



**COUNTY ASSEMBLY OF BUNGOMA  
SECOND ASSEMBLY, FIFTH SESSION**

**SPECIAL REPORT OF THE PUBLIC ACCOUNTS COMMITTEE (PAC) REGARDING  
THE LEGALITY OF THE EXPENDITURE OF KSHS.58, 660,400.57 PAID OUT BY THE  
COUNTY DEPT OF ROADS, PUBLIC WORKS AND INFRASTRUCTURE ON THE 10TH  
FEBRUARY,2020 VIDE CERTIFICATE NO.2 OF 10/02/2020 IN RESPECT TO THE DUAL  
CARRIAGE WAY ROAD PROJECT.**

**DECEMBER, 2021**

**Clerks Chambers,  
County Assembly Buildings  
PO BOX 1886,  
BUNGOMA, KENYA.**

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## **1.0 PREFACE**

### **1.1 ESTABLISHMENT OF THE COMMITTEE AND ITS MANDATE**

**Mr. Speaker Sir,**

The Public Accounts Committee is a Select Committee established under Standing Order No. 186 of the Bungoma County Assembly standing orders and is responsible for-

- (i) the examination of the accounts showing the appropriation of the sums voted by the County Assembly to meet public expenditure and of such other accounts laid before the County Assembly as the committee may deem fit.

**Article 195 of the Constitution of Kenya,2010 provides that-**

(1)A County Assembly or any of its committees has power to summon any person to appear before it for the purposes of giving evidence or providing information.

(2)For the purpose of clause (1), an Assembly has the same powers as the High Court to-

(a)Enforce the attendance of witnesses and examining them on oath,affirmation or otherwise;

(b)Compel the production of documents; and

(c)Issue a commission or request to examine witnesses abroad.

In this regard, it must be emphasized, in no uncertain terms, that the oversight function of this House as carried out through Committees elevates it to a status akin to that of a High Court. The exercise of this unique quasi-judicial function is expected to strictly adhere to and apply the principles of natural justice and fair hearing, and that every process or action taken by the House or its Committees must be seen by all to be above board taking into account the fact that decisions of this House bear the element of finality.

**Section 19 of the County Assemblies Powers and Privileges Act,2017 on examination of witnesses states that;**

Where a County Assembly or a Committee requires that any information be verified or otherwise ascertained by the oral examination of a witness, the County Assembly or the committee may-

(a)Cause such witness to be examined on Oath; and

(b) Require the witness to produce any document, paper, book or record in the possession or under the control of the witness which may have a bearing on the subject of the inquiry.

### **1.1 Guiding Principles**

In the execution of its mandate aforesaid, the committee has always been guided by core constitutional and statutory principles on Public Finance Management, as well as established customs, traditions, best practices and usages. These principles include:-

#### **1). Constitutional Principles on Public Finance**

Article 201 of the Constitution of Kenya, 2010 enacts fundamental principles that ***“...shall guide all aspects of public finance in the Republic...”*** These principles include, *inter alia*, that: **201(a)** *there shall be openness and accountability, including public participation in financial matters;* **201(d)** *Public money shall be used in a prudent and responsible way;* and **201(e)** *financial management shall be responsible, and fiscal reporting shall be clear.*

Article 227 of the constitution of Kenya 2010 on procurement of public goods and services provides as follows:-

**227(1) *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.***

**The provisions of section 117 (1) & (2) of the County Governments Act, 2012 on standards and norms for public service delivery state that;**

(1) A County Government and its agencies shall in delivering public services-

(a) Give priority to the basic needs of the public;

(b) Promote the development of the public service institutions and ensure that all members of the public have access to basic services.

(2) Public services shall be equitably delivered in a manner that accords to-

- (a) Prudent, economic, efficient, effective and sustainable use of available resources;
- (b) continued improvement of standards and quality;
- (c) Appropriate incorporation of the use of information technology; and
- (d) Financial and environmental sustainability.

## **2) 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”*.

The Public Accounts Committee has hoisted high these Constitutional provisions as the basis for holding each individual, Public Officers directly and personally liable for any loss of public funds under their watch. The Committee has and will continue to invoke these provisions in its recommendations to hold those responsible; personally accountable. This is also intended to serve as a deterrent measure.

