



COUNTY GOVERNMENT OF NAIROBI CITY

SECOND ASSEMBLY – (FOURTH SESSION)

NAIROBI CITY COUNTY ASSEMBLY

VOTES AND PROCEEDINGS

FRIDAY, AUGUST 14, 2020 AT 2.30 P.M.

1. The Assembly assembled at thirty minutes past Two O'clock.
2. The Proceedings were opened with Prayer

QUORUM OF THE ASSEMBLY

The Hon. Ag. Speaker having confirmed that there was Quorum called the Assembly to order.

3. COMMUNICATION FROM THE CHAIR: -

The Ag. Speaker conveyed the following Communication: -

“Hon. Members, Before I convey my communication, I take this opportunity to welcome you all to today’s unprecedented special sitting. As I indicated to you yesterday, Members will be participating in today’s sitting virtually except for the House leadership. This is in compliance with Ministry of Health guidelines on containment of the spread of Covid-19. I therefore sincerely thank you for adhering to the guidelines issued in my yesterday’s guidance regarding this virtual sitting.

RESIGNATION OF HON. BEATRICE K. ELACHI, CBS FROM THE OFFICE OF THE SPEAKER, NAIROBI CITY COUNTY ASSEMBLY.

Hon. Members, Pursuant to Section 7 of the County Governments (amendment) Act, 2020 as read together with Standing Order 5 (d) of the Nairobi City County Assembly Standing Orders, the Hon. Beatrice K. Elachi, CBS in a letter dated 10th August, 2020, addressed to the Clerk of the County Assembly, tendered her resignation from the Office of the Speaker.

Accordingly, Hon. Members, in accordance with the provisions of Standing Order 5(d) I hereby convey the said resignation and further state that Hon. Beatrice K Elachi is grateful to all Members for the opportunity you offered her to serve as the Second Speaker of the County Assembly.

BUSINESS SCHEDULED FOR THE SPECIAL SITTING

Hon. Members, Standing Order 5(3) provides as follows, and I quote:-

“(3) If the office of the Speaker falls vacant at any time before the end of the term of the Assembly, no business, other than election of the Speaker, shall be transacted by the County Assembly”.

Accordingly, Hon. Members, in compliance with the aforementioned provisions of our Standing Orders and upon the request of the Leader of the Majority Party vide a Memo dated 12th August, 2020 and the subsequent publication of Gazette Notice No. 5751 pursuant to Standing Order 30 (3), today’s special sitting has specifically been convened for purposes of conducting election of the Speaker.

Further, Hon. Members, the Chair wishes to remind you of the provisions of Standing Order No. 30 (4) which provides that, and I quote; *“Whenever the County Assembly meets for a special sitting, the Speaker shall specify the business to be transacted on the day or days appointed and the business so specified shall be the ONLY BUSINESS before the County Assembly during the special sitting, following which the County Assembly shall stand adjourned until the day appointed in the County Assembly calendar”.*

ASSEMBLY JUBILEE PARTY LEADERSHIP CHANGES

Honorable Members, the Office of the Speaker is in receipt of a letter from the Majority Whip of the Jubilee Party dated 15th April, 2020. The letter regards the Communication of changes to the Leadership of the Jubilee Party pursuant to Standing Order No. 20 of the County Assembly Standing Orders. Standing Order 20(7) provides that a member designated under paragraph (1), may be removed by the party or coalition of parties that designated him or her by two thirds of votes of all members of the largest party or coalition of parties in the County Assembly. Further, under Standing Order No. 20(8) the Whip of the largest party or coalition of parties in the County Assembly shall forthwith, upon a decision being made under this standing Order, communicate to the Speaker, in writing, the decision together with the minutes of the meeting at which the decision was made. Honorable Members, the Office of the

Speaker is further in receipt of Minutes and attendance lists in compliance with the provisions of the Standing Orders 20(7) and (8) communicating that the following have been designated Leaders of the Majority Party, namely: -

1. Hon. Abdi I. Hassan, MCA - Leader of Majority Party
2. Hon. Peter Wanyoike, MCA - Deputy Majority Leader
3. Hon. Paul K. Kados, MCA - Majority Whip
4. Hon. Waithera Chege, MCA - Deputy Majority Whip

Accordingly, the Changes are hereby communicated and are effective 15th April, 2020.

Accordingly, Hon. Members, the Assembly is duly notified of these changes.

