



NAIROBI CITY COUNTY ASSEMBLY

OFFICIAL REPORT

Second Assembly – Fourth Session

Thursday 12th November 2020

The House met at 2.30 p.m.

[Hon. Temporary Deputy Speaker (Ms. Immapet Kemunto) in the Chair]

PRAYERS

QUORUM

Hon. Temporary Deputy Speaker: Is the quorum enough? Clerk proceed!

PAPERS

Hon. Daniel Muturi: Thank you, Hon. Speaker, pursuant to Standing Order 191, I beg to lay the following Paper on the Table of the Assembly today Thursday 12th November 2020; The report of the Sectoral Committee on Trade Tourism and Cooperatives on Nairobi City County pop up markets and street vendors Bill 2019.

(The Paper was laid)

Hon. Speaker, pursuant to Standing Order 191, I beg to lay the following Paper on the Table of the Assembly today Thursday 12 November 2010; The report on Sectoral Committee on Trade Tourism and Cooperatives on the site inspection visit to Westland market.

I beg to lay. Thank Hon. Speaker.

(The Paper was laid)

NOTICES OF MOTIONS

Hon. Abraham Njihia: Thank you Hon. Speaker, I beg to move that Nairobi City County Betting Lotteries and Gaming Bill 2020 be read a second time.

Hon. Temporary Deputy Speaker: Order Hon. Njihia, we have not reached at the Motion yet. Hon. Ngengi do you have a Notice of Motion that you want to lay.

Hon. Daniel Muturi: Hon. Speaker, no I do not have Notice of Motion. Thank you.

Hon. Temporary Deputy Speaker: Can you come to the Clerk's table and liaise with them?

Hon. Daniel Muturi: Thank you, Hon. Speaker. Pursuant to Standing order 191, I beg to give a Notice of Motion for the following paper; The report of the sectoral committee on Trade tourism and cooperatives on site inspection to Westlands market.

Hon. Speaker, pursuant to Standing Order 191 I beg to give a Notice of Motion for the following Paper; the report of the Sectoral Committee on Trade tourism and Cooperatives on Nairobi City County pop up Market and Street Vendors Bill 2019. Thank you, Hon. Speaker.

STATEMENTS

Hon. Kennedy Obuya: Thank you, Hon. Speaker, kindly allow me to congratulate you on your election as Speakers panelist. Hon. Speaker, I believe in you because we have a history as your mentor politically. Allow me to congratulate you in a special way, because since this Corona began and your election and assumption of the office, I have not interacted with you at the plenary. Kindly receive my congratulatory message.

REQUEST FOR STATEMENT REGARDING THE DEVELOPMENT OF RESIDENTIAL APARTMENTS ON PLOT
NO. LR. 29/19714 FR NO. 224/32 AT IMARA DAIMA WARD

Hon. Speaker, pursuant to Standing Order 45 (2) (c) I wish to request for a statement from the Chairperson of the Sectoral Committee on Planning and Housing regarding the development of residential apartments on plot No. LR. 29/19714 FR No. 224/32 at Imara Daima Ward.

Hon. Speaker, the construction of the residential apartments is ongoing near Mombasa road on alleged private land, which is estimated to be 24 hectares. This development is becoming hazardous to the area residences and the general public as the site has not been protected through holding which has resulted in emissions of dust to the neighborhoods.

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

1. Whether the approval for the construction was done in line with the planning and building regulations and requisite procedures.
2. Whether the development meets the National, Environment, and Management Authority (NEMA) standards and Kenya National Construction Authority NCA, which issues compliance certificate to enable one to commence construction works.
3. Whether the developer was issued with an approved plan for the construction of the residential apartments.
4. Submission of official documents, the certificate issued by NEMA and NCA
5. Whether there were objections from residences or neighbourhood Associations
6. Whether the developer has provided public utility as required.

Hon. Speaker, there is a tendency and a culture of impunity that as leaders and representatives of the people of the Citizens, we have to stop it. At the said facility and development, Hon. Speaker, there is no signage that shows accreditation from necessary agencies that can prove that the ongoing development is accredited development.

Hon. Speaker, to the interest of the citizens that I represent, including the developer, this is a 24 hectares' piece of land and subdivision from the one. I can see there is no clear indication that there is surrender as is a requirement. There is no surrender of public utility as it is a requirement by law, Hon. Speaker. Kindly I beg to submit my statement. Thank you.