## **3) Obligations of Accounting Officers designated to County Government entities**

**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.”*

This provision also obligates accounting officers designated as such to various County Government entities to appear before the Public Accounts Committee of the County Assembly to respond to queries relating to their respective departments.

Section 156 of the PFM Act,2012 provides that;

(1) If an accounting officer reasonably believes that a public officer employed by a county government entity has engaged in improper conduct in relation to the resources of the entity, the accounting officer shall-

(a) Take appropriate measures to discipline the public officer in accordance with regulations; or

(b) Refer the matter to be dealt with in terms of the statutory and other conditions of employment applicable to that public officer.

(2) If the County Executive Committee Member for Finance reasonably believes that an accounting officer has engaged in improper conduct within the meaning of sub-section (4), the County Executive Committee Member for Finance shall-

(a) Take appropriate measures to address the matter in accordance with laid down procedures; or

(b) refer the matter to be dealt with in terms of the statutory and other conditions of employment applicable to that public officer.

(3) The measures referred to in sub-section (2) (a) include the County Executive Committee Member for Finance revoking the designation as accounting officer.

(4) For the purposes of this section, a public officer engages in improper conduct if the officer-

(a) Contravenes or fails to comply with this Act or any regulation in force;

(b) undermines any financial management procedures or controls;

(c) Makes or permits an expenditure that is unlawful or has not been properly authorised by the entity concerned; or

(d) fails without reasonable cause to pay eligible and approved bills promptly in circumstances where funds are provided for.

This section of the law further empowers the appointing authority to discipline errant accounting officers, which could include revoking their appointments. This provision has sealed a longstanding loophole that has previously seen accounting officers

continuously commit or preside over fiscal indiscipline and malpractice in their departments with impunity without sanction.

The County Public Accounts Committee strongly holds the view that these provisions of the law were intended to be fully deployed to operationalize the principles set out under Article 201 of the Constitution stated hereinabove and to ensure prudent and responsible management of public funds. The Committee has accordingly invoked these provisions in recommending varying disciplinary actions against persons or public officers who bear responsibility for breach of the law and/or are responsible for the loss or wastage of public resources.

The County Public Accounts Committee places a premium on these principles, among others, and has been guided by them in the entire process that has culminated into the production of this report.

The Committee further derives its powers from the Public Procurement and Assets Disposal Act 2015, the Public Procurement and Assets Disposal Regulations 2006, the Public Finance Management Act 2012, the Public Finance Management (County Governments) Regulations 2015, the County Governments Act, 2012 and the Constitution of Kenya 2010.

**Mr. Speaker Sir,**

On behalf of the Members of the Public Accounts Committee, I now hereby present to this House, the Committee's report on the investigations into the legality of the expenditure of Ksh.58, 660,400.57 paid out by the County Department of Roads, Public Works and Infrastructure on the 10<sup>th</sup> February, 2020 vide payment certificate No.2 of 10/02/2020 in respect to the Dual carriage way road project.

### **1.3 Committee Membership**

The Public Accounts Committee as currently constituted comprises of the following members:

1. Hon. Tony Barasa                      Chairperson
2. Hon. Joseph Magudah                Vice-chairperson
3. Hon. Tindi Manasseh                Member

4. Hon. Isaiah Sudi Member
5. Hon. Martin Pepela Member
6. Hon. Everlyne Mutiambu Member
7. Hon. Erick Wapang'ana Member
8. Hon. Winnie Nyambok Member
9. Hon. Jerusa Aleu Member
10. Hon. Metrine Nangalama Member
11. Hon. James Chesibok Member

#### 1.4 CONFIDENTIALITY UNDERTAKING BY MEMBERS OF THE COMMITTEE AND ITS SECRETARIAT.

To enhance the integrity of the committee and its work, members of the Public Accounts Committee have signed a confidentiality undertaking in accordance with the provisions of Bungoma County Assembly Standing Order No. 82. In this regard, Honourable Members and members of the secretariat have undertaken that they will not disclose any matter relating to the proceedings of the committee that is classified as confidential which shall include any evidence or documents presented to the



committee and any information under discussion or deliberation at its meetings relating to the subject matter.

