



NAIROBI CITY COUNTY ASSEMBLY

OFFICIAL REPORT

First County Assembly – Third Session

Tuesday, 24th March, 2015

The House met at 2:30 p.m.

(Hon. Speaker on the Chair, Mr. Alex Ole Magelo)

PRAYERS

Hon. Speaker: Sergeant-At-Arms there is too much noise on the other side.

COMMUNICATION FROM THE CHAIR.

ATTENDANCE OF PLENARY SITTINGS

Hon. Speaker: Once again good afternoon Hon. Members, I have the following communication to make. Hon. Members you recall that on Wednesday 26th February, 2014 and on Tuesday 4th March, 2014 the Chair issued separate but similar communication regarding the quorum hitches that are arising out of lack of attendance of plenary sitting by Members. The Chair then committed to observe the situation over a week's period and take the necessary action if no change is recorded in the attendance of plenary sittings. Hon. Members the overall effect of the communication was that Members increase the attendance of plenary and quorum hitches were greatly reduced. However Hon. Members, I wish to note with alarm that the Chair has noted the trend of sneaking by quorum hitches continue to impede the conduct of business before the Assembly.

Hon. Members, I wish to remind you of the following, you are all aware that Article 194 (1) (b) of the Constitution on Vacation of office of Member of County Assembly and Standing Order 230 provide for modalities of dealing with Members who persistently miss plenary Sittings.

Standing Order 230(1) provide as follows:-

If, during any Session, a Member is absent from eight sittings of the County Assembly without permission, in writing from the Speaker, the Speaker shall report the matter to the County Assembly and the matter shall stand referred to the Committee of Privileges for hearing and determination.

The provision summarises as follows regarding a Member found to have flouted this provision:-

At the conclusion of the debate on a Motion under paragraph (4), the Speaker shall not put a question but shall declare that, pursuant to Article 103 (1) (b) of the Constitution, the office of the Member concerned has become vacant. Hon. Members, in order not to force the Chair to act in this very punitive manner, it is in your own best interest to attend plenary sittings or inform the Chair of your absence by way of written notice. Henceforth, the Chair shall not take lightly the lack of attendance of plenary Sittings without written request for such absence, particularly if persistent and prolonged.

Henceforth, as per SRC circular on allowances for Members, you are all aware that every Member is entitled to eight Sittings per week. Broken down, the implication of the foregoing is that Members get sitting allowances for three plenary Sittings and five Committee Sittings. These requirements are currently being implemented and will be strictly observed. A Member who attends eight Committee Sittings without having attended any plenary shall forfeit three plenary Sittings as provided for by the SRC. You are advised accordingly.

DECORUM/DRESS CODE DURING PLENARY/COMMITTEE MEETINGS

Hon. Members, on Tuesday 4th March, 2014, the Chair made a Communication regarding decorum both during plenary and in Committee meetings, in which he guided on the mode of dressing and presentation for plenary and Committee Sittings. However, the Chair has noted with utmost concern that Members are increasingly flouting our own provisions on the foregoing matter. It has since come to my attention that the matter needs revisiting.

I wish to further guide as follows. Hon. Members, by practice and procedure, and by interpretation of Standing Order 177, a Committee of the Assembly is merely an extension of the Assembly. The procedure, practice, precedence and customs that apply to the plenary therefore directly apply to Committee Sittings. The Chair therefore takes great exception to Members who are increasingly attending Plenary and Committee Sittings in t-shirts, open shoes, or other unauthorized attire. By its very nature, the implications of this being an Honorable and August Assembly are that our dressing and mannerisms be formal and respectful.

Hon. Members henceforth, the Chair will not take lightly to Members whose dressing and mannerisms during plenary and Committee Sittings bring the reputation of the Assembly into disrepute. The Chair shall henceforth deal firmly with Members found flouting the Standing Orders and Speaker's Rules on attire and presentation during plenary. Chairpersons of Committees are also advised to strictly enforce the provisions of our regulations and the Speakers Rules on this matter. Thank you.

PAPERS

Hon. Leader of Majority (Mr. Elias Otieno): Thank you Mr. Speaker for allowing me to come and lay the paper. I beg to lay the following paper on the table of the Assembly today Tuesday 24th March, 2015. The report of the Auditor General on the financial statements of Nairobi City County Assembly Service Board Car Loan Scheme Fund for the year ended 20th June, 2014.

Mr. Speaker, I beg to lay the following paper on the table of the Assembly today Tuesday 24th March, 2015. County Debt Management Strategy Paper for the financial year 2015/2016, I beg to lay.

Hon. Speaker: Thank you Hon. Leader of Majority. Hon. Members, the report on the Auditor General on financial statement of Nairobi City County Assembly Service Board Car Loan Scheme Fund for the year ending 20th June, 2014 goes to PAC. The County Debt Management Strategy Paper for the financial year goes to Budget Committee.

Chairperson Sectoral Committee on Health Services.

Hon. Member for Nairobi South Ward (Mr. Manoah Mboku): Thank you Mr. Speaker. Pursuant to Standing Order number 180 (6) I beg to lay the following paper on the table of the Assembly today Tuesday 24th March, 2015. The fourteenth report of the Sectoral Committee on Health Services on the inspection visit to Jericho Health Centre.

Thank you Mr. Speaker once again. Pursuant to Standing Order number 180(6) I beg to lay the following paper on the table of the Assembly today 25th March 2015, the 13th Report of the Sectoral Committee on Health Services on the inspection visit to Umoja 1 Health Centre, thank you

Hon. Speaker: Thank you very much Hon. Chairperson of Health.

NOTICES OF MOTION

Hon. Manoah Mboku: Thank you Mr. Speaker, I beg to give Notice of the following Motions:

THAT, this Assembly adopts the Report of Sectoral Committee on Health Services on inspection visit to Jericho Health Centre laid on the table of the Assembly today 24th March, 2015 thank you.

