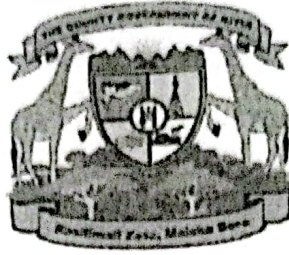


THIRD ASSEMBLY
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THIRD SESSION
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COUNTY GOVERNMENT OF KITUI
THE COUNTY ASSEMBLY
THIRD ASSEMBLY - (THIRD SESSION)
ORDERS OF THE DAY

TUESDAY 3RD DECEMBER, 2024 AT 9.00 A.M.

PRAYERS

1. Administration of Oath;
2. Communication from the Chair;
3. Messages;
4. Petitions;
5. Papers;
6. Notices of Motions;

- i. Motion on alteration of the Assembly Calendar, 2024. (Leader of Majority Party)

7. Statements;

COMMENCEMENT OF BUSINESS

8*. MOTION FOR REMOVAL FROM OFFICE OF THE COUNTY EXECUTIVE COMMITTEE MEMBER (CECM) FOR FINANCE, ECONOMIC PLANNING AND REVENUE MANAGEMENT - MR. PETER MWIKYA KILONZO.

Hon. Speaker
You may approve
~~Shah~~
2/12/2024

clerk
Approved.
~~Shah~~
2/12/2024

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THAT, in accordance with Section 40 (2) of the County Governments Act, 2012, and pursuant to Kitui County Assembly Standing Order No. 62, this Assembly hereby resolves to approve the motion seeking the removal from office of Mr. Peter Mwikya Kilonzo, County Executive Committee Member (CECM) for Finance, Economic Planning and Revenue Management, on the grounds of gross violation of the Constitution or any other law, incompetence, abuse of Office and gross misconduct as follows: -

1. GROSS VIOLATION OF THE CONSTITUTION OF KENYA, 2010 OR ANY OTHER LAW; -

Mr. Peter Mwikya Kilonzo has contravened Chapter Six of the Constitution of Kenya, 2010, Leadership and Integrity Act, 2012 and Public Officer Ethics Act, 2003 which enshrine the principles of leadership and integrity essential for public office. By conducting himself in a manner that erodes public trust and confidence in his role, Mr. Peter Mwikya Kilonzo has exhibited a fundamental disregard for the values of integrity, accountability and transparency required of the CECM for Finance, Economic Planning and Revenue Management.

Such acts include;

- i. Undermining the separation of powers and public participation as underscored in Articles 1, 10, 118, 175, 196 of the Constitution of Kenya, 2010, Section 91 of the County Governments Act, 2012, Section 125 of the Public Finance Management Act, 2012, and as advanced in Section 130 of the**

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PFM Act, 2012 as amended by Section 11(4) & (5) of the County Allocation of Revenue Act (CARA), 2021.

Mr. Peter Mwikya Kilonzo, CECM for Finance, Economic Planning, and Revenue Management, has blatantly undermined the principle of separation of powers as enshrined in Article 175 of the Constitution of Kenya, 2010, which emphasizes the autonomy of the county executive and legislative arms, and Section 11(4) of the County Allocation of Revenue Act (CARA), 2021 (which amended Section 130 of the PFM Act, 2012) and which prohibits the reallocation of unspent funds designated for the County Assembly to other purposes.

In the submitted Kitui County Supplementary Budget I for the Financial Year 2024/2025 (**See annex i**) received by the Assembly on 18th October 2024, Mr. Kilonzo unlawfully reallocated Kshs. 133,042,008 from the County Assembly's approved annual budget. This included a revote of Kshs. 100 million from the previous financial year 2023/2024 factored into the current annual budget for the construction of a modern office block for the County Assembly, contrary to Section 130 of the PFM Act, 2012 as amended by Section 11(4) and (5) of the CARA, 2021, which requires that unspent funds for the County Assembly from the ending financial year should be reallocated by the CECM Finance in a subsequent Supplementary Appropriation Bill to the County Assembly within two (2) months of the commencement of the financial year.

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It also included Kshs. 33,042,008 allocated in the current financial year for constructing Members of the County Assembly Ward Offices, thus undermining the Assembly's constitutional mandate over financial matters as provided under Section 125 of the Public Finance Management Act, 2012 which highlights the critical statutory steps to be observed in County budget making process viz County Integrated Development Plan (CIDP), Annual Development Plan (ADP), County Fiscal Strategy paper (CFSP) and annual budget estimate, and public involvement in the entire process.

