



NAIROBI CITY COUNTY ASSEMBLY

OFFICIAL REPORT

Second County Assembly – Fourth Session

Thursday 27th February 2020

The House met at 2.30 p.m.

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

PRAYERS

QUORUM

Hon. Speaker: Serjeant-at-arms, ring the bell for 5 minutes

(Quorum bell was rung for 5 minutes)

Clerk, proceed.

COMMUNICATION FROM THE CHAIR

TRANSFER OF COUNTY GOVERNMENT FUNCTIONS TO THE NATIONAL GOVERNMENT

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

Honorable Members, you will recall that during our special sitting held 9th January 2020, convened to discuss matters of County importance, Members raised several issues regarding challenges that were affecting service delivery in the County. Honourable Members, based on the contributions by a majority of Members, I directed that the Nairobi City Regeneration Committee be revamped in order to address the challenges that Members had raised in their submissions. In particular, the said Committee was to address the following; Water, Roads, Pending Bills, and Solid Waste Management.

Honorable Members, you will also recall that yesterday, I delivered a Message from H.E. the President and the Governor communicating that pursuant to Article 187 of the Constitution, the County Government had agreed to transfer implementation of the following functions to the National Government:-

- a) County Health Services;
- b) County Transport Services;
- c) County Planning and Development Services; and
- d) County Public Works, Utilities and Ancillary services.

Honorable Members, the afore-said actions affirms what this House had already foreseen during its special sitting of 9th January 2020. It also implies that despite the new developments, you will appreciate that the Assembly had initiated stakeholder engagement on the Nairobi regeneration concept. Equally, it also demonstrates that H.E. President, Uhuru Kenyatta means well for Nairobi and by extension, this County Assembly since he had an option of suspending/dissolving this County pursuant to Article 192 of the Constitution the effect of which could have been catastrophic.

Honorable Members, there have been many commentaries on the implication of the actions to transfer the said County functions especially on the very existence and the role of the County Government of Nairobi City which includes this Assembly. Honourable Members, I wish to remind you of the provisions of Article 187(2) (b) of the Constitution which provides:-

“Constitutional responsibility for the performance of the function or exercise of the power shall remain with the government to which it is assigned by the Fourth Schedule”.

In essence, Honourable Members, the role of the County Assembly to oversight the implementation of the said functions has not been taken away. In fact, Members should be prepared for expanded roles as far as engagement with the National Government in implementation of the functions is concerned. I am sure that relevant state agencies will be providing further clarity on this precedent setting matter.

Consequently, Honourable Members, I commit the Deed of Transfer of Functions from the Nairobi City County Government to the National Government to an *Ad-hoc* Committee that shall be established by this County Assembly pursuant to the Standing Orders to undertake and report on the following issues:-

- i) Study the said Deed of Transfer of Functions and un-pack its contents and implications;

- ii) The role of the County Assembly as far as implementation of the Deed is concerned;
- iii) The impact of the transfer of functions on the Budget making process for the FY 2020/2021 since we have already commenced the process; and
- iv) Propose areas that require legislation either by the Senate or the County Assembly.

I also direct, Honourable Members, that since we have limited time before the commencement date of the agreement, the Majority and Minority Whips presents the names of Members to be part of the Committee during the next sitting on Tuesday, 4th March, 2020. While tabling the names, the Whips should ensure that the Membership comprise of the Speaker as the Chairperson, Majority Leader as the Vice Chairperson, Minority Leader and Six (6) members from the Majority Party and Five (5) Members from the Minority Coalition. Accordingly, Honourable Members, the said Committee will have fourteen days from the date of its establishment to dispense off with its business and table its report. The Committee should meet all stakeholders affected by these actions. For avoidance of doubt, the Committee must engage the Acting County Secretary, the State Law Office, Commission on Revenue Allocation, the Ministry of Devolution and the Senate amongst others.

As I conclude, Honourable Members, let me remind you that we are living in interesting times and the task ahead is enormous. This Assembly has the key to unlock many challenges currently facing the County Government. As you are all aware, the County does not have a Deputy Governor, a substantive County Secretary and most of the Chief Officers are serving in an acting capacity. It is therefore upon us to exercise our constitutional mandate of oversight and address these matters before it is too late.

It is so directed!

