

COUNTY ASSEMBLY OF EMBU



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DPLCS  
21/12/2020

SECOND ASSEMBLY

:

THIRD SESSION

REPORT OF THE SECTORAL COMMITTEE ON ADMINISTRATION, PUBLIC SERVICE AND DEVOLUTION ON THE LEGAL COMPLIANCE OF THE WORKINGS AND UNDERTAKINGS OF THE EMBU COUNTY PUBLIC SERVICE BOARD

②  
Hon. Speaker  
pls approve for  
tabling in the  
Assembly  
22/12/2020

②  
CCA  
For further directions  
DPLCS  
22/12/2020

SUBMITTED TO THE COUNTY ASSEMBLY

Clerk's Office,  
County Assembly of Embu,  
P.O. Box 140-60100,  
EMBU.

DECEMBER, 2020



Tabled on  
22/12/2020

## TABLE OF CONTENTS

LIST OF ACRONYMS AND ABBREVIATIONS	3
EXECUTIVE SUMMARY	4
1.0. MANDATE OF THE COMMITTEE	7
1.2. MEMBERSHIP OF THE COMMITTEE	7
1.3. PROBLEM STATEMENT	7
1.4. OBJECTIVES	8
1.5. METHODOLOGY	8
1.6. TOOLS OF REFERENCE	8
1.7. ACKNOWLEDGEMENT	9
2.0 LEGAL FRAMEWORK	10
3.0 COMMITTEE DELIBERATIONS	13
3.1 SUBMISSIONS FROM THE CHAIRMAN AND SECRETARY COUNTY PUBLIC SERVICE BOARD	13
3.1.2 FURTHER SUBMISSIONS BY THE EMBU COUNTY PUBLIC SERVICE BOARD ON CONCERNS RAISED BY THE COMMITTEE	16
3.1.3 COMMITTEE FINDINGS FROM THE SUBMISSION BY THE COUNTY PUBLIC SERVICE BOARD	19
3.2 SUBMISSION BY THE EMBU COUNTY REVENUE AUTHORITY	19
3.2.1 COMMITTEE FINDINGS ON THE SUBMISSIONS BY THE EMBU COUNTY REVENUE AUTHORITY	22
4.0 COMMITTEE OBSERVATIONS	23
6.0 CONCLUSION	27

## **LIST OF ACRONYMS AND ABBREVIATIONS**

CECM	: County Executive Committee Member
CGA	: County Government Act, 2012 (Revised)
COK	: Constitution of Kenya, 2010
ECPSB	: Embu County Public Service Board
ECRA	: Embu County Revenue Authority
HON	: Honorable
IPPD	: Integrated Payroll and Personnel Database
MCA	: Member of County Assembly
PFM	: Public Finance Management Act, 2012
S.O	: The County Assembly of Embu Standing Orders (2 <sup>nd</sup> Edition)
FY	: Financial Year
OCOB	: Office of the Controller of Budget
CHRMAC	: County Human Resource Management Advisory Committee
DHRMAC	: Departmental Human Resource Management Advisory Committee
JICA	: Japan International Corporation Agency
P.E	: Personnel Emoluments
PFM Regulations:	Public Finance Management (County Government), Regulations, 2015



## EXECUTIVE SUMMARY

This report emanates from a resolution by the County Assembly of Embu in its sitting held on 13<sup>th</sup> October, 2020 and the subsequent commitment to the Committee on Administration, Public Service and Devolution vide letter Ref. CAE/LEG/16/VOL.VI/(04) dated 14<sup>th</sup> October, 2020.

The resolutions of the county Assembly required the Committee on Administration and Public Service and Devolution to investigate report on the legal compliance in the workings and undertakings of the Embu County Public Service Board.

The Committee on Administration in its meeting held on 21<sup>st</sup> October, 2020 resolved to invite the Embu County Public Service Board to a committee meeting on Thursday 29<sup>th</sup> October, 2020 at 11.00 am in Sunstar Hotel to deliberate on the matter of legal compliance on the undertakings and workings of Embu County Public Service Board.

The Board members made both oral and written submissions on the matter as contained in the motion. The members noted several gaps in the information provided. In writing of this report, the committee was guided by the provisions of Section 59 (1) (a) (b) (e) (g) (h) and (i) of County Government Act, 2012. The committee sought to know:

- i) Whether there were available funds to recruit the ECRA staff
- ii) Whether the recruitment process was adhered to as provided by the law.

Upon consideration of the submissions by the County Public Service Board, the Embu County Revenue Authority and CEC Member Finance, the committee came up with observations and recommendations to be incorporated in the report. Concerning the issue of availability of the funds, it was established that there was no compliance of the law since ECPSB did not take due regard to the need to limit the component of personnel emolument to a level that does not adversely affect other budgetary provisions. In this case the ECPSB did not comply with the legal provisions that require the board to ensure availability of funds before declaration of the vacant positions.

The Committee established that the Board had sought clarification on availability of funds from the Chief Officer responsible for finance confirmed in writing that indeed funds were available. Since the County Assembly had frozen subsequent recruitment and had not expressly approved budget for the same, it was observed that the ECPSB was in contravention of the County



Assembly resolutions which had frozen recruitment of ECRA staff. In its consideration of the submissions by various officers who were summoned by the committee, it was observed that, the ECPSB and the Chairman were aware of the county Assembly resolutions passed in the report of County Fiscal Strategy Paper 2019 which recommended on the freezing of the recruitments by the ECRA (*vide annexure 18*).

