

PETITION BY MR. JUSTUS MUTUNGA MUTUKU ON ALLEGED CORRUPTION
AND NEPOTISM AT THE MAKUENI COUNTY EXECUTIVE

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 Mr. Justus Mutunga Mutuku, a resident of Makueni County, on alleged corruption and nepotism at the Makueni County Executive.

2. Among the issues raised by the Petitioner are -

- a) that the County Government of Makueni has on several instances flouted public procurement laws, by failing to advertise tenders or failing to award tenders to the lowest bidders, for supply of goods and services to the county government;
- b) that the County Government of Makueni has allocated and spent funds towards projects not falling within its mandate, and further without obtaining approvals for such projects from the Makueni County Assembly or other Constitutional bodies. An example cited by the Petitioner is construction of a residence for the Deputy Governor, while the Salaries and Remuneration Commission had issued a Circular in 2013 to the effect that only the Governor and County Assembly Speaker are entitled to such a benefit;
- c) that the Governor of Makueni County has shown undue favoritism and nepotism in recruitment, assignment of duties, promotion and remuneration of staff working at the County Executive, contrary to Articles 27 and 73 of the Constitution and Sections 59, 60 and 62 of the County Governments Act; and
- d) that the County Government of Makueni has failed to effectively facilitate public participation during conception, design and implementation of various projects undertaken by the County Government.

3. The petitioner therefore prays that the Senate investigates these matters and makes appropriate recommendations thereon.

4. **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.

PARLIAMENT
OF KENYA
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[after comments by Senators]

5. *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.
6. 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.

② Charles

Please deal.

27/03/17

The Clerk of the Senate,
Parliament Buildings,
P.O. Box, 41842-00100.
NAIROBI.



① DLPS
Please deal.
MWA
24/3

Email : csenate@parliament.go.ke

**RE: PETITION TO THE SENATE CONCERNING WASTAGE
OF PUBLIC RESOURCES, UN-CHECKED CORRUPTION,
GROSS VIOLATION OF THE SUPREME CONSTITUTION OF
THE REPUBLIC OF KENYA AND THE SISTER ACTS DEEMED
TO GUARD DEVOLUTION IN MAKUENI COUNTY BY THE
COUNTY GOVERNMENT OF MAKUENI.**

I, the undersigned petitioner, being a Citizen of the Republic of Kenya, and the holder of a Kenyan national identity card number 22697393 and a resident of Kalawa ward, Mbooni constituency, of Makueni County of Post office Box number 12-90126 Kalawa, Mbooni East do present this petition as I draw the senate attention to the following:

1. **THAT**, I am a registered voter at Ndauni primary school of Mbooni sub-county and therefore legible to petition the senate on issues concerning 'institutionized' corruption, incompetence, impunity, nepotism, cronyism, wastage of public resources deemed to benefit the residents of Makueni county by the Governor and his Executive.
2. **THAT**, in contravention of Article 27, and Article 73 of Constitution of the Republic of Kenya, 2010 and other various provision of the County government Act, the Governor has shown undue favoritism towards those with whom he has relation to and those actively participated in his gubernatorial bid and thus determining their promotion and their remuneration without the approval of the County assembly.
3. **THAT**, contrary to section 59, 60, and 62 of the County government Act, the Governor has created offices on diverse dates from October to November 2014 (or around such dates), am reliably in the knowledge that the Governor un-lawfully created offices to accommodate further individuals to the service of the county against the guiding principles of the County Public Service Board which goes by the acronym MCPSB and further without the approval of the County Assembly.
4. **THAT**, the Governor has established a well- structured criminal conspiracy responsible to deceive the public members of getting the rightful information and also cause mayhem in public fora and thus causing the residents to live in panic from such incidences.



5. **THAT**, the county government has Contravened Article 56 of the Constitution by clandestinely formulating diversionary tactics to beat the noble intentions of Affirmative action programs designed to ensure that we the youth, women and PLWDs enjoys inclusivity, participation and economic opportunities by awarding tenders marked 'CLOSED' for the youth and awarding those to whom are outside the bracket of closed tenders and thus rendering the rightful beneficiaries into economic woes.

6. **THAT**, the county government ignored my polite written request for information where I wrote letters on many occasions commencing 20th March 2016 to various departments of the County government. These letters were hand – delivered non of the said letters were ever responded to or received acknowledgement of receipt of the letters.

