



THE COUNTY ASSEMBLY OF BOMET



THIRD ASSEMBLY: THIRD SESSION

REPORT

OF THE SELECT COMMITTEE INVESTIGATING THE PROPOSED DISMISSAL OF  
HON. ANDREW SIGEI AS THE COUNTY EXECUTIVE COMMITTEE MEMBER FOR  
FINANCE, ICT AND ECONOMIC PLANNING

Hon. Speaker  
You may approve  
for tabling  
Mpsaal  
30.08.2024

AUGUST, 2024



Approved  
[Signature]  
30/08/2024

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## CHAIRMAN'S FOREWORD

### **Hon. Speaker,**

Following the submission of a Special Motion by Hon.Eric Kirui, the Hon.Member representing Kimulot Ward for the proposed removal from office of Hon.Andrew Sigei as the County Executive Committee Member for Finance, ICT and Economic Planning on grounds of gross violation of the Constitution or any other law; incompetence; and abuse of office; a select committee was then formed pursuant to Section 40(3)(a) of the County Governments Act, 2012 to investigate into the grounds contained in the resolution of the County Assembly.

On Tuesday 6th August, 2024, the Hon.Eric Kirui pursuant to Section 40(2) of the County Governments Act, 2012 and Standing Order 72 of the County Assembly Standing Orders gave a notice of the Special Motion seeking for the resolution of the County Assembly for the dismissal of Hon.Andrew Sigei as the County Executive Committee Member for Finance, ICT and Economic Planning. This was after the Hon.Speaker had approved the Special Motion having been satisfied that the Special Motion was in accordance with the provisions of Section 40(2) of the County Governments Act, 2012 and Standing Order 72 of the County Assembly Standing Orders.

The Special Motion was then consequently approved by the County Assembly on Tuesday 13th August, 2024. Consequently on 21st August 2024, a Select Committee to investigate the matter was constituted. The Hon. Speaker while referring the matter to the Committee, directed that the Committee undertakes its investigations and report to the County Assembly within ten (10) days in accordance with section 40(3)(b) of the County Governments Act, 2012 , on whether the allegations against the County Executive Committee Member have been substantiated or otherwise.

In line with the Speaker's directive, the Committee held its first meeting on Thursday, 22nd August, 2024 at 11.30 Am, in the County Assembly Mini Chamber to elect its Chairperson and the Vice-chairperson and to prepare a program of activities.

Subsequently, the Committee held a number of sittings to investigate the proposed dismissal of the County Executive committee member for Finance, ICT and Economic Planning.

The Clerk of the County Assembly wrote to the Sponsor of the Special Motion and the County Executive Committee Member for Finance, ICT and Economic Planning vide letters dated 22nd August, 2024 notifying them of the formation of the Select Committee and inviting them to attend a conference of parties on Friday, 23rd August, 2024 and a hearing

on Tuesday 27th August, 2024 either in person or by a legal representative or both.

The Sponsor of the motion and the legal counsel representing the County Executive Committee Member appeared before the Committee on 23rd August, 2024 for the pre-hearing conference and on 27th August, 2024 for the hearing.

Thereafter, the Committee considered the submissions from both parties in accordance with the Constitution, the County Governments Act, 2012, the Public Finance Management Act, 2012 and other relevant laws, the County Assembly Standing Orders and the committee's rules on the Conduct of the Investigation.

### Committee Recommendation

In accordance with Section 40(2) of the County Governments Act, the Committee conducted the hearings to investigate the matters alleged in the Special Motion seeking the dismissal of the Hon. Andrew Sigei as the County Executive Committee Member for Finance, ICT and Economic Planning on three grounds: Allegations of gross violation of the Constitution or any other law; incompetence; and abuse of office by the County Executive Committee Member and recommends to the County Assembly that pursuant to Section 40(3(b) of the County Governments Act, 2012 and Standing Order 72(9) of the County Assembly Standing Orders, the Committee having found that two grounds on the allegations against the County Executive Committee Member for Finance, ICT and Economic Planning are substantiated, the County Assembly shall afford the County Executive Committee Member an opportunity to be heard and vote whether to approve the resolution requiring the County Executive Committee Member to be dismissed.

### Acknowledgement

The Select Committee wishes to thank the Offices of the Speaker of the County Assembly and the Clerk of the County Assembly for the support extended to the Committee in the execution of its mandate.

The Committee further extends its appreciation to the Sponsor of the Special Motion, Hon. Eric Kirui, MCA and the County Executive Committee Member for Finance, ICT and Economic Planning, Hon. Andrew Sigei, for sending his legal counsel to represent him during the hearings. The Select Committee also appreciates the media for the coverage of its proceedings during the investigation.

Finally, I wish to express my appreciation to the Hon. Members of the Committee and

the Committee Secretariat who sat for long hours and made useful contributions towards the preparation and production of this report.

On behalf of the Select Committee, it is my pleasant privilege to present to this County Assembly the Report of the Select Committee on the Investigation into the Proposed Dismissal of Hon. Andrew Sigei as County Executive Committee member for Finance, ICT and Economic Planning.



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**HON. NATHAN KIBET, MCA**

**CHAIRPERSON,**

**SELECT COMMITTEE INVESTIGATING THE PROPOSED DISMISSAL OF  
HON. ANDREW SIGEI AS COUNTY EXECUTIVE COMMITTEE MEMBER FOR  
FINANCE, ICT AND ECONOMIC PLANNING**

## CHAPTER ONE

### INTRODUCTION

1. On Tuesday 6<sup>th</sup> August, 2024, the Hon. Eric Kirui, Member of the County Assembly representing Kimulot Ward gave a notice of a special Motion dated 6<sup>th</sup> August, 2024 pursuant to Section 40(2) of the County Governments Act, 2012 and Standing Order 72 of the County Assembly Standing Orders. The Notice of the Special sought a resolution of the County Assembly for the dismissal of the Hon. Andrew Sigei as the County Executive Committee Member for Finance, ICT and Economic Planning on the following grounds:

- i. gross violation of the Constitution or any other law;
- ii. incompetence; and
- iii. abuse of office;

2. The Speaker was guided by the provisions of Section 40(2) of the County Governments Act, 2012 and Standing Order 72 of the County Assembly Standing Orders. Section 40(2) of the County Governments Act provides that "*A member of the county assembly, supported by at least one-third of all the members of the county assembly, may propose a motion requiring the governor to dismiss a county executive committee member on any of the following grounds*

*—*

*(a) gross violation of the Constitution or any other law;*

*(b) incompetence;*

*(c) abuse of office;*

*(d) gross misconduct; or*

*(e) if convicted of an offence punishable by imprisonment for at least six months.*

3. Procedurally, Standing Order 72(1) provides that "*Before giving notice of Motion under section 40 of the County Governments Act, 2012, the member shall deliver to the Clerk a copy of the proposed Motion in writing stating the grounds and particulars upon which the proposal is made, for requiring the Governor to dismiss a County Executive Committee Member on ground of a gross violation of a provision of the Constitution or of any other law; where there are serious reasons for believing that the*



*County Executive Committee Member has committed a crime under national or international law; or for gross misconduct. The notice of Motion shall be signed by the Member and the Clerk shall submit the proposed Motion to the Speaker for approval.”*

4. Additionally Standing Order 72(2) of the County Assembly Standing Orders provides that “A member who has obtained the approval of the Speaker to move a Motion under paragraph (1) shall give a three (3) days’ notice calling for dismissal of a County Executive Committee Member by the Governor.
5. Further Standing Order 72(3) provides that “ upon the expiry of three (3) days, after notice given, the Motion shall be placed on the Order Paper and shall be disposed of within three days;”
6. Further to that, Standing Order 72(4) requires a list of signatures in support of the special motion to be deposited in the office of the Clerk and that the Speaker shall not allow the Special motion to be moved unless he is satisfied that the member proposing to move the Special motion has been supported by at least a third of the members. Consequently, the Hon. Speaker found that the proposed Special Motion was in the prescribed form and met the threshold because it-
  - a) was signed by 28 Members of the County Assembly in support;
  - b) was in writing;
  - c) stated the grounds and particulars upon which the sponsor proposed dismissal of the County Executive Committee Members; and
  - d) was signed by the member representing Kimulot Ward.
7. Having found that the proposed Motion met the required threshold as to form and the admissibility of the grounds contained in the Special Motion, the Hon.Speaker allowed the Sponsor to give the Notice of Motion during the afternoon sitting of the County Assembly held on Tuesday 6<sup>th</sup> August, 2024.

## The Special Motion

8. The contents of the Special Motion were as follows:

### **DISMISSAL OF HON. ANDREW SIGEI AS THE COUNTY EXECUTIVE COMMITTEE MEMBER FOR FINANCE, ICT AND ECONOMIC PLANNING**

**IN LIGHT OF** Section 40(2) of the County Governments Act, 2012, which specifies the grounds for the removal of a County Executive Committee Member, including gross violations of the Constitution or any law, abuse of office, severe misconduct, incapacity to perform duties due to physical or mental reasons, or incompetence;

**WHEREAS** Hon. Andrew Sigei, the County Executive Committee Member for Finance, ICT and Economic Planning, has committed actions contrary to the expected conduct of a public officer as defined by our Constitution and other relevant laws;

**RECOGNIZING** that a State Officer, upon taking the oath of office as required by the Constitution, he is obligated to maintain the dignity and respect associated with his position;

**UNDERSTANDING** the County Assembly's oversight role as specified in the Constitution of Kenya and the County Governments Act, 2012;

**ALARMED** by the allegations of gross misconduct, abuse of office, and legal violations that compromise the integrity and principles of public service required from such a high office in the County Government;

**FURTHER AWARE** that the County Governor in his Communication dated 4<sup>th</sup> August, 2024 suspended the said County Executive Committee Member for an indefinite period;

**THIS COUNTY ASSEMBLY** Pursuant to the provisions of Section 40(2) of the County Governments Act, 2012 and Standing Order 72 of the County Assembly Standing Orders, **RESOLVES** that the Governor Dismisses the Hon. Andrew Sigei from the office of the County Executive Committee Member for Finance, ICT and Economic Planning on the following grounds-

**(1) Gross violation of the Public Finance Management Act, 2012 and Public Finance Management (County Government) Regulations**

**(a) Violation of Section 156(2) of the Public Finance Management Act, 2012**

**THAT,** the Hon.Andrew Sigei acting as the County Executive Committee Member for Finance and Economic Planning, appears to have committed gross violation of this statutory provision by failing to implement the County Assembly's resolution contained in the adopted Budget and Appropriations Committee pending bills report of November 2023 recommending in recommendation No. 5 and 6 for disciplinary action to be taken against officers involved in fictitious expenditure and revocation of designation as accounting officers of chief officers who have flouted established laws and regulations. The County Executive Committee Member has neither revoked nor taken any appropriate disciplinary action including referring the matter to be dealt with by the appropriate bodies.

The county government, from Hon.Andrew Sigei's acts of omission and commission, had at the beginning of FY 2023/24 a stock of pending bills amounting to Kshs.897.93million, comprising of Kshs.156.24 million for recurrent expenditure and Kshs.741.69 million for development activities.

**(b) Violation of Section 132(2) of the Public Finance Management Act, 2012**

**THAT,** the Hon.Andrew Sigei acting as the County Executive Committee Member for Finance and Economic Planning, appears to have committed gross violation of this statutory provision by failing to submit to the county assembly the County Finance Bill and revenue raising measures for the Financial years 2021/2022, 2022/2023 and 2023/2024.

**(c) Violation of Regulation 82(1)(b) of the Public Finance Management(County Government) Regulations**

**THAT,** the Hon.Andrew Sigei acting as the County Executive Committee Member for Finance and Economic Planning, appears to have committed gross violation of this Regulation by operating the County Executive Bursary Fund and the Car and Mortgage Funds using commercial bank accounts contrary to Regulation 82(1)(b) of the Public Finance Management (County Governments)

Regulations, 2015, which requires that County government bank accounts must be opened and maintained at the Central Bank of Kenya. This anomaly was noted and flagged by the Controller of Budget in its April 2024 budget implementation review report of the first nine months of the financial year 2023/2024.

