



COUNTY GOVERNMENT OF NAIROBI CITY

FIRST ASSEMBLY – (FOURTH SESSION)

NAIROBI CITY COUNTY ASSEMBLY

VOTES AND PROCEEDINGS

TUESDAY, OCTOBER 4, 2016 AT 2.30 PM

1. The Assembly assembled at thirty minutes past two O'clock.
2. The Proceedings were opened with Prayer.
3. **COMMUNICATION FROM THE CHAIR:-**

The Speaker conveyed the following communication;

GROSSLY DISORDERLY CONDUCT

“Hon. Members, the afternoon of Thursday 29th September, 2016, will go down in the history of this new Assembly Chamber as perhaps the darkest day during the First term of the First Nairobi City County Assembly.

Hon. Members, we will recall with astonishment the grossly disorderly conduct witnessed on the said day when a Member was attacked for merely attempting to prosecute an item of business which was properly before this house, having followed all due process and obtaining procedure under Section 33 of the County Government Act, 2012, and Standing Order 60 of the County Assembly Standing Orders.

Hon. Members, the needless attack on the person of Hon. Samuel Nyangwara by the Hon. Peter Owera, which occasioned the scuffle witnessed by all present and as reported by media houses via captured video, was indeed regrettable, despicable and shameful. What transpired here last week is now public knowledge and to say otherwise other than to condemn it would be to fail in my mandate as the Speaker of this August Assembly.

Hon. Members, I need not remind you that every Member of this Assembly has a right to bring forth any matter for debate, and when such matter is

approved procedurally, to table such matter without undue pressure or violent interference. No Member of this Assembly has the right to violently or otherwise interrupt the prosecution of any matter procedurally and lawfully before this Assembly by another Honourable member.

Perhaps some Hon. Members have forgotten, and if that is the case, here is a reminder. Hon. Members, there are various avenues through which dissent on any matter before this Assembly can be registered without resorting to violence. These avenues for dissent are provided for in the Standing Orders, and by practice, whether by raising objections on the floor or voting against such matter when the Question is put. Therefore, Hon. Members, there is no room for violent and unbecoming conduct in supposed pursuit of an objection to a matter due for tabling as witnessed here last week, and that can't be tolerated.

Hon. Members, the regulation of conduct and breach of order in the Assembly is provided for under Standing Orders 104, 105, 106, 107. Specifically, Standing Order 104 provides thus –

Conduct is grossly disorderly if the Member concerned, creates actual disorder; knowingly raises a false point of order; uses or threatens violence against a Member or other person; persists in making serious allegations without, in the Speaker's opinion, adequate substantiation; otherwise abuses his or her privileges; deliberately gives false information to the County Assembly; votes more than once in breach of these Standing Orders; commits any serious breach of these Standing Orders; or acts in any other way to the serious detriment of the dignity or orderly procedure of the County Assembly.

Hon. Members, I wish to note that this incident was very unfortunate. The acts of the instigators of the said scuffle were a serious detriment to the dignity and orderly procedure of the County Assembly. The Chair takes the threat of violence against any Member seriously and will not hesitate to take extreme measures to ensure it does not happen. Indeed as is the case in ordered societies elsewhere, grossly disorderly conduct has no place in the County Assembly.

The Chair directs the Powers and Privileges Committee to seize itself of this matter, and expects the Committee to review footage of the said sitting and report its findings and recommendations by Tuesday, 11th October, 2016 for appropriate directions on sanctions as recommended.

In view of the foregoing, I give the following directions –

1. Every member having signed the already gazetted, specific Leadership and Integrity Code, the Chair wishes to remind Members that the Assembly will fully cooperate with any external agencies charged with enforcing compliance with the code should the need arise. I wish to therefore remind Members that Parliamentary Privilege provides no immunity against disorderly conduct that contravenes Chapter Six of the Constitution and other enabling statutes on leadership and integrity;
2. The Clerk of the County Assembly to take inventory of all damage on Assembly property arising from the events of Thursday 29th September, 2016 and review footage of the sitting to identify those responsible for any such damage and hold them personally accountable for the same for purposes of surcharging those involved;
3. Members should take note that we are no longer in Charter Hall. Millions of tax payer's monies were sunk into building this new state of art debating Chamber and equipping it. It is our responsibility to protect public property against malicious damage. Need I remind you, Section 339 of the Penal Code on malicious damage to property recommends that any person who willfully and unlawfully destroys or damages any property is guilty of an offence, which, unless otherwise stated, is a misdemeanor, and is liable, if no other punishment is provided, to imprisonment for five years. So note that we have installed CCTV cameras and video cameras in this Chamber to protect public property from malicious damage, and it is the individual responsibility of every Member to protect public property within the precincts of the Assembly.

Hon. Members, stand warned. It is so directed.”

4. NOTICE OF MOTION – (Hon. Samuel Nyang’wara, MCA)

The Speaker conveyed the following directions;

DIRECTIONS - NOTICE OF MOTION UNDER STANDING ORDER 60

“Hon. Members, a Notice of Motion was submitted by the Hon. Samuel Nyangwara, MCA, pursuant to Article 181 of the Constitution, Section 33 of the County Governments Act, 2012 and Standing 60, and was subsequently processed and approved accordingly by the Speaker for tabling having met the threshold established for such Notice of Motion.