7. **THAT**, the County government has ignored my humble request to establish information centers in the thirty wards to enhance quickly information flow to the lowest administrative units to relieve the residents the burden of commuting to the County head quarters herein referred to as WOTE town. This letter was hand delivered and am in the knowledge the letter was drawn in accordance with s88 of the County government Act, and s89 which imposes a duty upon County government authorities to 'respond expeditiously to petitions and challenges from the citizen. Ever since, I have not even received the courtesy of an acknowledgement of receipt of my letter of request.

8. **THAT**, the government ignored my humble request when I personally and politely requested in writing to the County Secretary the staff register to which the letter was copied to Public Service Board of Makueni (MCPSB) dated on 11th October 2015 and no response has ever been made or to effect receipt of my request.

19. **THAT**, the Governor has completely failed to enhance provisions of the County government Act by not forming the County Economic Budget Forum, Investment profiling Business policy document, Effective public participation and further hiring un-qualified County officers who cannot expeditiously respond to the questions raised in public participation for most of them are only interested in political rhetoric against the wishes of the people.

10. **THAT**, the Government acquired four parcels of land at a cost of Kshs. 8 29,550,000, a deal which was signed on 30th June 2013 through single sourcing contrary to the public procurement and disposal Act, 2005 and with disregard of the law.

11. **THAT**, the Government between the Month of September 2014 and February 2016 purchased Computers and digital Cameras all at a cost of 9,992,820. The process raised audit queries for the documentary evidence shows no quotation or an open tender method was in actual conducted competitively.

12. **THAT**, the Government purchased a prime mover from M/S Central Farmers Garage at a cost of Kshs. 11,530,000. There wasn't if any evidence to support the payments except a print media cutting of one of the local dailies that is adduced as a proof that an open tender was really conducted. Concernedly, the lowest we are made to believe the lowest bidder to whom I am told quoted Kshs. 8,600,000 was still not awarded the tender a concern that still violates Part 1V of the Public procurement and Disposal Act 2005.

13. **THAT**, the county government un-remorsefully wasted public funds on the pretext of categorizing some Kshs. 13,766,682 for the supply of emergency materials for the construction of various projects under emergency expenditure category. Indeed, there was no any approval from the County assembly that, the said projects ever qualified to the category of emergency

projects and further the process was a direct single sourcing contrary to section 29 of the Public Procurement and Disposal Act.

14. **THAT**, for the year ended 30th June 2015, the County government procured services from Contractors on different dates to the tune of Kshs.146, 824,281. Further, no tangible documents can be adduced to support if any of the process was conducted in a competitive bidding process and therefore Makueni residents believe they may never get the value of their money.

15. **THAT**, the county Government allocated Kshs.239,095,692 for the construction of the office block and Governor's and His deputy's residential house. Albeit, I am in the knowledge that the SRC has on 18th December 2013 issued a circular directing that only the Governor and the Speaker of the Assembly are entitled for housing benefits and not the Deputy governor. Further, there are no BQs nor contract agreements are available for proof that the process followed the established laid down principles and the law.

16. **THAT**, though the County government thankfully initiated a food processing plant here-in referred to as Kalamba Food Processing Plant, which in its full operation will benefit the farmers. However, the idea being a noble one, has been watered down by a conduit of corruption syndicate where the government has awarded Kshs. 31,706,748 to various contractors through questionable operations with disregard of the principles guiding procurement guidelines as enshrined in the law. This way, it's my prayer that the issue will be acted upon.

17. **THAT**, the Governor still went ahead in occasioning the business as usual to procure general supplies of items worth 2,378,335 without subjecting the competitive tendering process as required in the law which indeed constituted serious anomalies that may lead to loss of public resources.

18. **THAT**, the office of the Governor used some Kshs. 570,680 for meals and refreshment without the list of the beneficiaries of the meals and refreshments in the Governor's office.

19. **THAT**, and further, an imprest of Kshs. 648,900. Was used to hire Taxis , Kshs 114,350 for Air time purchase, and Kshs. 1,194,955. Was used to pay allowances for inter –county sports competition without the support documents to authenticate if the imprest were properly utilized in accordance to the set laws.

20. **THAT**, the county government ignored the laid down principles by buying the KCPE and KCSE mock exams and thus contravening the guidelines of Ministry of Education . This malpractice led to the loss of Kshs. 6,420,000.

21. **THAT**, the government used imprest to procure services as in the construction of Yikisemei Primary School within Nguumo ward of Kibwezi West sub-county. Indeed, the project was a noble one since the school was grass thatched and a need to save the situation was an indispensable one. And in disregard of the provision of the law, the Kshs. 16,080,875 is feared to have been misappropriated in the name of using imprest in the category of emergency project.

