

COUNTY GOVERNMENT OF BUNGOMA

COUNTY ASSEMBLY OF BUNGOMA

COUNTY ASSEMBLY DEBATES

THE DAILY HANSARD

WEDNESDAY 14TH JUNE, 2023

Morning Sitting

COUNTY ASSEMBLY OF BUNGOMA
HANSARD OFFICIAL REPORT
WEDNESDAY 14TH JUNE, 2023

The House met at 9:30 a.m.

(Temporary Speaker [Hon. Benjamin Otsiula] in the Chair)

PRAYER

PAPERS

Temporary Speaker: Leader of majority, Hon. Joseph Nyongesa!

Hon. Joseph Nyongesa: Thank you, Mr. Speaker. Allow me table the following papers;

1. Report on Bungoma County participatory climate risk assessment.
2. Report on Bungoma County Climate change action plan 2023-2027

Temporary Speaker: Thank you, Leader of majority. Honourable members, the said reports having been laid before the House, I commit them to the Committee of Tourism, Environment, Water and Natural Resources for processing and let them report back to the House as soon as they are through with the process.

STATEMENTS

**1. CONSTRUCTION OF HIGH ALTITUDE TRAINING CENTRE ADMINISTRATION
BLOCK AND HOSTELS**

Temporary Speaker: Yes member for Kaptama ward Hon. Frankline Simotwo!

Hon. Frankline Simotwo: Thank you, Mr. Speaker. On behalf of the member for Kaptama, I am standing in for him to read a statement sought by Hon. Chemion on the construction of High Altitude Training Centre administration block and hostels.

Pursuant to the provisions of the Standing Orders 42(2) (c) of Bungoma County Assembly Standing Orders, I hereby seek for a statement from the Chairperson, Committee on Youths and Sports.

This is in respect to the construction of High Altitude Training Centre administration block on the hostels in Kaptama Ward.

In the response, let the Chairperson inquire into and report on the following;

1. The budgetary allocation so far.
2. The procurement process; that is the tender, adverts, evaluation reports, professional opinion from the head of the supply chain management and the name of the contractors who won the tenders.
3. The total contract sum and how much has been paid so far. Provide certificates for the payment for the same.
4. The contract period. Provide the contract agreement
5. Explain the level of works so far done, provide the BQ's of the same.
6. Explain the steps the department is taking to complete the project.
7. State when the project would be operationalized.
8. State the phases that impel Bungoma projects.
9. Provide any other important information in respect to the construction and operationalization of the high altitude training centre.

Temporary Speaker: Thank you, Hon. Franklin Simotwo. Honourable members, pursuant to the provisions of Standing Order 49 and 53, I direct that the Office of the Clerk do convey the information to the CEC Gender, Culture, Youths and Sports to file and furnish this House with a response within 14 days. Remember the House Business Committee gave directions that the responses will be filed in the House on Tuesdays, so since 14 days falls on the 28th of June which is a Wednesday, we now move to the 4th of July 2023.

Hon. Vitalis Wangila,

2. REHABILITATION OF THE ROAD FROM KABULA CATHOLIC CHURCH TO NABUREREYA DONE IN THE FINANCIAL YEAR 2021/2022

Hon. Vitalis Wangila: Thank you, Mr. Speaker. Pursuant to the provision of Standing Order 47(2)(c) of the Bungoma County Assembly Standing Orders, I hereby seek for a statement from the Chairperson, Committee on Roads, Transport, Infrastructure and Public Works. This is with reference to the rehabilitation of the Road from Kabula Catholic Church to Naburereya done in the Financial Year 2021/2022.

In the response there to, let the Chairperson inquire and report on the following;

1. The current status of the road
2. The procurement process, provide the tender advert, evaluation report, professional opinion from the head of supply Chain management
3. The name of the contractor who won the tender.
4. State the contract sum and how much has been paid so far.
5. State the contract period and elucidate whether the works were done within the contract period provided in the contract agreement.
6. Provide the contract agreement.

Temporary Speaker: Thank you, Hon. Vitalis Wangila. I direct that the Office of the Clerk do convey the communication of the CEC Roads, Transport, Infrastructure and Public Works and furnish this House with a response within 14 days. We will still take it to 4th of July 2023.

Hon. Timothy Chikati,

3. LACK OF CLEAR INFORMATION ON THE CONTRACTED STAFF WHOSE CONTRACTS ARE PEGGED ON THE CURRENT GOVERNOR'S TERM

Hon. Timothy Chikati: Thank you, Mr. Speaker Sir. I rise to seek a statement on the contracted staff pegged on Governor's term. Under the provisions of Standing Order 47(2)(c) of the County Assembly of Bungoma Standing Orders, I hereby seek a statement from the Committee of Public Administration and ICT.

This is in relation to the lack of clear information on the contracted staff whose term is pegged on the current Governor's term.

In the response, let the Chairperson enquire and report on the following;

1. The names of the contracted staff employed under contract pegged on the current Governor's term.
2. The salaries allocated to each of them and if it's per the salaries and remuneration circulars and guidelines.
3. The academic and professional qualifications of the aforementioned staff and proof of the same.
4. The job group of the aforementioned staff.
5. Whether the County Public Service Board did due diligence in ensuring that the academic and professional testimonials and certificates are genuine and from recognised institutions.
6. The minutes of the County Public Service Board approving employment of the staff.