In furtherance to the deliberations concerning whether or not the ECPSB followed the provisions of the law, it was observed that the Board did not adhere the provisions of law which required the Board to establish the availability of funds before embarking on the recruitment process. Despite the fact that the Board did not follow the due process, it was observed that there were staff in other departments who could be seconded to ECRA (*vide annexure 9*).

The committee further observed that, the ECPSB and the Chairman were aware that they would be held personally accountable for any recruitment of the staff done by Embu County Public Service Board (*vide annexure 12*).

The committee recommended that, the Embu County Public Service Board should comply forthwith with the Assembly resolutions passed on 13<sup>th</sup> October 2020 on freezing of employments of ECRA staff.

The committee further recommended that, Chairman ECPSB, the Secretary, and the Board should be held personally accountable for the recruitment of the staff which was done contrary to the resolutions of the Assembly passed on 13<sup>th</sup> October 2020, the comments from the Office of the Controller of Budget (OCOB) on the Embu County draft budget estimates 2020/21 dated Ref. COB/EMB/002/1(20) dated 15<sup>th</sup> June 2020, and the recommendations of the report of Liaison Committee on the Budget Estimates for the FY 2020/2021 and the Approved Appropriations Act, 2020.

In its further scrutiny, the committee recommended that, the County Public Service Board should review the County Staff Establishment to meet the County Budget Ceilings on wages and benefits at 35% of the county's total revenue as provided for in Regulation 25 (1) (b) of the Public Finance Management, 2015 (County Government). Owing to the weight of the matter in reference the committee recommend that the County Assembly through the Committee on General Oversight should summon the CEC Member Finance, Chief Officer

Finance to clarify on authorization of availability of funds for recruitment of ECRA staff vis-à-vis the approved budget estimates and appropriation legislations.



## 1.0. MANDATE OF THE COMMITTEE

The Committee on Administration, Public Service and Devolution has made this report pursuant to Standing Order Number 204 (5) of the County Assembly of Embu which defines the functions of the committee as being;

- (a) *Investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned departments;*
- (b) *Study the programme and policy objectives of departments and the effectiveness of the implementation;*
- (c) *Study and review all County legislation referred to it;*
- (d) *Study, assess and analyze the relative success of the departments as measured by the results obtained as compared with their stated objectives;*
- (e) *Investigate and inquire into all matters relating to the assigned departments as they may deem necessary, and as may be referred to them by the County Assembly;*
- (f) *To vet and report on all appointments where the Constitution or any law requires the County Assembly to approve, except those under Standing Order 198 (Committee on Appointments); and*
- (g) *Make reports and recommendations to the County Assembly as often as possible, including recommendation of proposed legislation.*

## 1.2. MEMBERSHIP OF THE COMMITTEE

The Committee on Administration, Public Service and Devolution was formed pursuant to Standing Order No. 204 of the standing orders of the County Assembly of Embu in an assembly resolution adopted on 19th September 2017.

The committee membership comprises of the following:

- |    |                              |   |                  |
|----|------------------------------|---|------------------|
| 1. | Hon. Duncan Ireri Mbui       | - | Chairperson      |
| 2. | Hon. Sicily Ruguru Njiru     | - | Vice Chairperson |
| 3. | Hon. Masters Leonard Muriuki | - | Member           |
| 4. | Hon. Martin Mwangi Kimani    | - | Member           |
| 5. | Hon. Michael Njeru Kariuki   | - | Member           |
| 6. | Hon. Steve Mugendi Munene    | - | Member           |
| 7. | Hon. Judy Mbuya Njue         | - | Member           |

## 1.3 PROBLEM STATEMENT

The Committee on Administration, Public Service and Devolution in pursuance to Part 2 of the Fourth Schedule of the C.O.K. 2010 as read together with the Embu County Assembly S.O. Number 204 (5) sought to establish the Legal Compliance of the

workings and undertakings of the Embu County Public Service Board regarding the recruitment of officers as advertised by the ECPSB on 18<sup>th</sup> September 2020.

In undertaking its mandate the ECPSB is guided by various statutes and also bound by resolutions of the County Assembly made from time to time. In the instant matter the committee delved into various issues that may have necessitated the need for recruitment of ECRA staff. Despite the fact that the County Assembly had passed a motion to stop the recruitment, the ECPSB went ahead recruited new staff. In recruiting of the new staff, ECRA ought to have satisfied itself that, money was available for the recruitment. The committee therefore sought to establish the veracity of the above facts.

#### **1.4 OBJECTIVES**

1. To establish the legal compliance of the workings and undertakings of the Embu County Public Service Board regarding an advert for recruitment of officers in Embu County Revenue Authority (ECRA) on 18<sup>th</sup> September 2020.
2. To prepare and table a report with recommendations to the assembly for subsequent adoption.

#### **1.5 METHODOLOGY**

The Committee on Administration, Public Service and Devolution used the following methods to come up with this report:

1. Committee meetings
2. Meeting with Members of County Assembly
3. Meeting with the County Public Service Board
4. Meeting with chairman Embu County Revenue Authority.

