



COUNTY GOVERNMENT OF NAIROBI CITY

FIRST ASSEMBLY – (FOURTH SESSION)

NAIROBI CITY COUNTY ASSEMBLY

VOTES AND PROCEEDINGS

THURSDAY, NOVEMBER, 24, 2016 AT 2.30 P.M.

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

3. COMMUNICATION

The Speaker conveyed the following Communications:-

i) ON THE INVASION OF ASSEMBLY PRECINCTS BY OFFICERS OF THE NAIROBI CITY COUNTY EXECUTIVE.

“Hon. Members, you will recall that the Chair on 22nd November, 2016 gave a Communication regarding efforts by the Assembly to secure its precincts and the challenge posed to the same by the County Executive, led by the Ag. County Secretary, one Dr. Robert Ayisi.

Hon. Members, in the said communication, the chair detailed the steps by which the Assembly came to be in possession of its current premises, from the initial gazette notice number 3159 dated 13th March, 2013 by the Chairperson of the Independent Electoral and Boundaries Commission, as well as the Speaker’s Gazette notice number 6614 of 11th September, 2015 made pursuant to Section 2 of the National Assembly (Powers and Privileges) Act, 2012, outlining the precincts of the Assembly.

Hon. Members, the communication was followed by a *Motion of Adjournment on a matter of definite and urgent County importance* sponsored by the Hon. Ibrahim Hassan (Leader of Minority Party), whose resolution was that the Assembly will not vacate its premises nor allow strangers to continue operating from its precincts in violation of its powers and privileges. Further, the Assembly made it very clear that it shall not have any further dealings with the Ag. County Secretary for the grievous contempt he has shown towards the Assembly. A letter to that effect dated 23rd November, 2016 was dispatched to the Governor’s Office for his action accordingly.

Hon. Members, today morning, the Chief Officers for Lands, as well as Public Works, the Chief Valuer, County Director of Planning, officers of the Inspectorate Department and officers from the Administration Police stormed Assembly Precincts and attempted to forcefully break into the 4th Floor, North Wing, City Hall Buildings.

Hon. Members, it is indeed shocking that the County Executive would resort to such drastic intimidation in place of civilized engagement. Suffice to say, County Governments have two arms, namely the Executive and the Assembly, and the underlining legal framework is crystal clear on the relationship between the two – none can operate in a vacuum. The County Executive cannot purport to prefect or oversight the County Assembly, nor can it fool itself that it can intimidate and bully the County Assembly by use of legal or extra legal means.

Hon. Members, what is even more unfortunate and quite sad is that the Judiciary in its recent rulings has decided to take sides in favor of the County Executive time and again in matters concerning the two arms of the County Government of Nairobi City, and has been issuing Orders willy nilly at the behest of a Member of the Judicial Service Commission, who happens to act as counsel for the County Executive, one Prof. Tom Ojienda. It is evidence of sheer manipulation and outright bias that the County Executive has twice obtained orders in minutes of lodging such application, without due response from the County Assembly.

Hon. Members, the Assembly will soon be raising this matter with the Senate and the Chief Justice, in order to safeguard the legislative independence of the County Assembly and the integrity of our processes.

Hon. Members, it is indeed surprising that the Executive would resort to suing the Assembly and invading Assembly precincts with armed police and other hired goons with such impunity.

Hon. Members, I wish to inform you that the Speaker today morning led a delegation of Members to the Office of the Cabinet Secretary for Interior and Coordination of National Government. The Cabinet Secretary assured the delegation that he will soon be dispatching a contingent of officers to protect the precincts of the Assembly from unauthorized intrusions. In the same vein, the Ministry will also establish a Police Post at the Assembly precincts, similar to what is provided for at the precincts of the Parliament of Kenya.

In his own words, and I quote, ‘the Governor cannot be allowed to play Monkey business with the County Assembly.

Hon. Members, that the County executive has no respect for the County Assembly is no longer in doubt. What the Assembly must do now is respond to this utter disrespect and send a clear message to all who imagine they can impeach Article 176 of the Constitution on the establishment of the County Assembly and its existence, the legislative powers granted by the Constitution under Article 185, the provisions of the County Governments Act, 2012 and the Parliamentary Powers and Privileges Act, 2012 regarding Assembly precincts, privilege and admission of strangers.

Hon. Members, I therefore direct as follows, that –

1. Effective today Thursday 24th November, 2016, the Assembly ceases forthwith any relationship it has with the County Executive;
2. The consequence of the above is that effectively, the Assembly will no longer entertain any business from the County Executive, and as such the consideration of the CFSP, Supplementary Estimates 2016 and any other such business is suspended forthwith;
3. The Motion of Impeachment of the Governor, Nairobi City County be slotted for debate on Tuesday, 29th November, 2016, keeping in mind that what the Court stopped was the Governor’s appearance, not the Assembly’s prerogative to dispense with the matter;
4. Any member is at liberty to lodge a Motion of censure or impeachment against any officer of the County Executive for any misconduct arising out of this matter or any other such claims of abuse of office or misconduct.