Hon. Temporary Deputy Speaker: Chair Planning or anybody from the Planning Committee? Zoom Members in Planning Committee, anyone to give an undertaking? Hon. Jacinta Wanjiru, Hon. Ibrahim, Hon. Imwatok, Hon. Waithara Chege or any Chair in this Assembly who can raise up and give a guideline?

Hon. Daniel Muturi: Thank you, Hon. Speaker, I think the ten working days will be good. I hope that is expected to go to Hon. Obuya the Member of Imara Daima. Thank you, Hon. Speaker.

Hon. Kennedy Obuya: Thank you, Hon. Speaker. Ten working days is okay with me.

Hon. Temporary Deputy Speaker: Okay! Hon. Members pursuant to Standing Order 41 I would like Hon. Njihia to proceed with his Motion.

Hon. Abraham Njihia: Thank you, Hon. Speaker Pursuant to Standing Order 191 (1) I beg to lay the Paper on the Table of the Assembly today Thursday 12 November 2020: The report of Sectoral Committee on Culture and Community Services on the Nairobi City County Betting, Lotteries and Gaming Bill 2020. Thank you, Hon. Speaker.

BILL

Second Reading

THE NAIROBI CITY COUNTY BETTING, LOTTERIES AND GAMING BILL, 2020 (ASSEMBLY BILL NO. 3 OF 2020)

Hon. Abraham Njihia: Thank you, Hon. Speaker and I beg to move that the Nairobi City County Betting Lotteries and Gaming Bill 2020 be read a second time.

Hon. Temporary Deputy Speaker: Hon. Njihia who is your seconder.

Hon. Abraham Njihia: Hon. Speaker, the Nairobi City County Betting, lotteries and Gaming Bill 2020 was read the first time on Wednesday 1st of July 2020 and subsequently committed to the sectoral committee of Culture and Community Services for consideration and thereafter submission of a report to the Assembly.

Hon. Speaker, the County Assembly had initial passed the City County Betting and Lotteries and Gaming Bill act which was gazetted as No. 5 of 2014. However, the Act was challenged in court for being unconstitutional.

Hon. Temporary Deputy Speaker: Order Hon. Njihia! I need the seconder of the Motion before we proceed.

Hon. Abraham Njihia: I have a seconder who is Hon Mellab Atemah.

Hon. Mellab Lumalah: Thank you, Madam Speaker, I stand to second the Motion.

(Question proposed)

Hon. Temporary Deputy Speaker: Mover!

Hon. Abraham Njihia: Thank you, Hon. Speaker. I beg to move that Nairobi City County Betting, Lotteries and Gaming Bill, 2020 be read a second time.

Hon. Speaker, the Nairobi City County Betting, Lotteries and Gaming Bill, 2020 was read the first time on Wednesday 1st July 2020 and subsequently committed to the Sectoral Committee on Culture and Community Services for consideration and thereafter submission of the report to the Assembly.

Hon. Speaker, the County Assembly initially passed the Nairobi City County Betting, Lotteries and Gaming Act, which was gazetted as No. 5 of 2012. However, the Act was challenged in court for being unconstitutional, null and void in Constitutional Petition No.295 of 2014, whereby the court issued judgement delineating the functions of both the National Government and the County Government on betting, lotteries and gaming.

Hon. Speaker, the current Bill varies with the nullified Act and seeks to replace the same in compliance with the final orders in Petition No. 295 of 2014. Indeed, Hon. Speaker, with the projected increase of city population and betting and gaming, there is need for County Assembly to regulate this sector in compliance with the Constitution.

Hon. Speaker, following committal of the Bill, we placed an advertisement in the local dailies on Monday 28th September 2020, inviting comments from the public in regard to the Bill. Following the call of memoranda from the public, the Committee received written memoranda from three stakeholders. All their proposals were deliberated and considered by the Committee.

Hon. Speaker, the Committee having considered the stakeholders' views with regard of the Bill, it made the following general observations:

- i. That the Bill was drafted with conformity with the Constitution of Kenya, 2010, Gazette Notice 8753 dated 8th September 2017, and the delineation of the functions between the National Government and County Government and the final judgment on the Petition No. 295 of 2014; That the Bill is a new Bill considering the final orders of Petition No. 295 of 2014;
- ii. That the Bill was developed by the County Government as a response to various persistent challenges facing Nairobi City County such as loss of revenue;
- iii. That the Bill is critical for the collection of revenue and control of betting, lotteries and gaming activities and the Nairobi City County cannot collect revenue from these activities due to inadequate laws governing the Nairobi City County betting, lotteries and gaming activities;
- iv. That the Bill was developed through a comprehensive stakeholder participation and therefore most concerns of the stakeholders are addressed; and
- v. That the Bill will help develop a workable framework to bridge the perceived gap between registration, regulation and realities within Nairobi County.

