

COUNTY ASSEMBLY OF BUNGOMA

COUNTY ASSEMBLY DEBATES

THE DAILY HANSARD

SPECIAL SITTING

MONDAY, 30TH JUNE, 2025

Morning Sitting

3rd County Assembly

4th Session

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SPECIAL SITTING

MONDAY DAY, 30TH JUNE, 2025

The House met at the County Assembly Chamber at 9:30 a.m.

(Mr. Speaker [Hon. Emmanuel Situma] in the Chair)

PRAYER

COMMUNICATION FROM THE CHAIR

Mr. Speaker: Honorable Members, this is the communication to the House;

CONSIDERATION OF GOVERNOR'S RESERVATIONS ON THE BUDGET ESTIMATES FOR THE FINANCIAL YEAR 2025/2026

I take this opportunity to welcome you to this special sitting of the County Assembly convened pursuant Standing Order 32 of Bungoma County Assembly Standing Orders and in accordance with the provisions of the **Gazette notice no 8726**. As you are aware during our regular sittings of this County Assembly, we concluded the consideration and approval of the Budget estimate for the FY 2025/26 and forwarded the same to the Governor for ascendance.

However, his Excellency the Governor in exercise of his legal mandate under Sections 24(2) (b) of the County Government Act 2012 has since returned the budget estimates accompanied by the Memorandum outlining the reservations on items within the approved document. Accordingly Honourable Members, this special sitting has been convened to allow this County Assembly to consider the reservations of the Governor and to make a resolution therefore in accordance with the law under Standing Orders.

The threshold of considering the Governor's reservations should the County Assembly choose to pass the Bill a second time without accommodating the Governor's reservations; it must do so by a vote of at least 2/3rds of all the Members of the County Assembly; at least 42 Members of this House.

A threshold applies specifically where the County Assembly rejects the Governor's reservations and they insist on the original provision as passed. If the County Assembly achieves this threshold the Speaker shall resubmit the Bill to the Governor which shall be required to ascend to it within 7 days.

However, should the Assembly fail to raise the 2/3 majority, the Governor's reservations will prevail and the Bill shall be passed with amendments proposed by the Governor.

Honourable Members, this is critical process that shall call for your full participation, sound judgment and fidelity to the law. I urge each of you to engage constructively in today's reservations as we continue to discharge our legislative and oversight mandate on behalf of the people of Bungoma.

I wish to remind the House that Standing Order 32(4) and (5); no other business shall be transacted during this Special Sitting. The matter before us is significant as it directly impacts the implementation of the programs and services for the people of Bungoma County in the upcoming financial year. I urge the Honourable Members to engage in today's proceedings with the seriousness, sovereignty and objectivity that such a legal process demands.

Let us discharge our responsibilities with outmost fidelity to the constitution, the law and the Public Finance Management Act and the Standing Orders for this House. Thank you. Next Item.

MESSAGES

MESSAGE PURSUANT TO THE STANDING ORDERS 156 SECTION 24(2B) OF THE COUNTY GOVERNMENTS ACT 2012 AND GOVERNORS RESERVATION IN BUNGOMA COUNTY APPROPRIATION BILL 2025 BUDGET ESTIMATES FOR FINANCIAL YEAR 25/26

Honorable Members, on our item No.3 is the Governor's Reservations and you are all aware we were to commence this meeting at exactly 9:30 a.m. and at some minutes to 8 I was called by my secretary that the Governor is in the corridor coming to my office and I did call the Majority who was also having a meeting with the leadership in their boardroom whether he had any planned meeting with the Governor's office and they answered me that they didn't have any planned meeting and since the Governor had come to the Assembly and to my office, I welcomed him and did invite all the Leadership to that meeting.

First and foremost, what is coming out from him is embarrassing because he was not aware of the contents of his own memorandum.

(Laughter)

What happened here was read to him and he was also shocked. Can we have one session please? It was read to him before the House Leadership if those demeaning words in the Memorandum were meant for this House or not. It was read by the Chairperson - Liaison Committee, our Deputy Speaker. We explained to him our position that if we did not have the mandate, why does he want us to approve the budget? Hence we have not made any deal with him.

(Applause)

My position is that a deal can only be made by Members in this House. He explained to us what happened and how the letter reached us. Members no deal has been reached because everything was discussed openly before the House leadership. I even asked him if the letter was meant for the Speaker because he indicated that Members don't have mandate therefore, why talk to them.

He responded that I was annoyed and of course I was annoyed.

(Applause)

The contents that I will read shortly for those not privy are not friendly. Will for the sake of Members who were not here when I made the presentation, although he has given an apology. I told him if he does not **rain** on his CECMs, they will be sent home one by one. That is our position.

(Applaud)

Members allow me read this memorandum to the House. Sorry, I did not see you Hon. Sheila and Hon. Tendet. Today I will be on your work Hon. Tendet.