## **1.5 TERMS OF REFERENCE**

Mr. Speaker Sir,

Vide a resolution of the this Committee in its meeting held on Monday, 19<sup>th</sup> April, 2021 in the Tent, at the County Assembly Buildings, the committee on its own motion (*suo-moto*), *resolved* to inquire into and report to the County Assembly on the following issue;

1. To investigate the legality including the procedure followed regarding the expenditure of a sum of Ksh.58,660,400.57 which amount was paid out by the County department of Roads, Public Works and Infrastructure on the 10<sup>th</sup> February, 2020 in respect to the Dual carriage way road project vide Certificate No.2

Mr. Speaker Sir, the Public Accounts Committee retreated from 18<sup>th</sup> to 23<sup>rd</sup> November 2021, at Kika Hotel, Kisumu to write and compile this report.

### **EVIDENCE TAKEN**

- (i) Mr. Huang Hwa Cang' (the site manager-Dual carriage road project)
- (ii) Mr. Michael Busienei (Site Engineer)
- (iii) Mr. Moses Wamalwa (Resident Engineer)

The above mentioned officers appeared before the committee on the 26<sup>th</sup> April, 2021 and were tasked to;

-Avail/table the contract agreement dated 15<sup>th</sup> January, 2019 entered into by the County Government of Bungoma (referred to as the Employer) and M/S Zhongmei Engineering Group Ltd (referred to as the contractor

-State whether there were any advance payments made by the County Government to the contractor and if yes, how much?

- Give an explanation regarding the current status of the project.

- The number of certificates raised to date and the balance of the contract sum that remains payable to the contractors

## **Submissions**

Mr. Speaker Sir, the site manager Mr. Huang Hwa Cang' submitted that they were in receipt of a letter warranting them to commence the works on the 12<sup>th</sup> of July 2019 although they real works begun in October, 2019.

Nevertheless, they were non-committal on tabling the contract agreement since it was domiciled in the office of the Chief Officer, Roads whom they requested the committee to request him to avail. The same was later availed for committee scrutiny.

He averred that they had received 10% of the contract sum as an advance payment translating to Ksh. 138Million.

He finally submitted that despite being behind schedule for reasons beyond their control occasioned by heavy rains; they were still determined to fulfill the contract agreement obligation and complete the road by July 2021. He went on and stated that the scope of works done were already at 60% with a tarmac of 3 kilometers.

On the number of certificates raised, the site manager stated that they had raised four certificates at the time of the interrogation.

## **SUBMISSIONS FROM THE COUNTY SECRETARY AND HEAD OF PUBLIC SERVICE (MR.W. J WAMBATI)&THE COUNTY ATTORNEY(MR. CYRIL WAYONG'O)**

The County Secretary and Head of Public service appeared before the Committee on the 7<sup>th</sup> May,2021 alongside the County Attorney to jointly respond to the following issues which also constituted the terms of reference.

The committee had sought for the duo to avail for interrogation purposes the following documents;

- (1) List of all pre-qualified Law firms that had been pre-qualified to provide legal services to the County Executive of Bungoma during the FYs 2018/19-2019/2020

- (2) Invoice from the law firm of M/s Kuloba & Wangila Advocates dated 29<sup>th</sup> April, 2021
- (3) Advocates (Remuneration) (Amendment) Order, (Gazette Supplement No.42 of 11<sup>th</sup> April, 2014)
- (4) Computation and justification for the legal fees
- (5) Payment voucher No.6458 amounting to Ksh.13, 000,000 being payment for legal fees in favour of A.S Kuloba and Wangila Advocates and the justification for the payment of the said amount out of Ksh.35 Million.
- (6) The Advocates practicing certificates (pc) for the years 2019, 2020 and 2021
- (7) A legal brief giving an update on the status of the case.
- (8) Copy of Bungoma HC Constitutional Petition No.4 of 2019 (Raphael Makokha Were & John Wekesa Khaoya –vs- Hon. Wycliffe Wangamati, Governor, Bungoma County & 7 others.
- (9) Replying affidavit sworn by the Chief Officer, Roads and Public Works on the 23<sup>rd</sup> July, 2019.

The said officers however sought for more time to enable them table the requested documents and also to be able to tender oral submissions in defense of the said documents which request was granted by the committee.