By these actions, Mr. Kilonzo has not only violated Section 130 of the PFM Act as amended by Section 11 of CARA, 2021, but has also overstepped his authority, thereby infringing upon the Assembly's financial independence in budgeting and subverting the checks and balances essential to the devolved governance framework. Further, these actions undermine the principle of public participation enshrined in Articles 10(2)(a) and 118(1)(b) of the Constitution of Kenya, 2010, which require public involvement in legislative and budgetary matters. This is further supported by Section 91 of the County Governments Act, 2012, which establishes mechanisms for public participation in governance and decision-making processes.

In reallocating these funds in deviance with the wishes of the public, Mr. Kilonzo disregarded the outcomes of public participation on the aforementioned statutory planning documents and infringed upon the constitutional requirement of transparency

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and accountability as stipulated in Article 10 of the Constitution. By undermining the Assembly's oversight role, Mr. Kilonzo violated the separation of powers and the public trust, both of which are fundamental to Kenya's devolved governance system.

ii. Violation of Section 135 of the Public Finance Management Act, 2012, and Regulation 39(3) & (8) of the Public Finance Management (County Governments) Regulations, 2015

- (a) Mr. Peter Mwikya Kilonzo, CECM for Finance, Economic Planning and Revenue Management, contravened Section 135 of the Public Finance Management (PFM) Act, 2012, and Regulation 39(3) and (8) of the PFM (County Governments) Regulations, 2015 in the submitted Kitui County Supplementary Budget I for the FY 2024/2025 on 18th October 2024. The submitted budget contained allocations for new projects that were not part of the approved annual budget, failing to meet the qualifications stipulated under these legal provisions.

Under Section 135 of the PFM Act, 2012, a supplementary budget should only contain expenditures necessitated by unforeseen and unavoidable needs that cannot wait for the next financial year or reallocations within the approved budget to address priority areas. Similarly, Regulation 39(3) and (8) of the PFM (County Governments) Regulations, 2015, specify that supplementary budgets must conform to the approved annual

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plan and cannot introduce new projects unless they meet the strict conditions set by the law, including unforeseen exigencies. Some of the allocations in the submitted supplementary budget which exemplify these violations are as follows:

- Office of the Deputy Governor - Purchase of Computers, Printers and other IT Equipment (To enable automation) Kshs. 1,241,700
- Ministry of Culture, Sports and Youth Development - Project Allowance - Youth Engagement Forum Kshs. 15M. Expenditures under this programme have already been incurred as evidenced by the invitation letter referenced CG.KTI/MCGYICT&SS/ADM/CAK/CECM/ 1/17/46 dated 6th November, 2024 inviting Members of the County Assembly to attend the Kitui County Youth engagement forum, 2024 on 15th November, 2024 at Ithookwe showgrounds (**see annex ii**). This happened when the supplementary budget I for FY 2024/2025 is still in the approval process and the same was undertaken without a policy to guide on its implementation. This was not an emergency and further a contravention of regulation 39(8) of the PFM (County Governments) Regulations, 2015 which envisages that new policy options and service delivery
- initiatives should only be considered when introduced in the annual budget estimates.
- Ministry of Culture, Sports and Youth - Advertising, Awareness and Publicity Campaigns - County tournament

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in football from Village level culminating into Governor's cup) Kshs. 10M.

During public participation on the County budget for the FY 2023/2024, among the contentious issues raised by the County residents was the poor state of County roads. This necessitated a reasonable allocation of Kshs. 284,749,652 to cater for the need. During a subsequent supplementary budget I for FY 2023/2024 (**see annex iii**), the CECM reallocated Kshs. 266,660,304 for other needs subverting the will of the people and eroding the sovereignty of the people provided under Article 1 of the Constitution of Kenya, 2010. This is an indication of misplaced priorities by the CECM Finance against pressing needs that ought to be addressed within the scarce resources available to the County. The effect of this reallocation has been devastating as roads are still in a dilapidated state owing to lack of supporting roads infrastructure works including drifts, culverts and gabions.

The introduction of new budget items and reallocations represent new projects that were neither approved in the original budget nor justified under the statutory qualifications for supplementary budgets. The introduction of such unauthorized expenditures undermines the principles of public finance management, including transparency and accountability, as enshrined in Article 201 of the Constitution of Kenya, 2010, and the PFM framework.

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By contravening these provisions, Mr. Peter Mwikya Kilonzo has jeopardized the County's financial integrity by failing to ensure prudent and lawful management of public funds. This disregard for statutory requirements erodes public confidence in the County's governance and threatens fiscal responsibility, which is central to devolved governance under the Constitution.