APPEAL AGAINST SANCTIONS LEVELLED ON THE HON. BENSON MWANGI, FOR ALLEGED BREACH OF PRIVILEGE

Hon. Members, the Office of the Hon. Speaker is in receipt of a letter from the Hon. Benson Mwangi, MCA regarding an appeal on his suspension from the House. The said suspension was issued under Standing Order 114(2) which provides for the power of the Speaker to call a Member whose conduct is gravely disorderly to order and shall order the member to withdraw forthwith from the precincts. Hon. Members, Standing Order 114 (5) provides that notwithstanding the provisions of paragraph (4), a member in respect of whom a suspension in paragraph (2) is imposed may appeal in writing to the speaker and the speaker may – (a) uphold the decision; (b) vary the decision and communicate the matter to the Assembly or; (c) refer the appeal to the Select Committee on Powers and Privileges for consideration.

Hon. Members, having considered the Appeal, I wish to guide as follows: - The conduct of a Member of the County Assembly and the breaches thereof are provided for under the Privileges Act, 2017 and the Standing Orders of the County Assembly. The application of the sanctions for breach of privileges is equally detailed under Section 16 of the Privileges Act and the Standing Orders. Critically, the application of these sanctions ought to be aligned with the provisions of Article 50 of the Constitution, which provides that every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a court or, if appropriate, another independent and impartial tribunal or body, in this case being the County Assembly and its mechanisms under the law and the Standing Orders. Hon. Members, the

decision obtaining herewith arose from the proceedings of the House, whence the Member was issued an additional time for suspension by the Hon. Speaker, and the appeal from that additional suspension indeed lies squarely with the Office of the Hon. Speaker by virtue of Standing Order No. 114(5). And therefore, the Chair is properly seized of jurisdiction to make a finding on this appeal as follows; Honorable Members, having perused the Appeal and the additional sanction meted therewith, and reviewed the fair hearing and access to justice principles in so far as the decision was concerned, I am inclined to advise as follows; That, in the interest of the administration of fair justice, it is my considered opinion that the additional suspension was an unfair and an unjust overreach, and it is therefore lifted pursuant to Standing Order 114(5).

It is so directed.

Thank you very much Hon. Members”.

4. COMMUNICATION FROM THE AG. SPEAKER ON THE PROCEDURE OF ELECTING THE SPEAKER: -

The Ag. Speaker issued the following communication: -

“Hon. Members, I have the following directions that I wish to convey regarding the Order on election of the Speaker. The Chair requests that you to be attentive and patient since it is rather a long communication which addresses critical steps leading to the election of the Speaker.

EVENTS LEADING TO TODAY'S SITTING

Hon. Members, Following the resignation of Hon. Beatrice K. Elachi, the Clerk in exercise of the powers conferred by Standing Order No.6 notified the general public of a vacancy in the Office of the Speaker of the County Assembly via Gazette Notice No. 5751 dated 12th August, 2020. Additionally, the office of the Clerk publicized the declaration of the vacancy by advertisement in three newspapers of national circulation.

In the notice and advert, the office of the Clerk invited interested persons who qualify to be elected as Members of County Assembly, but are not such Members to submit their nomination papers for election as Speaker of the County Assembly.

Hon. Members, as per the advertisement, a person who qualify for the position of the Speaker of the County Assembly was required to submit the nomination forms together with his or her curriculum vitae and relevant

supporting documents to the Office of the Clerk of the County Assembly at least forty-eight (48) hours before the day of the Sitting.

Hon. Members, at the close of the nomination period, the following seven (7) persons had submitted their nomination papers for election as Speaker of the County Assembly: -

1. Benson Mutura Kangara
2. Abdi Ali Abdi
3. Dr. Odingo Odhiambo Washington
4. Mike Obonyo Guoro
5. Allan Chacha Mang'era
6. Kennedy Okeyo Ng'ondi
7. Hon. Alex Sanaika Ole Magelo

Hon. Members, pursuant to the provisions of Article 193 of the Constitution and Standing Order 6 of the County Assembly Standing Orders, all the seven persons who completed and submitted their nomination papers, qualified as candidates for election as the Speaker of the County Assembly.

Hon. Members, Standing Order 6(5) requires that: -

“The Clerk shall maintain a register in which shall be shown the date and time when each candidate’s nomination papers were received and shall ascertain that every such candidate for election to the office of Speaker is qualified to be elected as such under Article 193 of the Constitution.”

In that regard, I hereby confirm that a register has been maintained by the office of the Clerk in accordance with the requirements of this Standing Order.

Further, Hon. Members, Standing Order No. 6 (6) requires that: -

“Immediately upon the close of the nomination period provided for in paragraph (2), the Clerk shall-

- (a) publicize and make available to all Members, a list showing all qualified candidates; and*
- (b) Make available to all Members, copies of the curriculum vitae of the qualified candidates.*

Hon. Members, I hereby confirm that a list showing all qualified candidates was publicized and was made available to all Members by the office of the Clerk. I further confirm that the office of the Clerk made available to all Members a list with copies of the curriculum vitae of the qualified candidates. However, Hon. Members, I wish to notify the House

that one candidate the Hon. Alex Sanaika Ole Magelo withdrew his candidature after publication of candidates, as such, we shall only have six (6) candidates.

