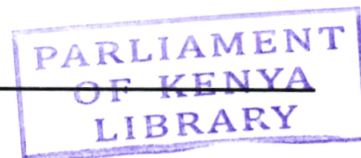
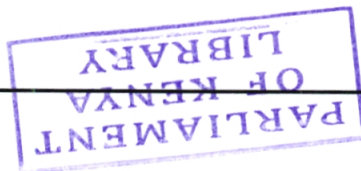


PETITION TO THE SENATE BY ABDULSALAM M. DAKANE AND ABDULLAHI HASSAN CONCERNING MISAPPROPRIATION OF FUNDS BY THE MANDERA COUNTY GOVERNMENT



Honourable Senators,

1. Pursuant to Standing Orders 220 (1) (a), and 225(2) (b), I hereby report to the Senate that a petition has been submitted, through the Clerk, by two residents of Mandera County, namely Abdulsalam M. Dakane and Abdullahi Hassan, concerning alleged misappropriation of funds by the Mandera County Government.
2. As you are aware, under Article 119(1) of the Constitution, and I quote: "*Every person has a right to petition Parliament to consider any matter within its authority, including enacting, amending or repealing any legislation.*"
3. In their petition, the petitioners state that there has been rampant misappropriation and misapplication of funds by the Mandera County Government, which has led to loss of public funds and denial of services to the people of Mandera County.
4. In summary, the petitioners state-
 - a) That, the Mandera County Government has been allocating and spending funds towards functions that are the preserve the National Government and are yet to be devolved to county governments. An example is the allocation of funds towards construction of the national trunk road 'B9' being the Mandera-Nairobi highway, which falls within the National Government's mandate;
 - b) That, the Mandera County Government, single sourced and entered into an ambulance lease agreement with the Kenya Red Cross Society, whereby the County Government is paying Kshs.64 million annually for hire of six ambulances;
 - c) That, the Reports of the Auditor-General and Controller of Budget for the financial years 2013/2014 and 2014/2015, respectively, revealed numerous instances where the County Government irregularly incurred expenditure by failing to follow the laid down procurement and public finance management laws and procedures. Among the instances highlighted by the petitioners are-

*Petition reported by the Speaker
and committed to the Standing
Committee on Finance, Commerce
and Budget on 16/6/15.
16/6/15*

- (i) irregular purchase and modification of 10 motor vehicles, through direct procurement, amounting to Kshs.84 million;
- (ii) irregular procurement and payment for residential and office premises without any lease agreements being signed;
- (iii) drawing of house allowances by the deputy governor while the rent for his residence was also paid by the county government;
- (iv) irregular payments of flight expenses and fees/commissions to travel agents without any competitive bidding having been carried out; and
- (v) irregular procurement of goods and services worth over Kshs.60 million through direct sourcing.

The detailed particulars of these breaches, which led to loss of public funds by the County Government, are contained in the said reports of the Auditor-General and Controller of Budget.

d) That, the County Government also wasted Kshs.116 million on undertaking a feasibility study for an airport at Libihya, Mandera, without any public participation. The public later rejected the said location leading to loss of the said funds, wherefore the proposed location was moved to Wargaduud.

5. The petitioners further state that the County Assembly is aware of this misappropriation and wastage of public funds, as highlighted by the reports of the Auditor-General and Controller of Budget, but has failed to take any action to protect public funds in exercise of its oversight role over the County Executive.
6. The petitioners therefore pray that the Senate undertakes a detailed audit of the matters raised in the petition and recommends appropriate action thereon.
7. **Honourable Senators**, pursuant to standing order 226, I shall now allow comments, observations or clarifications in relation to the petition for not more than thirty minutes.

[after comments by Senators]

8. Honourable Senators, pursuant to standing order 227(1), the Petition stands committed to the relevant standing committee, in this case the Standing Committee on Finance, Commerce and Budget. In terms of standing order 227(2), the Committee will be required, in not more than sixty days from the time of reading the Prayer, to respond to the Petitioner by way of a Report addressed to the Petitioner and laid on the Table of the Senate.