- (b) Mr. Peter Mwikya Kilonzo, CECM for Finance, Economic Planning and Revenue Management, violated Section 135(1) and (2) of the Public Finance Management Act, 2012 by authorizing the payment of Kshs. 76 million, funds appropriated in the Kitui County Supplementary II Appropriation Act, 2024, for drilling boreholes across the forty (40) Wards, to instead pay electricity bills for KITWASCO and KIMWASCO. This misapplication of funds was confirmed in the County Assembly report by the Committee on Agriculture, Water and Irrigation on the inspection of boreholes drilled across Kitui County in the Financial Year 2023/2024, KITWASCO and KIMWASCO pipelines, their main water sources, and treatment zones conducted from 12th to 16th August, 2024 (**see annex iv**).

Section 135(1) of the PFM Act, 2012, requires any reallocation of funds from the approved budget to be authorized through a supplementary budget, while Section 135(2) mandates that such reallocations must be presented to and approved by the County Assembly within two (2) months after the first withdrawal of the funds as required under Section 135(4) of the PFM Act, 2012. In

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this case, no supplementary budget was presented seeking the Assembly's approval to reallocate funds initially appropriated for drilling boreholes to settle electricity bills.

By authorizing this payment without following the statutory process, Mr. Peter Mwikya Kilonzo undermined the County Assembly's oversight role as enshrined in Article 185 of the Constitution of Kenya, 2010, which vests the Assembly with legislative and budgetary authority. This act also violates the principles of transparency and accountability under Article 201 of the Constitution, which require that public funds be utilized for the purposes for which they were appropriated.

This unauthorized expenditure further contravenes Section 149(1) of the PFM Act, 2012, which holds the County Executive Committee Member responsible for ensuring effective financial management and adherence to the approved budget. By redirecting funds appropriated for critical water infrastructure projects to unrelated expenditures, the CECM failed to prioritize and safeguard public resources, compromising service delivery and eroding public trust in the County's financial governance.

- iii. Violation of Articles 10, 73, and 75 of the Constitution of Kenya, 2010, Sections 8, 9, 10, and 11 of the Leadership and**
- iv. Integrity Act, 2012, and Sections 9, 11, and 12 of the Public Officer Ethics Act, 2003**

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Articles 10 and 73(1)(iii) & (iv) of the Constitution of Kenya, 2010, sets out the national values and principles of governance, as well as the expectations on the ethical exercise of authority by state officers. Article 75(1) of the Constitution, as read together with Sections 8, 9, 10, and 11 of the Leadership and Integrity Act, 2012, and Sections 9, 11(1) & (2)(a)(i)(ii), and 12 of the Public Officer Ethics Act, 2003, obligates state officers to conduct themselves in a manner that upholds public trust, avoids conflict of interest, and refrains from using their positions to confer personal benefits.

Mr. Peter Mwikya Kilonzo violated these provisions by using his office to improperly confer a benefit to himself and his family. He influenced the drilling of Myaani 001 and Myaani 002 boreholes on family land in Myaani village, contrary to the Annual Budget for FY 2023/2024, which had approved the drilling of this borehole in Senda Village. This action compromised public interest and diverted public resources for personal gain, contrary to Article 73(2)(c) and (d) of the Constitution, which mandates state officers to prioritize public interest and uphold accountability.

Article 10 of the Constitution underscores the national values of transparency and integrity in governance. By failing to adhere to these values, Mr. Peter Mwikya Kilonzo disregarded his ethical obligations, undermining public confidence in the impartial administration of resources. Moreover, Section 8 of the Leadership and Integrity Act, 2012, specifically prohibits state officers from using their positions for improper enrichment, while Section 9 emphasizes avoiding situations of conflict between personal

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interests and public duty. Similarly, Section 11(1) & (2)(a)(i)(ii) of the Public Officer Ethics Act, 2003, requires public officers to act in a manner that maintains the honour of their office. By using public funds and resources for personal advantage, Mr. Peter Mwikya Kilonzo not only violated these statutory provisions but also acted contrary to Section 12 of the Act, which demands public officials to maintain the integrity of the public office at all times. This act of influencing the relocation of the boreholes demonstrates a clear compromise of public resources for personal gain, a serious breach of ethical conduct and a violation of the public trust inherent in his position. In addition, the self-centeredness of the CECM Finance has subjected the locals of Senda village to untold suffering having prioritised this project undertaken in their village for ease of water accessibility which is a scarce resource within the region as contained in the County Assembly report by the Committee on Agriculture, Water and Irrigation on the inspection of boreholes drilled across Kitui County in the Financial Year 2023/2024, KITWASCO and KIMWASCO pipelines, their main water sources, and treatment zones conducted from 12th to 16th August, 2024 (**see annex iv**).

v. Violation of Article 175(b) of the Constitution of Kenya, 2010, and Sections 157 & 158 of the Public Finance Management Act, 2012

Mr. Peter Mwikya Kilonzo, CECM for Finance, Economic Planning and Revenue Management, violated Article 175(b) of the

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Constitution of Kenya, 2010, which requires accountability for financial resources and transparent revenue management within county governments. Additionally, he contravened Sections 157 and 158 of the Public Finance Management (PFM) Act, 2012, which mandate the establishment and enforcement of efficient systems for revenue collection to safeguard public finances.