(Laughter)

Hon. Tendet today I have the assistance of Hon. Makari and if all goes well, we will deliver the goodies to your House.

(Laughter)

Honourable Members, allow me read this memorandum to the House; I won't be going to the annexures in terms of the individual votes; I will read the narration of the rejection.

Honorable Speaker,

Bungoma County Assembly Building 437, which is not our address as you understand.

We are not part of 437, the Speaker is never there, and you know where we sit.

REJECTION OF UNLAWFUL ALTERATION TO THE COUNTY BUDGET ESTIMATES FOR THE FINANCIAL
YEAR 2025/2026 AND A REMINDER ON THE LIMITED MANDATE OF THE COUNTY ASSEMBLY IN
BUDGET MAKING

I write to you pursuant to Article 183, 1(c), and Article 185 (3) of the Constitution of Kenya, 2010 and Section 117 to Section 131 of the Public Finance Management Act, 2012. Herein referred as Public Finance Management Act to equivocally and categorically reject the illegal and unconstitutional amendments effected by the County Assembly Budget and Appropriation Liaison Committee to the Executive proposed budget estimates for the financial year 2025/2026.

The County Executive prepared and submitted the financial year 2025/2026 budget estimates to the County Assembly in accordance with Section 117 and 129 of the Public Finance Management Act 2012. These estimates were developed following Sectoral hearings, Cabinet consultations, and the fiscal policy guidelines issued by the County Treasury. After a detailed analysis of the tabled budget report, its accompanying schedule of amendments, we have observed grave violations of the law, abuse of the Constitutional mandate, and blatant disregard to the Doctrine of Separation of Powers as detailed below;

1. Unlawful budget amendments in exercise of the statutory limits of 1%

The Assembly increased the allocation for the Community Empowerment fund to Kshs. 35 million without the requisite approval of the Executive, an increase of over 16.5% contrary to Section 131 (2) of the Public Finance Management Act and Regulation 37 of the Public Finance Regulations of 2015. Section 131(2) of the Public Finance Management Act provides before the County Assembly consider the estimates of revenue and expenditure;

The relevant Committee of the Assembly shall discuss and review the estimates of estimate and make recommendations to the Assembly provided that the Committee shall not make any recommendations that would increase the expenditure in total or the amount of any vote without approval of the County Executive Committee Member for finance.

Further, Regulation 37 (1) (b) of the Public Finance Management Act, County Government Regulations, 2015 provides; *that the County Assembly may amend the budget submitted by the CEC Member of the Finance provided that any increase in expenditure in a proposed vote shall not exceed one per cent of the vote and in the increase shall be balanced by a reduction in another vote of the equivalent amount.*

It must be emphasized that 30% million allocation was already a gracious enhancement by the County Executive from within Kshs. 25 million following internal Capping Regulations and Sectoral Legal Assessment.

The County Assembly has no legal mandate, legal authority to reallocate or increase such figures unilaterally and in such is an outright illegality amounting to fiscal mutilation of the Executive mandate.

2. Illegal reallocation of funds from departments to central finance department

The attempt by the Assembly to remove the administration of the Community Empowerment Funds from the implementing departments and centralizing it under the Department of Finance is not only administratively unattainable but legally impermissible.

Under Section 104 1(b) of the Public Finance Management Act, the County Treasury mandate is to coordinate the preparation of the annual estimates of the revenue and expenditure not to implement or execute development projects. Departments which proposed and planned these projects remain legal and functional implementing agencies. The Department of Finance has no mandate to execute development projects on behalf of other departments and its role is clearly limited to the facilitating financial operations and the disbursements.

Furthermore, the 10 per cent administrative cost allocated to the Finance Department is unattainable and unlawful as it will lead to inordinate delay in efficiency and cause confusion. The Assembly cannot disorganize or reorganize the executive duties, the Assembly actions contravenes Article 183 1(d) of the Constitution which mandates the County Executive through respective departments to implement the County legislation and manage functions assigned to them.

Section 33 (f) of the County Government Act, empowers the Governor, the executive to coordinate the functions of the County departments. The reallocation undermines the principle of accountability, transparency, sectoral planning and reorganized under Section 102 as read with Section 104 of the Public Finance Management Act. The County Assembly has no mandate to reconfigure, reassign executive functions through budget amendments.

3. Violation of separation of powers

The budget making process is a collaborative function between the Executive and Legislature but within well-established roles. The Assembly role is oversight and limited adjustment within legal parameters, not executive planning or budgeting co-equal regulators.