**PETITION TO THE SENATE OF THE REPUBLIC OF KENYA UNDER ARTICLE 119
OF THE CONSTITUTION AND PART XXIV OF THE SENATE STANDING ORDERS
ON THE MISAPPROPRIATION OF FUNDS BY MANDERA COUNTY
GOVERNMENT**

TO:
THE SENATE OF THE REPUBLIC OF KENYA
C/O THE CLERK OF THE SENATE
SENATE BUILDINGS
NAIROBI
KENYA



**PETITION TO SENATE UNDER ARTICLE 119 OF THE CONSTITUTION AND
PART XXIV OF THE SENATE STANDING ORDERS ON THE
MISAPPROPRIATION OF FUNDS BY MANDERA COUNTY GOVERNMENT**

WE, the undersigned,

Citizens of the Republic of Kenya, Residents and voters of Mandera County and representing residents of Mandera County

DRAW the attention of the House to the following:

1. The Mandera County Government derives its revenues from the residents of the County of Mandera as well as from the National Government as provided for by the Constitution and the law.
2. The functions to which the revenues of the Mandera County Government are allowed to be expended are provided for in Part 2 of the Fourth Schedule of the Constitution.
3. Besides, the office of a Governor requires a person of integrity and provider of good leadership.
4. The Petitioners aver that it is unlawful, illegal and irresponsible of the Mandera Governor and Mandera County Public Service Board to show partiality and to be influenced by nepotism, favoritism and other improper motives like corrupt practices more so in *inter alia* : recruitments, tendering and distribution of the County's resources.
5. It is unlawful, illegal and unprocedural for the Mandera County Government to expend resources to a function not devolved or to a function which is the responsibility of the National Government as that amounts to diversion of County resources to unauthorized use.
6. It is denial of the Petitioners' and other residents of Mandera County of their economic and social rights protected under Article 43 of the Constitution to divert County funds to perform national functions without any justifiable cause.
7. The route national trunk road B9 being Mandera –Nairobi Highway passing through Rhamu-Wargadug-Elwak falls within the National Government's mandate and by allocating resources for the construction of the same by the Mandera County Government, the same amounts to abuse of the County's resources translating to abuse of office by the Mandera Governor.

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8. It is equally, unlawful, illegal and irresponsible of the Governor, Mandera County to expend resources to a function not devolved or to a function which is the responsibility of the National Government as that amounts to diversion of County resources to unauthorized use.
9. The Mandera County Government signed an ambulance lease agreement with Red Cross for 64 million per year instead of adhering to Appropriation Bill which recommended the buying of ambulances.
10. It is precisely because of the said ambulance deal that the Garissa Governor, Hon. Nathif Jamma Adam is in the list presented by the President to the National Assembly by the Ethics and Anti-Corruption Commission yet the Governor, Mandera County is not in the list the President presented to the Parliament.
11. In spite of these numerous shortcomings, the Ethics and Anti-Corruption Commission failed, refused and or neglected to include the Governor, Mandera County in the list it presented to the President.
12. The Petitioners states that the process of leasing 6 ambulances was single sourced, shrouded in mystery, opaque and has no slightest idea of transparency and public participation as is required by law.
13. An audit Report of the period 2013/2014 by the Auditor General reveals in part that the Governor, Mandera County amongst other things is a person who continuously contravenes the provisions of the constitution and the laid down procedures more particularly on the following :
 - a) At page 17 of the said Report, part 3.2, the Auditor General expressly and without ambiguity or mincing words condemns the irregular expenditure on purchase/modification of the new motor vehicles. The Report says direct procurement method was used; public procurement oversight authority was not notified as required for any tenders that exceed Kshs 500,000/- through direct tendering.
 - i) Payment of Kshs 5.5m paid to a merchant in respect of CCTV installation through direct tendering.
 - ii) Also various goods and services of about 23,165,099 were equally procured during that period without raising quotations as required by procurement regulations.
 - iii) Has contravened the functions which have been devolved and which is critical and extremely essential to the residents of Mandera County in Health services.

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- iv) The same Report equally condemns the irregular procurement and payment of office/residential rent and is explicit that the County spent 10,534,000 to pay rent but close examination showed quite a bit of anomalies like:

Deputy Governor drew house allowance and also had his residential rent paid.

County government rented five rooms from National Drought Management Authority without any lease agreement.

Monthly rent of about 2.3million was exaggerated.

