



## NAIROBI CITY COUNTY ASSEMBLY

### OFFICIAL REPORT

#### Second County Assembly – Fourth Session

Tuesday 6<sup>th</sup> October, 2020

The House met at 9.30 a.m.

*[Hon. Speaker (Mr. Benson Mutura) in the Chair]*

PRAYERS

QUORUM

**Hon. Speaker:** I have been informed that we have quorum. Clerk, proceed.

#### COMMUNICATION FROM THE CHAIR

##### REINSTATEMENT OF HON. EVE MALENYA AS MEMBER OF COUNTY ASSEMBLY

**Hon. Speaker:** Good morning Hon. Members, I have the following communication to convey: You will acknowledge that the matter of the assumption of office by way of swearing in one Perpetua Mponjiwa has over a time attracted myriad of legal and procedural questions from the Members, the public and other institutions and led to various interventions from my office, mostly guided by the outcomes of court processes.

For instance, Hon. Members, as an attempt to have the said Mponjiwa sworn in as a Member of the County Assembly, the Hon. Lady Justice Grace L. Nzioka in her ruling in the High Court Election Appeal No. 4 of 2018 delivered on 18<sup>th</sup> September 2020, directed that the Speaker of this County Assembly, referred to as the Fourth Respondent in the said ruling swears in one Perpetua Mponjiwa within 14 days. On October 1<sup>st</sup> 2020, which was an assembly sitting day, all was set to swear in the said Perpetua Mponjiwa. However, the sitting was not able to take place since there were no sufficient Members to constitute a quorum.

Hon. Members, it is worth noting that my office will be in contempt if the said swearing-in would not have taken place after the lapse of the 14 days and that such an event would only be halted by a court injunction. Accordingly, Hon. Members, may I now bring to your attention that my office is in receipt of a

court order suspending the implementation of the Gazette Notice No.3123 Volume CXX1-39 published on 5<sup>th</sup> April 2019.

Hon. Members, you will recall that the said Gazette Notice gave effect to the replacement of Eve Malenya with Perpetua Mponjiwa on the Orange Democratic Movement (ODM) gender top up list before the intermittent developments both in the judicial institutions and the assembly. This therefore, effectively reinstates Hon. Eve Malenya as the Member of this County Assembly.

Hon. Members, in this turn of events, it is my determination that the assembly particularly in reference to this case, has been taken to the circumstances that led to a Gazette Notice above i.e. where Hon. Eve Malenya was a bonafide Member of the County Assembly of Nairobi and there is no doubt that indeed she is one of us courtesy of the said order.

Consequently, I now direct the Office of the Clerk to reinstate Hon. Eve Malenya on all benefits, privileges and platforms enjoyed by Members of the County Assembly without arrears and the question as to whether the Member shall enjoy the benefits and privileges until the end of the term shall be determined by the outcome of the court and the conclusion of the case. It is my hope that the court will expeditiously adjudicate on and put this matter to rest.

Hon. Members, may I reiterate that my office is committed to observe and be guided by the rule of law which bides us all. We appreciate that such decisions can sometimes seem to encroach on the privileges of the assembly whose integrity I will always seek to protect, but often, constitutionalism must always be upheld in order to propagate a civilized society where discontents are addressed justly as per the law. Therefore, my office will always respect the decision reached by the judicial institutions only up to where the privileges of the assembly have been breached.

Finally, Hon. Members, in light of the foregoing circumstances, I want to urge you to uphold and adhere to what is required of you on matters *subjudice* pursuant to Standing Orders as we conduct our business in the assembly. I thank you Hon. Members, it is so directed. Thank you.

Next Order!

### NOTICE OF MOTION

#### INVESTIGATION INTO ISSUANCE OF BUILDING PLANS AND FRAUDULENT ACQUISITION OF LAND IN THE COUNTY

**Hon. Jayendra Malde:** Hon. Speaker I beg to give Notice of the following Motion; that, aware that the County has always been experiencing increased cases of land grabbing over the last years; noting the many allegations of officers at the Planning and Housing Department who work in cahoots with these people in order to acquire land fraudulently or get favoritism to blatantly contravene standards building plans and/or regulations; cognizant of the fact that the corruption continue to mar the transfer process of land and properties in the county without the knowledge of the residents living on such lands; further noting that the relevant department of the County Government has continued to remain adamant or complacent to rectify the anomalies dating back to 2017, giving the example of High Ridge Clinic that is under construction by a private developer; North High Ridge School situated in 6<sup>th</sup> Parklands Avenue that is allegedly grabbed and Parkland/High Ridge Ward whose approval for a ten storey was extended to more than 12 storey building; deeply concerned that many residents of Nairobi have abruptly been displaced

from their land and properties as a result of politicians and business elites allegedly giving bribes and engaging in corruption activities; fully aware of the laid down building guidelines and the implications of Chapter 6 of the Constitution of Kenya 2010 on Leadership and Integrity and the President's pronouncement in the fight against graft by public officers; this assembly urges the County Executive in liaison with Nairobi Metropolitan Services to urgently investigate the process followed in the issuance of building plans and the fraudulent acquisition of land in the county since 2017 that led to the many contraventions of the requisite building and land transfer regulations and issues on residents consultation before transfer of such land and property. Thank you Mr. Speaker sir.

