REPUBLIC OF KENYA

COUNTY ASSEMBLY OF BOMET

FIRST ASSEMBLY- FOURTH SESSION

BUDGET AND APPROPRIATION COMMITTEE

13TH REPORT

ON THE GOVERNOR'S MEMORANDUM ON REFUSAL TO ASSENT TO THE BOMET COUNTY APPROPRIATION BILL, 2016

laid on the County Assembly on 13/12/2016

DECEMBER 2016

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ANNEXURES

1 PREFACE

1.1 Background

On behalf of the Members of the Budget Committee and as required under standing order No. 190, I take this opportunity to present to the House, the Committee's Report on the Governor's memorandum on refusal to assent to The Bomet County Appropriation Bill, 2016 as submitted to the County Assembly Speaker and subsequently committed to the Committee on 6th December 2016.

Mr. Speaker Sir,

The constitution and the PFM Act placed significant responsibilities on the County Assembly over the management of public resources particularly with regard to resource mobilization, allocation, monitoring and control.

Mr. Speaker sir,

The Budget and Appropriation committee as currently constituted comprises of the following Honorable members:

1. Hon. Benard Ngeno – Chairperson
2. Hon. Reuben Langat V. Chair
3. Hon. David Rotich Big Five
4. Hon. Josphat Kirui
5. Hon. Samwel Bor
6. Hon. John Ngetich
7. Hon. Leonard Kirui
8. Hon. Wilson Keter
9. Hon. John Molel
10. Hon. Samson Towett
11. Hon. Leah Kirui
12. Hon. Julius Korir
13. Hon. Patrick Chepkwony

1.1 Mandate of the Committee

The standing order No. 190 establishes the Budget and Appropriation Committee with specific mandate to:

a) ***Investigate, inquire into and report on all matters related to coordination, control and monitoring of the County Budget.***
b) ***Discuss and review the estimates and make recommendations to the County Assembly.***
c) ***Examine the County Fiscal Strategy Paper presented to the County Assembly;***
d) ***Examine Bills related to the County budget, including Appropriations Bills; and***
e) ***Evaluate tax estimates, economic and budgetary policies and programmes with direct budget outlays.***

Mr. Speaker sir,

Section 210(5) of the Standing Orders states that,

"The Budget and Appropriations Committee shall discuss and review the Estimates and make recommendations to the County Assembly, taking into account the recommendations of the Sectoral Committees, the views of the County Executive Member for Finance and the public."

1.2 EXAMINATION OF THE GOVERNOR'S MEMORANDUM

Mr. Speaker Sir,

The committee held two sittings to review and report on the Governor's memorandum on refusal to Assent to The Bomet County Appropriation Bill 2016. During those sittings, the committee managed to engage the CEC for Finance and the County Assembly Clerk where they made oral submissions regarding the contents of the Memorandum.

The views, **Mr. Speaker sir,** were required to allow the Committee members to make an informed judgment on the Memorandum.

1.3 ACKNOWLEDGEMENT

Mr. Speaker sir,

I wish to thank the members of Budget and Appropriation Committee for their dedicated commitment and for remaining steadfast in the budget making process despite numerous hurdles continuously being encountered along the way. The committee also extends its gratitude to the assembly administration for the technical, administrative and financial support received as it discharged its mandate.

1.4 Affirmation and approval

Mr. Speaker sir,

It is therefore my pleasant duty and privilege, on behalf of the committee on Budget & appropriation to table this Report and recommend it to the House for adoption.

Signed---

THE HON. BENARD NGENO

CHAIRPERSON, BUDGET & APPROPRIATION COMMITTEE

Date------18/12/2016---

We, honourable members of the committee on Budget & Appropriation, do hereby affix our signatures to this report to affirm our approval and confirm its accuracy, validity and authenticity:-

No.	Name	Position	Signature
1.	Hon. Benard Ngeno	Chairperson	
2.	Hon. Reuben Langat	Vice Chairperson	
3.	Hon. Leonard Kirui	Member	
4.	Hon. Samwel Bor	Member	
5.	Hon. Josphat Kirui	Member	
6.	Hon. Patrick Chepkwony	Member	
7.	Hon. Wilson Keter	Member	W.K
8.	Hon. John Molel	Member	
9.	Hon. Leah Kirui	Member	
10.	Hon. Samson Towett	Member	
11.	Hon. Julius Korir	Member	
12.	Hon. David Rotich Big Five	Member	
13.	Hon. John Ngetich	Member	

2 INTRODUCTION

2.1 Budget Preparation Process for FY 2015/16

The preparation, approval and execution stages of the County budget are anchored in the Constitution, the Public Finance Management ((PFM) Act, 2012 and various subsidiary legislations including the Standing Orders. For a budget to be credible, it must not only be technically sound, but also faithful to legal provisions. This allows for a seamless processing and implementation of the budget, as well as ease of monitoring and review.

The estimates of revenue and expenditure for 2016/17 and the medium term were submitted to the County Assembly for consideration, review and approval (with or without amendments). The 2016/17 financial year budget underwent through the following process;

Process	PFM Deadline	Status
Guidelines circular issued by the County Executive Member for finance	30th August	2016/17 Budget circular was submitted to the Assembly
Submission of County Development Plan by executive for planning	1st September	Submitted and approved by the Assembly on 3rd March 2016
County Budget review and Outlook Paper	21st October	Submitted to the County Assembly as required by law
Submission of County Fiscal Strategy Paper	28th February	Submitted to the County Assembly, processed and approved with amendments on 15th March 2016
Submission of County Debt Management Strategy Paper	28th February	Submitted to the County Assembly
Submission of Budget Estimates (PBB)	30th April	The C.E.C for Finance and the County Assembly Clerk Submitted their respective budgets to the County Assembly by 30th April 2016. The Assembly then subjected the two budgets to a rigorous consultative process key of which being public participation. The Assembly passed the estimates on 16th June 2016.
Appropriation Law	30th June	The Assembly passed the County Appropriation Bill, 2016 on 23rd June 2016
Finance Act	30th June plus 90 days	Finance Bill not yet passed

3 LEGAL FRAMEWORK

3.1 PROCESSING OF THE BUDGET ESTIMATES

Section 8(1) (c) of the County Government Act 2012 states that;

"The County Assembly shall approve the budget and expenditure of the county government in accordance with Article 207 of the Constitution, and the legislation contemplated in Article 220(2) of the Constitution, guided by Articles201 and 203 of the Constitution"

Section 129 of the PFM Act 2012 states that;

(1) A County Executive Committee member for finance shall submit to the County Executive Committee for its approval—

*(a) the budget estimates and other documents supporting the budget of the county government, **excluding the county assembly**; and*

(b) the draft Bills at county level required to implement the county government budget, in sufficient time to meet the deadlines prescribed by this section.

(2) Following approval by the County Executive Committee, the County Executive Committee member for finance shall—

(a) submit to the county assembly the budget estimates, supporting documents, and any other Bills required to implement the budget, except the Finance Bill, by the 30th April in that year; and

*(b) ensure that the estimates submitted in subsection (a) **are in accordance with the resolutions adopted by county assembly on the County Fiscal Strategy Paper**.*

*(3) **Each county assembly clerk shall prepare and submit to the county assembly the budget estimates for the county assembly and a copy shall be submitted to the County Executive Committee member for finance**.*

(4) The County Executive Committee member for finance shall prepare and present his or her comments on the budget estimates presented by the county assembly clerk.

(5) The County Executive Committee member for finance shall ensure that the budget process is conducted in a manner and within a timeframe sufficient to permit the participants in the process to meet the requirements of the Constitution and this Act.

(6) As soon as is practicable after the budget estimates and other documents have been submitted to the County Assembly under this section, the County Executive Committee member for finance shall publish and publicize the documents.

(7) Upon approval of the budget estimates by the county assembly, the County Executive Committee member for finance shall prepare and submit a County Appropriation Bill to the county assembly of the approved estimates.

Section 131(1), (2) and (3) of the PFM Act further states that;

"(1)The county assembly shall consider the county government budget estimates with a view to approving them, with or without amendments, in time for the relevant appropriation law and any other laws required to implement the budget to be passed by the 30th June in each year.

(2) Before the county assembly considers the estimates of revenue and expenditure, the relevant committee of the county assembly shall discuss and review the estimates and make recommendations to the county assembly, and in finalizing the recommendations to county assembly, the committee shall take into account the views of the County Executive Committee member for finance and the public on the proposed recommendations."

(3) An amendment to the budget estimates may be made by the county assembly only if it is in accordance with the resolutions adopted regarding the County Fiscal Strategy Paper and if—
(a) Any increase in expenditure in a proposed appropriation, is balanced by a reduction in expenditure in another proposed appropriation; and
(b) Any proposed reduction in expenditure is used to reduce the deficit

3.2 LEGAL PROVISIONS WITH REGARD TO THE COUNTY FISCAL STRATEGY PAPER

Section 117 of the PFM Act provides that;
"(1) The County Treasury shall prepare and submit to the County Executive Committee the County Fiscal Strategy Paper for approval and the County Treasury shall submit the approved Fiscal Strategy Paper to the county assembly, by the 28th February of each year.
(2) The County Treasury shall align its County Fiscal Strategy Paper with the national objectives in the Budget Policy Statement.
(3) In preparing the County Fiscal Strategy Paper, the County Treasury shall specify the broad strategic priorities and policy goals that will guide the county government in preparing its budget for the coming financial year and over the medium term.
(4) The County Treasury shall include in its County Fiscal Strategy Paper the financial outlook with respect to county government revenues, expenditures and borrowing for the coming financial year and over the medium term.
(5) In preparing the County Fiscal Strategy Paper, the County Treasury shall seek and take into account the views of—
(a) the Commission on Revenue Allocation;
(b) the public;
(c) any interested persons or groups; and
(d) any other forum that is established by legislation.
(6) Not later than fourteen days after submitting the County Fiscal Strategy Paper to the county assembly, the county assembly shall consider and may adopt it with or without amendments.
(7) The County Treasury shall consider any recommendations made by the county assembly when finalising the budget proposal for the financial year concerned.
(8) The County Treasury shall publish and publicise the County Fiscal Strategy Paper within seven days after it has been submitted to the county assembly.

3.3 LEGAL PROVISIONS ON THE SUBMISSION AND CONSIDERATION OF THE REVENUE RAISING MEASURES BY THE COUNTY ASSEMBLY

Section 132 of the PFM Act provides as follows;

"(1) Each financial year, the County Executive member for finance shall, with the approval of the County Executive Committee, make a pronouncement of the revenue raising measures for the county government.