The County Assembly report by the Committee on Finance and Economic Planning on the Inspection Exercise on the Status of Revenue Collection in Kitui County, conducted from 2nd to 5th May 2023 (**see annex v**), revealed negligence on Mr. Peter Mwikya Kilonzo's part in implementing proper and transparent mechanisms for revenue collection. The report observed that revenue clerks continued to collect revenue in cash at most cess barriers, contrary to modern best practices and technological alternatives that enhance accountability and minimize pilferage.

This failure has led to significant revenue leakages, allowing substantial amounts of public funds to fall into private hands. Consequently, Kitui County has consistently failed to meet its own-source revenue targets for successive financial years. This shortfall directly contributes to the accumulation of unnecessary pending bills, undermining the County's fiscal responsibility and ability to deliver essential services.

Section 157 of the PFM Act, 2012, obligates the County Treasury to design and implement effective systems and controls for revenue collection and management, while Section 158 emphasizes the need for periodic evaluations of revenue collection systems to

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ensure accountability and mitigate revenue losses. The CECM's negligence in this regard demonstrates a failure of his statutory duty and a disregard for the principles of accountability and efficiency mandated under these sections.

Furthermore, Article 201 of the Constitution of Kenya, 2010, which sets out principles of public finance, highlights the need for transparency, accountability and fiscal responsibility in the management of public resources. By failing to address revenue collection inefficiencies, the CECM undermined these constitutional principles and the public trust in the County's financial governance.

Kitui County Assembly Standing Order No. 181 compels the CECM for Finance to provide a report to the relevant Committee of the County Assembly on the implementation status of the House resolution within Sixty (60) days. The CECM has grossly violated this provision by failing to implement recommendations adopted by the Assembly in the aforementioned Committee report.

This lack of proper supervision and coordination of revenue collection mechanisms exemplifies a violation of his duty to safeguard public funds, leading to financial mismanagement that compromises the delivery of services and the achievement of the County's development goals.

- vi. Violation of Article 10 & 201 of the Constitution of Kenya, 2010, Section 108 of the County Governments Act, 2012, and Sections 117 & 126 of the Public Finance Management Act, 2012**

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Mr. Peter Mwikya Kilonzo, CECM for Finance, Economic Planning and Revenue Management, violated Section 108 of the County Governments Act, 2012, and Sections 117 and 126 of the Public Finance Management (PFM) Act, 2012 by misleading the County Government into operating within statutory budget documents that were not aligned with the five-year County Integrated Development Plan (CIDP) for the period 2023–2027.

Section 108 of the County Governments Act, 2012, establishes the CIDP as the guiding framework for all development activities and expenditure planning within the County. It mandates that all planning documents, including the Annual Development Plan (ADP) and the County Fiscal Strategy Paper (CFSP), must align with the CIDP to ensure consistency with the County's long-term development priorities.

However, the ADP and CFSP for the Financial Year 2022/2023 were prepared and approved outside the CIDP for the period 2023–2027. The CIDP was submitted for approval by the County Assembly on 5th June 2023 vide a letter referenced CGKTI/CT/FIN/37/II/34 dated 2nd June 2023 (**see annex vi**) when the County Budget for the financial year 2023/2024 had already been submitted for consideration by the Assembly, rendering them (ADP, CFSP and the Budget estimates for the FY 2023/2024) inconsistent with the CIDP.

Section 117 of the PFM Act, 2012, requires the preparation of the CFSP to reflect the priorities outlined in the CIDP and the ADP. Additionally, Section 126 obligates the County Executive

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Committee to prepare the ADP based on the CIDP and submit it to the County Assembly for approval before budget formulation. By submitting and implementing budget documents that were misaligned with the CIDP, Mr. Peter Mwikya Kilonzo undermined the County's strategic development agenda and violated these statutory provisions.

This failure to adhere to the legal framework jeopardized the coherence and effectiveness of the County's planning and budgeting processes. The CIDP serves as the principal document for fostering integration and alignment of County programs and projects, and deviations from it compromise service delivery and resource allocation.