Hon. Speaker, in light of these, I wish to give notice that the Committee intends to move amendments to the Bill in Clause 2, 5, 1 (e), 14 (g), and 17 (2). The amendments are aimed at addressing the issues raised by stakeholders as contained in the tabled report and matrix.

Hon. Speaker, as I have taken the Members through this Bill, it is a Bill that can generate a lot of income. Now, the Nairobi City County is in short of revenue yet there are so many gaming, betting and lotteries which are going on but do not pay taxes. In light of this Bill, the County Government will be able to collect revenue which will generate income to the residents of Nairobi for better service delivery.

In the Bill, here must be a board of nine members. These members were gazetted, but up to today, they have never assumed office. Why? They have not assumed office because of this Bill. I urge this Assembly to assist us in passing this Bill so that we may even give people bread so that they can be able to feed their families and also generate revenue for this County. Sometimes back, we requested for 30 days'

adjournment so that it can be taken for public participation. It was taken for public participation. As I was reading my moving notes, there are some stakeholders who came and contributed, and now we are going to pass it the way it is. This is in respect to Clause 25 (1) (e), 14 (g), 17, and 2.

Thank you, Hon. Speaker. I now ask my colleague, Hon. Mellab to proceed with whatever I have not touched if that is the norm [to second the Motion]. Thank you.

Hon. Mellab Lumalah: Thank you, Madam Speaker for giving me this opportunity. I stand here to support this Motion. It has been long overdue. The Board was appointed many months ago but were not doing anything because of the laws governing the work they are supposed to do. The betting board is like an amorphous team or business that is going around that if we invest in as a County, it is able to give us enough revenue to support the logistics of some of the activities the County is running. It is pointless to have the board existing without giving them facilities and powers to work. It becomes toothless and can't do anything on the betting system.

This betting has been operating without any guidelines. It is now a high time as Assembly we pass this Bill because Nairobi is a hub of the betting points. We can agree with you Members that any time you look on your screens you will always see betting adverts. Do we really have guidelines and manage them as a County? How do you make good use of it to also contribute in revenue generation? We have to pass this Bill as soon as possible so that we get the board working and realize more revenue from betting. Thank you very much, I support [second].

[Question proposed]

Hon. Temporary Deputy Speaker: Any Member from Zoom? Hon. Ngengi.

Hon. Daniel Muturi: Thank you, Hon. Speaker. I stand to support this Motion. As the Chairman as articulated well on this Bill, it is common knowledge for most of us who spend time in this City. In the streets of Nairobi, you have people who are already running this betting but they don't give any income whatsoever to the County despite them being residents of Nairobi County and wanting development. They don't pay for any taxes nor licenses.

Hon. Speaker, there has been an incident around St. Peters where a gentleman was killed because most of them have become common since they are not regulated. This Bill will go a long way in regulating this industry. There will be a better management, and if anything goes wrong they are easier to trace and find. So, I fully support this Bill, and as it has been mentioned here, it has been delayed. Any such delay is really a loss of our revenue. I beg to support thank you, Hon. Speaker.

Hon. Temporary Deputy Speaker: Hon. Themendu Jeremiah! Hon. Jeremiah Themendu! Any other Member from zoom who wants to contribute this particular Motion, please just raise your hand.

Hon. Jeremiah Themendu: Hallow, Madam Speaker, can you hear me now?

Hon. Temporary Deputy Speaker: Yes, you can proceed.

Hon. Jeremiah Themendu: Madam Speaker, I rise to support the County Betting, Lotteries and Gaming Bill because if we do not have such a Bill in the Assembly, we are going to lose a lot of money. As you know those casinos pay the money to the National Government and some are devolved and the County does not get anything from them.

Therefore, if we have the Bill in place we shall be able to collect money for Nairobians to benefit and to create more jobs. There are also some people who do betting in the street. If the Bill is in place, I think they are going to look at the issue of the public be conned of their money and they will be able to follow the procedures to be laid down.

