



NAIROBI CITY COUNTY ASSEMBLY

OFFICIAL REPORT

Second County Assembly – Fourth Session

SPECIAL SITTING

Friday 14th August 2020

The House met at 2.30 p.m.

[Hon. Acting Speaker (Mr. John Kamangu) in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

Hon. Acting Speaker: Thank you Hon. Members. Hon. Members, before I convey my communication, I take this opportunity to welcome you all to today's unprecedented Special Sitting. As I indicated to you yesterday, Members will be participating in today's sitting virtually except for the House leadership. This is in compliance with Ministry of Health guidelines on containment of the spread of Covid-19. I therefore sincerely thank you for adhering to the guidelines issued in my yesterday's guidance regarding this virtual sitting.

RESIGNATION OF HON. BEATRICE K. ELACHI (CBS) FROM THE OFFICE OF THE SPEAKER OF NAIROBI CITY COUNTY ASSEMBLY

Hon. Members, Pursuant to Section 7 of the County Governments (amendment) Act, 2020 as read together with Standing Order 5 (d) of the Nairobi City County Assembly Standing Orders, the Hon. Beatrice K. Elachi, CBS tendered her resignation as the Speaker of Nairobi City County Assembly.

Accordingly, Hon. Members, in accordance with the provisions of Standing Order 5(d) I hereby convey the said resignation and further state that Hon. Beatrice K Elachi is grateful to all Members for the opportunity you offered her to serve as the Second Speaker of the County Assembly.

BUSINESS SCHEDULED FOR THE SPECIAL SITTING

Hon. Members, Standing Order 5(3) provides as follows, and I quote: -

"If the Office of the Speaker falls vacant at any time before the end of the term of the Assembly, no business, other than election of the Speaker, shall be transacted by the County Assembly".

Accordingly, Hon. Members, in compliance with the aforementioned provisions of our Standing Orders and the subsequent publication of Gazette Notice No. 5751 pursuant to Standing Order 30 (3), today's Special Sitting has specifically been convened for purposes of conducting election of the Speaker.

Further, Hon. Members, the Chair wishes to remind you of the provisions of Standing Order No. 30 (4) which provides that, and I quote;

"Whenever the County Assembly meets for a special sitting, the Speaker shall specify the business to be transacted on the day or days appointed and the business so specified shall be the only business before the County Assembly during the special sitting, following which the County Assembly shall stand adjourned until the day appointed in the County Assembly calendar".

CHANGES OF LEADERSHIP OF THE JUBILEE PARTY

Honorable Members, I have the following Communication to convey: -

Honorable Members, the Office of the Speaker is in receipt of a letter from the Majority Whip of the Jubilee Party dated 15th April, 2020. The letter regards the Communication of changes to the Leadership of the Jubilee Party pursuant to Standing Order No. 20 of the County Assembly Standing Orders.

Standing Order 20(7) provides that *a member designated under paragraph (1), may be removed by the party or coalition of parties that designated him or her by two thirds of votes of all members of the largest party or coalition of parties in the County Assembly.*

Further, under Standing Order No. 20(8) *the Whip of the largest party or coalition of parties in the County Assembly shall forthwith, upon a decision being made under this standing Order, communicate to the Speaker, in writing, the decision together with the minutes of the meeting at which the decision was made.*

Honorable Members, the Office of the Speaker is further in receipt of Minutes and attendance lists in compliance with the provisions of the Standing Orders 20(7) and (8) communicating that the following have been designated Leaders of the Majority Party, namely: -

1. Hon. Abdi I. Hassan, MCA - Leader of Majority Party

2. Hon. Peter Wanyoike, MCA - Deputy Majority Leader
3. Hon. Paul K. Kados, MCA - Majority Whip
4. Hon. Waitheera Chege, MCA - Deputy Majority Whip

Accordingly, the Changes are hereby communicated and are effective 15th April, 2020.

Accordingly, Hon. Members, the Assembly is duly notified of these changes. I thank you Hon. Members.