Their appearance was thus rescheduled to 24<sup>th</sup> May, 2021

**SUBMISSIONS FROM THE COUNTY EXECUTIVE COMMITTEE MEMBER FOR ROADS, PUBLIC WORKS AND INFRASTRUCTURE (Mr. COLLINS MUKHONGO) AND THE CHIEF OFFICER –ROADS AND PUBLIC WORKS (Eng. MAURICE MARANGO).**

The officers appeared before the committee on 30<sup>th</sup> April, 2021 and submitted as follows;

They averred their knowledge on the dual carriage way that had a contract term of 24 months that commenced in October 2019 to October 2021 at a total sum of Ksh. 571 Million but the real works commenced in October 2020.

They cited that the delay was occasioned by challenges surrounding the material tests as the contractor was given a radius within which to source for the materials. The

chief officer affirmed that the crusher had stalled but once it is fixed it will resume the works uninterrupted.

The officers stated that there was a variation of 20 Million which would still be recovered in the contract sum of Ksh. 571 Million. The CECM confirmed the variation stating that variations are always done by the employer and in this case it was done by the County Government of Bungoma through the Department of Roads and Public Works.

On the progress of the works, the CECM confirmed that so far the certificates raised on the road were totaling to a sum of Ksh. 400 Million and the works were at 63 percent complete. The works included construction of culverts and stone pitching on some parts of the road that the contractor deemed had unstable soils and thus needed reaffirmation. To this effect, the 400 Million remains a claim since it had not yet been signed by the resident engineer to warrant the payment. A status report was then laid to the committee.

In his submissions, the Chief Officer stated that by the time of the interrogation, only four (4) certificates had been paid at a total of Ksh. 505 Million excluding the advance payment to the contractor.

The Ksh. 58,660,400.57 in question was as a difference in payment between the drawn initial payments of Ksh. 161,911,116.60 from the available funds of Ksh. 103,250,766 that were appropriated in the fiscal year.

The Ksh 58 million was drawn from the Department's vote on Supplier of Credit after a supplementary budget was done and adjusted downwards after the approval since the contractor was due for payment of Ksh. 271 Million.

The Chief Officer confirmed that this payment was done pursuant to Article 210 (d) of the Constitution of Kenya 2010. And that that the decision made was reached in line with prudent financial management and protection of public funds from accrual of interest and penalties to the county government. That sourcing money within the department to foot the deficit was done prudently to avert accruals of interests; which is allowed under the PFMA, 2012.

The Chief Officer, Engineer Marango indeed affirmed that the aforementioned sum of Ksh. 58,660,400.57 was not appropriated by the County Assembly in the fiscal year but his decision was in line with prudent financial management, a matter that the Sectorial Committee on Roads and Public Works had questioned imploring that it was

a violation of Section 149 of the PFMA 2012. In his defense, he cited Section 151 of the PFM Act, 2012 alluding that it gave him the guidance and the powers to the expenditure.

He went further and stated that any documents approved by the Assembly without an appropriation allows him to expend money on the implementation of that program and report later to the County Assembly. In lieu of the foregoing therefore, the expended amount was flagged out from the quarterly report submitted to the County Assembly from the Department.

He cited Section 154 of the PFM Act, 2012 that gives the limitation on expenditure on funds that have not been appropriated as stated below;

- i. That the funds cannot be transferred to another County Entity/person; which allows them to source the funds from the department as was the case.
- ii. That they do not spend funds that have not been appropriated from capital to recurrent and in that case, they spend money on supply of credit on capital expenditure to another capital expenditure,
- iii. Not to reallocate on wages

That as the accounting officer, he was in compliance with the provisions of Section 154 of the PFM Act, 2012 after consultations and concurrence with his CECM and the County Treasury since he foresaw that the amount in the Supply of Credit could not be spend within the financial year, thus prompted for a reallocation request which was granted in the Supplementary Budget.

In his last remarks, the CECM affirmed that the progress on the construction of the dual carriage was on course and that the contractor had done so much compared to the payments received from the employer. He stated that at 63% completion, it translates that the contractor ought to have been paid close to 900 Million which was not the case.

He assured the Committee to alley any fears and emphasized that the road would be completed as per the contract agreement.