**(d) THAT**, the Hon. Andrew Sigei acting as the County Executive Committee Member for Finance, ICT and Economic Planning, appears to have committed gross violation of the Public Finance Management Act, 2012 and Regulations made thereunder by requisitioning money from the National Treasury and paying suppliers not listed in Forms A and B thereby disenfranchising the genuine suppliers.

**(e) Irregular Procurement Practices**

**THAT**, the Hon. Andrew Sigei acting as the County Executive Committee Member for Finance and Economic Planning, appears to have committed gross violation of the Public Finance Management Act, 2012 and Regulations made thereunder by purchasing heavy machinery outside the budget, despite budgetary allocation or approval by the County Assembly for the purchase of heavy machinery in the year 2023/2024, the county lacks ownership documents, meaning the purchase was never finalized as per contract. This contravenes Section 197(1) of the Public Finance Management Act, 2012, which requires proper documentation and finalization of procurement processes.

**(2) Incompetence**

**THAT**, the Hon. Andrew Sigei acting as the County Executive Committee Member for Finance and Economic Planning, appears to be incompetent by-

(i) Failing to ensure that the designated accounting officers under section 148(1) of the Public Finance Management Act, 2012 protects the county assets as required under section 149(2) of the Public Finance management Act, 2012 which requires designated accounting officers to:

(m) manage the assets of the entity to ensure that it receives value for money when acquiring, using or disposing of its assets;

(n) dispose of assets at the most competitive price and at the lowest possible cost ensuring that the proceeds from all asset disposals are deposited in a bank account of the entity;

- (o) ensure that the respective county government entity has adequate systems and processes in place to plan for, procure, account for, maintain, store and dispose of assets, including an asset register that is current, accurate and available to the relevant County Treasury or the Auditor-General;
- (ii) Failing to ensure that the county collects sufficient revenue- As a person who designates persons as collectors and receivers of revenue under section 157 of the Public Finance Management Act, 2012, the County Executive Committee Member has consistently failed to meet the target of collecting own source revenue for a number of financial years. For example during the first nine months of the financial year 2023/2024, the county collected a total of **KES 157,105,283** against a budgeted figure of **KES 332,041,830**.
- (iii) The County Executive Committee Member has also constantly failed to submit the requisite revenue raising measures and the county finance bill for the financial years 2021/2022, 2022/2023 and 2023/2024 contrary to sections 132(1) and (2) of the Public Finance Management Act, 2012.
- (iv) Failing to submit payroll and other payroll related costs- The County Executive Committee Member has also constantly failed to submit to the county assembly payroll and payroll related costs. He has also failed to ensure that all the personnel emoluments are processed through the Integrated Payroll and Personnel Database (IPPD) system. It is noteworthy that during the first nine months of 2023/2024 Financial year, a total of Kenya shillings 283.37 million was processed through manual pay-rolls which accounted for 11.6 per cent of the total personnel emoluments cost.
- (v) Failure to put in place a functional audit committee as required under Regulation 167 of the Public Finance Management(County Government) Regulations;
- (vi) Failure to adhere to fiscal responsibility principles contained in Article 201 of the Constitution and section 107 of the Public Management Act, 2012 and Regulation 25 of the Public Finance Management(County Governments) Regulations in particular:-
  - (i) Section 107(2) of the Public Finance Management Act, 2012 which provides –

In managing the county government’s public finances, the County Treasury shall enforce the following fiscal responsibility principles—

- (a) the county government’s recurrent expenditure shall not exceed the county government’s total revenue;

(b) over the medium term a minimum of thirty percent of the county government's budget shall be allocated to the development expenditure;

The Hon. Andrew Sigei acting as the County Executive Committee Member for Finance and Economic Planning has failed to ensure that the county government's development budget over the medium term is at a minimum of thirty percent. For example, in the financial year 2024/2025 submitted budget, the development budget was at a paltry twenty percent which blatantly contravenes section 107(2)(b) of the Public Finance Management Act, 2012.

- (ii) Regulation 25(1) of the Public Finance Management (County Governments) Regulations which provides-

In addition to the fiscal responsibility principles set out in section 107 of the Act, the following fiscal responsibility principles shall apply in the management of public finances—

- (a) The County Executive Committee Member with the approval of the County Assembly shall set a limit on the county government's expenditure on wages and benefits for its public officers pursuant to section 107(2) of the Act.

The Hon. Andrew Sigei acting as the County Executive Committee Member for Finance, ICT and Economic Planning has failed to submit to the county assembly for approval a limit on the county government's expenditure on wages and benefits for its public officers.

- (b) The limit set under paragraph (a) above, shall not exceed thirty five (35) percent of the county government's total revenue;

The Hon. Andrew Sigei acting as the County Executive Committee Member for Finance, ICT and Economic Planning has failed to ensure that the county government's expenditure on wages and benefits for its public officers does not exceed thirty five (35) percent of the county government's total revenue. The April 2022/2023 Office of the Auditor General's report indicates that the county government's wage bill is forty-four (44) percent which is nine (9) percent over and above the allowable limit of thirty five (35) percent.

- (vii) Failure to publish and publicize the County Fiscal Strategy Paper and the County Annual Development Plan contrary to the provisions of Sections 117(6) and 126(4) of the Public Finance Management Act, 2012.

- The Hon. Andrew Sigei acting as the County Executive Committee Member for Finance and Economic Planning has constantly failed to ensure that the County Fiscal Strategy Paper and the County Annual Development Plan are published contrary to the provisions of Sections 117(6) and 126(4) of the Public Finance Management Act, 2012.
- (viii) Failure to develop a Monitoring and Evaluation Policy to provide a framework for monitoring, evaluation and reviewing project implementation.

### **(3) Abuse of office**

- (i) The Hon. Andrew Sigei acting as the County Executive Committee Member for Finance, ICT and Economic Planning was part of a wider team that irregularly employed Bomet Water and Sanitation Company (BOMWASCO) personnel which in turn doubled the wage bill to unsustainable levels.
- (ii) The Hon. Andrew Sigei acting as the County Executive Committee Member for Finance, ICT and Economic Planning and his cohorts used their offices to irregularly and unlawfully dissolve a legitimate Bomet Water and Sanitation Company Board of Directors and formed an Interim Board against the WASREB regulations and the 2016 Water Act.
- (iii) The Hon. Andrew Sigei acting as the County Executive Committee Member for Finance, ICT and Economic Planning in conjunction with other County Executive Committee Members and under his stewardship irregularly brought in many Water Schemes e.g. Ndanai, Mogombet, Sergutiet, Kamureito, Kapkesosio, Gelegele and Kapcheluch. These schemes were on flat water rates with a lot of liabilities. This pushed the company to unfortunate levels of insolvency. As a County Executive Committee Member Finance, ICT and Economic Planning, Hon. Andrew Sigei did nothing by not considering the financial resources that should have been included in the handing over.
- (iv) The Hon. Andrew Sigei as a shareholder with 1 % shares of BOMWASCO intentionally refused to attend an annual general meeting on 29/12/2022 despite being invited via a hardcopy and soft copy invite. He was even called on that day by the present CECM Water and the County Attorney.
- (v) The Hon. Andrew Sigei in October 2022 alongside others formed an Interim Board while the other board was still in office against the WASREB regulations and the Water Act, 2016.
- (vi) **THAT** as a board member of BOMWASCO, he intentionally orchestrated a scenario whereby at every end of a three year term for any Board, the County Executive introduces this opaque Interim Board so as to do their

dirty dealings and governance interference which was meant to disrupt smooth running of the company.

- (vii) **THAT**, WASREB recommendation is that at the end of a term of a Board, a third of the members term should be renewed so as to keep an institutional memory. The Hon. Andrew Sigei was one of the members who removed the entire Board against the WASREB recommendation.
- (viii) **THAT**, the Hon. Andrew Sigei, acting as the County Executive Committee Member for Finance, ICT and Economic Planning in conjunction with the present Chief Officer Health irregularly paid out KES.5 million from Longisa Referral Hospital disguised as water bills. This money can't be traced since it was not paid to BOMWASCO and were not water bills as allegedly called.
- (ix) **THAT**, the Hon. Andrew Sigei acting as the County Executive Committee Member for Finance, ICT and Economic Planning abrogated himself powers on when and how to pay the monthly subsidy of KES.8.3 million to the company against the binding arrangements/ agreement between the County Assembly, the County Government and BOMWASCO of 2015.
- (x) **THAT**, the Hon. Andrew Sigei misled the Senate PAC Committee on electricity pending bill of KES. 43.4 million, which was part of a subsidy to BOMWASCO in 2020/2021 financial year. This money was to be paid by BOMWASCO to Kenya power but the Hon. Andrew Sigei didn't pay which then became an audit query.
- (xi) **THAT**, during the this year's appearance before the Public Investment and Public Accounts Committee during the inquiry into the operation and performance of the Bomet Water and Sanitation Company Ltd, the **Hon. Andrew Sigei** lied under oath that he has paid all the monthly subsidies.
- (xii) **THAT**, the Hon. Andrew Sigei acting as the County Executive Committee Member for Finance, ICT and Economic Planning totally failed to lead by example by failing to honor BOMWASCO water bills. He has by acts of commission and omission and acquiescence allowed departments not to honor their water bills which is now running into millions i.e over KES 10 million.

9. Section 40(3) of the County Governments Act provides that-

"If a motion under subsection (2) is supported by at least one-third of the members of the county assembly—



(a) the county assembly shall appoint a select committee comprising five of its members to investigate the matter; and

(b) the select committee shall report, within ten days, to the county assembly whether it finds the allegations against the county executive committee member to be substantiated.

10. The County Assembly became seized of the matter when the Special Motion was supported by 27 Members of the County Assembly hence stood approved by the County Assembly.
11. Subsequently, the County Assembly resolved to appoint a Select Committee to investigate the allegations contained in the Special Motion pursuant to the provisions of Section 40(3)(b) of the County Governments Act and report to the County Assembly within ten (10) days of its appointment on whether it finds the allegations against the county executive committee member to be substantiated.

### **Establishment of the Committee**

12. Section 40(3) (a) of the County Governments Act, 2012 provides for the appointment of a select committee comprising five members to investigate the allegations contained in the Special Motion.
13. Further, Section 40(3)(b) of the County Governments Act, 2012 provides that the select committee shall report to the County Assembly whether it finds the allegations against the County Executive Committee Member to be substantiated.

### **Committee Membership**

14. Following the approval of the motion for the proposed dismissal of Hon. Andrew Sigei as the County Executive Committee Member for Finance, ICT and Economic Planning, a select committee comprising of the following members was established by the County Assembly on Wednesday 21<sup>st</sup> August, 2024-

- i. Hon. Kibet Nathan-Chairperson
- ii. Hon. Dennis Kiplangat Ngeno-Vice Chairperson
- iii. Hon. Evaline Sang
- iv. Hon. Ann Chepkemoi

- v. Hon. Josphat Kipkirui

**Committee Secretariat**

15. The Select Committee was supported in the execution of its mandate by a Secretariat comprised of:

- i. Rashid Tonui
- ii. Calvine Kitur
- iii. Jesca Rotich
- iv. Benard Rono

## CHAPTER TWO

### Legal Framework

16. Section 40(2) of the County Governments Act, 2012 provides that, “ A member of the county assembly, supported by at least one-third of all the members of the county assembly, may propose a motion requiring the governor to dismiss a county executive committee member on any of the following grounds —

*(a) gross violation of the Constitution or any other law;*

*(b) incompetence;*

*(c) abuse of office;*

*(d) gross misconduct; or*

*(e) if convicted of an offence punishable by imprisonment for at least six months.*

17. Procedurally, Standing Order 72( 1) provides that “*Before giving notice of Motion under section 40 of the County Governments Act, 2012, the member shall deliver to the Clerk a copy of the proposed Motion in writing stating the grounds and particulars upon which the proposal is made, for requiring the Governor to dismiss a County Executive Committee Member on ground of a gross violation of a provision of the Constitution or of any other law; where there are serious reasons for believing that the County Executive Committee Member has committed a crime under national or international law; or for gross misconduct. The notice of Motion shall be signed by the Member and the Clerk shall submit the proposed Motion to the Speaker for approval.*”

18. Additionally Standing Order 72(2) of the County Assembly Standing Orders provides that “A member who has obtained the approval of the Speaker to move a Motion under paragraph (1) shall give a three (3) days’ notice calling for dismissal of a County Executive Committee Member by the Governor.