Temporary Speaker: Thank you, Hon. Timothy Chikati. Honorable Members, I therefore direct the Office of the Clerk to convey the communication of the CEC Public Administration and ICT to furnish the House with a response within 14 days. That takes us again to 4th of July, 2023.

MOTION

REPORT BY THE PUBLIC ACCOUNTS AND INVESTMENTS COMMITTEE ON THE REPORT OF THE AUDITOR GENERAL ON THE FINANCIAL STATEMENTS OF THE BUNGOMA COUNTY DISASTER AND EMERGENCY FUND FOR THE PERIOD ENDED 30TH JUNE, 2021

Temporary Speaker: Chairperson, Public Accounts and Investments Committee!

Hon. Timothy Chikati: Thank you, Honourable Speaker. I wish to table the Auditor General's report on the Financial Statements of the Bungoma County Disaster Management and Emergency Fund for the period ended 30th June, 2021.

On page 2, we have the table of contents, I will skip to page 3, chapter one

Temporary Chair: Hon. Chikati, the report is already tabled; you have to move the motion.

Hon. Timothy Chikati: Sorry about that. Honourable Speaker, on behalf of the members of the Public Accounts and Investment committee and pursuant to the provisions of Standing Order 209 and in accordance with Article 227(8) of the Constitution of Kenya 2010, it's my pleasure and duty to present to this Assembly the committee's report of the Auditor General's report on the Financial Statements of the Bungoma County Disaster Management and Emergency Fund for the period ended 1st July 2020- 30th June, 2021.

Allow me not to go through the mandate of the committee but continue to the powers!

Temporary Speaker: Proceed!

Mandate of the committee

The Committee pursuant to the provisions of Article 185(3) is mandated to exercise oversight over the County Executive Committee and any other County organs and also to examine special reports of the Auditor-General on County Government Funds in respect of the appropriation of sums granted by the County Assembly to meet the public expenditure, and to enforce adherence to the fiscal responsibility principles as provided under *Article 201 of the Constitution of Kenya, 2010*. The Committee executes its mandate on the basis of annual and special audit reports prepared by the Office of the Auditor-General (OAG)

AUDIT OF PUBLIC ACCOUNTS

According to Article 229(4) (b) of the Constitution of Kenya, within six months after the end of each financial year, the Auditor General is required to examine the Financial Report on the Accounts of all funds and authorities of the National and County Governments and express an opinion on the report on whether money appropriated by Parliament or the relevant County Assembly and disbursed;

- i) Has been applied for the purpose for which it was appropriated or raised;
- ii) Was expended in conformity with the authority that governs it; and was expended economically, efficiently and effectively.
- iii) The Audit reports shall then be submitted to Parliament or the relevant County Assembly for debate and consideration.

OBLIGATIONS OF ACCOUNTING OFFICERS

Section 149(1), of the PFM Act, 2012 stipulates that: *“An accounting officer is accountable to the County Assembly for ensuring that the resources of the entity for which the officer is designated are used in a way that is lawful and authorized; effective, efficient, economical and transparent.”*

DIRECT PERSONAL LIABILITY

Article 226(5) of the Constitution is emphatic that “If the holder of a public office, including a political office, directs or approves the use of public funds contrary to law or instructions, the person is liable for any loss arising from that use and shall make good the loss, whether the person remains the holder of the office or not”.

Section 116(1) of the Public Finance Management Act provides that, the County Executive Committee Member for Finance may, with the approval of the County Executive Committee and the County Assembly, establish Public Funds.

Section 116 (7)(a) (b) (c) of the same Act directs that “The administrator of a County Public Fund shall prepare accounts for the fund for each financial year and not later than three months after the end of each financial year, submit financial statements relating to those accounts to the Auditor-General and the County Assembly.”

Furthermore, the *Public Audit Act, No. 34 of 2015* stipulates that;

- 1) All reports of an Audit shall be submitted to Parliament or the relevant County Assembly.
- 2) Within seven days of receiving the report, Parliament shall publicize it on its official website and other public spaces.
- 3) Within fourteen days after submitting the report to Parliament or the relevant County Assembly, the Auditor-General shall publicize the report on the official website and other public spaces.

Further, Section 35 of the same Act stipulates that, the Auditor-General shall conduct audits of financial statements under Article 229 of the Constitution for State Organs and public entities and report annually to Parliament and the relevant County Assembly.

Section 36(1), states that the Auditor-General shall conduct performance audit to examine the economy, efficiency and effectiveness with which public money has been expended pursuant to Article 229 of the Constitution.