Moreover, these actions demonstrate non-compliance with the principles of good governance and accountability as outlined in Article 10(c) of the Constitution of Kenya, 2010, and the public finance principles in Article 201, which emphasize prudent and transparent use of public resources. By submitting these documents out of sequence and without proper alignment, Mr. Peter Mwikya Kilonzo failed in his duty to provide sound fiscal and economic guidance to the County Government, resulting in an uncoordinated, ineffective planning process and delayed uploading of the County budget into the Integrated Financial Management Information System (IFMIS).

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2.INCOMPETENCE:

Mr. Peter Mwikya Kilonzo, in his role as CECM for Finance, Economic Planning and Revenue Management, has consistently demonstrated an inability to effectively fulfil the responsibilities of his office. His repeated failures to comply with statutory obligations and deadlines have impeded the efficient functioning of the County Government, thereby compromising its operational stability and financial planning by: -

i. Non-Compliance with Statutory Deadlines for Submission of Statutory Documents

Mr. Peter Mwikya Kilonzo, CECM for Finance, Economic Planning and Revenue Management, has demonstrated glaring negligence in his handling of the Kitui County Finance Bills; critical legislative instruments governing taxation. The Finance Bill requires rigorous public engagement in line with Article 174(c) and Article 196 of the Constitution of Kenya, 2010, which underscore the principles of public participation and accountability in governance, and Section 3(f) of the County Governments Act, 2012, which prioritizes inclusivity in decision-making processes.

In clear violation of Section 133 of the Public Finance Management (PFM) Act, 2012, which mandates submission and approval of the Finance Bill within ninety (90) days after the passing of the Appropriations Bill, and Kitui County Assembly Standing Order No. 216, which establishes the procedural timelines for the Assembly, Mr. Peter Mwikya Kilonzo has consistently delayed submission of the Finance Bills.

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The Kitui County Finance Bills 2022, 2023 and 2024 were submitted as follows;

- Finance Bill, 2022 was submitted on 29th June 2023 (**see annex vii**);
- Finance Bill, 2023 was submitted on 21st September 2023 (**see annex viii**); and
- Finance Bill, 2024 was submitted on 30th September 2024 (**see annex ix**)

This noncompliance directly contravenes the legal requirement for the Assembly to consider and approve the Bills by the end of September of each financial year. The repeated delays in submission have significantly undermined the County's ability to revise and enact updated revenue collection rates, fines, fees and charges in line with the prevailing economic environment and budgetary needs. As a result, the County Government has been forced to rely on outdated revenue collection frameworks, negatively impacting its revenue-generating capacity.

Furthermore, the failure to meet statutory deadlines disregards the principles of accountability and transparency in public finance as enshrined in Article 201 of the Constitution of Kenya, 2010, and has jeopardized the County's financial stability. The delay in enacting these critical fiscal policies has not only compromised service delivery to the County residents but also contributed to inefficiencies in budget implementation due to reduced and untimely revenue inflows.

Additionally, Mr. Peter Mwikya Kilonzo's insensitivity to the heightened public awareness surrounding taxation matters and his neglect in ensuring timely and inclusive public participation has violated the

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constitutional obligation of involving citizens in decision-making processes as provided under Article 174(c) of the Constitution. This lack of responsiveness demonstrates incompetence and a failure to uphold the statutory and ethical standards expected of his office.

By failing to adhere to these statutory deadlines, the CECM has hindered the smooth operation of County fiscal and governance processes, intensifying the challenges of revenue mobilization and financial planning.

ii. Failure to Adhere to the Provisions of Section 157 of the Public Finance Management Act, 2012 on the Designation of Receivers of County Government Revenue

Section 157 of the Public Finance Management (PFM) Act, 2012 requires the CECM for Finance to designate, in writing, a specific person responsible for collecting, receiving and accounting for county government revenue. This statutory obligation is vested exclusively in the CECM for Finance to ensure clear accountability and effective financial governance.

In blatant disregard of this legal requirement, Mr. Peter Mwikya Kilonzo, CECM for Finance, Economic Planning and Revenue Management, neglected his duty and unlawfully delegated the designation authority vested in him to a Chief Officer within his ministry, contravening the express provisions of the PFM Act, 2012.

Evidence presented during a session of the County Assembly Committee on Labour and Social Welfare on Thursday, 4th July 2024, indicates that Ms. Roselyn Kavata Munyasya, an employee in the department, was

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assigned this role in writing by Mr. John Makau, the Chief Officer for Finance, Revenue Management and Accounting, on 14th March 2023. This evidence is contained in the Committee's report on a statement request by Hon. Jeremiah M. Mutua concerning various county staff in acting capacities **(see annex x)**.