19. Further Standing Order 72(3) provides that “ upon the expiry of three (3) days, after notice given, the Motion shall be placed on the Order Paper and shall be disposed of within three days;”

20. Further to that, Standing Order 72(4) requires a list of signatures in support of the special motion to be deposited in the office of the Clerk and that the Speaker shall not allow the Special motion to be moved unless he is satisfied that the member proposing to move the Special motion has been supported by at least a third of the members.
21. Additionally, the Committee was guided by the Constitution and the following statutes among others as it executed its mandate:
- a) The County Governments Act, 2012
  - b) The County Assemblies Powers and Privileges Act, 2017
  - c) The Penal Code, Cap 63;
  - d) The Evidence Act, Cap 80;
  - e) The Public Officer Ethics Act, Cap I 85B;
  - f) The Leadership and Integrity Act, Cap I 85C;
  - g) The Public Finance and Management Act, Cap 412A;
  - h) The Public Procurement and Asset Disposal Act, Cap 412C; and
  - i) The Fair Administrative Action Act, Cap 71 I.
22. The Committee was also guided by the County Assembly Standing Orders and its Rules on Conduct of Investigation.

### Public Participation and Submission of memoranda

#### **Notification to the Public**

The Constitution of Kenya and the County Governments Act, 2012 obligate the County Assembly to facilitate public participation and involvement in the legislative business and other businesses of the Assembly and its Committees. Participation of the People in decision making process is one of the national values and principles of governance provided for under Article 10(2) (a) of the Constitution. Article 196(1) (b) of the Constitution also provides that a county assembly shall facilitate public participation and involvement in the legislative and other business of the assembly and its committees. As such, the County Assembly of Bomet through an advert in the print media dated 23<sup>rd</sup> August 2024 invited the members of the public to submit written memoranda for or against the proposed removal from office of Hon. Andrew Sigei as the County Executive Committee member for Finance, ICT and Economic Planning. As on Monday 26<sup>th</sup> August 2024 at 9.00 Am, the committee had received a total of 5 memoranda most of which were not under oath as required by the law. The committee did consider a memorandum

of one Mr. Stanley Orwasa Ngeno who presented a written memorandum on oath as required by the law.

## **Conduct of Committee Proceedings**

### **Rules on Conduct of Investigation**

23. In accordance with the directions of the Hon. Speaker, the Clerk of the County Assembly prepared draft Rules on the Conduct of Investigation which the Committee adopted on Friday 23<sup>rd</sup> August, 2024 during its second sitting. The Rules are attached to this report as Annexure 6.

### **Meetings of the Select Committee**

24. Following its establishment on Wednesday, 21<sup>st</sup> August 2024, the Select Committee held its First Sitting on Thursday 22<sup>nd</sup> August, 2024 at 11.30 A.M. Pursuant to Standing Order 171( 1)(a) the Committee elected the Chairperson and Vice-Chairperson. The Hon.Nathan Kibet,MCA and the Hon. Dennis Kiplangat Ngeno, MCA were unanimously elected as the Chairperson and Vice Chairperson of the Committee respectively.

25. The Committee considered and adopted the Rules on the Conduct of Investigation and its program. Further, the Committee appointed Friday 23<sup>rd</sup> August, 2024 and Tuesday 27<sup>th</sup> August, 2024 as the dates for the pre-hearing and hearing respectively.

### **Invitations to Appear**

26. The Committee observed that Section 40(4) of the County Governments Act, 2012 provides for the right of the County Executive Committee Member to appear and be represented before the Select Committee during its investigations.

27. Having made this observation, and taking into account the strict statutory timelines, the Committee at its first meeting held on Thursday 22<sup>nd</sup> August 2024, resolved to invite the Sponsor of the Special Motion and the County Executive Committee Member to appear before the Committee for the pre-hearing conference and hearing. The invitations to Appear were issued on 22<sup>nd</sup> August, 2024.

## **Pre-Hearing Conference**

28. Pursuant to Rule 3.1 and 3.2 on the Rules of procedure, the Committee vide letters dated 22nd August, 2024, invited the Sponsor of the Special Motion and the County Executive Committee Member to a pre-hearing conference on Friday, 23<sup>rd</sup> August 2024 at 9.00 Am at the County Assembly Mini Chambers.
29. To this end, the Sponsor of the Special Motion and the legal counsel representing the County Executive Committee Member attended the pre-hearing conference on **Friday 23<sup>rd</sup> August, 2024**. The purpose of the conference was to address and resolve any preliminary concerns or issues that may arise before the commencement of the investigation hearings ensuring a smooth and efficient process.
30. During the pre-hearing conference, the Sponsor of the Motion provided a list of documentary evidence that he would rely on and would be adducing during the hearing proceedings.
31. The parties promised to exchange their respective documents together with the evidence to be relied upon.

## **Reading of particulars of the allegations**

32. Pursuant to Rule 6.2 on the Conduct of hearings, at the commencement of the hearing, the Chairperson invited the Sponsor of the Motion to read out, verbatim, the particulars of the allegations against the County Executive Committee Member as appearing in the Special Motion. In response to the allegations, the Legal counsel representing the County Executive Committee Member indicated that he wasn't in a position to plead to the charges and sought for more time to adequately respond to the allegations contained in the Special Motion.

## **Hearing of Evidence**

33. The Committee held a sitting on Tuesday 27<sup>th</sup> August, 2024 to hear the evidence and submissions of the parties. The verbatim evidence adduced is as recorded in the Hansard attached to this report as **Annexure 7**.
34. The Sponsor of the Motion called one witness being one Mr. Stanley Orwasa Ngeno to testify during the hearing.

## CHAPTER THREE

### CONDUCT OF PROCEEDINGS

#### **Pre-Hearing Conference of Parties**

##### **Preliminary Issues**

35. On Friday, 23<sup>rd</sup> August, 2024, the Committee held a pre-hearing conference of parties to address and resolve any preliminary concerns or issues that may arise before the commencement of the investigation hearings ensuring a smooth and efficient process. The meeting was also meant to confirm the documentation and evidence served and received, be apprised of the applicable procedure and consider any preliminary questions relating to the proceedings of the Committee.
36. The County Executive Committee Member through his Advocate Mr.Desmond Leteipa Silei, submitted that he was aware of the motion and affirmed receiving the notification from the office of the Clerk with the following documents: The order paper containing the approved motion on the proposed removal for your proposed removal from office, draft committee rules of procedure and approved committee work-plan and calendar. The legal representative indicated that he didn't have the contents of the motion on formation of select committees. He also informed the committee that he was not aware of the advertisement in the print media on the submission of written memoranda and confirmed receipt of the letter.

The legal counsel also stated that he had the following reservations:

- a) That the notice served to the County Executive Committee Member (CECM) was inadequate and insufficient as it infringes on the rights of the CECM. He stated that the formation of the select committee needn't have to done hurriedly to disadvantage the CECM.
- b) That there were two court pending petitions before Bomet High court and the Employment and Labour Relations Court in Kericho.
- c) That the CECM is unavailable due to short notice but all the same his team is ready to proceed with the hearing.

## Determination on Preliminary Issues

37. The Committee deliberated on the issue of extension of time raised by the legal counsel representing the County Executive Committee Member. The committee made a clarification to the legal counsel on the timelines that the County Assembly is bound by the standing order 72(6) of the County Assembly Standing Orders to appoint a select committee to investigate the grounds contained in the Special Motion within a period of seven (7) days.

Concerning the Motion moved and approved on 29<sup>th</sup> July, 2024, the legal counsel indulged the chairperson to shed light on the fate of the said motion. The chair informed the legal counsel that what was before the select committee was a new motion with different rules and procedures and even the composition of the committee is distinct from the initial one.

The counsel was hesitant on the hearing date and time since he indicated that he didn't have any confirmation from his client as to their level of preparedness and attendance. He therefore, requested the time to be adjusted as he was representing all the three CECMs. He further informed the committee that currently the CECM Finance, ICT and Economic Planning was on suspension and couldn't access some information without the authority of the County Secretary. He then requested for another date apart from Monday, 26<sup>th</sup> August 2024. On the appearance of the CECM Finance, ICT and Economic Planning during the hearing proceedings, the legal counsel requested to confirm the same after consulting with his client and also requested for a fair hearing of the matter.

After consultation with the members of the select committee, the chairperson granted the legal counsel's request and ruled that the hearing be done on **Tuesday 27<sup>th</sup> August, 2024**. The legal counsel further informed the committee that his client hopes that he would be given a fair hearing and that if a member of the committee would be perceived to be unfair, then the committee would stick to the dictates of the constitution and standing orders and that in their preparation they need to contact the County Executive given that the CECM in question is on suspension.

After consultations with the Committee members, the Chairperson made the following directions on the issues raised by the legal counsel:



- a) That before close of business on the 23rd of August, 2024, the legal counsel should confirm attendance of the CECM during the hearing for purposes of logistics and planning.
- b) That all requests of documents be made through the Office of the County Secretary and should his client have any challenge, the same can be communicated to the committee through the Office of the Clerk as **per rule (XII) 12 of rules.**
- c) That on the similarity of motions being that of 23<sup>rd</sup> July 2024 and 6<sup>th</sup> August, 2024, the committee notes that the motion being deliberated upon is distinct and separate from the other motion.

The committee also directed the legal counsel to **Part (IX) of (9.1)** of the Hybrid hearings and that the committee is ready if necessary to accord him further hearing through virtual means to ensure a fully fair process.

### **Evidence by the Sponsor of the Special Motion**

#### **Opening Statement by the Sponsor of the Motion**

**THAT** the governance framework in Kenya, particularly concerning the impeachment of a County Executive Committee Member, was designed to ensure accountability and uphold the rule of law, leaving no room for impunity in their society. He mentioned that the success of this process began with the County Assembly on that day.

The Sponsor of the Motion explained that his mandate was derived from sections 8 and 9 of the County Governments Act, 2012 and Article 185 of the Constitution of Kenya, 2010. He emphasized that the Assembly had a duty to the County Government and the people of Bomet County and warned that continued mismanagement of resources would worsen the suffering of the people. He asserted that if no action was taken against officers found culpable by acts of commission or omission, it would contribute to the failure of devolution in the country.

The mover stated that this responsibility led him to bring charges against Hon. Andrew Sigei concerning his dismissal as the County Executive Committee Member for Finance, ICT, and Economic Planning.

## **Witness 1: Hon. Eric Kirui (MCA, Kimulot Ward) Sponsor of the Special Motion**

On Tuesday 27<sup>th</sup> August, 2024, the Sponsor of the Special Motion took oath and adopted the statements contained in the Motion approved by the County Assembly and went through the charges which were structured as follows:

1. Gross violation of the Public Finance Management Act, 2012, and Public Finance Management (County Government) Regulations;
2. Incompetence;
3. Abuse of office;

Further, he claimed that regarding the dismissal of Hon. Andrew Sigei as the County Executive Committee Member for Finance, ICT, and Economic Planning, the charges levelled against him included gross violation of the Public Finance Management Act, 2012, and Public Finance Management (County Government) Regulations. He alleged that Hon. Andrew Sigei, as the County Executive Committee Member for Finance and Economic Planning, appeared to have committed gross violation of Section 156(2) of the Public Finance Management Act, 2012, by failing to implement the County Assembly's resolution in the adopted Budget and Appropriations Committee's Pending Bills Report of November 2023.