Hon. Members, I think we are privileged in the year 2020 to have live media coverage sometimes in our House. If indeed we shall be ringing the bell to force the honorable members of Nairobi to come to this House and we have already disappointed the president in him coming in to safeguard Nairobi County and to start doing the functions that he and the people of Nairobi gave us, it is good to write to your constituents and say you are no longer interested in coming to this House and we will do the honourable job. As I always said, the year 2020, we do not want to disappoint Kenyans who are sleeping hungry while we are receiving salaries based on their services and the taxes they pay. Therefore, this is the last time we are going to see Hon. Members walking on the corridors while the bell is ringing. When you were oriented, you were told of the meaning of that bell. It has respect. I humbly request Members to respect the bell.

PAPERS

Hon. Speaker: Chair ICT

Hon. Osman Adow: Thank you Madam, Speaker. Pursuant to standing order 191 (6), I beg to lay the following paper on the table of the Assembly today Thursday 27th February 2020. The report of the select committee on Energy, Information, Communication and Technology on the workshop to consider strategic plan development held from Thursday 26th – Sunday 29th September, 2019 at Pride Inn paradise hotel, Mombasa County. I beg to lay

Hon. Speaker: Majority Whip, report from the Controller

Hon. June Ndegwa: Pursuant to article 228 (6) of the Constitution 2010, I beg to lay the following paper on the table of the Assembly today Thursday 27th February 2020. The report of the Controller of Budget on the first quarter County Governments implementation review for the year 2019/2020. Madam Speaker, I beg to lay.

(Paper laid)

Hon. Speaker: Chairperson, Liason committee

Hon. John Kamangu: Thank you Madam Speaker. Pursuant to standing order number 19-sub section 6, I beg to lay the following paper on the table of the Assembly today Thursday 27th February 2020.

(Paper laid)

Pursuant to standing order 192 (2), I beg to lay the following paper on the table of the Assembly today Thursday 27th February 2020.

(Paper laid)

Hon. Speaker: I order the report from the Controller of Budget to be submitted to the Budget committee to do a short summary on what it entails and report the same to the House. Clerk

(Hon. Speaker leaves the Chair. Hon. Deputy Speaker takes the Chair)

MOTION

A POLICY THAT PROVIDES THE ESTABLISHMENT OF THE OFFICE OF THE COUNTY OMBUDSMAN

Hon. Mbugua Kabiro: Thank you very much Madam Speaker, That aware the constitution of Kenya 2010 grants the citizens of this republic comprehensive rights and fundamental freedom. Further aware that all over the world governments are established by society in order to deliver public goods, work and services

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and to administer policies and laws that are necessary and beneficial to the society, where the government is required to provide one form or other of public service in order for the right and/or liberties contained in the Bill of Rights to be realized; and to develop policies, laws and institutions, or undertake programme to promote, protect or fulfil these rights.

Concerned that the recent years have witnessed increased cases of arbitrary arrest, harassment and extortions of traders and other members of the public by City Inspectorate and Revenue Collection Employees thus infringing on the rights and fundamental freedoms of the residents.

Further, concerned that some of the officers who engage in such heartless acts do not face the full face of the law due to lack of effective complaints handling mechanism in the County. Noting that huge loss of revenue has been incurred by the County Government due to extortions by such employees at the expense to service delivery to residents of the County.

Acknowledging, that effective complaints handling is a crucial part of the quality service delivery in any institution as it helps identify weak areas and create motivation for continuous improvement, provides an opportunity for organization understand its customers and ensure that the issues they raise are quickly resolved, improves the reputation and image of the institution and provide management with information on how its staff treat customers, thus promoting accountability for both the institution and its staff.

This Assembly urges the County Executive, to develop a policy that provides the establishment of the office of the County Ombudsman, to receive and process complaints with a view to fostering a performance-oriented culture that seeks to revamp the process through which the County Government operates in order to increase efficiency, effectiveness and inculcate a culture of client-oriented, mission-driven and quality enhanced management in the County.

Hon. Speaker, this is a motion that I tabled quite a while back ago and it has really pleased me to see that it is actually seeing the order paper today. The office of the ombudsman is not a new concept it is exciting in the National Government and there are plans to actually devolve the office of the ombudsman to cater for County maladministration that cannot be reported to the office of ombudsman and this is what then I would call on-call, which is the office of Nairobi City Ombudsman.