THAT, this Assembly adopts the Report of Sectoral Committee on Health Services on inspection visit to Umoja 1 Health Centre laid on the table of the Assembly today on 24th March, 2015, thank you.

STATEMENTS

Hon. Member for Laini Saba Ward (Mr. Boniface Kitavi): Hon. Speaker pursuant to Standing Order 41(2) (c) I wish to request for a statement from the Chairperson of the Select Committee on Budget and Appropriations regarding the payment of Members of the taskforce on the improvement of performance of public primary schools and transition from primary to secondary education of Nairobi City County.

Hon Speaker on 6th March, 2014 the Governor of Nairobi City County launched a taskforce whose mandate was to recommend to the County Government measures to improve the performance of education in public schools and institutions. The Committee was to be guided by the gazette notice 1205 of 28th February. 2014.

Hon. Speaker in the statement the Chairperson should inquire into and report on:

- a) Reason as to why members of the taskforce have never been paid all their dues
- b) When the taskforce members will be paid their remunerations.

Thank you Mr. Speaker

Hon. Speaker: Hon. Chairperson for Budget?

Hon. Chairperson for Select Committee on Budget and Appropriations (Mr. Michael Ogada): Thank you very much Mr. Speaker sir, I'm only wondering if the taskforces which have been formed by the Governor are going to use our Committees as debt collectors but anyway we are going to bring our answer on Thursday next week

Hon. Speaker: Very well Hon. Chairperson, Hon. Leah Mumo

Hon. Leah Mumo (Nominated Member): Thank you Mr. Speaker, I stand on Standing Order 41(2)(c) I wish to request for a statement from Chairperson, Sectoral Committee on Agriculture, Environment, Natural Resources regarding payment to garbage collectors.

Hon. Speaker in the statement the Chairperson should inquire into and report on:

- I. Details on companies including the names of the companies that have been paid for garbage collection for the last six months
- II. Evidence of payment including all payments and vouchers

Hon. Speaker: Very well Hon. Mumo, Hon. Chairperson for Sectoral Committee, Agriculture, Environment, Natural Resources?

Hon. Member for Hospital Ward (Mr. George Ochieng Ochola): Thank you Mr. Speaker, I think Wednesday next week we could be able to answer that question.

Hon. Speaker: Very well you have one week to do that. Hon. Chairperson of Health, what is it now?

Hon. Manoah Mboku: Mr. Speaker I want to stand on personal statement, Standing Order 80, there is this issue of Pumwani Maternity and I want your indulgence in the matter; the Senate has taken this matter too far. As you are aware health services are devolved. I do not understand why the Senate has taken up this matter; it is interrogating our staff at Pumwani Maternity Hospital without--- the Pumwani saga where some twins went missing and this matter was reported to our Committee and we are investigating, we are doing the much we can to unearth what happened but the Senate Committee on Health has taken up this matter, it is really questioning our staff and as we are talking now the staff at Pumwani Maternity want to go on strike---

Hon. Leader of Minority (Mr. Abdi I. Hassan): Can the Chairman tell the House if it is because of the incompetence of the Chairman, that is the reason why the Senate took up the matter or what was the reason behind the Senate taking up the matter Mr. Speaker sir

Hon. Speaker: Hon. Chairman---

Hon. Manoah Karega Mboku: Mr. Speaker as I have just said for the digestion of the Member; that the Committee of Health is taking up the matter. We are investigating but the Senate has taken it personally. It is attacking our hospital; it is projecting our hospital in bad picture. It is everywhere in the media, in fact mothers are afraid of going to Pumwani Maternity because of fear of their babies being stolen. I want your indulgence in this matter---

Hon. Majority Chief Whip (Mr. David Mberia): Mr. Speaker I think the Senate is in order to investigate this matter. The County Government especially the County Executive slept on this job. Not the Chairman. I know our Chairman is very competent but the Executive arm including the Minister and Chief Officer slept on this job until the Senate took on this matter. I think the Senate is very much in order to investigate on this matter.

Hon. Speaker: Yes there is some information, Hon. Member of the area---

Hon. Karen Wanjiku (Nominated Member): Mr. Speaker sir, a personal statement is not supposed to be discussed. He was just informing and we are not supposed to discuss personal statement.

Hon. Speaker: Hon. Members you know there is a Maasai lady in the House--- Hon. Members, this issue of Pumwani is the damning experience Nairobians have gone through. This is not a light matter. In fact I have been expecting the Committee on Health to ask for my office to make a press conference. The other day I had in my office a letter from Kenya Nurses Association with photographs of the two sets of the children but the Chairperson, I know you are hard working with your Committee; it is up to you to do what the Senate is doing. This is no longer an issue of Nairobi; it is worldwide because this is something that has to do with human trafficking and human trafficking under the United Nations. Hon. Chairperson, the United Nations it is taking this thing very seriously. So I want you as the Committee of Health to take this opportunity to bring glory back to our hospitals. In fact I expected you to say all the workers at the hospital they needed to pack up and go. We cannot protect the people who are making families go through anguish.

Therefore the Committee on Health, in fact I need time with you to go through the letter which I have marked to the Clerk for your attention to see what is going on. So we need to come and get this thing as ours and as Hon. Chief Whip has just said let the failure of other people not be the failure of the Committee of Health, which is one of the most hardworking Committees of the Assembly. Thank you. Next Order please.

Hon Member for Kahawa West Ward (Mr. Patrick Ngaruiya): I need your advice Mr. Speaker, if the Senate does not want to show how incompetent we are I would also wish they take up an issue that cropped up in Kiambu Hospital where a woman had given birth to quadruplets and all of them died because of power failure in Kiambu Hospital. If they are serious on their job and if they don't want to pin down the County. Mr. Speaker I would also request through your office to be advised on how I can also handle because that woman is from my area of representation and she lost four children she had given birth to that night because of power failure.

Why didn't they investigate that particular issue? Thank you.

