



NAIROBI CITY COUNTY ASSEMBLY

OFFICIAL REPORT

Second County Assembly – Second Session

Thursday 9th August, 2018

The House met at 2.30 p.m.

(Hon. Deputy Speaker (Mr. Kamangu Nyumu) in the Chair)

PRAYERS

Hon. Deputy Speaker: Serjeant-at-Arms please ring the bell for 10 minutes.

(The Quorum bell was rung)

Hon. Deputy Speaker: Clerk, let us proceed I think we have the quorum now as requested. Thank you.

PAPERS

Hon. Deputy Speaker: Chair of Culture and Community Services, Hon. Mwangi Njehia.

Hon. Abraham Njihia: Thank you Hon. Speaker. I beg to give Notice of the following Motion; THAT, this Assembly adopts the report of the Sectoral Committee on Culture and Community Services on inquiry status---

Hon. Deputy Speaker: Hon. Njehia Order please! Why don't you first lay the document, then you read the statement, that is the procedure.

Hon. Abraham Njihia: Hon. Speaker if I got you right---

Hon. Deputy Speaker: Lay the papers first.

Hon. Abraham Njihia: That is in fact what I am doing Hon. Speaker, I am laying the papers. Unless otherwise advised.

Hon. Deputy Speaker: Then you have given the Notice, can you lay the papers please.

Hon. Abraham Njihia: Hon. Speaker pursuant to standing Order 191 (6), I beg to lay the following paper on the Table of the Assembly today Thursday 9th August 2018; report of the Sectoral Committee on

Culture and Community Services on inquiry into the status of the Eastleigh Social Hall, Eastleigh North Ward.
Thank you Hon. Speaker.

NOTICES OF MOTION

REPORT OF THE INQUIRY INTO THE STATUS OF THE EASTLEIGH SOCIAL HALL

Hon. Abraham Njihia: Thank you Hon. Speaker. I beg to give Notice of the following Motion; THAT this Assembly adopts the report the Sectoral Committee on Culture and Community Services on the inquiry into the status of the of the Eastleigh Social Hall, Eastleigh North Ward laid at the Table of the Assembly today Thursday 9th August 2018 .

STATEMENTS

APPROVAL OF CONSTRUCTION PLANS FROM SEPTEMBER 2017 TO JULY 2018

Hon. Moses Ogeto: Thank you Mr. Speaker. As much as there is a Motion which my colleague had tried to bring but they want to bring it as a statement. Hon. Speaker pursuant to Standing Order 45 (2) (c), I wish to request for a statement t from the Chairperson of the Sectoral Committee on Planning and Housing regarding the approval of construction plans by the Planning department between September 2017 to July 2018.

Hon. Speaker the Planning department is increasingly approving construction of High-rise buildings contrary to the zoning laws without undertaking public participation as required by the law. For instance, Kilimani, Kileleshwa, Woodley and many other places. It is not clear whether the development were approved under the new framework, which the County Assembly is aware of, and whether the due process was followed in authorizing the said projects, in the absence of which they may be subject to future demolitions and unnecessary losses to the developers.

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

1. Detailed report of all approvals for housing developments from September 2017 to July 2018; and; and
2. Detailed reports of enforcement as required by the Physical Planning Act or any other relevant laws for the same period.

Hon. Deputy Speaker: Chair of Planning, Deputy, or any member of the Committee who can stand on behalf of the Chair?

Hon. Daniel Muturi: Thank you, Hon. Speaker. May I propose that we will give an answer within two weeks? I hope that is appropriate for the Hon. Member.

Hon. Deputy Speaker: Hon. Ogeto, are you comfortable with two weeks?

Hon. Moses Ogeto: Hon. Speaker, you are aware there are a lot of demolitions in this City. Requesting for enforcement report is something that is in the laptop. Developers are going to lose millions of properties yet they got approvals from the County. It is better that this House be informed how these projects were approved and why demolitions are being carried on. I read on Facebook the Governor saying that whoever did this should be prosecuted first. You saw what happened in Kileleshwa the other day, those people were developing unapproved buildings. There was Director of Enforcement then but he never advised. It also happened in Nairobi West. We need these Enforcement reports within one week because Kenyans are losing properties due to negligence of some officers from the County.

