

Honorable Members,

COUNTY ASSEMBLY STANDING ORDERS,
KENYA 2010, THE COUNTY GOVERNMENT ACT AND THE KITUI
PROVISIONS OF THE LAW; PURSUANT TO THE CONSTITUTION OF
CONSTITUTION OF KENYA, 2010 AND OTHER APPLICABLE
EGH FOR GROSS MISCONDUCT AND VIOLATION OF THE
AGAINST KITUI COUNTY GOVERNOR H.E DR. JULIUS MALOMBE
COUNTY ASSEMBLY TO INITIATE IMPEACHMENT PROCEEDINGS
COMMUNICATION AS RELATES TO A PETITION TO THE KITUI

! No. 47 of 2024

The following communications were made;

4. COMMUNICATION FROM THE CHAIR

3. PRESIDING – Hon. Speaker on the Chair.

2. The proceedings were opened with prayer.

1. The Assembly convened at half past Two O'clock .

WEDNESDAY 13TH NOVEMBER, 2024 AT 2.30 P.M

VOTES AND PROCEEDINGS

THIRD ASSEMBLY - (THIRD SESSION)

THE COUNTY ASSEMBLY

COUNTY GOVERNMENT OF KITUI



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Article 37 of the Constitution as read together with Section 15 of the County Government Act, 2012 gives a right to any person to petition the County Assembly to consider any matter within its authority, including enacting, amending or repealing any of its legislation.

Standing Order No. 193 defines a petition to mean a prayer to the County Assembly by a Member of the public requesting the County Assembly to consider any within its authority, including enacting, amending or repealing any legislation.

Section 4(1)(a) of the Petition to County Assemblies (Procedure) Act, 2020 as read together with Standing Order No. 194(a) provides further that a petitioner and reported to the County Assembly by the Speaker.

Honorable Members,

In view of the above provisions and pursuant to Section 5 of the Petition to County Assemblies(Procedure) Act, 2020 as read together with Standing Order 199(2)(b), I wish to report to this County Assembly that the Clerk is in receipt of a petition dated 5th November, 2024 to the Kitui County Assembly to Initiate Impeachment Proceedings against Kitui County Governor H.E DR. Julius Malombe EGH for gross misconduct and violation of the Constitution of Kenya, 2010 and other applicable provisions of the law; pursuant to the Constitution of Kenya 2010, the County Government Act and the Kitui County Assembly Standing Orders .

Honorable Members,

Section 4(3) of the Petition to County Assemblies (Procedure) Act, 2020 as read together with Standing Order No. 194 (3) requires the Clerk within seven (7) days of the date of receipt of the petition to review the petition

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and ascertain whether it meets the requirements of our Standing Orders and of the law.

Honorable Members,

While reviewing the petition, the Clerk noted the following grounds as indicated by the petitioners in their petition;

- 1) That the governor converted public land in Kanyoonyoo B2 into private property affecting over three thousand (3,000) acres intended for community benefit contrary to Article 40 of the Constitution of Kenya.
- 2) That the governor orchestrated the forced eviction of residents from Kunda Kindu without prior notice, adequate compensation or adherence to due process contrary to Article 47 of the Constitution of Kenya and the Land Act which outlines procedural requirements for lawful evictions.

- 3) That the governor failed to fill critical administrative roles thereby creating operational inefficiencies which delayed essential services such as reduction in revenue collection contrary to Section 63 of the County Governments Act.

- 4) That the dismissal of several county officers by the governor without establishing their guilt or providing an opportunity for defence contrary to Article 236 of the Constitution of Kenya, 2010.

Honorable Members,

The grounds raised in this petition are weighty and therefore required the redress of some of the specific government institutions established under the law such as the County Public Service Board established under part VII of the County Governments Act, 2012 to look into affairs of County staff and

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the National Land Commission established under Article 67 of the Constitution of Kenya to look into matters of land especially public land.