Hon. Speaker: Thank you Hon. Ngaruiya, we need to discuss that with you. I think we can now go to the next Order. Hon--- you have a Statement, can I look at what you want to bring?

Hon. David Mberia: Mr. Speaker, there is a Statement from the Chairperson of---

Hon. Speaker: Order! Hon. Chair.

Hon. Member for Roysambu Ward (Mr. Peter Warutere): Mr. Speaker, I am standing on Standing Order No. 74 where I am seeking your indulgence.

Hon. Speaker: Order! Order No. 74, you talk while looking at me.

Hon. Peter Warutere: That is exactly what I am doing.

Hon. Speaker: Can you look at me now.

Hon. Peter Warutere: Yes, I am. My concern is on the matter that has been raised here by the Chairman of Health. I believe this is a House of Rules and Procedures and for some time you realize some Committees have not been performing their task. I read in the Nation Newspaper yesterday an opinion about the ability in terms of performance of the Chairmen of Committees. It was observed in the Nation that most of the Chairmen are not performing in the Parliament and particularly in the Counties.

We realize how ineffective our Committee Chairmen are within this Assembly and therefore I think I am raising this issue because when we were electing the Chairmen, we did not look at the competencies, interests and passion of these particular office bearers. For a very long time, we have realized there are issues and I think it is high time we now dissolve all the Committees and get at those three fronts (competencies, interests and passion) so that at least we can get holders who are equal to the task. I have no fear when I am talking about this neither am I saying this because I was removed from the position of a Chairman.

If we need to get serious Committees, we must look at those issues; competence, passion and interests of holders of this office. It is high time we seek indulgence of Majority and Minority Leaders so that we can reconstitute all the Committees. It doesn't make sense if we have a Chairman who does not attend meetings for about eight weeks and doesn't know what is happening within its docket yet the Senate comes all the way to perform the same duty. In this light, I am seeking your indulgence so that we can get the right people holding these offices.

Hon. Speaker: Next Order please! What are you discussing?

Hon. David Mberia: Mr. Speaker, there is a Statement which was ready for tabling by the Chairperson of Planning concerning the grabbed Health Centre land in Karen. I have a copy of the Statement which is ready for tabling.

Hon. Speaker: Hon. Chief Whip, we will bring it tomorrow please. It is an oversight, the information that I have is that the Committee on Planning was meeting the stakeholders in regard to the regularization of Development Bill, therefore--- Order!

Hon. David Mberia: There are several Members of the Committee in the House.

Hon. Speaker: Order Hon. Chief Whip! We will bring it tomorrow. What is it, Hon. Member for Clay City?

Hon. Member for Clay City Ward (Mr. Erastus Muiruri Mburu): Hon. Speaker, I am on a Point of Order under Standing Order No. 80. I want to put it to attention of this House that over fifty workers of this County Government of Nairobi have been issued with suspension letters and the most affected are car park attendants; those who do the clamping of vehicles.

I tried the whole day to get my statement to be typed but it never happened, I believe by tomorrow the Clerk whom I gave that work would have finished. They have been suspended and even barred from stepping into the County premises. It is serious because someone who has worked for this County Government for more than 20 years without even being given a warning letter is suspended. May be someone is trying to create position to bring his or her relatives to work in this County.

Hon. Speaker: Very well. Because your Statement will be tomorrow, let us leave it for tomorrow.

Hon. Erastus Muiruri Mburu: Thank you sir.

Hon. Speaker: Order Hon. Ochola! Can you come and apologize. How can you call workers thieves?

Hon. Member for Utalii Ward (Mr. Wilson Ochola): Mr. Speaker, I was trying to inform---

Hon. Speaker: Order! Can you apologize!

Hon. Wilson Ochola: Mr. Speaker, I apologize.

(Loud consultations)

Hon. Speaker: Okay. Next Order.

MOTION

Hon. Speaker: Hon. Members, the Motion of Hon. Clarence Munga was moved, seconded and question proposed. The Hon. Member who was on the floor was Hon. David Kitavi. The content of the Motion was as follows;

THAT, aware that there has been a high number of youth and women who contribute greatly to the development of Nairobi City County; further aware that the economic constraints the County is facing mostly affects the youth and women since most of them are unemployed; deeply concerned that these youth and women cannot access credit facilities from financial institutions due to lack of securities and guarantors; this Assembly urges the County Government to establish a Youth and Women Development Fund kitty to be disbursed equally among the 85 Wards as grants to youth and women.

So we now resume the debate which was interrupted on Tuesday, 17th March, 2015 at 2:30 p.m.
Hon. David Kitavi.

Hon. Member for Laini Saba Ward (Mr. David Kitavi): Thank you, Mr. Speaker. Though I had already made my contribution on this Motion, my biggest concern was on the last statement of that Motion. The Member who brought the Motion is saying that young people should be given grants. If you look at the definition of a grant, it is the money that is lent to groups or a person not to be returned. For that reason, I am against this Motion since we do not want to create young people who will be dependent on this County for money that is not returnable

Mr. Speaker, this County is already faced with a lot of problems and challenges. This Motion is not timely and I think we need to come up with creative measures to address issues of youth and unemployment rather than giving them grants. The National Government is already giving out Uwezo Fund and very many young people are already not accessing those grants in the first place, either because they are not aware, ignorance or due to various reasons. So, I would like the Member who brought this Motion to go and rethink about issues of getting credit access for young people. We cannot be giving young people fish; we need to teach them how to catch the fish. It would be imperative and it will cause a lot of trouble for us as a County given that the number of young people who are unemployed in our Wards will not qualify. I want to strongly oppose this Motion and ask the Member to re-draft it again. Thank you, Mr. Speaker.

Hon. Speaker: Hon. Thuo!