Further and without prejudice to the foregoing, Regulation 6 of the Bungoma County Disaster Management Emergency Fund Regulations, 2019 provides that subject to Section 3 of the Act, the objects and purpose for which the Fund is established is to:

- a) Establish an efficient structure for the management of the disaster and emergency by promoting awareness and cooperation amongst the agencies with a role of the disaster management and enhancing their capacities to maintain the provision of essential services during period of disaster and emergencies.
- b) Improve the effectiveness and efficiency of the disaster risk management system in the county, including measures for disaster preparedness, prevention, mitigation, response, reconstruction, recovery and relief;
- c) Facilitate resilience building, preparedness, early warning, contingency planning and timely response to disasters during its different stages in order to reduce and minimize the negative effects of disasters and addressing disaster impacts sustainably;
- d) Provide counter measures for conducting risk assessment/analysis to inform decision

making

- e) Prepare and implement a disaster risk management plan that contains measures to address complex emergencies and risks in consultation with the response agency in cooperation with other agencies in accordance with these Regulations.
- f) Vest authority in persons and agencies to act during time of disaster and emergency in accordance with plans approved under this Act and to require the observance and implementation and the directive given and initiatives taken by person authorized under these Regulations.
- g) Enhance the capacity of the county government, relevant agencies and communities to effectively manage the impact of disaster and emergencies that threaten human life, property and environment.
- h) Implement the mechanism to reduce risks and hazards that may cause, contribute to exacerbate disaster or emergency situation in the County, especially for vulnerable persons or groups.
- i) Facilitate procedures aimed at implementing activities in the aftermath of disaster and emergencies to receive financial resources from development partners who support government on disaster risk management interventions; provide for—
 - i. A common basket emergency fund in order to facilitate faster, transparent, predictable, and accountable release of funds for disaster risk management
 - ii. Funds for capacity and technical expertise development to improve on disaster risk management systems and contingency planning;

The Public Accounts and Investments Committee strongly hold the view that these provisions of the law were meant to ensure prudent and responsible use of public funds. The Committee has accordingly applied these provisions to recommend varying actions. The committee also places a premium on these principles, among others, and has been guided by them in the entire process that has culminated to this report.

CONFIDENTIALITY UNDERTAKING BY THE COMMITTEE

To enhance the integrity of the Committee and its work, Members of the Public Accounts and Investments Committee have signed a confidentiality undertaking in accordance with Bungoma County Assembly Standing Order No. 98. In relation to the provisions of the said Standing Order; Members have undertaken that in relation to this report, no Member of the Committee shall refer to the substance of the proceedings touching on the subject matter which shall include any evidence or documents presented to the Committee and any information under discussion or deliberation at its meetings before it is tabled in the County Assembly.

We have committee membership, if you allow me; I will proceed to the next part.

Temporary Speaker: You are allowed, proceed

Hon. Timothy Chikati: Thank you.

Acknowledgment

In conclusion, the Committee wishes to express its gratitude to the Offices of the Speaker and the Clerk for the support rendered to it during the consideration of this report. The Committee

further wishes to thank the Chief Officers and Executive Committee Members who appeared before it for their cooperation.

Further, the Committee acknowledges the valuable input of the Office of the Auditor-General in considering submissions from the management of various line departments.

Lastly, the technical and logistical input of the secretariat that led to the production of this report is highly appreciated.

On behalf of the Public Investment and Accounts Committee, I now wish to table this report and urge the Honorable House to adopt it and the recommendations therein.

The report is signed by the Chairperson and I am the vice chairperson representing him.

REPORT OF AUDITOR - GENERAL ON FINANCIAL STATEMENTS OF BUNGOMA COUNTY DISASTER MANAGEMENT AND EMERGENCY FUND FOR THE YEAR ENDED 30TH JUNE, 2021

REPORT ON THE FINANCIAL STATEMENTS

Qualified Opinion

The Accounting Officer submitted that the audit accompanying financial statements of Bungoma County Disaster Management and Emergency Fund set out on pages 1 to 29, which comprise of the statement of financial position as at 30 June, 2021, and the statement of financial performance, statement of changes in net assets, the statement of cash flows and statement of comparison of budget and actual amounts for the year then ended, and a summary of significant accounting policies and other explanatory information in accordance with the provisions of Article 229 of the Constitution of Kenya and Section 35 of the Public Audit Act, 2015.

In my opinion, except for the effect of the matters described in the Basis for Qualified Opinion section of my report, the financial statements present fairly, in all material respects, the financial position of the Bungoma County Disaster Management and Emergency Fund as at 30th June, 2021, and of its financial performance and its cash flows for the year then ended, in accordance with International Public Sector Accounting Standards (Accrual Basis) and comply with the Public Finance Management Act, 2012, and the Bungoma County Disaster and Emergency Management Act, 2019.

Basis for Qualified Opinion

Presentation and Inaccuracies of Financial Statements

The statement of comparison of budget and actual amounts indicates that the Fund had a final capital expenses budget of Kshs.9, 791,306 and actual expenditure on comparable basis of Kshs.26, 313,207 leading to a performance difference of Kshs.26, 313,207. However, the recomputed amount was Kshs.16, 521,901 thereby resulting in an unexplained variance of Kshs.9, 791,306. Further, the financial statements do not reflect pages 1 to 4 as well as pages 30 and 31. In the circumstances, the accuracy and completeness of financial statements could not be confirmed.

Management Response

The Kshs.9, 791,306 refers to the refunds from the advances that formed part of the income that was used to fund the activities for the year that included the capital expenditure of Ksh.26, 313,207. Mr. Speaker, we have a table explaining the same.