APPEAL AGAINST SANCTIONS LEVELLED ON THE HON. BENSON MWANGI, FOR ALLEGED BREACH OF PRIVILEGE

Hon. Members, I have the following Communication to convey: –

Hon. Members, the Office of the Hon. Speaker is in receipt of a letter from the Hon. Benson Mwangi, MCA regarding an appeal on his suspension from the House. The said suspension was issued under Standing Order 114(2) which provides for the power of the Speaker *to call a Member whose conduct is gravely disorderly to order and shall order the member to withdraw forthwith from the precincts.*

Hon. Members, Standing Order 114 (5) provides that *notwithstanding the provisions of paragraph (4), a member in respect of whom a suspension in paragraph (2) is imposed may appeal in writing to the speaker and the speaker may – (a) uphold the decision; (b) vary the decision and communicate the matter to the Assembly or; (c) refer the appeal to the Select Committee on Powers and Privileges for consideration.*

Hon. Members, having considered the Appeal, I wish to guide as follows: -

The conduct of a Member of the County Assembly and the breaches thereof are provided for under the Privileges Act, 2017 and the Standing Orders of the County Assembly. The application of the sanctions for breach of privileges is equally detailed under Section 16 of the Privileges Act and the Standing Orders.

Critically, the application of these sanctions ought to be aligned with the provisions of Article 50 of the Constitution, which *provides that every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body*, in this case being the County Assembly and its mechanisms under the law and the Standing Orders.

Hon. Members, the decision obtaining herewith arose from the proceedings of the House, whence the Member was issued an additional time for suspension by the Hon. Speaker, and the appeal from that additional suspension indeed lies squarely with the Office of the Hon. Speaker by virtue of Standing Order No. 114(5).

And therefore, the Chair is properly seized of jurisdiction to make a finding on this appeal as follows;

Honorable Members, having perused the Appeal and the additional sanction meted therewith, and reviewed the fair hearing and access to justice principles in so far as the decision was concerned, I am inclined to advise as follows; That, in the interest of the administration of fair justice, it is my considered opinion that the additional suspension was an unfair and an unjust overreach, and it is therefore lifted pursuant to Standing Order 114(5). It is so directed.

Thank you very much Hon. Members.

ELECTION OF THE SPEAKER

DIRECTIONS ON THE ELECTION OF THE SPEAKER

Hon. Acting Speaker: Hon. Members, I have the following directions that I wish to convey regarding the Order on election of the Speaker. The Chair requests that you to be attentive and patient since it is rather a long communication which addresses critical steps leading to the election of the Speaker.

Events leading to today's Sitting

Hon. Members, following the resignation of Hon. Beatrice K. Elachi, the Clerk in exercise of the powers conferred by Standing Order No.6 notified the general public of a vacancy in the Office of the Speaker of the County Assembly via Gazette Notice No. 5751 dated 12th August, 2020. Additionally, the office of the Clerk publicized the declaration of the vacancy by advertisement in three newspapers of national circulation.

In the notice and advert, the office of the Clerk invited interested persons who qualify to be elected as Members of County Assembly, but are not such Members to submit their nomination papers for election as Speaker of the County Assembly.

Hon. Members, as per the advertisement, a person who qualifies for the position of the Speaker of the County Assembly was required to submit the nomination forms together with his or her curriculum vitae and relevant supporting documents to the Office of the Clerk of the County Assembly at least forty-eight (48) hours before the day of the Sitting.

Hon. Members, at the close of the nomination period, the following seven (7) persons had submitted their nomination papers for election as Speaker of the County Assembly: -

1. Benson Mutura Kangara
2. Abdi Ali Abdi
3. Dr. Odingo Odhiambo Washington
4. Mike Obonyo Guoro
5. Allan Chacha Mang'era
6. Kennedy Okeyo Ng'ondi
7. Hon. Alex Sanaika Ole Magelo

Hon. Members, pursuant to the provisions of Article 193 of the Constitution and Standing Order 6 of the County Assembly Standing Orders, all the seven persons who completed and submitted their nomination papers, qualified as candidates for election as the Speaker of the County Assembly.

Hon. Members, Standing Order 6(5) requires that: -

"The Clerk shall maintain a register in which shall be shown the date and time when each candidate's nomination papers were received and shall ascertain that every such candidate for election to the office of Speaker is qualified to be elected as such under Article 193 of the Constitution."