22. **THAT**, the county government wastefully embezzled over Kshs.45,000,000 in a tree planting saga conducted in November 2013 where the coordinators were then not employees of the county government and the process was out rightly single sourced and payments were even made through a local money transfer (M-PESA). To this time, the government cannot adduce evidence of a surviving seedling since there were no plans to sustain the seedlings.

23. **THAT**, I am in the believe that the County government through the Governor in the aforesaid matters contravene fundamental principles proclaimed in the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenant on Civil and

Political Rights, African Union Convention on Preventing and Combating Corruption, Equal Remuneration Convention, United Nations Convention Against Corruption Employment Policy Convention (No. 122) African Youth Charter , The Constitution of Kenya, the general practices of the rules of fair play.

24. **THAT**, I believe that various persons in the service of county including the governor, have committed various offences related to corruption, nepotism, spirit of bad faith in discharging their mandate, opulence at the expense of public resources, violations of the penal code, subversion of the constitution as well as the Public Officer Ethics Act and therefore their abrupt change of live styles calls for their investigation.

25. **THAT**, based on the belief that the aforesaid accused persons had committed various criminal offences, do in the most humble terms PETITION the Senate to take up the matter of Makueni County with time being of great essence and forthwith address the raised issues.

26. **THAT**, I have criss-crossed all the available offices in the land to have these matters addressed by the relevant all of which have flatly failed.

27. **THAT**, it is my humble and honest belief that the Senate as the Principal Legal institution mandated to guard devolution, offer checks to the counties and oversight on matters of county governments and protect the citizens of the Republic of Kenya in all matters of the devolved units is privy to all the decisions made by the county's leading to the chain of events that are not only a matter of record but also in public domain which is further supported by the outcries by many citizens across the Nation on the aforesaid matters .

28. **THAT**, from the foregoing I sincerely believe that other relevant authorities to which I have in so many occasions reported are interested in having the matters aforesaid either expeditiously investigated and / or prosecuted in spite of me having furnished them with similar petitions with evidence sufficient to warrant the prosecution or at the very least investigation of all the Respondents. I am therefore convinced by my clear conscience which I verily believe to be true that under the principle of equality before the law, that the said institutions are under a constitutional obligation to protect the rule of law by investigating and prosecuting without discrimination all those persons who disregard the law.

29. **THAT**, about Seven (7) months since I brought the matter to the DPP, Attorney General, EACC and the office of the ombudsman, it is my sincere and honest belief that these offices have had more than sufficient time to finalize investigations and institute criminal proceedings against the Respondents.

30. **THAT**, it is my firm belief that letting the enumerated violations go unpunished will erode public confidence regarding due process of law and in addition bolster the culture of impunity in Makueni County and Kenya in general if members of the public feel that the rule of law can be put to ridicule by public officers who violate the law without any consequences. I am in the knowledge on the information I verily believe that the aforesaid institutions are under an obligation to protect the rule of law from ridicule.

31. **THAT**, as a Kenyan citizen and a registered voter, I have sufficient interest to see the aforementioned matters investigated and prosecuted under the principle of equality before the

law; Article 7 of the Universal Declaration of Human Rights stipulates that all are equal before the law and are entitled without any discrimination to equal protection of the law.

32. **THAT**, none of these issues raised in this petition is pending in any court of the law, constitutional or any other legal body.

WHEREFORE, your humble petitioner prays that the senate

1. Will investigate the aforementioned integrity issues touching the governor and his office.
2. Recommend possible remedies to tame gross violation of the Constitution and the rule of the law.
3. Recommend lifestyle audit to the county staff of Makueni County and consider lawful asset recovery (if need arise) to those possibly found culpable in the graft.
4. The Senate is humbly requested to visit Makueni County to conduct a public participation forum on the consequences of corruption and the need to defend devolution, its gain and challenges to the Citizens of Makueni County.
5. I pray in the most humble tone not to forsake Makueni residents their quest of integrity and the much needed desire for accountability.

Dated on this 15TH DAY OF MARCH 2017.

JUSTUS MUTUNGA MUTUKU
P.O. BOX. 12- 90126, Kalawa, Mbooni East.
Email ; mutukujustus54@gmail.com

I.D.NO. 22697393

SIGNATURE



REPUBLIC OF KENYA

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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./2017

24th February, 2017

Mr. Justus Mutunga Mutuku,
P. O. Box 408 - 90300,
MAKUENI.
Email: mutukujustus54@gmail.com
Tel: 0721961998

Dear *SW*,

**RE: PETITION TO THE SENATE ON ALLEGED CORRUPTION AND NEPOTISM AT
THE MAKUENI COUNTY EXECUTIVE**

I acknowledge, with thanks, receipt of your petitions on the above subject matter.