On the paging, pages 1-4 were as a result of printer incompatibility and configuration. The last two pages were attachments; there was an omission which has since been rectified in subsequent financial statements. *Attached are copies of Bank Statements and extract of financial statements 2020/2021.*

Oral Submissions

The Accounting Officer submitted paging errors arose due to technical issues with regard to printer compatibility and configurations. He acknowledged that the numerical errors had been noted by his team and the necessary corrections had been made. He further submitted that the variance in figures amounting to Kshs 9,791,306 was a result of the pagination and numbering errors. The Accounting Officer tabled the corrected document, which the Committee directed that it should be forwarded to the Auditor General for authentication and further direction.

Committee observations

1. The variance of Kshs.9, 791,306.25 was as a result of income from refunds on borrowings by various departments, which had not been explained. It is further noted that the Disaster and Emergency Fund advanced monies to departments through imprest from previous financial years.
2. The accounting officer didn't provide a break down on the nature of the activities that were financed through borrowings. It's further noted that the borrowings were repaid back after the closure of the financial year contrary to provisions of section 142 of the PFMA, 2012 which requires repayments to be done within the financial year it was borrowed.
3. Section 112 (1) (2) of the PFM (Public Finance Management Act) provides that;
 - a) The County Executive Committee Member for Finance may make payments from the County Governments Emergency Fund only if he or she is satisfied that there is an urgent and unforeseen need for expenditure for which there is no legislative authority and shall be in accordance to operational guidelines made under regulations approved by Parliament and the law relating to disaster management. The circumstances under which the borrowings were granted from the Emergency Fund can therefore not be justified.

RECOMMENDATION

1. The Committee recommends that the CECM desists from advancing monies from the Fund to other county entities in form of borrowings since it is in contravention with the purpose and the nature of the Fund. The CECM Finance and Economic Planning should adhere to the provisions of Section 110(2) of the Public Finance Management

Act, 2012 which provides that, *‘The purpose of an Emergency Fund is to enable payments to be made in respect of a county when an urgent and unforeseen need for expenditure; for which there is no specific legislative authority arises.*

2. The Office of the Auditor General to do verification on the nature of all refunds on the fund for the year under review and any outstanding borrowings and to file a report to the County Assembly within 60 days upon adoption of this report.
3. The CECM Finance should ensure that all the monies borrowed is collected and a report filed to the implementation committee within 30 days from the date of adoption of this report.

Overstatement of Cash and Cash Equivalents

The statement of financial position reflects cash and cash equivalents balance of Kshs. 16, 845,940 as disclosed in Note 3 of the financial statements. Included in the balance is an amount of Kshs.13, 835,840 in respect to outstanding imprest and advances disclosed as part of cash and cash equivalents. However, Management did not explain why the imprests and advances were wrongly classified as part of cash.

Further, no explanation was provided for the failure to have the outstanding imprests surrendered or recovered from the respective officers, as required by Section 93(5) and (6) of the Public Finance Management (County Governments) Regulations, 2015, which provides that imprests be surrendered or accounted for within seven (7) working days after returning to duty station.

In the circumstances, the accuracy and completeness of cash and cash equivalents balance of Kshs.16, 845,940 could not be confirmed.

Management Response:

- a) Imprests and advances were wrongly classified as part of cash

Imprests and advances were correctly classified as part of cash and cash equivalents as per the PSASB Approved Financial Reporting Template for the Fund. See Accounting Policy No. 14 on Cash and Cash Equivalents

Appendix 002(a); Extract of the Accounting Policies

- b) Un-surrendered Imprests

The Management acknowledges that the imprests and advances were Kshs. 13,835,840 as at 30th June, 2021. The status of the imprests and advances is currently as follows; honourable speaker that is tabulated on page 16.

Action taken;

- a) The Management has already issued demand notices and reminders to the imprest defaulters.
- b) Further, remedy is being pursued. The Management has also stopped issuance of any other imprest from the Fund.

Appendix 002(b); Listing of refunded/surrendered imprests and advances and the extracts of the bank statement

Appendix 002(c); Listing of Outstanding Imprests

Oral submissions

The Accounting Officer submitted that the status of imprests and advances had been correctly captured, classified and reported in the financial statements of the Fund. That there existed inconsistencies while classifying outstanding imprests under cash and cash equivalents. He further submitted that he had taken initiative to address the gaps that were arising from imprest management through a treasury circular on imprest recovery and non-surrenders; which he undertook to table before the Committee.

The status of outstanding imprests on the Fund amounting to Kshs. 8,227,950 was tabled before the committee.

COMMITTEE'S OBSERVATION

- a) The committee observes that the financial statement complied with the reporting template from the Public Sector Accounting standards Board (PSASB) in classifying Imprest under cash and cash equivalent as per the Accounting policy.
- b) The outstanding Imprest of Kshs. 8,227,940 dates back to the year 2020. This is contrary to the provisions of Regulation 93 of the PFM (County government) Regulations, 2015.

COMMITTEE'S RECOMMENDATIONS

The Committee recommends that the Accounting Officer should recover the full amount from the salary of defaulting officers with an interest at the prevailing Central Bank rates; in compliance with Regulation 93 (6) of Public Finance Management (County Government) Regulations 2015. The Committee hereby directs the Accounting Officer to submit a status report on the recovery within 60 calendar days from the date of adoption of this report. Failure to which, the Accounting Officer shall take responsibility and repay the defaulted imprest amount as per regulation 93 (7) of the Public Finance Management (County Government) Regulation, 2015.