#### **1.6 TOOLS OF REFERENCE**

The following tools of reference were used in this report;

1. The Constitution of Kenya, 2010.
2. The County Assembly of Embu Standing Orders, 2<sup>nd</sup> Edition, 2017
3. The County Government Act, 2012
4. The Employment Act Chapter, 226 (Revised Edition 2012 [2007])
5. Embu County Revenue Authority (ECRA) Act, 2017
6. Comments by Office of Controller of Budget on the FY 2020/21 Embu County Draft Budget Estimates, Ref. CO/EMB/002/2/1(20) dated 15<sup>th</sup> June 2020.
7. Correspondences from the Embu CPSB, Embu County Revenue Authority and CEC Finance.



3. The County Government Act, 2012
4. The Employment Act Chapter, 226 (Revised Edition 2012 [2007])
5. Embu County Revenue Authority (ECRA) Act, 2017
6. Comments by Office of Controller of Budget on the FY 2020/21 Embu County Draft Budget Estimates, Ref. CO/EMB/002/2/1(20) dated 15<sup>th</sup> June 2020.
7. Correspondences from the Embu CPSB, Embu County Revenue Authority and CEC Finance.
8. County Fiscal Strategy Paper, 2019.
9. The Auditor General's Report for the financial year ended 30th June 2017.
10. Report of the Liaison Committee on Budget Estimates for Revenue and Expenditure of Embu County Government for FY 2020/2021
11. Public Finance Management, Act 2012.
12. Legal opinion from the Director Litigation, Legal Compliance and Legislative Drafting.

## 1.7 ACKNOWLEDGEMENT

The committee wishes to thank the offices of the Hon. Speaker, the Clerk of the County Assembly and the secretariat for their continued support in ensuring that the committee executes its mandate as provided for in the Standing Orders of the County Assembly of Embu.

The committee also wishes to record its appreciation to all the summoned officers who appeared in person as well as those who provided written submissions for the perusal of the committee.

The Committee on Administration, Public Service and Devolution has the honour and pleasure to present this report on the Legal Compliance, Workings and Undertakings of Embu County Public Service Board.

SIGNED: \_\_\_\_\_

DATE: \_\_\_\_\_

21/12/2020

HON. DUNCAN IRERI MBUI,

CHAIRMAN,

COMMITTEE ON ADMINISTRATION, PUBLIC SERVICE AND  
DEVOLUTION



## **2.0 LEGAL FRAMEWORK**

### **2.1.1 Constitution of Kenya, 2010.**

Article 195 (1) of the C.O.K, 2012, 195. (1) A county assembly or any of its committees has power to summon any person to appear before it for the purpose of giving evidence or providing information. (2) For the purposes 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.

### **2.2.1 The County Government Act, 2012**

59. (1) The functions of the County Public Service Board shall be, on behalf of the county government, to—

(a) establish and abolish offices in the county public service;(b) appoint persons to hold or act in offices of the county public service including in the Boards of cities and urban areas within the county and to confirm appointments;

(c) exercise disciplinary control over, and remove, persons holding or acting in those offices as provided for under this Part;

(d) prepare regular reports for submission to the county assembly on the execution of the functions of the Board;

(e) promote in the County Public Service the values and principles referred to in Articles 10 and 232;

(f) evaluate and report to the county assembly on the extent to which the values and principles referred to in Articles 10 and 232 are complied with in the county public service;

(g) facilitate the development of coherent, integrated human resource planning and budgeting for personnel emoluments in counties;

(h) advise the County Government on human resource management and development;

(i) advise county government on implementation and monitoring of the national performance management system in counties;

(j) make recommendations to the Salaries and Remuneration Commission, on behalf of the county government, on the remuneration, pensions and gratuities for county public service employees.

(2) In appointing a person as a secretary to a board of a city or an urban area under subsection (1)(b), the County Public Service Board shall ensure that such person is a certified public secretary of good professional standing.

(3) The reports under subsection (1)(d) shall contain the details of persons appointed including gender, persons with disabilities, persons from the minority and marginalized communities.



(3) The reports under subsection (1)(d) shall contain the details of persons appointed including gender, persons with disabilities, persons from the minority and marginalized communities.

(4) In the performance of its functions under subsection (1)(e), the County Public Service Board shall have powers to—

(a) inform and educate county public officers and the public about the values and principles;

(b) recommend to the county government effective measures to promote the values and principles;

(c) assist county government in the formulation and implementation of programmes intended to inculcate in public officers the duty to uphold the values and principles;

(d) advise the county governments on their obligations under international treaties and conventions on good governance in the county public service;

(e) visit any county public office or body with a view to assessing and inspecting the status of compliance with the values and principles;

(f) investigate, on its own initiative or upon a complaint made by any person or group of persons, the violation of any values and principles;

(g) recommend to the relevant lawful authority, any necessary action in view of the violation of the values and principles by any person or public body;

(h) cooperate with other institutions working in the field of good governance in the public service; and

(i) perform any other functions as the Board considers necessary for the promotion of the values and principles.

(5) The report by the County Public Service Board under subsection (1)(f) shall—

(a) be delivered each December to the county assembly;

(b) include all the steps taken and decisions made by the board;

(c) include specific recommendations that require to be implemented in the promotion and protection of the values and principles;

(d) include specific decisions on particulars of persons or public body who have violated the values and principles, including action taken or recommended against them;

(e) include any impediment in the promotion of the values and principles; and

(f) include the programmes the board is undertaking or has planned to undertake in the medium term towards the promotion of the values and principles.

(6) The Board shall publish a report required under this section in the county Gazette not later than seven days after the report has been delivered to the county assembly.