THE VOTING PROCESS

Hon. Members, Standing Order 5(4) provides that the Chairperson of Committees (now the Deputy Speaker/Ag. Speaker) shall preside over the elections of the Speaker whenever a vacancy occurs in the office of the Speaker at any time before the end of the term of the Assembly. Consequently, I am set to preside over the current election exercise.

Hon. Members, Standing Order 7 provides that the election of the Speaker shall be by secret ballot. It is envisaged under the said Standing Order that the voting process shall be wholly manual where there are ballots and voting boxes and booths. However, under the current circumstances, where the plenary is virtual, the Chair directs that electronic voting shall be the voting mode to be used during this specific election.

Hon. Members, accordingly, the provisions of Standing Order 75 on electronic voting shall be applied with necessary modifications to suit the current circumstances. In the same breath, the Chair wishes to draw your attention to the amendments on the Standing Orders which we adopted on 2nd June, 2020 regarding virtual sittings. Specifically, the Assembly adopted that and I quote:-

“231 D Use of Technology:-

(1). The Speaker may, taking into account the gazetted precincts of the Assembly, prescribe appropriate information and communications technology platforms for the conduct of virtual proceedings under this part.

(2). The platform described under paragraph (1) shall;

*(d) where the Assembly is wholly precluded from conducting a physical sitting, **incorporate a system that allows Members to vote.***

(3) The voting system incorporated under paragraph (2) (d) shall be simple, accurate, verifiable, secure, accountable, transparent and facilitate the prompt declaration of results of each vote taken.”

With the foregoing, Hon. Members, upon expert advice, the Chair has chosen the *customized zoom application* as the platform that shall be used to conduct the current elections of the Speaker. In arriving at this decision, the Chair is satisfied that the application is simple, accurate,

verifiable, secure, secrete, accountable, transparent and has the ability to facilitate prompt declaration of results.

Indeed, Hon. Members, once voting shall be declared, you will be prompted on your various electronic devices to make your choice by clicking against the name and image of your preferred candidate. Once, every member will have completed voting, the results shall appear on your devices and on the screens for those in the Chamber. It is mandatory that all Members who wish to vote, including those currently in the chamber, to login through the zoom platform using their email addresses and gazetted names.

Hon. Members, I wish to remind the Assembly that the voting exercise we are about to undertake is secret. Accordingly, both Members in the Chamber and those voting virtually are not allowed to display to anyone how they voted. The Office of the Clerk is also directed not to disclose how Members voted. Members of the media are also reminded to observe rule 3(c) of the Assembly Broadcasting Rules, which provides that: *“Wide-angle shots of the Chamber shall be used during voting and Division and no shot shall be taken so as to show the manner in which a Member has voted in any secret ballot.”*

Further, Hon. Members, the Chairs wishes to remind the House that if no candidate is supported by the votes of two-thirds of all Members, the candidate or candidates who received the highest number of votes in the first ballot and the candidate or candidates who in that ballot received the next highest number of votes shall alone stand for election in a further ballot. The candidate who receives the highest number of votes in the further ballot shall be elected Speaker, and I will declare so.

5. ELECTION OF THE SPEAKER

The Ag. Speaker directed the Assembly ICT officers to prompt the voting feature on the zoom platform and gave members five (5) minutes to make their choice by clicking on your preferred candidate.

At the conclusion of the voting, the Ag. Speaker received the results from the Clerk as verified by the ICT Officers having obtained the same from the zoom platform.

The Ag. Speaker announced the results as follows:-

1. Benson Mutura Kangara	-	99
2. Abdi Ali Abdi	-	0

3. Dr. Odingo Odhiambo Washington	-	0
4. Mike Obonyo Guoro	-	0
5. Allan Chacha Mang'era	-	0
6. Kennedy Okeyo Ng'ondi	-	0

The Ag. Speaker thereupon declared Hon. Benson Mutura Kangara duly elected Speaker by majority votes.

Consequently, Hon. Benson Mutura Kangara was escorted to the Chamber of the Assembly by the Sergeant-at-Arms;

Thereupon, the Ag. Clerk administered the Oath of Office to the Speaker;

The Speaker submitted himself to the will of the County Assembly and gave the following communication.