Key Audit Matters

Key audit matters are those matters that, in my professional judgment, are of most significance in the audit of the financial statements. There were no key audit matters to report in the year under review.

Other Matters

Budgetary Control and Performance

The statement of comparison budget and actual amounts reflects final receipts budget and actual on a comparable basis of Kshs.70, 000,000. Similarly, the Fund expended Kshs.55, 815,938 against the approved budget resulting to an under-expenditure of Kshs.14, 184,062 or 20% of the budget. The underperformance affected the planned activities and may have impacted negatively on service delivery to the public. Further, the statement indicates that the Fund had a final capital expenses budget of Kshs.9, 791,306 but realized actual expenditure of Kshs.26, 313,207. The over-expenditure of Kshs.16, 521,901 was however not explained.

In the circumstances, the approved budget of the Fund was not realistic.

Management Response

a) Underperformance

The statement of comparison budget and actual amounts in the Approved Financial Reporting Template of the Fund is not exhaustive. Therefore, the conclusion on underperformance may not be accurate but will require one to look at all aspects of the financial statements. The current deficiencies include;

- i. It does not include reporting on acquisition of Assets. In IPSAS Accrual Basis of reporting, this expenditure is included in the Fixed Assets Movement Schedule; Property, Plant and Equipment. There was a capital expenditure of KShs. 26,313,207
- ii. It does not recognize prior cash and cash equivalents as a source of funds for financing the current year budget.

Honourable Speaker on page 18 we have a tabulation explaining the same.

N/B

The Kshs.9, 791,306 refers to the refunds from the advances that formed part of the income that was used to fund the activities for the year that included the capital expenditure of Ksh.26, 313,207.

Oral Submissions

The Accounting Officer submitted that all authorizations on the Fund's expenditure were made by the County Executive Committee Member for Finance at the time. That the unavailability of an approved budget was occasioned by the fact that the Emergency Fund's application was solely for expenditure on unforeseen circumstances; and there was no pragmatic approach to the application of an emergency budget due to the nature of Fund.

He further submitted that in Sec. 49 of the Disaster and Emergency Fund Policy provides guidelines and procedures for access of the Fund and implementation of programs of the Fund including budgetary processes.

Committee observations

1. The over expenditure was occasioned by capital expenditure of Kshs 26,313,207 under property plant and equipment as explained by the Accounting Officer. The budgeted amount of Kshs. 70,000,000 was adjusted upwards to Kshs. 81, 917,509 by refunds of Kshs. 9, 791,306 and opening balance of Ksh. 2,126,203.
2. The CECM Finance did not comply with the provisions of section 114 (1), (2) and (3) of the PFMA 2012 in seeking for approval by the County Assembly on Emergency expenditure and Appropriation for replenishment.

The Act provides as hereunder;

(1) The County Executive Committee Member for finance shall seek approval of the County Assembly within two months after repayment is made from the Emergency Fund.

(2) If the County Assembly is not sitting during the period referred to in subsection (1) or soon thereafter, the County Executive Committee member for finance shall seek the approval for the payment within fourteen days after the County Assembly's next sits.

(3) As soon as practicable after the County Assembly has approved the payment, the County Executive Committee member for finance shall cause a draft of the appropriation Bill to be introduced in the County Assembly for the appropriation of the money paid for the replenishment of the County Government's Emergency Fund to the extent of the amount of the payment.

Committee recommendations

1. The Accounting Officer having contravened section 114 of the PFM Act, 2012 is directed to submit the expenditures incurred on Emergency Fund for the financial year 2020/2021, 2021/2022 for approval by the County Assembly within fourteen days after the adoption of this report.

2. The accounting officer having violated section 114 of Public Finance Management Act, 2012 committed an offence and the Committee recommends invoking of Section 199 of the PFMA,2012 which provides as follows “ Except as otherwise provided by this Act, a person who is found guilty of committing an offence under this Act for which no other punishment is given, that person is liable for conviction to a term of imprisonment not exceeding 5 years or a fine not exceeding 10 Million shillings or both”

In this regard, the Committee directs the relevant authorities to take up the matter.

REPORT ON LAWFULNESS AND EFFECTIVENESS IN USE OF PUBLIC RESOURCES

Non-compliance with the Contractual Terms of Siuna-Kimalewa Culverts Project

Note 4 to the financial statements reflect additions of roads and other civil works of Ksh. 26, 313,207. Included in the balance, was an amount of Kshs.13, 845,876 incurred on construction of the Siuna-Kimalewa Culverts Project. The contract had been awarded to a local contractor at a contract sum of Kshs.139, 865,671. However, the drawings and designs of the project were not provided for audit review.

In addition, the Bills of Quantity for the project provided for the inclusion of a pedestrian passage on both sides of the culverts. However, a site inspection of the project carried out in October, 2021 revealed that the pedestrian passages had not been constructed.

In the circumstances, the Fund did not obtain value for money on the expenditure of Ksh.13, 845,876 incurred on the project.

Management Response;

The indicated sum is not the contract sum of any specific contract but the accumulated cost of PPE as on 30th June 2021. The contract sum for the identified project was Ksh.13, 845,876.