### **2.2.2 Employment Act Chapter 226 Revised Edition 2012 [2007]**

#### *Notification of vacancies;*

(1) This Part shall apply to an employer who employs twenty-five employees or more.

(2) An employer shall notify the Director of every vacancy occurring in his establishment, business or work place in a prescribed form giving the following details—

- (a) the employer's name and full address;
  - (b) details of the vacant post;
  - (c) minimum qualification required of the person seeking to be employed;
  - (d) the place of work; and
  - (e) the type of work, whether casual, permanent or term contract; and
  - (f) such other information as the Director may require.
- (3) A vacancy shall be deemed to occur on the date—
- (a) an employer creates a post to be filled by an employee or decides to engage one;
  - (b) an employee terminates or has his employment terminated by the employer and the employer abolishes the post.

### **2.2.3 Embu County Revenue Authority (ECRA) Act 2017**

Staff of the Authority

Section 14. (1) The County Public service Board shall appoint such staff as the Authority may recommend to be necessary for proper discharge of its functions under this Act, upon such terms and conditions of service as may be determined.

(2) The County public service Board shall-  
recruit staff through a competitive process;  
ensure that there sufficient number of staff qualified in matters related to accounting, finance, business, law, information technology or any relevant field necessary for the better carrying out the objects and functions of the Authority.

(3) In determining the terms and conditions of service, the County Public Service Board shall be guided by the recommendations of the Salaries and Remuneration Commission.



### 3.0 COMMITTEE DELIBERATIONS

The Committee sought submissions from witnesses to establish compliance in the following areas;

- Compliance with the law and guidelines on recruitment of staff.
- Compliance with the Comments by the OCOB
- Compliance with the various resolutions by the County Assembly contained in various Committee reports
- Compliance with Embu County Appropriations Act 2020 among others.

The Committee held various meetings in which it had invited various witnesses in a bid to establish the legal compliance in the workings and undertakings of the CPSB where presentations were made as follows;

#### 3.1 Submissions from the Chairman and Secretary County Public Service Board

The Embu County Public Service Board (ECPSB) was summoned to appear before the Committee on Administration, Public Service and Devolution through a letter dated 21<sup>st</sup> October, 2020. The ECPSB appeared before the committee on 30<sup>th</sup> October, 2020. The Board made its submissions based on the following matters raised by the committee:

**Approval and adoption of the County Fiscal Strategy Paper 2019 and the issue of freezing and suspending all new recruitment by the County Executive and its department:**

**Response:** On this matter the Board submitted that, all donor funded programs/activities (Japan International Corporation Agency (JICA) resulted to the hiring of new staff by various departments. Some of the departments which hired staff due to this requirement from the donors were Lands, Physical Planning, Urban Development, Environment and Natural Resources. The emergence of Covid-19 (Corona Virus) Pandemic which has been a global issue also led to hiring of new staff (Medical Officers, staff under the Universal Health Care coverage Program-Cohort1, Cohort II and interns) in the department of Health since Universal Health is an essential service. The creation of Embu County Revenue Authority through the Embu County Act, 2017 was mandated to assess, collect and account for all revenue in accordance with the County and National laws related to revenue administration and enforcement of County Laws. As a newly created authority there was need to engage more staff for efficient and effective service delivery. Identification of new stream for revenue collection required hiring of more staff due to retirement, natural attrition, resignation and inter-county transfers without replacement led to the need and justification for new recruitment. Creation of new facilities, hospitals, markets and dispensaries in the County has also resulted to the need for additional staff (*annexure 6*).



**High personnel emolument and the negative financial implications on the overall county budget and specifically county development budget;**

**Response:** It was reported that the County Public Service Board with effect from 2017/2018, 2018/2019 and 2019/2020 has not replaced staff that have exited through natural attrition, retirement on medical grounds, early retirement under 50 years rule, resignation and inter County transfers, therefore, there was accumulated savings over the years.

**Advertisement of vacant posts in Embu County Revenue Authority by the County Public Service board.**

**Response:** The Embu County Revenue Authority had requested for additional staff due to its mandate as a result of creation of new revenue streams from various departments which were reported to have started generating revenue.

The posts which were advertised by the CPSB were done based on need. This was after a need basis analysis was conducted by the ECRA directorate which is the body mandated to collect revenue in the County.

The posts emanated from the Finance and Economic Planning Departmental Human Resource Management Advisory Committee meeting (DHRMAC) held on 17<sup>th</sup> July, 2020 vide DHRMAC MIN NO: 18/7/2020, the ECRA board meeting held on 22<sup>nd</sup> July, 2020 vide Min. 3: Staff secondment and Recruitment and later forwarded to the County Human Resource Management Advisory Committee (CHRMAC) on 19<sup>th</sup> August, 2020 and the CPSB for considerations.

Before the County Public Service Board advertised for the ECRA posts, the confirmation of budget was done by the Chief Officer Finance and Economic Planning vide letter REF; FIN/EC/PSB/1/21/90 dated 16<sup>th</sup> September, 2020.

**Blatant failure of the County Public Service Board to furnish the county assembly with the approved county staff establishment and the office of the Auditor General has also cited the same in its report for the fiscal year 2017/2018;**

**Response:** The approved staff establishment was forwarded to the County Assembly of Embu vide letter REF.ECG/CPSB/ADM.19/VOL.II/59 dated 19<sup>th</sup> October, 2020 which was received on the same date by the assembly. The County Public Service Board also noted that this was the first time that the County Assembly had requested for the staff establishment from the ECPSB.



