



NAIROBI CITY COUNTY ASSEMBLY

OFFICIAL REPORT

Second County Assembly – Fourth Session

Thursday 26th November 2020

The House met at 2.30 p.m.

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

PRAYERS

QUORUM

Hon. Speaker: Clerk, confirm if we have the quorum.

(Clerk-at-the-Table confirmed there was quorum)

Clerk, proceed.

COMMUNICATION FROM THE CHAIR

DIRECTIONS ON THE SUSPENDED MOTION FOR REMOVAL OF THE GOVERNOR FROM OFFICE BY HON. PETER IMWATOK, MCA, MINORITY CHIEF WHIP

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

Hon Members, you will call that on Tuesday 3rd March 2020 during the afternoon sitting, the then Chair, Hon. Beatrice K Elachi had undertaken to give further direction on the Motion for removal of the Governor from office, whose notice had been issued by the Hon. Peter Imwatok. This followed the suspension of the Motion in compliance with orders of the court which had directed that the Member and the Assembly needed to comply with the applicable provisions of the law and the Standing Orders while considering the said Motion.

Hon. Members, in this regard, I wish to clarify that a Motion for removal of the Governor from office is a special Motion within the meaning of Standing Order 49. Standing Order 49 (2) provides that and I quote:

a) A notice of a Special Motion shall be:

i) Disposed of by the Speaker within seven days of receipt of notice from a Member under paragraph (1); and,

ii) Given by the Member within three sitting days following the approval of the Speaker.

b) A Special Motion shall be disposed of by the Assembly within three sitting days upon the notice".

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Hon. Members, Standing Order 49 (3) provides that if a proposer of a special Motion fails to observe the timelines prescribed under paragraph 2(a)(ii) or 2(b) of the Standing Orders, such notice of Motion or Motion shall be deemed to have been withdrawn and shall not be moved again in the same Session, except with the consent of the Speaker.

Accordingly, Hon Members, now that the Hon. Peter Imwatok failed to meet the timelines prescribed in Standing Order 49 (2), I hereby clarify that the Motion by the Member on the removal of the Governor from office, stands withdrawn in accordance with Standing Order 49 (3).

It is so directed. Thank you, Hon. Members.

Next Order!

DIRECTIONS ON ISSUANCE OF NOTICE OF MOTION ON REMOVAL OF THE GOVERNOR FROM OFFICE BY IMPEACHMENT

Hon. Speaker: Hon. Member, I wish to guide the House on the Motion. I have the following Communication to convey:

Hon. Members, before I invite the Member sponsoring the Motion on the removal of the Governor from office by impeachment to give notice of Motion, may I draw your attention to the provisions of Standing Order 67, and I quote:

"67(1) Before going notice of Motion under Section 33 of the County Governments Act, 2012, the member shall deliver to the Clerk a copy of the proposed Motion in writing, stating the grounds and particulars upon which the proposal is made for the impeachment of the Governor on the ground of a gross violation of a provision of the Constitution or of any other law; where there are serious reasons for believing that the Governor has committed a crime under national or international law; or for gross misconduct or abuse of office. The Notice of Motion shall be signed by the member who affirms that the particulars of allegation contained in the Motion are true to his or her own knowledge and the same verified by each of the members constituting at least a third of all the members, and that the allegations therein are true of their own knowledge and belief on the basis of their reading and appreciation of information pertinent thereto, and each of them sign a verification form provided by the Clerk for that purpose.

(2) The Clerk shall submit the proposed Motion to the Speaker for approval.

(3) A Member who has obtained the approval of the Speaker to move a Motion under paragraph (1) shall give a seven (7) days' notice calling for impeachment of the Governor."

Hon. Members, in view of the foregoing provisions, I wish to communicate that indeed I am in receipt of a verified notice of Motion from the Leader of Minority Party, through the Office of the Clerk on 26th November 2020 and approved the same, having confirmed that 86 Members of the County Assembly have appended their signatures in support of the said Motion.

Hon Members, may I now invite the Leader of Minority Party to proceed with giving notice of the said Motion.

It is so guided. Thank you.

NOTICE OF MOTION**REMOVAL OF THE HON. MIKE SONKO MBUVI FROM THE OFFICE OF THE COUNTY GOVERNOR OF THE
NAIROBI CITY COUNTY**

Hon. Michael Ogada: Thank you, Mr. Speaker Sir. I beg to give Notice of Motion to impeach the Governor of Nairobi City County, Mr. Mike Mbuvi Sonko.

Mr. Speaker, as per your directions and the requirements of the law, one thing I need to confirm is that we have, as Members of this House, signed and we have 86 signatures, as you have just confirmed.

