

COUNTY GOVERNMENT OF NAIROBI CITY



SECOND ASSEMBLY

THE NAIROBI CITY COUNTY ASSEMBLY
(FOURTH SESSION)

COMMUNICATION FROM THE CHAIR

No. 3 of 2020

GUIDANCE ON THE CONSIDERATION OF THE IMPEACHMENT MOTION OF THE GOVERNOR

Honorable Members, I have the following Communication to convey -

Honorable Members, you will recall that on **Thursday, 20th February, 2020**, the Hon. Peter Imwatok, MCA, Member for Makongeni Ward issued a Notice of Motion for removal from office of Hon. Mike Mbuvi Kioko Sonko, the Governor of the Nairobi City County by impeachment, pursuant to Article 181(1) (a), (b), (c) of the Constitution, Section 33 of the County Governments Act, 2012, and Standing Order 67. In this regard, **Honorable Members,** the Chair wishes to guide Members on how the Assembly shall dispense off with this business.

Honourable Members, before I proceed to issue my guidance to the House, I wish to remind the Assembly that impeachment is a process by which a legislative body levels charges against a government or political officials for offences the official might have committed. The power of impeachment is limited to removal from office but may also provide for a removed officer/leader to be disqualified from holding future office. In the United States of America for instance, the Constitution gives the House of Representatives the power to initiate the impeachment process, and it makes the Senate the sole court for impeachment trials. In our case, County Assemblies have been mandated to recommend to the Senate the impeachment of a Governor and the Senate serves as the

final jury. The Senate before taking a decision on impeachment has to investigate allegations raised including summoning witnesses.

Honourable Members, from the onset, Standing Order number 67 (4) provides as follows:-

*“(4) Upon the expiry of seven (7) days, after notice given, the Motion shall be placed on the Order Paper and shall be disposed of within **three days**; Provided that if the County Assembly is not then sitting, the Speaker shall summon the Assembly to meet on and cause the Motion to be considered at that meeting after notice has been given.*

Honorable Members, for the interest of the House and the Public, the aforementioned seven (7) days relating to the maturity period of this Motion refers to ‘calendar days’. The implication of the forgoing is that the motion shall mature on **Thursday 27th February, 2020**. In addition, **Honourable Members**, the Assembly is required to dispense off with the motion within three (3) days following the expiration of the seven (7) days. For avoidance of doubt, the three (3) days mentioned therein refers to ‘sitting days’ as provided for in Standing Order 2 on interpretation. For clarity, the three sitting days shall be; **Tuesday 3rd, Wednesday 4th and Thursday, 5th March, 2020**.

Further, **Honourable Members**, Standing Order 67 (5) and (6) provides as follows:-

“(5) When the Order for the Motion is read, the Speaker shall refuse to allow the member to move the Motion, unless the Speaker is satisfied that the member is supported by at least a third of all Members of the County Assembly to move the Motion; Provided that within the seven days’ notice, the Clerk shall cause to be prepared and deposited in his office a list of all Members of the County

Assembly with an open space against each name for purposes of appending signatures.”

(6) Any signature appended to the list as provided under paragraph (5) shall not be withdrawn.

Accordingly, **Honourable Members**, during our last sitting, there was a contestation on the understanding of the holder of the position of ‘Clerk’. For avoidance of doubt, I wish to clarify that Standing Order 2 on interpretation defines ‘Clerk’ as follows:- *“Clerk” means the Clerk of the County Assembly, or, if the Clerk is absent, or if the office is vacant, such other person as is for the time being performing the duties of the Clerk*”. Equally, **Honourable Members**, the Leader of the Majority had indicated to the Chair that he needed to verify the signatures presented. However, as mentioned, the role of verifying signatures is a preserve of the Clerk. However, I wish to inform the Assembly that fifty five (55) members appended their signatures. Regrettably, **Honourable Members**, the Chair is concerned that some of the Members who appended their signatures in support of the Motion have been threatened. The Chair takes these actions seriously and shall not shy away from invoking the applicable provisions of the County Assemblies Powers and Privileges Act, 2017 in protecting the Members since that is the Chair’s duty. I therefore direct the Office of the Clerk to apply the provisions of Standing Order 234 and ensure that the identity of the Members is protected until such a time the matter shall be referred to the Senate in the event the motion is carried. Similarly, **Honourable Members**, paragraph (6) restrains Members from withdrawing already appended signatures in support of this Motion.