**EVIDENCE/ORAL SUBMISSIONS BY THE COUNTY ATTORNEY MR. CYRIL  
WAYONG'O & THE CHIEF OFFICER, OFFICE OF THE COUNTY SECRETARY  
(DR. SIMIYU CHRIS)**

The abovementioned officers appeared before the committee on 24<sup>th</sup> May, 2021 and the Chief Officer, Office of the County Secretary sought for leave of the committee to be allowed to stand in for his boss reason being that the County Secretary was indisposed.

When asked whether he witnessed the contract as the County Attorney or the Legal Advisor, the County Attorney responded that by the time the contract agreement between the County Government of Bungoma and M/S Zhongmei Engineering Group Limited was being executed on the 15<sup>th</sup> January, 2019 vide contract No. BGM/CNTY/OT/RPW/184/2018-2019 contract sum being Ksh.1, 382,442,975.76, he was serving as a legal advisor.

When asked to explain to the committee what informed him to oversee the said transaction involving the two parties; the County Attorney stated that when he was appointed in the position of the legal advisor in the year 2019, it was realized that the county government was losing a lot of money by giving every county department a leeway to hire advocates to represent the county entities in legal matters thus it was resolved as a cabinet resolution that his office should in conjunction with the Office of the County Secretary be allowed to handle all legal matters.

When asked whether the Ksh.13Million legal fee payment out of the Ksh. 35Million was justifiable under the circumstances. The Chief Officer, Office of the County Secretary submitted that the same was paid out of vote heads of legal fee and also that his Office usually consults and works very closely with the Office of the County Attorney on legal matters before any payments are done. He further submitted that the said amount was paid out pursuant to the fee notes which had been submitted by the law firm in question.

When asked to state at what point was it resolved that the matter be handled by his office more particularly the issue of effecting the payment of Ksh.13Million. The chief officer sought for more time to avail relevant documentary evidence in respect of the matter. He further submitted that, after consulting the legal advisor; it was established that the fee notes submitted were within the provisions of the Advocates(Remuneration) (Amendment order), vide Gazette Supplement No.42 of 11<sup>th</sup> April, 2014.

On his part, the County Attorney concurred with the submissions of the Chief Officer, Office of the County Secretary and he further added that when he was appointed in the year 2019, a vote-head known as legal fees was in existence and he then advised that all legal fees vote heads scattered across the county departments be merged and pooled under one office hence the Ksh.13 Million was paid from the said merged vote heads domiciled in the Office of the County Secretary. The County Attorney also stated that once the final fee note is received after the conclusion of the court case, the balance will then be cleared.

## **SUBMISSIONS MADE BEFORE THE COMMITTEE**

### **CECM FINANCE AND ECONOMIC PLANNING**

The CECM, Esther Nasibwondi Wamalwa appeared before the committee as per the letter of invite on the 8<sup>th</sup> day of September 2021 accompanied with the Chief Officer for Finance. The process of taking an oath was duly conducted before cross examination by the committee members.

The CEC Member in responding to the matter (Dual Carriage) made the following submissions in response to issues raised by the committee members;

She appreciated the work being done by the committee in line with their constitutional mandate of oversight to the County Executive.

On inquiry into the reallocation approvals sought from the Department of Roads, Infrastructure and Public Works, the CECM submitted that indeed she received an application for reallocation that was dated 3<sup>rd</sup> February 2020 but was received in her office on 4<sup>th</sup> February 2020 which she duly approved on 5<sup>th</sup> February 2020. She further added that the reallocation was from vote code; 2410104 (Supplier for credit) to vote code 3110601 (Overhaul of Roads).

She added that the total amount under the code 2410104 for supplier for credit was Ksh. 471,912,595 and approved the request based on provisions of PFM Act section 154 (1)(b) and Sec 154 (2)(a).

On inquiry into the provisions of the PFM Act Section 154 (2) (c) on limited powers to reallocate funds, which states that the total of all reallocations made to or from a program or Sub-Vote does not exceed ten percent of the total expenditure approved for that program or Sub-Vote for that year, the CECM recorded that the reallocation did not exceed 10% since the Department only had four programs as hereunder;

- i) Transport and infrastructure
- ii) Public Safety
- iii) Building and construction
- iv) General administration and planning.

The 1<sup>st</sup> program of Transport and Infrastructure where the dual carriage road is domiciled had a budget of Kshs. 1,449,032,320 whose 10% would be Kshs. 144,903,232 and thus the reallocated amount of Kshs. 58,660,400.57 was only 4% of the program in total compliance to the provisions of the Public Finance Management Act.

