

COUNTY GOVERNMENT OF NAIROBI CITY



SECOND ASSEMBLY

THE NAIROBI CITY COUNTY ASSEMBLY
(FOURTH SESSION)

COMMUNICATION FROM THE CHAIR

No. 14 of 2020

RULING ON THE MATTER OF CHANGES IN MAJORITY PARTY'S LEADERSHIP IN THE COUNTY ASSEMBLY

Hon. Members,

You will recall that on **Tuesday, 2nd June, 2020** during the afternoon sitting, I had indicated to the house that I would issue a considered ruling on the admissibility or otherwise of a letter from the Jubilee Party dated **28th May, 2020** regarding the party's intention to change its leadership in the County Assembly. However, **Hon. Members**, as you are all aware, the events of that afternoon could not allow me to deliver the said ruling.

In view of the above, **Hon. Members**, I now wish to rule as follows:-

Hon. Members,

The decision to change party leadership in the County Assembly is a preserve of the Political Party in question, however, the same is governed by our Standing Orders specifically Standing Order 20 (7), (8) and (9). Similarly, there are several other precedents in both this Assembly and our National Parliament that can be referred to. In fact, the Senate is the recent house to have undergone this process.

Hon. Members, let me emphasis that the Speaker is blind to affairs of political parties represented in the County Assembly. **My role, if any, is to arbitrate conflicts that may arise on the floor**. Indeed, this was affirmed by a ruling of **Hon. Jonathan Lucas Hunt, M.P.**, the then Speaker of the New Zealand House of Representatives whom while giving direction on the nexus between Parties and the House, and how their affairs in as far as the House is concerned, noted as follows, and I quote:-

"... that whether under the Standing Orders or the Electoral Act, the Speaker is not concerned with what persons outside the House do, but only with what members of the House do by way of giving formal advice of changes to party arrangements through the mechanisms provided for in the Standing orders. That the Speaker only acts on formal

advice and does not take the initiative. How members conduct themselves politically is a matter for them to determine (sic)''.

Hon. Members,

My role as the Chair is to guide the Assembly to ensure strict adherence to our Standing Orders and precedents set. As an independent and impartial arbiter, I am only guided by the law as presently enacted. Indeed, on many occasions, myself and other Chairs who have occupied this seat have always rose to the occasion and provided the necessary guidance when questions of law and procedure have been raised.

Hon. Members,

On the procedure for removal and designation of the Majority Party Leadership, Standing Order 20 provides in part as follows and I quote:-

20. (1) The largest party or coalition of parties in the County Assembly shall designate a Member of the County Assembly belonging to the party or coalition of parties to be the Leader of the Majority Party;

(7) A member designated under paragraph (1), may be removed by the party or coalition of parties that designated him or her by two thirds of votes of all members of the largest party or coalition of parties in the County Assembly;

(8) The whip of the largest party or coalition of parties in the County Assembly shall forthwith, upon a decision being made under this standing Order, communicate to the Speaker, in writing, the decision together with the minutes of the meeting at which the decision was made.

(9) The removal of a member from office under paragraph (7) shall be followed by the designation of such member in his place in the manner provided for under paragraph 1 of this Standing Order within 48 hours.

Hon. Members,

Before I address the matter at hand, first, I have reflected on the letter by the Jubilee Party against the provisions of law and isolated the following facts that I need to address;

- i.) Whether a letter from a Secretary General of a political party can communicate a decision to effect changes in the party's house leadership;*
- ii.) Whether the threshold prescribed by Standing Order 20 has been met by the Jubilee Party to cause changes in the Assembly leadership;*
- iii.) Whether our Standing Orders allow for interim party leadership in the Assembly as alluded in the said letter; and*

iv.) My previous advice to the Party on the leadership progress in the County Assembly following the changes made in November 2019 by both Political Parties represented in the County Assembly.

Hon. Members,

As I have already indicated, the matter before hand is not unique to this Assembly. Indeed, precedents have already been set in this Assembly, the Senate, and indeed across various legislatures in the commonwealth jurisdictions. I therefore find it prudent to make reference to the precedents so set elsewhere and draw on a full range of procedural information available to determine how the Standing Orders have been applied and interpreted in the past with relation to the matter. In that sense, I have looked at the guidance of **Hon. Chege Mwaura, MCA** issued on **Tuesday, November 6th, 2018**, while in this chair, when a matter for removal of the Minority Leadership was brought before him. Secondly, I have reviewed the rulings of Speaker of the Senate, **Sen. Kenneth Lusaka, M.P, EGH**, issued on **15th March, 2018** when a similar question of removal of the Leader of the Minority Party was raised and subsequently on **12th May, 2020** when the Jubilee Party changed its leadership in the Senate. Lastly, I have reviewed processes used by both NASA Coalition and Jubilee Party to change/designate the current leadership in this Assembly.