Hon. Speaker, I support the Bill because it shall be for the welfare of the Nairobians. Thank you, Hon. Speaker.

Hon. James Kariuki: Thank you, Hon. Speaker. I rise to support this Bill because one thing it will give a remedy in the behavior and performance of the lottery. This is because it is being abused. Now, we are going to have a regulatory system whereby it can be managed from a level perspective to become an income generating and also employment and a source of revenue to the County. I rise to support and thank you, Madam Speaker.

Hon. Temporary Deputy Speaker: Any other Member from zoom, the floor is yours. Mover!

Hon. Abraham Njihia: Thank Hon. Speaker, as you have heard we are losing a lot of revenue. By having this Bill, we will be able to have regulation which will guide on the way forward.

Hon. Speaker, I would like to thank Hon. Mellab Atemah for seconding this Motion and I do not take it for granted. To Hon. Ngengi, Hon. Jeremiah Themendu Karani, Hon. Kiriba and all other Hon. Members who wished to support this Bill, thank you. This is a noble and good Bill for this City. Hon. Speaker, thank you so much.

(Question put and agreed to)
(The Bill was read accordingly)

BILL

Second Reading

THE NAIROBI CITY COUNTY PUBLIC NUISANCE BILL, 2020 (ASSEMBLY BILL NO. 5 OF 2020)

Hon. James Kariuki: Thank you, Madam Speaker. Once again, I would like to congratulate you for the appointment at the Speakers' panel. Here in the City County Assembly, we have observed third gender rule as per the constitution of the Republic of Kenya. Therefore, Madam Speaker, I beg to move the following Motion; That the Nairobi City County Public Nuisance Bill 2020, Bill No. 5 of 2020 be now read a second time.

Hon. Temporary Deputy Speaker: Hon. Kiriba, I think we should take Members for an induction. This is because you are supposed to move the Motion and give an entail of what the Members are supposed to contribute or rather or give us the seconder as the normal way we handle our Motions in this Assembly.

Hon. James Kariuki: Madam Speaker, I stand to be guided. Hon. Speaker, the Bill was read a First Time on 17th September 2020 and committed to the relevant Sectoral Committee Pursuant to the provisions of Standing Orders 130 and 131.

Hon. Speaker, a public nuisance is a criminal wrong. It is an act or omission that obstructs, damages, or inconveniences the rights of the community. It threatens the health, morals, safety, comfort, convenience, or welfare of a community. Such activities include obstructing a public road, polluting air and water, operating a house of prostitution, and keeping explosives.

Article 42 of the Constitution of Kenya 2010 provides that every person has the right to a clean and healthy environment including the right to have the environment protected for the benefit of present and future generations through legislative and other measures.

Hon. Speaker, the principle objective of this Bill is to outline legislative measures for the control of public nuisances within the precincts of Nairobi City County pursuant to the functions vested on the County Government under paragraph 3 of Part II of the Fourth Schedule to the Constitution of Kenya 2010.

This Bill seeks to control public nuisance and empower the County to take all lawful, necessary and reasonably practicable measures for: -

- a) Maintenance of the County at all times in a clean and sanitary condition;
- b) Abatement and prevention of public nuisance; and
- c) Remedying or causing to be remedied, any nuisance or condition liable to be injurious or dangerous to health or which has been declared to be a public nuisance

Hon. Speaker, the proposed law sets out the scope of application of the law which will be in addition to and not in derogation of the existing National laws on the subject.

Hon. Speaker, the Bill sets out provisions for certain actions and omissions amounting to public nuisance – which includes public nuisance relating to public roads and street offence; encroachment; sanitary facilities and controls; health measures in a food plant amongst others.

The Bill further highlights provisions relating to inspection of premises for compliance and the powers and mode of exercise of those powers during such inspections.

The Bill highlights miscellaneous matters including offences and penalties and the regulations making powers.

Hon. Speaker, I am confident that the implementation of this proposed law will go a long way in improving the public dignity in the County.

Hon. Speaker, I wish to call Hon. Ngengi to second the Motion.