The committee requested the CECM to avail the itemized budget; program based budget and written submissions to confirm the submissions by the County Executive Committee Member for Finance.

### **CHIEF OFFICER – FINANCE**

In response to a letter of invite from the County Assembly, the Chief Officer-Finance, Ms. Dinah Naswa Makokha appeared before the committee accompanied with the CECM Finance on 8<sup>th</sup> September 2021.

An oath was administered to Ms Dinah Naswa Makokha, the Chief Officer-Finance before commencement of the interrogation.

The Committee wanted to know whether the Chief Officer knew why she was before the committee. The officer responded by informing the committee that she was present before the committee to respond to issues of expenditure and reallocation surrounding the dual carriage way as invited by the Public Accounts Committee.

She concurred with the CECM that indeed the reallocation was approved in total compliance to the provisions of the Public Finance Management Act and specifically section 47 (1) (2) and (4) of PFM Regulations, 2015 which provides that;

For purposes of section 154(3) of the Act, Accounting Officers, may authorize reallocation of funds within programmes or sub-votes provided that;

- 1(a) This does not affect the total voted provision;
- (b) The provisions in the budget of the programme or sub-vote from within which the funds are to be transferred are unlikely to be utilized;



- (c) Reallocation is in accordance with donor conditions in the case of reallocation impacting on donor-funded expenditure;
  - (d) The reallocation does not affect the voted provisions from wage to non-wage expenditure or from capital to recurrent expenditure; and
  - (e) Allocations earmarked by the County Treasury for a specific purpose may not be used for other purposes, except with Treasury's approval
- (2) Accounting Officers shall keep a register of all budgetary reallocations and use it to prepare a report of all reallocations to the County Treasury not later than the 10th day of each month and the report shall state measures taken by the Accounting Officer to mitigate against future reallocations.
- (4) The County Treasury shall consolidate all reallocations and include them in the subsequent revised budget.

She added that the reallocation was factored in the subsequent supplementary budget as required and the final approval of reallocations is vested in the CECM-Finance even though the reallocation module has since been disabled currently in the IFMIS module.

The committee inquired into understanding matters of programs and votes as it regarded the reallocation and the chief officer submitted that a program is equivalent to a vote head which is different from a sub-vote line.

A vote is a ministry and a sub-vote is equivalent to a program which is broken down into various projects, therefore the reallocation was in order as the programs which were affected didn't exceed 10% since Ksh. 58,660,400.57 was only 4% of the program on Transport and Infrastructure which was budgeted at Ksh. 1,449,032,320.

## **ANALYSIS OF THE SUBMISSIONS FROM CEC-M AND CHIEF OFFICER FOR FINANCE**

Mr. Speaker Sir,

The dual carriage way road project from Sang'alo junction to Kanduyi was initiated in the financial year 2018/2019. The County Assembly has been allocating funds towards implementation of the said project in every financial year.

The tender for construction of the said road was advertised in the year 2018 vide tender no. BGM/CNTY/OT/RPW/184/2018-2019 and Tender name being, Kanduyi - Sang'alo Junction Dual Carriage Way Road.

The contract between the County Government of Bungoma (Employer) and M/S ZHONGMEI ENGINEERING GROUP LIMITED (Contractor) was signed on the 15<sup>th</sup> January, 2019.

The total contract sum for the project is **Ksh. 1,382,442,975.76**. The County Assembly has appropriated a cumulative total of Ksh. 591,495,064 upto the FY 2020/21, representing 42.8% of the contract sum. However, a total of Ksh. 941,495,064 has been appropriated upto and including FY 2021/22.

The County Government still needs to allocate a total of Ksh. 440,947,911.76 in the Financial Year 2022/2023 budget estimates for the project to be completed and be operational. This represents 31.90% of the total contract sum.

