

16<sup>th</sup> February 2024

Hon: Moses Masika Wetangula  
The Speaker of the National Assembly  
E-mail: [cna@parliament.go.ke](mailto:cna@parliament.go.ke)

Hon: Amason Jeffa Kingi  
The Speaker of the Senate  
Email: [cSenate@parliament.go.ke](mailto:cSenate@parliament.go.ke)

**OPEN LETTER TO HON. MOSES MASIKA WETANGULA AND HON. AMASON JEFFA KINGI**

In the matter of violation of my constitutional rights under articles 2,37, 94,95,96,119 of the Constitution 2010 read with the National Assembly standing order 219,220(1)(a),(3),(4)&(5) and the Senate Standing order 225, 226(1)(a),(3),(4)&(5) aver as follows:

1. Mr. Speaker(s) Sir, my name is Bernard Muchere, a patriotic Kenyan citizen by birth, a retired public officer, and a former President of the Association of Certified Fraud Examiners Kenya Chapter (134)., it is my civic duty and inalienable right as a citizen of Kenya as provided under Article 2, & 119 of the Constitution of Kenya 2010 to present a petition to Parliament.

**Petition**

2. Mr Speaker(s) Sir, upon undertaking a fraud examination on the Standard Gauge Railway (hereinafter known as SGR), I established that it was used to siphon out over Ksh. 1.2 trillion Kenyan taxpayers' money. Based on this revelation, I petitioned in June 2023 the National Assembly and Senate to consider this grave matter under the above-captioned provisions of the Constitution 2010 and the National Assembly and the Senate Standing orders.
3. Mr. Speaker(s) Sir, despite the timeline of seven (7) days upon receipt of the petition for handling public petitions as provided under standing orders 220(3)&(4) and 225 (3)&(4) of the National Assembly and the Senate respectively, eight (8) months down the line my petition appears to have been shelved.

**Was My Petition Shelved for Reasons that China Road and Bridges Corporation is Considered by Parliament and Kenya's Executive as a Sovereign Corporation?**

4. Mr Speaker(s) Sir, I ask the above question based on the "*special report on the procurement and financing of the construction of standard gauge railway from*

*Mombasa to Nairobi (Phase I)*” dated April 2014 by the National Assembly’s Public Investment Committee (hereinafter known as PIC).

5. Mr. Speaker(s) sir, upon the PIC, inviting the China Road and Bridges Corporation’s (hereinafter known as CRBC) general manager vide letter KNA/PIC/CORR/2013/(13) dated 23<sup>rd</sup> January 2013 to adduce evidence, the Principal Secretary, Ministry of Foreign Affairs Kenya (hereinafter known as the PS/ MFA), received a note verbal, CEK14/018 of 4<sup>th</sup> February 2014 from the Embassy of the Peoples of Republic of China warning that questioning the manager is tantamount to questioning the government of China. On the same note, the PS/ MFA vide letter Ref No. MFA. REL. 13/38 dated 5<sup>th</sup> February 2014 warned the Committee that questioning the manager would have serious and irrevocable negative consequences for Kenya’s national interests and relations with China. Consequently, PIC members tucked their tails between their legs and never questioned the Manager.
6. Mr. Speaker(s) sir, this was highly misleading and an attempt to conceal the Ksh. 1.2 trillion SGR fraud as CRBC was registered in Kenya in 1984 by the Registrar of Companies Kenya under the Company Act. State corporations are not exempted from investigations whether in Kenya, in China, or anywhere in the world. CRBC was investigated by the World Bank and was debarred from World Bank-financed contracts from 12<sup>th</sup> January to 11<sup>th</sup> January 2017.
7. Mr. Speaker(s) sir, I am constrained to believe that shelving of my petition has nothing to do with these warnings from the Chinese big brothers.

