



COUNTY ASSEMBLY OF MOMBASA
THE HANSARD

Wednesday, 5th March, 2025

Third Assembly – Fourth Session
FIFTH SITTING

*[The County Assembly met at 11:34a.m at the County Assembly Buildings]
[The Deputy Speaker (Honourable Fadhili Mwalimu Makarani) in the Chair]*

PRAYERS

The Deputy Speaker (Hon. Makarani): Good morning, Members. Take your seats.

[Lack of quorum]

Serjeant-At-Arms, please ring the quorum bell.

*[The quorum bell was rung for five minutes]
[Some Members entered the Chambers]*

Clerk, next order please.

MESSAGES

MEMORANDUM OUTLINING RESERVATIONS ON THE MOMBASA COUNTY WARD EQUITABLE DEVELOPMENT BILL, 2024.

Honourable Members, the Mombasa County Equitable Bill was passed by the County Assembly on Wednesday, 4th December, 2024 and the velum was forwarded to His Excellency the Governor dated 9th December, 2024. The Governor then referred the Bill to the County Assembly, while the memorandum addressed to the Speaker dated 24th December, 2024, outlining his reservations on the Bill. Section 24(2b) of the County Government Act, read that together with Standing Order 134(2) provides that,

The Governor shall within 14 days of receipt of a Bill refer the Bill back to the County Assembly, with a memorandum outlining reasons for referral.

I, hereby proceed to read the memorandum from the Governor and it is worth noting that, the memorandum was received during the long recess period.

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I wrote a letter dated 8th January, 2024 notifying the Members of the memorandum. Honourable Members the memorandum; Reference, Reservation on the Mombasa County Ward Equitable Development Bill, 2024. The above subject refers. His Excellency, the Governor has submitted his reservation for the Mombasa County Ward Equitable Development Bill, 2024 to the Speaker of the County Assembly of Mombasa. The memorandum reads;

WHEREAS a Bill entitled, “A Bill for an Act of the County Assembly of Mombasa to provide a framework for the promotion of equitable development in the Wards within the Mombasa County “, the short title of which is, “The Mombasa County Ward equitable Development Bill, 2024” was passed by the County Assembly;

AND WHEREAS the said Bill was presented to me to assent in accordance with the provisions of the Constitution;

NOW THEREFORE, in exercise of the power conferred on me by Article 185(2) and Article 115(1) (b) of the Constitution, I hereby tender my reservations on the Mombasa County Ward Equitable Development Bill, 2024 for the reasons set out hereunder:

CONFLICT WITH THE CONSTITUTION AND OTHER LAWS

1. Clause 5(3) – Allocation of Funds

- The Bill proposes that at least 30 per cent of the County Government’s development budget be allocated to Ward-based projects.*
- Conflict with Article 201(b) Roman 3) of the Constitution: Article 201 mandates the prudent and responsible use of public funds. Allocating a fixed percentage to ward projects risk undermining flexibility in the County Government’s budgeting process, limiting the ability to prioritize county-wide projects of greater importance.*
- Conflict with section 107 of the Public Finance Management Act, 2012: This section required Counties to adhere to fiscal responsibility principles, including allocating funds to county priorities as determined through planning processes. A rigid 30 per cent requirement conflicts with this principle and could hamper balanced development.*

2. Clause 7(2) and Clause 8(1) – Identification and Selection of Projects

- The Bill gives the Ward Projects Identification Committee significant power to identify and recommend projects.*
- Conflict with Article 174(a) and Article 179 of the constitution: While promoting public participation is laudable, the Constitution vests the executive authority of the County in the Governor and County Executive Committee. The Bill’s provision erodes this authority by devolving excessive projects selection power to Ward-level Committees.*

- *Duplication of Roles: The mandate overlaps with the established planning and budgeting processes provided under the Public Finance Management Act, 2012, creating potential conflict and redundancy.*

3. *Clause 12 – Funds Allocating and Reallocation*

- *The Bill restricts reallocation of the funds unless approved by the County Assembly.*
- *Conflict with section 154 of the Public Finance Management Act: The Act provides the County Executive flexibility to reallocate funds under urgent circumstances. The Bill's restriction could impede the County Government's ability to respond effectively to emerging priorities.*

GENERAL COMMENTS AND PRACTICAL CHALLENGES

1. *Management of Funds (Ward Development Fund – WDF)*

- *The Bill does not clarify whether funds for the Ward Development Fund (WDF) will be managed in a separate account or whether they will be implemented under the County Assembly or County Executive procurement processes. This lack of clarity may lead to administrative inefficiency and accountability issues.*