The total amount of money appropriated to the project to-date is as tabulated below;

#### A) BUDGET ALLOCATION

		<b>FY 2018/19</b>	<b>FY 2019/20</b>	<b>FY 2020/21</b>	<b>FY 2021/22</b>	<b>TOTALS</b>
<b>1</b>	Printed Estimates	70,000,000	271,912,595	350,000,000	350,000,000	<b>1,041,912,595</b>
<b>2</b>	Supplementary Adjustments	68,244,297	(168,661,828)	0		<b>(100,417,531)</b>
<b>3</b>	Approved Budget Estimates	138,244,297	103,250,767	350,000,000	350,000,000	<b>941,495,064</b>

#### B) ACTUAL PAYMENTS

The department made payments towards some payment certificates as shown below;

	<b>Payment certificate No.</b>	<b>Date of Payment</b>	<b>Amount paid</b>
<b>1</b>	Certificate 1	04/10/2019	138,244,297.58
<b>2</b>	Certificate 2	10/02/2020	58,660,400.57
<b>3</b>	Certificate 2	10/02/2020	103,250,766.00
<b>4</b>	Certificate 3	22/09/2020	193,191,449.75
<b>5</b>	Certificate 4	22/12/2020	150,447,814.10
	<b>TOTAL</b>		<b>643,794,728.00</b>

The total amount paid in the financial year 2020/21 is Ksh. 343,639,263.85 against a total allocation of Ksh. 350,000,000. There is still Ksh. 6,360,736.15 in the approved budget allocated for payment of the project.

It's noted from the above data, that the total payment is above the appropriated amount as per the approved budget. The source of the extra Kshs. 58,660,400.57 paid on 10/02/2020 vide certificate No. 2 is the one the committee investigated.

The Chief Officer for Roads, Infrastructure and Public works in his response letter dated 5<sup>th</sup>, May, 2020 to the County Assembly on the expenditure on Dual carriage way, indicated that there was a duly approved re-allocation of the excess in appropriated figure of Ksh. 58,660,400. A letter seeking approval of the reallocation was sent to the CEC-M for Finance and Economic Planning dated 3<sup>rd</sup>, February, 2020. The same was approved on 5<sup>th</sup>, February, 2020. (Letter and Application for reallocation form attached).

It's noted from the approved first supplementary budget for FY 2019/20 that Ksh. 390,748,282 was allocated towards pending bills which did not include Dual Carriage

way project. This amount was appropriated to pay the following as indicated in the approved programme based budget for FY 2019/20;

- |   |                    |
|---|--------------------|
| a) Roads pending development programmes       | - Ksh. 55,596,818  |
| b) Pending Ward Based Projects for FY 2018/19 | - Ksh. 297,625,168 |
| c) Pending Ward Based Projects for FY 2017/18 | - Ksh. 36,926,295  |

**Total** **Ksh. 390,148,281**

The total amount appropriated on supplier's credit vote was Ksh. 390 million, whose 10% translates to Ksh. 39 million. The Ksh. 58 million re-allocated is therefore beyond the 10% threshold by 4.9%.

Section 154(2) of the Public Finance Management Act, 2012 states as follows;

*(2) An accounting officer for a county government entity may reallocate funds between programs, or between Sub- Votes, in the budget for a financial year, but only if-*

*(a)provisions made in the budget of a program or Sub-Vote are available and are unlikely to be used;*

*(b)a request for the reallocation has been made to the County Treasury explaining the reasons for the reallocation and the County Treasury has approved the request; and*

*(c)the total of all reallocations made to or from a program or Sub-Vote does not exceed ten percent of the total expenditure approved for that program or Sub-Vote for that year.*

*(3) Regulations approved by the county assembly may prescribe requirements for the reallocation of funds within Sub-votes or programs.*

## COMMITTEE OBSERVATIONS

The Committee made the following observations;

1. That the department made a payment of Ksh. 58,660,400.57 towards certificate no 2(a) of 10<sup>th</sup> February, 2020 out of funds that were not appropriated to the project, contrary to the provisions of Section 149 sub-sections (1) and (2 (a)) of the Public Finance Management Act, 2012.
2. That the department procedurally made a re-allocation of Ksh. 58,660,400.57 by following all the approval procedures. It however, noted that the re-allocation was made out of a vote that was meant for payment of pending bills (Supplier credit- code 2410104) which is always given first charge during the budgeting process. A schedule of all the certified and verified creditors which did not include outstanding payments towards Dual carriage way was submitted to the Budget committee by the Department of Roads and Public Works for approval.
3. It was further, noted from the re-allocation forms, that Ksh. 58, 660,400.57 re-allocated from the supplier's credit budget line under (code 2410104) exceeded the 10 % provision by 4.9% contrary to the provisions of Section 154 (2) of the Public Finance Management Act, 2012.
4. The said reallocation in the vote balloons the pending bills in the county. This committee considers that the actions constitute fiscal indiscipline.