The appendix is attached. See the attached drawings and designs, the documents were erroneously excluded from a copy of the project file availed for the audit.

c) The Pedestrian passage

In his response the Accounting Officer stated that neither the designs nor BQs did not include the passage, hence the claim is erroneous.

Oral Submissions

The Accounting Officer submitted that there were supporting documents for the contract and presented them for review. He clarified that the contract sum for the project was Ksh. 13,845,876 and not Ksh. 139,865, 671 that had been noted by the Auditors.

He further submitted that the project had already been completed and was ready for use. He noted that the Auditor General had raised concerns on the issue of a pedestrian footbridge as not having been constructed whereas it was provided for in the Bills of Quantity for the project. On this he submitted that it was occasioned by an error of omission during the variation of works. Copies of the documents e.g. BQs, drawings and project design were presented for the Committee's consumption. The inspection report was not provided to the committee.

Committee observations

The Committee finds that the project sum was Ksh. 13,845,876 per the documents availed to the committee for review in the drawings and Bills of Quantities.

The following documents were not availed to the Committee for confirmation as submitted by the Accounting Officer:

1. The inspection report of the project
2. The original contract agreement of Siuna- Kimalewa culverts project.

Committee Recommendations

The committee recommends the Sectorial of Roads, Public Works and Infrastructure to take up the matter to establish how this project was implemented and file a report in this House within 30 days after the adoption of this report.

Lack of an Approved Budget

During the audit, Management did not provide an approved budget for the year under review, as required by Section 33 of the Bungoma County Disaster and Emergency Management Act, 2019, which provides that; the estimates are prepared, approved by the Committee and submitted to the Executive Committee Member for transmission to the County Assembly for approval.

In the circumstances, Management was in breach of the law.

Management Response

The Management has noted the concern. At the time of the audit, the Fund did not have guidelines for preparation of the budget for the Fund. The County Treasury has since issued Budget Preparation Guidelines that have been used for the subsequent year so as to comply with Section 33 of the Bungoma County Disaster and Emergency Management Act, 2019.

Committee observations

1. The County Disaster and Emergency Management Fund operated without an approved

annual budget.

2. The Committee established that the Bungoma County Disaster Emergency and Management Act has not been Gazetted.

Committee's recommendation

1. The CECM for Finance and Economic Planning should always ensure that budget estimates are approved by the County Assembly on the Disaster and Emergency Management Fund.

2. The Committee recommends the gazettelement of the Bungoma County Disaster and Emergency Management Act, 2019.

REPORT ON EFFECTIVENESS OF INTERNAL CONTROLS, RISK MANAGEMENT AND LACK OF INTERNAL AUDIT REPORTS

During the audit, it was revealed that there were no internal audit reports. As a result, there was no review of governance structures, value for money and risk-based audits. There was also no verification of internal controls and assets.

This was in contravention of Section 115(1) (a) of the Public Finance Management Act 2012, which states that a County Government entity shall ensure that it has appropriate arrangements for conducting internal audit according to the guidelines issued by the Accounting Standards Board.

Management Response

During the year 2020/2021 the Fund received Ksh.70, 000,000. This funding was among other sources that financed Covid-19 interventions during the year 2020/2021.

See Page 84 of the attached Report on the audit of Covid-19 funds. This Special Audit of the Emergency Fund was an intervening audit undertaken in October 2020.

Further, the concept of Combined Assurance requires parties to place reliance on each other's work so as to avoid duplication of resources. This concept requires the External Auditor to evaluate and make a decision on whether to rely on the Internal Auditor's work and for the Internal Audit also evaluate and make a decision on whether to rely on the External Auditor's work.

Therefore, the audit on Covid-19 funds during the year 2020-2021 was considered exhaustive by the Directorate of Internal Audit so as the Directorate to undertake an audit in other auditable areas that had not been covered during the year 2020-2021.

Subsequent audits have since been undertaken by the Directorate. The fund has since been audited and internal reports have been here attached.

Oral Submissions on extract of Internal Audit Reports

The Accounting Officer submitted that the law provides for collaboration between the

Internal Audit Unit and the External Auditors and that the two entities can rely on each other. That the Director Internal Audit had initiated a Special Audit of the Fund in the month of November 2020. It was further submitted that the challenges within the Internal Audit had already been discussed with CECM for Finance and corrective action was in the process.

Committee's observation

1. The Committee observed that the Internal Audit Department did not carry out audit on the Emergency Fund since a special audit on Covid-19 had been carried out by the Auditor General. There is however other programs under the Emergency Fund that were implemented during the period that ought to have been reviewed by the County directorate of Audit.
2. There were human resource challenges with the Directorate of Internal Audit as Submitted by the Accounting Officer.

Committee's recommendations

1. The human resource challenges of the Directorate of Internal Audit to be addressed so that there is adequate coverage of internal audit assurance and review of County wide programs.

On page 26, we have all the annexures. Page 27 we have the adoption schedule of the members of the Public Accounts and Investment Committee. That is the end of the report. Let me to call Hon. Ken Wanyama to second.