He submitted that the Pending Bill's report recommended disciplinary action to be taken against officers involved in fictitious expenditures and the revocation of the designation as accounting officers for those chief officers who violated established laws and regulations. He noted that Hon. Andrew Sigei neither revoked these designations nor took any appropriate disciplinary action, including referring the matter to the relevant investigative bodies.

The Sponsor of the Motion pointed out that, as a result of Hon. Andrew Sigei's acts of omissions and commissions, the County Government of Bomet began the FY 2023/2024 with pending bills amounting to Kshs.897.93 million, comprising of KES.156.24 million for recurrent expenditure and KES.741.69 million for development activities.

Further, he mentioned that he had copies of the reports requiring the County Executive Committee Member to take appropriate action and report back to the County Assembly within 14 days, which Hon. Andrew Sigei had failed to do.

## **CHARGE 2 Incompetence**

Hon. Eric Kirui accused the Hon. Andrew Sigei, in his capacity as the County Executive Committee Member (CECM) Member for Finance and Economic Planning, appeared to demonstrate incompetence through various actions. These included failing to ensure that designated accounting officers under Section 148(1) of the Public Finance Management Act, 2012, protected county assets as required under Section 149(2) of the same Act. According to Hon. Eric Kirui, the Hon. Andrew Sigei did not manage the county's assets to ensure value for money, failed to dispose of assets competitively, and did not maintain accurate and current asset registers as required by law.

Furthermore, Hon. Kirui indicated that Hon. Andrew Sigei had not ensured the county collected sufficient revenue. As the person responsible for designating revenue collectors and receivers under Section 157 of the Public Finance Management Act, 2012, Hon. Sigei had consistently failed to meet revenue collection targets over several financial years. An example provided was the county's collection of KES 157,105,283 against a budgeted figure of KES 332,041,830 during the first nine months of the 2023/2024 financial year.

Hon. Eric Kirui also accused Hon. Sigei of repeatedly failing to submit the necessary revenue-raising measures and county finance bills for the financial years 2021/2022, 2022/2023, and 2023/2024, as required by Sections 132(1) and (2) of the Public Finance Management Act, 2012. Additionally, he stated that Hon. Sigei had failed to submit payroll and payroll-related costs to the County Assembly and did not ensure that all personnel emoluments were processed through the Integrated Payroll and Personnel Database (IPPD) system. Hon. Kirui noted that during the first nine months of the 2023/2024 financial year, a total of KES 283.37 million was processed through manual payrolls, accounting for 11.6% of the total personnel emoluments cost.

Moreover, Hon. Kirui pointed out that Hon. Sigei had not established a functional audit committee as required under Regulation 167 of the Public Finance Management (County Government) Regulations. He further alleged that Hon. Sigei had failed to adhere to fiscal responsibility principles outlined in Article 201 of the Constitution and Section 107 of the Public Finance Management Act, 2012. Specifically, Hon. Sigei did not ensure that the county's development budget over the medium term met the minimum requirement of 30%, as stipulated by Section 107(2) (b) of the Act. For instance, in the 2024/2025 submitted budget, the development budget was only 20%, in clear violation of the law.

Additionally, Hon. Kirui accused Hon. Sigei of failing to submit to the County Assembly for approval a limit on the county's expenditure on wages and benefits for its public officers, as required by Regulation 25(1) of the Public Finance Management (County

Governments) Regulations. The 2022/2023 Report from the Office of the Auditor General indicated that the county's wage bill was 44%, exceeding the allowable limit of 35%.

Hon. Kirui also noted that Hon. Sigei had not published or publicized the County Fiscal Strategy Paper and the County Annual Development Plan, contrary to the provisions of Sections 117(6) and 126(4) of the Public Finance Management Act, 2012. Finally, he highlighted Hon. Sigei's failure to develop a Monitoring and Evaluation Policy to provide a framework for monitoring, evaluating, and reviewing project implementation.

After concluding his remarks on incompetence, Hon. Eric Kirui requested to proceed to the third charge on abuse of office. Upon receiving permission from the Chairperson, he stated that Hon. Andrew Sigei, as the CECM for Finance, ICT, and Economic Planning, was part of a team that irregularly employed personnel at the Bomet Water and Sanitation Company (BOMWASCO), leading to an unsustainable increase in the wage bill. He then sought guidance on when to call a witness to provide further information on this and other matters related to the charge of abuse of office.

### **Charge 3 Abuse of Office**

The Sponsor of the Motion accused Hon. Sigei of abuse of office during his tenure as the County Executive Committee Member for Finance, ICT, and Economic Planning. He alleged that Sigei was part of a team that irregularly employed personnel at Bomet Water and Sanitation Company (BOMWASCO), which led to an unsustainable increase in the wage bill. He also claimed that Sigei, along with others, used their positions to unlawfully dissolve BOMWASCO's legitimate Board of Directors and form an Interim Board, in violation of WASREB regulations and the Water Act of 2016.

The mover further accused Sigei of bringing in numerous water schemes under his leadership, which were on flat water rates with significant liabilities, pushing BOMWASCO towards insolvency. The mover stated that Hon. Sigei, who held 1% shares in BOMWASCO, intentionally refused to attend the company's annual general meeting on December 29, 2022, despite being invited.

Additionally, he accused Hon. Sigei of forming an Interim Board in October 2022 while the existing Board was still in office, against WASREB regulations and the Water Act, 2016. He also alleged that Sigei, as a BOMWASCO board member, orchestrated a scenario where, at the end of each Board's three-year term, the County Executive would introduce an Interim Board to enable their governance interference and questionable dealings.

Hon. Kirui claimed that Hon. Sigei was involved in the removal of the entire BOMWASCO Board, against WASREB's recommendation to renew a third of the members' terms to maintain institutional memory. He also alleged that Sigei, in collaboration with the current Chief Officer of Health, irregularly paid KES 5 million from Longisa Referral Hospital, disguised as water bills, which were untraceable as they were not paid to BOMWASCO.

Furthermore, Kirui accused Sigei of abrogating powers to control when and how to pay the monthly subsidy of KES 8.3 million to BOMWASCO, against the binding agreement between the County Assembly, the County Government, and BOMWASCO in 2015. He also claimed that Sigei misled the Senate PAC Committee on a pending electricity bill of KES 43.4 million, which was part of a subsidy to BOMWASCO in the 2020/2021 financial year, but was never paid, leading to an audit query.

He further accused Hon. Sigei of lying under oath during this year's appearance before the Senate Public Investment and Public Accounts Committee, claiming that he had paid all the monthly subsidies. Lastly, the mover alleged that Hon. Sigei failed to lead by example by not honouring BOMWASCO water bills and allowing departments to neglect their payments, resulting in arrears exceeding KES 10 million.

### **Clarifications by the Sponsor of the Motion**

After presenting these charges the Chairperson of the select committee invited members of the Committee to seek clarifications or ask questions related to the charges against the CECM for Finance, ICT, and Economic Planning.

The Committee requested clarification from Hon. Eric Kirui regarding a potential violation of the PFM Act relating to the requisition of funds from the National Treasury. Additionally, the Committee asked the Sponsor who is also the Chairperson of the Budget and Appropriations Committee, to respond to recommendations 5 and 6 of the pending bills report and other related action items, as his response would aid the Committee in making informed decisions.

The Hon. Eric Kirui responded that in charge number (d) regarding the violation of the PFM Act, the Hon. Andrew Sigei, acting as the County Executive Committee Member for Finance, ICT, and Economic Planning, appears to have committed a gross violation of the Public Finance Management Act, 2012, and the regulations made thereunder by requisitioning money from the National Treasury and paying suppliers not listed in Forms A and B, thereby disenfranchising the genuine suppliers. Furthermore, he stated that the county periodically, depending on how the procurement plan has been structured with the National Treasury, submits requests to the National Treasury for funds to settle bills,

whether for recurrent, development or for payroll. He stated that the forms used to request money from the National Treasury are standardized, and reports from the Office of the Controller of Budget on exchequer releases from as far back as July 2022 to June 2024 indicate that most of this money has been received by the County Treasury. However, many suppliers and contractors in the county remain unpaid, despite the funds having been remitted to the County Revenue Fund. This situation is of great concern, as most contractors in the county continue to suffer despite having supplied goods or provided services to the county, as they have been genuinely disenfranchised because the money requested from the National Treasury is not being paid to the intended beneficiaries.

He further stated that the beneficiaries over the same period, as detailed in an annex of the financial year 2023/2024 development expenditure exchequer releases summary as of 30<sup>th</sup> June 2024, highlight a troubling issue. For instance, in the Department of Roads, Public Works, and Transport, the approved budget for the entire financial year was KES 603,774,836. The cumulative exchequer releases the county received in respect to this department amounted to KES 557,357,776, representing a significant 92% of the funds received by the county. However, this department has accumulated the highest number of pending bills, raising concerns about what happened to the money. He stated that it shows that the funds are requisitioned from the National Treasury but is paid to unintended beneficiaries. He stated that the Hon. Andrew Sigei, as the head of the County Treasury, needed to have demonstrated to the Committee what happened to these funds, who the beneficiaries were, and why there are pending bills in that department.

On the specific recommendations in recommendation number 5 and 6 of the pending Bills report, the Sponsor of the Motion indicated that recommendation number five had recommended for disciplinary action against all staff who participated directly or indirectly in authorizing fictitious and deceitful transactions. This included individuals associated with incompetent or non-existent projects, as meticulously documented in the report. The disciplinary actions were to be executed without exception, and the committee emphasized the urgency of this matter. To ensure accountability, the committee called for a comprehensive report on the disciplinary actions taken against the implicated staff. This report was to be submitted to the County Assembly by the County Executive Committee (CECM) Member for Finance within 14 days upon receipt of the committee's report. This timely disclosure was crucial for maintaining transparency and fostering confidence in the corrective measures being implemented to address the identified issues.

He further stated that the Budget and Appropriations Committee had pointed out to the CECM for Finance, ICT and Economic Planning that even the committee appointed by His

Excellency the Governor to review the pending bills report, had cited issues where vendors or suppliers claimed they did not have a bill against the county government, yet they were listed in the pending bills report. Corrective disciplinary action was then recommended to the CECM, who was expected to communicate this to the Assembly within 14 days of the adoption of the pending bills report. However, despite the report being adopted in November 2023, the Assembly has yet to see any action taken against any officer. This clearly indicates a lack of focus by the CECM, and necessary action must be taken against him for failing to implement the Assembly's recommendation.

The Sponsor of the Motion stated that Recommendation number six on the Pending Bills Report focused on strengthening controls within the Treasury to enhance financial management. The committee expressed significant concerns regarding the prevalent issues of pending bills as an indication of extravagant spending, neglect of prior financial planning, and suboptimal revenue collection, leading to unmet targets. The committee emphasized that these pending bills constitute a breach of the Public Finance Management Act, its accompanying regulations, and various National Treasury circulars. The committee deems it imperative to underscore the gravity of this matter, asserting that such outstanding bills necessitate decisive action against public officers, particularly accounting officers, who have authorized unauthorized expenditures. The CECM for Finance, ICT and Economic Planning as the foremost accounting officer of the county, is specifically called upon to display courage and firmness in addressing this issue. The committee recommended that the CECM for Finance take resolute action by revoking the designation of officers as accounting officers, particularly those who flout established laws and regulations. Additionally, it is crucial for the CECM for Finance, ICT and Economic Planning to implement corrective measures ensuring strict adherence to the Public Finance Management Act and fostering rigorous accountability among accounting officers.

On other Charges concerning the operations of the Bomet Water and Sanitation Company (BOMWASCO), the Hon.Eric Kirui indicated that he shall call his witness one Mr. Stanley Orwasa Ngeno who is a former Chairperson of the Bomet Water and Sanitation Company Board.