(2) 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.

(3) Any recommendations made by the relevant committee or adopted by the county assembly on revenue matters shall –

(a) ensure that the total amount of revenue raised is consistent with the approved fiscal framework and the County Allocation of Revenue Act;

(b) take into account the principles of equity, certainty and ease of collection;

(c) consider the impact of the proposed changes on the composition of tax revenue with reference to direct and indirect taxes;

(d) consider domestic, regional and international tax trends;

(e) consider the impact on development, investment, employment and economic growth; and

(f) take into account the taxation and other tariff agreements and obligations that Kenya has ratified, including taxation and tariff agreements under the East African Community Treaty.

(4) The recommendation of the County Executive Committee member for finance shall be included in a report and tabled in the county assembly.

3.4 LEGAL PROVISIONS REGARDING GOVERNOR'S MEMORANDUM

Mr. Speaker Sir,

The Governor relied on the provision of section 24 of the County Government Act and submitted a memorandum on refusal to assent to the Bomet County Appropriation Bill, 2016 passed by the Assembly on 23rd June 2016. There is no doubt as to whether The Bomet County Appropriation Bill, 2016 is a Money Bill or not since that is well stipulated in Article 114 of the Constitution, section 21(4) of the County Government Act and County Assembly Standing order 208(2). The committee welcomed and acknowledged the wisdom of the Speaker to refer the Governor's memorandum to the committee since it proposes amendments to the Bomet County Appropriation Bill, 2016 making the input of Budget and Appropriation committee inevitable as stipulated in Section 21(3) of The County Government Act as follows;

"In the case of a money Bill, the county assembly may proceed only in accordance with the recommendation of the relevant committee of the county assembly after taking into account the views of the county executive committee member responsible for finance."

In line with the above provision, the committee invited the CEC member for Finance for a consultative meeting and to obtain his views regarding serious anomalies noted in the memorandum. The committee also sought the views of the Clerk since the memorandum sought to drastically reduce the County Assembly Budget.

The committee was also guided by the court judgment in petition number 5 and 6 of 2016 whereby the court ruled as follows;

"It is <u>not in dispute</u> that that the Bomet County Budget Making process for the financial year 2016/2017 was lawful. The court has made a finding that there was public participation and the processes as provided in the Public Finance Management Act, the County Government Act and most important the Constitution were followed. <u>A declaration do issue to the effect that the process was lawful.</u>"

The import of the courts determination therefore confirms the fact that the process leading up to the passage of the Bomet County Appropriation *Bill, 2016 was lawful.*

4 COMMITTEE FINDINGS AND OBSERVATIONS ON GOVERNOR'S MEMORANDUM

4.1 CLAUSE/VOTE BY VOTE ANALYSIS

4.1.1 CLAUSE 2(1)

Mr. Speaker Sir,

The committee established that the memorandum seeks to adjust the County's revenue by **Ksh. 27,824,382** explaining that the increase was informed by a grant from World Bank under the Kenya Devolution Support Program.

Comparison of Revenue passed in the Appropriation Bill, 2016 and Governor's memorandum

Upon comparing the total revenue passed and proposed revenue, the committee noted as follows;

Table 1

Item	Appropriation Bill, 2016 in(Ksh.)	Memorandum(Ksh.)	Variation(Ksh.)
Total Revenue	5,644,992,676	5,672,240,850	27,248,174

From Table 1, it is evident that the memorandum seeks to increase County Total revenue by **Ksh. 27,248,174** and not **Ksh. 27,824,382** (expected grant from World Bank). There is unexplained variation of **Ksh. 576,208.**

The committee submits that at time of approving The Appropriation Bill 2016, the Assembly, guided by input of Budget and Appropriation Committee, rejected a similar amendment from one honourable member who sought for inclusion of the same World Bank grant of **Ksh. 27,824,382.** This decision was motivated by the fact that the Assembly had not been supplied with any formal documentation such as grant agreement as required under PFM regulation 69. The matter had further been complicated by the fact that the grant had not been factored in the approved budget estimates. The Assembly recommended, in the absence of a formal grant agreement and owing to the fact that the budget cycle was at its tail end, the grant be appropriated for at a later date by dint of section 74(3) of the PFM regulations. The same premises which informed the Assembly decision has not changed to date. The aforementioned requirements were not even attached to the memorandum to persuade the Assembly to vacate its earlier stand.

4.1.2 VOTE R101 (Executives, Administration and Public Service Board)

Mr. Speaker Sir,

The Governors Memorandum seeks to adjust allocations of operations and maintenance for the office of the Governor, the Deputy Governor, the County Secretary, the County Executives and the County Public Service Board from Ksh. 161,567,685 to Ksh. 198,167,685. However, a review of the Appropriation Bill 2016, passed by this house on 23rd June this year, reveals that allocations of Ksh. 161,587,685 for operations and maintenance for the aforementioned excludes allocations for O&M for County Public Service Board which was separately allocated Ksh. 18 million for the purpose. Combined, the Appropriation Bill allocated Ksh. 179,567,685 for all the aforementioned including the County Public Service Board as shown in the following table;

Comparison of O&M allocations in the Appropriation Bill, 2016, Governor's memorandum and approved CFSP ceilings

Table 2

Item	Appropriation Bill, 2016 in Ksh.	Memorandum Ksh.	CFSP 2016 Ceilings Ksh.
County Executives	161,587,685	198,167,685	178,541,982
County Public Service Board	18,000,000		9,196,348
Total	**179,567,685**	**198,167,685**	**187,738,330**

It is evident from table 2 that the figure of **Ksh. 198,167,685** recommended in the Governor's memorandum was over and above the CFSP ceiling by more than Ksh. 10 million (6%). Whereas the CFSP had recommended a ceiling of Ksh. **187,738,330,** for operations and maintenance, the Assembly appropriated **Ksh. 179,567,685.** The drop was as a result of a reduction in local revenue targets (as revised downwards by the County Treasury) and reduction in allocations for motor vehicles, public participation and legal fees.

The Memorandum however states that;

"The amount budgeted for purchase of motor vehicle is meant to pay for the vehicles acquired through credit through instalments arrangements. The said vehicles have been delivered and currently in use."

However **Mr. Speaker Sir,** the above statement exposes a big problem. The word "credit" in the statement indicates that motor vehicles were bought through loan agreements. The committee submits that the Medium Term Debt Management Strategy Paper (DMSP) for FY 2016/17-2018/19 had not envisaged any loan/borrowing plans by the county or any of its entities. The DMSP for FY 2016/17, which ought to have captured any borrowing plans, was submitted to the Assembly on 28th February 2016 alongside County Fiscal Strategy Paper as required by law. It is also worth noting that the County Executive did not seek Assembly's approval for any loan/borrowing approvals particularly in regard to acquisition of motor vehicles.

The following is an excerpt statement from DBMS 2016/17 FY

"The main objective of public debt management is to ensure that the County government's financing needs and its payment obligations are met at the lowest possible cost over the short, medium to long run, consistent with a prudent degree of risk. This requires taking tactical position and looking in the basket of current issues and developing a strategic position to ensure that the servicing and management of County's financing requirements and payment obligations are met on a timely basis and at the lowest possible cost over the medium to long run, consistent with a prudent degree of risk. ***This ensures that decisions are not being made on an ad hoc basis, debt levels must be sustainable and affordable, and borrowed funds must be used to increase the well-being of the residents.*** *The main debt strategy is to limit borrowing to concessional terms and prudent levels", DMSP 2016.*

It is also noteworthy that the court in its judgment delivered on 21st November 2016 agreed with the County Assembly that the purchase of motor vehicles was illegal and that there should be no allocations thereof. The court stated thus;

"The third prayer is for a declaratory order that the respondents cannot budget and or release money for purchases that were illegally initiated in the first instance or for private ventures. I find no harm in granting that prayer. The 4th and 5th Respondents have stated that no allocation for funds had been made in respect to the questioned items and or issues."

Any attempt therefore to allocate public funds for the purchase of motor vehicles will be construed to mean that the County Assembly is advancing an illegality. This may pose dire consequences to the County Assembly.

Allocation to legal fees

Mr. Speaker Sir,

This house can recall reducing allocations for legal fees for the reason that the item had been allocated funds in two departments which could be used interchangeably. The Assembly however retained substantive amount to cater for any legal fees which could be required from time to time and guaranteed additional allocations via supplementary budget in case of any deficit. The Assembly however cautioned the county to focus on service delivery to the county residents and minimize issues leading to litigations.

Allocations to public participation

Mr. Speaker Sir,

The submitted budget had allocated **Ksh. 80 million** for vote R101 to carryout public participation in the department. The Assembly, through the guidance of Budget and Appropriation committee, had noted that the allocations were too high since unlike the previous financial years, all the departments were allocated funds to conduct their respective public participations. Allocations to county executives for public participation were therefore reduced since they were also in charge of their respective departments which could access the same through their respective departments. It should also be noted that allocations to development in the department was **Ksh. 60 million** and therefore allocating **Ksh. 80 million** for public participation amounts to fiscal irresponsibility. In comparison, **Ksh. 54.9 million** had been allocated for public participation in FY 2015/16 for all the departments to cover among others 16 no. policies targeted in the department of administration alone. This was expected to drop since the said department targeted 11 no. policies in the FY 2016/17. The Assembly while reviewing the allocations noted that a growth of over **238% (54.9m to 230m)** on allocations to community participation was not feasible, unjustifiable and counterproductive in that it would eat into allocations meant for capital expenditure. The Assembly therefore found it prudent and adequate to allocate **Ksh. 18 million** for public participation in the department of administration and executive for the community participation.

Mr. Speaker Sir,

While revising the allocations, this house advised the Executive to explore other cheaper options to reach out to the members of the public so as to free up funds to meet development objectives. One of the proposed options was the approach used by the Assembly. The Assembly usually carries out public participation at the lowest unit of devolution (ward level) where costs are at minimum. The only costs incurred include purchase of refreshments, lease of tents, public address system and transport for officers to the venues. It is established that, contrary to the information conveyed in the memorandum, a review of the allocations adopted in the County Fiscal Strategy Paper 2016 reveals no specific allocations made for Public participation.

Misnomer

Mr. Speaker Sir,

A misnomer was conveyed in the following statement;

"It is hereby submitted that the County Assembly of Bomet cannot exercise the right to substantively vary the estimates in the Bomet County Appropriations Act, 2016 and should have exercised this right during the consultative process undertaken while <u>preparing</u> the County Fiscal Strategy Paper."

