

REPUBLIC OF KENYA



TWELFTH PARLIAMENT

THE SENATE

CHARGES AGAINST HON. AMB. MOHAMED ABDI MOHAMUD, THE GOVERNOR, WAJIR COUNTY

1. Gross violation of the Constitution of Kenya, 2010; the County Government Act, 2012; the Public Procurement and Disposal Act, 2015; and the Public Finance Management Act, 2012 by the following actions, errors and/or omissions.

- (a) Failure to account for the financial resources allocated to the County and appropriated by the County Assembly by failing to provide quarterly expenditure reports to the County Assembly in blatant disregard of Articles 201(a), 183(3) of the Constitution and sections 149 and 166 of the Public Finance Management Act, 2012.
- (b) Lack of accountability in the management of the County resources by incurring unsustainable debts and other pending obligations to the tune of 2 Billion Kenya Shillings. These pending obligations were never disclosed both in the County Fiscal Strategy Paper 2019 and 2020 thus violating 201(e) of the Constitution, 2010 and section 107(2) of the Public Finance Management Act, 2012.

- (c) Failure to draft the Medium Term Strategy for the Financial Year 2020/2021 in contravention of section 123 of the Public Finance Management Act, 2012. This places Wajir County in a highly precarious position as it will have no Budget to run its affairs and it may lead to protracted and costly court battles with creditors and eventual auctioning of the County Assets.
- (d) Violation of Articles 176(1) and 185 of the Constitution of Kenya, 2010 by disregarding the County Assembly as an arm of the County Government and further undermining its three cardinal roles of legislation, oversight and representation through systematic non-remittance of the requisitioned funds for the County assembly operations amounting to Kshs. 70,216,902. This is truly an affront to the separation of power understanding that the County Assembly is an independent entity. This systematic crippling of the Assembly operations compromises the independence of this Honourable House. This unwritten edict of the County Governor violates the Constitution at Article 6 on Devolution and Access to Services and Article 10 on National Values and Principles of Governance.
- (e) Failure to establish the County Budget and Economic Forum for the County Budget Consultation Process as stipulated in Section 137 of the Public Finance Management Act, 2012 and as a result the County Governor has gone on to violate Sections 87, 91 and 115 of the County Governments Act, 2012 as well as Article 10 and 201(a) of the Constitution and deliberately created an atmosphere to facilitate plunder and loss of public resources.
- (f) Violation of Section 30(2)(k) of the County Government Act, 2012 by failing to deliver the Annual State of the County Address that

otherwise enumerates the policy direction of the County Government. This was despite the several requests coming from the Assembly. For Instance, the Hon. Speaker in letter vide *WCA/SPK/GOV/01/2020* dated 24th June 2020 urged the Governor to give the address but failed. (*Annex A*).

- (g) Violation of Section 30(2)(j) of the County Government Act, 2012 by failing to submit to the County Assembly an annual report of the implementation status on the County policies and plans.
- (h) Violation of section 167(1) of Public Finance Management (County Government) Regulations by failing to establish an audit committee for the County that will adhere to the forms prescribed by the Accounting Standards Board and that would further encapsulate the governance process, accountability process, control systems and offer objective advice on issue concerning risk, control, regulatory requirements and governance for the County.
- (i) The Governor has never bothered to seek approval of payments out of the emergency fund for the last three consecutive financial years and instead frustrated the Assembly's effort to enforce compliance.
- (j) That section 19 of the Wajir County Disaster Management Act allows the Governor through the CECM for Finance to establish County Emergency Fund, make payments out of the fund where necessary and seek approval of the County Assembly within two months of making such payments.
- (k) Violation of section 82(1)(b) of Public Finance Management (County Government) Regulations, 2015 by operating nineteen (19) bank accounts in local commercial banks. (*Annex b: Audit*

report FY 2017/2018). Under the Cash and Banking Arrangements for County Governments at Section 82(1) of the Public Finance (County Government) regulations, County Governments are to open their accounts with the Central Bank of Kenya.

- (l) Violation of regulation 25(1)(b) of the Public Finance Management (County Government) Regulations 2015 by exceeding expenditure limit of 35% County Government's total revenue. For instance, as at 30th June 2019, the County Government of Wajir wage bill was equivalent to 39.6% of the aggregate operational revenue.

- (m) Violation of section 119(5) of Public Finance Management, Act 2012 which requires the County Government to keep complete current records of all bank accounts required under the Constitution or other legislation. The Governor failed to maintain cash books for FY 2017/2018. This has caused misuse of Kshs. 409,175,031.81 as this money was withdrawn between 06/10/2017 and 29/06/2018 and its use cannot be ascertained. (Annex B: Audit report FY 2017/2018).