14. Again at page 17 of the said Report, part 3.2, the Auditor General expressly and without ambiguity or mincing words condemns the irregular expenditure on purchase/modification of the new motor vehicles. The Report says in part that 10 vehicles were procured at a cost of Kshs 80,098,300 vide payment vouchers No. 60 and 128 respectively. A further amount of Kshs 4,102,920 was spent to modify the vehicles at a garage in Nairobi.
15. Your Petitioners aver that all the while, this was done through direct procurement and the decision to use direct procurement was supported by the Tender Committee in outright contravention of the constitution and procurement laws.
16. Further, the County Government did not prepare specifications of motor vehicles required. The vehicles were therefore modified immediately after the purchase resulting into additional avoidable expenditure.
17. The Report further states that there was no contract agreement between the firm that was awarded the tender and the County Government of Mandera regarding purchase of the vehicles as required by section 68 of the Public Procurement and Disposal Act of 2005 which makes the said expenditure irregular and if there is anybody to take responsibility it's Governor Mandera County and the County Executive Committee Member in Charge of Health, Mandera County.
18. Again at page 22 of the said audit Report, the Auditor General expressly condemns the irregular payment of flight expenses. The auditor says that the County government paid kshs 2 million and kshs 1 million to travel agents in the month of June in respect of flight charter for use by County Officials. The Auditor nonetheless observes that there is no evidence of competitive bidding and concludes that expenditure amounting to 3 million was therefore not properly incurred.
19. Again at page 22 of the said audit Report, the Auditor General examines the expenses on motor vehicle repair. The auditor notes that repairs were not recorded against the logbooks since they were not maintained as required. The vehicles were neither inspected before nor after repairs to determine the estimated cost of repair and that repairs done as per the inspection Reports.

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20. Further, financial probity is lacking in the Mandera County Government and among its officers who perennially misappropriate public funds by frequently flying between Mandera and Nairobi at the expense of tax payers' money.
21. Further and without prejudice to the foregoing, there is a lot of wastage of public money and resources; a case in point, just to mention but a few, is advertising, readvertising and subsequent cancelling of tender adverts yet money spent is never recovered.
22. Almost all projects undertaken by or within the County are wanting for failure to comply with or conduct Environmental Impact Assessment as required by NEMA.
23. Besides, funds allocation is politically motivated to the extent that if you are politically in good books with the Governor, you get a blessing of funds allocation and thus equal treatment of Mandera residents is breached.
24. In the Auditor General's Report for the year 2013/2014, at pg 23, the Auditor General expressly and without ambiguity condemns the irregular expenditure on security. The Report says in part that about Kshs 1,839,700 was used to pay security personnel guarding the County Government offices, the Governor's and his deputy's residences. The auditor made the following observations among others regarding the same;
 - a) Payment vouchers were not signed by the said security personnel
 - b) List of the security personnel was not made available to him
 - c) In one instant, the figures in the payment voucher differed with the figures indicated in the payment schedule.
 - d) No master roll was maintained.
25. At page 18 of the bespoke Report, the Auditor General equally talks of irregular procurement of goods and services amongst them :
 - I. five generator sets worth 7.5m directly tendered and procured,
 - II. Computers and accessories worth 8,292,000/- similarly directly procured.
26. All this summed up is denial of the Petitioners' and other residents of Mandera County of their economic and social rights protected under Article 43 of the Constitution as the net effect of the foregoing averments is to divert County funds and misappropriate County funds without any justifiable cause.
27. Equally in breach Article 201 of the Constitution, the Respondents procured goods worth 49,102,630 during the financial year 2013/2014 through direct tendering which contravenes the laid down procurement process and procedures.
28. Contracts for projects and other civil works are awarded through unfair labour practices; say nepotism and clanism thus denying the Petitioners and other Mandera residents the right to be treated fairly and equally.

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29. More particularly, the Governor Mander County and the Mander County Public Service Board have abused the right of equal and fair treatment by only employing their cronies and people hailing from their community. Even within their communities, the most qualified individuals were denied employment.
30. Besides, the Mander County Government and Mander County Public Service Board through the bespoken unfair labour practice and employment, employed unqualified employees that have since been found unfit to serve by the recent biometric headcount of the County employees.
31. The conduct of the Mander Governor and Mander County Public Service Board amounts to breach of Article 174 of the Constitution with regard to objects of devolution as their conduct has denied the Petitioners' and the other residents of Mander County the constitutional benefits of devolution in terms of the spirit and letter of the Constitution.
32. Payment vouchers were equally signed by the County Executive Committee Member in charge of Finance, who is not mandated to do so.
33. The whole idea of unprocedurally awarding tenders and expending the County funds to perform National functions in the instant case is to perpetuate misuse of County recourses.
34. County residents of this area have been completely discriminated against by Mander County Government and their constitutional protection against discrimination in Article 27 is being breached.
35. The Petitioners state that it is unconstitutional and illegal for the Governor, Mander County to use his position to misuse public resources and discriminate against a section of the residents of the County.
36. The Petitioners states that the aforesaid actions are a violation of their fundamental rights and seeks this Honourable House's protection to stop the same.
37. The Petitioner states that the Governor, Mander County and the Mander County Public Service Board have misused and abused their office to benefit themselves, their clansmen and cronies to the disadvantage and prejudice of the Petitioners and other residents of the County.
38. The Mander County Government wasted 116 million on feasibility study without public consent for the location of the airport at Libihya Mander.
39. The locals later rejected the airport location and had to be moved to Wargaduud.
40. The Mander County Government wasted another 35 million on feasibility study for town tarmac road.