The biggest anomaly in this statement is that it bases its argument on **<u>unprocessed document</u>** as it was still at **preparatory** stage. This statement would not have been submitted had the drafters of the memorandum taken their time to review the final product, the County Fiscal Strategy Paper approved by the Assembly in March 2016. The committee submits that, it is in fact the Assembly which varied the submitted estimates to conform to the resolutions adopted in the Fiscal Strategy Paper and to ensure fiscal responsibility in line with section 107 and 117 (6) of the PFM Act and regulation 26(1),(3) and (4) of the Public Finance management regulations 2015.

The committee also established that save for allocations to public participation and legal fees, the memorandum did not explain the purpose for additional allocations proposed in recommendation (1) and (2). It will be difficult to appropriate and effect the proposed alterations owing to lack of sufficient explanations on the intended purpose. Consequently, considering the memorandum recommendation (1) and (2) will contravene the provisions of the law and the county Assembly resolutions on the budget estimates.

4.1.3 VOTE R102 (Finance)

Mr. Speaker Sir,

The memorandum seeks to increase O&M allocations to the department from **Ksh. 158,745,944** to **Ksh. 183,745,944** an additional increment of **Ksh.25 million**. It is clear that out of the increment being sought, Ksh. 20 million was meant for the furniture thus leaves unexplained purpose of **Ksh. 5 million**. Before appropriating any funds, the proposed expenditure must be stated and traced to a particular purpose as failure to which is tantamount to appropriating a blank cheque which contravenes the essence of budgeting and provisions of the law. In proposing the additional amount, the memorandum seeks to revert allocations to furniture which the Assembly, in exercise of its oversight authority, reduced its allocations from **Ksh. 40 million** to **Ksh. 20 million.** This house, **Mr. Speaker Sir,** retained Ksh.20 million and advised the executive to acquire furniture for new offices only and that existing offices continue using their current furniture to ensure prudency and in order not to constraint resources available for development.

Mr. Speaker Sir,

The Memorandum seems to agree with the Assembly's reduction on allocations to public participation from Ksh. 25 million to Ksh. 5 million for the department of Finance. The item had already been allocated Ksh. 5 million in the approved estimates and concretized in the County Appropriation Bill 2016. The memorandum should have therefore excluded allocations for public participation for the department while seeking to revise total allocations for the department.

4.1.4 VOTE R103 (Public Health and Environment)

Mr. Speaker Sir,

The memorandum seeks to increase allocations for O&M for the department from Ksh. 13,020,353 to Ksh. 16, 020,353. However, it does not provide any explanations on what the required additional increment of Ksh. 3 million is meant for. This will make it difficult for this house to appropriate and effect the proposed alterations owing to lack of sufficient explanations on the intended purpose.

4.1.5 VOTE R104 (Social Services)

Mr. Speaker Sir,

The memorandum seeks to increase allocations for O&M for the department from Ksh. 7,279,361 to Ksh. 11,279,361. However, no explanations is provided on what the required additional increment of Ksh. 4 million is meant for hence making it difficult for this house to consider re-appropriating and effecting the proposed alterations.

The memorandum also seeks to re-classify capital transfer to old age as development expenditure. This is in spite of the approved CFSP ceilings classifying cash transfers for the old age as recurrent. The Assembly's action was informed by the fact that the economic classification for capital transfer to old age was a recurrent expenditure since monthly stipend cannot yield any capital gain.

IMF Classification

How does IMF classify expenditure?

Upon research, the committee established the following;

IMF reports data on overall expenditure for all countries on a format laid out in the IMF Government Finance Statistics Manual 1986 (GFSM 1986) or the newer GFSM 2001.

Type of Expenditure is broken down into:

Recurrent expenditure *– all payments other than for capital assets, including on goods and services, (wages and salaries, employer contributions), interest payments, subsidies and transfers.*

Capital expenditure *– payments for acquisition of fixed capital assets, stock, land or intangible assets. A good example would be building of schools, hospitals or roads. However, it is important to note that much donor-funded "capital" expenditure, though referring to projects, includes spending on non-capital payments.*

Classification by CEC Member for Finance

Mr. Speaker Sir,

During his appearance before Budget and Appropriation committee in March 2016, the County Executive Committee Member for Finance agreed with the committee that monthly stipend for the old was indeed a recurrent expenditure. Below is an excerpt of the committee report;

"The C.E.C member for Finance during his appearance before the committee acknowledged that monthly stipend for the aged (county safety net) were a recurrent expenditure and should be reflected as so."

It is therefore evident that the variations made in the approved estimates and the subsequent appropriation Bill was intended to adhere to the resolutions made in the County Fiscal Strategy Paper thus the contrary statement made in the memorandum is unsupported.

4.1.6 VOTE R105 (Medical Services)

Mr. Speaker Sir,

The memorandum seeks to amend by deleting the figure **"472,366,896"** and substituting with **"17,601,325** erroneously stating that the amount is meant for operations and maintenance. However the appropriated amount of Ksh. **472,366,896** is meant for Salaries for medical personnel. Obviously **ksh.17, 601,325** will not be adequate to meet salary requirements for the department.

It also seeks to reclassify a number of items as development expenditure. Resolutions adopted by the County Assembly in the County Fiscal Strategy Paper recommended a number of items including hire of ambulances to be classified as recurrent expenditure in the budget estimates. However, the memorandum seeks to, incorrectly, revert the items to development expenditure. The following excerpt of the Assembly resolution adopted in the County Fiscal Strategy Paper adequately addressed the issue;

"The County Treasury should correctly reflect hire of ambulances, purchase of pharmaceuticals and non-pharmaceuticals as recurrent expenditure in the budget estimates."

4.1.7 VOTE R106 (Economic Planning and Development)

Mr. Speaker Sir,

The memorandum agreed with Assembly's reduction on allocations for public participation to Ksh. 5 million. It also seeks to introduce **Ksh. 27,824,382** grant from the World Bank for capacity building. This issue was addressed conclusively in clause 2(1). The memorandum further seeks to increase unexplained Ksh. 5 million for O&M for the department. At the time of approving the ceilings adopted in the County Fiscal Strategy Paper, the department was a division under the department of Finance and therefore the statement that the alteration did not take into account the County Fiscal Framework is unfounded.

4.1.8 VOTE R107 (Agri-business, Co-operatives and Marketing)

Mr. Speaker Sir,

The Assembly reduced **Ksh.22, 709,246** from allocations to personnel emoluments. The budgeted amount of **Ksh.178, 709,246** was way above the ceilings of **Ksh. 156 million** as per the county Fiscal Framework adopted under the County Fiscal Strategy Paper in line with sections 107(1), (3) & (4), 117(5)&(6) of the Act and regulations 26(1),(3) and (4). It is established that the appropriated amount conformed to the ceilings approved in the County Fiscal Strategy Paper 2016. Furthermore analysis of the supplementary budget approved in May 2016 reveals that the department required **Ksh. 145,351,816** to cater for PE to the end of FY 2015/16. It is therefore evident that **Ksh. 156 million** allocated included salary increment.

The memorandum agrees with the Assembly's reduction on allocation to public participation. The Assembly had reduced allocations for the purpose from **Ksh. 15 million** to **Ksh. 5 million**. It however further seeks to reduce it to **Ksh. 4 million** without explaining how the balance of Ksh. 1 million will be utilized.

4.1.9 VOTE R108 (Water Services)

Mr. Speaker Sir,

The memorandum seeks to increase allocations for O&M from **Ksh. 6,819,378** to **Ksh. 9,818,378**. It did not however divulge the specific items that it seeks to adjust. The proposed allocations will deviate from the County Fiscal Framework adopted under the County Fiscal Strategy Paper contrary to sections 107(1), (3) & (4), 117(5)&(6) of the Act and regulations 26(1),(3) and (4).

It is also established that the Memorandum ratifies Assembly's reduction on allocations to public participation. However, it seeks to retain **Ksh. 3 million** for the purpose as opposed to **Ksh. 2 million** approved by the Assembly.

4.1.10 VOTE R109 (Education and Vocational Trainings)

Mr. Speaker Sir,

The memorandum seeks to increase allocations for personnel emolument from **Ksh. 172,700,000** to **Ksh. 198,304,919**. It is however established that, the approved allocations conformed to the ceilings approved in the County Fiscal Strategy Paper of **Ksh. 172,700,000** contrary to the statement conveyed by the memorandum. As such, the memorandum proposed allocations of **Ksh. 198,304,919** will deviate from the County Fiscal Framework adopted under the County Fiscal Strategy Paper contrary to sections 107(1), (3) & (4), 117(5)&(6) of the Act and regulations 26(1),(3) and (4). The Assembly had slashed **Ksh. 25,604,919** on PE for the department from the submitted budget so as to ensure conformity to CFSP ceilings. The Assembly had established that the proposed amount of **Ksh. 198,304,919** was way above the approved ceilings in CFSP of **Ksh. 172,700,000**. It is further established that the 2nd supplementary budget approved in May 2016 was **Ksh. 160,622,634** indicating that the amount was adequate to cater for department PE to the end of FY 2015/16. This is a clear indication that the budgeted amount of **Ksh. 172,700,000** for PE for FY 2016/17 had sufficiently catered for annual salary increment.

The Memorandum ratifies Assembly's reduction on allocations to public participation. It however seeks to further reduce it to **Ksh. 2 million** for the purpose as opposed to **Ksh. 5 million** approved by the Assembly. It is a concern that it does not explain how the realized amount from the reduction will be spent. The memorandum seeks to increase O&M allocations from **Ksh. 9,326,272** to **Ksh.11, 326,272** an additional of **Ksh. 2 million** without explaining the purpose of the increment.

The law requires that any Bill, Governor's memorandum included, seeking to amend the Appropriation Bill must ensure that any increase in expenditure in a proposed appropriation is balanced by a reduction in expenditure in another proposed appropriation.