Hon. Members,

In order to refresh the memory of Members, with regard to the removal of the **Hon. Sen. Moses Wetangula, M.P.**, as the Leader of the Minority Party in the Senate and his replacement thereof with **Sen. James Orengo, MP, SC**, pursuant to Standing Order No. 20, (4) (5) and (6) of the Senate Standing Orders. The decision to effect changes on the Senate Minority Party Leadership was communicated through a letter from the Senate Minority Party Whip, Sen. Mutula Kilonzo Jrn. on 15th March, 2018. This letter was premised on a letter from the ODM Party, with minutes of the resolution attached, as signed by 16 out of the 27 Senators affiliated to the NASA Coalition, confirming the said resolution. The Speaker of the Senate therefore allowed the changes on the strength of the Minority Whips letter and the minutes thereto.

Hon. Members, with regards to the replacement of **Hon. Sen. Onesmus Kipchumba Murkomen, MP**, and **Hon. Sen. Susan Kihika, MP** as the Majority Leader and Majority Chief Whip of the Senate respectively, Speaker Lusaka informed the House that the decision was communicated to his office by the Office of the Deputy Minority Whip, Hon. Sen. Irungu Kang'ata, MP. The Speaker noted that the letter by Hon. Sen. Kang'ata was accompanied with the following documents amongst others:-

- i.) *Minutes of the Jubilee Parliamentary Coalition meetings dated 11th May, 2020, which is a record of the proceedings of the meeting together with resolutions; and*
- ii.) *Duly signed list of Senators who attended the meeting.*

Hon. Members, the Hon. Speaker of the Senate went further to note that the minutes showed that twenty (20) Senators attended the meeting and resolved unanimously to change the leadership. The Hon. Speaker was thus satisfied that the changes were made in accordance with Senate Standing Order 19 (1), (2), (3) (4), (5) and (7) and met the threshold required under Standing Order No. 19 (5) and he consequently conveyed the new leadership of the Jubilee Party in the Senate thus effecting the changes of the majority party.

Hon. Members, in the same breath, Hon. Chege Mwaura, MCA while in the Chair, in this House, communicated that he had received a letter dated 25th October 2018 from the Chairperson of the ODM Party, Hon. John Mbadi, M.P., communicating the ODM Party's decision to recall its earlier letter appointing the Hon. Elias Otieno, MCA, as Leader of the Minority and the Hon. Peter Imwatok, MCA as the Minority Whip and in their respective places, appointed the Hon. Kennedy Oyugi, MCA as Leader of the Minority and Hon. Nicholas Okumu Ouma, MCA as Minority Whip. In his finding, the Chair observed that since the said communication emanated from the Office of Hon. John Mbadi, M.P., being the Chairperson of the ODM Party and the Minority Party Leader in the National Assembly, it contradicted the provisions of Standing Order 20 (8), which domiciles the authority to communicate such party decisions in the ambit of the minority party whip. The Chair held that Hon. John Mbadi, CBS, M.P., is not, and indeed cannot purport to be, the Minority Party Whip for an Assembly to which he does not belong. Further, the Chair noted that the said communication was not accompanied by minutes of the NASA coalition's meeting, and therefore did not comply with Standing Order 20 (8). **To that extend, Hon. Mwaura declined to effect the changes in the Minority Coalition as communicated by the ODM Chairman.**

Honorable Members, I will now turn to the issues I have identified that require my determination with respect to the County Assembly Majority Leadership as follows:-

- I. *Whether a letter from a Secretary General of a political party can communicate a decision to effect changes in the party's house leadership;*

Hon. Members, Standing Order 20 (8) speaks in mandatory terms that any changes in the majority party leadership shall be communicated to the Speaker in writing by the whip of the largest party or coalition of parties in the County Assembly. It further provides that the communication should be accompanied by minutes of the meeting at which the decision was met. This position was indeed

affirmed by two rulings of the Speaker of the Senate, the Rt. Hon. Sen. Ken Lusaka, EGH as already explained in this guidance. Further, Hon. Chege Mwaura while in the Chair also re-affirmed this position. In the current circumstance, the decision to effect the changes was communicated to my office by the Secretary General of the Jubilee Party who is certainly not the Majority Whip in this County Assembly. **Further, the said letter is not accompanied with any minutes in support of the decision or attendance list of a meeting where the decision was made.**

II. Whether our Standing Orders allow for interim party leadership in the Assembly as alluded in the said letter;

Hon. Members, the letter from Jubilee Party allude to the fact that the current Majority Leadership is interim. I am reminded that the position of the Majority Leader or Minority Leader is created pursuant to Section 10 of the County Governments Act, 2012 which provides in part as follows:-

“ (1) There shall be in each county assembly a leader of the majority party and a leader of the minority party.