- (n) Violation of Articles 201(a)(d)(e) of the constitution of Kenya, 2010 on principles of Public Finance Management and Article 226(5) as well as Article 227(1) on procurement of goods and services and the presidential directive no. 2 of 2018. The Auditor-General in his report on financial statements of Wajir County Executive for the year ended 30th June 2018 (Annex B: Audit report FY 2017/2018) observed the following glaring irregularities committed under the watch of the Governor as the Chief Executive of the County as provided under Article 179(4) of the constitution
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- Irregular procuring of goods and services amounting to Ksh 172,751,776 without raising quotations as required by Section 105 and 106 of the Public Procurement and Disposal Act, 2015 but rather used standard forms to procure goods, works and services that did not give guidance on specific requirements of the tender, where to place them and the deadline for submission of the tender.
- Irregular award of contract for construction of 60,000 M3 mega pan at Shimbirey to Ms FATCO Construction and Transporters ltd at a contract sum of Kshs 34,747,105.27. This company had a lesser experience in water construction than the other bidders in the tender.
- Misappropriation of Kshs 199,237,448. The Controller of Budget authorized a request for credit from the County Government of Wajir vide letter dated 5th December 2019 and sum of Kshs 199, 237,448 was credited to the Wajir County Development Operation Account. Ksh 104,046,400 for 24 companies for Water resources department and Ksh 95,241,305 for 15 companies for roads, transport and public works department. However, the money was diverted for different use contrary to the purpose of which the money was requested for. (Annex C: True copy of the list of the companies that were used for request of fund). Out of the 24 companies that were listed as the beneficiaries of the sum of Ksh 104,046,400 meant for Water resources, none of the companies were paid except Dulla Limited which was paid Ksh. 26,672,608. The rest of the 23 companies did not receive any payments and the money was diverted and paid

to other companies that were not included in the list attached to the request for funds. This is a clear case of misappropriation and outright theft of public funds.

- Out of the sum of Ksh 95,241,305.78 for roads, transport and public works which was meant to pay 15 companies, none of the 15 listed companies were paid except Halane Construction Limited which was paid Ksh 43,805,207.50 but which the money was paid on 20th November 2019, 6 days before the County had even made the request for the funds, thus making the payment suspect and fraudulent. The other 14 companies listed alongside Halane Construction Company in the letter requesting for funds were not paid, but instead the sum of Ksh 51,436,101.28 was diverted to other companies other than intended payees. (Annex C: A true copy of the payment registers evidencing the payment and the request). The paid companies are shell companies used by certain individuals associated with the Governor and his family to defraud the County.
- Tender No WCG/OT/SP/02/2019-2020 Supply of relief food and assorted items for humanitarian needs. The tender was awarded to Leyli General Contractors Co. Limited which is associated with the Governor and his family. Contrary to the law, the company was allowed to supply items at an inflated rate. For instance, the company supplied 42,857 bales of maize meal (ugali) flour at a cost of 3,500 per bale totaling to Ksh 149,999,500 contrary to the local market price of Ksh 1,600 per bale. Further, some items have not been 100% delivered, for instance sleeping mat and

Tarpaulin. (Annex D: letter of notification of award to the supplier and response to request for statement on County food and non-food items).

- Contrary to the provisions of the Public Procurement and Asset Disposal Act, 2015 and the public Finance Management Act, 2012, the County Executive of Wajir under the leadership of the Governor, gave contracts to various companies to undertake construction of mega water pan that have not been factored in the approved budget of FY 2020/2021. (Annex E: Tender notice for the said projects).

The tender no. were as follows;

1. WGC/OT/WTR/01/2020-2021
2. WGC/OT/WTR/02/2020-2021
3. WGC/OT/WTR/03/2020-2021
4. WGC/OT/WTR/04/2020-2021

The tenders were awarded the following companies:

- Tender no. 1: Leyli General Constructors Ltd
- Tender no. 2: Warbow Building Construction ltd
- Tender no. 3: Kamorow Construction ltd
- Tender no. 4: Bloomergic Construction ltd

(o) Violation of Article 227 of the constitution on Procurement of Public Goods and Services and section 45, 46, 47, 48, 53, 54, 57, 71 and 74 of the Public Procurement and Asset Disposal Act, 2015. The Governor has failed to prudently manage the County resources by engaging in procurement of goods and services

without a system that is fair, equitable, transparent, competitive and cost-effective as required by Article 227(1) of the constitution. WHEREAS the Public Procurement and Asset Disposal Act 2015 clearly stipulates the procedure to procure goods and services by any public entity, the Governor violated the Act on the following Counts;