The judiciary has consistently pronounced itself on this issue in the Council of Governors and six others by the Senate and another 2015 EKLR the High Court by Justice Isaac Lenaola as then was held; *the Legislative Arm of the government is not to encroach on the constitutional and legal mandate of the executive. The principle of separation of powers must be respected to avoid institutional overreach and illegality.*’

Further, in Okiya Omutata Okoit and the Cabinet Secretary, National Treasury and three others, 2018 EKLR the Court stated that; *it is not open to parliament or by the extension County Assembly to originate or independently alter the budget proposals out of the framework laid down in the Public Finance Management Act. To do so is to usurp the constitutional role of the executive. While the Parliament and the County Assembly exercise oversight, they cannot originate or substantially alter budget priorities in ways that interfere with the policy decisions of the executive.*

The Assembly attempt to usurp the Executive functions under this case of budget review, in this case amounts to legislative overreach, violation of the executive constitutionality, protected autonomy in budget formulation and assigned functions under Article 183 and 185 of the Constitution of Kenya 2010.

4. Conflict of interest

There is glaring conflict of interest arising from the composition of the Liaison Committee, which has been sitting in place of the Budget and Appropriation Committee. It has come to the light that several Members of the Liaison Committee, together with members of the secretariat, have close family relations. The situation...

(Loud consultation)

Honourable Members! Honourable members...

(Loud Consultation)

Allow me finish. Allow me finish.

(Loud consultations)

Order Members! Allow me finish please. The situation raises serious ethical governance concerns and directly...

Order! Hon. Kawa.

And directly undermines the integrity of the budget process. The presence creates both real and perceived lack of impartiality which taints the objectivity, transparency and the credibility of the budget making process. Public finance management principles...

Order! Honourable Members Order!

(Loud Consultations)

Public finance management principles demand strict adherence to fairness, accountability and the avoidance of any actual or perceived conflict of interest. The compromised structure of the committee not only contravenes these principles but also casts doubts on whether the budget was prepared and processed in a manner that prioritizes the public interest. As such, the budget in its current form cannot be endorsed or implemented as it fails to meet the basic threshold of the institutional integrity and impartiality.

5) Let it be clear that the preparation, submissions of the budget estimates is solely the mandate of the Executive. Under Article 201, Article 202 of the Constitution, Section 117 to Section 129

of the Public Finance Management Act, Section 32 (k) of the County Government Act, which obligates the government to submit the budget to the County Assembly and Section 132 of the Public Finance Management Act, which only permits the Assembly to pass or reject the appropriation bill and not to redraft the budget.

6) In light of the above, the County Executive, demand for immediate rectification and resubmission. In light of the above violation, the County Executive rejects the amended budget as tabled by the Assembly.

Demands that the budget be returned to the county executive for correction and realignment within legal framework and that any attempt to proceed with appropriation based on the altered budget will attract legal challenges, including judicial review and a reference to the Controller of Budget and Auditor General if the Assembly persists with its illegality.

In conclusion, the Assembly is hereby reminded that the budget originates from the Executive and its role is strictly review and oversight not re-appropriation or origination usurpation of executive functions. Any amendment must be within the narrow confines of the law and must not exceed 1% without express concurrence from the Executive. I want to implore the Assembly to refrain from institutional impunity, respect the legal boundaries of its mandate, and desist from any further mutilation of Executive fiscal policy plans.

(Laughter)

Order Members!

(Applause)

(Laughter)

Order Members!

(Loud Consultations)

Order Members! Attached herewith, the analysis of the said mutilated specifics, the adopted report of Bungoma County Annual Budget Estimates for the financial year 2025-2026 and the budget therein is hereby rejected, dated 26th of June 2025. His Excellency, Rt. Hon. Kenneth Makelo Lusaka E.G.H Governor of Bungoma County, copied to the County Secretary, copied to the CEC Member of Finance, copied to the Controller of Budget, copied to the Auditor General and copied to Ethics and Corruption Commission.

Then Honourable Members, lastly the analysis of the annual budget estimate for the financial year 2025-2026 following the submission of the annual budget estimate for the financial year 2025-2026 approved by the County Assembly, it was observed that they did not comply with

Section 113, 131(2) to the Public Finance Management Act 2012, where before the committee charged with the responsibility of handling the budget by County Assembly finalizing the recommendations, shall seek the views of the County Executive Member of Finance which they failed to comply.

Secondly, paragraph 37 (1) of the Public Finance Management Regulations 2015; require County Assembly not to make changes on a vote more than one per cent. The table below show the analysis. Honourable Members, I now submit this memorandum with the returned budget to the Committee of Liaison...

(Applause)

...to retreat and look at the memorandum vis-a-vis the document.

As you do so be aware of one thing, today is 30th of June; the deadline of budget approval is today. If you fail, then you must bring a vote on account tomorrow morning, for consideration. Thank you. The Liaison Committee is now given the document formally through the Committee Clerk.

(Loud Consultations)

Honourable Members! Honourable Members this was a Special Sitting and we are done with item 3. Next.

ADOURNNMENT

Honourable Members, we adjourn this morning sitting and resume at 2:30 p.m. in our Special Sitting to get a feedback from Liaison Committee. Thank you.

The House rose at 10:49 a.m.