### STATEMENTS

**Hon. Speaker:** Hon. Fredrick Omondi? Is he online? In the meantime, can we have Hon. Deputy Speaker?

REQUEST FOR STATEMENT REGARDING FINANCIAL STATEMENTS, DISBURSEMENTS AND MANAGEMENT OF THE PENSION FUND BY COUNTY PENSION FUND AND LAPFUND

**Hon. Geophrey Majiwa:** Thank you Hon. Speaker. Pursuant to Standing Order no. 45(2) (c) I wish to request for the statement from the Chairperson of the Sectoral Committee on Labour and Social Welfare regarding the financial statements, disbursements and management of the pension fund by the County Pensions Fund (CPF) and LAPFUND for the County Executive employees.

Hon. Speaker persistent concerns have been raised by the retiring officers on the delays in payment of their retirement benefits by CPF and LAPFUND contrary to the terms and conditions between the organizations and the County. Hon. Speaker there are allegations that the pension funds are deliberately delayed; delaying disbursements of funds to the beneficiaries by engaging in risky investments are serious and critical because these traumatizes the beneficiaries after years of hard work serving and sacrifices.

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

1. Reasons for the delays in processing and disbursing benefits to County workers;
2. The terms and conditions given in the agreement and contract between the County, CPF and LAPFUND if there is adherence to the same;
3. Whether the investments by CPF and LAPFUND through the pension funds are viable or put pensioners' funds at risk;
4. The financial statements of the pension funds paid for the last two years;
5. Challenges being faced by CPF in implementing its policies in Nairobi County;
6. Clarifications on transition from gratuity to pension scheme and its benefits to County staff;
7. Status of remittances by the staff;
8. Brief on Retirement Benefits Authority policy on non-remittance; and
9. Whether there exists an alternative pension scheme for County staff.

Thank you.

**Hon. Speaker:** Very well. Can we have the Chairperson of Labor? In his absence, Majority Leader, can you give an undertaking on when you will get the report?

**Hon. Peter Wanyoike:** Thank you Mr. Speaker. This is a weighty matter but due to the procedure that we have to write and notify the Executive giving them seven days in which to respond, give us two weeks, Mr. Speaker.

**Hon. Speaker:** Deputy Speaker, is that in order?

**Hon. Geophrey Majiwa:** I am afraid Hon. Speaker, this culture of two weeks in this Assembly must somehow come to an end. Because I don't see why we should give him two weeks with such a weighty matter where Members of staff have retired and are dying of poverty while somebody is keeping their money, investing in a risky manner and we continue giving them more time to enjoy this money while the owners of the money are suffering. I would be comfortable with one week; these people are all around town here and getting them will not be a big problem.

**Hon. Speaker:** I think Deputy Speaker, in line with the weighty matter that you have raised, I think for them to be able to substantively give a feedback; I think two weeks should be in order.

**Hon. Geophrey Majiwa:** Most obliged.

**Hon. Speaker:** Next statement, Hon. Fredrick Omondi, is he online? I have been told that we have some technological problems; he had two statements to make, but I think we can go to the next order.

## MOTION

### ENFORCEMENT OF REPAINTING OF BUILDINGS IN NAIROBI CITY

**Hon. Moses Ogeto:** Thank you Hon. Speaker. I want to move the following Motion: That aware that Part Two of the Fourth Schedule of the Constitution of Kenya 2010 the functions and powers of the County Government among others covers public health; Further aware that section 118(b) of Public Health Act Cap 242 identifies as nuisance, any dwelling or premises or part of a construction in such a state as dirty to be dangerous to health. Noting that the Nairobi City County is the entry point into the County by international guests; Further noting that the aesthetic characteristics of the city gives the first impressions of its general organization and national character. Cognizant that the County Government and the Nairobi Metropolitan Services have separately issued public notices to owners of buildings to repaint, in line with the Nairobi City County Beautification System Initiative; Concerned that to a large extent the property owners have ignored to comply with the said notices. Realizing that the County has a responsibility to make laws and policies in people's interest which they hold in trust, this Assembly resolves that the County Executive and Nairobi Metropolitan Services moves with speed to enforce the aforementioned on repainting of buildings in the City County.