By delegating a statutory role exclusively reserved for the CECM, Mr. Peter Mwikya Kilonzo demonstrated incompetence and blatant disregard for his legally prescribed obligations, violating the governance principles outlined in Section 157 of the PFM Act, 2012. This failure to fulfill his duties:

- (a) Undermines the county's financial governance, creating a gap in accountability for revenue collection and management.
- (b) Has contributed to significant revenue leakages, directly impacting the county's ability to meet its own source revenue targets.
- (c) Erodes public trust, as improper delegation compromises the transparency and integrity of public financial management.

This act of negligence illustrates a failure to prioritize public interest and uphold constitutional and statutory obligations, ultimately hindering the County's financial sustainability and governance standards. Resultantly, the County has not been able to provide effective service delivery owing to lack of adequate funds to fully finance the County budgets.

iii. Failure to Adhere to the Provisions of Section 103 and 109 of the Public Finance Management Act, 2012

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Mr. Peter Mwikya Kilonzo, as the CECM for Finance, Economic Planning and Revenue Management, failed in his statutory responsibility for the management, administration and coordination of County revenue collection, as outlined in Sections 103 and 109 of the Public Finance Management (PFM) Act, 2012.

Section 103 of the PFM Act, 2012, designates the County Treasury headed by the CECM Finance to be responsible for the efficient management of public finances, including revenue collection, while Section 109 requires the establishment and proper administration of a County Revenue Fund into which all revenue should be deposited promptly and managed transparently.

As of 30th June 2023, Kshs. 11,395,086 in collected revenue could not be accounted for due to poor supervision and coordination of revenue collection activities as contained in auditor general's report for the period ending 30th June, 2023 (**see annex xi**) It was discovered that certain revenue collectors were holding cash instead of depositing it into the designated County Revenue Fund. This failure occurred despite consistent budgetary allocations for the automation of revenue collection systems, which have yet to be fully implemented under the CECM's leadership.

This failure amounts to gross mismanagement of public finances, allowing theft of public funds under his watch. The mishandling of revenue collection not only contravenes the PFM Act but also violates the principles of good governance, accountability and integrity, as

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stipulated in Article 10 and Article 201 of the Constitution of Kenya, 2010.

The blatant theft of public funds ought to have been reported promptly to the Ethics and Anti-Corruption Commission (EACC) and the Directorate of Criminal Investigations (DCI) for investigation and prosecution. However, no such action was taken and the implicated staff remain employed in various County Government departments, further eroding public confidence in the County's governance.

As head of the County Treasury, it was Mr. Peter Mwikya Kilonzo's statutory duty under Section 104(1)(d) of the PFM Act, 2012 to enforce effective financial control measures and advise the County Government on necessary remedial actions. His failure to report or act on the identified theft demonstrates negligence in performing his duties and a disregard for the anti-corruption and ethical standards outlined in Sections 8 and 9 of the Public Officer Ethics Act, 2003.

This situation exemplifies a lack of commitment to safeguarding public resources and ensuring accountability, contrary to the public finance principles enshrined in law. The inaction and ongoing revenue management inefficiencies continue to undermine the County's financial stability and public trust.

iv. Unlawful submission of a Memorandum on the Approved County Fiscal Strategy Paper (CFSP) 2024/2025

Mr. Peter Mwikya Kilonzo, CECM for Finance, Economic Planning and Revenue Management, demonstrated a fundamental failure to

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understand his roles and mandate as defined by the law by submitting a memorandum to the Clerk of the Assembly objecting to the approved County Fiscal Strategy Paper (CFSP) for the Financial Year 2024/2025. This was done via a letter referenced CGKTI/CT/FIN/35/V/43 dated 11th April 2024 (**see annex xii**).

The submission of this memorandum was an unlawful attempt to overturn a decision of the County Assembly, a direct overreach of the CECM's mandate, and a deliberate contravention of the legal framework governing County budgeting processes. Section 24(2)(b) of the County Government Act, 2012, and Standing Order No. 134(2)(b) of the Kitui County Assembly Standing Orders, only allow the Governor to refer an Appropriation Bill back to the Assembly with a memorandum outlining specific reasons for the referral. There is no legal provision that permits the CECM to challenge an approved CFSP or any Assembly decision in the manner undertaken by Mr. Peter Mwikya Kilonzo.

Additionally, this act violated key provisions of the Public Finance Management Act, 2012, which establishes the roles and responsibilities of the County Treasury and the Assembly in the budget-making process. Once the CFSP has been approved by the Assembly as per Section 117 of the PFM Act, 2012, the County Treasury's mandate is strictly to implement the priorities therein. Any objections to the approved CFSP should be addressed through established legal channels, which do not involve the submission of unilateral memoranda by the CECM.