On the issue of personnel emoluments paid outside the Integrated Payroll and Personnel Database (IPPD) system, the Hon.Eric Kirui submitted that the issue was flagged because anything not paid through the payroll must be scrutinized and that before being placed in the IPPD, every government officer who receives money from the government must have a payroll number and to obtain a payroll number, an individual must have an



appointment letter, which, in the case of a county employee must be signed by the County Public Service Board.

### **Witness of the Sponsor of the Motion**

In support of his Motion, the Sponsor of the Special Motion called the following witness:

#### **Witness: Mr. Stanley Orwasa Ngeno**

The witness took oath pursuant to Section 17(a) of the Oaths and Statutory Declarations Act, Cap 15. The Committee confirmed that the witness had attained the age of majority and hence was competent to testify. He stated that:

He is a resident of Sigor ward in Bomet County with verse experience from teaching to management at various road projects and Pyrethrum Board of Kenya. In reference to the subject matter, Mr. Orwasa was appointed as the chairman of the board of directors for Bomet Water and Sanitation Company (BOMWASCO) for a period of three years vide a gazette notice on 4<sup>th</sup> September 2019.

He indicated that before the term period ended, the board of directors were asked to step aside not directly but indirectly and that is when contentious issues arose since the due process wasn't followed. After we stepped aside, an interim committee was established before the other board members were appointed.

He then tabled a copy of the memorandum that he had earlier submitted to the County Assembly and affirmed its ownership. He applauded the committee for considering his memorandum in regards to the removal of Hon. Andrew Sigei, CEC Member for Finance and Economic Planning. He further indicated that Bomet residents have suffered a great deal because the accused has misused office for a long time and tabled a copy of the appointment letter (Ref BC.7/2/1) dated 23<sup>rd</sup> October 2019 outlining roles and responsibilities that were issued to all Board members by the then County secretary, Ms. Evaline Rono and copied to His Excellency the Governor and County Executive Committee Member for Water and Irrigation.

He added that another issue of concern was the incorporation of the BOMWASCO. He stated that the company was incorporated on 18<sup>th</sup> day of June 2013 and amended on 19<sup>th</sup> day of October 2014. He posited that Article 26 of the company's memorandum of association constitutes the membership of the board as follows;



*"The board of directors shall consist of the following;*

- a) Representatives of five sub counties competitively recruited*
- b) Two representatives of the county government who shall be the department of water affairs and that of finance."*

He further stated that Article 35 of the memorandum of association further directs as follows;

*"The business of the company shall be managed by the directors who shall be responsible for implementation of company's memorandum and articles of association, provide guidelines and control functions of service, approve business plan and budget, provide management guidelines, approve major contracts, authorize charges in policy, hold quarterly meetings, prudent investments of funds and assets for beneficial use and recommend adjustment to tariffs as per guidelines."*

On the issue of Hon. Andrew Sigei being part of a team that irregularly employed Bomet Water and Sanitation Company (BOMWASCO) personnel, Mr. Orwasa informed the committee that recruitment of a managing director and other senior management staff is the mandate of the board while that of the rest of employees is done through a request by the department. Contrary to this, a total of 87 employees were employed by the board from 16<sup>th</sup> August to 4<sup>th</sup> September 2019. For instance, Mr. Orwasa tabled a copy of minutes of an interview for the position of internal auditor held on 14<sup>th</sup> August 2019 at the company's board room indicating members present being the board members with the accused as the chairperson.

He tabled a protesting letter that he had written to the Managing director in regards to the recruitment advertisement made on 19<sup>th</sup> June 2019 which was contrary to the standards that required that for every 100 connections, the company can employ 8 personnel.

From this submission, it is clear that the board went outside its mandate and further contravened HR policies and regulations in regards to employment.

On the issue of irregular and unlawful dissolution of a legitimate board, he indicated that WASREP Regulations and the articles of association of the company stipulate that whenever a term of a board ends, two third of the members exit and a third remains for purposes of continuity. It was quite noting that an interim board consisting of new members was appointed contrary to the said laws and regulations.

He then tabled a copy of the letter (ref BC100/2/1) addressed to the managing director of the BOMWASCO appointing the interim board that was written and signed by Mr. Simon Langat, the County Secretary and Head of Public Service, and copied to H.E Governor and H.E Deputy Governor.

He stated that it's noteworthy that the county secretary appointed the interim board instead of the Governor. He further stated that the interim board recommended for Mr. Patrick Langat, Mr. Gilbert Metet and Mr. Richard Mesis to proceed on leave and for Mr. Benard Rono, the Commercial and Finance Manager to act as the Managing director during the period. While the three officers were on leave, the same interim board sent Mr. Patrick Langat on a compulsory leave for 30 working days directing him to hand over the office including all the bank signatories to Engineer Fredrick Ruto who is an assistant director at the department of water. Engineer Fredrick Ruto was then appointed the acting managing director of BOMWASCO without an appointment letter giving him the authority perform the responsibilities of the managing director. It was during this time when the witness and his team were kept in the dark raising concerns on why the acting MD was drawing salaries and allowances from the company without the proper authority.

On the accusation that the Hon. Andrew Sigei irregularly brought in water schemes such as Ndanai and Mogombet which put the company to unfortunate levels of insolvency, the witness alleged that when they were appointed, the salaries doubled and the increasing number of employees being recruited never bothered the board. For instance, Mogombet project had an outstanding debt of Ksh. 5M in form of salaries for 7 employees, 5M in form of pumps that were replaced and 5M in form electricity panel acquired.

He alleged that it is because of the incompetency of the Hon. Andrew Sigei that led to the company spending about 15M to take over Mogombet water project. He stated that the board should have considered not to take over any project without a resource since this led to the current state of insolvency. Also, the appropriated amount by the County government of Ksh.8.3M per month as subsidy to BOMWASCO was never paid resulting to huge electricity bills from the nine (9) schemes.

On the issue of intentionally refusing to attend the Annual General Meeting on 29<sup>th</sup> December 2022, despite being invited via a hard copy and soft copy invite, the witness tabled a copy of the minutes of the AGM which confirmed the absence of the CECM Member for Finance, ICT and Economic planning.

Mr. Stanley Orwasa then testified that Hon. Andrew Sigei, in collaboration with the current Chief Officer of Health, authorized a payment of KES 5 million from Longisa County Referral Hospital, purportedly for water bills. He indicated that while he had annexes of

certain reports, he did not have records of the actual payments. Mr. Orwasa further explained that during a board meeting, the management was instructed to collect outstanding bills from various customers, including institutions, government entities, individuals, and companies. Upon reviewing these pending bills, Mr. Orwasa informed the committee that their board scrutinized the report and discovered that Longisa Referral Hospital had accumulated a significant bill totaling KES 8 million at that time. He noted with concern that while sub-county hospitals were consistently making payments, Longisa Referral Hospital was unable to settle its bills.

He further explained that during the meeting, he contacted the administrator, who is the current Chief Officer of Health and the administrator then sent him a copy of a voucher showing a payment of Ksh. 5 million made to Longisa Referral Hospital instead of BOMWASCO. The witness implored the committee's legal team to invoke the Article 35 of the Constitution on the Bill of Rights to obtain information on the payments on his behalf, noting that while the copy was sent to him around mid-February 2022, he was unable to locate it. The witness was further advised to submit the payment voucher by Friday 29<sup>th</sup> August, 2024 as it was a crucial document to enable the committee arrive at informed decision.

Mr. Orwasa informed the committee that during the 2020/2021 financial year, the company was allocated KES 43.4 million. However, he noted that the funds were not received within that financial year but were instead disbursed late in the 2021/2022 financial year, raising concerns about whether the payment was intended for the previous arrears or the current budget highlighting discrepancies in financial management. Mr. Orwasa further claimed that Hon. Andrew Sigei misled the Senate by stating that the allocations were paid on time, which was not the case. He also accused Mr. Sigei of misappropriating KES 8.3 million per month allocated to BOMWASCO as a subsidy resulting in a decline in water supply services.

Mr. Stanley Orwasa criticized Hon. Sigei's management, drawing an analogy to a mother who knows how much is left to provide for her child, suggesting that the CECM for Finance, ICT and Economic Planning neglected essential responsibilities. He pointed out that, despite paying other departments for utilities, Hon. Sigei failed to ensure that BOMWASCO was compensated for over four years, leading to serious issues such as slaughterhouses lacking water. Orwasa highlighted a Ksh. 11 million debt owed by the governor's office to BOMWASCO and questioned Mr. Sigei's commitment to assisting Bomet residents, expressing his disappointment in the ongoing water crisis and questioning Hon. Sigei's motives.

## **Clarifications sought from the witness by the Committee**

Following the witness's submissions, the committee noted several key issues that required clarification by the witness.

1. Whether the witness has been officially served with a letter indicating the termination of their membership as BOMWASCO Board of Directors.

In response, Mr. Orwasa informed the committee that they have not received any letter to date.

2. Whether the witness still considers himself as a director to the board

In response the witness informed the committee that, according to his understanding and in accordance with the law, they still remain as members of the board. He noted that, due to a previous incident where enforcement officers from the County Government were used to close the gate during a meeting, they chose to move quietly to avoid conflict. Consequently, they now face potential financial risks if there are errors regarding their names on the CR12.

3. Whether their names have been Gazetted in the Kenya Gazette indicating that they are no longer part of the Bomet Water and Sanitation Company Board of directors.

In response the witness confirmed to the committee that their names have not been gazetted, indicating that they are no longer serving as board members. He explained that the confusion arose from the formation of the interim board and the executive order given by the governor for the current board's exit, which led the Managing Director at that time to proceed to court. The Managing Director was later persuaded to negotiate outside of court, and a settlement is pending. The witness criticized this process as an example of how the county government is misusing taxpayers' money.

4. Whether Hon. Sigei chaired the meeting held on 16<sup>th</sup> August to 4<sup>th</sup> September, 2019 that led to the recruitment of the 87 employees and what his role was in chairing the board and whether these employees were engaged by an interim board that may have been unconstitutional.

In response Mr. Orwasa argued that the formation of the interim board, which disregarded the Water Act 2016, WASREB Regulations, and the Companies Act, enabled Hon. Andrew Sigei and his team to exercise powers. He informed the committee that the engagement of 87 employees on 16<sup>th</sup> August to 4<sup>th</sup> September, 2019 by an interim board that was unconstitutionally constituted. He further highlighted that the tenure of his board

expired on the 23<sup>rd</sup> September 2019, prior to the commencement of the recruitment process.

The witness then tabled the following documents for further perusal and examination by the committee.

1. Memorandum of Association of Bomet Water Company Limited.
2. Memorandum supporting the removal of Hon. Andrew Sigei – County Executive committee Member for Finance, ICT and Economic Planning in the County Government of Bomet.
3. Minutes of the Interviewers for the position of an Internal Audit Held on 14/8/2019 at the Company Board Room.
4. Letter dated 23/12/2019: Titled, Human Resource Personnel.
5. Bomet Water Company limited Advert dated 19/6/2019 on Recruitment of Staff.
6. Letter dated 17<sup>th</sup> January, 2024, Ref: BCA/13/11/1(53) (Re: Meeting with the County Public Investments and Accounts Committee)
7. Minutes of the full board of directors meeting held on 9<sup>th</sup> Septembers, 2022 at the Company's Board Room.
8. Letter dated 7<sup>th</sup> December, 2022, Ref: BWC/BOD/37/Vol3/ (61) Annual General meeting.
9. Letter dated 23<sup>rd</sup> September, 2022, Ref: BWC/MD/32/Vol.3 (201) Re: Request for advice on seconded staff from county government of Bomet.
10. Letter dated 23<sup>rd</sup> October, 2021, Ref: BC. /7/2/1 Re: Appointment as a chairperson Bomet Water Company LTD.

