no clear strategies to deal with revenue collections on how to restructure and turn around the company to become profitable.
- (iii) There is no clear plan for addressing the issue of company employees and their remuneration and entitlements by the company, and discrepancies in revenues.

The Committee recommends that the company's management must prepare a clear and detailed arrangement on how unpaid statutory deductions and employee salaries are settled within 90 days of the adoption of this report.

The Company incurred an expenditure of Kshs. 86, 455, 624 on staff costs representing fifty-nine percent (59%) of the Company's total operational costs of Kshs. 146, 086, 920. This is contrary to paragraph 3.15 of the Model Human Resource Policy and Procedures Manual for Water Service Providers by WASREB which prescribes that in determining the staff establishment, the Water Service Provider shall be guided by WASREB sector benchmarks on personnel expenditures as a percentage of total operation costs. The management has explained that the high wage bill has

been caused by the recruitment of more staff during the year under review hence no efforts appear to have been made to check the wage bill.

The Accounting Officer submitted that WASREB guideline as per paragraph 3.15 of the Model Human Resource Policy and Procedures Manual for Water Service Providers by WASREB of staff levels is 7-11 staff for every 1000 connections.

Further, the personnel expenditure as per the percentage of O&M costs is at 38 % (83, 655, 611/ 222, 455, 611) which is within the sector benchmark of 40% for medium companies.

The number of customers' connections then was 20,000. This implies that the company optimal personnel should be $20000 \times 11/1000 = 220$ staff against 204 at the time of audit.

Finally, the accounting officer indicated that in order to manage wage bill, the company has suspended recruitment to replace those who exit the company on retirement and non-renewal of staff on contract.

The management submitted a copy of WASREB impact report issue no 13 page 39 (**Annex 5**) for audit Verification.

The Committee was concerned that even though the company staffing was within the WASREB guidelines, the performance of the company in terms of revenue collection had deteriorated beyond unimaginable levels. It is very apparent that the company recruited without adherence to its staff needs resulting in a bloated wage bill which has seriously affected the performance of the company.

It is recommended that the management should undertake the following initiatives within six months after the adoption of this report;

- a) Staff rationalization and optimization
- b) Introduce performance contracts and appraisal

Available records indicate that the Company produced 5, 119, 519 cubic meters (M³) of water, of which only 2, 180, 915 M³ were billed to customers leaving out the balance of 2, 938, 604 M³ unbilled representing 57% of the production as Non-Revenue Water (NRW). The NRW exceeded the set threshold of 25% as approved by the Water Services Regulatory (WASREB) guidelines.

The Accounting Officer submitted that the high non-revenue water reported is attributed to both technical and commercial losses. Technical losses include visible and non-visible leaks and bursts due to aging infrastructure which were inherited from the mother Agency. Whereas commercial losses are due to illegal consumptions, flat-rated consumers and malfunctioning meters contribute to NRW. To address the above challenges, the accounting officer indicated that the Company initiated replacement of old and dilapidated PVC pipelines with HDPE network in Bomet town Silent line - 3 km, Sergutiet Line-5km and Boito raising main - 4km in the FY 2020. These are

capital-intensive measures and the County Government through the Department of Water is in the process of replacing other networks taken over by the company by procuring more water meters which has been factored in the current financial year budget 2022 - 2023 and so far they have procured 1000 smart water meters at a total cost of Kshs 19, 934, 650.

Finally, the Accounting Officer stated that the County Government of Bomet on behalf of the Water Company has entered an MOU with the State Ministry of Water to address the issue of Non-Revenue Water as part of revenue enhancement measures. This will ensure 100% metering.

A copy of pictorial evidence of ongoing meter replacements has been availed for audit Verification (Annex 6).

The committee observed that the response was not satisfactory since there were neither clear timelines nor financial resources set aside for ensuring that the issue of high Non-Revenue Water is dealt with. It was further observed that as of May 2023 Non-Revenue Water stood at 66%.

The Committee recommends that the management of the company must put in place clear strategies to mitigate water losses within three months of the adoption of this report by the Assembly.