This office will be mandated to deal with maladministration that happens within the Executive and not within the Assembly. I hear complaints in many places and people would then want to understand what is the genesis of ombudsman and what would they be doing. The Ndegwa Commission in 1971 was the first commission to actually create the need for the formation of an ombudsman office in any institution especial in the public service.

There were so many complaints that were filed and the Ndegwa Commission said there should be an office that deals with the maladministration within the sectors so as we can prevent, issues of maladministration within the County and National Government.

There are complaints when you go outside of these walls and they say that the public sector in Nairobi is made with a lot of abuse of power, discourtesy, corruption and many other vices. Hon. Speaker establishing such an office should actually prevent many of the City residents from coming up to follow their payments or administrative issue that has been done against them whenever they have challenges in the city. This would create a registry of complaints over which someone can then login and say I have a problem with my title or land rate, and I have been doing it like for 20 days and it is against you service level agreement that provides that this issue should be sorted within 10 days or 2 days.

Hon. Speaker, the policy should provide that there be to establish an independent office that would then handle any maladministration issues and that would then provide comfort for Nairobiian who are providing through their taxes fueling this 35billion Budget considering that we have a population cross to 7million and both these people want services provided.

Hon. Speaker, you understand what has happened with the transfer of functions from County Government to National Government and this is aimed, at providing services delivery.

The office of the Ombudsman would then also offer proper steering of services in a way that would provide the city residents and people who are providing services an opportunity to be treated well and to also have a proper complain mechanism that that does not contradict the natural law of justice. It happens at the National Government, and the Judiciary where there is Judiciary Ombudsman who handles cases and many other institutions.

Hon. Speaker, I would wish to stop there and ask my friend, Hon. Osman Adow to second this Motion. Thank you.

Hon. Osman Adow: Thank you, Mr. Speaker, I wish to second the motion. I think this is an issue most of the elected MCAs usually deal with on day to day basis. Too many complains that most of the time we cannot handle or even address.

There is a need for the County Government to retrain the people especially the so called *Kanjo* because there are a lot of malpractices that we see every day in and out that we are unable to do as elected MCAs. Therefore, this is a timely motion that needs to be addressed. The motion says that we should request the County Government. We should not request but demand. If the County Government cannot bring anything, then the House should take up the matter and find a way of enforcing it. I therefore support this motion and second it. Thank you.

(Question proposed)

Hon. Deputy Speaker: Hon. Mary Ariviza.

Hon. Mary Ariviza: Thank you, Mr. Speaker Sir, I stand to support this motion that has been brought by Hon. Mbugua. However, I have some corrections, I don't think we need to say that it will only supervise the Executive. Office of Ombudsman is an office that protects the citizens of a particular country, region or area. Here, it will be an office that is going to be able to help the citizens of Nairobi to be able to air their

views on how their services are being delivered to them by the County Government. The County Government includes the Executive and the Assembly.

Secondly, it should be noted that the idea of citizenry participation in what happens in the affairs of this country is a threat that runs through our Constitution from the beginning till the end. In the preamble, we are told 'We the people of Kenya'. The whole Constitution starts with the people of Kenya. So, I support in that it will be able to help our people in order to correct us when there is mismanagement or when we are doing well. In fact, if this office was already there, probably some of the quagmire we are facing right now wouldn't have been there. We would have already heard the cries of the people of Nairobi and corrected ourselves much earlier.

Participation of our citizens in our lives as leaders runs throughout the Constitution of 2010. Therefore, it is important that we as leaders don't become people who know it all and don't need corrections. Let it be instituted as quickly as possible so that we have an office where Nairobians can go and complain when they are not served well. Thank you very much, Mr. Speaker.

Hon. Deputy Speaker: Thank you. Hon. Jeremiah Karani Themendu.

Hon. Jeremiah Themendu: Thank you, Mr. Speaker, I rise to support the motion. It is timely. It is time that we get that office of Ombudsman because we have big problem in our County. Our officers are using excessive force in treating the citizens of Nairobi. We need the environment of Nairobi to be good for those traders so that in return we can get rates from them

Hon. Speaker, I think it is time that we sit down and make decisions although we cannot allow our CBD to be crowded with hawkers although they pay rate. I think they pay around Kshs.50 per day and that is good money. We need to be friendly with them so that they can have an office where they can complain when there is problem when they have been mishandled by our *askaris*. Thank you Mr. Speaker. I support the motion.