A Notice of the said Motion was to be given on Thursday 29th September, 2016, which Notice was interrupted and therefore not given.

Standing Order 60(3) provides that a member who has obtained the approval of the Speaker to move a Motion pursuant to Section 33 of the County Governments Act, 2012, for the impeachment of the Governor, shall give a seven (7) days’ notice calling for impeachment of the Governor.

Upon the expiry of seven (7) days, after notice given, the Motion shall be placed on the Order Paper and shall be disposed of within three days; provided that if the County Assembly is not then sitting, the Speaker shall summon the Assembly to meet on and cause the Motion to be considered at that meeting after notice has been given. The Member will be giving notice of Motion shortly.

Hon. Members, any Member who wishes to violently disturb the peace is free to do so, but be warned - **I am ordering the sergeants at arms to throw out any such Member who even attempts to heckle the Honourable Member, outside of the Assembly precincts for a period of 30 sittings pursuant to the powers bestowed on me under Standing Order 1.**

I will now give the floor to Hon. Nyangwara to give Notice of his Motion.

It is so guided.”

(Thereafter, Hon. Samuel Nyang'wara give notice of the following motion)

AWARE, that *Article 73(2) (d) and (e)* of the Constitution of Kenya provides for accountability of a state officer to the Public, for decisions and actions as a key guiding principle of leadership and integrity, further aware that Section 30(2) of the County Government Act, 2012 provides for the functions and responsibilities of a County Governor, noting that *Section 30(3)* provides for ways in which the Governor's functions ought to be performed, this Assembly **RESOLVES** to remove the Hon. (Dr.) Evans Kidero from office of the County Governor of Nairobi City, pursuant to *Article 181(1)(a), (b), (c)* of the Constitution, Section 33 of the County Governments Act, 2012, and Standing Order 60 of the Nairobi City County Assembly Standing Orders, on the following grounds;

1. Gross violation of the Constitution, 2010; The County Government Act, 2012; The Public Procurement and Disposal Act, 2015; and the Public Finance Management Act, 2012.

- a) Inability to control and manage County debt, leading to the unmitigated accrual of debt, which has ballooned the County's overall debt to unmanageable levels, rising from Kshs 12 billion when he took office in 2013 to the current Kshs42 billion, within three years, thus creating paralysis in funding for projects and programs; debts which were not disclosed in the Debt Management Paper, 2015 and 2016 and the County Fiscal Strategy Paper, 2015 and 2016, violating Articles 201(e), of the Constitution, Section 123 and 207(2)(e) of the Public Finance Management Act, 2012.
- b) Violation of the *Articles 201 (a), (d), (e)* of the Constitution of Kenya on principles of Public Finance and *Article 226(5)* on the audit of Public entities, as well as *Article 227(1)* on procurement of goods and services, and the Public Procurement and Disposal Act, 2015 by flouting the principles of public finance management in far as public procurement of goods and services is concerned, where the Auditor-General faulted the procurement process. The system was set up by a private company whose selection criterion was made under suspicious and illegal circumstances. Citing numerous missteps in the procurement process, Auditor-General, Mr. Edward Ouko, concluded that the 4.5 per cent of all transactions retained by JamboPay are too high compared to what the Kenya Revenue Authority charges. The auditor found that two other bidders, Virtual Mobile and Craftsilcon, had bid to charge 2.5 per cent of the transaction costs, but were not considered. A review of the cost-impact using the actual revenues for the 2012/2013 financial year established that the county government will spend an enormous Sh767.4 million in the five years the contract is supposed to run.

- c) Violation of the *Articles 201 (a), (d), (e)* of the Constitution of Kenya on principles of Public Finance and *Article 226(5)* on the audit of Public entities, as well as *Article 227(1)* on procurement of goods and services, and the Public Procurement and Disposal Act, 2015 by flouting the principles of public finance management in the unilateral signing of an agreement with Foton for the supply of busses, a matter which the EACC is investigating.
- d) Violation of the *Articles 201 (a), (d), (e)* of the Constitution of Kenya on principles of Public Finance management, the Public Finance Management Act, 2012 and the County Allocation of Revenue Act, 2015 on the use of conditional grants from the National Government, where the Governor in the 2014/15 and 2015/16 Financial Years diverted or negligently caused to be diverted Conditional Funds meant for the free Maternity program and user fees foregone to other unrelated programs, to the great detriment of City residents struggling to access better healthcare, contrary to the regulations that govern the use of conditional grants from the National government;
- e) Violation of the *Articles 201 (a), (d), (e)* of the Constitution of Kenya on principles of Public Finance management, the Public Finance Management Act, 2012 on the authorization of expenditure of revenue collections at source across the City, leading to heavy revenue leaks and missed targets, which has greatly affected the implementation of County programs aimed at uplifting the lives of residents, leading to stalled projects and unpaid contractors contrary to Statute and Constitutional provisions of the procedure for collection, withdrawal and usage of public funds.
- f) Violation of *Article 176(1)* and *185* on the creation and authority of County Assembly as an arm of County Government by undermining the Assembly's legitimate authority to make laws, through willful refusal to implement resolutions of the County Assembly, such as a free on employment, which the Governor has ignored and undertaken advertisements for employment twice, ignoring implementation of the Nairobi City County Wards Development Fund Act, 2014, even after assenting to the Bill, and in the absence of any directions on the illegality of the Act, any of its provisions or otherwise from the High Court under *Article 165 (3)(d)(i)* and *(iv)* of the Constitution.
- g) Violation of *Section 4* of the County Governments Act, 2012 and *Section 3* of the Nairobi City County Flags and Other Symbols Act, 2013, by refusing to implement the approved symbols as provided for in the Act.