Honorable Members,

From the above establishment, the Clerk noted that this petition falls short of the requirement on the form of petition as provided for under Section 3 of the Petition to County Assemblies (Procedure) Act, 2020 as read together with Standing Order No. 197 which required the petitioners to have clearly stated in their petition as to whether;

i. Any efforts had been made to have the matters/issues addressed by the aforementioned relevant body and whether there was any response from that body or whether the response had been unsatisfactory;

ii. The issues in respect of which the petition is made are pending before any court of law or other constitutional or legal body;

Honorable Members,

Further the laws of Kenya provide for two ways on which the governor can be removed from office. These are;

1. By impeachment

Article 181 of the Constitution of Kenya, 2010 provides for the grounds for the removal of the county governor as follows;

- a) Gross violation of the Constitution or any law;
- b) Where there are serious reasons for believing that the County governor has committed a crime under national or international law;
- c) Abuse of office or gross misconduct; or
- d) Physical or mental incapacity to perform the functions of office of county governor.

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Section 33 of the County Government Act as read together with Standing Order No. 60 provides for the procedure for the removal of the county governor which shall be by impeachment motion supported by at least a third of the members of the County Assembly.

2. Suspension of County Government

Article 192 of the Constitution of Kenya as read together with Section 123 of the County Governments Act, 2012 provides for the procedure under which a county government can be suspended if it engages in actions that are deemed to be against the common needs and interest of the citizen of a County. This can be done through a petition to the president supported by signatures of not less than ten percent of the registered voters in the County.

Honorable Members,

From the foregoing, the petitioners' petition does not meet the required threshold to petition the County Assembly to initiate the proceedings for the removal of the governor however, in the event that their petition meets the required threshold, the County Assembly shall not hesitate to consider it for further direction.

Honorable Members,

In view of the above, I therefore direct the Office of Clerk to return back the petition to the petitioners so as to ensure it complies with our Standing Orders and the law.

!! . NO. 48 OF 2024

**COMMUNICATION AS RELATES TO THE APPROVED KITUI COUNTY
SUPPLEMENTARY BUDGET I ESTIMATES FOR FY 2024/2025.**

Honorable Members,

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I wish to extend my heartfelt gratitude to each of you for your commitment and dedication in passing the Kitui County Supplementary Budget I Estimates for FY 2024/2025, which was submitted to this Assembly on 18th October 2024.

As you are all aware, we have engaged in extensive dialogue and consultation to produce a supplementary budget that adheres to the laws of the land and genuinely represents the interests of our citizens. Throughout this process, we have upheld the principle of separation of powers between the County Assembly and the County Executive as enshrined in the Constitution.

Article 175 of the Constitution of Kenya, 2010, underscores the principles of devolved governments, emphasizing that the County governments must have reliable and separate executive and legislative authorities. It requires that both the County Assembly and the County Executive to promote democracy, uphold the separation of power and ensure public participation.

Honourable Members,

The submitted budget contained an unjustified reduction of the Assembly development budget by Kshs. 133,042,008:

- Kshs. 100 million from a revote allocated for construction of a modern office block in the last Financial Year 2023/2024; and
- Kshs. 33,042,008 allocated for construction of Ward Offices in the current Financial Year 2024/2025.

I want to briefly take you through the legal requirements which guide on budgetary allocations and independence of the Assembly in revoting any unspent funds from the previous financial year.

i. The procurement of works for the proposed Kitui County Assembly modern office block was done in compliance with Section 45(2) of the Public Procurement and Asset Disposal Act, 2015 which provides that all procurement processes shall be within the approved budget of the

procuring entity and shall be planned by the procuring entity concerned through an annual procurement plan.

The proposal by the County Executive in the submitted supplementary budget to reduce this allocation for an already tendered project would interfere with the terms of the contract and constitute a breach of contract under Section 149(1)(d) of the Public Finance Management Act (PFMA), 2012, and Regulation 23(a) of the Public Procurement and Asset Disposal Act, 2015 which require the accounting officer to ensure that procurement entered into by the entity are lawful and are complied with. Insufficient funding to the project could potentially result to interest on delayed payments for not honouring payment certificates raised by the contractor which would plunge the County into undue financial crisis and legal consequences.