This overreach by the CECM undermined the principle of separation of powers enshrined in Article 175 of the Constitution of Kenya, 2010, and

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subverted the Assembly's exclusive mandate to approve and oversee the implementation of budgetary frameworks. His actions displayed a lack of adherence to Article 10 (respect for the rule of law) and Article 201 (prudence in public finance) of the Constitution.

The memorandum was a direct challenge to the Assembly's decision-making authority, a fundamental breach of the democratic processes governing County operations.

v. Misreporting on IFMIS uploading for the Kitui County Supplementary II for Financial Year 2023/2024

One of the cardinal principles of public financial management is strict compliance with approved budgets and adherence to the legislative frameworks that govern them. Mr. Peter Mwikya Kilonzo, in his role as the CECM for Finance, Economic Planning and Revenue Management, failed to honour this principle when he inaccurately uploaded the recurrent budget allocation for the Ministry of Health and Sanitation into the Integrated Financial Management Information System (IFMIS). The Kitui County Supplementary II Appropriation Act, 2024, a binding legislative document mandating strict execution of the approved budgetary provisions, expressly indicated the recurrent budget allocation for the Ministry of Health and Sanitation as Kshs. 3,467,530,515. Despite this clear indication, Mr. Peter Mwikya Kilonzo negligently uploaded the figure as Kshs. 3,447,994,858, creating a variance of Kshs. 19,535,657, as pointed out by the Controller of Budget's letter referenced COB/KTU/002/2/3(25) dated 30th April 2024

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(see annex xiii), the Hyperion budget printout (see annex xiv), and the Supplementary II Appropriation Act, 2024.

This discrepancy constitutes a breach of the principles outlined in Article 201 of the Constitution of Kenya, 2010, which mandates openness, accountability and strict adherence to public financial discipline. Further, Section 104 of the Public Finance Management Act, 2012, imposes an obligation on the County Treasury to ensure that all financial transactions align with approved budgetary allocations, a standard that was grossly violated in this instance.

By failing to adhere to the legal provisions, the CECM undermined Section 107(2) of the Public Finance Management Act, 2012, which underscores the importance of fiscal responsibility in public resource management.

The failure to accurately upload the budget allocations into IFMIS demonstrates a lack of due diligence and technical oversight. It undermines the fiscal integrity of the County and compromises the confidence of stakeholders, including the public, in the County Treasury's ability to manage public resources effectively. This negligence is particularly concerning given that IFMIS serves as a central platform for public financial management, designed to ensure accuracy, transparency and compliance with statutory requirements.

vi. Unrealistic County Own Source Revenue Target

Mr. Peter Mwikya Kilonzo, the CECM for Finance, Economic Planning and Revenue Management, has set an unrealistic revenue target of Kshs. 988,645,941 in the submitted Kitui County Supplementary

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Budget I estimates for the financial year 2024/2025, which represents an increase of Kshs. 388,645,941 from the Kshs. 600 million in the approved County budget for the same period.

This increase in the revenue target comes on the heels of underperformance in the previous year, where the own-source revenue target of Kshs. 585 million was under collected by Kshs. 67,950,185. Moreover, the total own-source revenue collected for the first quarter of the financial year 2024/2025 was a mere Kshs. 112,157,327, as outlined in the CECM's response to concerns raised by the County Budget and Appropriations Committee during the consideration of the Kitui County Supplementary Budget I estimates for the financial year 2024/2025 (**see annex xv**).

Given the history of underachievement in meeting revenue targets and the current slow revenue collection pace, it is evident that the proposed new target of Kshs. 988,645,941 is not only unrealistic but may also lead to significant fiscal challenges. If this target is not met, the County risks accumulating large, unnecessary pending bills by the end of the financial year, further straining its financial stability and ability to provide services.

As detailed in this motion, it is clear that the County has a poor revenue collection administration system, riddled with serious revenue leakages. These systemic issues require urgent reform and a complete overhaul of the County's revenue collection strategies. Unfortunately, this has proven to be an uphill task for Mr. Peter Mwikya Kilonzo, who has not demonstrated sufficient competence in addressing these challenges.

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This failure to align revenue targets with realistic collection capabilities is a direct violation of the principles of fiscal responsibility and prudent financial management enshrined in Article 201 of the Constitution of Kenya, 2010, and is contrary to the Public Finance Management Act, 2012, particularly Section 104, which mandates effective revenue mobilization and management. Moreover, it undermines the County's ability to implement the County Integrated Development Plan (CIDP) and achieve its development objectives, which depend heavily on the availability of reliable and adequate financial resources.

