



NAIROBI CITY COUNTY ASSEMBLY

OFFICIAL REPORT

Second County Assembly – Third Session

SPECIAL SITTING

Thursday 22nd January 2020

The House met at 2.30 p.m.

[Hon. Speaker (Ms. Beatrice Elachi) in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

DELIBERATION ON THE ISSUES OF COUNTY IMPORTANCE

Hon. Speaker: Hon. Members, let me take this opportunity to welcome you to this special sitting. I thank you for finding time from your busy schedules to attend this sitting. As leaders, we are always reminded that wherever we are called upon to perform duties of County and National importance, we must always rise to the occasion and I must applaud you for that.

Hon. Members, by a memo dated 17th January 2020, the Leader of Majority Hon. Charles Thuo MCA requested the Speaker to convene a special sitting for the County Assembly pursuant to Standing Order No 30 in order to deliberate on the nomination of the Deputy Governor of Nairobi City County. As such, I will be calling upon the Leader of Majority to issue a statement pursuant to Standing Order No 45 (2c).

Equally, we are expected to consider a supplementary budget of the County Government as contained in a gazette notice that convened this special sitting. Indeed Hon. Members as you are aware, the Public Finance Management Act, 2012 provides for circumstances under which a supplementary budget may be introduced. In particular, Section 135 of the Public Finance Management Act provides as follows;

135 (1)- “A County Government may spend money that has not been appropriated if the amount appropriated by any purpose under the County Appropriations Act is insufficient or a need has arisen for expenditure of a purpose of which no amount has been appropriated by that Act or money has been withdrawn from the County Government emergency fund.”

A County Government shall submit a supplementary budget in support of additional expenditure of authority for spending under Section 1 Subsection 1,3 in complying with Subsection 2. A County Government shall describe how the additional expenditure relates to the physical responsibilities, principles and financial objectives.

Hon. Members, you are aware that this Assembly passed a budget for the financial year 2019-2020. However, in the implementation of the budget, the Controller of Budget and the National Treasury have observed that most Counties including Nairobi City County have not cleared their pending bills and have threatened stoppage of release of funds to the county. As such, in order to forestall this situation, it is important that the supplementary budget be passed so that all pending bills especially those that have been audited by the Auditor General are settled. In particular bills owed to the following groups must be given priority; youths, persons with disability, women and other special interest groups.

Hon. Members, I therefore urge the select committee on Finance, Budget and Appropriations and the various sectoral committees to keep in mind these issues when considering the estimates. In addition, Hon. Members the supplementary budget will also give the County Assembly an opportunity to realign its votes so that the County Assembly can fund some of the critical programmes that have not been funded since the passage of these financial years' estimates.

Finally, Hon. Members, I wish to remind you for the provisions of Standing Order No 34 on the need to stick on the subject of today's sitting since the Chair will not allow any deliberations outside today's gazetted business. Moreover, I urge you to uphold the provisions of Standing Order No 94 on sub judice rule as you transact your business today. For clarity, the Standing Order provides as follows:

94 (1) subject to Paragraph 5- *"No member shall refer to any particular matter that is sub judice or which by the operation of any written law is secret. A matter shall be considered sub judice when it refers to active criminal or civil proceedings and the discussion of such matters is likely to affect its fair determination."* You are so guided.

(Point of order)

Hon. Speaker: Yes, Hon. Member.

Hon. Abdi Hassan: Thank you, Madam Speaker. When I look at the order of business in the Order Paper under Communication from the Chair, Standing Order No 43 reads:

Messages from the Governor and the Senator – *"That the Speaker shall read to the County Assembly any messages from the Governor or the Senator of the County delivered to the Speaker for communication to the County Assembly. If a message is received from the Governor or the Senator of the County at a time when the County Assembly is not in session, the Speaker shall forthwith cause the message to be transmitted to every member and shall report the message to the County Assembly on the day the County Assembly resumes. When a message from the Governor or senator of the County is read, the message shall be deemed to have been laid before the County Assembly."*

Hon. Speaker: Hon. Member of Matopeni, I need to know where we have gone out of order

Hon. Abdi Hassan: As per your special gazette notice, Madam Speaker, you need to do the communication from the Governor and the Standing Order does not give you leeway to report to the Assembly. It is not in your discretion to give messages from either the Governor or the Senator. It is a must.

(Applause)

I have noticed that you have jumped Order No 2 all the way to Order No 4.

Hon. Speaker: Hon. Member for Matopeni---

Hon. Abdi Hassan: You need to start by following the law, which is very clear. Give communication to this House. The moment you skip that---

Hon. Speaker: Hon. Member for Matopeni, will you allow the Speaker to guide you?

Hon. Abdi Hassan: Go ahead.

Hon. Speaker: Or you want to give us more advise?

Hon. Abdi Hassan: Go ahead.

Hon. Speaker: Hon. Member of Matopeni, the same Standing Orders allows for this House to decide the sequence. We can change the business and decide the order as per the Speaker. I do not have any communication from the Governor today, unless you have it and you want to give it to me.

(Hon. Abdi Hassan spoke off the record)

Hon. Speaker: Hon. Member of Matopeni, I have read the communication and informed you that the Majority Leader will stand at the right time and move why we are here today. The Speaker is just chairing a special sitting that was called in by the Majority Leader---

Hon. Abdi Hassan: Madam Speaker, with your indulgence, I have read for you Standing Order No 43 (3). You gave a communication from the Governor on the earlier special sitting and unless we follow the law, then we have no business being here.

Hon. Speaker: Okay. Thank you.

(Point of order)

Hon. Abdi Hassan: Let me be informed by my good friend here.

