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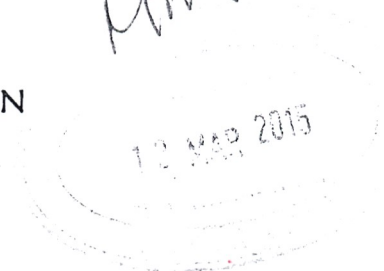
Paper laid on the table  
of the House by the  
Hon. Benjamin Kung'u  
on 12.03.2015.  
MMW

REPUBLIC OF KENYA

KENYA NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT – THIRD SESSION

THE DEPARTMENTAL COMMITTEE  
ON  
FINANCE, PLANNING & TRADE



REPORT ON THE CONSIDERATION OF PUBLIC PETITION BY RESIDENTS OF TRANS  
NZOIA COUNTY ON THE IRREGULAR PURCHASE OF "TRANS NZOIA COUNTY  
REFERRAL HOSPITAL"

PARLIAMENT BUILDINGS,  
NAIROBI

MARCH, 2014

## 1.0 PREFACE

### 1.1 Committee Mandate

The Departmental Committee on Finance, Planning & Trade is one of the twelve Departmental committees of the National Assembly established under SO 216 and mandated to:-

- (a) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- (b) To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation.
- (c) To study and review all legislation referred to it.;
- (d) To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
- (e) To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary and as may be referred to them by the House;
- (f) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (*Committee on Appointments*); and
- (g) Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

### 1.2 Committee Membership

The Committee comprises of the following members:-

1. Hon. Benjamin Langat, MP (**Chairman**)
2. Hon. Nelson Gaichuhie, MP (**vice Chairman**)
3. Hon. Jones M Mlolwa, MP
4. Hon. Anyanga, Andrew Toboso, MP
5. Hon. Timothy M .E. Bosire, MP
6. Hon. Shakeel Shabbir Ahmed, MP
7. Hon. Joash Olum, MP
8. Hon. Dr. Oburu Oginga, MP
9. Hon. Patrick Makau King'ola, MP
10. Hon. Abdullswamad Sheriff, MP
11. Hon. Sumra Irshadali, MP
12. Hon. Ogendo Rose Nyamunga, MP
13. Hon. Iringo Cyprian Kubai, MP
14. Hon. Dennis Waweru, MP
15. Hon. Tiras N. Ngahu, MP
16. Hon. Sakaja Johnson, MP
17. Hon. Jimmy Nuru Angwenyi, MP
18. Hon. Ronald Tonui, MP
19. Hon. Mary Emase, MP
20. Hon. Joseph Limo, MP
21. Hon. Lati Lelelit, MP
22. Hon. Kirwa Stephen Bitok, MP
23. Hon. Sammy Mwaita, MP
24. Hon. Daniel E. Nanok, MP
25. Hon. Eng. Shadrack Manga, MP
26. Hon. Abdul Rahim Dawood, MP
27. Hon. Sakwa John Bunyasi, MP
28. Hon. Alfred W. Sambu, MP
29. Hon. Sammy Koech, MP

### **1.3 Presentation of the Petition to Parliament**

The Petition by the residents of Trans Nzoia County on Irregular Purchase of “Trans Nzoia County Referral Hospital” was presented to the National Assembly by the Hon. Dr. Robert Pukose, MP pursuant to Standing Order 225(2) and the Petition to Parliament (Procedure) Act, 2012. The petition was dated 27<sup>th</sup> August, 2014 and signed by fifteen citizens praying *“that the National Assembly, through the Departmental Committee on Finance, Planning & Trade directs that a special audit be conducted into the circumstances leading to the purchase of the referral hospital with a view to immediately taking necessary measures to have the matter dealt with through the relevant Government financial agencies.*

The Committee was obligated to consider the petition and respond to the petitioner by way of a report within sixty days of reading the prayer pursuant to standing order 227(2). That report should also be laid on the Table of the House.

On analysis of the petition, it generally complies with the Standing Order and the Petitions to Parliamentary Act, 2012 save for not disclosing on whether or not efforts have been made to have the matter cleared.