(Point of Information)

Hon. Peter Imwatok: Thank you, Mr. Speaker, I love your suit, it is exclusive. *(Laughter)*

Hon. Deputy Speaker: Thank you.

Hon. Peter Imwatok: Mr. Speaker, allow me to say one thing as the leader of this House, on behalf of the Leader of Majority, Leader of Minority, and Majority Whip and the deputies. I think committees should take their jobs seriously. There is no way we will be asking questions in this Assembly but there is no Chair, Vice Chair and no active member of the committee. It becomes a moribund House, a House that is just there for purposes of signing in allowances. Some of us don't want to be found in Integrity House that we come here just to be seen and to sign to get Ksh. 3, 000 allowances. That goes into consideration that all Chairs must be serious with their duty or else we ask the Majority Leader and Minority Leader to bring a substantive Motion against all the Chairs of the committees apart from those Chairs who are present here.

For instance, PAC is present, Labor is present, ICT is present with a report that is unsubstantiated which we are waiting eagerly. Other Chairs must be very serious. Secondly the statement that *Mheshimiwa* Deputy Whip Ogeto has proposed is the same statement and Motion we wanted to discuss here last week and the House was full. Nobody was in this House preempting the Motion to be discussed about and in the real sense we are trying to say this House must be a House that carries the aspiration of people of Nairobi.

We agree the national government has a stake; yes but also we are saying the County government Act says at any given moment the national government won't enforce a national policy; it must do consultation with the County government.

In two weeks, as the statement response say, the entire Mbotela will be swiped; the entire Kaloleni will be swiped. We approved the emergency fund in the last budget we passed, even without Jubilee side, there was more than Ksh. 80 million on emergency fund and we said we want to know how we can help our people with this fund.

Bwana Speaker if you go to Makongeni now it's a village. Kids are sleeping outside. Mothers are breastfeeding from the roads. It is shame and the County government has not spoken even one word. It means we are destitute in this County. Mr. Speaker this statement should be treated in this House as a matter of urgency. Just rule that we form an ad hoc committee here so that we know when these demolitions are done. Look at Java in Kilimani. Honestly I was born those years that Java was there. It was red in colour. I don't know when it started being on riparian land. More than 40 years is when we are realizing this building is standing on riparian land!

There are things happening in this County which are not right. Even if the national government is enforcing national policies, it must also be informed by the policies of County government and the County government must be the first protector of this people. We can't allow a situation whereby the County government sits on surrender mode; whatever the national government wants to do just do it, we are here! We are just led left, right, center by national government. The County government must come in and speaks for its people because when you go to Kaloleni, Mathare slum they were evicted. Other people were brought from other places. The World Bank built modern houses and they were told 'wait here we will built more houses for you to occupy'. Afterwards they are now out.

Mr. Speaker I request, with your wisdom, if you can rule that this Committee of Planning to bring this report before this House because demolitions are all over. I just read on the Governor's page saying he is going to demolish his own house in Buruburu. The question is, did the Governor also grab? If so is the Governor guilty as accused? Because he has just said 'I am going to demolish mine in Buruburu, subsequently demolish for Kamanda'. It means he is a cartel of grabbers. In a nutshell the Governor is appreciating he is also a grabber...

Hon. Osman Adow: There is Point of Order. Is the Leader of Minority debating the issue or for Point of Information? Is the Chair of that Committee out of the country on official duties? I think without the Chair I don't know if he can proceed. Or how many members of that Committee are left here? But the Leader of Minority is debating the issue and I don't think we should be debating that issue now.

Hon. Peter Imwatok: I will try to emphasize on that for Hon. Adow to understand more. You know Miguna Miguna comes from Canada. I sometimes have issues to deal with people who have ever stayed in Canada. Speaker I was just saying can you rule on our behalf that this is a matter of importance? This statement is not a cheeky-cheeky statement. It is a statement touching on the lives of people of Nairobi. If this Committee is competent enough let it take this issue. Speaker, you ruled that by tomorrow or Tuesday the Whips from both sides will form an Adhoc Committee that will look into these issues of demolition, if this Committee is incompetent enough. Thank you.