6. COMMUNICATION FROM THE CHAIR – ACCEPTANCE SPEECH BY THE SPEAKER

The Speaker, having been sworn in, proceeded to give his acceptance speech in the following Communication from the Chair–

“Kwanza kabisa, nachukua fursa hii kumrudishia Mwenyezi Mungu shukrani kwa kutupa nafasi ya kuja kuwahudumia wakati huu. Vilevile, narudishia shukrani Waheshimiwa wote wa Bunge la Kaunti hii maanake nyinyi ndio wabunge wangu na pia wakubwa wangu. Nitawatii, kuwatumikia, na kufanya kazi pamoja. Nawashukuru. Pia, nachukua fursa hii kushukuru Chama chetu cha Jubilee, hasa Rais Uhuru Muigai Kenyatta na Msajili Mkuu wa Chama chetu, kwa kunipa fursa ya kuwa mgombea wa kiti cha Spika. Nashukuru kwa yale yote ambayo wamenifanyia na nitawatendea kulingana na misingi na kanuni za chama. Vilevile, nashukuru Chama Pinzani cha ODM kwa heshima ambayo wamenionyesha zaidi ya kunikubali nije hapa nifanye kazi. Ni ishara kuwa siasa ya nchi tunaweza fanya pamoja. Pia tunaweza shirikiana tufanye kazi pamoja maanake huduma zinazofaa tufanye ni dharura. Wakaazi wa Nairobi wanahitaji tufanye kazi pamoja na kwa undugu. Kwa upande wa upinzani, fikisha salamu zangu kwa Kinara wa Chama. Si rahisi tukiwa upande wa demokrasia upate kuhidhinishwa na chama cha upinzani. Pokea salamu zangu mahali uliko.

Nimeomba kazi hii nije niwahudumie kama Spika. Sisemi kuwa nilikuwa bora zaidi, lakini kwa heshima zenu na fadhila zenu, mmeona ni vyema nije niwahudumie. Naelewa kinagaubaga yale ninafaa kufanya, sanasana kwa upande wa utunzi na ubunifu wa sheria. Tutashirikiana pamoja. Hayo yote tutafanya tukiangalia mwelekezo wa Katiba ya nchi

yetu tukufu. Nachukua fursa hii pia kushukuru Gavana wa Nairobi, Mike Mbuvi Sonko. Wewe ni Gavana wetu na tuutajaribu kama Bunge hili tufanye kazi pamoja mahali ambapo inahitajika tufanye kazi pamoja. Tusaidiane ili huduma ziwe sawa. Pokea salamu zangu Gavana wangu, ulikuwa mbunge wangu. Mwenyezi Mungu azidi kukupa heshima na hekima ya kuwahudumia watu wa Nairobi. Vilevile, najua kuna changamoto kuhusu Shirika jipya zaidi miongoni mwetu, Nairobi Metropolitan Services. Ni shirika ambalo lazima tushike mkono. Kwa hivi sasa, ni kama yule mtoto mdogo anayechuchumaa. Lazima tushike kama Bunge aweze kusimama na kisha aanze kukimbia maanake huduma zinahitajika na watu wa Nairobi kwa haraka iwezekanavyo. Kwa hivyo, hasa tukiwa na Janga la Corona, tutawashika zaidi na tufanye kazi pamoja. Wabunge, hivi karibuni kupitia viongozi wenu, Kiongozi wa Wengi, Kiongozi wa Wachache na Viranja wenu, nitawaalika kwa mkutano wa dharura tuweze kujuana, tufahamiane, na tupange vile tutafanya kazi pamoja. Kwa hivyo, mkipata mwaliko wangu mshukuru. Wakati huu, nimekuja kwa heshima na upole, nitakapokunja jamvi na kuondoka tuwe na urafiki na kumbukumbu nitakazofurahia nyakati zijazo. Natumahi hayo yote yatatendeka. Kwa leo, najua tuna mambo mengi ya kufanya. Kama Bunge, lazima tuangalie taaluma na kanuni za Bunge. Lazima kila moja wetu apewe fursa ya kujadiliana. Kuwa na maoni mbadala haimanishi kuwa wewe ni adui wa yule mwingine. Tutajaribu tuwe pamoja, na wachache pia tuwape sikio lakini haki tuwape wengi. Kwa hayo mengi, najua tutapatana. Nawaomba kwa heshima Waheshimiwa wa Bunge hili Mwenyezi Mungu awape hekima na busara ya kuweza kukariria na kukadiria mambo ambazo tutapatana. Nehema ya Mwenyezi Mungu izidi kuwa nanyi sasa na wakati wote. Ahsante”.

There being no other business and the time being thirty minutes past Three O'clock, the Hon. Speaker adjourned the Assembly without Question put pursuant to the Standing Orders.

7. ASSEMBLY ROSE - at thirty Minutes past Three O'clock.

MEMORANDUM

The Speaker will take the Chair on **Tuesday, 8th September, 2020** or on a date to any other date to be communicated