4.1.11 VOTE R110 (Roads and Public Works)

Mr. Speaker Sir,

The only change recommended by the memorandum on the vote is a reduction of salaries from **Ksh. 56,400,000** to **Ksh. 47,857,068**. The explanation is that some staff had been redeployed to administration. You will recall that this house increased the allocations so as not only to conform to the resolutions adopted in the County Fiscal Strategy Paper but also to cater for Annual salary increments. The report as adopted by the Assembly read in part as follows;

*An additional **Ksh.8, 542,932** was allocated to PE to address under budgeting. Analysis of the 2nd supplementary budget for FY 2015/16 approved in May 2016 revealed that the department required **Ksh. 54,776,664** to the end of the FY yet the submitted budget (2016/17 FY) allocated **Ksh. 47,857,068.** The additional allocations will scale up to **Ksh. 56,400,000** approved in the County Fiscal Strategy Paper.*

4.1.12 VOTE R111 (ICT, Training and Industry)

Mr. Speaker Sir,

The memorandum seeks to increase allocations for staff emoluments from **Ksh.28, 700,000** to **Ksh.60, 854,665**. If the increment is approved, then the allocations will deviate from the County Fiscal Framework adopted under the County Fiscal Strategy Paper contrary to sections 107(1), (3) & (4), 117(5)&(6) of the Act and regulations 26(1),(3) and (4). The memorandum explains that the increment is required to cater for staff of the Centre of Devolved Governance affected by re-organization in county executive government structure which was not factored in the County Fiscal Strategy Paper. However, a review of the County Fiscal Strategy Paper submitted to the assembly in February 2016 reveals that the Centre was operational and was part of the department of ICT, Training and Industry. This is vindicated by the 2nd supplementary budget approved in May 2016 which indicated that the department required **Ksh. 9,680,424** for PE to the end of FY 2015/16. It is therefore evident that the budgeted amount of **Ksh.28, 700,000** for PE in FY 2016/17 had captured salaries for the Centre of Devolved Governance staff. Personnel Emoluments for ICT had already been moved to this department and had been factored in the County Fiscal Strategy Paper 2016/17 FY. A part from roads departments (read R110), there was no other reduction made on PE in other departments to support the statement that there were movement of staff to this department. If it was indeed true that the changes made in PE was due to the staff redeployment, then one would have expected that a reduction of PE in one department is followed by a comparative increase in another. However all the departments submitted budgets had their PE scaled upwards.

4.1.13 VOTE D102 (Finance)

Mr. Speaker Sir,

The memorandum seeks to revise allocations for this vote from **Ksh. 23,356,050** to **Ksh. 5,356,050.** However the stated figure of **Ksh. 23,356,050** is ***non-existent*** in the Appropriation Bill for it to be deleted. The correct figure for development in this vote is **Ksh. 25,356,050** out of which **Ksh. 20 million** is meant for resource mobilization initially captured under water department and **Ksh. 5,356,050** for revenue automation in Longisa hospital. The entire amount of **Ksh. 25,356,050** was not meant for revenue automation. This information indicates that the drafters of the memorandum did not bother to go through the County Assembly resolutions on approved budget estimates.

4.1.14 VOTE D103 (Lands, Public Health and Environment)

The memorandum seeks to reduce allocations for development programmes from **Ksh.121, 756,525** with the explanations that the increased amount will affect the development programmes in other department and will lead to budget deficit. It is however noted that this information is misleading as the Assembly approved a balanced budget of **Ksh. 5,644,992,676** in accordance with the total gross revenue projections. The Assembly appropriated development expenditure for each department and thus the information that the increased amount would affect development programmes for other departments is a misrepresentation of facts.

4.1.15 VOTE D104 (Social Services)

Mr. Speaker Sir,

In exercise of its oversight role, the Assembly scrapped allocations to Bomet IAAF Stadium owing to lack of transparency and accountability on the huge resources channeled to the facility in the previous financial years. The Assembly noted that the executive had been hesitant to provide the total cost of the project and expenditure to date which should be provided before further allocations are considered. The Assembly decisions had also been ratified by members of the public.

The Assembly did not reduce allocations for the old age but increased from **Ksh. 288 million** to **480 million** in order to cater for monthly stipend and NHIF contributions for 16,000 beneficiaries as per the estimates provided by the CEC member for Finance. The Assembly however moved the allocations to vote R104 to adhere to correct economic classification as recurrent expenditure.

4.1.16 VOTE D105 (Medical Services)

Mr. Speaker Sir,

Contrary to the information contained in the memorandum regarding vote D105, the Assembly did not reduce allocations for construction of Health Centres. In fact the Assembly allocated ***additional*** **Ksh. 15 million** for constructions of Health Centres. Allocations to purchase of medical drugs, pharms and non-pharms, leasing of medical equipment and hire of ambulances were re-classified as recurrent expenditure which thus explains the reduction in vote D105 and comparative increment in vote R105.

4.1.17 VOTE D107 (Agri-business, Cooperatives and Marketing)

Mr. Speaker Sir,

The memorandum seeks to reduce allocations for development programmes from **Ksh.207, 081,856** to **Ksh. 177,081,856** with the explanations that the increased amount will affect the development programmes in other department and will lead to budget deficit. As stated earlier, the Assembly approved a balanced budget of **Ksh. 5,644,992,676** in accordance with the total gross revenue projections. The Assembly appropriated development expenditure for each department and thus the information that the increased amount would affect development programmes for other departments is a misnomer.

4.1.18 VOTE D108 (Water Services)

Mr. Speaker Sir,

The memorandum seeks to revise allocations for this vote from **Ksh. 284 million** to **Ksh. 340 million** with explanations that its reduction will negatively affect water service provision and operations of Bomet Water Company. It is established that, the Assembly reduced allocations to Bomet Water Company by half owing to the fact that the company was collecting revenue which was being used to defray part of the expenses. Despite persistent requests by the Assembly, the company had not declared the amount of revenue it collects for the services rendered. The changes effected were consistent with public views.

4.1.19 VOTE D109 (Education and Vocational Training)

Mr. Speaker Sir,

The memorandum seeks to reduce allocations for development programmes from **Ksh.253, 357,706** to **Ksh.238,357,706** with the explanations that the increased amount will affect the development programmes in other department and will lead to budget deficit. As stated earlier, the Assembly approved a balanced budget of **Ksh. 5,644,992,676** in accordance with the total gross revenue projections. The Assembly appropriated development expenditure for each department and thus the information that the increased amount would affect development programmes for other departments is a misnomer.

4.1.20 COUNTY ASSEMBLY

Mr. Speaker Sir,

The memorandum seeks to reduce total allocations for the Assembly from **Ksh. 635,663,137** to **Ksh. 495 million**. However, this will create confusion since allocations for R112 and D112 were not amended which adds up to the total allocations for the Assembly. It explains that the reductions were meant to cater for adjustments made in the executive budget without indicating any other substantive reasons.

It is also established that there was no prior consultation between the executive and the Assembly before altering the latter's budget. The memorandum seeks for massive reduction in the Assembly's budget which might affects its core function including oversight, representation and legislation. This is contrary to the spirit of separation of powers and independence of the Assembly as envisaged in the creation of the two arms of government. Such actions surmounts to interference by the executive arm of government on the county assembly's independence. If unchecked, it will erode the gains already made in the areas of oversight, representation and legislation.

Furthermore, the memorandum did not specify what the proposed allocations of Ksh.495 million were meant for in the Assembly's budget. How much was apportioned to development and recurrent expenditure?

This contravenes the mandatory provisions of section 24(1) of the County Governments Act which states as follows;

"(1) The Speaker shall, within fourteen days, forward a Bill passed by the county assembly to the governor.

(2) The governor shall within fourteen days after receipt of a Bill—

(a) assent to the Bill; or

(b) refer the bill back to the county assembly with a memorandum outlining reasons for the referral"

To the extend therefore that the Governor did not provide reasons for alterations of the County Assembly Budget, the same is incurably defective and incapable of being considered.

It is also established that the consent recorded on 2nd Nov 2015 between the County Assembly and the County Executive and subsequently adopted as an order of the court on 6th Nov 2015 authoritatively provided as follows;

> ***"Kshs.10M shall be retained in the county assembly's development vote for facilitation of public works design works and associated expenses for the County Assembly Chamber and any other amount required over and above the Kshs. 10M shall be provided by the executive through a supplementary budget.***
>
> ***THAT other development issues which include purchase of land, landscaping and pavements and construction of Assembly residential buildings and committee rooms shall be discussed before end of February 2016 and included in the Annual Development Plan, County Fiscal Strategy Paper and Budget Estimates."***

The consent was signed by Governor Isaac Ruto on behalf of the Executive and County Assembly Speaker Hon. G.K. Kipngetich on behalf of the County Assembly witnessed by Dr. Peter Koros the C.E.C member for Finance and Mr. Isaac Kitur the Clerk of the Assembly in presence of their respective legal officers. Annexed (Annex 1) hereto is a copy of the consent and court order.

Furthermore pursuant to section 129 of the Public Finance Management Act 2012 mandates the Clerk to prepare and submit County Assembly Budget Estimates. The law requires the Executive and Assembly budget to be submitted separately to the Assembly by CEC member for Finance and County Assembly Clerk respectively. The question therefore is whether the Governors memorandum can make unilateral decisions and adjustments on the Assembly's budget without any consultation whatsoever. Either arm of government must observe and respect the separation of powers and authority while exercising their constitutional roles as envisaged in the creation of the two arms of County Government pursuant to Article 176 of the Constitution.

4.2 ANALYSIS OF FIGURES

Mr. Speaker Sir,

A careful review of the amendments reveals serious inconsistencies in the amended figures with the most affected being the recurrent expenditure. It is established that where amendments were made in some votes, the memorandum did not amend their totals implying that they were retained as appropriated in the Bill. This anomaly will distort the entire budget. Despite amendment made on either allocation to personnel emoluments or operations and maintenance, the totals for vote R101, R102, R103, R104, R105, R106, R107, R108, R109, R110 and R111 were not changed.

Further analysis of expenditure vis-à-vis the county's total revenue reveals that **Ksh.133,710,918** floats as they have not been allocated to any entity, programmes or projects. This arose from the fact that whereas the memorandum provided total county's revenue as **Ksh. 5,672,240,850**, only **Ksh.5,538,529,932** were allocated for recurrent and development expenditure for various spending units. This analysis is provided in Annexure II attached hereto.

Arising from the above, the proposed amendments if passed as submitted will result in an invalid Appropriation bill.

5 VIEWS OF THE CEC MEMBER FOR FINANCE AND COUNTY ASSEMBLY CLERK

The County Executive Committee Member for Finance and the County Assembly Clerk appeared before the committee on 7th December 2016 and submitted as follows;

5.1 CEC Member for Finance

The committee shared its findings on the Governor's memorandum. Of particular concern was the serious anomaly's noted in the Governor's memorandum key of which being the **Ksh.133,710,918** which was left unallocated thus creating a surplus Budget.

