

COUNTY GOVERNMENT OF NAIROBI CITY



SECOND ASSEMBLY

THE NAIROBI CITY COUNTY ASSEMBLY
(FOURTH SESSION)

COMMUNICATION FROM THE CHAIR

No. 02 of 2020

SPECIAL SITTING OF 22ND JANUARY, 2020

Hon. Members, Let me take this opportunity to welcome you to this Special Sitting. I thank you for finding time from your busy schedules to attend this sitting. As leaders, we are always reminded that whenever we are called upon to perform duties of County/National importance we must always rise to the occasion. I must applaud you for that.

Hon. Members, by a memo dated **17th January, 2020**, the Leader of the Majority, Hon. Charles Thuo, MCA requested the Speaker to convene a Special Sitting of the County Assembly pursuant to Standing Order 30 in order to deliberate on the nomination of the Deputy Governor of Nairobi City County. As such, I will be calling upon the Leader of the Majority to issue a Statement Pursuant to Standing Order (45) (2) (c). Equally, we are expected to consider a Supplementary Budget for the County Government as contained in a Gazette Notice that convened this special sitting.

Indeed, **Hon. Members,** as you are aware, the Public Finance Management Act, 2012 provides for circumstances under which a Supplementary Budget may be introduced. In particular, Section 135 of the Public Finance Management Act provides as follows:-

“135. (1) a county government may spend money that has not been appropriated if the amount appropriated for any purpose under the County Appropriation Act is insufficient or a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act, or money has been withdrawn from the county government Emergency Fund.

(2) A county government shall submit a supplementary budget in support of the additional expenditure for authority for spending under subsection (1).

(3) In complying with subsection (2), a county government shall describe how the additional expenditure relates to the fiscal responsibility principles and financial objectives.

Hon. Members, as you are aware, this Assembly passed a budget for the FY 2019/2020. However, in the implementation of the Budget, the Controller of Budget and the National Treasury have observed that most counties including Nairobi City County have not cleared their pending Bills and have threatened stoppage of release of funds to the County. As such, in order to forestall this situation it is important that a supplementary budget be passed so that all pending bills especially those that have been audited by the Auditor General are settled. In particular, bills owed to the following groups must be given a priority.

- i) Youths
- ii) Persons with Disability
- iii) Women and other special interest groups.

Hon. Members, I therefore urge the Select Committee on Finance, Budget and Appropriations and the various Sectoral Committees to keep in mind of these issues when considering the estimates. In addition, **Hon. Members,** the Supplementary Budget will also give the County Assembly an opportunity to realign its votes so that the County Assembly can fund some of the critical programs that have not been funded since the passage of this Financial Year's estimates.

Finally, **Hon. Members,** I wish to remind you of the provisions of Standing Order No. 30 (4) on the need to stick on the subject of today's sitting since the Chair will not allow any deliberations outside today's gazetted business. Moreover, I urge you to uphold the provisions of Standing Order 94 on the *sub-judice rule* you transact today's business. For clarity, the said Standing Order provides as follows:-

“ 94. (1) Subject to paragraph (5), no Member shall refer to any particular matter which is sub judice or which, by the operation of any written law, is secret.

(2) A matter shall be considered to be sub judice when it refers to active criminal or civil proceedings and the discussion of such matter is likely to prejudice its fair determination.”

You are so guided!

I thank you Hon. Members.

The Hon. Beatrice Elachi, CBS
SPEAKER OF THE NAIROBI CITY COUNTY

Wednesday, 22nd January 2020

COUNTY GOVERNMENT OF NAIROBI CITY



SECOND ASSEMBLY
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(FOURTH SESSION)

DIRECTIONS FROM THE CHAIR

No. 02 of 2020

-On the statement of the Majority Leader-

Hon. Members, I have heard all of you who have spoken on this matter especially the Majority Leader.

Hon. Members, *Nairobi City County today is in a precarious situation that require the application of the famous Speaker Marende's Solomonic wisdom so that the County does not sink into deeper crisis. Indeed, faced with a similar crisis, Speaker Marende had to make a decision whose effect left the Country united by ensuring that all factions are contended.*

Hon. Members, As you may recall during our special sitting held on **9th January, 2020**, I informed the House that we had sought an advisory opinion from the Office of the Attorney General and the Supreme Court vide **Supreme Court Advisory ref: 1 of 2020** over the nomination **Ms. Anne Kananu Mwenda** to the position of Deputy Governor. The said advisory is yet to be received.