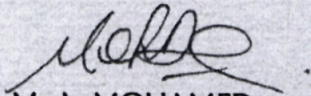
Upon reviewing the petitions in terms of Senate Standing Order 220 (3), it is advised that the petitions, though they raise important issues for consideration by the Senate, are not admissible in their present form. This is for the reasons that –

- i) the language in the text of the petition and in the prayer offends Section 3 (b) and (h) of the Parliament (Procedure) Act (No. 22 of 2012), and Senate Standing Order 223, paragraphs (b) and (h). The said provisions require that a petition to the Senate '*be written in respectful, decorous and temperate language*', and that the petition concludes with '*a clear, proper and respectful prayer, reciting the definite object of the petitioner or petitioners in regard to the matter to which it relates*';
- ii) the subject-matter of the petition has not been indicated on every sheet, as required under Section 3 (e) of the above Act, and Senate Standing Order 223 (e);
- iii) the petition does not indicate whether any efforts have been made to have the subject matter of the petition addressed by a relevant body and whether there has been any response from that body or whether the response has been unsatisfactory. This is a requirement under Section 3 (f) of the said Act, and Senate Standing Order 223 (f); and
- iv) the identification number of the petitioner has not been indicated on the petition, which is a requirement under Section 3 (i) of the said Act, and Senate Standing Order 223 (i).

In the circumstances, it is requested that you amend the petitions to comply with the said requirements. Attached in this regard are the applicable provisions of the Petition to Parliament (Procedure) Act and the Senate Standing Orders, on the form of a public petition, as well as a template which you may adopt in redrafting the petition.

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. A. MOHAMED
SENIOR DEPUTY CLERK
FOR: CLERK OF THE SENATE

Encls.

THE SENATE
RECEIVED

15 FEB 2017

DIRECTOR LEGISLATIVE AND
PROCEDURAL SERVICES

PUBLIC PETITION
TO: CLERK OF THE SENATE

PARLIAMENT BUILDING

P.O. BOX 41842-00100.

NAIROBI, KENYA.

DATED ON THIS 18TH DAY OF JANUARY 2017;

RE; PETITION; CONCERNING WASTAGE AND GROSS VIOLATION
OF THE SUPREME CONSTITUTION OF THE REPUBLIC OF KENYA
AND THE SISTER ACTS DEEMED TO GUARD THE TOOLS OF

DEVOLUTION IN MAKUENI COUNTY;

BY

JUSTUS MUTUNGA MUTUKU.

THE SENATE
RECEIVED

14 FEB 2017

SENIOR DEPUTY CLERK (M.A.)

I, your undersigned and humble Petitioner, being a citizen of the republic of Kenya and a resident of Makueni County and a voter at **Ndauni primary school polling station** forthwith submit this petition to this constitutional institution as I call upon this institution to investigate thoroughly with time being of essence the **institutionized corruption, incompetence, impunity, nepotism, cronyism, plunder of public resources** as an instrument of the self-advancement by the governor and his cronies.

This petition enshrines the legitimate concerns of the residents of Makueni County against the Governor of Makueni County for abuse of his office and the constitutional prerogatives entrusted to him as state officer. The governor has committed multiple acts of;

1. **Malfeasance:** The doing that is unlawful, wrong and un-constitutional
2. **Misfeasance:** The improper doing of an act that the governor is lawfully entitled to do.
3. **Nonfeasance:** The failure of the governor to act where duty requires him to act with no sufficient cause or willful neglect of duty.

The aforementioned Governor has prima facie violated the law at the county, National and International levels. These statutes are serious un- resolved questions about his conduct, honesty, financial probity, fairness, reputation, soundness of his moral judgment and his commitment to the national values set out in Article 10 of the Constitution.

Inter-alia, the governor has:

1. Blatantly violated various provision of the Constitution with impunity.
2. Contemptuously disregarded the Public procurement and Disposal Act, 2005.
3. Acted ultra vires to the provision of County Government Act.

