

GOVERNMENT OF NAIROBI CITY COUNTY



Approved
B. Muriuki
20/2/2020

Hon. Speaker
Forwarded for your
advise.

Hon.
Ag. Clerk
20/02/2020

THE NAIROBI CITY COUNTY ASSEMBLY
SECOND ASSEMBLY (FOURTH SESSION)

REMOVAL OF THE GOVERNOR FROM OFFICE PURSUANT TO ARTICLE
181(1)(a), (b), (c) OF THE CONSTITUTION, SECTION 33 OF THE COUNTY
GOVERNMENTS ACT, 2012 AND STANDING ORDER 67

Subject: Removal of the Governor from Office

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 Governments Act, 2012 provides for the functions and responsibilities of a County Governor, noting that *Section 30(3)* of the County Governments Act, 2012 provides for ways in which the Governor's functions ought to be performed, this Assembly **RESOLVES** to remove the **Hon. Mike Mbuvi Kioko Sonko** from office of the County Governor of Nairobi City County, pursuant to *Article 181(1)(a), (b), (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, 2010; The County Governments Act, 2012; The Public Procurement and Disposal Act, 2015; and the Public Finance Management Act, 2012.**
 - a) Violation of *Section 30 of the County Governments Act, 2012* by willingly refusing to constitute a County Executive Committee that mirrors what is contemplated under *Article 179(2)(b)* of the Constitution of Kenya and *Section 30 (2) (a) and (i)* of the County Governments Act, 2012 where close to a half of the County Executive Committee comprises of Members who are serving on an acting capacity for the longest period rendering them to serve under constant fear of being sacked/reshuffled by the Governor thus they cannot make any independent/substantive decisions. The effect of which has been a breakdown in service delivery to the residents, revenue collection, statutory deductions, accumulated debts, revenue evasion, death and stagnation of planning department causing deaths, injuries and diseases.

- b) Violation of *Section 12 (1) of the Assumption of Office of Governor No.4 of 2019 (specifically First Schedule): -*
- i) Violation of social contract and more specifically Article 1 of the Constitution, 2010 dealing with Sovereignty and exercise of donated power by the people of Nairobi City County (he has untruthfully and Carelessly Served the people);
 - ii) Violation of Section 30 of County Government Act 2012;
 - iii) Gross violation of the Constitution and other applicable laws;
 - iv) Committed several crimes under National and International laws; and
 - v) Abuse of office or gross misconduct.
- c) Violation of *Article 73 (2) (b)* Objectivity and impartiality in decision making and in ensuring the decisions are not influenced by nepotism, favoritism, and other improper motives or corrupt practices;
- d) Violation of *Article 179 (2) of the Constitution of Kenya, 2010* by willingly failing to legally and procedurally name a Deputy Governor, following the vacancy created by **Hon. Polycarp Igathe** from the position. Deliberately holding the National Government and the County Government at ransom in the event of a vacancy occurring in the position of the Governor or inability of the Governor to discharge his functions thus risking the operations of the County Government and rendering of service delivery to the people (*Annex 2*);
- e) Subsequently, Miguna Miguna's name was forwarded to the Assembly on 16th May, 2018 and the Assembly requested for particulars of the nominee which the Governor is yet to comply. Consequently, currently, there are 2 nominees of the position of Deputy County Governor from the Governor. As such, the Governor has consistently exhibited a character of disregarding Government institutional procedures of formal engagement (*Annex 2*).
- f) Violation of Section 30 (h) of the County Government Act, 2012 by failing to chair any meeting of County Executive Committee with no tangible excuse (*Section 30 (h) provides that the County Government Act provides that the Governor shall chair meetings of the County Executive Committee*);
- g) Non-adherence to the provisions of the County Governments Act and Employment Act by failing to confirm County Executive Committee Members (CEC) and Chief Officers where majority have been in acting capacity for more than the Legally stipulated period.
- h) Violating the provisions of Section 44 of the County Governments Act, 2012 by failing to appoint a substantive County Secretary in the last one and a half years.