The County Executive was operating with a staff establishment that was approved by the cabinet in 2015. By the time of the audit query, work was in progress to review the staff establishment due to changes that were necessary cutting across all the departments.

The County Government inherited National government personnel from the devolved functions and the County Public Service Board is yet to inform the County Assembly how it has rationalized the said personnel.

The County Public Service Board inherited staff from the National Government where some are paid by the National Government and the process of rationalizing the staff who were seconded to the County is progressive (on-going).

Some of the departments are partially devolved e.g Agriculture and Cooperative Development, Livestock and Fisheries, Water and Irrigation, Lands, Physical Planning and Urban Development and Infrastructure, Transport and Public Works, so therefore consultations are on-going on the staff rationalization process in their specialized functions.

**Failure by the Embu County Revenue Authority to requisite for the advertised posts and that the Board had never held its maiden formal meeting.**

**Response:** The Board responded that, the Embu County Revenue Authority Board is properly constituted according to the ECRA Act, 2017. In this regard, the Board further submitted that, the board has had two meetings since it was incepted. However the Board was only able to produce one set of board minutes which was held on held on 22<sup>nd</sup> July 2020. After scrutinizing the meeting minutes it was established that, the minutes in reference were not authenticated ((*vide annexure 10*)).

**That, the Failure by the County Public Service Board to recruit/allowed recruitment of so many casuals who are paid by the County Government outside the payroll against the advisory by the Auditor General.**

**Response:** The County Public Service Board had frozen the hiring of casual staff vide letters Ref. No. EC/PSB/CAS.6/VOL.1/103 and ECH/PSB/CAS.6/VOL.1/154 dated 1<sup>st</sup> December, 2016 and 27<sup>th</sup> June, 2017 respectively where the Board directed that all casuals who have been working without explicit authority from the board must be ready to take any personal responsibility in case of any financial losses.

The contracted staff in the Health department were hired before freezing of recruitment was done by the County Public Service Board. A supplementary budget was passed by the County Assembly and the contracted staff (Health Department) are paid manually since they do not have job groups and employee personal numbers.

### 3.1.2 Further Submissions by the Embu County Public Service Board on concerns raised by the Committee

In its in-depth consideration of the matter of employment of new staff, the committee raised various queries to the ECPSB which were responded to as follows:

**Query on IPPD.** The committee sought to know whether all the staff in the County establishment are included in the Integrated Payroll and Personnel Database (IPPD) print out.

**Response:** The Board responded that all the staff were in the PPPD print out and that the staff list was available for scrutiny by the committee. In the submitted copy of IPPD the committee noted various anomalies including case where staff beyond the retirement age had been retained in the payroll and also staff whose designations had not been specified.

The committee further established that there were over 138 no. staff who were identified as employees who were inherited from the former local authorities (*vide page 30-32 of annexure 7*)

**Query on staff establishment.** In its bid to establish the staff in the county, the committee had asked for a copy of staff establishment per department.

**Response:** The list was availed and the committee established that various departments had the following staff establishment:

- a) Devolved staff (from various departments) – 1,395
  - i) Health - 1,152
  - ii) Water - 52
  - iii) Lands - 11
  - iv) Agriculture - 163
  - v) Public works - 17
  - vi) Staff from former local authorities – 194
- b) Office of Governor has 26 no. staff with no variance.
- c) Staff establishment of various departments were shown as below:



*Table 1: Indicating the number of staff required per Department or entity and no. of current staff and the variance thereof*

S/N	Department	Required staff	No. of current staff	Variance
1.	ECRA	261	162	-ve 99
2.	Agriculture	160	171	+ve 11
3.	Livestock	99	50	-ve 49
4.	Veterinary	93	62	-ve 31
5.	Fisheries	56	27	-ve 29
6.	Cooperatives	33	30	-ve 3
7.	Education	1133	618	-ve 515
8.	Finance	76	46	-ve 30
9.	Economic planning	42	13	-ve 29
10.	Gender	33	15	-ve 18
11.	Infrastructure	86	30	-ve 56
12.	Lands Physical Planning and Urban Dev.	23	18	-ve 5
13.	Municipality of Embu	98	2	-ve 96
14.	Natural resources	99	2	-ve 97
15.	Trade and tourism	78	20	-ve 58
16.	Investment and industrialisation	36	1	-ve 35
17.	Water and irrigation	11	3	-ve 9
18.	Youth Empowerment and Sports	10	5	-ve 5
19.	Health	2493	1320	-1173
20.	ECPSB	45	19	-ve 26
21.	Public Service and Administration	251	161	-ve 90
22.	ICT and Public Communication	19	4	-ve 15
23.	Administration and Enforcement	366	202	-ve 164
	<b>TOTAL</b>	<b>5,601</b>	<b>2,981</b>	<b>-ve 2,620</b>



It was established that on average the total staff establishment as per the submitted IPPD print out was 2981. In ECRA the staff was found that, there were 162 no. staff who were in-post against the proposed 261 no. staff. In this regard it was submitted that there was a staff variance of 162 no. staff who were proposed to be employed in ECRA. (*Annexure 3 and Page 62 of annexure 8*)

The committee observed that there was a variance of 2620 no. staff in the entire county. The committee further observed that there was need for staff head count since the data supplied may not be commensurate with the exact data of staff population in Embu County.