(2) The leader of the majority party shall be the person who is the leader of the largest party or coalition of parties in the county assembly.

(3) The leader of the minority party shall be the person who is the leader of the second largest party or coalition of parties in the county assembly.”

Hon. Members, the aforementioned provisions are operationalized by Standing Orders 20 and 21 which provides that the largest political party or coalition of parties and the second largest political party or coalition of parties shall designate in the County Assembly the leaders of the majority or minority respectively. **Hon. Members**, a reading of these provisions of the law does not contemplate a situation where the parties/coalitions can designate interim leaders. As far as the County Assembly is concerned, once a leadership has procedurally been removed and replaced, it does not concern the County Assembly whether in the eyes of the party the leadership so designated is interim or not. To this end, **Hon. Members**, in as much as there is no provision in law and practice providing for interim leadership in the County Assembly, the Speaker cannot purport to assume and hold that a particular leadership in the County Assembly is interim since that is not in the Speaker’s purview. **Hon. Members**, indeed, a political party has the onus of nominating its leadership in the Assembly, after the elections, however, thereafter, the process of replacement and removal shall be fully subjected to the rules and procedures of this house.

III. My previous advice to the Party on the leadership progress in the County Assembly following the changes made in November 2019 by both Political Parties represented in the County Assembly.

Hon. Members, we are all a live to the circumstances leading to the current leadership. Indeed, in the month of October 2019 or thereabout, the County Assembly faced serious leadership challenges. The situation had deteriorated to an extent that no business could be transacted in the County Assembly and Assembly precincts had turned out to be an arena of physical confrontation/fist fights among Members. This situation necessitated both Jubilee Party and NASA coalition, **upon following the appropriate procedure**, to effect changes in their leadership. Six (6) months after the changes, I wrote to the Jubilee Party, vide a letter **Ref. NBI/SPK/JUB/04/01** dated **25th April 2020** **enumerating the stability that the Assembly was enjoying and the achievements of the new leadership**. I also informed the Party that the former leaders, Hon. Elias Otieno (former leader of Minority) is currently under suspension for a period of three (3) calendar months for missing more than 8 sittings as determined by the Select Committee on Powers and Privileges and the same awaited the former Leader of Majority, Hon. Abdi I Hassan who had missed eleven (11) consecutive sittings. Indeed this was confirmed on **Tuesday 9th June 2020** when this Assembly adopted the report of the Select Committee on Powers and Privileges. It is therefore surprising that the former majority leader is one of the nominees by the Party even after the Chair forewarned the Party on the likelihood of the Member facing a suspension for breach of both the Constitution and the Standing Orders.

Hon. Members, with the forgoing, my last task, which is the mainstay of my ruling on this matter, is to determine whether the letter by the Jubilee Party meets the threshold provided for under Standing Order 20 to cause changes in the majority leadership in the Assembly. **Honorable Members**, having carefully set out and analyzed the issues for determination and while emphasizing that the Chair has no role in the internal affairs of political parties other than interpreting the law, I make the following determination on this matter:-

- i.) **THAT**, the intended changes by the Jubilee Party falls short of the requirements of Standing Order 20, which contemplate such decision to be supported by evidence of a two thirds vote by the membership of a Party or Coalition of Parties in the Assembly, as evidenced by Minutes of such Resolution and as Communicated by the Whip of the Majority/Minority party or Coalition of Parties;
- ii.) **THAT**, the assertion that the current Majority Leadership in the County Assembly is interim does not stand since the law as presently enacted does not contemplate a political party to designate/appoint/elect interim leaders in the County Assembly;
- iii.) **THAT**, a Member who has been suspended from Assembly Sittings for a period of **four (4) Months Assembly** sittings cannot assume a role of House Leadership since such a Member cannot transact business in the

County Assembly. Allowing this would lead to paralysis of Assembly business.

In view of the foregoing, **Hon. Members, I am unable to act on the correspondence from the Secretary General of the Jubilee Party and cannot effect the desired changes in the form so presented.**

Finally, **Honorable Members**, as the Speaker of the Assembly, I am bound to apply the rules of the Assembly without fear or favour, especially in cases where the Standing Orders have expressly provided for the matter in question. To ensure the orderly flow of business, and the maintenance of order and stability, this Assembly observes parliamentary rules and traditions, both written and unwritten. It is the Speaker's duty to interpret these rules impartially, to maintain order, and to defend the rights and privileges of all Members regardless of their positions.

The Assembly and indeed all parties interested in the matter are accordingly guided.

I thank you Hon. Members.

The Hon. Beatrice Elachi, CBS
SPEAKER OF THE NAIROBI CITY COUNTY

Thursday 11th June, 2020.