The CEC member for Finance acknowledged the errors and requested for more time to review and submit its response to the committee. The Committee in a resolution granted the request and advised the CEC to submit written submissions or comments the following day of 8th December 2016. However, the CEC member for Finance never bothered to submit any written submissions or comments thereafter.

5.2 The County Assembly Clerk

The committee enquired to know from the County Assembly Clerk whether there was any prior consultation between the Executive and Assembly before recommending changes in the Assembly's Budget.

The clerk responded that there was no consultation whatsoever, and even if it was there, it would have been unconstitutional. To buttress his point, he cited Articles 174,176,201,224 and 226 of the Constitution. He confirmed to the committee that there was no way the County Assembly's budget would be reduced as it will affect its capacity to deliver on its three core mandates.

The Clerk further confirmed to the committee that the construction of a modern chamber had already begun since the construction contract had already been signed and executed. As such any purported alteration on the County Assembly Budget would pose a great risk and subject the County Government to litigations running into millions of shillings thus a waste of county resources. He concluded his presentations by stating that any approval of the proposed allocations would imply that the development vote is part of those allocations and that he would give priority as the County assembly had committed itself as per the contract documents.

The committee established that the proposed reduction of Assembly's budget contravenes the County Allocations Revenue Act 2016.

6 *RECOMMENDATIONS*

Mr. Speaker Sir,

The committee submits that errors noted in figures are not just figures but public funds meant to finance various programmes and projects. A vote by vote analysis reveals that some of the amendments sought had no explanations on the programmes or items affected. Some other amendments had already been addressed by the Assembly implying that the governor's memorandum was out of touch with the Assembly's resolutions on the approved estimates. It is also established that the memorandum based its argument on incomplete documents i.e. County Fiscal Strategy Paper still at preparatory stage yet final document had been approved by the Assembly.

The committee is alive to the fact that the budget cycle for 2016/2017 is approaching the end of the second quarter and that further delays will only serve to delay the budget process. It is in this spirit that the committee recommends that the supplementary appropriation Bill be introduced in order to address the Governor's concern and any other outstanding issues.

The committee further recommends that the memorandum should be rejected in toto, given its inherent flaws and the offhand manner in which it was drafted, and that the Bill passed on 23rd June 2016 be Gazetted. The Committee has not taken this decision lightly but has considered the conduct of the County Executive especially their continuous failure to adhere to the County Fiscal Strategy Paper approved by the Assembly and the fact that in five months they could not realize the massive errors in the memorandum and the fact that the High Court has ruled that allocations to certain items proposed in the memorandum as unlawful. The Committee also sought legal advice which also conveyed that the memorandum was incurably defective.

In view of the aforementioned serious anomalies and illegalities, it is the committee's recommendation that the memorandum cannot be considered in its current form.

ANNEXURE 1

32

BOMET COUNTY ASSEMBLY
RECEIVED
30 JUN 2016
P.O. Box 590-20400
BOMET

REPUBLIC OF KENYA

Received at 8:

OFFICE OF THE GOVERNOR

REFUSAL TO ASSENT TO THE BOMET COUNTY APPROPRIATION BILL, 2016

MEMORANDUM

Ronald Sang
For B & A Committee Action
6/12/2016

By His Excellency, the Honourable Isaac Ruto, EGH,
Governor of the County Government of Bomet.

Submitted to the Speaker of the County Assembly of Bomet.

(2) DLS/PFA
Please peruse and advise
05/07/2016

(1) Clerk
Kindly refer the matter to budget office and legal department for their opinion before I commit to budget ~~Committee~~ & Appropriation Committee to deal with it.
Hon. Speaker,
01/07/2016

BOMET COUNTY ASSEMBLY
TABLE & JOURNALS OFFICE
P.O. Box 590-20400 BOMET

DLS/PFA

CLAUSE 2(1)

Clause 2(1) of the Bill states as follows:

"**2.** (1)The Bomet County Treasury may issue out of the County Revenue Fund and apply towards the supply granted for the service of the financial year ending 30th June, 2017 the sum of Kenya Shillings Five Billion, Six Hundred and Forty Four million, Nine Hundred and Ninety Two Thousand Six Hundred and Seventy Six, and the sum shall be deemed to have been appropriated as from 1st July, 2016, for the services and purposes specified in the schedule".

The original clause states the total sum proposed to be appropriated under the Bill by the County Government of Bomet. Following the adoption of the County Fiscal Paper, the County has received a grant from the World Bank under the Kenya Devolution Support Program for the amount of Kenya Shillings Twenty Seven million, Eight Hundred and Twenty Four Thousand, Three Hundred and Eighty Two. Therefore, the total revenue of the County is Kenya Shillings Five Billion, Six Hundred an Seventy Two million, Two Hundred and Forty thousand Eight Hundred and Fifty.

RECOMMENDATION:

For the foregoing reasons, I recommend that clause 2(1) of the Bill be amended by deleting the words "Five Billion, Six Hundred and Forty Four Million, Nine Hundred and Ninety Two Thousand, Six Hundred and Seventy Six" and substituting thereof with the words 'Five Billion, Six Hundred and Seventy Two million, Two Hundred and Forty thousand Eight Hundred and Fifty''.

VOTE R101

The amount required for the financial year ending 30th June 2017 for operations and maintenance for the Office of the Governor, the Deputy Governor, the County Secretary, the County Executives and the County Public Service Board is **Ksh. 198,167,685.**

The amount budgeted for purchase of motor vehicle is meant to pay for the vehicles acquired on credit through instalments arrangements. The said vehicles have already been delivered and currently in use.

The amount allocated for legal fees is to enable the County Government to acquire legal services to ensure all its activities meet the designated legal threshold.

Articles 35, and 38 of the Constitution of Kenya (hereinafter referred to as "the Constitution" and sections 87, 88,89, 90, 91, 92, 93, 94, 95, 96 and 97 of the County Governments Act, 2012, stipulate that public participation in the amount allocated to community participation is meant to enable the county discharge its mandate in the budgeting process as required by law

I submit that **Ksh 40,000,000** allocated to purchase of office furniture and fittings for new and existing offices in all the departments remain as submitted in the estimates.

The proposed alteration does not take into account the County Fiscal framework adopted under the County Fiscal Strategy Paper contrary to sections 107(1),(3)&(4), 117(5)&(6) of the Act, regulations 26(1),(3)and(4) of the Regulations and adopted by the County Assembly under section 117(6).

I submit that **Kshs.5,000,000** is directed towards enabling the County Government discharge its legal obligations of facilitating public participation in accordance with Articles 35, and 38 of the Constitution and sections 87, 88,89, 90, 91, 92, 93, 94, 95, 96 and 97 of the County Governments Act, 2012.

RECOMMENDATION:

I recommend that the Vote R102 for operations and maintenance expenses be amended by deleting the figure **"158,745,944"** and substituting thereof with the figure **"183,745,944".**

VOTE R103

The amount required for the financial year ending 30th June 2017 for operations and maintenance for vote R103 is **"Ksh 16,020,353**

The sum caters for recurrent and committed expenditure. The proposed alteration does not take into account the County Fiscal framework adopted under the County Fiscal Strategy Paper contrary to sections 107(1),(3)&(4), 117(5)&(6) of the Act, regulations 26(1),(3)and(4) of the Regulations and adopted by the County Assembly under section 117(6).

RECOMMENDATION:

I recommend that the figure for R103 for operation and maintenance expenses be amended by deleting the figure **"13,020,353"** and substituting thereof with the figure **"16,020,353".**

VOTE R104

The amount required for the year ending 30th June 2017 for operations and maintenance in this vote is **"Ksh.11,279,361".** The economic classification for capital transfer to old age is development.

I submit that **Kshs.5,000,000** is directed towards enabling the County Government discharge its legal obligations of facilitating public participation in accordance with Articles 35, and 38 of the Constitution and sections 87, 88,89, 90, 91, 92, 93, 94, 95, 96 and 97 of the County Governments Act, 2012.
There is an additional **Ksh 27,824,382** grant from the World Bank for capacity building that should be included.

RECOMMENDATION:
I recommend that the figure for R106 be amended by deleting the figure **"Ksh.25,406,000"** and substituting thereof with the figure **"58,230,382"**.

VOTE R107
The amount required for the year ending 30th June, 2017, is **"Ksh. 178,709,246"**. The increase in the amount allocated to personal emolument in the financial year 2016/17 is informed by annual salary increment for the employees in the department. The proposed alteration does not take into account the County Fiscal framework adopted under the County Fiscal Strategy Paper contrary to sections 107(1),(3)&(4), 117(5)&(6) of the Act, regulations 26(1),(3)and(4) of the Regulations and adopted by the County Assembly under section 117(6).
I submit that **Kshs.4,000,000** is directed towards enabling the County Government discharge its legal obligations of facilitating public participation in accordance with Articles 35, and 38 of the Constitution and sections 87, 88,89, 90, 91, 92, 93, 94, 95, 96 and 97 of the County Governments Act, 2012.

RECOMMENDATION:
I recommend that to delete the figure **"156,000,000"** and substituting thereof with the figure **"178,709,246"**.

VOTE R 108
The amount required for the year ending year 30th June 2017 for operations and maintenance is **"Ksh.9,818,378"** and the proposed alteration does not take into account the County Fiscal Framework adopted under the County Fiscal Strategy Paper contrary to sections 107(1),(3)&(4), 117(5)&(6) of the Act, regulations 26(1),(3)and(4) of the Regulations and adopted by the County Assembly under section 117(6).

VOTE R110

The amount required for the year ending year 30th June 2017 for operations and maintenance is **"Ksh.81,467,420"** and the proposed alteration does not take into account the County Fiscal framework adopted under the County Fiscal Strategy Paper contrary to sections 107(1),(3)&(4), 117(5)&(6) of the Act, regulations 26(1),(3)and(4) of the Regulations and adopted by the County Assembly under section 117(6) as the money is committed to recurrent expenditure that is redacted from the National Treasury.

The decrease in the amount allocated to personnel emolument in the financial year 2016/17 is informed by staff establishment from HR that shows that some of the staff were redeployed to administration therefore justifying the estimated value.

I submit that **Kshs.2,000,000** is directed towards enabling the County Government discharge its legal obligations of facilitating public participation in accordance with Articles 35, and 38 of the Constitution and sections 87, 88,89, 90, 91, 92, 93, 94, 95, 96 and 97 of the County Governments Act, 2012.