Hon. Speaker: Hon. Member for Karura Ward (Mr. Kamau Thuo): Mr. Speaker thank you for this opportunity you have accorded me to give my views on this Motion. The issue of empowering young people, most Governments including the Government of Dr. Evans Kidero always think of giving young people money or funds to start small scale businesses. My concern is on empowering young people with the right skills because we might give young people the funds without skills, what will happen is, you will see them around popular joints in Nairobi like in Kangemi or Matopeni.

My emphasis is on the skills, we must be intentional and deliberate on empowering young women and Men first with requisite skills and knowledge. As I contribute to this Motion I also wish to suggest that since the village polytechnic is a function of the County Government we would start there, because if we go ahead and give young people money without a proper program in place we'll only have the opportunity to give the first group but there will be no money to give those other groups. So I neither support nor oppose this Motion, thank you. I was just giving my views.

Hon. Speaker: Hon. Elkana Mauti!

Hon. Member for Kwa-Reuben Ward (Mr. Elkana Mauti): Thank you Mr. Speaker, I think the Hon. Member who came up with this Motion is really thinking about the youth in our Wards. I only want to give him an advice because a Motion cannot substitute for the fund kit, it is only the Bill that can substitute, my concern for the Hon. Member is to come up with a Bill and we will pass it, we have no problem, we want to

empower women and youth in our Wards, so come up with a Bill and we approve for the fund to be set aside.

Hon. Speaker: Very well Hon. Elkana! Hon. Kambi

Hon. Member for Dandora Ward (Mr. Stephen Murathi Kambi): Thank you very much for this opportunity Mr. Speaker sir, I rise to support the Motion on one ground, first of all I'll have to give a further elaboration on the meaning of the word grant. This is money that's given out not to be returned but to be used or to be exhausted for the intended purpose. I do believe we have a youth desk in this County and it was formed sometimes last year. Kindly can I have your attention? *Mumo, huwezi ninyanganya pesa, uninyanganye airtime. Pengine uko na maneno na mimi sasa.* This is now getting personal. *Pesa ako nazo, ndio huyo hataki niongee jamani.* Thank you, I want to catch the speaker's ear.

Kindly indulge me Hon. Members with due respect, thank you very much. Mr. Speaker sir, as I was saying, I do believe we have a youth desk in this County and it was formed sometimes last year but to our surprise I think it is a boardroom kind of Committee because it has never gone out there and we can't relate only with the funding's that are given by the National Government. As a County of course we need to create a percentage that will upgrade the Social welfare of our people at the Ward level.

Too much money gets lost in this County, it is wise if the money can find its way to our people as long as the intended purpose for the grant is met and there's a monitoring and evaluation Committee that will be formed to ensure they do better follow ups on the youth. It will be something that can really help this County because two birds are better than one. Too many youth outside there are not accessing the funds for various reasons and we can't simply ignore them or categorize them in generality and say they are ignorant or they don't want to develop. So I am very much for the Motion I am very much for the Motion and would urge that the Bill be speeded up, we come and pass the Bill, we set an allocation so that we can be able to empower our youth at the Ward level. Thank you.

Hon. Speaker: Hon. Alex Otieno.

Hon. Member for Mugomoini Ward, (Mr. Alex Otieno): Thank you Mr. Speaker sir. I would like to support the Motion but with amendments, instead of grants I think we can suggest---

Hon. Speaker: Hon. Chairperson of Water, you know the procedures of an amendment. Therefore continue but with amendments, you know the procedures.

Hon. Alex Otieno: Thank you Mr. Speaker, I think this Motion is a right one because we have several youth and women in our Wards who need support from Government. Since these youth and women come from Nairobi County, I think if Nairobi County can set aside some funds to take care of these youths because if we do not take care of them, tomorrow you will hear that some of the Hon. Members are mugged just simply because the youths are not engaged. If the youths are engaged the Members will not

find hard time handling them while at their Ward. If funds can be set aside to assist women and youths, I think it will be something of great help. Thank you Mr. Speaker I support.

Hon. Member for Eastleigh South, (Mr. Nelson Masiga): Thank you Mr. Speaker sir, I wish you call the Mover to reply.

Hon. Speaker: Very well Hon. Members, I now call the Mover of the Motion to reply.

Hon. Member for Kabiro Ward, (Mr. Clarence Munga): Thank you Mr. Speaker and thank you Hon. Members, majority of them, for supporting this Motion. For those who are opposing, let me just bring to their attention that we need to generate a Bill and some of their worries will be catered for in that Bill. The concern about grants can be changed to be loans instead so as to cater for their concern. What is important is that we need to generate a fund meant for youth, women and people with disability because these people require our help. I think Kiambu has done it, Trans – Nzoia has also done it and as a leading County we need to show our youths and women that we are also concerned about them. So I urge this Honorable House to support this Motion so that we ensure that we now move to another stage of generating a Bill on the same Mr. Speaker. So thank you.

Hon. Speaker: Hon. Members, I was just getting a little bit mesmerized by Hon. Imwatok, whom I should have sent out but I know you are hurting. Hon. Members I now put the question that,

(Question put and agreed to)

MOTION

Hon. Member for Embakasi Ward, (Mr. Michael Ogada): Thank you very much Mr. Speaker sir. Hon. Speaker I beg to move the following Motion that, this Assembly Adopts the Report on the Select Committee on Budget and Appropriations on the Request to Rescind Approval of Loan Facility, Laid on the Table of the Assembly On Wednesday 25th February, 2015.

Mr. Speaker sir, as Hon. Members may recall this Assembly on 23rd Of October, 2014 through a Motion tabled by the Leader of Majority approved the request for approval of a Loan facility of Kshs. 4 billion. Further it is worth reminding Members that the approved loan request was made to be utilized for the development Project and to provide a buffer to the intermittent revenue inflows thereby ensuring that the County staff and Members of this House receive their salaries in a timely manner.