**Query on freezing of the employment in the County:** The committee had sought to know whether or not the Board had honored the recommendation by CFSP 2019, CFSP 2020 and the Embu County Budget Estimates for the FY 2020/2021 on freezing of employments by the Embu County Government.

**Response:** In a written submission the Committee established that the Board had sought clarification on availability of funds from the county Chief Officer responsible for finance and the Chief Officer confirmed in writing that indeed funds were available. Since the County Assembly had frozen future recruitment and had not expressly approved budget for the same, the Committee sought the input of the County Executive Committee Member for Finance and the County Chief Officer responsible for finance to clarify this issue (*annexure 12 & 13*).

The two officers however did not turn up for the summons though they gave reasons for their nonattendance. The Committee therefore could not establish whether or not the funds were available for the recruitment of the Embu County Revenue Authority (ECRA) new staff. Whereas the Assembly resolved to freeze and suspend recruitment of staff through The County Fiscal Strategy Paper, 2019, the same freeze could not be expressly established in The County Fiscal Strategy Paper, 2020 and in the subsequent Embu County Budget Estimates for the FY 2020/2021 (*vide annexure 17 and 18*).

**Query on the source of the funds for the proposed recruitment.** The committee requested to know if there were funds for employment of the ECRA staff.

**Response:** It was reported that the five cadres of staff advertised on 18<sup>th</sup> September 2020 would cost the County Ksh.24, 802,680. The Finance department confirmed that the funds were available to undertake the employment. The department of Finance had given a



submission indicating that the money for employment of ECRA staff was available (*vide annexure 4 B*)

### **3.1.3 Committee Findings from the Submission by the County Public Service Board**

From the aforementioned the committee made the following observations;

1. That, the board had honoured Article 195 (1) of the C.O.K, 2012, by appearing before the committee as demanded by the invitation.
2. That, the Board provided minutes which were not authentic (the minutes were not signed).
3. That, the board did not have data of the county staff employed under contract basis per department as well as the casuals engaged in the entire County(annexure 1 &2)
4. That, there was no legal framework of guiding the employment, retention and release of the different cadres of staff in the County.

### **3.2 Submission by the Embu County Revenue Authority**

The committee summoned the Chairperson, Embu County Revenue Authority (ECRA) on 26<sup>th</sup> November 2020. The chairman responded via a letter Ref: No. ECRA/2020/11/26/02 dated 26<sup>th</sup> November 2020, (*vide annexure 11*) and made his submissions as follow:

#### **1. Query on the staff working within the Embu County Revenue Authority and their respective designations.**

The committee was informed that ECRA had a total of 227 staff who were seconded to the Authority from other departments. These staff were comprised of both the inspectorate and Revenue Collectors/officers.

- a) **ECRA Headquarters:** There are 11 staff at ECRA headquarters who are headed by the ECRA Chief Executive Officer.
- b) **ECRA staff in Runyenjes Sub County:** The sub county has 26 no. staff who are headed by the Sub county Revenue Officer. Out of these members of staff eleven (11) are in inspectorate, while fourteen (14) are in the revenue collection. There is one (1) driver who serves the entire sub county.
- c) **ECRA staff in Manyatta Sub County:** There are 95 staff in Manyatta Sub County. These staff are headed by the sub county revenue officer. Out of these members of staff



sixty three (63) are in inspectorate, while fourteen (31) are in the revenue collection. There is one (1) driver who serves the entire sub county.

- d) **ECRA staff in Mbeere North Sub County:** It was reported that there are 39 staff in Mbeere Sub County. These staff are headed by the sub county revenue officer. Out of these members of staff twenty one (21) are in revenue collection, while seventeen (17) are in the inspectorate. There is one (1) driver who serves the entire sub county.
- e) **ECRA staff in Mbeere South Sub County:** It was reported that there are 56 staff in Mbeere South Sub County. These staff are headed by the sub county revenue officer. Out of these members of staff twenty eight (28) are in revenue collection, while twenty seven (27) are in the inspectorate. There is one (1) driver who serves the entire sub county.

## 2. Query on the staff seconded to ECRA and their respective designations

On this matter it was reported by the chairperson there was a total of 232 staff who were seconded to ECRA from both the inspectorate and revenue collections sub departments. These staff are mainly in finance and administration sub departments. The chairman also underscored that, a number of staff in this department had exited job through natural attrition. In this regard, it was reported that, the staff are distributed per Sub County as shown below:

- a) **Runyenjes sub-county** – there were twenty five (25) seconded officers whereby thirteen (13) staff are serving as revenue collectors while eleven (11) were serving in the inspectorate. There is one (1) driver who serves in the sub sector.
- b) **Manyatta sub-county** – there were ninety four (94) seconded officers whereby sixty two (62) staff are serving as revenue collectors while thirty one were (31) were serving in the inspectorate. There is one (1) driver who serves in the sub sector.
- c) **Mbeere North sub-county** – there were thirty eight (38) seconded officers whereby twenty (20) staff are serving as revenue collectors while seventeen (17) were serving in the inspectorate. There is one (1) driver who serves in the sub sector.
- d) **Mbeere South sub-county** – there were a total of fifty five (55) seconded officers whereby twenty seven (27) staff are serving as revenue collectors while twenty seven (27) were serving in the inspectorate. There is one (1) driver who serves in the sub sector.