This unrealistic target further worsens the County's budgeting challenges, as it may encourage financial mismanagement, misreporting and improper planning, all of which undermine the integrity of public financial management within the County.

3. ABUSE OF OFFICE

Mr. Peter Mwikya Kilonzo, in his capacity as the CECM for Finance, Economic Planning and Revenue Management, has exploited his position for personal gain, in direct violation of the code of conduct expected of Public Officers and the national values and principles of governance as enshrined in Article 10 of the Constitution of Kenya, 2010.

- (a) In a shocking and unlawful act, the CECM manipulated the allocation of a community borehole project, redirecting it to be drilled on his family property, thereby depriving the intended community beneficiaries. This blatant act subverted the public interest for his personal advantage.

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Specifically, Mr. Peter Mwikya Kilonzo used his office to influence the diversion of the drilling of Myaani 001 and Myaani 002 boreholes from Senda village to Myaani village, on family land, at a cost of Kshs. 2 million. This gross misuse of public resources and authority exemplifies abuse of office by the CECM, contrary to Article 73 and 75 of the Constitution of Kenya, 2010, as well as Sections 8, 9, 10, 11, 13, and 24 of the Leadership and Integrity Act, 2012.

Such actions breach the public trust and represent a complete failure to carry out the duties of his office in a professional, transparent and accountable manner. Furthermore, this conduct constitutes the use of office to unlawfully enrich himself, as well as a failure to exercise impartiality and objectivity in the execution of his official duties, as mandated by Articles 10, 73(2)(b) & (c), and 232(1)(a)(c) and (e) of the Constitution of Kenya, 2010.

This abuse of office undermines the integrity of public service, erodes public confidence in the leadership and contributes to a culture of impunity, where public resources are diverted for personal gain rather than for the public good.

(b) There have been numerous complaints from contractors alleging that Mr. Peter Mwikya Kilonzo, in his capacity as the CECM for Finance, Economic Planning and Revenue Management, has been asking for bribes from them before approving payments for contracts done. This conduct is contrary to:

- Section 6(1) of the Bribery Act, 2016, which criminalizes the solicitation or acceptance of any financial or other advantage

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as an inducement or reward for the improper performance of a relevant function or activity.

- Chapter Six of the Constitution of Kenya, which sets the principles of leadership and integrity, including accountability, transparency and the avoidance of corruption or abuse of office.
- Sections 10 and 12 of the Leadership and Integrity Act, 2012, which mandate state officers to uphold public trust and avoid conflicts of interest or conduct that undermines the dignity of their office.

These actions not only undermine public confidence in the office but also violate the ethical and legal standards required of public officers.

- (c) Further, several Chief Officers have raised concerns that Mr. Peter Mwikya Kilonzo has been engaging in bullying behaviour by issuing threats and intimidation to advance his personal interests contrary Section 34 Leadership and Integrity Act, 2012, which prohibits state officers from which prohibits state officers from bullying, intimidating or harassing any person.

4.GROSS MISCONDUCT

i. Improper use of public office for personal gain

Mr. Peter Mwikya Kilonzo influenced the drilling of Myaani 001 and Myaani 002 boreholes on family land in Myaani village, contrary to the approved allocation for a borehole at Senda Village in the FY 2023/2024 budget. This action violated Articles 73(2)(c) and 75(1) of the Constitution, Sections 8, 9, and 10 of the Leadership and Integrity Act,

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2012, and Sections 9, 11, and 12 of the Public Officer Ethics Act, 2003, which require state officers to act with integrity and prioritize public interest over personal gain.

The improper prioritization of personal interests over public welfare constituted a breach of ethical obligations, undermined public trust and diverted critical resources meant to alleviate water scarcity in Senda Village.

ii. Unlawful submission of a memorandum challenging the approved CFSP

Mr. Peter Mwikya Kilonzo unlawfully submitted a memorandum objecting to the approved County Fiscal Strategy Paper (CFSP) for FY 2024/2025. This violated Section 24(2)(b) of the County Governments Act, 2012, and Standing Order No. 134(2)(b) of the Kitui County Assembly Standing Orders, which vest authority over such matters in the Governor and not the CECM.

These above two scenarios couple with failure to submit a supplementary budget seeking ratification for the expenditure of Kshs. 76 million to pay electricity bills for KITWASCO and KIMWASCO within two (2) months of such expenditure in line with Section 135 of the PFM Act, 2012 amount to gross misconduct by the CECM.

(Hon. Anthony Musyimi Musyoka - M.C.A)

****Denotes order of the day****