Hon. Speaker, before I call a seconder to second me on this Motion, I want to put a few headlines why I had to bring this Motion. Hon. Speaker, you realize in main cities in the world, starting from Berlin, New York, Los Angeles, Mexico, Poland, Singapore, San Francisco, Austria, these cities are examples of why painting should be done. For example, when you go to New York City, you realize that one street has very beautiful colors painted and well-decorated, Hon. Speaker.

I was impressed when I was doing my research that there's a country called Albania, it is next to Greece; and they have done full implementation of painting in the city. They say that beauty of a city welcomes and opens the eye. Hon Speaker, beauty protects the integrity of the city. In the country of

Albania when they started implementing painting, there was definitely an effect. The effect which trickled fast was that people stopped careless littering because you felt ashamed when you litter the street when it has been painted very well. People in that city started paying taxes because they were able to see the beauty of that city. Truly, when you go to Italy, there is a street that has been painted very well and they call it Red city, because they have maintained the colors of that city until when you arrive there you find how best it is.

Hon. Speaker, I am moved to move this Motion for that purpose Hon. Speaker, so that in the next six months this City will start looking beautiful. Therefore, if beauty is in the City the culture and mentality of our Nairobi residents will definitely change; so that when you walk in this city you will find how clean it is.

Hon. Speaker, people should take responsibility that even if you want to litter in the city you will feel ashamed; that is the spirit I believe in this Motion. There is a saying that states the “Green in the City” which is a motivation of the city in this Republic of Kenya especial in Nairobi.

Hon. Speaker, the other day when we were in Mombasa you could see the blue and white paints in the building, it looked beautiful. When we tell our residents it will look marvelous and this is what has moved me to bring this Motion to ensure that the owners of the buildings start painting. This will make people feel good coming in this city and they will be able to pay taxes.

Hon. Speaker, I therefore call my Minority Leader, Hon. Ogada to second me on this Motion.

**Hon. Michael Ogada:** Thank you Hon. Speaker, the Motion that has been brought by the Deputy Minority Whip is timely and is very much in order. It is in order in the sense that you can see what it is taking place in Nairobi and there is a lot of work that is currently going on like in pavements, improvement of roads and your will agree with me that NMS is doing a lot even in the estates. Starting from, I think, next week they are going to do one kilometer road in every slum, they are doing serious work in Level Three Hospitals, and this is a serious improvement.

As for the dirty faces of buildings that we have in the CBD and in our estates, you will realize for example I live in an estate in Embakasi, which was done by Mugoya around 20 years ago and since they did that work, people bought the houses through mortgage. You will realize that people only paint inside of their houses but nobody has painted outside of their houses. I think it is because people buy units, which has been a problem. With this Motion it is going to give an authority to both the County Government and Nairobi Metropolitan to ensure that all owners of buildings are aware that their buildings are supposed to be clean all the time and painted.

As it has been put that once they do it, it will be a place where they will have to paint all the buildings after which maybe after every three years and I know a bill is coming to that effect which is going to make it mandatory that if you own a building in Nairobi, after every 36 months, it must be repainted so that at least the face of the City of Nairobi can be maintained. The way my colleague has just raised the issue of how neat and tidy New York City looks and how Los Angeles City looks.

When you went to Mombasa, the other day there was an instruction that all buildings be painted and when we went Mombasa you will find it is done and it looks great, but before it looked very dull and dark before it was painted. Since it was painted, the City has become so bright and I think that is why I think tourists are really flooding after the Covid-19 subsided. Therefore, we can only support this Motion

and encourage the building owners within the County of Nairobi to make sure that their buildings look neat. Previously, I overheard people saying that for County to approve that have to paint your building, it is like approving a new building plan, which is expensive and costly.

However, as an Assembly we have come up with an idea for you to be authorized and allowed to paint your building, you are going to do it at a fee of Kshs.4, 000 for the license and then it ends there and you start painting your building. I think it is not going to be very expensive for them since it will be affordable and easy. Therefore, Hon. Speaker I stand to second this Motion.

**Hon. Speaker:** Thank you. Before I put the question, we are facing some technological issues and I can easily tell that the Motion was generating a lot of interest from Hon. Members, and almost over a hundred Members had logged in but all of sudden the system has collapsed but I believe the ICT team will work on it. Therefore, I suggest the mover we shelve the Motion until we sort out the issue of the other Members so that they will be able to respond.

*(The Motion was deferred)*

#### **ADJOURNMENT**

**Hon. Speaker:** There been no other business we adjourn the sitting to this afternoon. Thank you.

***The House rose at 11.40 a.m.***