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41. The administration gave the Mandera Town tarmac without competitive bidding and value for money costing 2.4 Billion for 24 Kilometers.
42. Contrastingly, Wajir County's tarmac cost 1.2 billion for 24 kilometers.
43. To exacerbate the situation, the Office of the Controller of Budget in its Report for the financial year 2014/ 2015 recommended that the County should establish an appropriate project monitoring and evaluation framework.
44. We would particularly wish to draw this Honourable House's attention to pages **144,145** and **146** of the said Report which pages speaks volumes regarding the manner in which the Governor, Mandera County and the Mandera County Government expended the funds allocated to them.
45. The Mandera County Assembly is in concert with the Governor, Mandera County as it has abdicated its oversight role by engaging in business with the Governor, Mandera County and the Mandera County Government. The Members of the Mandera County Assembly have colluded with the Governor, Mandera County to deny the people of Mandera County their right to development.
46. The Petitioners state that they are equally entitled to protection of the Law by the Respondents. At the moment, we have not gone to court or other bodies until we conclude the senate petition.
47. Despite the attempts to ask the county government to correct these malpractices, misappropriation of funds nothing has been done to reverse the situation.
48. This Honorable Senate is vested with the competent jurisdiction to hear and determine this Petition by dint of the Provisions of Articles 96(1), 119 and 125 of the Constitution of Kenya 2010 as well as the Standing Orders of the House.
49. The Petitioners will crave the leave of this Honourable House to introduce other relevant material in a bid to help the House to arrive at a just determination.

HEREFORE, your humble Petitioners PRAY that:

1. Pending the hearing and determination of this Petition, this honorable Senate does Order the freezing of any non-emergency and non-salary funds that the National Government intends to or has already allocated to the Mandera County Government, Mandera County Assembly and Mandera County Public Service Board.
2. The relevant Committee of this Honourable Senate does conduct a special audit with regard to the management of funds allocated to Mandera County Government for the financial year 2013/2014 and 2014/2015 with specific focus on the following :

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- (a) Hundreds of millions of shillings illegally transferred to private accounts since the inception of the Mandera County Government through the manipulation of the IFMIS systems.
 - (b) Cash flow problems with some suppliers and contractors not being paid for the past one year.
 - (c) Hundreds of millions of shillings reportedly spent on arbitrary and unprocedural procurement of goods and services every month through Local Service Orders (LSOs) issued to cronies and/or relatives cheaply by the County Executive Committee Members.
 - (d) Determination of the beneficiaries of the abovementioned hundreds of millions of shillings.
 - (e) Determination of whether there is value for money and the competitiveness and legality of the process used in issuing the LSOs/LPOs.
3. **Determination of expenditure items financial year 2014/2015 :**
- a) Animal Census/Market Ksh. 175,000,000- No census was carried out;
 - b) Purchase of land for sports ground and Moi Stadium Ksh.116,000,000-No land was purchased;
 - c) Bursary Ksh.117,000,000-No bursaries were issued;
 - d) 6 school buses Ksh. 47,000,000- No busses were purchased;
 - e) Public Toilets in all wards for Ksh.33,000,000;
 - f) Purchase of land for airstrip- Ksh. 50,000,000- No purchase was made;
 - g) Feasibility study for Mandera Town tarmac road for Ksh. 35,000,000
4. **A finding that there is evident violation of the Constitution and the law in the conduct of the affairs of the Mandera Governor and Mandera County Public Service Board and in particular a finding that there is widespread nepotism, favoritism and clanism in the recruitment of staff that assist the Governor, Mandera County as advisors (for instance, the Chairman of the Tender Committee is the Governor's Economic Advisor) and a finding that there is evident violation of the Constitution and the law in the recruitment processes that have done by the Mandera County Public Service Board since its inception.**
5. **An investigation into whether the over 1,000 employees recruited in the past 2 years were employed on merit and whether they have appropriate and legal qualifications for the positions they hold in light of the fact that last year over 40 staff were found to be having fake papers. The minority corner tribes were denied employment and faced discrimination.**
6. **An investigation into the tendering process which in the Petitioners' view, was done in the most unprofessional manner to briefcase companies that do not meet the requirements specified in the tender specifications in most instances.**