⑤ Charles
Please review and
revert.
15/02/17

① DLPS
Please deal.
15/2/17

4. Pitilessly watered down the precepts of the Public Management Act.
5. Unwarrantedly sidelined the international convention ratified by the Republic of Kenya.
6. Contrary to Article 27, and Article 73 of the constitution of Kenya, 2010 and other various provision of County government Act, the Governor has shown undue favoritism towards those with whom he has friendship and to whom funded his gubernatorial bid and therefore he has covertly hired several of these members by authorizing their assignments and determined their promotion and remuneration. A classical example is the promotion of his former political adviser to job group R skipping the six ranks above his previous position.

The governor breached section 59, 60 and 62 of the County government Act by creating offices on diverse dates from October to November (or around such dates). With reliable source from the governor's office and documentary evidence at my disposal (which am ready to divulge upon formal request). These offices are unlawful as the offices are not established by the County Public Service Board nor approved by the County Assembly.

7. The governor has un remorsefully breached Article 73 of Chapter six of the constitution which enshrines the guiding principles of leadership and integrity because he lacks objectivity and impartiality in decision making which most of the time is laden on improper motives and corrupt practices, a notorious example in this context is the construction of myriad of projects which are not of the public interest nor enshrined in the CIDP. A glaring example is the construction of **Makongo View point** which has become the eye sore, since it has been galactically idling in its position for three years running.
8. The governor has established a well-structured criminal conspiracy to shamelessly deceive and mislead the public by concocting propaganda to the public to hood wink the public in all manner of misinformation. For instance, the finance executive was on air in one of the local FM Radio duping the residence that they have set aside 80% of the budget yet the controller of the budget had earlier on hinted that Makueni County government had dismally allocated a paltry 14% of the funds contrary to the regulation so given.
9. In contravention of Article 56 of the constitution, the governor has clandestinely formulated diversionary tactics to circumvent and defeat the noble intention to arm twist the Affirmative action programs designed to ensure that the youth, women and PLWDs enjoys inclusivity, participation, educational and economic opportunities, and access to employment among other practices. It is equally paramount to note that, the department of youth, women and gender issues has NEVER conducted ANY public participation nor can the said department adduce evidence to the effect that indeed public participation was undertaken on any of the platforms established under section 91 of the county government Act, but has illegally proceeded to wantonly procure projects without the consent of the governed.
10. Ab initio, and Pursuant to Article 2(6) of the Constitution of Kenya which stipulates that any treaty or convention ratified by the Republic of Kenya shall form part of the laws of Kenya under this Constitution, hence violation of these international instrument is tantamount to violation of this Constitution. The governor has therefore violated several provision of the International convention on civil rights, International convention socio-economic and cultural rights by cuddling discrimination, favoritism, corruption and

marginalization as far as job opportunities are concerned. Of these ratified conventions and treaties violated by the governor include:

- (i) **African Union Convention on Preventing and Combating Corruption**, adopted at Maputo, Mozambique on 11th July 2003.
- (ii) **Contracts of Employment (Indigenous workers)** adopted at Geneva, Switzerland in 1947.
- (iii) **Equal Remuneration Convention**, adopted on 29th June 1951 at Geneva Switzerland.
- (iv) **United Nations Convention Against Corruption(UN)**, adopted on 31st October 2003 at Merida, Mexico.
- (v) **Employment Policy Convention (No. 122)** adopted on 9th July 1964, at Geneva, Switzerland.
- (vi) **African Youth Charter adopted on 2nd July 2006, at Banjul, Gambia.**

The office of the Governor has failed to up-hold the enshrined tenets of integrity and honour to the plight of the governed by being complacent in the following ways;

- (i) The lack of available information from the County Executive, and obstructed access to access thereto, whether by negligence or deliberate fault, in breach of Article 35 of the Constitution of Kenya and ss 93 – 96 of the County Governments Act 2012

Examples: -

Despite repeated requests for a copy of the County Integrated Development Plan, and despite access thereto being offered on both the County Government and County Assembly websites, neither site permitted downloads when clicked on. The CIDP, originally drawn in 2013, was only made available to the public in electronic form only and which isn't accessible to the broad cross section of the residents of Makueni for most of them are not electronic media savvy, and only after receipt of my Petition to the Executive dated 9th February 2016. Even now it is not available in hard copy to the residents of the county.

- (ii) **Ignoring** my polite written requests for information. We wrote letters on many occasions commencing 20th March 2016 to various Ministries of the County Government, These letters were hand-delivered, but have been rudely ignored - I have not even received acknowledgments of receipt.