Hon. Deputy Speaker: Planning Committee, is ten days comfortable with you? The ten days as requested?

Hon. Daniel Ngengi: Ten (10) days should be adequate, Hon. Speaker. I hope that is satisfactory to the Hon. Member. The Speaker has ruled.

Hon. Deputy Speaker: So in ten days. Thank you. I think I have ruled for ten days from today.

Hon. Abraham Njihia: Thank you, Hon. Speaker. I also rise to let you know that in February 14th I rose in this House requesting for a statement on Plot number 209/11927/3 and again on 20th February I also rose in this House requesting for a statement on the status of Anderson Hall within Woodley/Kenyatta Golf Course and up to today I have never received an answer and I seek your guidance,

Hon. Speaker because I was elected by the people of Woodley to represent them here, I fail to understand because these statements have been here. Hon. Obuya was here on that seat and he ordered that this statement be brought to this House within 2 weeks. The Speaker herself was here and she ordered that this statement be brought to this House and up to today six months down the line I have never received this statement. Hon. Speaker, I am seeking for your guidance on the same. Thank you.

Hon. Deputy Speaker: it has taken a lot of time because most of the Chair's responses have not been received well. So, I order that all the responses to statements that have been brought on the floor of the House be given up to Wednesday next week otherwise action will be taken against the Chairs. Thank you.

Hon. Maurice Gari: Mr. Speaker, I wanted to talk about that but you have made a ruling. Mr. Speaker, this County is being taken away and we are not seeing. People are sleeping and the County is going back to the Government as per I know. I commented something on our page and I said we should have a regeneration committee from the County level and Devolution Committee at the County level so that we can be enjoined with the National Government so that we can oversee what is happening daily.

Mr. Speaker, I asked for a statement in February when we resumed the House and up to now I have not received a reply. This was about the construction on riparian reserves and sewer lines. There is no Chairperson, he is not there, I was calling that Committee and I was told we are going for a site visit and up to now Mr. Speaker... And I have seen that nowadays there is no need of coming to this Assembly.

Hon. Deputy Speaker: Thank you. I think I have ruled and I have given up to Wednesday next week and the Chair will follow it up.

Hon. Maurice Gari: Mr. Speaker, as a rider on that because I will not find another time to talk, Mr. Speaker if we sleep the way we are now seeing Members chasing the wind and you cannot see the wind you are chasing.

Mr. Speaker this is a witch-hunt. One day you will get to hear that the President is forming a committee to disband the entire committee. We are treading on a very dangerous path and therefore we should wake up as Hon. Members to legislate on our mandate.

Hon. Deputy Speaker: Hon. Gari, I have made a ruling. Let us go by that.

Hon. Maurice Gari: Mr. Speaker, I am ---

Hon. June Ndegwa: Point of Order Mr. Speaker. Has the Hon. Member become a spokesman of the President? How does he know what the President is going to talk about? You have already made a ruling and we are a House of rules and procedures. We do not work on signs and wonders.

Hon. Deputy Speaker: Thank you June. Clerk, can we proceed. Is Hon. Patrick Musili around? Response from the Labour Committee.

Hon. Peter Wanyoike: Thank you Mr. Speaker. The Sectorial Committee on Labour and Social Welfare report on a response statement requested by Hon. Majiwa MCA from the Chairperson of the Sectorial Committee of Labour and Social Welfare. On 20th February, 2018—

Hon. Deputy Speaker: Is Hon. Majiwa around?

Hon. Peter Wanyoike: Mr. Speaker, Hon. Majiwa is not in but is aware that we are tabling this report.

Hon. Deputy Speaker: Was there any communication?

Hon. Peter Wanyoike: Yes. We communicated with him.

Hon. Peter Imwatok: Chair, kindly take your seat. Thank you. Allow me to speak on behalf of my Member being the Minority Chief Whip. I am aware that he is not in the House and never communicated to me as to whether the statement is coming to the floor of the House and therefore I urge the Chair to be patient and wait to table the report next week on Tuesday when he will be back.

Hon. Deputy Speaker: Let us give him up to Tuesday. Will he be around then?

Hon. Peter Imwatok: I will communicate to him.