Section 11 (4) of the County Allocation of Revenue Act (CARA), 2021 stipulates that any unspent Assembly balances from the previous financial year should be budgeted for within the Assembly budget in the subsequent Supplementary Appropriation Bill. Reallocating these funds would contravene this provision which amended Section 130 of the Public Finance Management Act, 2012 by introducing new sub-sections (3) and (4) which gave Assemblies the autonomy to re-budget their unspent funds in a subsequent Appropriation Bill.

Honourable Members,

The submitted supplementary budget had further proposed expunging in its entirety the allocation of Kshs. 33,042,008 allocated for construction of Ward Offices in the approved budget for the Financial Year 2024/2025.

Equally, I want to briefly take you through the legal provisions which require institutions to ensure a conducive working environment for its workers. Article 41(2)(b) of the Constitution of Kenya, 2010, which grants every worker the right to reasonable working conditions. Section 6(2) of the same Act puts the responsibility to the employer to ensure the provision and maintenance of a working environment for every person

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employed that is, safe, without risks to health, and adequate as regards to facilities and arrangements for the employee's welfare.

Honourable Members,

Our collective prioritization of these key and impactful construction projects was therefore essential to fulfil these legal requirements and to ensure that Members of County Assembly, the Service and the Ward staff would have a good working environment compared to the current sorry state at their work stations which is unfavourable due to unavailability of enough working space contrary to Section 48 of the Occupational Safety and Health Act, 2007.

Honourable Members,

As you will recall, the County Integrated Development Plan (CIDP) 2023-2027 prioritized constructing both the modern office block and Ward offices, priorities that were subsequently reflected in the approved Annual Development Plan (ADP) 2024/2025 and the County Fiscal Strategy Paper (CFSF) 2024/2025. These essential planning documents underwent comprehensive public participation, in line with Article 10 (2) (a) and 118(1)(b) of the Constitution of Kenya, 2010, as well as Section 91 of the County Governments Act, 2012, which mandate public involvement in the county planning process.

Thus, retaining these projects in the approved County Budget for FY 2024/2025 reflects the will of the people and aligns with the Assembly's strategic objectives. Removing allocations for the construction of the office block and Ward offices at the supplementary budget stage would, therefore, undermine these planning documents and our institution's long-term goals.

Honourable Members,

The contract for constructing the office block was awarded in 2021 under the previous administration, stemming from an initiative by the last Assembly leadership. The initial allocation for this project was also made in 2021, and it has since been revoted annually due to circumstances outside the Assembly's control. The current County Assembly Service Board (CASB) is only implementing this vital flagship project and we are committed to ensure that it complies with the relevant laws through our Contract Implementation

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Team (CIT), supervision by the consultant and seeking guidance and professional expertise from the Department of Public Works.

The County Executive has also proposed several development projects aimed at improving the welfare of County staff through increased office space and other initiatives. As an Assembly, we fully support these efforts and encourage the County Executive to plan and present such proposals to the

Assembly for consideration. A good example of this is the construction of offices for village administrators, among other projects.

Honourable Members,

Contrary to any claims suggesting a lack of developmental prioritization, I wish to present a comparative analysis of allocations for various construction projects undertaken by the County Executive in contrast to the Assembly's allocation for development. This demonstrates our modesty in relation to similar projects undertaken by the County Executive:

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S. NO	FINANCIAL YEAR	COUNTY HEADQUARTERS ADMINISTRATION BLOCK	SUBCOUNTY, WARD AND VILLAGE ADMINISTRATORS' OFFICES	ACQUISITION OF LAND	CONSTRUCTION OF MINISTRY OF LANDS, ROADS, INFRASTRUCTURE AND URBAN DEVELOPMENT OFFICES IN VARIOUS SUBCOUNTIES	CONSTRUCTION OF POLICE POSTS	CONSTRUCTION OF CPSP OFFICES	CONSTRUCTION OF ENFORCEMENT OFFICE BLOCK	TOTAL ALLOCATIONS
1	2013/2014	-	-	-	-	-	-	-	-
2	2014/2015	32,250,958	90,000,000	-	-	-	-	-	122,250,958
3	2015/2016	61,741,772	129,485,585	19,480,550	-	-	-	-	210,707,907
4	2016/2017	-	44,786,311	-	18,000,000	-	-	-	62,786,311
5	2017/2018	50,000,000	-	-	-	-	-	-	50,000,000
6	2018/2019	71,840,142	-	-	-	-	-	-	71,840,142
7	2019/2020	37,079,918	7,382,956	-	2,500,000	-	-	-	46,962,874
8	2020/2021	8,793,235	-	-	-	-	-	-	8,793,235
9	2021/2022	7,106,317	1,467,340	-	7,841,535	-	-	-	16,415,192
10	2022/2023	17,621,312	-	-	-	50,000,000	-	-	67,621,312
11	2023/2024	12,000,000	45,416,334	1,700,000	8,000,000	48,866,000	15,000,000	-	130,982,334
12	2024/2025	37,500,000	5,000,000	-	9,080,000	73,741,227	10,000,000	2,000,000	137,321,227
TOTALS		335,933,654	323,538,520	21,180,550	45,421,535	172,607,227	25,000,000	2,000,000	925,681,492

In view of the above, I urge all Members to uphold our priority projects and ensure their successful completion, recognizing that the Assembly's development budget is significantly smaller compared to the allocations in the Executive's development budget.

Honourable Members,

I want to sincerely thank the County Budget and Appropriations Committee for being firm and seeing to it that the Assembly's development allocation of Kshs. 133,042,008 is rightfully re-budgeted under the Assembly's budget for the Financial Year 2024/2025 as guided by the relevant provisions of the law. The summary of the supplementary budget approved in this afternoon sitting can be summarised as follows for all the County entities;

County Ministry	Recurrent Estimates		Total Recurrent Estimates	Development Estimates	Total Budget Estimates
	PE	O&M			
Office of the Governor	508,750,023	841,630,036	1,350,380,059	1,080,925,698	2,431,305,757
Office of the Deputy Governor	67,995,241	90,208,315	158,203,556	34,298,479	192,502,035
Ministry of Water & Irrigation	92,191,299	47,255,495	139,446,794	634,298,726	773,745,520
Ministry of Education, Training & Skills Development	792,641,583	148,826,190	941,467,773	134,743,229	1,076,211,002
Ministry of Roads, Public Works & Transport	155,338,312	58,952,011	214,290,323	750,909,421	965,199,744
Ministry of Health & Sanitation	2,683,235,689	1,139,427,207	3,822,662,895	425,802,009	4,248,464,905
Ministry of Trade, Industry, MSMEs, Cooperatives & Innovation	85,147,508	113,759,458	198,906,966	639,194,086	838,101,052
Ministry of Energy, Environment, Forestry, Natural & Mineral Resources	51,627,213	74,414,131	126,041,344	356,330,080	482,371,424
Ministry of Culture, Gender, Youth, ICT, Sports & Social Services	69,159,768	98,003,135	167,162,903	43,500,045	210,662,948

KTUI COUNTY SUPPLEMENTARY I BUDGET FY 2024/25

County Ministry	Recurrent Estimates		Total Recurrent Estimates	Development Estimates	Total Budget Estimates
	PE	O&M			
Ministry of Finance, Economic Planning & Revenue Management	221,304,941	212,348,432	433,653,372	102,791,974	536,445,346
County Public Service Board	29,665,152	37,201,506	66,866,658	24,734,068	91,600,726
County Assembly Service Board	468,287,168	778,353,821	1,246,640,989	240,900,561	1,487,541,550
Kitui Municipality	33,636,755	46,559,814	80,196,569	85,896,953	166,093,522
Mwingi Town Administration	31,360,891	37,842,909	69,203,800	33,352,967	102,556,767
Ministry of Agriculture & Livestock	260,189,069	102,480,188	362,669,257	573,508,752	936,178,009
Ministry of Lands, Housing and Urban Development	56,983,440	45,250,624	102,234,064	198,802,376	301,036,439
TOTALS	5,607,514,051	3,872,513,271	9,480,027,323	5,359,989,425	14,840,016,748
	37.79	26.10	63.88	36.12	100.00

The Office of the Clerk will forward the approved report to the County Executive Member for Finance, Economic Planning and Revenue Management for him to prepare and submit the Supplementary Appropriation Bill to the Assembly for consideration.