(iii) **Ignoring** my polite requests given in person to various County Officers for **access to information**. This is in breach of Article 35 of the Constitution and s96 (1) of the County Governments Act. Further, there is no designated County Information Office, in breach of s96 (2) of the County Governments Act: not even a single Notice board in Makueni County has ever erected in the 30 wards nor, does the County website carry any relevant up to date information. This Petition was hand delivered and was drawn in accordance with s88 of the County Governments Act. Section 89 which imposes a duty upon county government authorities "to respond expeditiously to petitions and challenges from citizens". I have not even received the courtesy of an acknowledgment of receipt of my Petition.

- (iv) **Ignoring** my humble request when I personally directed questions to County secretary in writing and copied to the MCPSB here-in- referred to as The Makueni County Public Service

Board for the staff register for I strongly believed the Governor has violated blatantly the provisions of the supreme constitution and was presiding over skewed employment opportunities favoring one region and the relations in the executive and his cronies.

(v) **Ignoring** my requests, delivered in person to various Officers, including the Governor of Makueni county concerning **the lack of procurement** procedures contrary to public procurement and disposal Act 2005 and BQs on certain projects as outlined overleaf.;

(vi) The non-supply of draft Bills in electronic format or hard copy timeously before public participation fora, and the failure to give any feedback or response to contributions and comments whether made at those fora or later in written form.

(vii) Failure to form the **County Economic Budget Forum**, and ensure due and proper participation, in breach of Article 10 of the Constitution of Kenya and s137 of the Public Finance Management Act 2012.

(viii) The lack of **investment profiling** and business policy documents or planning in the County. The Chamber of Commerce has asked for investment profiling and offered its help to the Trade Ministry without any response. Nor have any business Policy documents been discussed and prepared; again the Chamber offered to help. In short, there has been no Stakeholder consultation and participation.

(ix) Despite the warnings, the County proceeded with a Business Investors Conference, when wholly unready, thus failing to attract investors, embarrassing the local business community and worse, incurring enormous wastage of devolved funds in non-priority issues that cannot even be traced in the CIDP. In short, instead of creating a business-friendly context, County's inaction and incompetent lethargy has caused the opposite.

Failure to properly conduct public participation in breach of the spirit of the Constitution and ss91 and 92 of the County Governments Act.

Failure to supply draft Bills timely for consideration before public fora, in both soft and hard copy and failure to supply all of them in soft copy for those who have no access to the internet and other social media channels.

Imposing unreasonable ultimatums for the submission of written comments - one ultimatum gave us a mere 24 hours to deal with four bills.

Failure to acknowledge the massive effort the residents have put in to help County Government in critiquing and improving various draft Bills. Public members have in social *Kamkunjis* worked hard and made written submissions, both in hard and soft copy but have not received any feedback. Evidence for this is to be found in my letter to the Governor letter to the Governor of 4th May 2016.

Failure to deliver **civic education**, and provide the appropriate institutional framework in breach of ss 98-100 of the County Governments Act 2012, and ignoring our requests for information concerning this. We requested this in our letter to the Governor dated 3rd June 2016

County Government habitually send **unqualified County officers** – who cannot answer sensible questions - to conduct public participation events, and has failed to provide any feedback to any of our submissions, whether made in fora or subsequently in writing. Furthermore, i repeat that County has failed to reply to any of my letters, and failed to commit

anything in writing, even to the point of failing to acknowledge receipt. As evidence, I refer to the petition by **Kitise kithuki ward residents** which was again hand delivered – and the original duly stamped as received by the Governor's office on the 18th of July 2016: -

I have also attended County Offices, many times, in person, and each letter was hand delivered. Not a single reply has been received; not even an acknowledgment of receipt. This is deeply disappointing; worryingly inefficient, and appears to be deliberate and therefore disrespectful.

The Executive is either incompetent, evasive and therefore rude, or both.

Below is a constellation of Copy letters, all hand delivered and severally dated to: -

25th May 2016, The ECM, Finance, on budget hearing process quorum queries.

27th June 2016, Chief Officer, Devolution department.

3rd July 2016, The Governor, through the County Secretary

5th August 2016, The Governor concerning public participation.

24th August 2016, The Governor, concerning the missing CIDP

12th September 2016, The Minister of Education, cc to CEC Finance

30th October 2016, The Governor, concerning the public participation process

Furthermore:

The following issues i raised in person at the County Head Quarter on various dates starting from 3rd May 2016 to which - as usual- there has been no response: -

(i) Relating to matters in the proposed **Makueni County Budget 2015-2016**: -

(ii) On provision made in the Budget for an **Information Office** to comply with s96 (2) of the County Governments Act 2012. The proposed ICT office will not suffice and will not be legally compliant.