Mr. Speaker sir, the loan having been approved by the Assembly procedures notwithstanding the onus was now on the County Treasury to source for banks from where to borrow as well as identify the exact development projects to be financed with Kenya Shillings 2.5 billion. However, some Members of the public and Indeed of this County Assembly were not convinced that they were fidelity to the law in the

process of approving the loan request and therefore chose to seek legal redress, a matter that remains before the courts today and any discussions on the same would amount to subjudice.

Mr. Speaker sir, the Constitution and other laws of Public Finance Management have placed onus on the Budget and Appropriations Committee to ensure that the Budget related documents submitted to this Assembly have complied with the statutory regulations as outlined in the Public Finance Management Act, 2012 and other statutes.

Mr. Speaker sir, the Committee considered the reasons for rescinding the decision of the Assembly and noted that there was a number of important information necessary for effective oversight of the utilization of the approved amount which had not been submitted before the initial loan request was approved by the County Assembly, some of these critical pieces of information that were missing include:

- i. Details of the banks from which the loan was to be borrowed including how the same was arrived at, rate of interest among other related matters;
- ii. How the proposed loan married with the financing plans as enumerated in the Debt Management Strategy Paper and County Fiscal Strategy Paper.
- iii. The Debt Ceiling for the County which needed to be submitted to the Assembly for approval prior to forwarding the loan request for consideration
- iv. How the amounts requested related to the most recent audited accounts noting Section 107 (3) and 142 (2) of the Public Finance Management (PFM) Act 2012 that requires that short term borrowing does not exceed five percent of the most recent audited revenues of the County
- v. The County Assembly was yet to pronounce itself and approve the County ratio of debt; revenue as required by section 107 (4) of the PFM Act, 2012;
- vi. A detailed breakdown of the project to be financed by the Ksh2.5 billion to be borrowed and the return on investment for each of the projects noting that all the development project in the 2014/15 budget had a clear financing plan;
- vii. How the proposed loan related to the fiscal responsibility principles for the current and coming financial years and;
- viii. The financial position of the County with regard to stock and composition of public debt, debt management and repayment plan taking into account interest payments.

Mr. Speaker sir, we would wish to underline that these were important data that this Assembly was greatly out of order to overlook and therefore it is commendable that we have a second bite at the cherry and this time we need to ensure that we get the biggest chunk. The Budget and Appropriations Committee will not surrender in its urge to have this Assembly follow its own rules and procedures.

Mr. Speaker sir, after consideration of the above factors and in light of the new submissions by the County Treasury, the Budget and Appropriations Committee was persuaded that there is need to disapprove the earlier decision of the County Assembly so as to ensure that in addition to addressing the above concerns, there is adequate public input before any new request is considered. This Committee

hence recommends that before submitting any other request for approval of loan facility to this Assembly, the County Treasury shall in future ensure that:

- i. There is adequate public participation;
- ii. The request is accompanied with details of banks from which the loan is to be borrowed including how the same was arrived at, rate of interest among other related matters;
- iii. Any analysis of how the proposed loan marries with the financing plans as enumerated in the debt Management Strategy Paper and County Fiscal Strategy Paper of the respective financial year;
- iv. There is debt ceiling for the County. In this regard the Budget and Appropriations Committee wished to invite the Select committee on County Delegated legislation to follow up and ensure that all financial regulations required to be submitted for approval are presented without any further delay;
- v. There is a breakdown of how the amounts requested relate to the most recent audited accounts as anticipated in Section 107 (3) and 142 (2) of the Public Finance Management Act 2012;
- vi. There is an approved County ratio of debt; revenues as required by Section 107 (4) of the PFM Act, 2012;
- vii. A presentation of a detailed breakdown of the projects to be financed by the Ksh.2.5billion to be borrowed and the return on investment for each of the projects;
- viii. How the proposed loan related to the fiscal responsibility principles for the current and coming financial years; and
- ix. The financial position of the County with regard to stock and composition of Public debt management and repayment plan taking into account interest payments.

Mr. Speaker sir, in conclusion and pursuant to the provisions of Article 212 (b) of the Constitution, Section 142 of the Public Finance Management Act 2012 and Standing Order 46(2) (a) the County Budget and Appropriation Committee recommends that:

This County Assembly resolves to rescind its Motion passed on the 23rd of October 2014 on the question to approve the loan facility of Ksh 4 billion.

Thank you Mr. Speaker sir I wish to call upon Hon. Njoroge Kairu to second this Motion.

Hon. Member for Woodley Ward (Mr. Njoroge Kairu): Thank you very much Mr. Speaker, the Chairman of Budget and Appropriation has given all the reasons why we need to rescind the Motion. My humbly request to this House, is that we should be very cautious when passing anything in the House because that loan facility Mr. Speaker sir, brought the morale of the Committee of Budget down completely because the rule of law was not followed and the Committee was divided into two. Therefore, I beg to second the Motion. Thank you.

Hon. Speaker: Hon. Members I now propose the question that,

(Question proposed)

Hon. Speaker: Hon. Imwatok.

Hon. Member for Makogeni Ward (Mr. Peter Imwatok): Thank you Mr. Speaker, I am on the side of the Government on this side and on the side of the Government on the other side. Thank you and first of all I must recommend the able Committee of Budget and Appropriation through its able Chairman, my learned friend *Mheshimiwa* Ogada, eloquently put the Motion approved on 23rd. It is good if asked at Assembly as the Chair has said we must put our House in order. As always Speaker says "you cannot throw stones on a glass house by yourself when you are in a glass house".

I think Mr. Speaker as the Chair says it is now the County on course. If as an Assembly we can rescind our own decisions it also shows that we can befit to other Department in this County. Therefore, as I second this report it is very important and paramount for the Executive to know as we are aware now we have projects going on in the entire County which were advertised and also am aware as Hon. Members we were elected in this County that soon Ward Development Fund is going to be rolled out Mr. Speaker.