## COMMITTEE RECOMMENDATIONS

Section 196 (1) and (3) of the Public Finance Management Act,2012 states that:

*(1) A public officer shall not spend public money otherwise than authorized by the Constitution, an Act of Parliament or County legislation.*

*(3) A public officer shall not enter into any obligation that has financial implications for the national government budget or county government budget unless the obligation is authorized by the Constitution, an Act of parliament or an Act of a County Assembly.*

*Section 9 of the Public officer Ethics Act, 2003 provides that:*

*A Public officer shall-*

*(a) Carry out his duties in a way that maintains public confidence in the integrity of his office.*

1. The committee finds the Chief Officers in charge of Roads, Public Works and Infrastructure(Eng. Maurice Marango) and his Finance counterpart(M/s Dinah Naswa Makokha) responsible for the erroneous reallocations and thus recommends that the Office of the Director of Criminal Investigations (DCI)in conjunction with the office of the Director of Public Prosecutions(DPP) to take up the matter and carry out further investigations with a view to bringing all responsible officers to book depending on culpability. The committee awaits implementation report from the relevant committee of the County Assembly within (60) days from the date of adoption of this report.
2. To forestall recurrent of similar anomalies in future, the committee recommends strict adherence to budgetary provisions by the County Treasury as approved by the County Assembly pursuant to the requirements of

Regulation 42 (1)(b)&(d) of the Public Finance Management (County Governments) Regulations,2015.

3. The committee further recommends that the relevant County department should as a matter of urgency, consider capacity building all accounting officers on matters Public Procurement and Assets Disposal and the Public Finance Management Acts and any other relevant laws.

#### 5.0 ACKNOWLEDGEMENT

Mr. Speaker Sir, allow me to commend each and every single Honourable Member of this Committee for their commitment and exemplary work which made the investigation into the legality of the expenditure of Ksh.58, 660,400.57 paid out by the County department of Roads, Public Works and Infrastructure on the 10<sup>th</sup> February,2020 vide certificate No.2 of 10/02/2020 towards the Dual carriage way project and the production of this report a success.

I applaud you all, distinguished Colleagues!

However, the Committee wishes to register its displeasure against some of the officers from the County Executive whom time and again sought for unnecessary adjournments which in turn affected the time within which this exercise ought to have been concluded.

Further, the Committee is grateful to the Offices of the Speaker and the Clerk to the County Assembly for the support received as the Committee discharged its mandate.

The Committee is greatly indebted to the Secretariat for their overwhelming participation in the entire process. It is as a result of their commitment and dedication to duty that the work of the Committee and production of this Report came to fruition.

Mr. Speaker Sir, it is therefore my pleasant duty and privilege, on behalf of the Public Accounts Committee, to table this report for deliberation and adoption by the House.

**Signed:** .....

**Date:** .....

**HON. TONY BARASA, MCA**

**CHAIRMAN, COUNTY PUBLIC ACCOUNTS COMMITTEE**

**Date: DECEMBER, 2021.**

## **6.0 ADOPTION SCHEDULE**

We the members of the Public Accounts Committee hereby append our signatures adopting this report.



No	Name	Designation	Sign
1	Hon. Tony Barasa	Chairman	
2	Hon. Joseph Magudah	Vice Chairman	
3	Hon. Busolo Sudi	Member	
4	Hon. Martin Pepela	Member	
5	Hon. Elly Tindi	Member	
6	Hon. Erick Wapang'ana	Member	
7	Hon. Metrine Nangalama	Member	
8	Hon. Everlyne Mutiambu	Member	
9	Hon. Jerusa Aleu	Member	
10	Hon. James Chesibok	Member	
11	Hon. Winnie Nyambok	Member	

**ANNEXTURES:**

1. Signed Contract Agreement dated 15<sup>th</sup> January, 2019
2. Interim payment certificates
3. Zhongmei payments with EFT Numbers
4. Copy of the Reallocation form