(Applause)

Temporary Speaker: Hon. Kennedy Wanyama,

Hon. Kennedy Wanyama: Thank you, Mr. Speaker Sir. I rise to second a motion from the Public Accounts and Investments Committee report on Auditor General's report on the financial statements of the Bungoma County on Disaster and Emergency fund for the period ended 30th June, 2021. First, I want to take this opportunity and thank our Vice chairman for presenting the report very fast and eloquently. I will spend some time and touch on a few issues that were the basis for the qualification of this report.

I want to touch on is the issue of advances to other departments. As at the end of the financial year, we had a balance of Ksh.9, 791,306 relating to advances given to other departments. This amount remained outstanding as at the end of the financial year and this is contrary to section 142 of the PFM Act 2012 which requires that any borrowings must be refunded within the same financial year. This is also in contravention of section 110 (2) of the PFM Act 2012 which provides that the purpose of emergency fund is to enable payment to be

made in respect of a County when an urgent or an unforeseen need for expenditure for which there is no specific legislative authority arises. The PFM Act further under section 112 (2) (ii) provides that the CECM for Finance may make payment from the County Government Emergency Fund only if he/ she is satisfied that there is an urgent and unforeseen need.

From the aforementioned, it is clear that the circumstances under which these borrowings were made from the emergency fund cannot be justified. What simply happened is that someone sat down and converted this important fund into a petty cash float where money was just being disbursed at the stroke of a pen without approval from the County Assembly.

The second issue is the issue of un-surrendered imprest; this is under cash and cash equivalence in our report. As at the end of the financial year 30th June 2021, total balance was Ksh.13, 835,840 out of which recoveries were made totalling to Ksh.5, 607,900 which the management provided a list leaving an outstanding amount of Ksh.8, 227,940.

As per section 93 (5)(vi) of the PFM Act County Government's regulations 2015, imprests are supposed to be surrendered within 7 working days after returning to work stations.

I want to really bring up this issue because recently we were on a retreat reviewing the 9 month reports from the Executive and this problem seems to be recurring and it's across all the departments. So the CEC of Finance and Planning really needs to be strict and ensure that all imprests are surrendered as per regulations provided within the law.

In our report, the CEC incurred a CAPEX (Capital Expenditure) of Ksh.26, 313,207 on plant, property and equipment without approval by the County Assembly. Recently, if you remember, we appropriated KSH.100, 000,000 to this account, now what should be understood is that there is a process through which this amount should be expensed. As much as the amount is already appropriated but there is a process and as per section 114 (1) (2) (3), of the PFM Act 2012, in seeking for approval by the County Assembly on emergency expenditure and appropriation for replenishment. So the CEC whenever he wants to expend amounts from this fund, he/she must still seek for approval from the County Assembly, but this did not happen.

On the issue of internal controls and risk management; when you look at our report, the Internal Audit did not carry out any audit on this emergency fund account simply because the external auditor had already done an audit of the Covid19. Covid-19 is just a portion of the

emergency fund, so you can see that a lot of other programs were left out, and not audited by the Internal Audit which leaves a lot of issues hanging there. On this issue, I want to request and urge the Chairman of the Finance Committee, my senior *Mheshimiwa* Mukhongo; I think the Department of Finance and Economic Planning should be submitting quarterly reconciliations of this account for us to be able to offer proper oversight.

Lastly on the issue of lack of an approved budget; as noted by management, I think it's on page 23 of the report, there was no approved budget, and the reason why there was no approved budget is because there were no guidelines for preparation of a budget for the fund. My request to the current holder of the office is that he/she needs to ensure that this is in place to facilitate easy oversight by the County Assembly. With these few remarks I urge the House to support this motion.

(Applause)

Temporary Speaker: Well, thanks to Hon. Timothy Chikati for his eloquence while moving the motion and Hon. Kennedy Wanyama for his remarks that is well put. Honourable members, a report having been moved and dully seconded, I propose a question that this House adopts a report by the Public Accounts and Investments Committee report of the Auditor general on the financial statements of Bungoma County on Disaster and Emergency fund for the period ended 30th June 2021. I would now open the floor for members to contribute to the motion. Yes, I have seen Hon. George Makati.

(Question proposed)

Hon. George Makari: Thank you, Honourable Speaker. First of all, allow me congratulate Hon. Chikati for the good work. Actually I didn't know he can read so well but today he has me proved wrong. I think we need to applaud Hon. Chikati for...

(Applause)

...the very good work he has done and then also the seconder was very smart. He also took us through the issues they have found to be raising some question marks.

I remember this issue came to the attention of the Committee on Finance and my chair by then and even today was Hon. Mukhongo who has stepped out but I know he is coming back. I want to use the words that Hon. Wanyama used that someone thought that this was a petty cash float and I want to thank you for that word actually somebody sat somewhere who was the CEC Finance by that time and thought this was a petty cash float where she can withdraw money and just use it the way she wants.

If you get the meaning of emergency, then you cannot use the emergency fund the way the last government did and especially the CECM - Finance. Also the seconder of the motion said, in every government department, even the County Assembly, there is an Internal Audit department. It means those people who work there they sleep on the job because what has come out from the committee's report would have been seen by them and raised an alarm but they didn't.

Emergency Fund as Hon. Chikati said cannot be a fund where the County government does borrowing every other day to other departments negating its purpose of dealing with projects that is on emergency basis. So the way they administered this fund was illegal and I didn't get the recommendations of the committee clearly but the people who run this fund if they are still alive and they have audit queries, my suggestion is that this money be recovered from them.