It is so directed.

I thank you.”

ii) DIRECTION ON PUBLIC PETITION

“**Honorable Members**, yesterday a read a petition by the Babadogo slum residents on delay by the Nairobi City County Government to provide free health care to orphans and vulnerable children, severely disable persons and elderly persons from the slum.

Hon. Members, the petitioners had two prayers;

- i) The Nairobi City County Assembly look into the matter with a view to revise the Nairobi City County Health Department budget by providing supplementary budget for the National Health Insurance

Fund program that will ensure that 150,000 households and approximately 750,000 beneficiaries are provided with free and universal health care services in the County; and/or

- ii) That the Nairobi City County Government to establish a special kitty/fund that can be used to implement the health care cover for the vulnerable population through NHIF program to cover 150,000 households and approximately 750,000 beneficiaries.

Hon. Members, I have reviewed the petition and the prayers and noted that prayer number two cannot be handled by the County Assembly. I therefore direct the relevant Assembly Committee to focus on prayer one of the said petition and report back as required by the Standing Orders.

It is so directed.

I thank you.”

4. PAPERS

The following paper was laid:-

- i. The report of the Sectoral Committee on Health Services on the retreat to Naivasha at Sawela Lodge from 15th to 18th September, 2016.

(Chairperson, Sectoral Committee on Health Services)

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

Pursuant to Standing Order 41 (2) (c) the following Member requested for statement:-

- i) Hon. Elkana Mauti sought a statement from the Chairperson of the Sectoral Committee on Water and sanitation regarding the lost vehicle KCD 806 Y Double Cabin Isuzu Dmax belonging to Nairobi City Water and Sewerage Company
- ii) The Chairperson of the Select Committee on Implementation responded to the following statement requests :-
 - a) Statement requested by Hon. Samuel Nyang'wara regarding the implementation of the resolutions of the Select Committee on Public Accounts Report on the Auditor General's Report of the Audited Financial Statements of the County for the FY 2012/2013;
 - b) Statement requested by Hon. Kamau Thuo regarding the implementation status of the motion on the renaming of Limuru Road in Karura Ward to Prof. Wangari Mathai Road; and

- c) Statement requested by Hon. Zulfa Hakim regarding the implementation status of a motion passed by the Assembly urging the County Executive Committee Member for Education, Children, Youth Affairs, Gender Affairs, culture, social services, ICT and e-Government and County Public Service Board to establish a full-fledged department of Children in the County.

6. COMMITTEE OF THE WHOLE ASSEMBLY

Order for Committee read;

IN THE COMMITTEE

Chairperson of Committees in the Chair

The Nairobi City County Office of the County Attorney Bill, 2016
(Assembly Bill No.4 of 2016)

Clause 3 amendments proposed –

THAT, Clause 3 be amended by deleting the clause in its entirety and substituting it with the following new clause:-

“This Act shall apply to the Office of the Nairobi City County Attorney and shall not apply to the Nairobi City County Assembly”.

(Hon. Jaffer Kassam)

Question of the amendment proposed

Question put and agreed to;

Question that Clause 3 as amended be part of the Bill proposed, put and agreed to

Clause 4 and 5

Question that Clause 4 and 5 be part of the Bill proposed, put and agreed to

Clause 6 amendment proposed –

THAT, Clause 6 be amended:

- i) In sub-clause (1) (d) by deleting the words “offices discharging legal duties in the county public service” and substituting therefor the words “legal entities”.
- ii) In sub-clause 2 by inserting the words “upon appointment” before the words “take and subscribe to”

(Hon. Jaffer Kassam)

Question of the amendment proposed

Question put and agreed to;

Question that Clause 6 as amended be part of the Bill proposed, put and agreed to

Clause 7 amendment proposed –

THAT, Clause 7 be amended:

- i) In paragraph (a) by deleting the word “Government” and replacing therefor the word “Executive”
- ii) In paragraph (c) by deleting the word “Government” and replacing therefor the word “Executive”
- iii) By inserting the following new paragraph immediately after paragraph (f)
“shall be responsible for drafting of legislation emanating from the Nairobi County Executive Committee”
- iv) By inserting the following new paragraph immediately after paragraph (g) “shall be responsible for rectification of mistakes in legislation through a rectification order published in the Kenya Gazette or County Gazette which shall thereafter be tabled in the County Assembly in accordance with the provisions of the law in place for management of Statutory Instruments”.
- v) By inserting a new paragraph as follows:-“may perform prosecutorial functions in cases involving violation of Acts of the County Assembly of Nairobi City”
- vi) By inserting a new paragraph as follows:-“shall publish all legislation passed by the Nairobi City County Assembly”