- I.** Allowed unqualified professionals to handle the function of procurement in the department of Roads and Public Transport contrary to section 47 of the PPAD Act 2015. This has led to the mismanagement of resources allocated to the department.
- II.** Allowed the accounting officers of the key sectoral departments to procure goods and services without any annual procurement plan approved by the relevant CECM that is based on indicative or approved budget. as a result, the accounting officers have engaged in fraudulent procurement activities and engaged in overspending sprees in wanton abandon leaving the unsuspecting members of the public worse for wear with manually generated LPOs and LSOs without availability of funds to service contrary to the provisions of the Laws and the Constitution. The departments of Roads & Public Transport, Water and Health are the biggest casualties and since remain a threat to the County Economy and service delivery.
- III.** The Governor has routinely since assumed office, facilitated and condoned corruption by allowing the

accounting officers of various department in procuring goods and services to split and structure the entire development budget of the County into numerous quotations of below four (4) million Kenya Shillings to avoid and circumvent the procurement procedures contrary to section 54 of the Act. In some cases, the tender documents such as the quotations, LSOs and minutes were all raised in the same day

(p) Violation of right to Health of the people of Wajir County. The County Executive under the leadership of the Governor has caused the health sector of the County to run into disarray and into deplorable state that has comprised and undermined the realization of the right to highest attainable health standard of the people of Wajir as enshrined in Article 43(1) of the constitution of Kenya, 2010;

- Whereas the County Assembly has allocated over Ksh 2.4 Billion to the department of medical services, public health and sanitation in the financial years 2018/2019, 2019/2020, and 2020/2021 which is equivalent of 22% way above the national health policy requirement of 20% under Universal Health Coverage, the only County's referral hospital laboratory which also serves the region cannot conduct a test on the corona virus pandemic due to faulty test kits and lack of reagents despite additional allocation of Ksh 194,000,000 in the 3rd Wajir County Supplementary budget for FY 2019/2020 in a bid to contain the spread of the disease.

- Mismanagement of the budget appropriated for basic health services such as ambulances, fuel and maintenances as evidenced by the public outcry after widely circulated incident in Eldas Constituency where a desperate caller who wanted to save a life in rural Eldas was tasked to buy tires and fuel for the County Ambulance. The department admitted unequivocally this allegation in response to a statement by the MCA for Eldas Ward tabled on the floor of the House through the sectoral committee for Public Health and Medical Services. This notwithstanding the death of the senior County Public Health Officer for lack of oxygen in the main County Referral Hospital.

2. Abuse of Office/Gross misconduct

- i) Abuse of power and authority of the Governor and contrary to Article 236 as read together with Article 235 of the constitution of Kenya, 2010, the County Government Act, 2012 and the Public Service Act by reshuffling the Chief Officers in the Finance department (6) times within two years despite being a critical docket with the County Government of Wajir with the intent of distorting institutional memory and facilitate corruption and plunder of public resources. The unpredictability of the tenure of the office which is now largely dependent on the constantly changing mood and liking of the Governor's wife, has eroded public confidence in the critical department of the County treasury.

ii) Violation of the Article 73(2)(b) of the constitution on objectivity and impartiality in decision making and in ensuring the decisions are not influenced by nepotism, favoritism and other improper activities or corruption practices. The Governor has allowed his wife to literary run the County affairs as the de facto authority. He ceremoniously officiates and sign off where necessary for decisions she unilaterally make based on her own wishes and judgment without due regard to any law. It is open secret in Wajir County and far beyond its borders that Mrs. Kheira Omar is the ‘supreme’ leader of the County and it is always her way or the highway. This has caused ridicule and disrepute to the high office of the County Governor. Therefore, his decision to relinquish the executive powers vested on him constitutionally and derived from the people, amounts to abuse of office and relegation of duties.

iii) Violation of section 59(b) of the County Government Act 2012 by usurping the powers of the County Public Service Board to appoint person to hold or act in offices of the county public service. The Governor has allowed Mr. Jeff Mworira, his Economic Advisor who was in contract basis to act as the Head of the County treasury from March 2018 to December 2018. Mr Jeff with help of others irregularly withdrew Ksh 26.1 Million from Wajir County Imprest account held at KCB, Wajir branch. The officer who was later arrested by Ethics and Anti-Corruption Commission and was charges with abuse of office contrary to section 46 as read with section 48 of the Anti-corruption and economic crimes act, 2003. In court case number ACC 47/2018, he was convicted and sentenced to pay Ksh

800,000 or in default to serve four years in prison. The Court further ruled that Wajir County governor, H.E Amb. Mohamed Abdi Mohamud be investigated for abuse of office in relation to the above case.