Hon. Speaker: Yes, Minority Whip

Hon. Peter Imwatok: Madam Speaker, I respect the member for Matopeni who is the immediate Majority Leader of the County Assembly and inform him on what he is speaking about. This is a communication, which he is also acknowledging in his own speech that you made during the previous special sitting. Therefore, what is before this House is a gazette notice on two items namely a submission of a supplementary budget and the deliberation courtesy of the Majority Leader. It is wrong to direct the Speaker on what the Majority Leader will want to deliberate on. He cannot direct the Chair because she has the discretion under Standing Order No 1 that in any given time where the law has ambiguity in the Standing Order, then she takes precedence in decisions made. You should not be swayed in any way. Stick to your law. Thank you

Hon. Speaker: Hon. Member of Matopeni Ward.

(Hon. Abdi Hassan spoke off the record)

Hon. Speaker: Hon. Member of Matopeni---

Hon. Abdi Hassan: Give me time, Madam Speaker

Hon. Speaker: Proceed.

Hon. Abdi Hassan: Thank you. Standing Order No gives the Speaker---

Hon. Speaker: Can I listen to the Majority Leader?

Hon. Abdi Hassan: I do not want to deal with hecklers.

Hon. Charles Thuo: Thank you. Hon. Speaker, it is clear that you are in charge of the business of this House and this is not in doubt. When the Speaker is on her feet then nobody should challenge her and when she speaks too. We are not in competition. This is a House of rules and they must be followed. Last week, we were on a special sitting requested by the Minority Leader and a communication was made and it is from that, that I requested we have a sitting to deliberate on the issues that were discussed. I therefore inform my senior and good friend Hon. Guyo that he may not have been aware. Thank you.

Hon. Abdi Hassan: I am not through, Madam Speaker

Hon. Speaker: Hon. Members, I want to guide the process.

(Hon. Abdi Hassan spoke off the record)

Hon. Speaker: Are you challenging him?

Hon. Abdi Hassan: Madam Speaker---

Hon. Speaker: Just a minute, senior! Do not make it look like we do not have rules as a House. Order! Jubilee Party has called for a special sitting and we have allowed that. I want to request the Member of Matopeni to allow us do that. In the first sitting, you were not present yet you come here to challenge it. That is not right. I also want to note that the communication that I gave is what triggered our being here today. I have given your Majority Leader time to inform the House and he has noted that he will stand pursuant to Standing Order No 45 to give us his statement on the matter. Therefore, I request members to allow us first table the supplementary budget which is more important, I commit it to the committee then proceed to the reasons as to why the Majority has invited us here. Are we in agreement with that? Proceed Clerk.

PAPERS

Hon. Speaker: Majority Leader.

Hon. Charles Thuo: Hon. Speaker, pursuant to Standing Order No 228 (1), I beg to lay the following paper on the table of the Assembly today, Wednesday 22nd January 2020:

The draft supplementary budget estimates for the County Government and the County Assembly for the Financial year 2019/2020.

(The Paper was laid on the Table of the Assembly)

Hon. Speaker: Thank you. I now ask the Chair budget to look at the pending bills and ensure that sector groups are paid. This is a task that I am handing over to the budget committee to assist us and ensure that we conform to the push by treasury.

STATEMENTS

Hon. Speaker: Majority Leader?

Hon. Charles Thuo: Hon. Speaker, I wish to give a statement as the Leader of Majority Party and spokesperson on behalf of the Government in the Assembly, pursuant to provisions of Standing Order No 45 (2b).

Hon. Speaker, you recall the nomination of Miss Anne Kananu Mwendwa as the Deputy Governor of Nairobi City County Government pending committal since your office sought for advisory opinion at the

office of the Attorney General and the Supreme Court. Aware that Article 183 of the Constitution of Kenya 2010 provides for the County Assembly---

(Point of order)

Hon. Speaker: What is the point of order, Minority Leader?

Hon. David Mberia: I stand on point of order under Standing Order No 94. As per your communication, you noted that any matter before a court of law should not be discussed at the floor of the House therefore as a party, we are not going to be part of an illegality discussed in this House

(Loud consultations)

Hon. Speaker: Order! Order!

Hon. David Mberia: I am on a point of order!

Hon. Speaker: Order, Minority Leader!

(Loud consultations)

Hon. David Mberia: Let them make noise, Madam Speaker, but I am standing on point of order 94. This is a House of rules and procedures and we are not going to allow this House to be ---

(Loud consultations)

Hon. Speaker: Order, Members! I like the pressure we have. How I wish, that in the last two years this pressure was there, we could not have been in this situation. How I wish we were serious even at this moment to ensure that we get a deputy governor. We can just listen to each other and listen to that statement so that we can be able to deal with it.

I would like to inform the Jubilee side that they are the ones who are now convincing the Nariobians that they have an opportunity to do this one and for all. Can you show the Nariobians the right way of moving with this process? If we are going to shout to each other, the Nariobians will have an opportunity to think otherwise. So, let us not show them otherwise. Proceed!

(Loud Consultations)

Order! Let us just hear him and see whether it is out of order or not.

Hon. David Mberia: As I said before, this House is a House of rules and procedure. As you communicated earlier, under Standing Order 94 (1) which says, "*No Member shall refer to any particular matter which is sub judice or which, by the operation of any written law, is secret. (2) A matter shall be considered to be sub judice when it refers to active criminal or civil proceedings and the discussion of such matter is likely to prejudice its fair determination*".

Madam Speaker, there are several matters in court relating to the nomination of the Deputy Governor---

Hon. Speaker: Order, Minority Leader! You know that at the moment you cannot bring what it is not in the House and what I do not have in the House. Order! Proceed Majority Leader!

(Loud Consultations)

Hon. Speaker: Order! The Majority Leader, proceed.