2. *Implementation of Projects*

- *After projects are budgeted for, the process of implementation and disbursement of fund remain unclear. Will the funds be disbursed to ward directly or will they be channeled through the County Executive? A lack of streamlined implementation processes risks delays and inefficiency in projects execution.*

3. *Overlap with other Development Processes*

- *The distinction between WDF projects and other Executive project identified during public participation forum is unclear. If the WDF projects are the same as departmental priority projects or those identified through public participation, the existence of this Bill is redundant. This could negate its purpose and undermine efforts towards streamlined governance and planning.*

PREVIOUS SENATE CONSIDERATION

- *A similar Bill was previously introduced before the Senate of the Republic of Kenya for consideration and did not pass. The Senate raised similar reservation, including concerns about:*
- *The inflexibility of fixed budgetary allocations, which undermine prudent financial planning.*

- *Overlapping mandates, creating unnecessary redundancies with existing legal frameworks for public participation and project planning.*
- *The potential for misuse or mismanagement of funds, exacerbated by the lack of clarity on accountability structures.*
- *These reservations remain relevant and must be addressed to avoid repeating the same challenges at the County level.*

PREMATURE IMPLEMENTATION AND CONSULTATION

- *The proposed Bill introduces significant financial and operational changes without adequate consultation with the Commission on Revenue Allocation (CRA) or other stakeholders as required under Article 190(3) of the Constitution.*
- *This may jeopardize equitable development by creating unsustainable mandates on the County Government's budget.*

GOVERNOR'S COMMITMENT TO EQUITABLE DEVELOPMENT

- *As articulated in the Mombasa Mwanzo Mpya Manifesto, I am firmly committed to promoting equitable development across all wards in the County.*
- *I hereby direct the County Executive Committee Member for Finance to liaise with the Honourable County Assembly to refashion this Bill in a manner that aligns with the Constitution of Kenya, existing jurisprudence and other applicable laws. This effort will ensure that the Bill's objectives is achieved without contravening legal and administrative principles.*

CONCLUSION

The Bill as currently structured, risk contravening key constitutional principles, particularly regarding fiscal responsibility, separation of powers and efficiency in public service delivery. While the objectives of the Bill are laudable, further consultations and amendments are necessary to align it with Kenya's legal framework and practical governance needs.

I have set my hand unto this memorandum dated this 24th Day of December, 2024. His Excellency Abdulswamad Sheriff Nassir, Governor, Mombasa County.

Honourable Members, the memorandum outlining the reasons for referral having been committed to the Committee Finance Budget and Appropriation for consideration. I urge the Committee to fast truck the process to enable this House to consider the memorandum, thank you yes Clerk?

PETITIONS

MOMBASA COUNTY SOLAR POWERED COMPUTER LABS FOR EDUCATION AND COMMUNITY
ACCESS BILL, 2025

The Deputy Speaker (Hon. Fadhili Makarani): Honourable Members, the County Assembly has received a petition on the Mombasa County Solar Powered Computer Labs for Education and Community Access Bill, 2025. Members pursuant to Standing Order 201(1)(2) this petition stands committed to Committee on Education and Digital Transformation, who shall in not more than sixty calendar days respond by the way of a report to the petitioners and laid by the Table of the County Assembly. Yes Clerk?

NOTICE OF MOTION

APPROVAL OF THE COUNTY ASSEMBLY CALENDAR FOR THE FOURTH SESSION

Yes, Honourable Leader of Majority?

Thank you, Mr. Speaker Sir. Mr. Speaker Sir, I beg to give notice to the following Motion;

THAT, pursuant to the provision of Standing Order 25(1), this Assembly approves the County Assembly Calendar (Regular Sessions) for the fourth session.

Mr. Speaker, the dates are as attached;

Third session part 1, 11th February to 12th March, 2025, part 2 of the third session will be 15th April to 7th May, 2025, part 3 of the third session will be 10th June to 9th July, 2025, part 4 of third session 29th July to 20th August, 2025, part 5 of the third session 9th September to 15th October, 2025 and the last part, part 6 of the third session will be 28th October to 3rd December, 2025.

Mr. Speaker, also to be noted that whenever there is the need or any emerging issues, the County Assembly pursuant to Standing Order 26(3) can Gazette a Special Sitting for this House to proceed, thank you Mr. Speaker.

Thank you. Yes, Clerk?

ADJOURNMENT

Honourable Members, having no other business the House stands adjourned until today 5th March at 2:00p.m.

The House rose at 11:57a.m.