In line with Standing Order No. 134 and Section 24 of the County Government Act, 2012, after the Assembly considers and passes the Supplementary Appropriation Bill:

- i. The Speaker shall, within fourteen (14) days, forward the Bill to the Governor.
- ii. The Governor shall within fourteen (14) days after receipt of the Bill;
 - a. assent to the Bill; or
 - b. refer the Bill back to the Assembly with a memorandum outlining reasons for the referral.

- !!! If the Governor refers the Bill back to the County Assembly, the Assembly may, following the appropriate procedures -
 - a. amend the Bill taking into account the issues raised by the Governor;
 - or
 - b. pass the Bill without amendment.

iv. If the Assembly amends the Bill taking into consideration the issues raised by the Governor, the Speaker shall within fourteen (14) days submit the Bill to the Governor for assent.

v. If the Assembly passes the Bill a second time, without amendment, or with amendments which do not accommodate the Governor's concerns by a vote supported by two-thirds of members of the County Assembly, the Speaker shall within seven (7) days re-submit the Bill to the Governor and the Governor shall within seven days assent to the Bill.

vi. If the Governor does not assent to a Bill or refer it back within fourteen (14) days, the Bill shall be taken to have been assented to on the expiry of that period.

Honourable Members,

As I conclude, I want to state that we have made remarkable progress together as an Assembly. Let us remain united, resilient and committed to doing what is right, disregarding any external pressures that may seek to divide us or cast us in a negative light. This Assembly is a House of rules and order, and I urge each of you to stand by our decisions with integrity.

5. STATEMENT

The following Statement was given on floor of County Assembly

! Schedule of plenary business for the week ending on 22nd November, 2024

(Designated member, County Assembly Business Committee)

6. MOTION ON ADOPTION OF THE REPORT BY THE COUNTY BUDGET AND APPROPRIATIONS COMMITTEE ON CONSIDERATION OF KITUI COUNTY BUDGET ESTIMATES FOR THE FINANCIAL YEAR 2024/2025.

(Chairperson, County Budget and Appropriations Committee)

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Motion Made & Question Proposed;

THAT, pursuant to the provisions of section 131(1) of the Public Finance Management Act, 2012 as read together with Standing Order No. 186(3), this Assembly hereby adopts the report by the County Budget and Appropriations Committee on the consideration of Kitui County Budget Estimates, for the Financial Year 2024/2025, laid on the Table of the County Assembly on Tuesday 18th June, 2024.

(Hon. Zachaeus Ivutha Syengo - M.C.A.)

Debate arising

(With the leave of the Hon. Speaker, the debate was suspended to allow the Motion to extend the Sitting Hours)

7. MOTION ON EXTENSION OF HOURS OF MEETING - (Leader of the Majority Party)

Motion Made & Question Proposed;

THAT, pursuant to the provisions of Standing Order No. 27 (3) (a), this Assembly hereby resolves to extend its sitting hours beyond 6.30 p.m. to allow the Members adequate time to transact the business as contained in the Order Paper.

(Hon. Harrison Maluki Mawia - M.C.A.)

Debate arising;

Question put and AGREED TO

(Resumption of Debate on the Motion on adoption of the Report by the County Budget and Appropriations Committee on consideration of Kitui County Budget Estimates for the Financial Year 2024/2025)

Question Put & AGREED TO

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8. ADJOURNMENT - and the time being twenty-three Minutes to Eight O'clock, the Hon. Speaker adjourned the house.

9. ASSEMBLY ROSE - at twenty-three Minutes to Eight O'clock.

MEMORANDUM

The Honourable Speaker will take the chair on Tuesday, 18th November, 2024 at 9.00 A.M.

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