REFERRAL OF NOMINEE FOR THE DEPUTY GOVERNOR TO THE SELECT COMMITTEE ON APPOINTMENT
FOR VETTING

Hon. Charles Thuo: Hon. Speaker, Aware that Article 183 (3) of the Constitution of Kenya, 2010 provides that County Assembly while respecting the principle of the separation of powers, may exercise oversight over the County Executive Committee and any other County Executive organs; further aware that on 6th January 2020, the office of the Speaker received a message from the Governor nominating Ms. Anne Kananu Mwenda as the Deputy Governor of the Nairobi City County Government which was conveyed to the County Assembly by the Speaker during the special sitting held on Thursday, 9th January 2020; further aware, that the functions of the Governor as contemplated in Section 31 of the County Governments Act, 2012 amongst others is to provide leadership to the County Executive Committee and administration based on the County policies and plans and promote and facilitate citizen participation in the development of policies and plans, and delivery of services in the County; concerned that the current leadership vacuum in the County Executive part has slowed down the process of promotion of citizen participation in the development of the County policies and plans and service delivery to the residents of Nairobi as evidenced by the lackluster implementation of the County Development Budget; acknowledging the communication by the Speaker on 9th January, 2020 to seek Legal Advisory from the Office of the Attorney General and The Supreme Court on the process of appointment of the Deputy Governor; as leaders of the County whoever who were entrusted by the residents of Nairobi, we should work tirelessly to ensure that our people get the required quality services effectively; now therefore, Hon. Speaker, it is my request that you allow this Hon. House to react on the issue and that the name of the nominee be referred to the Select Committee on Appointment for vetting as you give direction on the same. Thank you, Hon. Speaker

(Applause)

Hon. Speaker: Thank you, Majority Leader. Hon. Members, I want us to be now very clear on this matter. I want to open it for ventilation and then we will see how to proceed on this matter. I hope you have listened to what the Majority Leader has said. Remember that we are talking of a nominee and we need to start the process. So, do not tell us to jump up the guns without the process. I think he has taken us well through and in the end, we shall give the direction of that process. I would like to open for ventilation before we give that direction. Hon. Benson Mwangi.

Hon. Benson Mwangi: Thank you, Madam Speaker, the issue of the deputy governor is long overdue. We as Jubilee MCAs with our majority members will ensure that the moment that name comes in the House, it will pass without fail. Thank you.

(Applause)

Hon. Speaker: Hon. Beatrice Waithera

Hon. Beatrice Waithera: Madam Speaker, I did not request.

(Laughter)

Hon. Kennedy Obuya: Thank you, Hon. Speaker, I would like to applaud you for your wisdom today. There are times that we have to listen to the voice of reason and the voice of God. Particularly today, I want to conquer with the Majority Leader and our senior Hon. Guyo.

Hon. Speaker, as an institution we cannot take away our autonomy and our independence to another institution. Our key responsibility is to follow the rule of law guided by the Standing Orders, County Governments Act and the Constitution of Kenya.

Hon. Speaker, I don't want to take you back because you have already given us a breakthrough for way forward by allowing us to debate on the matter. It is important, just like our Hon. Majority Leader has said, that you should guide the House that the nominee should be subjected to under scrutiny by the Appointments Committee. They are only supposed to look into five things; one, if the nominee meets the threshold and has a credential by DCI, Higher Education, Jubilee Party and the EACC, it is not under our jurisdiction to pre-empt and predict before the name is subjected. Let us not behave as if we have an interest. That seat requires neutrality and wisdom. Please allow the nominee to go to the specific committee to discuss and see if the nominee meets the requirements, then the committee will advise the House if we can approve or reject the nominee. Thank you, Hon. Speaker.

(Applause)

Hon. Millicent Jagero: Thank you, Madam Speaker, I just want to concur with my fellow Hon. Obuya, the one that he has forgotten to mention is the Elections Act that the nominee for the Deputy Governor needs to meet the threshold.

I also believe that once the name will be taken to the Appointment Committee. They will look at all those matters and take them to the IEBC and the report that the IEBC together with the Appointment Committee will come with, after deliberation by us the Members of this House, we will see if the deputy governor meets the requirements of him being a deputy governor of this great County of Nairobi. Thank you, Madam Speaker.

Hon. Peter Kimuhu: Thank you very much, Madam Speaker. Let me also take this opportunity to support what Leader of Majority has presented. As I borrow a leaf from my colleague, Hon. Kennedy, it is absurd that immediately after you read the message from the Governor in our previous sitting, to be honest, that should have immediately been followed by the automatic committal of that message to the relevant Committee of this Assembly. It is not to say that we made a mistake. We may have jumped a couple of days but it is never too late and that is the reason why we are here today so that at the end of our deliberation this afternoon, that message should be committed to the relevant Committee of Appointment.

It is not our business to decide as to whether the name will pass, our business will be to follow the procedure as it clearly defined within our Standing Orders and other laws of our land. The name will be subjected by the Committee to all types of scrutiny, which entail the scrutiny by EACC and Commission of Higher Education to establish whether her degree is in order by IEBC as to whether she can hold the position of a state officer. The Committee will go through all that process. If we have gone through a passage that is contrary through the procedure, again it shall be captured at the committee level. By the time, the committee give us a report in this House to decide whether to pass it or not, every part of the scrutiny of vetting will have been exhausted.

We have had many problems out there, everybody in this country has developed a mentality or a mind that we have been sabotaging the process. Everybody has been asking us exactly what it is that we want to be done.

Today, as far as I am concerned, it is a good and happy day that you will finally use your power to commit the message squarely to where it belongs. With those few remarks, Madam Speaker, *naomba Mwenyezi Mungu akusaidie*.

Hon Mbugua Kabiro: Thank you very much, Madam Speaker, I wish to acknowledge that indeed we have a Governor who is Mike Mbuvi Sonko.

(Applause)

Madam Speaker, let us talk about rights and responsibilities. The authors of BBI and many other documents in the past in this republic have elaborately talked about the rights and responsibilities. That for you to enjoy the rights, someone somewhere has to perform their responsibility. The responsibility to appoint a deputy governor does not rest with us, it rests with the Governor of Nairobi. For us to enjoy a County Assembly that does not have commotion and that is stable, someone who is called the County Governor has to perform his responsibility of appointing a deputy governor. He has done that.