### **2.0 CONSIDERATION OF THE PETITION**

On 23<sup>rd</sup> October, 2014, the Hon. Dr. Robert Pukose, MP (on behalf of the Petitioners) appeared before the Committee and briefed the Committee, on the petition, as follows:-

- (i) The Trans Nzoia County referral Hospital was purchased by the County Government at a cost Kshs.185 million from an abandoned structure which was 65% complete. An additional Kshs. 300 million will be required to complete the facility.
- (ii) The process of the purchase of the Trans Nzoia County Referral Hospital failed to meet the requirements of Article 227(1) as it did not ensure the contract is fair, equitable, transparent, competitive and cost-effective.
- (iii) The structure had already been bought by persons close to the County Government for Kshs. 23 million but was immediately sold to the County Government for Kshs. 185 million thereby occasioning loss of public funds.
- (iv) The facility is close to the Kitale District Hospital which is already serving the area around Kitale town and has minimal room for expansion.
- (v) There was no public participation nor valuation of the property as required under Article 174(c).
- (vi) The petitioners therefore pray that the National Assembly through the Departmental Committee on Finance Planning & Trade; directs that a special audit be conducted into the circumstances leading to the purchase of the referral hospital with a view to immediately taking the necessary measures to have the matter dealt with through the relevant government agencies.

### 3.0 COMMITTEE OBSERVATIONS

Guided by the Constitution, Public Procurement and Disposal Act, 2005 and the National Assembly Standing Orders, the Committee observed as follows:-

- 3.1 Article 227(1) of the Constitution provides that when a State organ or any other public entity contracts for goods or services, it shall do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective.
- 3.2 The County Government of Trans Nzoia has a duty to procure all its goods or services and related contracts in accordance to the Constitution. The petitioners allude to the fact that there was no transparency, fairness, equity or competitiveness in doing the transaction.
- 3.3 Article 95(2) grants the National Assembly the power to deliberate on and resolve any issues of concern to the people and further Article 95 (4) (c) grants the Assembly the power of oversight over national revenue and its expenditure. Therefore, the Committee is well within its mandate in determining the issues raised by the residents of Trans Nzoia.
- 3.4 The Public Procurement and Disposal Act provides for scenarios where authorized persons may intervene if prudent procurement procedures have not been met. Section 49 of the Act provides for Inspections and Audits relating to contracts and it states-

*(1)The following shall apply in relation to a contract for procurement—*

*(a) the Director-General, or anyone authorised by the Director-General, may inspect, at any reasonable time, the records and accounts of the procuring entity and contractor relating to the contract and the procuring entity and contractor shall co-operate with and assist whoever does such an inspection; and*

*(b) the Controller and Auditor-General, or an auditor authorised by the Controller and Auditor-General, may audit the accounts of the procuring entity and contractor relating to the contract and the procuring entity and contractor shall co-operate with and assist whoever does such an audit.*

The implication of this provision, allows the Director-General or anyone person authorized by him/her to inspect records and accounts of the procuring entity in relation to the contract. The Controller and Auditor- General or any person authorised by him/her may also inspect such records and accounts that are in question.

- 3.5 Under section 93(1) of the Act, redress through administrative review of the procurement proceedings is foreseeable. In this case, the aggrieved party must be a candidate to the proceedings for this section to be invoked. The requirements for an application for review include, inter alia, that “one has to be a candidates as defined under section 3 of the Act,” under which a candidate is defined as a person who has submitted a tender to a procuring entity. Further section 100 of the Act provides for commencement of judicial review where a decision has been made by the Review Board within fourteen days from the date of the Board’s decision.
- 3.6 In this scenario the Committee advises the aggrieved candidates to commence an administrative review of the procurement proceedings. Another law enforcement agency that an individual can seek redress from is the Ethics and Anti-Corruption Commission (EACC). Here the residents can blow the whistle on the irregularities in the procurement process.