- i) Violation of *Articles 201 (a), (d), (e)* of the Constitution of Kenya, 2010 on principles of public finance management, the **Public Finance Management Act, 2012** by deliberately interfering with the processes of procuring a new internal revenue management system as advised by the Nairobi City County Assembly despite sufficient notice by the previous provider that they did not intend to renew their contract with the County Government. Equally, the Governor has refused to allow automation of revenue collection leading revenue leakages despite the County Government establishing an over Kshs 2 billion data centre. The trend analysis on revenue collection depicts a declining trend during his tenure yet the Governor has been misleading the public on improved revenue. (*Annex 3*)
- j) Violation of *Articles 201 (a), (d), (e)* of the Constitution of Kenya, 2010 on principles of public finance management, the Public Procurement Act by acting *ultra vires* to his powers by recalling a tender that had been awarded to a service provider for provision of consultancy services to undertake a revenue baseline study for select revenue streams against the provisions of Section 153 of the Public Procurement and Asset Disposal Act, 2016 (*Annex 4*).
- k) Violation of Article 236 as read together with Article 235 of the Constitution of Kenya, 2010, the County Governments Act, 2012 and the Public Service Act by reshuffling Chief Officers in the Finance Sector seven (7) times within two years despite being a critical docket within the County Government of Nairobi City with the intent of distorting institutional memory to facilitate corruption and plunder of public resources.
- l) Violation of the *Articles 201 (a), (d), (e)* of the Constitution of Kenya, 2010 on principles of public finance management and *Article 226(5)* as well as *Article 227(1)* on procurement of goods and services and the Presidential Executive Order no. 2 of 2018. The Auditor General in his report on the Financial Statements of Nairobi City County Executive for the year ended 30th June 2018 (*Annex 4: Audit Report FY 2017/2018 and Supporting Documents*) observed the following glaring irregularities committed under the watch of the Governor as the Chief Executive of the County as provided for under Article 179(4) of the Constitution:-
 - i) Irregular award of contracts to thirteen (13) contractors at a combined contract sum of **Kshs. 419, 847, 395/-** and subsequent concealing of procurement documents to evade accountability. (*Annex 4.*)
 - ii) Skewed award of a tender to a contractor to grade and gravel selected roads in Tassia Estate at an inflated rate of **Kshs. 10, 500, 000/-** per km. In addition, despite the contractor having been paid **Kshs. 49, 356, 480/-** the road is yet to be graded and out of the amount paid, **Kshs 10,212,516** was paid outside IFMIS. (*Annex 5*);

- iii) Violation of the Public Procurement and Asset Disposal Act, 2016 by gross manipulation of the actual number of County staff by adding over 2000 more staff to the official staff roll that were insured by AAR Insurance Ltd knowingly that they were ghost workers with an intention of colluding with the Insurance firm in order to defraud the County Government through kick-backs (*Annex 6*).
- iv) Unaccounted for cash withdrawal of Kshs.209, 385, 752/- and irregular payment of suppliers an amount of Kshs 381,841,224/- through cash (*Annex 7*).
- v) Violation of the **Constitution of Kenya 2010 Articles 201 (a), (d), (e)** on principles of Public finance, **Articles 227 (1)** on procurement of goods and services and the **Public Procurement and Disposal Act 2005** by failure to adhere to the stipulated dictates of the law in awarding a contract of construction of Dandora Stadium at a contract sum of **Kes.1, 036, 551, 224. 80** in the financial year 2017/2018, contract number **NCC/ED/T/193/2017-2018**. The purpose of the irregular award was not to supply the stadium but for personal gains and kickbacks. The contract was also irregularly varied in contravention of the Public Procurement and Asset Disposal Act, 2016 where the bills of quantities were varied (*Annex 8*).
- vi) Terminating ongoing secondary education bursary for orphans and needy students that were unable to proceed with their secondary education for political expediency.
- vii) Disinheriting poor and distressful members of the public and more specifically a powerless Orphaned family of their large portion of land in Kanamai, Kilifi County in the Coastal region, all for selfish gain and personal enrichment(*Annex 9*);
- viii) Irregular implementation of the beautification program that led to expenditure of Kshs 18, 750, 000/- without any tangible results on the ground while claiming it is his personal contribution (*Annex 10*).
- ix) Irregular payment of Legal Fees amounting to over **Kshs 900,000, 000/-** to selected law firms with a motive of defrauding the County Government at the expense of all pending bills (*Annex 11*).
- x) Inability to control and manage County debt and clear pending bills as directed by the National Treasury. Despite the Governor setting up a Pending Bills Taskforce that incurred public expenditure in terms of sitting allowances, its report has never been made public thus creating paralysis in funding of projects and programs since contractors/service providers have either refused to transact with the County or have suffered losses arising from sanctions imposed by their lenders (*Annex 12*)