Where on earth do we pick imprest from an emergency fund? Imprest is not an emergency and then worst of all un-surrendered imprest amounting to 13 million until at the time of audit and when you pick an imprest it means there is a function you are going to undertake and then you surrender immediately. When the law gives 7 days but here they have sat with imprest for almost a year until the Auditor General raised the issue. Until up to now it is an audit query because the imprest was not surrendered.

My submission and support to the motion is that those people who were in office at that particular time, I have not heard that they died but they are still alive and they must be held accountable for this illegal running of an emergency fund. Although they are out of employment, they must be followed and asked to refund this money. I support.

(Applause)

Mr. Temporary Speaker: Thank you, Hon. Makari. Hon. Waiti Wafula,

Hon. Waiti Wafula: Thank you, Mr. Speaker. As much as the report is good because so many issues have been identified, scrutinized and dealt with the good committee on PAC, my concern is on outstanding advances on the table that is page number 16, where we have the outstanding advances of Kshs 8, 227,940 as tabled, but when you look at the supporting documents referring to appendix 2(c), when you add those totals, they add up to 6,697,500 so the difference is 1,530,450. So was it just by design, an error or who is this special person holding an advance that omitted deliberately to be mentioned? So I would want the committee to tell this Honourable House that concern.

Mr. Temporary Speaker: Thank you, Hon. Wafula Waiti. Hon. Ipara Johnston,

Hon. Johnston Ipara: Thank you, Mr. Speaker Sir. First of all, let me start by lauding my neighbour Hon. Timothy Chikati for presenting a very comprehensive precise report and which was to the point. I also want to commend Hon. Ken who is my vice by proving that he

is up to the task by putting up things the way they are supposed to be. According to the regulations, *it says 'the CECM may with approval of the County Assembly establish an emergency fund'*. It is this House that approved the regulations that established the emergency fund with specific purpose and the specific purpose was to enable payments to be made for urgent and unforeseen events.

2) To provide for a budget where a budget was not available and

3) For payments to be made to alleviate the situation and

4) To control the damage which is in a small scale and within the County?

5) Also to manage the threats to human life and welfare and

6) To manage the damage to the environment. Clearly, it spells out at what stage and time this money can be used but shockingly the CEC on his own digression choose to convert this particular into a cooperative society fund; where she came up with by-laws which allowed her to lend out without the knowledge of this Honourable House.

This is a disservice to the people of Bungoma County and if I am not wrong, the law that established this fund clearly spells out that after the expenditure has been incurred, the CECM is supposed to table to this House, which was not done. The recommendation should include which is provided in cap 446 and in particular section 19 that the CECM who acted in contravention of the law should be surcharged. That should be among the recommendation. If we allow this to continue then this particular person will continue to abuse this fund, use this fund for their own purposes and this Honourable House will be appropriating the money. We should stand without fear of any contradiction to defend the right of our people to get quality service.

How do you issue imprest from this emergency fund and it is said this emergency fund can only serve what is not provided for in the budgetary and when we talk about imprest, it must have been gotten from the money appropriated under the recurrent item. Why do you issue imprest from this fund and this people are still within the boundaries of Kenya, I believe that strong recommendation be made which should also include being arrested and charged in a court of law. I rest my case.

Mr. Temporary Speaker: Thank you, Hon. Okasida Ipara. I therefore call upon the mover of the motion Hon.Chikati to reply.

Hon. Timothy Chikati: Thank you, Mr. Speaker. Thank you all Honourable members who have contributed. Where Honourable members have tried to seek clarification, I think most of it has been captured in our report. Hon. Ipara, on our recommendation on ways of recovering the imprest, if you see on page 17 we have said that from the salary of the defaulting officers even with an imprest at the prevailing Central Bank rates has to be recovered failure for which the accounting officer shall take the responsibilities to repay the defaulted imprest amount as per the regulation of Public Finance Management Regulations.

On Hon. Waiti, if you do your maths well on page 16; on the surrendered amount, if you look at the top of the page the surrendered advances, if you add that 840 plus the surrender amount of 5, 607,060 plus the outstanding amount of 8,227,940, I think the total is just correct. I have done it twice and it comes to 13,835,840 and actually that is what is reflected in the appendix attached.

Let me also thank Hon. Makari about the emergency fund where he says the CECM Finance has no authority to use the emergency funds as petty cash and following on that, he must ensure that the internal audit does its work and it also collaborates with the external audit, so that we cannot have loopholes. Also it is expressively captured in law that imprests should be surrendered within 7 days. I think those are the only concerns from the three Honourable members.

(Applause)

Mr. Temporary Speaker: Thank you, Hon. Chikati for that brief and concise but very objective reply to the motion. Honourable members, a report having been moved and duly seconded and debate having subsequently ensued, I now wish to put a question that this House adopts the report by the Public Accounts and Investments Committee on the report for the Auditor General on the financial statements of Bungoma County Disaster and Emergency fund for the period ended 30th June, 2021.

(Question put and agreed to)

(Applause)

The report is accordingly adopted. Honourable members, that having been our last item on our Order Paper, the House stands adjourned to Wednesday 14th June, 2023 at 2:30 p.m. session.

(House adjourns)