In this regard, it meant that, there were fourteen (14) members of staff who had left the service through natural attrition.

### **3. Query on request for employment of staff.**

The Chairperson furnished the committee with a letter Ref. No. dated EC/CEO.ECRA/STAFF/VOL.1/17 dated 18<sup>th</sup> June 2020 indicating that ECRA had requested ECPSB to recruit 60 no. staff. He indicated that, there was need to recruit sixty (60) revenue collectors and fifteen revenue supervisors (15) in Embu County Revenue Authority.

The request by ECRA was discussed by Human County Resource Management Advisory Committee (CHRMAC), vide minute of 17<sup>th</sup> July 2020 and recommended that 78 no. officers of various positions be advertised by ECPSB for employment.

Further it was noted that on 18<sup>th</sup> August 2020 the department of Administration Public Service and Devolution, through a CHRMAC meeting held on 18<sup>th</sup> August 2020 recommended for the advertisement of the no. 78 staff to work under ECRA (*annexure 11*).

### **4. Query on ECRA board meetings**

The committee sought to know whether the Board had held any board meeting since its inception. The chairman insisted that, the board had held meetings though not regularly. In his bid to justify this account, the chairman provided a set of minutes which could not meet the bare minimum threshold of minutes. The minutes which the committee was furnished with indicated that ECRA held a meeting on 22<sup>nd</sup> July 2020. In the minutes in reference, it was alluded that, ECRA had made a request during the budget making process in the FY 2020/21 of Ksh 30 million for recruitment in respect of new staff of ECRA and Ksh 20 million for the Development component in Embu County Revenue Authority. On its part the committee disqualified the authenticity of the minutes on the grounds of failure to meet minimum threshold of minutes.

### 3.2.1 Committee Findings on the Submissions by the Embu County Revenue Authority

Concerning the submissions done by ECRA the committee established:

- i) THAT, during the budget making process for the FY 2020/21, ECRA had proposed an additional allocation of Ksh 15 million in respect of employment of extra fifty (50) staff and Ksh. 2.2 million in respect of rental offices for ECRA offices.
- ii) THAT, in response to this request, Liaison Committee recommended that, it was not possible to approve the request due to limited resources hence the request was deferred to such a time when there will be commensurate growth in resources. (*Annexure 17 pg 21 and 34*).
- iii) THAT, the Office of the Controller of Budget (OCOB) on the FY 2020/21 on Embu County Draft Budget Estimates, in a letter Ref. COB/EMB/002/2/1 (20) dated 15<sup>th</sup> June 2020 had advised the County Government of Embu to adhere to Regulation 25 (1) (b) of the Public Finance Management 2015 (County Governments ) sets a ceiling on County Governments expenditure on wages and benefits at 35% of the county's total revenue (*annexure 15*);
- i) THAT, a review of Embu County Government budget estimates for the FY 2020/2021 indicated that allocation to personnel emoluments amounts to Ksh 3.07 billion, translating to 47.5% of the total revenue which is over and above the recurrent ceiling provided by law.
- ii) That, the information given by ECPSB differed from the one provided by ECRA. The data from ECPSB indicated that ECRA had 162 no. staff whereas ECRA indicated that number of staff was at 227.



#### 4.0 COMMITTEE OBSERVATIONS

The committee considered submissions received from the CEC Member Administration Public Service and Devolution, Chairman ECRA and CEC Member Finance as well as other provisions from other laws and made the following observations;

1. THAT, the County Public Service Board did not comply with the Assembly resolutions passed on 13<sup>th</sup> October 2020 on freezing of employments of ECRA staff(*annexure 5*).
2. THAT, the ECPSB and the Chairman were aware of the County Assembly resolutions passed in the report of County Fiscal Strategy Paper 2019 which recommended on the freezing of the recruitments by the ECRA( *vide annexure 17*).
3. THAT, the Chairman, Secretary and Members of the ECPSB were aware that they would be held personally accountable for any recruitment of the staff done by Embu County Public Service Board contrary to the resolutions of the Assembly passed on 13<sup>th</sup> October 2020, the advisory of the Office of the Controller of the Budget (OCOB) Ref. COB/EMB/002/1(20) dated 15<sup>th</sup> June 2020, and the recommendations of the report of Budget Estimates for the FY 2020/2021 and the Approved Appropriations Act, 2020 (*vide annexure 12 & 16th*).
4. THAT, the Chairman, Secretary and Members of the ECPSB were in contravention of section 59 (g), (h) and (i) of the County Government Act, 2012.
5. THAT, the County Chief Officer for Finance did not comply with the requirements of budget estimates and the appropriations act when confirming availability of funds to recruit new staff by ECPSB.
6. THAT, the ECPSB has been unable to do staff rationalization since 2013 something which has made some staff to continue being categorized as former County Council or otherwise (*vide annexure 11*).
7. THAT, the CEC Finance and Economic Planning and Chief Officer Finance were in contravention of Public Finance and Management Act, 2012 for unlawfully authorising availability of funds for recruitment of staff outside

approved budget estimates FY 2020/2021 and Embu County Appropriations Act, 2020 (*vide annexure 17 & 19*).