**China Road and Bridges Corporation conceptualized the development of an Electric Train from Mombasa to Nairobi and offered to Finance the Construction. Did the Kenyan Executive and Parliament unpatriotically take over financing of SGR from CRBC, thus, burdening Kenyan taxpayers and downgrading the electric train to the Standard Gauge Railway?**

8. Mr Speaker(s) sir, the General Manager CRBC (Kenya) wrote to the Cabinet Minister for Transport on 15<sup>th</sup> April 2008 seeking to establish Kenya’s first electric railway system from Mombasa to Nairobi by use of three Turnkey financing models: (a) Direct investments from CRBC, Seller’s Credit from CRBC and Direct investment from other financial institutions. Financing Turnkey Contract is the responsibility of an EPC contractor (CRBC). CRBC included cunningly Buyer’s credit from GOK which is not a turnkey financing model.
9. Mr. Speaker(s) sir, despite CRBC's offer to use its resources to develop an electric railway system, the Financial Secretary/ National Treasury Kenya, wrote two letters,

Ref. No. EA/FA 214/78/01 dated 2<sup>nd</sup> & 10<sup>th</sup> October 2012 to the Ambassador of the People's Republic of China requesting financing of a Standard Gauge Railway (downgrading the electric train), through an extraordinary preferential buyer credit loan aggregating to approximately USD 4.13 billion.

10. Mr Speaker(s) sir, in the course of development of the SGR between 2013/2014 and 2019/2020, the same Financial Secretary issued SGR GOK grants from Kenyans tax revenues to Kenya Railway Corporation aggregating to approximately Ksh. 695 billion for payment to CRBC in Kenya and on the other hand, executed irrevocable notice of drawdown aggregating to approximately Ksh, 539 billion for payment of CRBC in China and crediting the same amount as loan in a purported GOK account in Exim Bank of China. This means the payment to CRBC aggregated to approximately Ksh. 1.2 trillion against the contracted sum of approximately Ksh. 475 billion.
11. Mr Speaker(s) sir, it begs the question, **was there a need to have borrowed the Exim Bank of China loan given that Kenyan taxpayers over-financed the SGR with approximately Ksh. 695 billion against the Contracted sum of approximately 475 billion?**

**Unconstitutional Amendment of Article 206(1) of the Constitution through amending section 50(7) of the Public Finance Management Act, 2012 enabling nonpayment of purported USD 5 billion SGR Exim Bank of China loan into the Consolidated Fund**

12. Mr Speaker(s) sir, in May 2014 Parliament amended section 50(7) of the Public Finance Management Act, 2012, whereby, it added two exemptions (c)&(d) on top of the exemption under Article 206(1)(a)&(b), exempting money raised by the National Government from being paid into the consolidated fund. **Were the added exemptions intended to exempt the purported USD 5 billion SGR Exim Bank of China loan from being paid into the Consolidated Fund?**
13. Mr Speaker(s) sir, the main constitutional responsibility of the Kenyan Parliament is to enact Laws to safeguard Kenyan citizens' resources. **Was the Unconstitutional amendment of Article 206(1) of the Constitution through amending section 50(7) of the Public Finance Management Act, 2012 meant to safeguard Kenyan citizen resources or the Chinese citizen resources?**
14. Mr. Speaker(s) sir, the figures used in this open letter are derived from two fraud examination reports that I authored as a concerned citizen and were the basis of my SGR petition. The reports were titled, **“Fraud Perspective on Mombasa-Nairobi-Naivasha Standard Gauge Railway (SGR) Contract(s) and Loan(s)”** and **“Fraud Perspective on Kenya Railway Corporation’s (KRC) Financial Statements Report**

**Relating to Standard Gauge Railway Contracts and Loans**". I copied the reports to the Cabinet Secretaries for the National Treasury, and Infrastructure & Transport, the Principal Secretaries for the National Treasury, and Transport, The Attorney General, the Managing Director/ Kenya Railway Corporation, the Auditor General, and the Controller of Budget. It is now one year since I submitted copies of the reports to the responsible state officers and none of them have ever rebutted any of its content.

Mr Speaker(s) sir, based on the above-enumerated facts contained in my petition which appear to implicate the Kenyan Executive, Parliament, and the Chinese big brothers, am constrained to believe that this might not be the reason for shelving my SGR petition.



Bernard Muchere, CFE  
Fraud Risk Management  
Consultant