(Hon. Jaffer Kassam)

Question of the amendment proposed

Question put and agreed to;

Question that Clause 7 as amended be part of the Bill proposed, put and agreed to

Clauses 8 amendment proposed –

THAT, Clause 8 be amended:

- (i) In sub clause (1) (a) by inserting the words “with leave of Court” before the word “appear”.
- (ii) In sub clause (2) (a) by inserting the words “in consultation with and on the recommendation of the County Public Service Board” immediately after the word “establish”

(Hon. Jaffer Kassam)

Question of the amendment proposed

Question put and agreed to;

Question that Clause 8 as amended be part of the Bill proposed, put and agreed to

Clause 9 amendment proposed –

THAT, Clause 9 be amended:

- (i) In sub-clause (2) (a) by inserting the words “and seek leave of Court” before the words “to be enjoined in the suit”.
- (ii) By deleting sub-clause 3 in its entirety.

(Hon. Jaffer Kassam)

Question of the amendment proposed

Question put and agreed to;

Question that Clause 9 as amended be part of the Bill proposed, put and agreed to

Clauses 10

THAT, Clause 10 be amended by inserting the words “in their personal capacity, for acts done or omissions made in official capacity” before the words “in respect of any proceedings”.

(Hon. Jaffer Kassam)

Question of the amendment proposed

Question put and agreed to;

Question that Clause 10 as amended be part of the Bill proposed, put and agreed to

Clause 11-13

Question that Clauses 17-29 be part of the Bill proposed, put and agreed to

Clause 14 amendment proposed –

THAT, Clause 14 be amended:

- (i) In sub-clause (1) (a) by deleting the word “serious” appearing before the word “violation” and substituting thereof the word “any”.
- (ii) In sub-clause 2 by deleting the word “upon” between the words “may,” and “election” and substituting with the words “90 days after”.

(Hon. Jaffer Kassam)

Question of the amendment proposed

Question put and agreed to;

Question that Clause 14 as amended be part of the Bill proposed, put and agreed to

Clause 15 amendment proposed –

THAT, Clause 15 be amended:

- (i) In sub-clause 1 by inserting the words “and execution of documents” after the words “except the power of delegation”.
- (ii) By deleting sub-clause 3 in its entirety.

(Hon. Jaffer Kassam)

Question of the amendment proposed

Question put and agreed to;

Question that Clause 15 as amended be part of the Bill proposed, put and agreed to

Clause 16 amendment proposed –

THAT, Clause 16 be amended in sub-clause 1 by deleting the word “Government” and substituting thereof the word “Executive”.

(Hon. Jaffer Kassam)

Question of the amendment proposed

Question put and agreed to;

Question that Clause 16 as amended be part of the Bill proposed, put and agreed to

Clause 17 amendment proposed –

THAT, Clause 17 be amended in sub-clause 1 by deleting the words “relating to the functions of the County Attorney”.

(Hon. Jaffer Kassam)

Question of the amendment proposed

Question put and agreed to;

Question that Clause 17 as amended be part of the Bill proposed, put and agreed to

Clause 18 amendment proposed –

THAT, Clause 18 be amended by deleting sub-clause 2 in its entirety.

(Hon. Jaffer Kassam)

Question of the amendment proposed

Question put and agreed to;

Question that Clause 18 as amended be part of the Bill proposed, put and agreed to

Clause 19 amendment proposed –

THAT, Clause 19 be amended by deleting sub-clause 3 in its entirety and substituting therefor the following new sub-clause-

“The County Solicitor shall be the accounting officer of the Office of the County Attorney”.

(Hon. Jaffer Kassam)

Question of the amendment proposed

Question put and agreed to;

Question that Clause 18 as amended be part of the Bill proposed, put and agreed to

Clauses 20 and 21

Question that Clauses 20-21 be part of the Bill proposed, put and agreed to

Clause 22 amendment proposed –

THAT, Clause 22 be amended in sub-clause (2) (a) by deleting the words “agency, organization or institution” and substituting thereof the words “County Public Service Board”

(Hon. Jaffer Kassam)

Question of the amendment proposed

Question put and agreed to;

Question that Clause 22 as amended be part of the Bill proposed, put and agreed to

Clause 23 amendment proposed –

THAT, Clause 23 be amended:

- (i) By deleting sub clause 2 in its entirety.
- (ii) In sub-clause 3 by inserting the words “subject to the guarantees of Article 47 of the Constitution of Kenya” after the words “be liable to disciplinary action”.