Hon. Sylvia Museiya: Thank you Mr. speaker. I rise to support the motion and say that complain handling mechanism is an important part of service delivery. As leaders, the residents of Nairobi are our clients and the taxes that they pay allows us to sit in this assembly and to deliberate as we drink a bottle of water.

There have been complaints especially to the Committee that I sit, the Justice and legal Affairs Committee on issues to do with the City Inspectorate department. Whereas we need to have a balance between the rights of citizens to do business and the right of the county government to ensure that law and order, it must be checked against safeguarding basic or fundamental rights and freedoms of citizens. It should have come earlier but it is good that Hon. Kabiro has thought about it now.

We should move with speed to ensure that the office is there, it is functional and that resources are available and may be some of us will serve in it way after the dissolution, suspension or end of term of this County Assembly whichever comes first. I rise to support, thank you.

Hon. Deputy Speaker: Thank you Hon. Museiya.

Hon. Maurice Gari: Thank you Mr. Speaker. I rise to support this motion. It is a noble idea to come up with the Ombudsman office, Mr. Speaker. Reading the mod of the House, I think it is good to call the mover to reply. But the mover replies, I want to bring to your attention that one Hon. Kagis under Standing Order 106 is not properly dressed. He has brought the issue of swag in the assembly. Thank you Hon. Speaker.

Hon. Deputy Speaker: Thank you Hon. Gari. Hon. Jayendra Malde!

(Point of Order)

Hon. Deputy Speaker: Point of order number? What does Standing order 106 say? Hon. Gari, please do not give wrong standing orders. Next time I will punish you for that. I will not forgive you for that Hon. Gari. Hon. Jayendra Malde, please proceed!

Hon. Jayendra Malde: thank you Mr. Speaker for catching my eye. I would like to support the motion of Mheshimiwa Kabiro. It is a timely motion there is a lot of harassment in Nairobi County and investors are moving out to other counties. I can give you an example of NEMA comes from the Inspectorate department, we are getting thousands of calls every day that county and NEMA officials are harassing.

This is time because Nairobians do not have anywhere to report to and we are losing a lot of revenue to the cartels. I rise to support the motion, thank you Mr. Speaker. *Asante sana*.

Hon. Deputy Speaker: Thank you Hon. Malde.

Hon. James Mwangi: Thank you Mr. Speaker sir. I stand to oppose this motion since I think the county is now dissolved and we cannot be talking about hawking matters. The challenges that Nairobi landlords have been facing each and every day is because of hawkers hawking near their doorsteps. Mr. Speaker, I don't think this is the right way that we should go. Thank you Mr. Speaker.

Hon. Deputy Speaker: Thank you Hon. Mwangi. Minority Leader!

(Point of Order)

Hon. Deputy Speaker: What is the point of Order? Just a minute, Clerk, what does it say? You don't mislead the House, what does Standing Order No. 88 say?

Hon. Mary Mwami: That a person---

Hon. Deputy Speaker: Just wait for a minute. Proceed Hon. Mary Ariviza.

Hon. Mary Mwami: Thank you sir. I stand to ask if the Hon. Member who was here really knows the meaning of ombudsman because he has opposed and he has not given us the reasons for opposing. We know we have hawkers but what we are saying is that – there is even I think a week or two weeks ago we

discussed on how we can have them hawking in some streets, in our Transport, Infrastructure and Trade meeting.

That is not even the problem, what we are saying is that, when there is a conflict between the citizens of Nairobi and the county government, they have a place to go and complain. But he has not really told us the reasons why he is opposing.

Hon. Deputy Speaker: Thank you, noted. Hon. Minority Whip on the same! Could you request because I can't see you.

Hon. Peter Imwatok: Order No. 3.

Hon. Deputy Speaker: Okay, proceed.

Hon. Peter Imwatok: Thank you. Bwana Speaker, I must appreciate Hon. Kabiro for being that brace that we envisage so much in this assembly. Indeed, this is the most important motion before this House--- Protect me from *Mheshimiwa* Doris. As a House we must be able to leave history behind--- She is making noise unless she converses in low tones. I know no Sonko; no peace.