RECOMMENDATION:

I recommend to delete figure **"Ksh. 56,400,000"** and substituting thereof with the figure **"Ksh. 47,857,068"**.

VOTE R 111

The amount allocated for personnel emoluments for the department is inclusive of personnel emoluments for staff of the Centre of Devolved Governance which was not factored in County Fiscal Strategy Paper ceilings following reorganisation in the County Executive Government's structure. Personnel Emolument for ICT was housed under Finance, ICT and Economic Planning

RECOMMENDATION:

I recommend to delete the figure **"28,700,000"** for personnel emolument and substitute thereof with the figure **"60,854,665 "**.

CLASS SUB-TOTAL RECURRENT

RECOMMENDATION

I recommend that the **CLASS SUB-TOTAL RECURRENT** figure be amended by deleting the figure **"3, 443,701,994"** and substituting it with the figure **"3,337,857,256"** to cater for initial class adjustments proposed herein.

RECOMMENDATION:
I recommend that the figure"30,698,000" be amended by deleting and substituting thereof with the figure "391,198,000"

VOTE D 105
The amount allocated for the year ended 30th June 2017, for medical services development programmes is "Ksh.489,965,936". A reduction in this vote will affect the development programmes in other departments such as construction of health centres. Further, the classification for purchase of medical equipment, leasing of medical and dental equipment is development.
The proposed alteration does not take into account the County Fiscal framework adopted under the County Fiscal Strategy Paper contrary to sections 107(1),(3)&(4), 117(5)&(6) of the Act, regulations 26(1),(3)and(4) of the Regulations and adopted by the County Assembly under section 117(6).

RECOMMENDATION:
I recommend to delete the figure of Ksh.55,400,000" and substituting thereof with the figure "Ksh.489,965,936".

VOTE D 107
The amount required for the year ending 30th June 2017 for development programmes in the Department of Agribusiness and Co-operatives is **Ksh.177,081,856.** A further increase will affect the development of programmes in the other departments and will lead to a budget deficit.
The proposed alteration does not take into account the County Fiscal framework adopted under the County Fiscal Strategy Paper contrary to sections 107(1),(3)&(4), 117(5)&(6) of the Act, regulations 26(1),(3)and(4) of the Regulations and adopted by the County Assembly under section 117(6).

RECOMMENDATION:
I recommend that the figure for the development programs for Agribusiness and Co-operatives be amended by deleting the figure "207,081,856" and substituting thereof with the figure "177,081,856".

VOTE D108
The amount required for the year ending 30th June 2017 for development programmes in the Department of Water Services is **Ksh.340,000,000.** A reduction

COUNTY ASSEMBLY

CLASS SUB-TOTAL COUNTY ASSEMBLY

RECOMMENDATION:

I recommend that the **CLASS SUB-TOTAL** figure be amended by deleting the figure **"635,663,137"** and substituting it with the figure **" 495,000,000 "** to cater for initial adjustments proposed herein.

GRAND TOTAL

RECOMMENDATION:

I recommend that the **GRAND TOTAL** figure be amended by deleting the figure **"5,644,416,468"** and substituting thereof with the figure **" 5,672,240,850 "** to cater for initial adjustments proposed herein.

DATED ....30th June....2016

ISAAC RUTO, EGH

GOVERNOR, COUNTY GOVERNMENT OF BOMET

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

PETITION 5 OF 2016

BENARD CHEPKWONY MUTAI...PETITIONER

VERSUS

COUNTY GOVERNMENT OF BOMET.................................1ST RESPONDENT

THE GOVERNOR BOMET COUNTY..................................2ND RESPONDENT

THE COUNTY EXECUTIVE
MEMBER FOR FINANCE..3RD RESPONDENT

COUNTY ASSEMBLY OF BOMET.......................................4TH RESPONDENT

SPEAKER COUNTY ASSEMBLY OF BOMET..........................5TH RESPONDENT

CONTROLLER OF BUDGET...6TH RESPONDENT

RULING

The notice of motion dated the 29th day of June 2016 seeks the following orders:-

(a) That the court be pleased to issue a declaration that the 2016/2017 Bomet County Appropriation Bill and or Act is egregious and unconstitutional hence null and void.

(b) That the court be pleased to issue a declaration that the sovereignty lies with the people of Kenya and submissions of the public must be considered in Appropriation legislation to with Bomet county Appropriation Bill Act 2016/2017

(c)That the court be pleased to issue a declaratory order that the Respondents cannot budget and/or release Money for purchases that were illegally initiated in the first instance or for private ventures.

(d) That each party bears their own costs

(e) Any other appropriate relief that the court deems fit.

The grounds for the petition are that

(1)The respondents passed a budget that does not adhere to the ceilings prescribed for the county Executive.

(11)That the Respondents Budgeted for purchase of several Isuzu double cabin-motor vehicles, tractors, water boozers, lorries and truck cranes that were acquired un procedurally and illegally.

(111)That the Respondents budgeted for construction of a stadium which is a three year ongoing project shrouded in secrecy and which has serious audit queries.

(1v)That the Respondents purported to budget for the Payment of Motor vehicles that were bought on hire purchase in the financial year 2015/2016 which was illegitimate and unlawful.

(v)That the county Government has purported to make an allocation to finance the Bomet water company which is a private company and has not been declared a county entity for purposes of funding pursuant to section 5 of the public finance management Act 2012.

(vi)That the submitted estimates providing for an allocation of funds to the IAAF Bomet Stadium construction which is unlawful should not be factored in the budget for the financial year 2016/17.

(vii)That the county Assembly in exercising its oversight role adopted a report that recommended that a special forensic audit be done regarding the Bomet stadium project.

(viii)That the petitioner went further to state that there was drastic rise in budgetary allocations to personnel emoluments which contravenes section 107 of the public finance management Act which provides that compensation of national and County Government employees shall not exceed thirty five percent of the county Governments total revenue.

(ix)In spite of the mandatory requirement of public participation, the respondents have gone on to budget for projects that were roundly rejected by the public hence overthrowing the sovereignty of the people of Kenya.

There are two main issues for determination by this court.

The first one is whether this court has jurisdiction to hear and determine this petition.

The second one is whether the Respondents contravened the constitution the public finance management Act and the count Government Act in the Bomet County budget making process for the financial year 2016/2017.

It is the petitioner's contention that this court has jurisdiction to determine this petition as what is in question is the budgetary process that led to the passing of Bomet County Appropriation Bill pursuant to article 224 of the constitution and article 201 which provides for the principles of public finance in the following manner "The following principles shall guide all aspects of public finances in the Republic

(a) There shall be openness and accountability, including public participation in financial matters.

(b) ...

(c) ...

(d) ...

(e) ...

The petitioners also relies on article 165 (3) (d) (ii)which clothes the High Court with the jurisdiction to hear any question respecting the interpretation of this constitution including the determination of the question "whether anything said to be done under the authority of this constitution or of any law is In constistent with, or in contravention of this constitution".

It is further contended that the respondents did not comply with the provisions of public finance management Act section 104 (1) (a) (b) with regards to county government budget process Section 117 and Section 118, Section 125 (1), Section 129 (1) Section 131 of the said Act.

The 1st 2nd and 3rd Respondents case

It is the contention by the Respondents that under Section 8 (c) of the county government Act, the county Assembly shall

(a)....

(b)....

(c) Approve the budget and expenditure of the county government in accordance with article 207 of the constitution and the legislation contemplated in article 220 (2) of the constitution guided by article 201 and 203 of the constitution.

Further it is submitted that article 199 (1) of the constitution provides:-

"county legislation does not take effect unless published in the Gazette.

That Bomet county Appropriation bill 2016 is yet to be enacted as an Act of Bomet count y Government and has not been gazetted and that article 165 (2)(d)(11)of the constitution cannot grant jurisdiction to this court as there is no act or law which can be said to be inconsistent with the constitution and therefore the petition is premature.

It is further, the contention by the Respondents No 1,2 and 3 that the county Government of Bomet Annual budget estimates and appropriation Bill for the financial year 2016/2017 were prepared and passed in the form and according to the provisions of the constitution and provisions of the Section 125, 129, 130, 131, 132 and 133 of the public finance management Act.

That the executive committee member for finance prepared the 2016/2017 budget estimates of revenue in accordance with the provision of law and submitted the estimates to Bomet county Assembly for consideration.

The Bomet Appropriation Bill was passed by Bomet county Assembly. It was resubmitted to the 2nd Respondent who referred it back to the

Assembly with a memorandum pursuant to section 24 of the county Government Act.

Section 24 (3) provides :-If the governor refers a bill back to the county Assembly the county assembly may following the appropriation procedures under this section

(a) Amend the bill taking into account the issues raised by the Governors,or

(b) Pass the bill without amendment

(4)If a county assembly amends the bill taking into consideration the issues raised by the governor, the speaker shall within 14 days submit the bill to the governor for assent.

It is contended that the 1^{st} 2^{nd} and 3^{rd} Respondents complied with article 10 and 196 of the constitution on the principles of public participation in both the legislative process and in governance by inviting members of public to participate in public forums held at each of the county governments sub county to discuss and input on the budget estimatesfor the financial year 2016/2017.

Further it is contended that the petitioners failed to plead his petition with reasonable precision as he has not pleaded the actual articles of the constitution that have been infringed and the manner of infringement.

Case for the 4th and 5th Respondent

It is the 4th and 5th Respondents case that this court does not have jurisdiction to hear and determine the present petition as there is no demonstrated infringement or violation or denial of a right or fundamental freedom. The Respondent further contend that whereas the court has jurisdiction under article 165 (3) (2)(ii) of the constitution in matters where there is infringement or denial of rights or fundamental freedoms, the Bomet county budget has not been passed yet as the process is still ongoing and issues raised in this petition can be canvassed and ventilated by the county assembly. The 4th and 5th Respondents contend that they did comply with the provisious of the public finance management Act Section 117-134 Section 117 (5) of the Act provides "In preparing the county fiscal strategy paper, the county treasury shall seek and take into account the views of;

(a)The commission on Revenue allocation

(b)the public

(c)any interested person or group of persons and

(d) any other forum that is established by legislation"

Section 125 (1) of the Act provides for the various stages for the county government budgetary process which consist of

(a)Integrated development planning process which shall include both long term and medium term planning

(b)Planning and establishing financial and economic priorities for the county over the Medium term.

(c)Making an overall estimation of the county governments revenues and expenditure.