Billing records for the year ended 30 June 2020 revealed that an average of seven hundred and fifty-six (756) Customers had water connections without meters and were billed on average consumptions. Although Kshs. 6, 759, 255 was realized as revenue from these customers translating to 5% of the total sales, billing of customers without meters could result in possible loss of water hence a high percentage of Non-Revenue Water.

The Accounting Officer submitted that unmetered connections were due to malfunctioning water meters. However, the Company has procured and installed all the 756 customers who were under flat rate with pre-paid meters leading to non-revenue water.

A copy of the list of customers metered was availed for audit Verification.

The committee observed that the response given was not satisfactory. The management submitted a list of customers purported to have been metered as indicated in Annex 7. The list provided is unverifiable and upon further investigation, the committee noted that the list provided was misleading. This matter is thus marked as resolved.

It is evident that the management is not giving this issue the necessary attention and the Committee recommends that a special inquiry be undertaken

The statement of financial position reflects non-current assets balance of Kshs. 47, 592, 817. Included in this balance is Kshs.17, 573, 015 for Chebunyo – Siongiroi Water Project financed by

grant from Water Sector Trust Fund (WSTF) during the financial year 2015/2016 for the construction of a water supply extension to connect the Chepalungu area from Moi Girls - Siongiroi water distribution point. Payment documents indicate that the total grant amount of Kshs. 17, 573, 015 had been paid. However, the project failed to take off during the test run on completion due to low water volumes/levels at the in-take.

The feasibility study documents on the project have not been availed for audit to establish whether the project was confirmed viable and a site inspection visit carried out in the month of January 2020 noted that the site has since been abandoned.

The Accounting officer submitted that the hydrological report for the proposed water source shows that there would be sufficient water to serve the entire area without affecting downstream users. The hydrological report has been availed for audit verification.

The Accounting Officer also averred that indeed It is true that Kshs. 17, 573, 015 was utilized to construct an extension line from Siongiroi to Chebunyo, funded by WSTF in FY 2015/ 16 and the project being a multiyear project was supposed to have a direct line to connect from Sigor intake works to Siongiroi with funding from the county. However, due to financial challenges, it was not completed on time, but currently, it is at 95% completion and expected to be operational before the end of the financial Year 2022 - 2023.

Copies of the hydrogeological report (Annex 8 (a)) Budget for 2020/ 2021 and 2022/ 2023 with status progress report (Annex 8 (b)) were availed for audit Verification.

The committee observed that the response by the management was unsatisfactory and contained false and unverifiable information. The Committee undertook a site visit to the site of the project and confirmed the salient issues noted by the Auditor General. The committee observed that the water project is not functional due to low water volume at the intake as noted by the Auditor General. Furthermore, the committee noted that some of the facilities of the project have been vandalized especially in Chebunyo Market.

The Committee makes the following additional observations;

- a. The submission by the accounting officer that the project will be operational towards the end of the financial year 2022/ 2023 is misleading and false since the committee visited the project location on the stated period and confirmed the contrary. There was no significant activity taking place that justified that the project would be complete towards the end of the Financial Year 2022/ 2023.
- b. The Committee observed that the hydrological survey undertaken is questionable. This is because the hydrological report indicates that the project would be sustainable but upon

verification and as indicated by the auditor general, the project failed to take off due to low water volume at the intake.

Based on the stated observations, the committee recommends that further inquiry and investigation be undertaken within three months to establish the real issues affecting the current circumstances of the project and how the same can be revived to serve the residents of the County.

Hon. Temporary Speaker, I urge the Hon. Members to intervene for this Company to come back to life. Let us focus and do something as an Assembly.

I call upon Hon. Olivia to Second.

Hon. O. Koskei (Nominated MCA, UDA): Hon. Temporary Speaker, Sir, thank you. I Second the report.

(Question proposed and opened for debate)

Hon. P. Ronoh (Kipsonoi Ward, UDA): Hon. Temporary Speaker, thank you. Allow me to first welcome the pupils of Tagaruto Primary School. Feel at home. It is my humble duty to encourage you to work hard in school and aspire to be good citizens, government workers, business persons, and good professionals as you grow into the future.