Hon. Speaker, I beg to give Notice of the following Motion:

THAT, whereas Chapter Six of the Constitution, the Leadership and Integrity Act, 2012 and the Public Officers Ethics Act provide for primarily, the conduct of state and public officers, and the accountable exercise of power and responsibility assigned to State and public officers;

And whereas Article 10 as read together with Article 73 of the Constitution and Section 3 of the Leadership and Integrity Act, 2012 provides for respect for the rule of law, good governance, accountability and transparency of state officers for decisions and actions as key guiding principles of leadership;

And whereas Article 179(4) exclusively bestows on the Governor the Executive authority, which Executive authority is provided for under Section 30 of the County Government Act, 2012, to wit he is to;

(a) provide leadership in the County's governance and development;

(b) provide leadership to the County Executive Committee and administration based on county policies and plans;

(c) promote democracy, good governance, unity and cohesion within the County;

(d) promote peace and order within the County;

(e) promote the competitiveness of the County;

(f) be accountable for the management and use of the County resources;

And whereas the Assembly is cognizant of the fact that the Governor is facing charges in respect to corruption allegations emanating from the award of contracts, which charges have rendered him incapable of performing his functions, whence he was recently barred from accessing his office, leaving the County in limbo granted the vacancy that befell the Office of the Deputy Governor on 31st January 2018 persists;

And whereas by action, inaction, omission and or commission the Governor of the Nairobi City County has failed, refused and or neglected to exercise the powers and responsibilities bestowed upon the Office of the Governor in a manner that promotes trust in the office he occupies in keeping with the high standards of professional ethics contemplated under Article 232(1)(a) of the Constitution as read together with Section 30(3) of the County Governments Act, 2012;

Cognizant that under Article 185(3) as read together with Section 8 of the County Governments Act, 2012, the County Assembly is mandated to undertake oversight of the County Executive in the performance of its functions as provided for in the Constitution and other enabling laws, which functions the County Governor as the Chief Executive Officer of the County has either failed, neglected and or exhibited gross violation of the Constitution and written law;

Reasons whereof under Article 181 of the Constitution as read together with Section 33 of the County Governments Act, 2012, the following grounds are provided for, for the removal of the Governor, amongst which are;

- (a) gross violation of the Constitution or any other law;
- (b) where there are serious reasons for believing that the County Governor has committed a crime under national or international law;
- (c) abuse of office or gross misconduct; or
- (d) physical or mental incapacity to perform the functions of office of County Governor.

Now therefore, this Assembly resolves to remove the Hon. Mike Sonko Mbuvi Gideon Kioko alias Mbuvi Gidion Kioko Kivangulia Kivatu Nangeleesi (MBT) from the Office of the County Governor of the Nairobi City County, pursuant to Article 181(1)(a) and (c) of the Constitution, Section 33 of the County Governments Act, 2012 and Standing Order 67 of the Nairobi City County Assembly Standing Orders, on the following grounds:

1. Gross violation of the constitution or any other law

(Gross violation of the Constitution; the County Governments Act, 2012; the Public Procurement and Disposal Act, 2015; and the Public Finance Management Act, 2012)

- a) The Governor of the Nairobi City County has violated Articles 201(a), (d), (e) of the Constitution of Kenya on principles of Public Finance Management and Section 15 of the Public Finance Management Act, 2012, the County Allocation of Revenue Act, 2015 on the use of Conditional Grants from the National Government, by the diversion or negligently causing to be diverted Conditional Funds, for instance in the use of the road levy and Bursary Funds to pay for garbage collection contractor and lawyers, contrary to Bursary Fund Regulations and the approved Budget. While the Governor requested for Kshs.297million for Bursary from the Controller of Budget, these funds were illegally used to pay garbage contractors and lawyers.
- b) The Governor of the Nairobi City County has violated Article 10, Article 201(b) and (d) of the Constitution by failing, refusing and/or neglecting to comply with the provisions of Regulation 20 of the Public Finance Management (County Governments) Regulations, 2015, which failure, refusal and/or negligence has compromised the provision of services envisioned under Part II of the 4th Schedule to the Constitution 2010, *inter alia* most crucial provision of health services during the raging pandemic.
- c) The Governor of the Nairobi City County has violated Article 187(2)(a) of the Constitution and Article 5.2 of the Deed of Transfer, by his continued willful refusal to execute the statutory warrants essential to the release of funds from the County Revenue Fund, which has grounded the provision of services of not only the County Executive, but of the Nairobi Metropolitan Service (NMS) and its exercise of the transferred functions. This action violates the provisions of Article 187(2)(a) of the Constitution and Article 5.2 of the Deed of Transfer, whence the County Assembly duly adopted the Budget for the Financial Year 2020/2021 and enacted the Nairobi City County Appropriation Bill, 2020.

