

COUNTY GOVERNMENT OF NAIROBI CITY



SECOND ASSEMBLY

THE NAIROBI CITY COUNTY ASSEMBLY
(FOURTH SESSION)

COMMUNICATION FROM THE CHAIR

No. 12 of 2020

GUIDANCE ON BUSINESS BEFORE THE ASSEMBLY

Hon. Members,

I have the following communication to convey:-

- i.) **Guidance on the consideration of the Report of the Select Committee on Powers and Privileges.**

Hon. Members, without appearing to pre-empt debate on business of today's sitting, I am compelled to guide the Assembly on the legality or otherwise of the scheduled business particularly, the Report of the Select Committee on Powers and Privileges which the House is set to consider. Notably, the matter before the Assembly relates to allegations of absenteeism of Hon. Abdi I Hassan, MCA raised on the floor of the Assembly on **Tuesday, 16th March, 2020**. While Standing Order 242 require that the matter be dispensed within fourteen (14) days, you will note that due to the Covid - 19 pandemic, the Assembly adjourned indefinitely which coincided with the long recess. Additionally, most Members of the Assembly had travelled outside the Nairobi Metropolis thus they could not access the precincts. As such, **Hon. Members,** following our resumption of sittings and the adoption of the virtual sittings of Committees, the Committee had to fast-track this matter.

In this regard **Hon. Members,** my guidance is limited to the extent that there is a Court Order issued on **8th June, 2020** by **Hon. Mr. Justice Korir**, whose net effect is to stop this House from considering the said report. Hon. Members, allowing this Order without clarifying certain facts which the Honorable Court may not have been informed by the petitioner would be doing a disservice. First and foremost, **Hon. Members,** the Petition alludes to one **Hon. Abdi Hassan Guyo** while our

records show that the Member in question and who swore in this Assembly is **Hon. Abdi Ibrahim Hassan** whose identification number is 27947751. Thus the Orders are defective to that extend.

Secondly **Hon. Members**, Article 185 of the Constitution vests legislative authority of the County in its County Assembly. The Constitution goes further to mention in Article 196 that Parliament shall enact legislation providing for the Powers, Privileges and Immunities of County Assemblies, their Committees and Members. To this end, Parliament in its wisdom enacted the County Assemblies Powers and Privileges Act, 2017 which in Section 10 provides as follows:-

“10 Proceedings not to be questioned in court

No proceedings or decision of a county assembly or the Committee of Powers and Privileges acting in accordance with this Act shall be questioned in any court”

Section 11 of the said Act further expounds as follows:-

“11 Immunity from legal proceedings

(1) No civil or criminal proceedings shall be instituted against any Member for words spoken before, or written in a report to a county assembly or a Committee, or by reason of any matter or thing brought by him or her therein by a report, petition, Bill, resolution, motion or other document written to a county assembly.

(2) No civil suit shall be commenced against the Speaker, the leader of the majority party, the leader of the minority party, a chairperson of a committees or any member for any act done or ordered by them in the discharge of the functions of their office.

Further, Section 14 of the County Governments Act, 2012 gives a County Assembly powers to enact Standing Orders to regulate its procedure including, in particular, orders for the proper conduct of its proceedings.

Hon. Members, the implication of these provisions of the law is that the legislative power of this Assembly cannot be impeded by any person or authority outside this Assembly. Indeed, this has been the practice adopted by various legislatures across the Commonwealth Jurisdiction and it is founded on the principle of separation of powers and checks and balances. Accordingly **Hon. Members**, while not appearing to cast aspersion on the Judge and the Court, the far the court can go is to review the decisions (outcomes) of this Assembly and not to injunct us from carrying out our legislative roles.

Hon. Members, in view of the above, I direct that the Order of the Court of 8th June, 2020, does not and indeed cannot prevent this County Assembly from carrying out its legislative function. Consequently, **Hon. Members**, this business shall be transacted as scheduled in the Order Paper.

ii.) Coopting of Members to the Sub-Committee on Emerging Issues

Hon. Members, as you are aware, there are various issues that have emerged following the outbreak of the Covid-19 pandemic and the establishment of the Nairobi Metropolitan Services. These issues have a direct impact in the manner we shall be conducting business in this Assembly. As such, Hon. Members, due to the complexity of these emerging issues, there is need for unfettered attention by the Assembly Leadership particularly the Service Board in order to develop policies that will guide the Assembly on how it operates going forward. Accordingly **Hon. Members**, in order to assist the Speaker and the Assembly leadership to develop these policies, I have today, after extensive consultation with the house leadership, co-opted the following Members into a Sub-Committee of the Service Board to with a mandate of addressing the aforementioned emerging issues:-

1. The Hon. Chege Mwaura, MCA
2. The Hon. Susan Makungi, MCA
3. The Hon. Muchene Kabiro, MCA
4. The Hon. Jocyce Muthini, MCA
5. The Hon. Mwaura Samora, MCA
6. The Hon. Cecilia Ayot, MCA
7. The Hon. Francis Ngesa, MCA
8. The Hon. Clarence Munga, MCA
9. The Hon. Moses Ogeto, MCA

Hon. Members, this Sub-Committee shall commence its work with immediate effect and shall make regular reports to the Assembly Leadership and the Service Board. I wish the Members all the best as they commence their duties.

You are so guided!

I thank you Honorable Members.

The Hon. Beatrice Elachi, CBS
SPEAKER OF THE NAIROBI CITY COUNTY
Tuesday, 9th June, 2020