8. THAT, Embu County Public Service Board was aware existence of casual workers who were not in the payroll and whose source of salaries was not disclosed.
9. THAT, based on the staff establishment provided by the CEC Member Administration Public Service and Devolution, the county government had so many unutilised staff in the Embu County Public Service system (*vide annexure 9*).
10. THAT, there were Two Hundred and Thirty Two (232) staff who were seconded to ECRA and hence there was no emergency in recruiting extra staff (*vide annexure 11*).
11. THAT, whereas the ECRA chairman alluded that ECRA Board had held two meetings, the minutes as presented to the Committee were not authenticated (*annexure 11*).
12. THAT, the County Chief Officer for finance and the County Treasury when authorising availability of funds, were in contravention of the advisory of Office of The Controller of Budget (OCOB) on ensuring compliance in regard to appropriation of Personnel Emoluments (PE) within the recommended ceilings of not more than 35% of the total county revenue. (*vide annexure 15*).
13. THAT, ECPSB and Embu County Revenue Authority acted in total disregard of advisory of the approved report of Liaison Committee on The Budget Estimates for the Revenue and Expenditure of Embu County Government for FY 2020/21 concerning recruitment of ECRA staff whose budgetary requests were not approved by the county assembly (*vide annexure 12 and 17*).



## 5.0 COMMITTEE RECOMMENDATIONS

Upon considering the submissions by the Embu County Public Service Board, the ECRA, and the CEC Member Finance, the Committee came up with the following recommendations and remedies on the legal compliance of the workings and undertakings of the ECPSB;



1. THAT, the Chairman, the Secretary, and the Members of Embu County Public Service Board be held personally responsible accountable for the recruitment of new ECRA staff which was done by ECPSB contrary to the law, resolutions of the Assembly passed on 13<sup>th</sup> October 2020, the advisory of the Office of the Controller of the Budget (OCOB) Ref. COB/EMB/002/1(20) dated 15<sup>th</sup> June 2020, and the recommendations of the report of Budget Estimates for the FY 2020/2021 the Embu County Appropriations Act, 2020.
2. THAT, County Assembly consider invoking the provisions of Section 58 (5) of County Governments Act, 2012 and initiate the process of removal from office of the Chairman, members and Secretary of Embu County Public Service Board on grounds of serious violation and breach of various laws including Section 59 (g), (h), and (i) of the County Governments Act, 2012, Embu County Appropriations Act, 2020 and Regulations 25 (1),(b) of Public Finance Management ( County Government) Regulations, 2015.
3. THAT, the CEC Member for Finance who is also the head of County Treasury do ensure that the future budget estimates and the appropriation legislations comply with the provisions of Public Finance Management (County Government) Regulations, 2015.
4. THAT, the Embu County Public Service Board and any other entity or person, do comply forthwith, with the Assembly resolutions passed on 13<sup>th</sup> October 2020 on freezing of employments of ECRA staff.
5. THAT, the Count Public Service Board and any other entity or person do comply forthwith with the County Assembly resolutions passed in the report of County Fiscal Strategy Paper 2019 which recommended on the freezing of the recruitments of the new staff.

6. THAT, the County Public Service Board do review and align the County Staff Establishment to meet the County Budget Ceilings on wages and benefits at 35% of the county's total revenue as provided for in Regulation 25 (1) (b) of the Public Finance Management 2015(County government).
7. THAT, County Public Service Board do strictly adhere to Section 59 of the County Governments Act, 2012 in the performance of its duties.
8. THAT, within ninety (90) days upon adoption of this report, the Embu County Public Service Board in conjunction with the Head of County Public Service and the County Executive Committee Member responsible for Administration, Public Service and Devolution do a comprehensive staff rationalisation to ensure that all the existing staff are optimally used.
9. THAT, the County Assembly through the Committee on General Oversight do summon the CEC Member responsible for Finance and County Chief Officer for Finance to clarify their authorization of availability of funds to the Embu County Public Service Board vis-à-vis the current approved budget estimates and appropriation legislations.
10. THAT, ECRA adhere to the provisions of the Embu County Revenue Authority (ECRA) Act, 2017, especially Section 3 (1) which provides that, *The Board shall meet not more than 12 times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.*
11. THAT, the County Public Service Board prepare and forward to the County Assembly the following policy frameworks;
  - (a) Casual engagement, retention and release framework/policy
  - (b) Internship policy
  - (c) Contractual staff policy



## 6.0 CONCLUSION

The committee on Administration, Public Service and Devolution, therefore requests the House to consider the observations and recommendation and adopt the report.

1.	Hon. Sicily Ruguru Njiru	Vice Chairperson	
2.	Hon. Masters Leonard Muriuki	Member	
3.	Hon. Martin Mwangi Kimani	Member	
4.	Hon. Michael Njeru Kariuki	Member	
5.	Hon. Steve Mugendi Munene	Member	
6.	Hon. Judy Mbuya Njue	Member	

SIGNED: 

DATE: 21/12/2020

HON. DUNCAN IRERI MBUI,  
CHAIRMAN,

COMMITTEE ON ADMINISTRATION, PUBLIC SERVICE AND  
DEVOLUTION

The purpose of this report is to provide information regarding the activities of the [redacted] and its [redacted] in the [redacted] area.

Date	Location	Activity	Remarks
1/1/77	[redacted]	[redacted]	[redacted]
1/2/77	[redacted]	[redacted]	[redacted]
1/3/77	[redacted]	[redacted]	[redacted]
1/4/77	[redacted]	[redacted]	[redacted]
1/5/77	[redacted]	[redacted]	[redacted]
1/6/77	[redacted]	[redacted]	[redacted]

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Page 1

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