- d) The Governor has violated the provisions of Article 183 of the Constitution as read together with Standing Order Number 193 and Section 123 of the Public Finance Management Act, 2012 by undermining the authority of the County Assembly, whence the Governor has refused and or failed to implement resolutions of the County Assembly or forward a report detailing his inability to do so in line with Article 183 of the Constitution as read together with Standing Order Number 193, with respect to County Public debt and debt management under the provisions of Section 123 of the Public Finance Management Act, 2012. Failure of which the County has been unable to control and manage County Public debt. The result is unmitigated accrual of debts which has ballooned the county's overall debt to unmanageable levels, rising from Kshs.56 billion when he assumed office in 2017 to about Kshs. 90 billion as at June this year.
- e) The Governor has violated Article 227 (1) of the Constitution on procurement of goods and services as read together with the provisions of Public Procurement and Disposal Act 2015 by flouting the principles of Public Finance Management in as far as public procurement of goods and services is concerned. When the Public Procurement Regulations Authority (PPRA) flouted the procurement process for the construction of the Dandora Stadium, the authority flagged irregularities in awarding of the tender, alteration of the contract specifications, suspected irregular payments and forgery of documents. Despite technical evaluators questioning the quality of work, the PPRA indicted the County Government for paying Kshs. 196.9 million to the contractor.
- f) The Governor violated Section 35 (4 and Section 45 (1) of the County Government's Act 2012 as read together with Section 104 and Section 148 of the PFM Act whence between 2018 and early 2019, and contrary to the law, the Office of the County Executive Committee Member for Finance and that of the Chief officer for Finance were held by the same person, one Ms. Winfred Gathagu, which situation occasioned confusion and inefficiencies at the County Treasury, hence failing to promote good governance, and compromising the doctrine of transparency and accountability within the County Government.
- g) The Governor has violated the provisions of Section 104 of the PFM Act on the responsibilities and powers of a County Treasury, whence through inaction, action, omissions and commissions he continues to preside over a broken Public Finance Management System, whence the County Treasury remains ineffective. Despite various resolutions of the County Assembly urging the Governor to improve efficiencies by decentralizing the finance function to sectors as required by the provisions of Section 148 of the Public Finance Management Act 2012, the county continues to operate in contravention of the law.
- h) The Governor has violated the provisions of Article 5.5 of the Deed of Transfer of Functions, by his refusal to hand over the necessary documentation to enable Kenya Revenue Authority (KRA) to undertake optimal revenue collection under the transferred functions. For instance, by the end of June 2020, the County had collected just about Kshs.8.4 billion, against a projected revenue target of Kshs.17.05 billion, which was partly due to failure by the County Government to facilitate

KRA to hit its optimal potential as the revenue collection agent appointed pursuant to the Deed of transfer of Functions.

- i) The Governor grossly violated Article 201 of the Constitution on the prudent use of financial resources and Section 159 of the Public Finance Management Act 2012, as read together with Section 7 of the Nairobi City County Tax Waivers Administration Act 2013, by unilaterally issuing waivers in total disregard of the law. The Governor was aware that the law provides that waivers should be granted by the CECM for Finance.
- j) The Governor has violated the provisions of Article 201 (d) of the Constitution on principles that guide all aspects of public finance in the Republic, and 227 (1) on procurement of public goods and services, and the provisions of the Public Procurement and Disposal Act 2015 by willfully interfering in the award of the tender for construction of the Dandora stadium as established by PPRB, leading to the loss of public funds in overseeing payments despite concerns by technical officers.
- k) The Governor has violated the provisions of Article 201 of the Constitution and the Public Finance Management Act, 2012 on principles that guide all aspects of prudent use of public finance where intentionally or negligently he presided over massive loss and theft of County public funds in the three years he has been in office, as evidenced by the Auditor General Report of 2018/2019, which raised the red flag over city's stalled Ksh.204.2 million projects, as well as allure by the County Government to meet its revenue targets.
- l) The Governor has violated the provisions of Article 5 of the Deed of Transfer of functions by sabotaging the transfer of functions. The Governor is yet to provide NMS with crucial information necessary in aiding the carrying out of the transferred functions. For instance, failure to facilitate NMS with data on ongoing projects, pending bills and staff payroll details on transferred functions has greatly derailed the performance of these functions to the detriment of the public good.