In that regard, I hereby confirm that a register has been maintained by the office of the Clerk in accordance with the requirements of this Standing Order.

Further, Hon. Members, Standing Order No. 6 (6) requires that: -

“Immediately upon the close of the nomination period provided for in paragraph (2), the Clerk shall-
(a) publicize and make available to all Members, a list showing all qualified candidates; and
(b) Make available to all Members, copies of the curriculum vitae of the qualified candidates.

Hon. Members, I hereby confirm that a list showing all qualified candidates was publicized and was made available to all Members by the office of the Clerk. I further confirm that the office of the Clerk made available to all Members a list with copies of the curriculum vitae of the qualified candidates. However, Hon. Members, I wish to notify the House that one candidate the Hon. Alex Sanaika Ole Magelo withdrew his candidature after publication of candidates, as such, we shall only have six (6) candidates.

The Voting Process

Hon. Members, Standing Order 5(4) provides that the Chairperson of Committees (now the Deputy Speaker/Ag. Speaker) shall preside over the elections of the Speaker whenever a vacancy occurs in the office of the Speaker at any time before the end of the term of the Assembly. Consequently, I am set to preside over the current election exercise.

Hon. Members, Standing Order 7 provides that the election of the Speaker shall be by secret ballot. It is envisaged under the said Standing Order that the voting process shall be wholly manual where there are ballots and voting boxes and booths. However, under the current circumstances, occasioned by the outbreak of Covid-19 and the subsequent guidelines issued by the Ministry of Health and the Head of Public Service vide letter Ref.OP/CAB.26/1/3A dated 20th July, 2020, where the plenary is virtual, the Chair directs that electronic voting shall be the voting mode to be used during this specific election.

Hon. Members, accordingly, the provisions of Standing Order 75 on electronic voting shall be applied with necessary modifications to suit the current circumstances. In the same breath, the Chair wishes to draw your attention to the amendments on the Standing Orders which we adopted on 2nd June, 2020 regarding virtual sittings. Specifically, the Assembly adopted that and I quote: -

“231 D Use of Technology: -

- (1). The Speaker may, taking into account the gazetted precincts of the Assembly, prescribe appropriate information and communications technology platforms for the conduct of virtual proceedings under this part.*
- (2). The platform described under paragraph (1) shall;*
 - (d) where the Assembly is wholly precluded from conducting a physical sitting, incorporate a system that allows Members to vote.*
- (3) The voting system incorporated under paragraph (2) (d) shall be simple, accurate, verifiable, secure, accountable, transparent and facilitate the prompt declaration of results of each vote taken.”*

With the foregoing, Hon. Members, upon expert advice, the Chair has chosen the *customized zoom application* as the platform that shall be used to conduct the current elections of the Speaker. In arriving at this decision, the Chair is satisfied that the application is simple, accurate, verifiable, secure, secrete, accountable, transparent and has the ability to facilitate prompt declaration of results.

Indeed, Hon. Members, once voting shall be declared, you will be prompted on your various electronic devices to make your choice by clicking against the name and image of your preferred candidate. Once, every member will have completed voting, the results shall appear on your devices and on the screens for those in the Chamber. It is mandatory that all Members who wish to vote, including those currently in the chamber, to login through the zoom platform using their email addresses and gazetted names.

Hon. Members, I wish to remind the Assembly that the voting exercise we are about to undertake is secret. Accordingly, both Members in the Chamber and those voting virtually are not allowed to display to anyone how they voted. The Office of the Clerk is also directed not to disclose how Members voted. Members of the media are also reminded to observe rule 3(c) of the Assembly Broadcasting Rules, which provides that: *“Wide-angle shots of the Chamber shall be used during voting and Division and no shot shall be taken so as to show the manner in which a Member has voted in any secret ballot.”*

Further, Hon. Members, the Chair wishes to remind the House that if no candidate is supported by the votes of two-thirds of all Members, the candidate or candidates who received the highest number of votes in the first ballot and the candidate or candidates who in that ballot received the next highest number of votes shall alone stand for election in a further ballot. The candidate who receives the highest number of votes in the further ballot shall be elected Speaker, and I will declare so.