### **Evidence by the County Executive Committee Member for Finance, ICT and Economic Planning Hon. Andrew Sigei**

The Hon. Andrew Sigei the County Executive Committee Member for Finance, ICT and Economic Planning was scheduled to appear before the Select Committee on Tuesday 27<sup>th</sup> August 2024 at 9.00 A.m. He however didn't appear and instead sent his legal counsel Mr. Desmond Leteipa Silei to represent him before the Select committee proceedings. Mr. Desmond Leteipa Silei however didn't appear before the committee on the scheduled time but he ultimately did appear albeit so late. He was informed by the Committee that the Sponsor of the Motion was ready to proceed and had indeed taken the stand to prosecute his motion and adduce evidence in support of his allegation. When invited by the Chairperson to address the select committee he stated that:

Hon. Andrew Sigei was still preparing for the hearing and was unable to attend the session. For this reason, he had him to request a further extension of time.

The Chairperson, Hon. Nathan Kibet, reminded the counsel that during the pre-trial hearing on Friday which he was present, the parties had agreed to convene on Tuesday, 27<sup>th</sup> August, 2024 to allow sufficient time for preparation. The Chairperson noted that the committee had even offered to meet on Monday evening, but Mr. Desmond Leteipa Silei had requested for Tuesday 27<sup>th</sup> August 2024 instead, leading the committee to assume that the time would be used to prepare adequately to represent his client.

The legal counsel acknowledged that they had been granted time for the hearing but explained that they only received the documents and charges on Saturday 24<sup>th</sup> August, 2024 via email, which he had not reviewed with the CECM over the weekend. He submitted that they had expected to receive physical documents, which would have facilitated better preparation. Since some documents were available only online, the legal counsel Desmond Leteipa Silei reiterated his request for additional time.

The Chairperson asked Mr. Leteipa if he was ready to proceed, but Leteipa expressed regret that he was not prepared to do so on behalf of his client, who wished to respond to the charges in person. The Chairperson then reminded Mr. Leteipa that they were already on the sixth day of the ten-day period stipulated by Section 40(3)(b) of the County Governments Act, 2012 for prosecuting the matter. Despite the concerns raised by the legal counsel the Chairperson emphasized the need to maintain fairness throughout the proceedings.

In response, the Chairperson informed Mr. Desmond Leteipa that the committee had decided to extend the time for defense preparation until Friday, 30<sup>th</sup> August, 2024 at 10.00 Am. He assured the legal counsel that the committee would accommodate additional requests for submitting evidence, recalling witnesses, or responding to documents, and offered the flexibility of attending in person or virtually. The Chairperson also confirmed that the proceedings were being streamed live, ensuring transparency.

When asked if all the necessary documents had been provided, Mr. Desmond Leteipa Silei confirmed receipt of most documents but noted the absence of specific ones listed in the schedule, such as the pending bills report. The Chairperson explained that most of the missing documents were public and could be accessed online or obtained from the Office of the Clerk. Although aware that the CECM was currently suspended, the Chairperson emphasized that access to the documents should not be an issue.

The Chairperson then allowed Mr. Leteipa to leave the session but made it clear that the Sponsor of the Motion, Hon. Eric Kirui, would continue to prosecute his case. He suggested that the legal counsel could remain to follow the proceedings, as it would aid in preparation, but left the decision to him. The counsel opted to leave, citing another committee meeting he had to attend, and the Chairperson granted him permission to do so.

### **Closing Statement by the Sponsor of the Motion**

In his closing statement, the Sponsor of the Motion, Hon. Eric Kirui reiterated the fact that the issue at hand is grave and he requested the select committee to consider the matter seriously and take it upon itself to find Hon. Andrew Sigei culpable and proceed to recommend for his dismissal from office that we move ahead and remove Andrew Sigei from office immediately.

## CHAPTER FOUR

### ANALYSIS OF THE EVIDENCE

#### **Background**

The Committee examined the evidence put forth and the arguments presented by all parties involved. The Committee was guided by the constitutional imperatives enshrined in Kenya's legal framework, including principles of fair hearing, fair administrative action, natural justice, good governance, and the overarching consideration of public interest in the matter.

In accordance with the provisions of section 40 (5) (b) of the County Governments Act, the Committee is mandated to recommend the dismissal from office of a County Executive Committee Member if the allegations in the Motion are **substantiated**. As such, the deliberations of the Committee were centered on the crucial question of whether the allegations as levelled by the Sponsor of the Motion have been sufficiently proven.

The grounds for the dismissal of a County Executive Committee Member from office are laid down in Section 40(2) of the County Governments Act as follows-

*“ 40(2) A member of the county assembly, supported by at least one-third of all the members of the county assembly, may propose a motion requiring the governor to dismiss a county executive committee member on any of the following grounds —*

*(a) gross violation of the Constitution or any other law;*

*(b) incompetence;*

*(c) abuse of office;*

*(d) gross misconduct; or*

*(e) if convicted of an offence punishable by imprisonment for at least six months.*

The Sponsor of the Motion seeks a resolution to have the County Executive Committee Member dismissed on the following grounds –

*(a) gross violation of the Constitution or any other law;*



*(b) incompetence;*

*(c) abuse of office;*

### **Ground One: Gross Violation of the Constitution or any other law**

Before examining the allegations under the ground of gross violation of the Constitution, the Committee explored what amounts to gross violation of the Constitution.

A plain reading of the phrase '**gross violation**' reveals that the ground **is not merely violation of the Constitution but gross violation**. In other words, not every violation of the Constitution is considered a ground for removal. It is therefore imperative, at the outset, to determine what amounts to gross violation of the Constitution or any other law.

The Court of Appeal in the case of ***Martin Nyaga Wambora & 3 others v Speaker of the Senate & 6 others [2014] eKLR*** held as follows with regard to gross violation:

*"We note that the **Constitution** does not define gross-violation. What amounts to gross violation must be considered on a case-by-case basis taking into account the peculiar facts and circumstances of each case. We concur with High Court's statement that whether conduct is gross or not will depend on the facts of each case and not every violation of the **Constitution** or other law is gross violation. The Nigerian Supreme Court in the case of **Hon. Muyiwa Inakoju & Others - vs- Hon. Abraham Adaolu Ade/eke, S.C.272/2006** opined as follows:*

*The following constitute gross violation or breach of the Constitution:*

- a) interference with the constitutional functions of the legislature and the judiciary by an exhibition of over constitutional executive power;*
- b) abuse of the fiscal provisions of the Constitution;*
- c) abuse of the Code of Conduct for public officers;*
- d) disregard and breach of the provisions on fundamental rights;*
- e) interference with local government funds and stealing from the*

*funds, pilfering of the funds...for personal gains;*

- f) instigation of military rule and military government; and*
- g) any other subversive conduct which is directly inimical to the implementation of some other major sectors of the Constitution.*

The Committee also considered the fact that in order to pin-point what constitutes violation of the constitution or any other law lies with specificity and precision. There has to be specified with precision the provisions of the Constitution or any other law which are alleged to have been breached. This test was explained in the locus classicus of **Anarita Karimi Njeru v Republic [1979]JeKLR**, as follows,

*"We would, however, again stress that if a person is seeking redress from the High Court on a matter which involves a reference to the Constitution, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed."*

The Committee examined the allegations under the ground of violation of the Constitution or any other law using the aforementioned tests.

### **Allegation of Gross violation of the Public Finance Management Act, 2012 and Public Finance Management (County Government) Regulations, 2015**

#### **(a) Violation of Section 156(2) of the Public Finance Management Act, 2012**

The Sponsor of the Motion alleges that the Hon. Andrew Sigei acting as the County Executive Committee Member for Finance and Economic Planning, appears to have committed gross violation of this statutory provision by failing to implement the County Assembly's resolution contained in the adopted Budget and Appropriations Committee pending bills report of November 2023 recommending in recommendation No. 5 and 6 for disciplinary action to be taken against officers involved in fictitious expenditure and revocation of designation as accounting officers of chief officers who have flouted established laws and regulations. He submitted that the County Executive Committee

Member has neither revoked nor taken any appropriate disciplinary action including referring the matter to be dealt with by the appropriate bodies.

He further alleged that the county government, from Hon. Andrew Sigei's acts of omission and commission, had at the beginning of FY 2023/24 a stock of pending bills amounting to Kshs.897.93million, comprising of Kshs.156.24 million for recurrent expenditure and Kshs.741.69 million for development activities.

The Sponsor of the Motion further mentioned that he had copies of the reports requiring the County Executive Committee Member to take appropriate action and report back to the County Assembly within 14 days, which Hon. Andrew Sigei had failed to do. He tabled the County Assembly Committee on Budget and Appropriation Report on the County Executive Committee Member for Finance, ICT and Economic Planning Request to the County Assembly for Input, Clarifications or Reservations on the Contents of the Bomet County Pending Bills Report for Financial Year Ending 2022/2023 to prove his allegation.

### **Allegation of Violation of Section 132(2) of the Public Finance Management Act, 2012**

The Sponsor of the Motion alleges that the Hon. Andrew Sigei acting as the County Executive Committee Member for Finance, ICT and Economic Planning, appears to have committed gross violation of this statutory provision by failing to submit to the county assembly the County Finance Bill and revenue raising measures for the Financial years 2021/2022, 2022/2023 and 2023/2024.

Section 132(2) of the Public Finance Management Act, 2012 provides that, "The County Executive Committee member for finance shall, on the same date that the revenue raising measures are pronounced, submit to the county assembly the County Finance Bill, setting out the revenue raising measures for the county government, together with a policy statement expounding on those measures."

The Sponsor then tabled a written correspondence by the County Assembly with the County Executive Committee Member for Finance ICT and Economic Planning dated 3rd October, 2023 on the status of the County Finance Bill. The CECM from the correspondence appeared to have presented a different document from that envisaged under Section 132(2) of the Public Finance Management Act, 2012 and that from the County Assembly's Bills Tracker of the Second and Third Assembly, there is no proof that the CECM Finance and Economic Planning submitted the County Finance Bills for the stated years.

## **Allegation of Violation of Regulation 82(1)(b) of the Public Finance Management(County Government) Regulations**

The Sponsor of the motion alleges that the Hon.Andrew Sigei acting as the County Executive Committee Member for Finance and Economic Planning, appears to have committed gross violation of this Regulation by operating the County Executive Bursary Fund and the Car and Mortgage Funds using commercial bank accounts contrary to Regulation 82(1)(b) of the Public Finance Management (County Governments) Regulations, 2015, which requires that County government bank accounts must be opened and maintained at the Central Bank of Kenya. This anomaly was noted and flagged by the Controller of Budget in its April 2024 budget implementation review report of the first nine months of the financial year 2023/2024.

The Sponsor then tabled the County Governments Budget Implementation Review report for the first nine months FY 2023/2024 of April 2024.

The committee needed more information so as to make an informed decision.

## **Allegation of Gross Violation of the PFM Act, 2012 and Regulations thereunder**

The Sponsor alleged that the Hon.Andrew Sigei acting as the County Executive Committee Member for Finance, ICT and Economic Planning, appears to have committed gross violation of the Public Finance Management Act, 2012 and Regulations made thereunder by requisitioning money from the National Treasury and paying suppliers not listed in Forms A and B thereby disenfranchising the genuine suppliers.

The Sponsor of the motion did not however table any document to prove his allegation.

## **Allegation of Irregular Procurement Practices**

The sponsor of the motion alleges that the Hon.Andrew Sigei acting as the County Executive Committee Member for Finance and Economic Planning, appears to have committed gross violation of the Public Finance Management Act, 2012 and Regulations made thereunder by purchasing heavy machinery outside the budget, despite budgetary allocation or approval by the County Assembly for the purchase of heavy machinery in the year 2023/2024, the county lacks ownership documents, meaning the purchase was never finalized as per contract. This contravenes Section 197(1) of the Public Finance Management Act, 2012, which requires proper documentation and finalization of procurement processes.