3.7 Where there is inordinate delay from the above agencies (PPOA& EACC), the residents may seek redress from the Courts, seeking orders to suspend the process until the case is heard and determined on the ground of irregular procurement.

#### 4.0 COMMITTEE RECOMMENDATIONS

Considering the prayers that were sought by the petitioner, the Committee has requested the Auditor General to conduct a special audit of the procurement process of the Trans Nzoia County referral Hospital. The Committee will table the audit report as soon as it is received.

#### 5.0 CONCLUSION

Though there are pertinent legal issues raised in the petition that will require further investigation, the Committee could only respond to the prayers sought in the petition which was to request the Auditor General to conduct a special audit on the procurement of the Trans Nzoia County referral Hospital.

Signed  .....

**HON. BENJAMIN LANGAT, MP  
CHAIRPERSON**

**DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING AND TRADE**

Date: 10 - 03 - 2015 .....

ANNEX 1

**MINUTES OF THE 57<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE HELD ON TUESDAY 23<sup>RD</sup> OCTOBER, 2014 IN THE COMMITTEE ROOM 4<sup>TH</sup> FLOOR PROTECTION HOUSE PARLIAMENT BUILDINGS, AT 10.00AM**

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**Present**

1. Hon. Benjamin Langat, MP - **Chairperson**
2. Hon. Nelson Gaichuhie, MP - **Vice-Chairperson**
3. Hon. Dr. Oburu Oginga, MP
4. Hon. Jimmy Nuru Angwenyi, MP
5. Hon. Shakeel Shabbir Ahmed, MP
6. Hon. Abdul Rahim Dawood, MP
7. Hon. Iringo Cyprian Kubai, MP
8. Hon. Joseph Limo, MP
9. Hon. Timothy Bosire, MP
10. Hon. Jones Mlolwa, MP
11. Hon. Lati Lelelit, MP
12. Hon. Ogendo Rose Nyamunga, MP
13. Hon. Patrick Makau King'ola, MP
14. Hon. Kirwa Stephen Bitok, MP
15. Hon. Anyanga Andrew Toboso, MP
16. Hon. Ronald Tonui, MP
17. Hon. Mary Emase, MP
18. Hon. Sakwa John Bunyasi, MP
19. Hon. (Dr.) Robert Pukose, MP - friend of the Committee

**Apologies**

1. Hon. Eng. Shadrack Manga, MP
2. Hon. Sammy Mwaita, MP
3. Hon. Tiras Ngahu, MP
4. Hon. Sammy Koech, MP
5. Hon. Joash Olum, MP
6. Hon. Dennis Waweru, MP
7. Hon. Sakaja Johnson, MP
8. Hon. Sumra Irshadali, MP
9. Hon. Alfred Sambu, MP
10. Hon. Abdullswamad Shariff, MP
11. Hon. Daniel Epuyo Nanok, MP

**IN ATTENDANCE**

1. Ms. Esther Nginyo Third Clerk Assistant
2. Mr. Nicodemus Maluki Third Clerk Assistant
3. Mr. Fredrick Otieno Third Clerk Assistant

**MIN.NO. DCF/270/2014 PRELIMINARIES**

The Chairperson called the meeting to order at 10:30 am followed by a word of prayer.

**MIN.NO. DCF/271/2014: CONSIDERATION OF A PETITION ON IRREGULAR PURCHASE OF TRANS NZOIA COUNTY REFERRAL HOSPITAL BY HON (DR.) ROBERT PUKOSE, MP.**

Hon. Dr. Robert Pukose, MP appeared before the Committee to brief it on the Petition by the Residents of Trans Nzoia County on the Irregular Purchase of "Trans Nzoia County Referral Hospital". The petition was referred to the Committee by the Speaker on 27<sup>th</sup> August, 2014. In his presentation, the Hon. Dr. Pukose informed the Committee as follows:

- (vii) The process of purchase of the Trans Nzoia County Referral Hospital failed to meet the requirements of Article 227(1) as it did not ensure the contract is fair, equitable, transparent, competitive and cost-effective.
- (viii) The facility was purchased at a cost Khs.185 million from an abandoned structure which was 65% complete. An additional Khs. 300 million will be required to complete the facility.
- (ix) The facility is close to the Kitale District Hospital which is already serving the area around Kitale Town and has minimal room for expansion.
- (x) The structure had already been bought by persons close to the County Government for` Kshs. 23 million but was immediately sold to the county government for Kshs. 185 million. The Transaction has occasioned loss of public Funds.
- (xi) There was no public participation nor valuation of the property as required in Article 174(c).
- (xii) The petitioners therefore pray that the National Assembly through the Departmental Committee on Finance Planning & Trade; directs that a special audit be conducted into the circumstances leading to the purchase of the referral hospital with a view to immediately taking the necessary measures to have the mater dealt with through the relevant government agencies.

**Committee observations and resolutions**

- The Committee observed that the only prayer sought in the petition is for the National Assembly to direct the Auditor General to conduct a special audit matter for the consumption of other government agencies is so far dealing with the matter is concerned. As much as it could have liked to investigate the matter deeper, it is only bound by the prayers sought at that moment in time.
- While undertaking the audit, the following documents would be helpful;
  - i) The sale agreement
  - ii) The title deeds
  - iii) The Valuation report
  - iv) The Approval payment with the stamp duty
  - v) The Transfer documents
  - vi) The Cash transfers
- The Secretariat was asked to write to the Auditor General and ask to upon the prayers being sought by the petitioners.

**MIN.NO. DCF/272/2014: CONSIDERATION OF THE COUNTY GOVERNMENT  
(AMENDMENT) BILL, 2014**

This matter was differed to a later date.

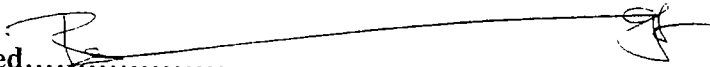
**MIN.NO. DCF/273/2014: ANY OTHER BUSINESS**

The following matters were raised under this agenda item;

- i) The Chairperson informed the Committee members that seven Members will be travelling to Turkey for benchmarking trip on Textile and Tourism sectors between 6<sup>th</sup> and 14<sup>th</sup> December, 2014.
- ii) The Committee deliberated on the budget implementation status of the Ministry of industrialization and resolved to invite the Cabinet Secretary responsible for industrialization at an opportune time to brief the Committee on the implementation status of the Special Economic Zones and the status of industrial development in the Country.

**MIN.NO. DCF/274/2014 ADJOURNMENT**

The Chairperson adjourned the meeting at 11.30 a.m.

Signed.....

**Chairperson**

Date..... 28-10-2014 .....



ATTENDANCE REGISTER FINANCE, PLANNING & TRADE

DATE 23/10/2014 10:00AM

AGENDA CONSIDERATION OF COUNTY GOVERNMENT (AMENDMENT) BILL, 2014 §  
IRREGULAR PURCHASE OF TRONS NZOIA COUNTY REFERRAL HOSPITAL

	NAME	TITLE	SIGNATURE
1	Hon. Benjamin Kariuki	Chair	
2	Hon. Nelson Gachukua	V/Chair	
3	Hon. Andrew Toboso	Member	
4	Hon. Patrick Makau	"	
5	Hon. Lathi Lelehit	member	
6	Hon. SAKWA BUNYASI	"	
7	Hon. MAUMUNGA ROSE	"	
8	Hon. JIMMY ANWEMI	"	
9	Hon. RONALD TONUI	"	
10	Hon. KUBAI LINGO	"	
11	Hon. TIM E. BRIDE	"	
12	Hon. MARY ENOCHI	"	
13	Hon. LINDA JOSEPH	"	
14	Hon. A. RALPH	"	
15	Hon. JAMES MLOLWA	"	
16	Hon. SHARIF SHARIF	"	
17	Hon. KIMWA S. BITOK	"	
18	Hon. Dr. Oburu Oginga	"	
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REPUBLIC OF KENYA



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CLERK'S CHAMBERS

National Assembly

Parliament Buildings

PO Box 41842-00100

NAIROBI, Kenya

KNA/DC/FPT/2014(87)

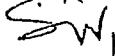
27<sup>th</sup> October, 2014

Mr. Edward R. O. Ouko, CBS

Auditor General,

Anniversary Towers

NAIROBI.