2. Abuse of Office

- a) The Governor has abused his office by violating Article 75 of the Constitution as read together with Section 11 and 13 of the Leadership and Integrity Act, 2012, on the conduct of State Officers, where the Governor has persistently intimidated, harassed and molested officers of the County Executive, including blackmailing his County Executive Committee Members and Chief Officers with one-year contracts, whose renewal he has undertaken arbitrarily, leaving the Officers jittery about their employment and creating a climate of fear, uncertainty and despondence. For instance, in May 2019, the Governor failed to renew the contracts of all twenty-three (23) Chief Officers, instead directing they hand over to Directors, greatly affecting the continuity of service delivery and accountability in the County.
- b) The Governor has abused his office by violating Article 75 of the Constitution as read together with Section 16 of the Leadership and Integrity Act, 2012 by willfully using public funds to pay for his daughter's travel to New York, USA, to allegedly attend the County First Lady's Conference, held during the 62nd Session of the Commission on the Status of Women 2018.

3. Gross Misconduct

- a) The Governor has violated Article 73 of the Constitution by failing to promote public confidence in the integrity of the office of the Governor following his being charged before the Anti-corruption court, thus prejudicing and or compromising the social contract and trust bestowed upon him by the people of Nairobi by virtue of Article 1 of the Constitution. As a consequence, therefore, the Governor has been barred from accessing his office vide a court order and thus incapable of performing his functions under Section 30 of the County Government Act, 2012.
- b) The Governor has violated Article 73 of the Constitution and Section 8 and 11 on the Leadership and Integrity Act, 2012 on public trust and professionalism, where he is on record admitting that he was intoxicated and thus not in the right frame of mind when he signed the Deed of Transfer for the transfer of certain functions of the County to the National Government in February, 2020. In his own words, *"Hawa watu wa State House waliniconfuse na pombe kwanza, by the time I was meeting the President for signing I was just seeing zigzag."* This allegation of impropriety on the part of Sate House imputes improper motive on the office of the President, and brings disrepute, ridicule, hatred and contempt to the Office of the President and of the Governor.
- c) The Governor has violated Article 73 of the Constitution and the Leadership and Integrity Act, 2012 on the responsibilities of leadership, by failing to professionally perform his constitutionally sanctioned duties owing to his constant absence from office, even before he was formally restrained by the courts from accessing his office due to corruption charges, whence the Governor remained constantly unreachable in person or on his phone for inordinately longer periods of time to the huge detriment of the performance of the functions of the County Executive. Indeed, the governor purported to execute the functions of the County Government from his home in Mua Hills, Machakos County.
- d) The Governor has violated Article 75(1)(c) of the Constitution as read together with Section 11 of the Leadership and Integrity Act, 2012 in respect of conduct of State Officers by drawing a salary and hefty allowances and enjoying the privileges of the office he holds, while failing to diligently report to work and being perennially absent, even before he was formally restrained by the Courts from accessing his office due to corruption charges.
- e) The Governor has violated Section 8 of the Leadership and Integrity Act, 2012 on Public Trust, where he has constantly used his position to abuse public trust in the County Government, by exercising the powers of his office in a manner detrimental to prudent public service delivery, by persistent use of divisive and unbecoming language which undermines the office he holds and the County administration.
- f) The Governor has violated Articles 73 and 75 of the Constitution on conduct of State Officers that is demeaning to the offices they hold, and Section 11 of the Leadership and Integrity Act, 2012 by persistently and willfully using publicizing and publishing abusive and unbecoming words and language, as evidenced by his social media posts and numerous rants, in which he has hurled abuses and conducted himself in a manner that undermines and demeans the office of the Governor.

4. Crimes under National Law

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- a) There are serious reasons to belief that the Governor has committed crimes under National law, specifically the Anti-corruption and Economic Crimes Act, which crimes he has been charged for in the Anti-Corruption Court

Mr. Speaker, I beg to lay these papers.

(Applause)

Hon. Speaker: Hon. Members, as per the Notice of the Motion issued by the Minority Leader, the same shall be executed in line with the provision of Standing Order 63 and with respect to Section 33 of the County Governments Act, 2012. You are so guided.

MOTION

Hon. Waithera Chege: Thank you, Mr. Speaker. I wish to request for postponement of this Motion because there are few statements that are missing, and we would want to enrich it next week. Because I am a Member of the House Business [committee], I think we will be finalizing it by the end of the day tomorrow. I wish to request.

Hon. Speaker: Thank you. So, the Motion will go back to the House Business Committee for allocation. Next Order!

(Motion deferred)

COMMITTEE OF THE WHOLE ASSEMBLY

Hon. Speaker: Hon. Members, I understand that today we will not be proceeding to the Committee of the Whole House as there are some Bills that needs to be polished up. I think, by next week, the Committee will have tabled all the amendments.

(Bill deferred)

ADJOURNMENT

Hon. Speaker: Hon. Members, there been no other business, the House stand adjourned to Tuesday next week, 1st December 2020, at 9.30 a.m.

The House rose at 4.00 p.m.