Hon. Deputy Speaker: Let us reschedule it for Tuesday at 2:30 p.m.

Hon. Peter Imwatok: Thank you.

MOTION

Hon. Moses Ogeto: Hon. Speaker, I am on Point of Order 53 (1) before the Chair moves---

Hon. Deputy Speaker: You are out of order Hon. Members because you are anticipating debate.

Hon. Moses Ogeto: Mr. Speaker I am on Standing Order 53.

Hon. Deputy Speaker: You are out of order! Hon. Members, the matter for which the Chair is about to raise arises out of the report tabled before this House and due deliberations today Thursday 9th August 2018. The matter at hand regards the report by Sectorial Committee on Energy and ICT which speaks to the question of oversight of oversight of a County entity and reporting by sectorial committees on matters arising out of the adopted resolution of Select Committee on Public Accounts.

Hon. Deputy Speaker: Indeed Hon. Members, permit me to note from the outset of the House Committee whether sectoral or select, performance much of the work on the Assembly including examining critical issues in details, from a County Government policy and proposes new laws to wider topics like the finances and economy. This work, for sectoral committees, includes following up on recommendations of the Auditor General as reported on by the Select Committee on Public Accounts, to monitor compliance with the said recommendations for the various sectors of the County Government.

Hon. Members, we must, however, observe that there exists a thin line between monitoring compliance of a sector with recommendations of a Select Committee on Public Accounts and out rightly

seeking to reopen resolution of the House as adopted through the reports by using means other than prescribed in the Standing Orders.

In other words Hon. Members, can a Committee of the Assembly be allowed to examine the adopted Report of another Committee in its totality and make recommendations on basis of supposedly new findings contradicting the other Committee's adopted report?

Hon. Members, to answer the foregoing, a common question of the parliamentary procedure is whether or not the House or any other Committee can change its mind, on a decision that has been adopted. Hon. Member, the answer is yes, it can be done. That is being said, from a practical standpoint some decisions have already been carried out cannot be undone for obvious reasons.

Hon. Members, I will now refer you to Standing Order number 92 (2) which provide that "*It shall be out of order to introduce an argument on any specific question upon which the County Assembly has taken a decision, or the Speaker has ruled upon, during the same Session, except upon a Motion to rescind that decision made with the permission of the Speaker*".

Hon. Members, a Motions to rescind is provided for under Standing Order 53, which amongst other things provides under 53 (1) that "*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*".

Further, Standing Order 53 (2) specifically provides that "*Despite paragraph (1)-(a) a Motion to rescind the decision on such a question may be moved with the permission of the Speaker and (b) a Motion to rescind the decision on a question on a Special Motion shall not be allowed*".

Hon. Members, I have looked at both the report of the Select Committee and Public Accounts and the body and recommendations of the report of the Sectoral Committee on Energy and ICT now before the House, and I wish to guide as follows.

In my mind, there is no doubt that Sectoral Committee on Energy and ICT went above and beyond the scope of recommendations of the Select Committee on Public Account which is originally set out to monitor and enforce compliance based on the gap identified by the Auditor General and report on the same by the Select Committee on Public Accounts.

Instead, the Sectoral Committee on Energy and ICT sought to reopen the adopted resolution of the House vide the Report of the Public Account Committee and purported to report on the report of the PAC, contradicting it in its entirety without first having the House properly decide decision to adopt the PAC report having to adopt within the Session.

Hon. Members, I find that the report of the Sectoral Committee of Energy and ICT as currently before the House cannot be allowed to proceed and therefore, I direct the Chair to withdraw the same for further review by the Committee under Order NO. 8 as here now guided.

It is directed so. Thank you. Hon. Chair!

(Loud Consultations)

Hon. Osman Adow: Thank you, Mr. Speaker, in our deliberations in the Committee Meeting today, we resolved that we are going to withdraw and reexamine our report and bring it at a later date. Thank you.

(Loud Consultations)

ADJOURMENT

Hon. Deputy Speaker: Thank you very much we have agreed on that matter. Hon. Members as there is no any other business today, the House stands adjourned until Tuesday next week at 2.30 p.m. Thank you, may God bless you and have a nice weekend.

(The House rose at 3.19 p.m.)