He presented to the committee the Auditor general's report on the County executive of Bomet 2022-2023 which flagged the county government on irregular procurement of road maintenance machinery which revealed that the Management incurred Kshs.141,547,000 for the supply of five (5) crawler dozer, five (5) graders or land levelers and one (1) motorized roller. However, the procurement of the equipment was outside of the County Integrated Development Plan (CIDP) 2018-2023, Annual Development Plan (ADP) 2022-2023, approved budget and approved consolidated annual procurement plan for the year under review.

Further, tender opening minutes dated 28<sup>th</sup> March, 2023 submitted for audit were not initialized in all pages by the committee officials and listed seven (7) received bids with one bidder who submitted IFMIS bid being disqualified by the tender opening committee for not submitting the manual copy. This was contrary to Section 78(7) of the Public Procurement and Asset Disposal Act.

### **Ground Two-Incompetence**

(1) The Sponsor of the Motion alleges that the Hon.Andrew Sigei acting as the County Executive Committee Member for Finance and Economic Planning, appears to be incompetent by-

(i) Failing to ensure that the designated accounting officers under section 148(1) of the Public Finance Management Act, 2012 protects the county assets as required under section 149(2) of the Public Finance management Act, 2012 which requires designated accounting officers to:

(m) manage the assets of the entity to ensure that it receives value for money when acquiring, using or disposing of its assets;

(n) dispose of assets at the most competitive price and at the lowest possible cost ensuring that the proceeds from all asset disposals are deposited in a bank account of the entity;

(o) ensure that the respective county government entity has adequate systems and processes in place to plan for, procure, account for, maintain, store and dispose of assets, including an asset register that is current, accurate and available to the relevant County Treasury or the Auditor-General;

The Sponsor of the Motion when required to substantiate the allegation was not in a position to provide any documentary evidence on the culpability on the part of the County executive committee member for finance, ICT and economic planning.

- (ii) Failing to ensure that the county collects sufficient revenue- He alleges that as a person who designates persons as collectors and receivers of revenue under section 157 of the Public Finance Management Act, 2012, the County Executive Committee Member for Finance, ICT and Economic Planning has consistently failed to meet the target of collecting own source revenue for a number of financial years. For example during the first nine months of the financial year 2023/2024, the county collected a total of **KES 157,105,283** against a budgeted figure of **KES 332,041,830**.

The Sponsor of the Motion in a bid to substantiate his claim tabled the report of County Governments Budget Implementation Review report for the first nine months for the FY 2023/2024 of April 2024 which substantiated the allegation.

- (iii) The County Executive Committee Member has also constantly failed to submit the requisite revenue raising measures and the county finance bill for the financial years 2021/2022, 2022/2023 and 2023/2024 contrary to sections 132(1) and (2) of the Public Finance Management Act, 2012.

The Sponsor then tabled a written correspondence by the County Assembly with the County Executive Committee Member for Finance ICT and Economic Planning dated 3<sup>rd</sup> October, 2023 on the status of the County Finance Bill. The CECM from the correspondence appeared to have presented a different document from that envisaged under Section 132(2) of the Public Finance Management Act, 2012 and that from the County Assembly's Bills Tracker of the Second and Third Assembly, there is no proof that the CECM Finance and Economic Planning submitted the County Finance Bills and revenue raising measures for the stated years.

- (iv) Failing to submit payroll and other payroll related costs- The Sponsor of the motion alleges that the County Executive Committee Member has also constantly failed to submit to the county assembly payroll and payroll related costs. Also that he failed to ensure that all the personnel emoluments are processed through the Integrated Payroll and Personnel Database (IPPD) system. It is noteworthy that during the first nine months of 2023/2024 Financial year, a total of Kenya shillings 283.37

million was processed through manual pay-rolls which accounted for 11.6 per cent of the total personnel emoluments cost.

The Sponsor of the Motion provided responses of the CECM Finance, ICT and Economic Planning contained in the committee of budget report on the programme based MTEF budget estimates for the year ending 30<sup>th</sup> June 2025 for the County executive and the county Assembly. In the report , the CECM had been asked to provide a detailed schedule of payroll costs for each department or spending unit and he responded that payroll is consolidated and is not disaggregated per departments, what is available is one payroll and he did fail to provide the consolidated payroll to the Budget and Appropriations committee.

- (v) Failure to put in place a functional audit committee as required under Regulation 167 of the Public Finance Management (County Government) Regulations; The Sponsor of the motion alleges that the CECM Finance and economic planning has failed to put in place a functional internal audit committee as evidenced by lack of reports from the committee.

He then tabled the Auditor-General's Report on the County Executive of Bomet 2022-2023 to demonstrate that the existing audit committee is dysfunctional. In the report, the Auditor General noted that the County Executive did not have a functional audit committee in line with Regulation 168 of the Public Finance Management (County Regulations), 2015 which states that the main function of the audit committee shall be to support the accounting officers with regard to their responsibilities for issues of risk, control and governance and associated assurance provided that the responsibility over the management of risk, control and governance processes remains with the Management of the concerned county government entity and follow up on the implementation of the recommendations of internal and external auditors. It further noted that in the circumstances, the effectiveness of the measures by the Management to manage risk, internal control and governance could not be confirmed.

- (vi) Failure to adhere to fiscal responsibility principles contained in Article 201 of the Constitution and section 107 of the Public Management Act, 2012 and Regulation 25 of the Public Finance Management(County Governments) Regulations in particular:-
  - (a) Section 107(2) of the Public Finance Management Act, 2012 which provides –

In managing the county government's public finances, the County Treasury shall enforce the following fiscal responsibility principles—

(a) the county government's recurrent expenditure shall not exceed the county government's total revenue;

(b) over the medium term a minimum of thirty percent of the county government's budget shall be allocated to the development expenditure;

The sponsor of the motion alleges that the Hon. Andrew Sigei acting as the County Executive Committee Member for Finance and Economic Planning has failed to ensure that the county government's development budget over the medium term is at a minimum of thirty percent. For example in the financial year 2024/2025 submitted budget, the development budget was at a paltry twenty percent which blatantly contravenes section 107(2)(b) of the Public Finance Management Act, 2012.

He then tabled the Committee on Budget and Appropriation Report on the programme Based MTEF Budget Estimates for the year ending 30<sup>th</sup> June, 2025 for the County executive and the County Assembly.

(b) Regulation 25(1) of the Public Finance Management (County Governments) Regulations which provides-

In addition to the fiscal responsibility principles set out in section 107 of the Act, the following fiscal responsibility principles shall apply in the management of public finances—

(i) The County Executive Committee Member with the approval of the County Assembly shall set a limit on the county government's expenditure on wages and benefits for its public officers pursuant to section 107(2) of the Act.

The Sponsor of the motion alleges that Hon. Andrew Sigei acting as the County Executive Committee Member for Finance, ICT and Economic Planning has failed to submit to the county assembly for approval a limit on the county government's expenditure on wages and benefits for its public officers.

The Sponsor of the motion surmises that at no instance has the CECM Finance and Economic Planning sought for an approval for a limit on the county government's expenditure on wages and benefits for its public officers as required under regulation 25(1)(b) of the Public Finance Management (County Governments) Regulations.



- (ii) The limit set under paragraph (a) above, shall not exceed thirty five (35) percent of the county government's total revenue;

The Sponsor of the motion alleges that Hon. Andrew Sigei acting as the County Executive Committee Member for Finance, ICT and Economic Planning has failed to ensure that the county government's expenditure on wages and benefits for its public officers does not exceed thirty five (35) percent of the county government's total revenue.

He then referred to the FY 2022/2023 Office of the Auditor General's report which indicates that the county government's wage bill was forty-four (44) percent which was nine (9) percent over and above the allowable limit of thirty five (35) percent.

- (vii) Failure to publish and publicize the County Fiscal Strategy Paper and the County Annual Development Plan contrary to the provisions of Sections 117(6) and 126(4) of the Public Finance Management Act, 2012.

The sponsor of the motion alleges that the Hon. Andrew Sigei acting as the County Executive Committee Member for Finance and Economic Planning has constantly failed to ensure that the County Fiscal Strategy Paper and the County Annual Development Plan are published and publicized contrary to the provisions of Sections 117(6) and 126(4) of the Public Finance Management Act, 2012.

He then surmised that if the CECM Finance, ICT and Economic Planning had published and publicized the said documents, then copies of the same could have been availed to the county assembly and other devolved units of the county government. The committee also takes cognizance of the fact that there has been constant budgetary allocations for publication and publicization of the said documents.

- (viii) Failure to develop a Monitoring and Evaluation Policy to provide a framework for monitoring, evaluation and reviewing project implementation.

The Sponsor of the motion alleges that the Hon. Andrew Sigei acting as the County Executive Committee Member for Finance, ICT and Economic Planning has failed to develop a Monitoring and Evaluation Policy to provide a framework for monitoring, evaluation and reviewing project implementation.

He surmises that the failure of the CECM to develop such a policy has led to lack of a mechanism to monitor and evaluate the progress of implementation of the county projects. The allegation however was uncontroverted since the CECM has not responded to the allegation as levelled.

**Ground Three: Abuse of office**

- (i) The Sponsor of the Motion alleges that the Hon. Andrew Sigei acting as the County Executive Committee Member for Finance, ICT and Economic Planning was part of a wider team that irregularly employed Bomet Water and Sanitation Company (BOMWASCO) personnel which in turn doubled the wage bill to unsustainable levels.
- (ii) He also alleges that Hon. Andrew Sigei acting as the County Executive Committee Member for Finance, ICT and Economic Planning and his cohorts used their offices to irregularly and unlawfully dissolve a legitimate Bomet Water and Sanitation Company Board of Directors and formed an Interim Board against the WASREB regulations and the 2016 Water Act.
- (iii) The Sponsor of the Motion further alleges that Hon. Andrew Sigei acting as the County Executive Committee Member for Finance, ICT and Economic Planning in conjunction with other County Executive Committee Members and under his stewardship irregularly brought in many Water Schemes e.g. Ndanai, Mogombet, Sergutiet, Kamureito, Kapkesosio, Gelegele and Kapcheluch. These schemes were on flat water rates with a lot of liabilities. This pushed the company to unfortunate levels of insolvency. As a County Executive Committee Member Finance, ICT and Economic Planning, Hon. Andrew Sigei did nothing by not considering the financial resources that should have been included in the handing over.
- (iv) He also alleged that the Hon. Andrew Sigei as a shareholder with 1 % shares of BOMWASCO intentionally refused to attend an annual general meeting on 29/12/2022 despite being invited via a hardcopy and soft copy invite. He was even called on that day by the present CECM Water and the County Attorney.
- (v) The Sponsor alleged that the Hon. Andrew Sigei in October 2022 alongside others formed an Interim Board while the other board was still in office against the WASREB regulations and the Water Act, 2016.

- (vi) He posited that as a board member of BOMWASCO, he intentionally orchestrated a scenario whereby at every end of a three year term for any Board, the County Executive introduces this opaque Interim Board so as to do their dirty dealings and governance interference which was meant to disrupt smooth running of the company.
- (vii) The sponsor also alleges that one of the WASREB's recommendation is that at the end of a term of a Board, a third of the members term should be renewed so as to keep an institutional memory yet the Hon. Andrew Sigei was one of the members who removed the entire Board against the WASREB recommendation.
- (viii) He further alleged that the Hon. Andrew Sigei, acting as the County Executive Committee Member for Finance, ICT and Economic Planning in conjunction with the current Chief Officer Health irregularly paid out KES.5 million from Longisa Referral Hospital disguised as water bills. This money can't be traced since it was not paid to BOMWASCO and were not water bills as allegedly called.
- (ix) The Hon. Eric Kirui also alleged the Hon. Andrew Sigei acting as the County Executive Committee Member for Finance, ICT and Economic Planning abrogated himself powers on when and how to pay the monthly subsidy of KES.8.3 million to the company against the binding arrangements/ agreement between the County Assembly, the County Government and BOMWASCO of 2015.
- (x) He also indicated that the Hon. Andrew Sigei misled the Senate PAC Committee on electricity pending bill of KES. 43.4 million, which was part of a subsidy to BOMWASCO in 2020/2021 financial year. This money was to be paid by BOMWASCO to Kenya power but the Hon. Andrew Sigei didn't pay which then became an audit query.
- (xi) The Sponsor posited that during the this year's appearance before the Public Investment and Public Accounts Committee during the inquiry into the operation and performance of the Bomet Water and Sanitation Company Ltd, the **Hon. Andrew Sigei** lied under oath that he has paid all the monthly subsidies.
- (xii) Lastly the Sponsor of the motion asserted that the Hon. Andrew Sigei acting as the County Executive Committee Member for Finance, ICT and Economic Planning totally failed to lead by example by failing to honor BOMWASCO water bills. He has by acts

of commission and omission and acquiescence allowed departments not to honor their water bills which is now running into millions i.e over KES 10 million.