Honourable Members, Article 47 of the Constitution of Kenya, 2010 on fair administrative action provides; *“every person has the right to*

administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair''. Equally, **Honourable Members**, the Chair wishes to refer you to the High Court Petition No 3 of 2014, *Martin Nyaga Wambora and others vs the Speaker of the Senate and others*, in which a three judge bench comprising of H.I Ong'udi, C. W Githua, B. N.Olao observed that: *“Even though Section 33(1) of the County Governments Act, 2012 does not provide expressly for the right to be heard, we are alive to the rule that there is a presumption in the interpretation of statutes that rules of natural Justice will apply whenever administrative decisions with a potential to adversely affect an individual are made. It is therefore clear in our mind the right to be heard should apply whenever Section 33(1) of the Act is being invoked by any County Assembly.”*

Honourable Members, with the forgoing, I direct that the Office of the Clerk notifies the Governor to submit written replies to the allegations raised in the Notice of Motion which should be received on or before **Monday, 2nd March, 2020 at 10.00 am**. Once in receipt of the replies, if any, the Clerk shall cause dissemination of the copies to all Members before the sitting of **Tuesday, 3rd March, 2020**. Consequently, I direct the Office of the Clerk to serve the Governor with the Notice of Motion.

Subsequently, **Honourable Members**, Article 196(1) (b) of the Constitution provides that *“a County Assembly shall facilitate public participation and involvement in the legislative and other business of the Assembly and its Committees”*. In this regard, **Honourable Members**, to satisfy the requirements of the said provisions, Members of the Public are requested to submit written memoranda on this matter. I therefore direct the Office of the Clerk to place a notice in atleast two local dailies of national circulation requesting for the said submissions.

Honourable Members, during the consideration the Motion at hand, the House shall be guided by the provisions of Standing Order 49 on consideration of a 'special motion'. In this regard, the mover shall be allowed a maximum of two (2) hours while moving and a maximum of thirty (30) minutes while replying. While all other Members shall be allowed a maximum of fifteen (15) minutes. **Honourable Members**, at the conclusion of debate on the motion, and the Chair having been satisfied that all members intending to contribute have done so, a vote on the motion shall be taken and this shall be done on or before the third sitting day.

Honourable Members, in conclusion, the Chair wishes to remind Members on the provisions of Standing Order 113 and 114 on gross misconduct and the sanctions therein. Equally, I refer you to the provisions of Section 28 of the County Assemblies Powers and Privileges Act, 2017 on improper influence of Members and the sanctions therein as we dispense off with this business. For the purposes of clarity, the said Section provides as follows:-

(1) A person shall not, by fraud, intimidation, force, insult or threat of any kind, or by the offer or promise of any inducement or benefit of any kind, or by any other improper means –

(a) influence a member in the performance of the member's functions as a member;

(b) induce a member to be absent from a county assembly or a committee at a particular time; or attempt to compel a member to declare himself or herself in favour or against a matter pending before or proposed or expected to be submitted to a county assembly or a committee.

(2) A member shall not solicit, receive or accept any fee, compensation, gift, reward, favour or benefit of any kind for the member or another person for in respect of–

(a) voting in any particular manner or not voting on a matter before a county assembly;

(b) promoting or opposing anything pending before or proposed or expected to be submitted to a county assembly; or

(c) making a representation to a county assembly.

(3) A person who contravenes this section commits an offence.

Honourable Members, therefore I urge you to observe these provisions of the law as we execute this process.

For your interest **Hon. Members**, kindly note that the Chair, Pursuant to the Provision of Standing Order No. 1 of the Assembly Standing Orders, may issue further directions as and when the need arises with regard to this particular Motion before this Assembly.

You are so guided.

I thank you Honorable Members.

THE HON. BEATRICE ELACHI, CBS
SPEAKER OF THE NAIROBI CITY COUNTY ASSEMBLY
Tuesday, 25th February, 2020