Hon. Daniel Muturi: Thank you Hon. Speaker. I rise to support this Motion by Hon. Kiriba which is very timely. Hon. Speaker, Nairobi has gone rogue, it is not a surprise as you walk the streets of Nairobi, whether day or night, Nairobi as a whole, all the seventeen constituencies, you will find people relieving themselves, that is short calls (urinating), on the streets as you walk along. Someone will just turn around whether there are children around and start doing their business, which other than being uncouth, is also uncultural for us. Hon. Speaker, this kind of impunity has grown and come even to the CBD and other parts of the county.

As you look around, there are also issues of pollution, noise pollution, people are hooting as they please, others are toting as they please, vehicles are smoking and not properly maintained, which is quite a danger to the environment. We used to have a law of people smoking in public and the same law is still being violated. You still walk around or where we go in the evenings to relax our minds over a small drink, we used to be separated from the smokers and there were smoking zones, but now everybody smokes everywhere and in these COVID days, we need to take care of our health.

You see also cars are fixed in the streets, anywhere on the road, which again is a danger to both the motorists and the mechanic fixing the car.

Hon. Speaker the other culture that we have in Nairobi now that is very worrying is the *boda bodas*, they traverse the city riding on the wrong side of the road, carrying passengers, we cannot also have situations where you have one carrying around three, four or five passengers. Because when these accidents occur, you see whole families affected. I do not know what has come over us, when we endanger our families by putting all of them on a motorcycle, taking into consideration the kind of roads and the kind of riders we have.

So Hon. Speaker, only to mention a few, we have also people who walk dogs and they go defecating on the streets and also people who are selling food which has not been inspected. We go to some of these restaurants or we walk in the streets of Nairobi, and I would like to invite the Hon. Speaker sometime to walk down with me in some of these streets where you have music blaring loudly in the streets. The speaker is right there in your ears, you have signs hanging over you that you cannot even walk, you are dodging signs right there in your face.

Hon. Speaker you also get into the public transport and it is just noise. I prefer to walk nowadays because by the time I get home, trying to relax, my mind is just going 'boom-twaf', which to me is very stressful and several times I have been abused for asking the driver or tout to put down the music, telling me if I am too old I get out of the vehicle. Sometimes it is raining and I need to get home and so it becomes quite an issue to survive in this city. It is about time we have order in this city and this document I beg Members to support it because this is a very good document and we shall pass it. But Hon. Speaker if I may, after this is said and done, like all other Motions and Bills that we have passed in this honorable house, I think we have got 485 since we got here, there are some we found from the last Assembly. I am also very disappointed because we do have an Implementation Committee and the Executive is also failing us on this because such laws, if properly enforced, we can see a big change in our way of life, our children will be living in a better environment. Hon. Speaker, we are having problems even when our children come on holidays, we have to send them to the rural areas because of the noise pollution around the neighborhood. So I beg to second and plead to the relevant authorities to take this document very seriously Hon. Speaker. I beg to second. Thank you.

Hon. Temporary Speaker: On a lighter note, I understand you are the MCA for the city centre and I don't know if your electorates ever hear about the particular Bill, especially those people who are selling shoes. I don't know how they will take it. But for me, because the pollution is actually a menace to us, I think the house will give clear guidelines on how we will forge forward for a safer and also pollution free city.

(Question proposed).

Members, Hon. Obuya.

Hon. Kennedy Obuya: Thank you Hon. Speaker. I was getting guidance and counsel from our senior Hon. Mwangi Njihia. Allow me, because in the interest of time and also in the interest of global warming, matters pollution are matters that affect naturally the development of the global community. I rise fully to support. Thank you Hon. Speaker.

Hon. Temporary Speaker: Any Member from zoom? Please just raise your hand, we will identify you. Any Member? Mover!

Hon. James Kariuki: Thank you, Madam Speaker. I am overwhelmed by the support on this Bill. I wish to acknowledge with gratitude the offices of the Speaker, the Clerk of the County Assembly, for the logistical and technical support accorded during the drafting of this proposed law. My appreciation to all stakeholders who contributed in developing this law. Finally, my gratitude to the Members of the County Assembly for support and consideration of the Bill, I hereby do wish to also appreciate my seconder, Hon. Ngengi because of his vast experience with Public Nuisance Bill and also experience in his Central Ward. Thank you so much Members for the support. I beg to reply.

(Question put and agreed to)

(The Bill was read accordingly)

ADJOURNMENT

Hon. Temporary Deputy Speaker: There being no any other business, the House adjourns till Tuesday 17th November 2020 at 9.30 a.m. Thank you and God bless you all.

The House rose at 3.35 p.m.