(d)adoption of county fiscal strategy paper

(e)Preparing budget estimates for the county government and submitting estimate to the county assembly.

(f)Approving of the estimates by the county assembly.

(g) Enacting an appropriation law and any other laws required to implement the county government budget

(h) Implementing the County Government budget; and

(i) Accounting for and evaluating the government's budgeted revenues and expenditures

(2)The county Executive committee member for finance shall ensure that there is public participation in the budget process.

Section 91 of the county government Act provides; The county government shall facilitate, the establishment of structures for citizens participation including

(a)Information communication Technology based plat forms

(b)Town hall meetings

(c)budget preparation and validation fora

(d) Notice boards, announcing jobs, appointments, procurement award, and other important announcements of public interest.

(e) development projects sites.

(f) avenues for participation of peoples representatives including but not limited to members of the National Assembly and senate, or

(g) establishment of citizen fora at county and decentralized units"

It is patently clear from the above provisions that public participation is a very important cog in the wheels of budgetary making process which processes are spearheaded by the county government and the county executive committee member for finance.

It is the contention by the 4th and 5th respondents that the estimates submitted by the county government do not conform to the commission on revenue allocation recommended ceilings on the recurrent votes for the county Assembly and the county executive.

Further its submitted that the committee on budget and appropriation found that the purchase of the motor vehicles was irregular since the provisions of the public procurement and disposal Act No.2005 were not followed. In that it was established that the vehicles were being paid for in installments which would spill over to the next financial year 2016/2017.

It is also contended that the county Assembly did not make any allocation for the construction of IAAF Bomet stadium and that there was a recommendation by the ad hoc committee that a forensic audit be carried before any allocation of funds was made.

That no allocation of funds were made towards the construction of the stadium as no forensic audit had been carried out.

As for the allocation of funds to the Bomet water company. The committee on budget and appropriation and the county Assembly did observe that it was illegal for the county government to continue financing the operations of an entity that was not a county one. That no allocation of funds were made. It is submitted that the county Assembly passed the appropriation bill without any amendments whatsoever and that the Governor of Bomet had no right to radically alter or amend the approved estimates.

Determination

Jurisdiction to hear and determine this petition .In the case of OWNERS OF MOTOR VESSEL LILLIAN 'S' V.CALTEX OIL (K) LIMITED 1989 KLR PAGE 14 the court of appeal stated this "without jurisdiction a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of proceedings, pending other evidence a court of law downs its tools in respect of the matter before it the moment, it holds the opinion that its without jurisdiction".

Article 165 (3) (d) (ii) (iii) of the constitution vests the High court with the jurisdiction to hear any question respecting the interpretation of the constitution including the determination of (1) the question whether any law is inconsistent with or in contravention of this constitution

(11)the question whether anything said to be done under the authority of this constitution or of any law is inconsistent with ,or in contravention of this constitution"

The main ground for this petition is that Bomet County is on the verge of passing an illegal egregious and illegitimate appropriation legislation that is against the tenets of the constitution.

Article 201 of the constitution provides for the principles of public finance, to include (a) openness and accountability, including public participation in financial matters.

In the main, the petitioner is about the process, what is at stake is the process of passing a legislation that is said to be illegal, egregious and illegitimate.

It is the duty of the court to evaluate and assess whether the business conducted by the Respondents was in accordance with the law, fairness and justice. Its incumbent upon the court to interrogate and find out whether the principles of public finance as provided for under article 201 of the constitution and the provisions under the public finance and management Act were followed.

I am of the considered view that this court has the jurisdiction to entertain hear and determine this petition.

I have heard the rival arguments and submissions by the petitioner and the Respondents.

The first prayer in the petition is for a declaration that the 2016/2017 Bomet county Appropriation bill or Act is egregious unconstitutional hence null and void.

The Bomet county Appropriation bill 2016 has not been enacted into a law. It has not been published in the Kenya Gazette as required under Article 199(1) of the constitution. The Bomet county Appropriation bill has not been assented into law. It is submitted that the 2nd Respondent did not assent to it but instead refereed it back to the county Assembly with memorandum of resolutions. The county Assembly is not bound by those resolutions and there is still room for ventilating the issues raised in the petition.

Public participation

The third prayer is for a declaratory order that the Respondents cannot

budget and or release money for purchases that were illegally initiated

in the first instance or for private ventures.

I find no harm in granting that prayer. The 4th and 5th Respondents have stated that no allocation of funds had been made in respect to the questioned items and or issues.

A declaration to issue as prayed.

Each party to bear their own costs.

Ruling delivered dated and signed this 21st day of November 2016 .In the presence of Mr Morintat for Petitioner Matwere for 1st-3rd Ngeno holding brief Kipkoech for the 4th and 5th Tuti for the 6th Respondent

M.MUYA

JUDGE

2/11/16.

Court -Typed copies of the record of proceedings and Judgement to be

furnished to the parties of this petition.

M.MUYA

JUDGE

2/11/2016

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

PETITION NO. 6 OF 2016

BERNARD NGENO ....PETITIONER

=VERSUS=

THE GOVERNOR BOMET COUNTY.........................1ST RESPONDENT

THE COUNTY EXECUTIVE COMMITTEE

MEMBER FOR FINANCE.......................... ....2ND RESPONDENT

COUNTY ASSEMBLY OF BOMET..........................3RD RESPONDENT

SPEAKER BOMET COUNTY ASSEMBLY.................4TH RESPONDENT

RULING

This petition seeks the following orders:-

1. That the court be pleased to issue a declaration that the Bomet County budget making process for the financial years 2016/2017 was lawful.
2. That the court be pleased to issue a declaration that the public finance management Act is the substantive law and prevails over and above the legislations in the enactment of the Appropriation law.

3. The court be pleased to issue a declaration that the 1st Respondent's memorandum dated 30th June 2-16 is unconstitutional.
4. The court be pleased to issue a declaration that the 1st Respondent is not vested with Veto powers to decline to give an assent to an Appropriation Law.
5. That there be no orders to cost
6. It is not in dispute that the Governors memorandum for refusal to assent to the Bomet County Appropriation bill 2016/2017 is the main bone of contention in this petition.
7. It is common ground that it is within the powers and mandate of the county treasury, the county executive and the county assembly to prepare and approve a budget for a county government.
8. On 23rd day of June 2016, the county assembly of Bomet passed the Bomet Appropriation bill 2016 without amendments.
9. The fourth Respondent submitted the bill to the 1st Respondent for purposes of assenting.
10. The 1st Respondent on the 30th day of June 2016 declined to assent and referred it back to the Bomet County Assembly with a memorandum containing resolutions that he wished to be included in the bill.

11. The two main issues for determination are

(a) Whether the Governor's action of referring back to the Bomet County Assembly of the Bomet county Appropriation bill with a memorandum is inconsistent with, or is in contravention of the law.

(b) Whether the public finance management Act prevails over the county Government Act and or is above all other legislations in the process of enactment of an Appropriation Act by a County Government.

12. S. 24(1) of the County Government Act provides:- "The speaker shall within 14 days, forward a bill passed by the county assembly to the Governor.

(2) The governor shall within 14 days after receipt of a bill.

(a) Assent to the bill, or

(b) Refer the bill back to the County Assembly with a memorandum outlining reasons for the referral.

(3)If the governor refers a bill back to the County Assembly the County Assembly may, following the appropriate procedures under this section –

(a) Amend the Bill taking into account the issues raised by the governor; or

(b) pass the bill without amendment.

(4) If a county Assembly amends the bill taking into consideration the issues raised by the governor, the speaker shall within fourteen days submit the bill to the governor for assent.

13. The contention by the 3rd and 4th Respondents is that S. 24 of the County Government Act donates veto powers to the governors in referring a bill back to the County Assembly with a memorandum outlining reasons for referral.

14. It is further contended that the Appropriation law is a special piece of legislation which has specific timelines and which has various stakeholders.

15. The principles of public finance are found in article 201 of the constitution which provides, "The following principles shall guide all aspects of public finance in the Republic.

(a) There shall be openness and accountability including public participation in financial matters

(b) .....

(c) .....

(d) Public money shall be used in a prudent and responsive way, and

(e) Financial management shall be responsible and fiscal reporting shall be clear.

16. Public participation is a central pillar in matters of public finance.

17. S.104 (1) (a) (b) of the public finance management Act provides:- subject to the constitution, a county treasury shall monitor, evaluate and oversee the management of public finances and economic affairs of the County government including:-

(a) Developing and implementing financial and economic policies in the county

(b) Preparing the annual budget for the county and co-coordinating the preparation of estimates of revenue and expenditure of the county government .

S.117(5) of the Act provides:- "in preparing the County fiscal strategy paper, the County treasury shall seek and take into account the views of

a) The commission on revenue allocation.

b) The public

c) Any interested persons or groups; and

d) Any other forum that is established by legislation.

S.87 of the County government Act provides for the principles for citizen participations in among others budget preparation and validation fora.

The principle of public participation is a deliberate architecture designed to engage the citizens of this county in the determination and governance in their daily lives.

In petition No. 5, I made a determination that the court had jurisdiction to entertain and hear the two petitions.

It is not in dispute that the Bomet County Budget making process for the financial year 2016/2017 was lawful. The court has made a finding that there was public participation and the processes as provided in the public finance management Act, the County government Act and most important the constitution were followed.

A declaration do issue to the effect that the process was lawful.

As regards the second prayer that the public finance management Act is the substantive law and prevails over and above other legislations in the enactment of the appropriation I find it rather unclear and ambiguous. It has not been averred and or alleged that S. 24 of the County Government Act is unconstitutional

Reliance has been placed on the provisions of S. 6 of the public finance management Act which provides that it will prevail in case of inconsistency between this Act and any other legislation in the following matters

(a) preparation and submission of budget estimates including time for doing so

(b) Preparation and submission of accounts for audit including the time to do so.

(c) ....

(d) ....

(e) ....

(f) ....

(g) ....

A perusal of S. 24 of the county Government Act shows that it does not relate to preparation and submission of budget and or accounts but relates to a referral of a bill back to the County Assembly with a memorandum outlining reasons for the referral. To that effect there is no inconsistency.

I am in agreement with the petitioner and the 3rd and 4th Respondents that the process of making a county budget is time consuming and takes great efforts of the County executive the county assembly and the public for it to come into fruitition.

The rationale and import of S. 24 of the County Government Act is therefore put into question. Whether a single individual should hold sway over the concerted efforts of many.