I don't see why if we really follow the procedure, as enumerated by the Chair of Budget and Appropriation, the Executive now can extend their hands in this House for approval of some of the Money because we will be sure there is development taking place in this County. I therefore, urge this House to help us as Budget and Appropriation Committee to approve this report so that we hasten the development agenda of the County so that the Executive may put their House in order so they can bring us 10 billion, 20 billion as long as there are projects rolled out in this County Mr. Speaker, I beg to support.

Hon. Speaker: Very well, Hon. Karen Wanjiku.

Hon. Karen Wanjiku: Thank you Mr. Speaker sir, let me put my document in order Mr. Speaker sir. Thank you for giving me this opportunity to give my voice about rescinding. I am known as a Hon. Member who stands for procedures in this House and Mr. Speaker sir, I thank the Chairman for Budget because they have accepted that the procedures were not followed. But two wrongs don't make any right. We cannot reverse for example if I had an intention of raping someone I will be taken to court. This is the law and it is standard.

Hon. Speaker: There is a Point of Order

Hon. Manoah Mboku: Mr. Speaker can the Hon. Member repeat what she said in capital letters. Did she mean rape?

Hon. Karen Wanjiku: Mr. Speaker sir, that is a term in law and I have said rape. I was giving an example so that whatever I am saying can sink into your minds. We cannot reverse a wrong that has been done. When we were discussing this Motion, I remember I vehemently opposed it together with some Members but other Members went on passing it. What are we telling Nairobi's? Is it that we are confused and we do not know what we are supposed to do?

I want to state categorically Mr. Speaker sir, that our Constitution is very clear. The Budget Chairman has read 212 of (b) it but has skipped section (a) of 212, and I do not know why he did it deliberately. It reads as follows;

Borrowing by Counties: A County Government may borrow only if the National Government guarantees the loan. That was the contest that we did not follow the law.

I do not want to explain everything he said, it is very clear. This is a matter that is in court as he has said. In law we call it, a matter subjudice; that means that a particular case or matter is under trial of being considered by a judge or a court therefore we cannot discuss it and it is supported by our Standing Order that is our Bible and our Quran number 85.

Mr. Speaker sir before I read because I can hear someone saying enemies of progress, we had been confused in order to pass this Motion by being told that this money was meant for Ward Fund and when the Chairman was reading I did not hear Ward Fund anywhere. We were confused in order to pass this Motion.

Hon. Speaker: What is it? Order! Order! Members

Hon. Karen Wanjiku: Mr. Speaker let me finish. I still have my time, protect me. I am rightfully here and I am going to use the law.

Hon. Speaker: What is it Hon. Is it a Point of Order or what do you have?

Hon. Karen Wanjiku: I do not want to be informed

Hon. Speaker: She does not want to be informed.

Hon. Karen Wanjiku: Mr. Speaker sir protect me

Hon. Speaker: Order Hon.!

(Loud consultations)

Hon. Karen Wanjiku: Mr. Speaker sir, as I finish I want to read Standing Order no. 85. Matters subjudice or secret.

(Loud consultations)

Hon. Speaker: Order Members! Allow the Members to hear what the Hon. Member is saying

Hon. Karen Wanjiku: Yes Mr. Speaker sir. It states very clearly in Standing Orders No. 85 (1) subject to paragraph 5 up there and it reads; it shall be out of order for a Member to criticize or call to question the proceedings of County Assembly or Speakers ruling. Okay let us go on because that does not concern what we are saying. No member shall refer to any particular matter which is subjudice or which by the operation of any law is secret.

(2) A matter shall be considered to be subjudice when it refers to--- Mr. Speaker let me finish, I still have my time. This is a very serious matter---

Hon. Speaker: Order! She does not want to be informed. Order!

(Loud consultations)

Hon. Speaker: Order! Members.

(Loud consultations)

Hon. Karen Wanjiku: Mr. Speaker let them say their interests in this matter

Hon. Speaker: Order Hon. Members!

(Loud consultations)

Hon. Karen Wanjiku: I still have my 15 minutes Mr. Speaker sir. They are using up my four minutes.

(Loud consultations)

Hon. Speaker: Order Hon. Members! You will have your time. Order!

(Loud consultations)

Hon. Karen Wanjiku: Mr. Speaker sir, they should say their interests on this matter or keep quiet. No. 2 says; a matter shall be considered to be subjudice when it refers to active criminal or civil proceedings and the discussion of such matter is likely to prejudice.

As we continue, let me read No. 4 which says; a Member alleging that a matter is subjudice shall provide evidence to show that paragraph two and three are applicable. Mr. Speaker sir I need your attention.

(Loud consultations)

Hon. Speaker: Order Hon. Members! Order! You will have your time to speak

(Loud consultations)

Hon. Karen Wanjiku: I have the evidence here---

(Loud consultations)

Hon. Speaker: One more minute. Order!

Hon. Karen Wanjiku: I have the evidence here from Kenoti and Kibe and Mr. Speaker sir you have the communication, same with the Clerk and the Governor

Hon. Speaker: Order Hon. Members!

Hon. Karen Wanjiku: This matter is not supposed to be discussed. You remember when we were talking about the Clerk we were told that this is matter subjudice ---

Hon. Speaker: Order! Hashim

Hon. Karen Wanjiku: *saa zangu hazijaisha.*

Hon. Speaker: Order Members! Order! Hon. Karen Order!

Hon. Karen Wanjiku: I still have two minutes.

(Loud consultations)

Hon. Speaker: Order Members! Hon. Members Order! Chair, Thuo, Kambi and Chief Whip. Hon. Members certain Motions not to be moved, I want to start on 46 and come to 2 (a). Hon. Members no Motion may be moved which is the same in substance as any question which has been resolved either in the affirmative or in the negative during the preceding six months in the same session. Order Chairman!

46 (2) says and be attentive. Despite paragraph one, a Motion to rescind the decision on such a question may be moved with the permission of the Speaker. Your time is up. Hon. Thuo.

Hon. Thuo Kamau: Mr. Speaker, thank you so much. You may have your seats now. Protect me from Wanjiku, Mr. Speaker.