(iii) On of civic education programme in the Devolved units yet a budget has been set aside for the function for civic education - for the second year running, County will be in breach of the law – ss100 and 101 of the County Governments Act, which specifies the creation of education Unit, and institutional framework - and will also thus again fail to fulfil the tenets of constitution.

(iv) Similarly, with the proposed construction of parking along the streets of Wote town by the Roads Department.

(v) The proposed expenditure on “buying so many fuel guzzling luxury vehicles” which is so vague as to be incomprehensible, and should therefore be declared void for uncertainty.

(vi) County has not formed and operationalized a **County Monitoring and Evaluation Committee (COMEC)** as recommended by the CIDP and the Office of Controller of Budgets in its 2014 Report, which recommended the urgent creation of a framework for Monitoring and Evaluation “in order to ensure projects are monitored and implemented within the specified period”. This has not been done, and no provision has been made for this in the Budget.

(vii) The CIDP proposes a **CIDP Implementation Secretariat**. This has not been done, and there is no provision in the Budget for this forum.

(viii) **Bursaries**. Of an overall budget expenditure of Kshs.50million annually which does not end up to the needy beneficiaries but to those who are vertically connected to the officials of the selecting panel or as guided by the governor's functionaries.

(ix). **Water.** The budget for the year ended 2015 itemized a proposed expenditure of Kshs.302,876,277 for 142 water projects. Only 17 projects are said to be completed with a yawning gap of 111 not yet begun. I appeal this institution to move speedily to ascertain the anomaly since Makueni county residents are in urgent need of water which is classified as a rare commodity in this region.

Corrupt Practices and abuse of office.

The county government acquired four parcels land at a cost **Kshs29, 550,000.** a deal which was signed on 30th June 2013 through single sourcing contrary to public procurement and disposal Act 2005 and therefore need to revoke the illegal process.

The county government between the month of September 2014 and February 2015 purchased computers and digital cameras all costing Kshs.9, 992, 820. This raises audit queries for the documentary evidence showed no quotation nor an open tender method used was done at all.

The county government purchased a prime mover from M/S Central Farmers Garage at a cost of **Kshs.11, 530, 000.** There wasn't if any evidence to support the payments except a print media cutting of one of the local dailies as a proof that an open tender was conducted competitively. Sadly, the lowest bidder to whom had quoted **Kshs.8,600,000 was not awarded the tender contrary to part 1v of the public procurement and disposal Act 2005.**

The county government further blatantly wasted public funds by pretense to categorize some **Kshs.13, 766,682.** For the supply of emergency materials for the construction of various projects under emergency expenditure category. There was no any approval from the County Assembly that, the said projects ever qualified to the category of emergency projects and further the process was a direct single sourcing contrary to section 29 of the Public Procurement and Disposal Act. For the year ended 30th June 2015, the county government procured services from contractors on different dates to the tune of Kshs.146, 824,281. Further no documents were provided to support if the process was through competitive bidding process and therefore, the Makueni residents cannot ascertain the value of their money.

The County government allocated Kshs.239, 095, 692 for 5th construction of office block and the governors and the deputy governor's residential houses. Albeit, the SRC had on 18th December 2013 issued a circular that only the Governor and the speaker of the county assembly are entitled for housing benefits but not the deputy governor. Contrary to the provisions of the constitution, no BQs nor contract agreements are available for proof if the process was competitive. Therefore, Makueni residents cannot ascertain if the staggering Kshs.239, 095,692 was utilized properly.

Makueni county government has nobly initiated a fruit processing plant here-in referred to as **Kalamba food processing plant which** in full operation will benefit the fruit farmers in the county. This being a noble idea, has been watered by a conduit of corruption syndicate where the county government has awarded Kshs.31,706,748 to various contractors through dubious operation without following principle procurement guidelines as enshrined in the constitution. The governor should be investigated for stewarding a clandestinely connected web of corruption network to steal from the residents of this county.

The government still went ahead in its business as usual to procure general supplies of items worth 2, 378,335 without subjecting the competitive bidding process as required in the law

section 29 of the public procurement and disposal Act, 2005. As a result, the County government was in breach of law and remedy is quite indispensable to recover the money and possibly, prosecution of those behind the scam.

The government is further duping the residents by not awarding a tender to the lowest bidder in a case of contract awarded to M/S Shatit Enterprise Ltd for the fabrication of metal stalls at Mbui Nzau at a contract sum of Kshs.2, 400,000. Yet the lowest bidder had quoted Kshs.1, 365,000. No explanation can be adduced to explain why the lowest bidder was not awarded the tender and therefore the county government should expeditiously explain the subsequent wastage of 1, 035,000 had the lowest bidder was awarded the tender.