In order to demonstrate the allegations contained in the ground of abuse of office, the Hon.Eric Kirui, Sponsor of the Motion invited on Mr. Stanley Orwasa Ngeno who was a former Chairperson of the Bomet water and Sanitation Company as a witness. Mr. Orwasa informed the committee of the happenings that took place when he was the Chairperson of BOMWASCO. The witness indeed narrated disappointing events that occurred during the time and which has led to the current state of the water service provider. The committee indeed took notice of the fact that there was negligence in the manner in which the water service provider had been run so far which explains its current state of insolvency. The select committee also took judicial notice of the office of the auditor general's report and the Bomet County Assembly PIC/PAC report on the operations of the Bomet Water And Sanitation Company which raised a number of governance issues and recommended for reconstruction of the company.

Although the committee notes that there was indeed failure on the part of the county executive in remittance of the monthly subsidy of KES 8.3 Million, there were other governance issues in the company which required a collective effort of all the stake holders so as to ensure that the water service provider was run efficiently and effectively. The Committee however was not in a position to pin point the individual culpability of the Hon.Andrew Sigei being the County Executive Committee Member for Finance, ICT and Economic Planning given that the water company is an independent entity that was formed pursuant to the Companies Act. Although he is listed as one of the directors of the company courtesy of the office he holds, there is no indication that the failure of the company was his sole responsibility. The committee does not however exculpates him from the collective responsibility being a member of the board and a person who was supposed to ensure that the monthly subsidy that is supposed to be paid by the county government is paid on time and in full so as to enable the water company to run its operations.

## CHAPTER FIVE

### COMMITTEE OBSERVATIONS

#### **General Observations**

The Committee having undertaken investigations on the proposed dismissal of the County Executive Committee Member for Finance, ICT and Economic Planning Hon. Andrew Sigei observed that there is need to amend the ten days timeline provided for under section 40(3)(b) of the County Governments Act as the same is short and it therefore limits the committee's engagements with all the stake holders in the matter of impeachments. The short timeline provided also makes it difficult for the committee to proceed especially when a number of preliminary issues are raised which requires the attention of both parties.

#### **Specific Observations**

Having considered the allegations in light of the applicable law, the evidence before the Committee and the presentations by the parties, the Committee made the following observations:

#### **Ground One: Gross Violation of the Constitution or any other law**

##### **(a) Allegation of Gross violation of the Public Finance Management Act, 2012 and Public Finance Management (County Government) Regulations, 2015**

##### **i. Violation of Section 156(2) of the Public Finance Management Act, 2012**

The Committee observed that the Hon. Andrew Sigei acting as the County Executive Committee Member for Finance, ICT and Economic Planning indeed failed to take any appropriate action against Chief officers and other officers who were implicated in the County Assembly Committee on Budget and Appropriation's Report on the County Executive Committee Member for Finance, ICT and Economic Planning Request to the County Assembly for Input, Clarifications or Reservations on the Contents of the Bomet County Pending Bills Report for Financial Year Ending 2022/2023. The CECM is required

under the law to take appropriate action so as to ensure that public resources are protected.

ii. **Allegation of Violation of Section 132(2) of the Public Finance Management Act, 2012**

The committee observed that the Hon. Andrew Sigei acting as the County Executive Committee Member for Finance, ICT and Economic Planning, indeed grossly violated this provision of the law by failing to submit to the county assembly the County Finance Bill and revenue raising measures for the Financial years 2021/2022, 2022/2023 and 2023/2024. It is clear that the CECM failed to heed to several requests by the County Assembly to submit the two documents despite the fact that the role being a mandatory one under the Public Finance Management Act, 2012. The CECM member at some point submitted an unpublished legislative proposal despite the law stating otherwise. The committee also takes note of the fact that the CECM finally submitted a county finance bill, 2024 after several requests from the Committee on Finance and Economic Planning.

iii. **Allegation of Violation of Regulation 82(1)(b) of the Public Finance Management (County Government) Regulations**

The committee observed that the Sponsor of the Motion did not provide sufficient evidence to prove that the Hon. Andrew Sigei acting as the County Executive Committee Member for Finance and Economic Planning indeed operated the County Executive Bursary Fund and the Car and Mortgage Funds using commercial bank accounts contrary to Regulation 82(1)(b) of the Public Finance Management (County Governments) Regulations, 2015, which requires that County government bank accounts must be opened and maintained at the Central Bank of Kenya. The Committee having scrutinized the list of bank accounts operated by the County executive was not in a position to uphold this allegation. The Sponsor of the Motion needed to provide more information on this to substantiate his allegation.

iv. **Allegation of Gross Violation of the PFM Act, 2012 and Regulations thereunder**

The Committee observed that the Sponsor of the Motion did not provide any document to prove the allegation that the Hon. Andrew Sigei acting as the County Executive Committee Member for Finance, ICT and Economic Planning requisitioned money from the National Treasury and paid suppliers not listed in Forms A and B thereby disenfranchising the genuine suppliers.

**v. Allegation of Irregular Procurement Practices**

The committee observed that the Hon. Andrew Sigei acting as the County Executive Committee Member for Finance and Economic Planning indeed committed gross violation of the Public Finance Management Act, 2012 and Regulations made thereunder by purchasing heavy machinery outside the budget, despite budgetary allocation or approval by the County Assembly for the purchase of heavy machinery in the year 2023/2024. The committee observed that the county lacks ownership documents, meaning the purchase was never finalized as per contract and this contravenes Section 197(1) of the Public Finance Management Act, 2012, which requires proper documentation and finalization of procurement processes. The CECM being in charge of Finance and Economic Planning was supposed to ensure that the procurement of the equipment was provided for in the County Integrated Development Plan (CIDP), Annual Development Plan (ADP), approved budget and approved consolidated annual procurement plan for the year during which the procurement was made.

**Ground Two-Incompetence**

- (i) The Committee observed that the Sponsor of the Motion did not provide sufficient proof to demonstrate that the Hon. Andrew Sigei acting as the County Executive Committee Member for Finance and Economic Planning is incompetent by failing to ensure that the designated accounting officers under section 148(1) of the Public Finance Management Act, 2012 protects the county assets as required under section 149(2) of the Public Finance management Act, 2012.
- (ii) The committee also observed that the Hon. Andrew Sigei acting as the County Executive Committee Member for Finance, ICT and Economic Planning is incompetent by failing to collect sufficient revenue. As a person who designates persons as collectors and receivers of revenue under section 157 of the Public Finance Management Act, 2012, the County Executive Committee Member for Finance, ICT and Economic Planning has consistently failed to meet the target of collecting own source revenue for a number of financial years.
- (iii) The committee further observed that the Hon. Andrew Sigei acting as the County Executive Committee Member for Finance, ICT and Economic Planning is incompetent by constantly failing to submit the requisite revenue raising measures and the county finance bill for the financial years 2021/2022, 2022/2023 and 2023/2024 contrary to sections 132(1) and (2) of the Public Finance Management Act, 2012.
- (iv) The committee also observed that the Hon. Andrew Sigei acting as the County Executive Committee Member for Finance, ICT and Economic Planning is incompetent by constantly failing to submit payroll and other payroll related costs.
- (v) The committee also observed that the Hon. Andrew Sigei acting as the County

Executive Committee Member for Finance, ICT and Economic Planning is incompetent by failing to adhere to fiscal responsibility principles contained in Article 201 of the Constitution and section 107 of the Public Management Act, 2012 and Regulation 25 of the Public Finance Management(County Governments) Regulations in particular:-

- (a) In Section 107(2) of the Public Finance Management Act, 2012 which provides – In managing the county government’s public finances, the County Treasury shall enforce the following fiscal responsibility principles (b)Over the medium term a minimum of thirty percent of the county government’s budget shall be allocated to the development expenditure;
- (b) Regulation 25(1) of the Public Finance Management(County Governments) Regulations which provides-

In addition to the fiscal responsibility principles set out in section 107 of the Act, the following fiscal responsibility principles shall apply in the management of public finances—

- (i) The County Executive Committee Member with the approval of the County Assembly shall set a limit on the county government's expenditure on wages and benefits for its public officers pursuant to section 107(2) of the Act.
- (ii) The limit set under paragraph (a) above, shall not exceed thirty five (35) percent of the county government's total revenue. The committee observed that the CECM has failed to ensure that the personnel emoluments are kept within the allowable limits and that the same has always been way above the required 35%.
- (iii) The committee also observed that the CECM is incompetent by his failure to publish and publicize the County Fiscal Strategy Paper and the County Annual Development Plan contrary to the provisions of Sections 117(6) and 126(4) of the Public Finance Management Act, 2012 despite budgetary provisions for the same.
- (iv) The committee then finally observed that the CECM is incompetent by his failure to develop a Monitoring and Evaluation Policy to provide a framework for monitoring, evaluation and reviewing project implementation.



### **Ground Three: Abuse of office**

The Committee then finally observed that on the issues pertaining to Bomet Water and Sanitation Company (BOMWASCO) the Committee was not in a position to pin point the individual culpability of the Hon. Andrew Sigei being the County Executive Committee Member for Finance, ICT and Economic Planning given that the water company is an independent entity that was formed pursuant to the Companies Act 2015. Although he is listed as one of the directors of the company courtesy of the office he holds, there is no indication that the failure of the company was his sole responsibility. The committee does not however exculpates him from the collective responsibility being a member of the board and a person who was supposed to ensure that the monthly subsidy that is supposed to be paid by the county government is paid on time and in full so as to enable the water company to run its operations.


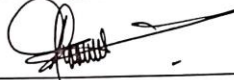
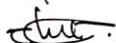


## CHAPTER SIX


### COMMITTEE FINDINGS

The Committee finds that the allegations under Ground One on Gross violation of the Constitution or any other law and Ground Two on incompetence are **substantiated** while Ground Three on abuse of office was **unsubstantiated**.

ADOPTION OF THE REPORT

We, the Honorable Members of the Select Committee investigating the proposed dismissal of Hon. Andrew Sigei as County Executive Committee Member for Finance, ICT & Economic Planning, do hereby affix our signatures to this report to affirm our approval, confirm its accuracy, validity and authenticity: -

| No. | Name                        | Position         | Signature  |
|-----|-----------------------------|------------------|--|
| 1.  | Hon. Kibet Nathan           | Chairperson      |    |
| 2.  | Hon. Dennis Kiplangat Ngeno | Vice Chairperson |    |
| 3.  | Hon. Evaline Sang           | Member           |    |
| 4.  | Hon. Ann Chepkemoi          | Member           |   |
| 5.  | Hon. Josphat Kipkirui       | Member           |  |

Signed  Date 30/08/24

**HON. NATHAN KIBET, MCA.**  
**CHAIRPERSON,**  
**SELECT COMMITTEE INVESTIGATING THE PROPOSED DISMISSAL**  
**OF HON. ANDREW SIGEI AS COUNTY EXECUTIVE COMMITTEE**  
**MEMBER FOR FINANCE, ICT & ECONOMIC PLANNING**