2. Crimes under National Law

- a) Violation of *Articles 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 awarding the revenue collection tender controversially to JamboPay, with a costly charge of 4.5 per cent of all transactions retained by JamboPay, which the Auditor noted as too high compared to what the Kenya Revenue Authority charges and what other bidders have proposed in the tender document;
- b) Violation of *Articles 201* of the Constitution and the Public Finance Management Act, 2012 on principles that guide all aspects of public finance in the Republic where the Governor either intentionally or negligently has presided over massive loss and theft of County public funds in the four years he has been office, as evidenced by the Auditor General's Report of 2013/2014, where the auditor raised the red flag over failure by the Nairobi county government to bank some Shs252 million, which is part of Shs5.5 billion collected as revenue by the county. Records made available for audit revealed that during the period 1st January, 2013 and 30th June, 2013, a total of Sh 5,511,732,231.00 was collected from the various sources of revenue but only Sh5,258,849,088.00 was banked resulting to under banking of Sh252,883,143.00, partly leading the arrest and prosecution of Senior Officers in the Finance Department who report directly to him, as well as the theft of public resources through wasteful procurement and payment for non-existent services, for instance exaggerated legal fee notes to certain lawyers and law firms, with legal debts standing Shs5 billion.

3. Abuse of Office/Gross misconduct

The County Governor of the Nairobi City exhibited gross misconduct/abuse of office as follows: -

- i. Violation of *Article 75(1)(c)* 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 first by assaulting a Member of Parliament, an elected leader from Nairobi City County, a matter which legal redress was sought, forcing the Governor to settle out of Court, and that recently he again allegedly assaulted another Member of Parliament, to the dismay of the Public when he was invited by the Senate of Kenya to answer audit queries relating to expenditures by the Nairobi City County Executive.
- ii. Creation of the Office of the County Attorney contrary to *Section 62(2)* of the County Governments Act, 2012.

5. STATEMENTS PURSUANT TO STANDING ORDER 41(2)(c)

Pursuant to the provisions of Standing Order 41(2) (c), the following Members sought statements –

- i. Hon. Alexander Mulatya requested for a statement from the Chairperson of the Sectoral Committee on Planning and Housing regarding the grabbing of part of the Land hosting Embakasi Girls Secondary which is a public land; and
- ii. Hon. Clarence Munga requested for a statement from the Chairperson of Sectoral Committee on Planning and Housing regarding the grabbing of plot allotment No. 936 Dagoreti/Riruta which is a public land hosting HGM Primary School in Kabiro Ward.

6. THE NAIROBI CITY COUNTY PUBLIC NUISANCE BILL, 2016 (ASSEMBLY BILL NO. 7 OF 2016)

Order for First Reading read;

(Hon. Samuel Nyageri Nyang'wara, MCA)

Bill Read a First Time

7. THE NAIROBI CITY COUNTY OFFICE OF THE COUNTY ATTORNEY BILL, 2016 (ASSEMBLY BILL NO. 4 OF 2016)

Order for Second Reading read;

Motion made and Question proposed;

THAT, the Nairobi City County Office of the County Attorney Bill, 2016 (Assembly Bill No. 4 of 2016) be now read a second time.

(Hon. Abdi I. Hassan, MCA –Minority Leader)

Debate arising;

Mover replied;

Question put and **agreed to**

Bill read a Second Time and committed to the Committee on the Whole Assembly.

QUORUM OF THE ASSEMBLY

Rising in her place on a Point of Order, the Hon. Karen Wanjiku drew the attention of the Chairperson of Committees (Hon. Ng'ondi) to the fact that there was no Quorum in the Assembly;

And the Speaker having counted the Honourable Members present and confirmed that there was no Quorum caused the Division Bell to be rung;

And there being **no** Quorum after expiry of ten minutes;

And the time being twenty seven minutes to Five O'clock, the Speaker interrupted the proceedings and adjourned the Assembly without Question put pursuant to the Standing Orders.

8. ASSEMBLY ROSE - at twenty seven minutes to five O'clock.

M E M O R A N D U M

The Speaker will take the Chair on
Wednesday, 5th October, 2016 at 2.30p.m

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