The county government through the office of the governor explain the manner in which an impress of Kshs.570, 680. was used for meals and refreshment without the list of the beneficiaries of the meals and refreshments in the Governor's office.

Further, an imprest of Kshs.684,900 was used to hire Taxis, Kshs.114,350 air time purchase, Kshs.1,194,955 was used to pay allowances for inter- county sports competition without support documents to authenticate if the imprests were properly utilized in accordance to the set laws.

The county government illegally involved itself in malpractices to buy KCPE and KCSE Mock exams contrary to the guidelines of the Ministry of Education. This malpractice led to the loss of Kshs.6, 420,000 and therefore urgent need to recover the money is of paramount need.

Under development and absorption of funds meant for development.

Makueni county government has ignored the plight of the residents desire to turn things around with an expectation of full budget absorption in development of the tune of Kshs.3, 355,082,455.

The government sluggishly was not able to channel the said development funds to the much needed services and thus ending up in spending a paltry Kshs.1, 224,816,842 and therefore occasioning a yawning development gap of Kshs.2, 130,265,613 un-spend. This is a shameful translation of 63.5% under development.

Below is a table of the project status earmarked for implementation in the said FY ended by 30TH June 2015 as is evident from the records and Auditor general report for the year ended 30TH June 2015.

Department	No. of projects	Amount budgeted.Kshs	Projects not begun.	Projects completed.	On-going projects.	Stalled Projects.
Lands	39	40,654,650	14	7	18	0
Trade and Tourism	63	282,935,000	46	8	9	0
Gender and youth.	25	40,691,667	19	4	2	0
Education and ICT	158	167,034,701	92	51	17	0

Transport and Infrastructure	99	174,670,93+5	58	24	17	0
Agriculture & Livestock.	14	135,350,000	6	3	4	1
Water & Irrigation	142	302,876,277	111	17	12	1
Health	99	219,560,953	59	16	21	2
Sub totals	639	1,363,774,183	405	130	100	4

The table indicates the laxity of the government not to adhere to the timely projects implementation if the residents are to reap the benefits of devolution.

The county government is also in the record of building structures which are not in the use citing the purpose they were meant to do after their completion. Some notable examples are market shades for **Mama mbogas** which are still idling without use. Some notable examples include, Makindu market shades, Kalawa, Kathonweni among others.

MY PRAYER.

I counsel this Constitutional institution to take up the matter of Makueni County with seriousness it deserves and conduct investigation emancipate the county from this institutionalized corruption and take immediate action appropriately in the course of pursuit of Justice to the people of Makueni County.

I unwaveringly demand this institution not to trample on the constitutional obligation given by Kenyans to respond without delay time being of great essence if the Makueni County residents entitled to enjoy the fruits of devolution. I am calling this office to institute a thorough and credible forensic audit into the county books of Accounts to un-earth the rot in this government within a reasonable time frame and make the report public.

With this and many more prayers, i hope these cases involving constitutional coup, corruption and enlisted acts of impunity and outright arrogance by some public officials are in our parlance evidence of the 'culture of clout' and result in hiring un qualified personnel and awarding tenders with ; 'theft written between the lines' must be ended forthwith.

Still, it is my humble counsel to this institution to investigate the Governor and take the necessary action forthright.

Also, this institution has nothing else left but to rise to the expectations of the **Constitution** and without delay, salvage the situation within the constitutional framework based on *Actio in rem scripta*:

I confirm that the issues in respect of which this Petition is made are not pending before any court of law, or constitutional or legal body.

THEREFORE your humble petitioner **PRAY** that this institution to duly, diligently and forthwith find its *locus standi* to respond to the matters raised in this Petition, time being of the essence, and in particular give reply and direction to each and every matter in writing as soon as is reasonable, setting forth its explicit answers, proposals as to further action and timelines therein.

I am grateful to God and this institution that on this landmark date of presenting this public petition to this institution, Makueni residents will never again be in this complete depths of despair as it has been the case but we will be buoyed with the hope that our affairs will be taken care of and all forms **corruption, cronyism, nepotism, plunder of public resources, impunity** and other forms of *contra legem* in the said government.

And your **PETITIONER** will ever pray that justice will prevail for the people of Makueni County as I remain objective in my clear conscience and ready to divulge any information needed by this institution upon a formal request to do so.

Yours Truly.

Signature: 

JUSTUS MUTUNGA MUTUKU

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