In the Supreme Court Advisory, No. 1 of 2015, that was conducted and delivered by five supreme minds, the Justice Njoki Ndungu, Smokin Wanjala, M. K. Ibrahim, Isaac Lenaola and Prof. JB. They said that you cannot contemplate a situation where a deputy governor is not in office. That is why they gave guidelines on how to appoint a deputy governor.

Madam Speaker, this Assembly is in receipt of a nominee for a deputy governor, we cannot deny that, whether we go to America, Egypt or back in Kenya, we cannot deny that. There is a letter that was widely circulated in media, one that had been received in this Assembly and even committed as to have been sent to this House.

Madam Speaker, Article 180 (5) of the Constitution says that each nominee for the position of a governor must appoint a deputy governor. That is for the purposes of an election. All of us, including my elected colleagues, none of you vied for the position of a governor. It is only one person that vied for the position of Governor under the ticket of Jubilee Party and his name is Mike Sonko. Irrespective of the challenges that he is facing right now, we have to accord him his constitutional responsibility of appointing a deputy governor. That, he has done. Our prerogative and responsibility is to process that name.

Madam speaker, let us talk about Nyeri County. They never even considered the issues of IEBC in the floor of the House. The name was committed to Appointment Committee and it was the responsibility of the nominee for that position to go to IEBC, EACC, and DCI and get clearances before he or she appeared before the Committee on Appointments.

So, today let us commit that name to the Appointments Committee and let the nominee appear before them and present herself and all her papers and qualification and any other thing that they require to be submitted, then they process and file a report before this House so that we can agree and see who are the majority in the House. Wwe shall surely pass that name when it comes to this floor. Madam Speaker, thank you very much.

(Applause)

Hon. Silvy Moseiya: Thank you, Madam Speaker, I rise to give a few points. One, we are in a very tough political times as a county. We have a Governor who is barred from functioning as a governor for now. It means that we need to have something to circumnavigate through the issue. There is no better way than having a deputy governor. The Governor is very clear that he shall nominate a deputy governor. Whether that person fails for one reason or the other before the Committee on Appointments, he shall appoint another until we get a deputy governor because this country has no shortage of people who are qualified.

Two, it is not the responsibility of this House to decide whether the process the Governor followed in appointing the deputy governor is constitutional, legal, procedural or not. Committee on Appointments should vet that person. As I had intended to say, it is up to that person to satisfy the committee whether he/she is qualified or not. Shall we pass a name that is not qualified, there is a court of law. We have a very vigorous judicial system. Anybody including a member of this House can go and challenge the process or the name. Let that name come as fast as possible. I urge that the committee shall look into it in an open, transparent and no malicious manner and bring us a report to this House so that we either pass or not.

As a Jubilee member, I am aware that my party members are intent on having a government that is moving. I thank you for bringing the issue of supplementary budget that we need to move economically and politically. We assure Nairobians and the Governor that when that name is cleared by the Committee on Appointments, we shall pass it fast and furious. Thank you.

(Applause)

Hon. Patrick Mbangula: Thank you, Madam Speaker. In the nomination of a deputy governor, we are not committing an illegality. This debate is going to give us limelight on which direction we want to go as a county. Let us be reminded that His Excellency the Governor Mike Mbuvi Sonko has not been convicted of any crime in any court in the Republic of Kenya. He is still the Governor of Nairobi City County.

(Applause)

NASA has not walked out. Madam Speaker, I must agree with you that the process has to be followed to the later. This is setting the pace for us to decide our destiny as a county. We are leading 4.5 million Nairobians and we cannot afford to have a county which has no leadership. It is time now that we need to start discussion on where we want to go in the next two and half years that we are in the office.

Madam Speaker, thank you for giving us this opportunity to discuss, think it through and make decision as a House. I know there is a process that has to be followed. We support the initiative of the Majority Leader. Thank you.

Hon. Speaker: Hon. Mark Ndung'u.

Hon. Mark Ndung'u: Thank you very much, Madam Speaker. Being a champion of women leadership, I would like to congratulate the Governor for nominating Ann as the Deputy Governor. I would like to also like to congratulate the Governor for being the first governor in the republic of Kenya to implement the BBI Report which says when the governor is a male, the deputy governor must be a female.

Reading the mood of the House, Madam Speaker, please take the name to the Appointments Committee. Thank you very much.

(Applause)

Hon. Speaker: Hon. Anita.

Hon. Chege Mwaura: Hon. Speaker, I have been on request for a long time until---

Hon. Speaker: Hon. Mwaura, I can't see you.

Hon. Chege Mwaura: I put Anita's card so as to see if it is my card or is it sabotage because I have been requesting to speak---

(Laughter)

Hon. Speaker: Why would you be sabotaged and I can see we have around 60 members---

Hon. Chege Mwaura: Everyone around me knows that I have been requesting for the last ten minutes and I am not being given a chance.

Hon. Speaker: Hon. member, I can't see you on the screen.

Hon. Chege Mwaura: I am the one who put Anita's card.

Hon. Speaker: Thank you. You need to confirm first of all that you have used Anita's card.

Hon. Chege Mwaura: Yes, I have and I am not ashamed about it. Can your technical team ensure the member for Ngara Ward is given due chance to speak any time he requests?

Hon. Speaker: Can the member of Ngara Ward ensure he inserts the card well?

Hon. Chege Mwaura: It is inserted and it is blinking, Hon. Speaker.

Hon. Speaker: It is not. So, proceed with Anita's card.

Hon. Chege Mwaura: Thank you. Anyway, it is not my plan to start by a commotion. Happy new year---

(Point of order)

Hon. Speaker: What is the point of order, Majority Leader?