(Hon. Jaffer Kassam)

Question of the amendment proposed

Question put and agreed to;

Question that Clause 23 as amended be part of the Bill proposed, put and agreed to

Clauses 24-30

Question that Clauses 24-30 be part of the Bill proposed, put and agreed to

Clause 31 amendment proposed –

THAT, Clause 31 be amended by deleting sub-clause 2 in its entirety.

(Hon. Jaffer Kassam)

Question of the amendment proposed

Question put and agreed to;

Question that Clause 31 as amended be part of the Bill proposed, put and agreed to

Clause 32 amendment proposed –

THAT, Clause 32 be amended:

- (i) In sub-clause 1 by deleting the words “as soon as practicable after the thirtieth of June” and substituting thereof the words “on or before the 15th day of July”.

Question of the amendment proposed

Question put and agreed to;

Question that Clause 32 as amended be part of the Bill proposed, put and agreed to

New Subclause 32A

THAT, Clause 32 be amended:

- (i) By inserting a new sub-clause as follows:-

The County Attorney shall submit quarterly reports on the operations of the Office of the County Attorney to the Clerk of the County Assembly for tabling before the County Assembly.

Motion made and question proposed;

That new subclause 32A be read a Second Time

(Hon. Jaffer Kassam)

Question put and agreed to

Question that new subclause 32A be part of the Bill proposed, put and agreed to

New Clause 33A

THAT the following new Clause be inserted immediately after Clause 33 –

Transition **33A** (1) The Governor shall within 14 days of the coming into force of this Act, fill the position of the Office of the County Attorney in accordance with the provisions of this Act.

(2) The person exercising the powers of and functions of the County Attorney or its equivalent immediately before this Act shall cease exercising such powers or functions on the expiry of 14 days after coming into force of this Act.

(3) Any person who shall exercise the powers or functions of the County Attorney or its equivalent after the expiry of the period referred to in sub-section 2 above shall be guilty of an offense and liable to a fine of Kshs five million or imprisonment for five years or both.

Motion made and question proposed;

THAT, the new clause 33A be now read a Second Time

(Hon. Peter Muriithi Warutere)

Question put and agreed to

Question that new clause 33A be part of the Bill proposed, put and agreed to

Schedule 1

Question that Schedule 1 be part of the Bill proposed, put and agreed to

Schedule 2

Question that Schedule 2 be part of the Bill proposed, put and agreed to

Clause 2 amendment proposed –

THAT, Clause 2 be amended by;

(i) inserting the following new definition in its proper alphabetical order-
“County Government” for the purpose of this Act means the County Executive Committee, all the County Government entities and departments and does not include the County Assembly of Nairobi City.

(ii) In paragraph 3 by deleting the words “and includes the Deputy County Attorney”

(Hon. Jaffer Kassam)

Question of the amendment proposed

Question put and agreed to;

Question that Clause 2 as amended be part of the Bill proposed, put and agreed to

Title

THAT the Long Title of the Bill be amended by inserting the words “to provide for the establishment of the Office of the Nairobi City County Attorney” after the words “AN ACT of the County Assembly of Nairobi City”.

(Hon. Jaffer Kassam)

Clause 1

Question that Clause 1 be part of the Bill proposed, put and agreed to

Bill to be reported with amendments.

7. ASSEMBLY RESUMED:-

The Nairobi City County Office of the County Attorney Bill, 2016 (Assembly Bill No.4 of 2016)

Bill reported with amendments

Motion made and Question proposed:-

THAT, the Assembly do agree with the Committee of the Whole Assembly in the said report.

(Hon. Jaffer Kassam)

Question put and agreed to.

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 Third Time.

(Hon. Jaffer Kassam)

Question put and agreed to.

Bill read a Third Time and **passed**

8. COMMITTEE OF THE WHOLE ASSEMBLY

Order for Committee read;

IN THE COMMITTEE

Chairperson of Committees in the Chair

The Nairobi City County Animal Control and Abattoirs Management Bill, 2016 (Assembly Bill No. 3 of 2016)

Rising in his place on a point of order, Hon. Akuk Mo claimed that there was lack of quorum pursuant to Standing Order 32(1).

The Chair having ascertained that there was no quorum ordered the Sergeant at Arms to ring the division bell for eight minutes as per Standing Order 31(2).

Quorum still not being present at the expiration of eight minutes, the Chairperson of Committees left the Chair to report to the Assembly the lack of quorum.

9. ASSEMBLY RESUMED

The Chairperson of Committees reported to the Assembly the lack of quorum in the Committee of the Whole Assembly.

And the time being thirty minutes past Four O'clock, the Speaker interrupted the proceedings and adjourned the Assembly without Question put pursuant to the Standing Orders.

10. ASSEMBLY ROSE - thirty minutes past Four O'clock

M E M O R A N D U M

The Speaker will take the Chair on
Tuesday, November 29th, 2016 at 2.30 p.m.

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