The Actual Voting

Hon. Members, having explained the voting procedure, we are now ready to vote. I also refer you to the virtual guidelines I issued today's meeting. However, before we proceed, I wish to confirm first from the Clerk and ICT team whether we have the requisite quorum of two-thirds. I now direct the Assembly ICT officers to prompt the voting feature on the zoom platform.

Hon. Members, you have five minutes to make your choice by clicking on your preferred candidate. Proceed Hon. Members and vote!

(Hon. Members voted virtually)

Hon. Members, the voting is now closed; you can see the results on your screens.

(Election results were cast on the screens)

RESULTS

I now want to declare the winner as per the tally. Hon. Members, the results from first round are as follows: -

- | | |
|--------------------------|-----|
| 1. Benson Mutura Kangara | 123 |
| 2. Abdi Ali Abdi | 0 |

- | | |
|-----------------------------------|---|
| 3. Dr. Odingo Odhiambo Washington | 0 |
| 4. Mike Obonyo Guoro | 0 |
| 5. Allan Chacha Mang'era | 0 |
| 6. Kennedy Okeyo Ng'ondi | 0 |
| 7. Hon. Alex Sanaika Ole Magelo | |

Hon. Members, Mr. Benson Mutura Kangara having attained 123 votes hence having met the prescribed two thirds threshold, I hereby declare him as the valid elected Speaker of the Nairobi City County Assembly.

(Applause)

Consequently Hon. Members, I hereby order the Chief Serjeant-at-Arms to search, find and bring to the Chamber the said person Benson Mutura Kangara, for purposes of ascribing the oath of office. Hon. Members, I now direct that the Clerk proceed and administer the oath of office.

Sorry Hon. Members, the ICT team can you correct the mistake and confirm the figures properly so that I can declare the Speaker. ICT team, can you put the figures together so that I can announce the proper figures?

Sorry Hon. Members, the ICT team had a problem with their machines and I want now to give the correct figures. The correct figures are as follows: -

- | | |
|-----------------------------------|----|
| 1. Benson Mutura Kangara | 99 |
| 2. Abdi Ali Abdi | 0 |
| 3. Dr. Odingo Odhiambo Washington | 0 |
| 4. Mike Obonyo Guoro | 0 |
| 5. Allan Chacha Mang'era | 0 |
| 6. Kennedy Okeyo Ng'ondi | 0 |
| 7. Hon. Alex Sanaika Ole Magelo | |

Mr. Benson Mutura Kangara, having attained 99 votes, hence having met the prescribed two thirds threshold, I hereby declare him as the valid elected Speaker of the Nairobi City County Assembly.

(Mr. Benson Mutura was accordingly declared the Speaker)

(Applause)

Consequently Hon. Members, I hereby again order the Chief Serjeant-at-Arms to search, find and bring to the Chamber, the said person Benson Mutura Kangara, for purposes of ascribing the oath of office.

(Hon. Benson Mutura was escorted into the Chamber)

(On arrival, the Speaker-elect was escorted to the Chair by Hon. Paul Kados, the Majority Chief Whip)

Hon. Members, I now direct that the Clerk proceed and administer the oath of office. Thank you

(The Acting Clerk administered the Oath of Allegiance to the Speaker-elect, Hon. Benson Mutura)

(Applause)

(The Speaker, Hon. Benson Mutura took the Chair)

COMMUNICATION FROM THE CHAIR

SUBMISSION OF THE SPEAKER TO WILL OF THE HOUSE

Hon. Speaker: Kwanza kabisa, nachukua fursa hii kumrudishia Mwenyezi Mungu shukrani kwa kutupa nafasi ya kuja kuwahudumia wakati huu. Vilevile, narudishia shukrani Waheshimiwa wote wa Bunge la Kaunti hii maanake nyinyi ndio wabunge wangu na pia wakubwa wangu. Nitawatii, kuwatumikia, na kufanya kazi pamoja. Nawashukuru.

(Applause)

Pia, nachukua fursa hii kushukuru Chama chetu cha Jubilee, hasa Rais Uhuru Muigai Kenyatta na Msajili Mkuu wa Chama chetu, kwa kunipa fursa ya kuwa mgombea wa kiti cha Spika. Nashukuru kwa yale yote ambayo wamenifanyia na nitawatendea kulingana na misingi na kanuni za chama.