Hon. Deputy Speaker: Minority Whip please address the issue, leave Hon Doris alone.

Hon. Peter Imwatok: Hon. Speaker, in light of that, I know she is a cornerstone on this and I will say that the plane landed. Mr. Speaker, I must appreciate Hon. Kabiro and say that this is a very important motion. I always encourage Hon. Kabiro that in the history of this County assembly, he will be remembered as a man who walked with a bag which is healthier than 10kgs on a daily basis but thinking so hard what to he will bring before the House.

Indeed, if there is anybody who holds a record in terms of statements and motions, a person that we can say that came here to work for Nairobians as a special elect; is *Mheshimiwa* Kabiro.

Congratulations because you have really done as proud as young men out there you bought more motions. I am also challenging others to be able, because you don't have a ward, there someone who wants bursary, someone wants a drainage system, someone wants environment to be clean, you have time to go there to a library and research what we can do on devolved units of the county so that we come here and debate things that are positive.

Speaker looking at the motion, it is premised on injustice. Indeed, there is a lot of injustice that is being exhibited. Assume today as me as chief of the party I have done injustice outside there to residents, who can follow up on me? Because anything happening to me and a resident out there he can only go to a court of law.

The Powers and Privileges only enforces my rights and immunity here. Speaker I appreciate this motion and urge all of us – because when we talk about cartels in this county- cartels are not those ones outside there. They have their cronies and masters from the top of the county. I am just giving an example

bwana Speaker whereby a standard two drop out by the name Solo can come and evict a doctor in an office – Dr. Makondingo. Where are we heading in this county?

Hon. Deputy Speaker: Hon Osman I didn't see you. are you properly dressed?

Hon. Osman: Yes.

Hon. Deputy Speaker: Thank you. Do the necessary.

Hon. Peter Imwatak: Mr. Speaker I am just saying that this county, if we are not careful is being taken over by goons, terrorists, maligners, demagogues and uncouth people who pretend in the name of attaching themselves to the government while doing injustice to the people.

Look at the situation in the *matatu* industry. The owners of *matatu* do not run the aspect of the *matatu* industry. There is a cartel that you have to contribute Kshs 200 on daily basis to take to their masters. And the funny thing about is that the masters are not housed outside this precinct. They are within the county government. In the parking department they are there. There is no professionalism.

A county ombudsman is nothing we can run away from. It is something we must have as a county. But my worry is who will have the audacity to form this important institution. Even if it is formed the committee and people involved will be sycophants. The *kipindires*, the controllers ...you appoint someone you know very well from his body stature, language he cannot exhibit the right to do this job but you give him because he is your friend. He can adjust your tie at any time, he can worship you at any time but output is not there.

Bwana Speaker as much as I support Kabiro maybe you convert this into an Act of the county so that we domicile it as a law so that everyone – whether the soon to be impeached Governor will be there or a Governor coming in will be able to enforce it into action. I know there are trying moments ahead for this county. In those trying moments we must embrace them as they come even as a house.

Hon. Mark Mugambi: Thank you Mr. Speaker as I rise to support this motion I am surprised that my hon member in this house has asked about the chances of us getting the corona virus since yesterday evening we allowed a plane with over 200 passengers into our county. They were cleared and the ministry of health had the audacity of telling them to self-quarantine for 14 days. Is this a government that has the people's interest at heart or are we afraid of putting restrictions to the Chinese government since we are benefitting from them?

Mr. Speaker as we know our healthcare is in ...

Hon. Deputy Speaker: Hon Mugambi please adhere to the issue that is on the floor. You are out of order.

Hon. Mark Mugambi: I understand, Mr. Speaker, I am out of order but it is a matter of grave concern both to you and to me and the people we represent in this county.

Hon. Deputy Speaker: Thank you, I understand. The mover, Hon Kabiro

Hon. Mbugua Kabiro: Thank you Mr. Speaker. I wish to thank everybody who participated in the execution of this agenda today and Osman Adow for seconding this motion. I wish to reply thank you.

(Question put and agreed to)

(The Motion by Nancy Muthami deferred due to absence of the mover)

ADJOURNMENT

Hon. Deputy Speaker: Hon Members there being no other business the house stands adjourned till Tuesday 2.30 p.m., thank you and God bless you all.

The House rose at 4.40PM