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7. An investigation into the variation of most tenders by over 20% of the Contract Price.
8. Investigations into allegations that contractors are paid for work not done and money is shared out.
9. A finding that the Governor, Mandera County is personally liable for the violations of the Constitution and law.
10. A finding and holding that the 6 contracts and or awards to wit:-
 - a) MCG/220/2014-15 Construction of Rhamu-olla Road;
 - b) MCG/221/2014/15 Construction of Takaba to Qofole Road;
 - c) MCG/083/2014/15 Construction of 60,000M earth pan Kiliweri in Barissa sub-County;
 - d) MCG/Mandera Town Tarmac contracted to Frontier Construction;
 - e) MCG/ Mandera town tarmac contracted to Lafey construction Co. Ltd;
 - f) MCG/22/2014 to 2015 construction of Mandera town road;

Were awarded in contravention of Articles 10, 47, 73 & 174 and Part V of the Public Procurement and Disposal Act to the extent that the purported responsive tenders were on respective sites before the procurement formalities were undertaken let alone concluded.

11. A finding that Mandera County spends huge amounts of development budget on construction of buildings, offices and residential houses in contravention of the recent circular No.5/2015 from the Commission on Revenue Allocation (CRA) thereby depriving Residents of Mandera County basic services such as clean water and health.
12. Such Orders as this Honourable Senate may in its discretion issue to best serve the ends of justice for the Petitioners, the People of Mandera County and/or the Republic of Kenya.

And your Petitioners will ever pray.

Name of Petitioner	Full Address National ID or Passport	Signature/Thumb Impression
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ABDULLAH HASCAN	P.O Box 251 MANDERA	
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ID No: 24313121

ABDUSALAM DAKANE	P.O. BOX 25/MANDERA	
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ID No. 7875798



TO:
THE SENATE OF THE REPUBLIC OF KENYA
C/O THE CLERK OF THE SENATE
SENATE BUILDINGS
NAIROBI
KENYA
May 26, 2015

Dear sir,

RE: CORRECTION OF FORMAT FOR PETITION AGAINST MANDERA COUNTY

We hereby resubmit our petition against Mandera County Government after consulting with your legal department which we have changed inline with the required format.

We therefore request our previous document with attachments and in its place our new document accepted.

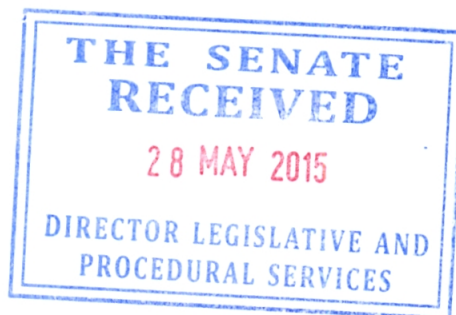
Yours faithfully

Abdulsalam M Dakane

Abdullahi Hassan

0723 511981

0712723723



DLPS
Please deal.
27/05/15

Mr. Mungua
This is to replace the
earlier one.
Please deal.
28/5/15

REPUBLIC OF KENYA

Telegraphic Address
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Clerk's Chambers
The Senate
Parliament Buildings
P. O. Box 41842 -00100
Nairobi, Kenya

PARLIAMENT OFFICE OF THE CLERK OF THE SENATE

Ref. SEN./PETITIONS/CORR./2015

10th June, 2015

Mr. Abdulsalam M. Dakane &
Mr. Abdullahi Hassan
P. O. Box 251 - 70300
MANDERA
Tel: 0723511981/0712723723

Dear

Petitioners

RE: PETITION TO THE SENATE CONCERNING MISAPPROPRIATION OF FUNDS BY
THE MANDERA COUNTY GOVERNMENT

I acknowledge with thanks receipt of your Petition to the Senate regarding the above subject matter.

This is to inform you that the matter is under consideration and that we will reply substantively in due course.

Mrs. Serah Kioko, Director, Legislative & Procedural Services (Tel No. 0722881777 and Email, skioko@parliament.go.ke or kiokoserah@gmail.com) is the officer responsible for facilitating this matter.

Yours

Sincerely

M. W. Munga

C. W. MUNGA (MRS.)
FOR: CLERK OF THE SENATE