However, **Hon. Members,** following the Majority Leader's request and the issues that have been conversed on the floor this afternoon, I wish to remind you that regarding filling of a vacancy in the office of the Deputy Governor, the Supreme Court in March, 2018 issued an advisory ***in the matter of the Speaker of the County Assembly of Embu*** which comprehensively addressed the issue and gave directions on how to respond in filling the vacancies arising in the Office of the Deputy County Governor. Subsequently, **Hon. Members,** the Independent and Electoral and Boundaries Commission (IEBC) which is

the statutory body responsible for conducting elections in Kenya developed guidelines in conformity with the Supreme Court advisory on how a vacancy in the position of the Deputy Governor should be filled. **Hon. Members**, all persons in the Republic are bound by these regulations. In fact, they have formed part of the precedent set in the cases of Nyeri and Bomet Counties that had a similar scenario. As Speaker, I will be sending some of the Members to go and benchmark on how they carried out their process. The said guidelines provides as follows:-

i) *Vetting of the Proposed Nominee*

The Commission shall appoint through a Gazette Notice, the County Returning Officer and his/her deputy to vet the proposed nominee pursuant to the constitutional and statutory qualifications. Subsequent to which the Commission shall issue the nominee with a nomination clearance, a copy of which is forwarded to the County Governor.

ii) *Consideration and Approval by the County Assembly;*

Once the County Governor receives the **nomination certificate** of the nominee he/she shall thereafter forward the nominee's name to the respective County Assembly for vetting, deliberation and possible approval.

iii) *Transmission of the Approval to the Commission;*

Once the Nominee has been approved by the County Assembly, the Speaker to the Assembly shall forward to the Commission in writing the resolution of the Assembly with recommendations approving the nominee to the office of the Deputy County Governor.

iv) *Publication of the Nominee as the Deputy Governor;*

Upon receipt of the Assembly's resolution from the Speaker, the Commission shall publish in the Kenya Gazette the appointment of the Deputy Governor. The Commission shall also notify the Chief Justice who by law is expected to appoint via the Kenya Gazette the Judge or Chief Magistrate before who the Deputy Governor nominee may take his or her oath of office in accordance with the County Governments Act, 2012.

v) *Oath of Office;*

Upon Gazettement, the Speaker of the County Assembly shall take necessary steps to facilitate the New Deputy Governor to take the Oath of office.

Hon. Members, according to our procedures, whenever an appointment by the Governor require approval of the County Assembly, the name of the nominee is always submitted to the relevant Committee for vetting and reporting. As such, **Hon. Members**, in cognizant of the guidelines issued by the IEBC, I hereby commit the name of **Ms. Anne Kananu Mwenda** to the Select Committee on Appointments for consideration. In particular, I direct that before the Committee tables its report to this Assembly, it must undertake the following:-

- i) **Ascertain whether the nominee meets the requirements set by the Supreme Court and IEBC in filling a vacancy in the position of the Deputy Governor;**
- ii) **Inquire from the Supreme Court on the status of the Supreme Court Advisory ref: 1 of 2020 and comply with the same;**
- iii) **Ascertain whether the nominee meets all the legal requirements relating to persons eligible to hold the position of the Deputy Governor.**
- iv) **Comply with all applicable legislations relating to the nomination or filling of a vacancy in the office of the Deputy Governor.**
- v) **Whether there are court cases to prejudice the process going forward**
- vi) **Liase with the Ethics and Anti-Corruption Commission (EACC) who took the original letter by H.E. the Governor transmitting the name of the nominee.**

Hon. Members, it is the interest of all of us that we have a stable and functioning County Government so that Nairobians can benefit from the fruits of devolution. I wish to reiterate that I am fully aware that **there is no vacancy** in the Office of the Governor of Nairobi and the person currently holding that position is **H.E. Mike Mbuvi Sonko**. As such, I absolutely have no interest of occupying that position or exercising the powers of the Governor. Indeed, the only time the Constitution contemplates the speaker to act in the position of the Governor is when there is an impending election. Article 182 of the Constitution provides thus:-

(4) If a vacancy occurs in the office of county governor and that of deputy county governor, or if the deputy county governor is unable to act, the speaker of the county assembly shall act as county governor.

*(5) If a vacancy occurs in the circumstances contemplated by clause (4), **an election to the office of county governor** shall be held within sixty days after the speaker assumes the office of county Governor”.*

Hon. Members, I am fully guided and bound by the principles of separation of powers between the Assembly and the Executive.

My sole objective as the Speaker is to facilitate the County Assembly to perform its oversight mandate objectively so that service delivery within the County does not stall for whatever reason

It is so directed!

I thank you Hon. Members.

The Hon. Beatrice Elachi, CBS
SPEAKER OF THE NAIROBI CITY COUNTY

Wednesday, 22nd January 2020