S. 24 (1) of the County government Act places timelines necessary to ensure that a bill is enacted timeously.

The speaker is mandated to forward a bill passed by the county Assembly to the governor within 14 days.

(2) The governor is required within 14 days after receipt of a bill to

(a) Assent the bill, or

(b) Refer the bill back to the county assembly

(3) If the governor refers a bill back to the county assembly the county assembly may, following the appropriate procedures under this section –

(a) amend the bill taking into account the issues passed by the governors. Or

(b) pass the bill without amendment.

(4) If a county assembly amends the bill taking into consideration the issues raised by the governor, the speaker shall within 14 days submit the bill to the governor for assent.

The governor does not have the last say. It's the county assembly as the representative of the people that has. It has powers to amend the bill and or pass it without amendment.

I decline to grant declaration in terms of prayers 2, 3 and 4 of the petition.

The budget making process was lawful.

The Bomet County Assembly should proceed with a alacrity to perform its duties as provided for under S. 24 of the county government Act. The petition partially succeeds as regards prayers No. 1.

Each party to bear its own costs.

As regards contempt proceedings in respect of the 3rd and 6th respondents.

I concur with counsel for 3rd Respondent and 6th Respondents on the grounds that the applicant has failed to annex court orders given on 29th June 2016 in support of his application and instead annexed those given on 1st July, 2016.

Onus of proof in contempt proceedings is a kin to that in a criminal case which is proof beyond reasonable doubt.

I have perused the affidavit sworn by Selina Amsugut Iseme Director of Legal services of the office of the controller of Budget and I am satisfied proper explanation has been given as regards compliance with the court orders. The application dated 11th October 2016 is found to be without merit and its dismissed.

Each party to bear its costs

Ruling delivered dated and signed this 22/11/2016 in open court and in the presence

J.K. Koech for petitioner

Matwere for 1st and 2nd Respondents

Njeru holding brief Kipkoech for 3rd and 4th

Tuti for the 6th Respondent in petition No.5.

M. MUYA
JUDGE
22/11/2016

Certified copies of judgment to be furnished to all parties

M. MUYA
JUDGE
22/11/2016

ANNEXURE 4

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BOMET

CONSTITUTIONAL PETITION NO. 2 OF 2015

NANCY ROTICH..1ST PETITIONER

KIRPORTICH CHAMDANY--------------------------------------2ND PETITIONER

ELIZABETH TOLOWO---3RD PETITIONER

KIPNGETICH MUTAI MARTINE------------------------------4TH PETITIONER

JOHN CHERUYIOT TERER------------------------------------5TH PETITIONER

JAIRU RONO--6TH PETITIONER

GILBERT TOO--7TH PETITIONER

VS.

THE SPEAKER COUNTY ASSEMBLY OF BOMET----1ST RESPONDENT

THE COUNTY ASSEMBLY OF BOMET------------------2ND RESPONDENT

*(In Court before Honourable Justice **H.I ONG'UDI – JUDGE** on 3rd day of November 2015)*

ORDER.

This matter coming up for Mention on the progress of the report, by consent it is agreed that the;

(1) County Assembly ceiling is set as Kshs.489,368,979/= consisting of Kshs.446,060,020/= and Kshs. 38M for gratuity and Shs.5,308,959/= for pending bills.

(2) Kshs.10M shall be retained in the County Assembly's development vote for facilitation of public works, design works and associated expenses for the County Assembly Chamber and any other amount required over and

Tabled on 11/11/2015.

above the Kshs.10M shall be provided for by the executive through a supplementary budget.

(3) Other development issues which include purchase of land, landscaping and pavements and construction and Assembly residential buildings and committee rooms shall be discussed before end of February 2016, and included in the annual development plan, county fiscal strategy paper and the budget estimate.

(4) The CEC Finance of the County government of Bomet in consultation with the clerk of the County Assembly Bomet shall submit to the County Assembly a supplementary budget to re-organize the votes to reflect the terms of this consent within 14 days after the Appropriation Bill has been regularized.

(5) The Petition be and is hereby marked as settled with no Order as to Costs.

Given under my hand and the Seal of this Court on the 3rd day of November 2015.

H.I. ONG'UDI

JUDGE.

Issued at Kericho on the ---------------- **day of** ---------------- **2015.**

DEPUTY REGISTRAR
HIGH COURT OF KENYA
KERICHO

DEPUTY REGISTRAR

<u>HIGH COURT KERICHO.</u>

HIGH COURT OF KENYA AT BOMET, CONSTITUTIONAL PETITON NO. 2 OF 2015 NANCY ROTICH AND OTHERS -VS- THE SPEAKER COUNTY ASSEMBLY OF BOMET AND ANOTHER

By Consent it is agreed as follows:

1. **THAT** County Assembly ceiling is set at Kshs. 489,368,979.00 consisting of:- Kshs. 446,060,020.00, Kshs. 38,000,000.00 for gratuity and Kshs. 5,308,959.00 for pending bills.
2. **THAT** Kshs. 10,000,000.00 shall be retained in the County Assembly's development vote for facilitation of Public Works for design works and associated expenses for the County Assembly Chamber, and any other amount required over and above the Kshs. 10,000,000.00 shall be provided for by the Executive through Supplementary Budget.
3. **THAT** other development issues which include purchase of land, landscaping and pavements and construction of assembly residential buildings and committee rooms shall be discussed before end of February 2016 and included in the Annual Development Plan, County Fiscal Strategy Paper and Budget Estimates
4. **THAT** the CEC, Finance of the County Government of Bomet, in consultation with the Clerk of the County Assembly of Bomet, shall submit to the County Assembly a Supplementary Budget to reorganize the votes to reflect the terms of this consent within 14 days. After the Appropriation bill has been signed
5. **THAT** the petition be and is hereby marked as settled with no order as to costs.

DATED at BOMET this 2nd day of NOVEMBER 2015

HON. ISAAC K. RUTO
GOVERNOR
COUNTY GOVERNMENT OF BOMET

HON. GEOFFREY K. KIPNGETICH
SPEAKER
COUNTY ASSEMBLY OF BOMET

Witnessed by:

Dr. PETER KOROS
CEC FINANCE, CGB

ISAAC KITUR
CLERK, CAB

In the presence of:-

BELINDA KAMAR
LEGAL ADVISOR, CGB

In the presence of:-

HARON K. NG'ENO
SENIOR LEGAL OFFICER, CAB

ANNEXURE 5

REPUBLIC OF KENYA

Clerk's Chambers
Off Narok – Sotik Road
P.O. Box 590 – 20400
BOMET.

email: info@bometassembly.go.ke
website: www.bometassembly.go.ke
Cell: 0727 887146

BOMET COUNTY ASSEMBLY

OFFICE OF THE CLERK

FROM: **Legal Department** **Dated 9th December, 2016**

TO: **THE CLERK.**

SUBJECT: **GOVERNOR'S MEMORANDUM.**

This opinion is based on the information as has been supplied and reviewed by the legal department. This opinion has relied heavily on the reports of the budget and appropriation committee that was very detailed on the 2016/17 budget process.

In summary, the legal department is of the opinion, for the reasons that will be given below, that the governor's memorandum dated 2015 in relation to the Bomet Appropriation Bill is fatally defective and thus cannot be considered by the County Assembly.

The fatal flaws,

The Budget and Appropriation Committee has given a blow by blow analysis of each proposed amendment in this present report and thus there is no need for repetition, suffice to say that all the conclusions are based on firm legal ground.

An appropriation bill under the Public Finance Management Act is required to conform to the ceiling set out in the approved County Fiscal Strategy Paper as well as the approved estimates and most of all, the appropriation law has to be balanced.

If the Governor's memorandum has to be considered and passed as is, then the resulting law would then fail in respect of the above.

ANNEXURE 7

	APPROPRIATION BILL				MEMORANDUM			
	PE	O$M	DEVELOPMENT	TOTAL	P.E	O&M	DEVT	TOTALS
county execu	164,007,525	161,567,685	-	325,575,210	164,007,525	198,167,685		362,175,210
public service	29,520,000	18,000,000	-	47,520,000	29,520,000	18,000,000		47,520,000
administratio	284,500,000	87,107,000	60,000,000.00	431,607,000	284,500,000	111,767,000	60,000,000.00	456,267,000
Finance	155,682,465	158,745,944	25,356,050.00	339,784,459	155,682,465	183,745,944	5,356,050.00	344,784,459
Economic pla	19,996,295	25,406,000	30,000,000.00	75,402,295	19,996,295	58,230,382	30,000,000.00	108,226,677
Lands, Public	192,496,758	13,020,353	121,756,525.00	327,273,636	192,496,758	16,020,353	104,446,638.00	312,963,749
social services	45,206,029	498,779,361	30,698,000.00	574,683,390	45,206,029	11,279,361	391,198,000.00	447,683,390
Medical servi	472,366,896	463,667,261	55,400,000.00	991,434,157	472,366,896	17,601,325	489,965,936.00	979,934,157
Agribusiness	156,000,000	26,686,400	207,081,856.00	389,768,256	178,709,246	26,686,400	177,081,856.00	382,477,502
Water Service	86,152,032	6,819,378	284,000,000.00	376,971,410	86,152,032	9,819,378	340,000,000.00	435,971,410
Educational a	172,700,000	9,326,272	253,357,706.00	435,383,978	198,304,919	11,326,272	238,357,706.00	447,988,897
Roads and Pu	56,400,000	79,467,420	429,777,408.00	565,644,828	47,857,068	79,467,420	429,777,408.00	557,101,896
ICT training a	28,700,000	31,380,920	68,200,000.00	128,280,920	60,854,665	31,380,920	68,200,000.00	160,435,585
TOTAL EXECU	**1,863,728,000**	**1,579,973,994**	**1,565,627,545.00**	**5,009,329,539**	**1,935,653,898**	**773,492,440**	**2,334,383,594.00**	**5,043,529,932**
County Assem	272,304,300	246,950,121	116,408,716.00	**635,663,137**			495,000,000	**495,000,000**
TOTAL	**2,136,032,300**	**1,826,924,115**	**1,682,036,261.00**	**5,644,992,676**			**2,334,383,594.00**	**2,334,383,594**

Memorandum	
Total recurrent for executive	2,709,146,338.00
Total Development	2,334,383,594.00
Total allocations to Assembly	495,000,000.00
Grand Total	**5,538,529,932.00**
Total Revenue in memorandum	**5,672,240,850.00**
Unexplained Variance	**133,710,918.00**