Vilevile, nashukuru Chama Pinzani cha ODM kwa heshima ambayo wamenionyesha zaidi ya kunikubali nije hapa nifanye kazi. Ni ishara kuwa siasa ya nchi tunaweza fanya pamoja. Pia tunaweza shirikiana tufanye kazi pamoja maanake huduma zinazofaa tufanye ni dharura. Wakaazi wa Nairobi wanahitaji tufanye kazi pamoja na kwa undugu. Kwa upande wa upinzani, fikisha salamu zangu kwa Kinara wa Chama. Si rahisi tukiwa upande wa demokrasia upate kuhidhinishwa na chama cha upinzani. Pokea salamu zangu mahali uliko.

(Applause)

Nimeomba kazi hii nije niwahudumie kama Spika. Sisemi kuwa nilikuwa bora zaidi, lakini kwa heshima zenu na fadhila zenu, mmeona ni vyema nije niwahudumie. Naelewa kinagaubaga yale ninafaa kufanya, sanasana kwa upande wa utunzi na ubunifu wa sheria. Tutashirikiana pamoja. Hayo yote tutafanya tukiangalia mwelekezo wa Katiba ya nchi yetu tukufu.

Nachukua fursa hii pia kushukuru Gavana wa Nairobi, Mike Mbuvi Sonko. Wewe ni Gavana wetu na tuutaribu kama Bunge hili tufanye kazi pamoja mahali ambapo inahitajika tufanye kazi pamoja. Tusaidiane ili huduma ziwe sawa. Pokea salamu zangu Gavana wangu, ulikuwa mbunge wangu. Mwenyezi Mungu azidi kukupa heshima na hekima ya kuwahudumia watu wa Nairobi.

Vilevile, najua kuna changamoto kuhusu Shirika jipya zaidi miongoni mwetu, Nairobi Metropolitan Services. Ni shirika ambalo lazima tushike mkono. Kwa hivi sasa, ni kama yule mtoto mdogo anayechuchumaa. Lazima tushike kama Bunge aweze kusimama na kisha aanze kukimbia maanake huduma zinahitajika na watu wa Nairobi kwa haraka iwezekanavyo. Kwa hivyo, hasa tukiwa na Janga la Corona, tutawashika zaidi na tufanye kazi pamoja.

Wabunge, hivi karibuni kupitia viongozi wenu, Kiongozi wa Wengi, Kiongozi wa Wachache na Viranja wenu, nitawaalika kwa mkutano wa dharura tuweze kujuana, tufahamiane, na tupange vile tutafanya kazi pamoja. Kwa hivyo, mkipata mwaliko wangu mshukuru.

Wakati huu, nimekuja kwa heshima na upole, nitakapokunja jamvi na kuondoka tuwe na urafiki na kumbukumbu nitakazofurahia nyakati zijazo. Natumahi hayo yote yatatendeka. Kwa leo, najua tuna mambo mengi ya kufanya. Kama Bunge, lazima tuangalie taaluma na kanuni za Bunge. Lazima kila moja wetu apewe fursa ya kujadiliana. Kuwa na maoni mbadala haimanishi kuwa wewe ni adui wa yule mwingine. Tutajaribu tuwe pamoja, na wachache pia tuwape sikio lakini haki tuwape wengi.

Kwa hayo mengi, najua tutapatana. Nawaomba kwa heshima Waheshimiwa wa Bunge hili Mwenyezi Mungu awape hekima na busara ya kuweza kukariria na kukadiria mambo ambazo tutapatana. Nehema ya Mwenyezi Mungu izidi kuwa nanyi sasa na wakati wote. Ahsante.

(Applause)

ADJOURNMENT

Hon. Speaker: Hon. Members, you know I am not quite conversant with some of these issues. So, you will bear with me.

Hon. Members, the Assembly stands adjourned until Tuesday, September 8th 2020 at 9:30 a.m. in accordance with the Assembly calendar. Thank you.

The House rose at 3:30 p.m.