



NAIROBI CITY COUNTY ASSEMBLY

OFFICIAL REPORT

Second County Assembly – Fourth Session

Thursday 19th November 2020

The House met at 2.30 p.m.

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

PRAYERS

Hon. Temporary Deputy Speaker: We have the quorum, proceed.

PAPER

Hon. Temporary Deputy Speaker: The Chairperson of Select Committee on Members Services Committee, Hon. Muthami?

Hon. Silvy Moseiya: Madam Speaker, I am not the Chairperson, but Mheshimiwa Nancy is not feeling well. I have not been asked to hold brief for her but she may not be able to appear right now.

(Point of Order)

Hon. Antony Gathumbi: I can hear her from the phone. She is even shouting, "I am here". May be there is a technical problem.

Hon. Temporary Deputy Speaker: Yes, Hon. Nancy Muthami, proceed.

Hon. Nancy Muthami: Hon. Speaker, this is the Report of Select Committee on Members Services and Facilities on induction workshop held from 19th to 22nd October 2020. Thank you, Hon. Speaker.

(The Paper was laid on the Table)

NOTICE OF MOTION

Hon. Nancy Muthami: Hon. Speaker, I beg to give notice of the following Motion:

THAT, this Assembly adopts the Report of Select Committee on Members Services and Facilities on induction workshop held from 19th to 22nd October 2020, laid on the table of the Assembly today, Thursday 19th November 2020. Thank you.

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STATEMENTS

Hon. Temporary Deputy Speaker: Yes, Hon. Kimemia.

REQUEST FOR STATEMENT REGARDING OWNERSHIP OF LAND LR NO.209/4401/318 LOCATED IN MAKADARA ESTATE, MAENDELEO ROAD OFF HAMZA ROAD

Hon. Antony Gathumbi: Thank you, Madam Speaker. Let me take this opportunity to congratulate you for having being selected as Member of Speaker's Panel.

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 ownership of land LR NO.209/4401/318 located in Makadara Estate, Maendeleo Road off Hamza Road.

Hon. Speaker, there are allegations being raised by the residents of Makadara concerning a well-orchestrated scheme by the County Chief Valuer for unknown reason to sabotage the registration of the aforementioned piece of land and opening of its rates account even after payment of Kshs. 5 ,000 was made in 2012.

Hon. Speaker, the owner of the property was issued with the title deed in 2011 by the defunct City Council, but there are people masquerading and contesting to be the real owners of the plot.

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

- i. The real owners of the plot LR NO.209/4401/318 allegedly under contestation;
- ii. Reasons the land rate account for the above mentioned property has neither been opened nor registered since 2012 to enable the owner make annual remittance to the County as required;
- iii. Reasons as to why the County Chief Valuer is delaying the completion of the search of the said property to ascertain the real owners; and
- iv. Measures the Nairobi Metropolitan Services (NMS) and the County Executive have initiated to ensure lands with genuine titles are timely registered and their rates accounts duly opened to enhance revenue in light of the integrated revenue collection system of Nairobi City County.

Thank you, Hon. Speaker.

Hon. Temporary Deputy Speaker: Chair of Planning? Any Member?

Hon. Silvy Moseiya: Hon. Speaker, I am a Member of the Planning Committee. I think I will abide by the tradition that has been set in this House in terms of response to Statements and say they give us two weeks, bearing in mind that most of the answers are on the other side of the road.

Hon. Antony Gathumbi: Thank you, Madam Speaker. I will take the two weeks.

MOTION

POLICY TO PROVIDE FOR OUTSOURCING OF LEGAL SERVICES

Hon. Silvy Moseiya: Hon. Speaker, this being my substantive time to speak, I start by congratulating you. It is refreshing to see a young beautiful lady seated at the Speaker's seat.

THAT, aware that the County Assembly enacted the Nairobi City County Office of the County Attorney which provides for the establishment of the office of the County Attorney Act to be staffed with competent Legislative drafters, legal personnel and constitutional experts; further aware that the Act provides for the functions of the Office of the County attorney which include drafting of legislations emanating from the

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County Executive and publication of all legislations passed by the County; concerned that the County has lost many cases and resources due to lack of robust legal representation in cases involving the County Government; further concerned that the County legal department has failed to promote and guide the County resources in a manner to protect property of residents of Nairobi County due to lack of professionalism; noting that the County Assembly has passed several Acts which have not been published as required by the Law; this Assembly urges the County Executive to develop an elaborate policy to provide for outsourcing of legal services to handle complex or time-consuming projects and cases on a more affordable budget.

I beg Hon. Kimemia to second the motion.

Hon. Antony Kimemia: Thank you very much Madam Speaker. I would like to take this opportunity to second the Motion before us and also to congratulate Madam Museiya for having seen the problem that we face in the Executive, particularly in the County Attorney's Office.

Madam Speaker, the County Attorney's office is a very important office in the Executive. It is the backbone of the county because it is through this office that most of our revenue is guided, through the laws that are made in these offices. I would therefore like to just emphasize and say that the Motion is important and that the Executive should really find a policy framework on which they can work on in ensuring that the office is working promptly. So Madam Speaker I second the Motion.

(Question proposed)

Hon. Moses Ogeto: Madam Speaker, first and foremost, I stand here to support this Motion. I want to congratulate Hon. Museiya for bringing such a Motion. I also remind you that I have been the Vice Chairperson of the Justice and Legal Affairs Committee since 2013. Hon. Speaker, Nairobi County has lost a lot of cases, and looking at the submissions by Hon. Museiya, it is very clear that the County Executive and the County Attorney to bring up a policy which will guide on how the cases will be allocated to various lawyers. We know various lawyers who have been paid by the same County Executive because of the lack of framework.