Hon. Charles Thuo: Hon Speaker, I acknowledge my colleague's concern. But then our Standing Orders provide that when more than one member requests to speak, it is at the discretion of the Speaker to choose the person speaking. Thank you.

Hon. Speaker: Thank you. It is when the Speaker catches your eye, but now the Speaker is catching the eyes on the screen. The hon member has said he has been trying, I want him now to proceed.

Hon. Chege Mwaura: I stand guided by my Leader of Majority. I want to remind him that I have been sitting there and I know how this process works.

(Applause)

If the Speaker doesn't catch my eye, it is fine, but let it be clear that I had not been caught. Let it not be a technical issue.

Hon. Speaker: Hon. member, unless you have another issue, I don't think the Speaker can refuse any member to speak. Therefore, I want you to tell us, are you insinuating that the Speaker has been denying you to speak?

Hon. Chege Mwaure: Madam Speaker, I have said that it could be a technical issue that I wanted to be sorted. If the member of Ngara's card is not being reflected, let your team sort out.

Hon. Speaker: Not you alone, I think Hon. Kados, I can't see you, Hon. Wahienya, I did not see you. So, they are many. Hon. Leah, I can't even see you.

(Hon. member spoke off the record)

I want you to come, leave it blinking and come to the Speaker's chair.

Hon. Chege Mwaure: Madam Speaker, all we are saying is that the technical issue be sorted.

Hon. Speaker: Okay.

(Hon. Leah Supuko spoke off the record)

Hon. Speaker: Now it is on.

Hon. Leah Supuko: Okay.

Hon. Speaker: So, switch it off.

Hon. Chege Mwaure: Thank you, Madam Speaker---

Hon. Speaker: Hon members, let us first deal with that technical matter. I ask the guys to check. On the screen, I have eight members; Hon Silvy Moseiya is still there, somebody is using Hon. Elias Otieno's card, Hon. Doris, Hon. Kiragu, and Hon. Mugambi. I don't have Hon. Kados and Hon. Waithera. Hon. Njihia and Hon. Kimemia, I now see you. Proceed, Hon. Mwaure.

Hon. Chege Mwaure: Thank you, Madam Speaker, I apologies for that. I am a backbencher now, so I have to be very clear that I am being seen.

First and foremost, I thank the Leader of Majority for having called this sitting. However, specifically Standing Order No. 30 gives us clear guideline of how such special sittings should be handled. Between yesterday and today, we received ten messages via SMS reminding us about today's sitting without necessarily giving us the agenda. I would request your technical team also to be furnishing us with the matter that is going to be debated. On special sittings, the issue is only that item that has been gazetted. Today I got six messages and yesterday I got four. None of them told us about the agenda. That is why we had an issue about supplementary budget and the one that the Leader of Majority had called.

Having said that, I think that it is important if the process of appointing the deputy governor should go through the process of landing in the House and going to the relevant committee. No problem. But here is my problem, the last time we were here on a Kamukunji, the Speaker pronounced herself on how the process should happen. Again yesterday, sections of the media suggested that the Speaker is pronouncing herself on the issue of the deputy governor without necessarily this House sitting.

It is my contribution that if the process is about the name hitting the floor, goes to the committee, vetted and comes to the floor for voting, then that is fine. But if the Chair, who is the face of the County Assembly, is reported on media saying that she has rejected the name and then tabling it again for us to

have a discussion, I feel either you were misreported or somebody is flip-flopping. I hope it is not my Speaker who is flip-flopping.

It is the business of this House to ensure Nairobi gets a candidate that is suitable to the job. If that voting process is going to be done through Appointments Committee, that is fair enough. But the results should look into the candidature of the nominee and give us the suitable candidate. If she is not suitable for whatever reasons, let it be seen. We should not look like a conveyor belt of messages coming from the Executive. We must be critical. I think it is not the nicest thing to say, but it is important that we are clear that the name that we agree and process that we choose for ourselves must be looked at with Nairobian and Kenyans will feel like there are leaders in the County Assembly of Nairobi that are willing to oversight messages that come from the Governor.

If you pronounce yourself, then you do it again and tell us that whatever happened that time, now I agree another process to happen. In future, let us know clearly how the process is till the end. If the lady is qualified or not, it is not a problem. You are on record, Madam Speaker having sent an advisory opinion to the Supreme Court but was not communicated in the floor of the House. That communication and advisory should help us know what is happening today. Otherwise, we will be pushed on a party position, but at the end of the day when Nairobian look at us, they must agree with us that what we did was right. That the process that was followed was fair to the lady. The lady has nothing wrong in being nominated. It is this House to look into the issues and fairly and justly give her due respect and due process. Nairobian will see that we are not rubber stampers and bootlickers but we are here to oversight.

(Applause)

I am waiting because I am no longer in the Appointments Committee. If that is the direction that is going to go, we are expecting results that look at Nairobi as a whole. Because you are the Chair of the committee, we demand respectfully that we arise from partisanship and simplicity and give Nairobi what it deserves. Thank you.

(Point of order)

Hon. Charles Thuo: Hon. Speaker, point of order under Standing Order No. 90 bars any member of this Assembly to anticipate debate. What the hon member is doing is trying to think that the Committee on Appointments will not do a good job in giving us a good deputy governor. It is the job of the Appointment Committee to vet and to report to this House. It is not right for the member to insinuate that the candidate we have might not be right when she has not been vetted. Thank you.

Hon. Chege Mwaura: Madam Speaker, I did not insinuate but I am within the confines of debate to urge the Appointments Committee that I am not a member of but I will be expected to digest what they will have done.

(Applause)

So, when I implore on them to do a good job, I am not forcing them to do whatever they want. I am saying let have the lens of Nairobian and suitability at hand and not mediocrity in this matter.