- xi) Forcing suppliers to part with between 10% to 30 % as a pre-condition for payment of their pending bills denying the CEC Member for Finance to clear pending bills.
- m) Violation of *Section 30 (3)* of the **County Governments Act, 2012** by exhibiting incompetence, inability to provide leadership and govern the County that has led to a total breakdown of service delivery in the County whereby the County Government is unable to perform the following functions as required under Part Two of the Fourth Schedule to the Constitution:-
 - i) *Refuse collection*; most estates within the city are engulfed in waste due to failure by the County Government to collect the waste;
 - ii) *County transport including county roads, street lighting, traffic and public transport*; the Nairobi City public transport has totally collapsed, the roads are impassable, traffic congestion is at unmanageable levels including within the Central Business District and the city is engulfed in darkness orchestrated by failure to procure materials for repair spoilt street lights;
 - iii) *County health services*; most county hospitals have almost stalled in their operations due to constant strikes by health workers, stoppage in supplies of drugs due to failure by the County Government to pay KEMSA, inefficiency by health officers leading to untold suffering of ailing Nairobian; and
 - iv) *County planning*; there are no ongoing approvals of building plans/developments following the shutting down of the planning department by the Governor hence leading to loss of revenue and stagnation of development.
- n) Violation of *Section 30 (2) (k)* of the **County Governments Act, 2012** by failing to deliver the annual state of the county address that would otherwise enumerate the policy direction of the County Government.
- o) Violation of *Section 30 (2) (j)* of the **County Governments Act, 2012** by failing to submit to the County Assembly an annual report on the implementation status of the County policies and plans.

2. Abuse of Office/Gross misconduct

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

- i) Gross violation of **Chapter 6 of the Constitution of Kenya, 2010** by among others bringing the office of Governor into disrepute. Breaching the social

contract between the bearer and the people of Nairobi as subsumed under Article 1 of the Constitution of Kenya.

Consequently, the Hon. Mike Mbuvi Kioko Sonko has and continues to degrade the character of the people of Nairobi through making contemptuous, malicious and unfounded allegations against them.

Subsequently, he displays conduct unbecoming before the right thinking members of the public generally.

Using unprintable abuses on them while appearing at times either consuming alcohol in office or and inebriated often.

ii) Gross violation of **Article 40 of the Constitution of Kenya 2010** on the Protection of every person's right to property and **Section 155 of the Land Act, 2011** which bars unlawful acquisition and occupation of property through the forceful dispossession of:-

- a. *Land in Kwale and Kilifi County;*
- b. *Land in Mtwapa Mombasa County; and*
- c. *Land in Nairobi County.*

The county governor promptly facilitated the irregular transfer of the said parcels for his disposal and benefit either through proxies or persons personally known to him and under his beck and control.

iii) Equally, riding on a good intention of the national government to issue title deeds to residents of Nairobi especially from Eastlands, the Governor misled residents to pay lawyers Kshs 30,000 per title so that they can facilitate them to acquire the title deeds as promised by H.E. President. Up to date, the residents have never been issued with the title deeds they paid for (*Annex 14*)

iv) 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** by publicly insulting members of the public and other leaders and persons, matters some of which legal redress has been sought (*Annex 13*).

v) Violation of **Section 59 (1) (b)** of the County Governments Act, 2012 by interfering with the functions of the Public Service Board by unilaterally sacking, suspending, terminating, and re-deploying Members of the County Boards, County Chief Officers and Staff. Similarly, the Governor has usurped the powers of County Boards (*Annex 15*).

vi) Resorting to unorthodox means of punishing political opponents and business competitors by misusing his office and county resources to settle scores as witnessed in the cases of the *Directors of Marble Arch Hotel located*

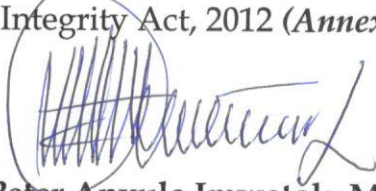
along Lagos Road, Off Tom Mboya Street and Pimp my ride located along Kenyatta Avenue (Annex 16).

vii) Demeaning the Office of the Governor of the Capital City of Kenya by conducting official engagements when drunk leading to loss of opportunities for the County for instance:

- a) Global Fund Delegation that was kept waiting for three(3) hours leading to loss of Kshs 15 billion for a pre-arranged collaboration for health sector.
- b) PTA bank was unable to build its headquarters along Lenana Road and relocated to Ethiopia denying Nairobians jobs and revenue.
- c) Sabotaging the implementation of the President's Big Four agenda under housing by denying investors approval of building plans and asking for kick-backs. Similarly, the Governor has deliberately refused to approve funds towards the Nairobi regeneration Committee as per the agreement.
- d) Violation of Section 30 of the County Governments Act, 2012 on failure to promote peace and order by creating gangs and thriving in anarchy and chaos. Further, he has failed to promote order in service delivery.
- e) Running a parallel government through Sonko rescue team.
- f) Failing to facilitate citizens especially persons with disabilities, the elderly and even the staff to conveniently access City Hall Annex by deliberately refusing to repair of lift just because of it being associated with the former Governor.

viii) Misusing public resources for direct family benefit (*Annex 17*).

ix) Exhibiting conflict of interest in violation of Section 16 of the Leadership and Integrity Act, 2012 (*Annex 18*).



Hon. Peter Anyule Imwatok, MCA
(Member for Makongeni Ward), Minority Chief Whip

Date: 20.10.2020