The same policy I believe will bring a lot of lawyers and senior counsels who will be in a position to represent the County during litigation. For example, one lawyer was paid around Kshs.250 million for just work not done, Hon. Speaker. If you look at other cases and the payments which were accruing and which were paid before the Justice and Legal Affairs Committee, a lawyer represents the County then the County fails to pay the same lawyer, he goes to court and gets an injunction and decree from court to be paid.

The same lawyer when he was given such instructions, he knew that he was going to protect the County, then you find the same lawyer loses the case, the outsourced lawyers, and again after losing the same case he sues the same County, which gave him the same work. It is madness, Hon. Speaker.

The same policy framework, which will be brought before this Assembly, must give guidelines on how and on which '*locus standi*' will be presented on giving the cases to outsourced lawyers. That one will save taxpayers money because what we have seen in this Nairobi County has become a business of paying lawyers and not even paying the contractors, and this has delayed some few developments in Nairobi County.

This policy framework will assist in ensuring that the taxpayers' money will be used accordingly. I believe even the same will ensure that even the same people who will draft the policy, they will be brought to

book, there will be a question of unemployment. With those few remarks, I beg to support this Motion. Thank you Madam Speaker.

Hon. Mary Ariviza: Thank you Madam Speaker. I stand also to support the Motion. I know there is already a legal department that exists, but I think a framework would go a long way in ensuring that the right things are done within. Because once you have a group of lawyers that are working for the County, and we do not have a framework on how everything is done, then it is like animal farm, where everything is just happening zigzag without any proper framework.

So I stand to support this in that it will give a legal framework for the legal officers or legal representatives of the County on how they will work. Secondly, it will be able to bring out how many legal officers can be within that department and then a legal framework on who can be involved from outside. That way as my colleagues have said, it will be able to save revenue loses for the County and also there will be a department or a legal framework that will show how much can be used within that particular department. So I stand here to support, this is a very important Motion.

Hon. Temporary Deputy Speaker: Any Member from zoom, if you want to contribute please you can raise your hand. Hon. Jeremiah Themendu.

Hon. Jeremiah Themendu: Thank you Hon. Speaker. I rise to support this Motion. It is timely and it is good for Nairobian. There are officers who violate the law and make the county to lose money because officers from the county go to court as they cannot just keep mum when the law is being violated. The reason why I am supporting the same is because if we get that framework, it shall prevent even those officers to use their authority sometimes violating the rights of members of this county.

Members of the public are aware of what is happening and they know where to go when their rights are violated. They normally go to court and the legal department's mandate is to represent the county. They even outsource lawyers from outside who they pay using the money from the county which has come from Nairobian as tax.

I rise to support because it shall help our people on the ground and help the county to get money. This money can be used to develop our wards instead of paying lawyers. Thank you very much Hon. Speaker, I support Hon. Moseiya's Motion.

Hon. Temporary Deputy Speaker: Thank you Hon. Themendu. Any other Member? Any Member from Zoom? Mover?

Hon. Silvy Moseiya: Thank you Madam Speaker. I read the Motion without giving any remarks. I would like to say a few things about this Motion. One, the legal department's outsourcing of lawyers has become an easy business for some lawyers sometimes in collaboration with the County Executive including the office of the County of the Attorney which is saddening.

I am not going to raise the issue of how they are paid because of the Advocate's Remuneration Order that guides payment. What I have a concern with is that we have a County legal department which has got eight lawyers only and they keep on saying that they cannot be able to recruit more but they can afford to outsource more. This beats the logic.

We have also got the issue of vetting of these lawyers into the panel at the Executive, I am not so sure about the assembly. I think the Justice and legal Affairs Committee need to pursue the matter because

the suppliers and contractors are shortlisted as service providers for this county, there need to be a threshold. May be the threshold is so low and that is why we keep on losing these cases.

There is also the issue of lawyers been given preferential treatment compared to the other suppliers and contractors to the county. As much as they supply the much needed services, how is the outsourcing done? Being their friend even though not an advocate yet, it is a bit questionable. I do not want to go to the details on how cases are assigned to specific lawyers but it is a bit eye blow-raising – for lack of a better word. I urge the Legal Committee of the assembly to pursue a further engagement with the legal department to find out how we can save the tax payers money that is used to outsource legal firms.

I thank Members who have supported the Motion. I know that most of the Members know lawyers are paid and even now they are demanding for payment. The fact that they are lawyers means that they have power to enforce their rights, that is where you will hear *Mheshimiwa* Ogeto say they sue. We do not pay them sometimes because we do not agree with what they present but they will sue us further and there is nothing we can do except to pay them. That is not the path that many suppliers will take because we owe many suppliers from 2013 but because they are not friends of the court, they have not been able to enforce their payment as vigorously as lawyers.

We need to tame this issue of outsourcing because it seems that for every case the county is outsourcing a legal firm out there. It beats the logic of what our legal department is doing. I urge the County Executive to look into this Motion very keenly, I also urge the Committee on Justice and Legal Affairs to pursue further dialogue. One time when I was a Member of that committee we started that dialogue of a policy when Christine was the County Attorney but it collapsed midway. I urge that this continues and I beg move. Thank you.

Hon. Silvy Moseiya: Thank you. That was a nice Motion. You should consider the Ombudsman process so that it can be enacted in the BBI report. It is going to help much more in our proceedings.

(Question put and agreed to)

ADJOURNMENT

Hon. Temporary Deputy Speaker: There being no other business, the House stands adjourned till 24th Tuesday 2020 next week at 9.30.a.m.

The House rose at 3.20 p.m.