(Loud consultations)

Thank you Mr. Speaker.

Hon. Speaker: Hon. Thuo is on the floor.

Hon. Thuo Kamau: Thank you Mr. Speaker.

Hon. Speaker: Try to be attentive please.

Hon. Thuo Kamau: Mr. Speaker, before---

Hon. Speaker: Order Hon. Chief Whip, Minority!

Hon. Minority Chief Whip (Mr. Hashim Kamau): Point of Order Mr. Speaker.

Hon. Speaker: On what?

Hon. Thuo Kamau: Mr. Speaker he must quote. Can I proceed Mr. Speaker? I know his intention, kindly protect me from Hon. Hashim.

Hon. Speaker: No, no he will have his chance.

Hon. Thuo Kamau: He will have his chance Mr. Speaker. Mr. Speaker, the reason why some of us were so agitated and we were standing up to catch your eye is because the Hon. Member who represents interests in this House, Hon. Karen---

Hon. Karen Wanjiku: Point of Order Mr. Speaker.

Hon. Speaker: Order! Order! Can you proceed quickly?

Hon. Thuo Kamau: Mr. Speaker, my point is that we cannot allow Hon. Karen Wanjiku---

Hon. Speaker: Are you supporting, seconding or you are---?

Hon. Thuo Kamau: Mr. Speaker, allow me to first of all make a point---

Hon. Speaker: No!

Hon. Thuo Kamau: ---and drive the point home. I want to affirm your decision because some of us cannot sit as Hon. Karen Wanjiku---

Hon. Speaker: Order!

Hon. Thuo Kamau: ---question your wisdom on this matter Mr. Speaker. What she was trying to drive home, Mr. Speaker is that this Motion is not proper before this House. It is very proper, Hon. Karen Wanjiku and the rest. Mr. Speaker, I want to join my colleagues who represent the interest of the people, oversee and make laws to support this particular Motion because in this County Government of Nairobi. We do not have enough money to conduct our business and we have to allow the Executive to borrow money; but to borrow money through the right process. And because they have come back to this Assembly, they are not drunk. They are very sober. We cannot afford to decline an appeal by the Executive. So, I support and I keep on supporting that we rescind the decision of this County Assembly and give the Executive the leeway to bring a proper Motion so that we can borrow money. And I congratulate Hon. Karen Wanjiku. Thank you Hon. Speaker.

Hon. Speaker: Hon. Thuo and then Hon. K'Otieno.

Hon. Stephen Kambi: My learned friend, we serve the same purpose. Thank you very much.

Hon. Speaker: Hon. Chief Whip, Minority, you are making a lot of noise.

Hon. Stephen Kambi: Mr. Speaker sir, first of all I will have to congratulate the Budget Committee for good work with a small correction. Four Billion sounds a bit too small. You should have added an extra zero there. Make this thing 40 Billion. Mr. Speaker sir, if my memory does not fail me, when we took over the City County of Nairobi from the defunct County Council, it had too much debt. Those debts have forced us to sacrifice our developmental agendas in order to incorporate such kind of debts. Mr. Speaker sir, let us leave a legacy as the first County Assembly of Nairobi. We leave a debt of almost 100 Billion and we develop Nairobi. Who cares? The next administration will deal with it.

Mr. Speaker sir, we can't have enemies of development standing here who want to portray political agendas so that the current incumbent do not perform, *ndio wapate sababu ya kugonga hawa 2017. Hiyo siasa hatutakubali hapa. Mimi ningemba hivi.* Chairman Ogada, *ambiya Executive iongeze zero moja hapo, ikuje ikiwa 40, kila Ward ipatiwe allocation ya 150 million tufanye maendeleo.* The next administration will deal with the debt. Mr. Speaker sir, I beg to support. Thank you very much.

Hon. Speaker: Hon. K'Otieno and then you, Elkana.

Hon. Pius Otieno: Well---

Hon. Speaker: Hon. K'Otieno on the floor. Order Members!

Hon. Pius Otieno: Thank you Mr. Speaker for giving me this opportunity. First of all, I want to support this Motion. This Motion seeks to rescind the decision that we made last time. Rescindment simply means to nullify. So, Mr. Speaker, we are nullifying this because probably there were procedures that were not well followed. There was no fidelity to the law. But I appreciate the Chairman of Budget and Appropriations Committee and the Executive for having seen the light and probably ate the humble pie.

Mr. Speaker, I also want to extend my gratitude to Hon. Members for having read the law, section 212 of the Constitution but what she might have forgotten is that there is a word there in that Constitution that people keep on abusing. There are two important words and they are very important. One is the word "may" and "shall". I want us to learn how we use the word "may". Mr. Speaker, when we use the word "may", it gives authority. It gives you discretionary powers; meaning you can either do it or choose to ignore. And when we use the word "shall", you are bound by the law. We would say that it is mandatory for you to perform that. So, we must differentiate how we use these two terms: "may" and "shall". I also appreciate the fact that Karen is growing and I like the speed unto which she is growing with. Many people don't grow at that pace.

Secondly, Mr. Speaker, the reason as to why this Motion is timely is because probably we have known where the rain started beating us from. The rain was beating us because there was not enough budgetary allocation towards the project. If we can sit like this sometimes and have a sense that we should begin a Nairobi--- sometimes I call it the renaissance of Nairobi, meaning the rebirth of Nairobi because for the last two years, we have not performed well. But if this 2015 is going to redefine the ways unto which Nairobians are going to get services, if it is through this loan then so be it. I also want to challenge the Chairman of Budget and Appropriations Committee, Hon. Michael Ogada. The law is very clear. It was stating that there should be a regulation that is going to guide how we shall be borrowing this money. It is important that that Committee starts working on the regulations so that those regulations will be brought to our Committee, the Committee on County Delegated Legislations because these regulations will be made by the Executive so that we also don't give the Executive too much leeway to borrow beyond their means. I believe in efficiency and we should only borrow when we have the capacity to repay the loan. With that, Mr. Speaker, I beg to support. Thank you very much.