Hon. Lawrence Odhiambo: Thank you, Madam Speaker, let me take this opportunity first to congratulate you on this matter, more so in giving orders for our members to debate on this serious matter. I want to tell colleagues that have walked out, Nairobianians are watching us. We have been working almost two years without a deputy governor. This is the time that we should give the Appointments Committee time to go and vet this nominee. If she qualifies, well and good, if she does not then we will wait for another person to be appointed. Thank you, Madam Speaker.

(Applause)

Hon. Paul Kados: Thank you for catching my eye. The issue before us is very pertinent for Nairobianians. One thing that we should be asking ourselves, is the person who brought the name to the Assembly the right person? Yes, he is. He is the Governor of Nairobi.

(Applause)

Did the name come to the assembly? Yes, it came where it was supposed to come. Was the name committed to the relevant committee? No. Madam Speaker, I think it is a high time because Nairobianians have been waiting, the issue of the Deputy Governor has been spoken for a long time and this is the only time it has been committed to us. The other one was Migunas and you know he was not part and parcel. I think he is a Canadian and not a Kenyan that is what the papers say. This lady is a Kenyan and she is an officer of this county. The best thing to do is to commit this name to the Committee of Appointment which I understand you are the chairperson. Let you ventilate and know whether she has gotten clearance from the IEBC. The committee is the one supposed to come with those issues.

The issue of bringing the debate before us, I think you should have ruled that the name be committed to the relevant committee and let's have a time line, I understand it is three months. Is it three months or 90 days? Sixty days? Then we will have time to debate after the Committee of Appointment goes through those conditions which are required. Has she been cleared by anti-corruption? I think those letters should be there. For us as a House, I think we are tied. Can that name be committed to the relevant committee? Thank you, Madam Speaker.

(Hon. Warutere spoke off the record)

Hon. Speaker: Hon. Warutere you know you should be on HANSARD and if you speak without the mic it will be difficult.

Hon. Peter Warutere: Thank you, Hon. Speaker for catching my eye. I want to start by thanking God for we have come all the way from Voi. The road has been safe and the first hurdle for Governor Sonko has been eliminated. For that, we must thank God.

(Applause)

Secondly, I want to state categorically that this kitchen might be hot but I choose fight within it. What you have seen here will be a very lousy and bad picture for Nairobianians. We were elected to perform a particular duty and we must align to it and we must perform as such.

I want to talk about suitability. I happen to sit in the Appointment Committee or I have sat in that committee for long to know that when the name was given by Governor Mike Sonko, he eliminated one

problem that we had foreseen; the dissolution of this county. I believe strongly that his thoughts were and still are that at least we will have a functional government. Therefore, I strongly believe that it is the duty of a particular committee which works through powers that are delegated by a superior committee which is this House. We cannot purport to work on behalf of an extension of this House.

I want to thank you for sanity has started prevailing, we needed to do this yesterday. We have an opportunity to redeem ourselves because I believe talking about a process is the work that we have been obligated to this House. We have 60 days to talk about suitability. If she has an issue with IEBC or with the Jubilee Party, I can see that figures from our party are within and are listening, let us give this opportunity to that extension of this House so that they can do their job.

I want to echo what Hon. Obuya said; that for us to be seen doing what is right, for us to rekindle that hope that has been lost for a long time, we must get our job done in the right way. What is the right way Hon. Speaker? Let us follow the laid down procedures in our statutes. You pronounced yourself on this matter. Let us pick that bit from where you left so that the commitment is done to the relevant committee. Then we have faith in that committee that the name of Anne Mwenda if she is suitable, an innocent Kenyan who has been given an opportunity by the Governor of this city to serve at whatever position. It would not be in good faith for us not to look at that name when we have not given her an opportunity to interrogate, to look at her credentials and see if she has satisfied whatever issues that are spelt out quite well in our issue in terms of determination in what she stands for.

I want to concur that we can't be seen to be doing a job of another committee. Let us do the noble thing and allow the Appointmenst Committee to work on the suitability of an innocent Kenyan. We would have done our bit to ensure that we have given her an opportunity. In the event that she does not meet the qualifications, then another name will still be brought to this hon House. This is a House of rules and procedures and we will work on the name and certify that she gets the opportunity to serve or continue serving in her current status.

Hon. Speaker, as we come to the tail end of this session, kindly do the noble thing by giving and committing that name to relevant committee, we beseech you Hon. Speaker. Thank you.

Hon. Leah Supuko: Thank you Madam Speaker for finally catching my eye. I would like also to add my voice on deputy governor's issue which I think is the best option that we Nairobians have right now.

Secondly, I would like to say that the law must be followed. By following the law, I want to appreciate that all the members of the Jubilee Party who are in this House went through the party. I am a member who is proud of my party until otherwise.

For now, first things first, I really appreciate that Anne Mwenda is listening at the gallery. She is the Secretary of the Board of Elections in Jubilee Party. Facts should not be hidden from facts. As I support that the name should go to the Committee of Appointments, I would also like to urge members that nominee should go through the party. I did not see what I was reading in newspapers that she must be vetted by IEBC, it does not vet members. It is the party which nominates a person that sends the name to the IEBC. I want to advise all of us that first things first, for the Nairobians or Kenyans to see that we are following the law because the nominee should first be vetted by the party nominating her if she is a member of that party. That is a requirement in the election rules of this country.

I want to say that I am proud because I sit in that elections board and I will not hesitate to tell my fellow commissioners that this is a nominee from the Governor of Nairobi who has all the rights to nominate whoever he wants.

(Applause)

The only thing that I won't support is if she is not a member of the party, we can't force things. I want to know from where I am standing that Anne the nominee, is a member of Jubilee Party. It is just a formality for her to go through the party because that is the rule of law for the name to come to the Committee of Appointments.

Madam Speaker, as my colleague Hon. Chege Mwaura put it, we have read a lot of things in the newspapers about the advisory, about what and what. I was asking myself what is our role as members of this House if we are not given a chance to do what Nairobian elected us to do in this House? We should be given a chance to vet whoever is coming to be our Deputy Governor because she is very important to us.