This is the County Assembly, a body vested with the responsibility of regulating how county functions run. We also check on the excesses of the County Executive, the operations of government entities including the one that we are discussing today and represent you in this Chamber while you are at home.

Hon. Temporary Speaker, I want to come to life with the report of the Public Investments and Accounts Committee. BOMWASCO became a government entity upon a resolution of this Assembly on a report that was tabled by the Committee on Water in 2019, when they chose to adopt the report of Sessional Paper No. 3 of 2019. That was in conformity with Section 5 (1) of the PFM Act which demands that for an entity to be a government entity, it has to be passed through the Assembly.

Bomet Water Company has been given the mandate as a county government entity to dispense water at a fee to the people at home. It is disgraceful, as a stand here, that the Kamureito Water Project is the only water project in my ward. Ironically or paradoxically, the same ward is the largest in land mass.

Hon. Temporary Speaker, I conducted a research and I established that Kamureito Water Project has managed to connect only 600 users. Unfortunately, as we speak, there has been no continuous flow of water for the last month. In a nutshell, the water project is unreliable and according to the Constitution in the Bill of Rights, Article 38, water is an essential commodity and the citizens

demand that they should be served with clean drinking water. Hon. Temporary Speaker, that is not the case in my ward. To add salt to injury Hon. Temporary Speaker, this county assembly approves a budget that the county executive supplement the operations of the company to the tune of Ksh. 100 million in a year.

When the committee chair says in their recommendation that the management of Bomet Water Company should come back to work and show the prudence of use of public money, in my case if, in the stipulated timeline that the committee has given them if they are not going to make sure that water is running and they provide water to the users Mr. speaker, I would personally recommend the repealing of the section that incorporated them because 100 million is worth provision of water and if after getting the Ksh. 100 million if there is no water then I do not see any reason for them being in office. It is better for the government to work directly with water projects and provide water to the residents than to give Ksh. 100 million to Bomet Water Company yet there is no water at all.

Hon. Temporary Speaker, it is not right and it is not fair and unless the Board of Management wakes up to reality and works then we will consider rescinding the decision that was made in the second assembly in making Bomet Water Company a county entity. Hon. Temporary Speaker, I support the report and it is my humble duty to kindly urge the chair to remind us upon the elapse of the three months that they have given the management that if there is nothing going on then we will debate it again.

Hon. Temporary Speaker (J. Kipkirui): Honorable Eric Kirui.

Hon. E. Kirui (MCA Kimulot Ward, UDA): Thank you, Hon. Temporary Speaker, I rise to contribute to the report tabled by the honorable chair Honorable Charles on the auditor general report on the Bomet Water Company and I want to first start by lauding the committee for the good work they did on the report.

I wonder when the chair was giving the members this report whether the Assembly was able to understand what it meant by having a qualified report. I am a member of the Institute of Certified Public Accountants of Kenya and I am an accountant by training. Sometimes the terms used in audit are very confusing and sometimes the chair stands here and tells us they were given a qualified report, someone would think that a qualified report is a report that gives a good credence. It is second in ranking in terms of the report because it starts with an unqualified report then a qualified report then the third report would be a disclaimer of opinion then an advanced report. I followed the chair and listened through what he said when he was talking about the receivables or the money that is supposed to be collected as debts from the people who owe the company up to

the tune of almost Ksh. 220 million which is receivables then the payables are almost at Ksh. 92 million. One is lost whether we have an entity that is supposed to be called liquid and at the tail end, even if there is a recommendation of a special audit on the company.

Looking through the whole report and the analysis by the committee, it says a lot about the management of the water company. The fact that each year and in the committee that I sit in, we give the company each year up to the tune of Ksh. 100 million in budget so that we support their operations and they are not able to come up.