Hon. Speaker: Thank you very much. Hon. Elkana.

Hon. Elkana Mauti: Thank you Mr. Speaker. I think this is the moment that we were waiting for. Last time, we were asking what the loan was for. But now we have seen that the loan is for development. Adverts have been put out. Tenders are on the way. Now, what else do we need? On clarification, if there was a court case, that is a Constitutional case, not civil or criminal. So, we should differentiate between criminal, civil and Constitutional cases.

Mr. Speaker, I am here to support. They were asking for 4 Billion. Let them come with 10 Billion because we need to change Nairobi. We need to do something in Nairobi. I was at my home where I was born. In fact, it is very wonderful. Development has been done. You cannot compare it with Nairobi. Remember, we are at the headquarters where we need to do development for others to copy from us. I know what we miss is money and this is the time. The Chairman for Budget and Appropriation Committee, I beg you; you give a high percentage on development when we are going to approve this loan. I know the Executive side has known that the Assembly is the key for the Nairobian. Theirs is to implement what we have made for them. As I believe, they have even come up with regulations, rules and policies on how the loan is going to be catered for. I am advising them to apply Kshs. 20 billion and not Kshs. 10 billion so as to cover any development in Nairobi County.

Finally, this is the third year the Assembly of Nairobi has been paying loans for the defunct City Council. Why don't we apply? The defunct City Council had applied for a loan Kshs. 5 billion whereby we only had 70 Wards but now there are 85 Wards, it think we should borrow three or four times. I am very happy today because I have seen development starting in my Ward. The contractors initially feared they will not be paid but through the Motion, they will be very sure that they will be paid. I think three weeks from now, the Members of the County Assembly of Nairobi will be smiling because the projects will have been rolled out in their Wards. I also think the women kitty which they had applied for will be factored in in this loan. Thank you, Mr. Speaker.

Hon. Speaker: Hon. Chief Whip Minority.

Hon. Hashim Kamau: Mr. Speaker, if you go to the scrutiny of the request to rescind the approval of the loan facility, and in particular Number 6 and 7, there is an issue of same session; the one you have mentioned, the issue of 'with the permission of the Speaker' and issue of the special Motion. That one has been addressed by No. 7. But actually what Hon. Karen was saying is No. 2. Now, Mr. Speaker---

Hon. Speaker: Which page?

Hon. Hashim Kamau: Scrutiny of the request, page three, No. 2. Mr. Speaker, I am seeking your guidance and direction before we go further. Bearing in mind Standing Order No. 85, No 2 says 'the loan having been approved by this Assembly, procedures notwithstanding, the onus is on the County Treasury to source for the banks from were to borrow as well as identify the exact development projects to be financed with the Kshs. 2.5 billion'. However, some Members of the public and indeed of this Assembly

were not convinced that there had been fidelity to the law in the process of approving the loan, request and therefore chose to seek legal redress. A matter that remains before the courts today and any discussion on the same will amount to subjudice. Now bearing in mind Standing Order No. 85 and we have our Clerk who is a lawyer, Mr. Speaker, can you give us direction if the Motion is properly before the House.

Hon. Speaker: Hon. Members, I think we dealt with the issue of rescinding and we did not at any time trample on any litigation. The area here, and we have to be very careful, is we are saying to rescind the decision as the Assembly, notwithstanding the fact that we have not once again trampled on any illegality as the Assembly. We went to 46 (2) (a) that cleared the way and therefore I call upon the mover of the Motion to reply.

(Applause)

Hon. Michael Oganda: Thank you very much Mr. Speaker sir, I am glad because the Hon. Members of this House actually understand why we are here. We are here to bring development, learn and to make sure that we perform our duties.

Budget as a Committee played the role they could play at that particular time and when the Hon. Members of this House realized that some things were not quite in order they raised issues. As a Committee we decided to eat the humble pie and we said if the Members who might be the Majority or Minority are not convinced, and it is good that all of us are convinced and therefore, we have decided as a Committee that we are rescinding what was passed, and beside that I don't understand this issue of something being in court because, KFF and KPL have got a case in court but they have been out in hotels discussing the same issues and when they reached an agreement the court just allowed them to proceed and go on with other things and decided to kick out that document which means you are allowed if something is contentious, you are allowed to do in house discussion and then the court, I am not a lawyer am a lay man am just thinking loud.

The Courts will allow you to make---you see the court cannot allow you to correct a wrong. Anyway, I am happy that Members of this House have seen the sense because this is not a loan we are asking for, we are only cancelling what we did request for last time. Then the Executive if they still need money for development they will approach the House and do proper request that will be brought to the house properly and Member of this House will have an opportunity and time to discuss and agree, if they will want to increase the figure they will increase, if they will do away with the paper they will do that, because this is a House of rules and order as *Mheshimiwa* Karen keeps on putting it.

So thank you very much Members because as I see you here you have already agreed with this. Thank you very much and God bless you.

Hon. Speaker: Thank you Hon. Chairperson Budget and Appropriation. Hon. Members I put the question,

(Question put and agreed to)

Hon. Speaker: Hon. Members the following Bill is due for the second reading pursuant to Standing Order 121 (4); the Nairobi City County Regularization of Developments Bill, 2015 (Assembly Bill No. 1 of 2015). So the Chairperson, Sectoral Committee on Planning and Housing should prepare it.

Hon. Members, yes.

Hon. Nelson Masiga: Thank you Mr. Speaker sir, we seek for extension for the Bill to consultation on Thursday 2nd April, 2015 it will be adequate and conclusively reviewed, the stakeholders with their submission will come up with a report for the same.

Hon. Speaker: Very well, House Business Committee Meet after the rise of the Assembly. Next order! Hon. Members the House stands adjourned until tomorrow 2.30 p.m. Thank you.

The House rose at 4.27 p.m.