Madam Speaker, that is all I can say, I don't want to insinuate what your conclusion will be, but you are also a property of Jubilee Party and you can't run away from it. You are in this House because we are the majority. I am not telling you not to be neutral with our brothers and sisters on the other side, but your party comes first no matter what.

(Applause)

I only want to urge you whatever conclusion you make is the best for this House, the best for the rule of law and the best for the party that brought you to that seat and the party that made us to be majority in this House. Thank you, Madam Speaker.

(Applause)

Hon. Silas Matara: Thank you, Hon. Speaker for this opportunity. First of all, I would like us to be clear on the issues that we are discussing in this House. We might digress to the issue on whether the nominee is qualified or not. I believe it is not the business of this House to discuss that until it passes through the Appointments Committee and then for us to debate whether we are going to approve the findings of the Appointments Committee or not.

Hon. Speaker, the House needs to be informed that there is no law with regards to the nomination of a deputy governor as it is right now. If there is, I would like to be informed of the same. Because we are in this situation, the fall back plan was the direction of advisory opinions by the Supreme Court. In this case, our business as members and you included, are subjected to our Standing Orders of this House and all our operations are governed by the same. So my thinking is, we don't have to think about whether the name came to this House or was it legal or illegal. Our question is, once it became the property of this House after being tabled, it is our responsibility to dispense with the matter either we like it or not.

The advisory opinion from the Supreme Court indicated that the process is supposed to take 60 days after receiving the letter. When the letter was received in your office, the 60 days started. The Appointments Committee is supposed to deal with the report within 21 days. The more we delay with dispensing the matter is going to lead the assembly in a quagmire state.

I urge this House that we do the right thing. If in your wisdom you see it best to commit it to the Appointments Committee as is the wish of the members, let that committee dispense with that matter and bring the name to this House and it is going to vote on the report of that committee. Thank you Hon. Speaker.

Hon. Abdi Hassan: Thank you Madam Speaker for catching my eye. The question at hand is; does the Governor of Nairobi has powers to nominate the deputy governor? The answer is yes. Is there any court which has injected the Governor from nominating his deputy? The answer is no.

(Inaudible) ---this House from debating or approving or otherwise the approval of the deputy governor, the answer is no. Does the Standing Orders give the--- to this House or otherwise the answer is that the Speaker has no discretion. The word that has been used by the standing orders is 'shall'. When a Governor or a Senator gives a message to the Speaker, it is upon her to bring that message to the House.

Madam Speaker--- *(Inaudible)* to a House. Without dispensing with this issue of the deputy governor in the next two months, this county may be dissolved because the county cannot run. We need to put the interest of Nairobians first because that is the reason why some of us have been elected for the last 15 years. I urge you to commit that name to the Appointments Committee. Let it vet the suitability of the nominee. It is upon that committee--- *(Inaudible)*

Madam Speaker, there is no law either the Constitution or the County Government Act or the Standing Orders which gives this House the mandate to ask if the lady is a member of Jubilee or not.

(Applause)

That thing happens when we go for elections and this is not an election. It is a vetting of a nominee who has been nominated by the Governor of Nairobi. I am not in talking terms with the Governor but I need to speak what is supposed to be spoken. I urge you to commit the name to the Appointments Committee. With those few remarks--- *(Inaudible)*

Hon. Speaker: Hon. Members, allow me to say that this was a special sitting and I gave the opportunity so that we remove blame from the Majority Leader. You know very well that when we table a name we never debate because it's a nominee, we just table and commit. But today I was courteous enough to allow the Majority Leader and members to ventilate. And because it was not a debate, we were ventilating to see how the tensions were and I think that they have gone down now. I want you to look at your Standing Orders and tell us when you have ever seen us debating a nominee before it even goes to the committee, it was a special thing. I think the tensions have now gone down. I want you to look at your standing orders and tell us when you have ever seen us debating any nominee before it goes to the committee. I want us to close the debate because sometimes we might end up destroying the whole process. So, I want to bring the Leader of Majority to finalize so that I can give my directions.

Hon. Charles Thuo: Thank you Hon. Speaker. I want to take this opportunity to thank all Members who have taken their time and those who have contributed to the issue. It is clear that it is the mood of the House and the wish of these Hon. Members that Nairobi gets a Deputy Governor. The need of that seat cannot be overstated. It is needed to bring normalcy and to bring a sense of control in this County Government.

As we proceed, I thank members of NASA coalition who decided to stick with us despite part of the leadership walking out. A few of them walked out. I have taken over the leadership of this Assembly in very hard times. It is in such hard times that I am expected to give guidance and leadership and steer this ship of Nairobi County Government and the Assembly into right waters. We are now in rough waters. I do not take it for granted that the chair and members stuck with me.

As you proceed to give direction, I urge Hon. Speaker to please read the mood of these members. They represent the views of Nairobian. We speak for Nairobian who elected us. It is clear that Nairobi wants a deputy governor. And knowing you as I do, the great leader that you and the way you have steered this committee, I do not have any doubt that your direction is to commit the Committee on Appointment and that we are going to start the process of vetting and since you are the Chair of that committee which means that you still steer the process further and I am confident that members are going to walk out of that door with a feeling of satisfaction and pride knowing that they have performed their duties. Thank you, Hon. Speaker.

Hon. Speaker: Thank you Leader of Majority. Before I give any direction on the matter, I would want us to dispense of with a few matters that are very critical for guidance and the dignity of the House.

Hon. Members of Jubilee, you know that we are on recess. When you are on recess on you call for a special sitting, we deal with matters that are in that special sitting. Indeed, when the Governor sent that letter, I had to read the letter and leave it at that because we are on recess. If we really wanted to proceed with the matters, it would have been in that special or at that time. But today, your Leader of Majority has brought it to the House in the correct way, that is why I have allowed it. Sometimes, it is good to note that if we are in our normal sessions, I think the matter moves very fast. But in special sitting during recess, we move according to that special sitting and it is within the Standing Orders. Let us not show Nairobian that we have refused to do our job. We follow the law and we will follow the law at that time.