Dear 

**RE: SPECIAL AUDIT REPORT ON IRREGULAR PURCHASE OF "TRANS NZOIA COUNTY REFERRAL HOSPITAL"**

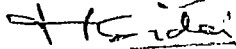
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The Departmental Committee on Finance, Planning & Trade is established by Standing Order 216 of the National Assembly and is mandated amongst others 'to investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House'.

The Committee is in receipt of a petition from the Hon. Dr. Pukose, MP on behalf of the residents of Trans Nzoia County alleging that the County Government of Trans Nzoia had irregularly purchased Trans Nzoia County Referral Hospital. The petitioners prayed that a special audit be conducted on the circumstances leading to the purchase of the referral hospital with a view to taking corrective measures by the competent government agencies.

During its Sitting held on 23<sup>rd</sup> October, 2014, the Committee deliberated on the matter and resolved to request you to carry out a special audit into the matter and report back to the Committee within three weeks to enable the Committee proceed and report back to the House.

Yours 

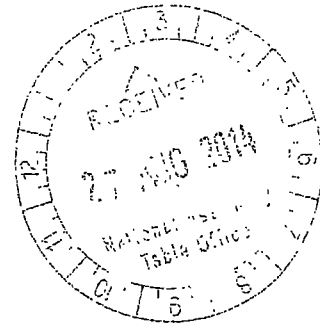
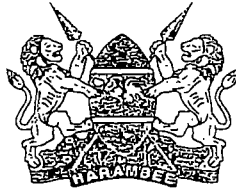


**MICHAEL R. SIALAI**

**For: CLERK OF THE NATIONAL ASSEMBLY**

Encl.

REPUBLIC OF KENYA



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THE NATIONAL ASSEMBLY  
ELEVENTH PARLIAMENT  
(SECOND SESSION)

**PUBLIC PETITION**

BY THE RESIDENTS OF TRANS NZOIA COUNTY ON THE IRREGULAR PURCHASE OF  
"TRANS NZOIA COUNTY REFERRAL HOSPITAL"

---

I, **THE UNDERSIGNED**, on behalf of the residents of Trans Nzoia County,

**DRAW** the attention of the House to the following;

- i) **THAT**, Article 227 (1) requires that 'when a State organ or any other public entity contracts for goods or services, it shall do so in accordance with a system that is fair, equitable, transparent, competitive and cost-effective';
- ii) **THAT**, the County Government of Trans Nzoia as a public procuring entity has been contravening the said article of the Constitution;
- iii) **THAT**, recently; the County Government procured an abandoned structure ostensibly to set up "Kitale County Referral Hospital";
- iv) **THAT**, no valuation of the property, nor public participation as envisioned under Article 174 (c) of the Constitution was carried out before the said purchase;
- v) **THAT**, the current location of the proposed "Kitale County Referral Hospital" is close to the Kitale District Hospital which is already serving the area around Kitale town and has minimal room for expansion;

NAME	ID NO.	SIGNATURE
1 Vivalis	7309462	
2 EVANS NYAKURUKI	10443975	Evans Nyakuruki
3 Leonora Numbwa	4260338	
4 Catherine Muhonja	13145392	Cath...
5 Mary Thomas	7324237	MARY
6 Irene MUKORO	13483540	Irene
7 PINGATA LINIGU	<del>0715374620</del> 20825597	
8 JOTHAM MUKU	4737254	
9 ALFRED MUKO	0281605 - 0729977452	
10 MATTHEW WANFONYI	0242306	Matthew
11 PAUL SITUMA	26573994	
12 EMILY OYUGI	6581585	Emily
13 ZIPPY KATIKA	26581572	
14 Colleta Lumonya	6092954	colleta
15 Dennis Menna	28805610	