I would have loved to hear also whether there is any Board member who has never received any perks in terms of sitting allowances for the year in question and my humble submission and my guess would be none of them has ever gone home without earning an allowance in terms of sitting allowance in the board. Be it as it may, we will be looking at having a company that is situated within some quarters in this headquarters. Siphoning the public's Money and delivering zero service to this county. It will be unfair to the members of Bomet County and residents of Bomet County to continue having this company running as an entity in Bomet County whereas it is serving no one because you are robbing Peter to pay Paul and we are taking public money instead of even using that money well. Ksh 100 million would connect so many people. It would be very cheap to connect water on gravity to several homesteads and forego funding some people sitting at some offices here in Bomet headquarters and leaving the members of Bomet County languishing in the lack of water.

Looking through this report I know the time frame given for discussion of reports on the floor of this Assembly sometimes steals the real gist of having a conversation that would in the long run give us a very informed position on this. I would first request this Assembly that resolves to form an ad hoc committee to look into the whole company as it works. The chair is saying we give them three months but I am suggesting that we form an ad hoc committee so that we look into these issues. We even resolved that the company be declared illiquid and be declared redundant so that we are able to go to the drawing board and start from a fresh slate.

We are also looking at them not being able to support and you know when a donor has given up to Ksh. 17 million on a project in Chebunyo as we have been told by the chair and that money the ideological survey has been carried out and it came out that it was poorly done and that there is no water volume and there is nothing that is going on or to a tune of Ksh. 17 million. I think that is a serious indictment of the whole company and from this floor of the Assembly, I want to request This Assembly that we decide on the face value of this report before even we go to in-depth and say this Assembly has a special committee that looks through the operations in the water company

then we make a decision out of a very informed position and also we will also be able to invite also the office of the auditor general to carry out a special report on this company so that we make a decision.

I know once we do that, the other county entities that we have here will wake up because we will be holding people accountable for actions and also we will be putting people on notice that are using public money to the wrong use and not giving the service that we require as a county.

I rise to support this report and also urge this Assembly that we all resolve to form an ad-hoc committee to look into the issues surrounding the water company and eventually make a good decision that will either catapult this county in terms of the water company into the future or else we continue whining about the water company while a few individuals are enjoying their pecks at the expense if the people of Bomet County. I support this report.

Hon. Temporary Speaker (J. Kipkirui): Thank you very much honorable member from Kimulot. I give the mover of the motion the right of reply. Honorable Charles.

Hon. C. Langat (Boito Ward, UDA): Thank you very much. Adoption of this report will assist in triggering the action. I must also appreciate your contribution and your concern because BOMWASCO needs our serious input. Employees are suffering; the company is not making any money. The people of Bomet need services and water but what the company is giving them is a raw deal. On the full report, we as the committee have tried our level best to give an observation and recommendation in each and every report. We still have got two more reports and at the end of the day we will have to come up to a conclusion and do something.

I thank all of you; the office of the speaker, the office of the clerk, our secretariat and the members of the committee for burning the midnight oil to come up with a water type report. Let us all in one unity adopt this report so that it triggers the action. Thank you.

Question put and agreed to

BILL

First Reading

THE BOMET COUNTY LIVESTOCK SALES YARD BILL, 2023.

Hon. Temporary Speaker (J. Kipkirui): Pursuant to Standing Order 133, I commit this bill to the committee on Agriculture Livestock and Fisheries. The said committee shall conduct Public Participation and report to this honorable Assembly within 20 calendar days. I hope the chair you have noted.

Hon. P. Ronoh (MCA Kipsonoi – UDA): Noted honorable Speaker.

BILL

First Reading

THE BOMET COUNTY CONTROL OF STRAY DOGS BILL, 2023.

Hon. Temporary Speaker (J. Kipkirui): This bill stands committed to the committee on Agriculture, Livestock and Fisheries and the committee is required to report to this honorable Assembly within 20 calendar days.

Hon. P. Ronoh (MCA Kipsonoi – UDA): Thank you. We shall expedite as directed.

ADJOURNMENT

Hon. Temporary Speaker (J. Kipkirui): There being no business, this Assembly stands adjourned to tomorrow 5th October 2023 at 2.30 PM.

The Assembly rose at 4:20 p.m