Therefore, the second matter is and I want to just say this, while we take the nominee, I believe that most of the members here have been in the Appointments Committee. It is important for us to appreciate that so that people don't think this House refused to guide the nominee. As the Speaker of Nairobi County, I have guided the nominee and if she follows the process, we should not be having matters that heated for nothing.

When a Speaker of an institution calls you six times to guide you, it is important to appreciate that. I want us to move that we have guided the nominee. She needs to follow what we have said. I think Hon. Leah has put it very clear that let us remember it is a political process where you deal with the political party. The Speaker is just here to sit and listen and to guide and I will continue doing that. It is also important for the nominee, as we proceed, to do rightfully what we need for us to proceed and dispense this matter. I hereby direct.

Hon. members, I have heard you all. You have spoken on this matter, especially the Majority Leader. Nairobi City County today is in a precarious situation that require the application of the famous Speaker Marende's solomonic wisdom so that the county does not sink into deeper crisis. Indeed, faced with a similar crisis, Speaker Marende had to make a decision whose effect left the country united by ensuring that all factions are contented.

Hon. Members, as you may recall, during our special sitting held on 9th January 2020, I informed the House that we had sought an advisory opinion from the office of the Attorney General and the Supreme Court vide Supreme Court Advisory Ref 1 of 2020 over the nomination of Miss Ann Kanamu Mwenda to the position of Deputy Governor. The said advisory is yet to be received. However, following the Leader of Majority's request and the issues that have been conversed on the floor this afternoon, I wish to remind you that regarding filling of a vacancy of the office of the deputy governor, the Supreme Court in March 2018 issued an advisory in the matter of the Speaker of the County Assembly of Embu which comprehensively addressed the issue and gave directions on how to respond in filling the vacancies arising in the office of the deputy governor.

Subsequently, the Independent and Electoral Boundaries Commission which is the statutory body responsible for conducting elections in Kenya, developed guidelines in conformity with the supreme court advisory on how a vacancy in the position of the deputy governor should be filled.

Hon. Members, all persons in the republic are bound by these regulations. In fact, they have formed part of the precedence set in the cases of Nyeri and Bomet Counties that had a similar scenario.

As Speaker, I will be sending some of the members to go and benchmark on how they carried out their process. The said guidelines provided as follows:

Vetting of the proposed nominee. The commission shall appoint through a gazette notice the county returning officer and his/her deputy to vet the proposed nominee pursuant to the constitutional and statutory qualifications subsequent to which the commission shall issue the nominee with a nomination clearance a copy of which is forwarded to the county governor.

Consideration and approval by the County Assembly. Once the county governor receives the nomination certificate of the nominee, he/she shall thereafter forward the nominee's name to the respective county assembly for vetting, deliberation and possible approval.

Transmission of the approval to the commission. Once the nominee has been approved by the county assembly, the Speaker to the Assembly shall forward to the commission in writing the resolution of the Assembly with recommendations approving the nominee to the office of the deputy governor.

Publication of the nominee as the deputy governor. Upon receipt of the Assembly's resolution from the Speaker, the commission shall publish in the Kenya Gazette the appointment of the deputy governor. The commission shall also notify the Chief Justice who by law is expected to appoint via the Kenya Gazette the judge or magistrate before the deputy governor nominee may take his or her office in accordance with the County Governments Act ,2012.

Oath of office. Upon gazettelement, the Speaker and the County Assembly shall take necessary steps to facilitate the new deputy governor to take the oath of the office.

Hon. Members, according to our procedure, whenever an appointment by the governor requires approval of the county assembly, the name of the nominee is always submitted to the relevant committee for vetting and reporting.

As such, in cognizant of the guidelines issued by the IEBC, I hereby commit the name of Ms Ann Kananu Mwenda to the Select Committee on Appointments for consideration. I direct that before the committee tables its report in this Assembly, it must undertake the following:

- i. Ascertain whether the nominee meets the requirements set by the Supreme Court and IEBC in filling a vacancy in the position of the deputy governor;
- ii. Enquire from the Supreme Court on the status of the Supreme Court advisory reference 1 of 2020 and comply with the same;
- iii. Ascertain whether the nominee meets all the legal requirements relating to persons eligible to hold the position of the deputy governor;
- iv. Comply with all applicable legislations relating to the nomination of filling a vacancy in the office of the deputy governor. Whether there are court cases going on to prejudice the process going on.
- v. Liaise with the Ethics and Anticorruption Commission who took the original letter by His Excellency the Governor transmitting the name of the nominee.

Hon. Members, it is the interest of all of us that we have a stable and functioning County Government so that Nairobians can benefit from the fruits of devolution. I wish to reiterate that I am fully aware that there

is no vacancy in the office of the Governor of Nairobi. And the person currently holding that position is His Excellency Mike Mbuvi Sonko.

As such, I absolutely have no interest of occupying that position or exercising the powers of the Governor. Indeed, the only time the constitution contemplates the Speaker to act in the position is when there is pending election under Article 182 of the Constitution.

“If a vacancy occurs in the office of the county governor and that of the deputy county governor or if the deputy county governor is unable to act, is when the Speaker of the Assembly shall act. If a vacancy occurs in the circumstances contemplated by clause 4, and election to the office of the county governor shall be held within 60 days”

Hon. Members, I am fully guided and bound by the principles of separation of powers between the Assembly and the Executive. Our sole objective is to facilitate the County Assembly to perform its oversight mandate objectively so that service delivery within the county does not stall for whatever reason. It is directed.

ADJOURNMENT

Hon. Speaker: There being no other business, Hon. Members the House adjourns to February 11th, 2020.

The House rose at 4:45 p.m.