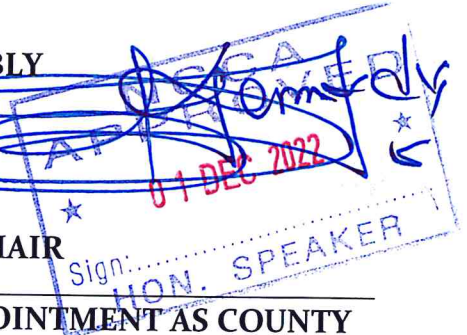


COUNTY GOVERNMENT OF NAIROBI CITY



NAIROBI CITY COUNTY ASSEMBLY
THIRD ASSEMBLY
(FIRST SESSION)



COMMUNICATION FROM THE CHAIR

RESUMPTION OF VETTING OF NOMINEES FOR APPOINTMENT AS COUNTY
EXECUTIVE COMMITTEE MEMBERS

Hon. Members,

I have the following Communication to convey regarding the resumption of vetting of nominees for appointment as County Executive Committee Members: -

Hon. Members,

1. You will recall that on **Thursday, 27th October, 2022**, I conveyed a message to this House from H.E. the Governor forwarding names of nominees for appointment as County Executive Committee Members for vetting and approval. Pursuant to the Public Appointments (County Assemblies Approval) Act, 2017, I committed the names of the nominees to the **Select Committee on Appointments** for vetting and reporting.

Hon. Members,

2. As soon as the Committee commenced the vetting exercise, on **9th November, 2022**, the Employment and Labour Relations Court in **ELRC Petition No. E184 of 2022; the Association of Muslim Lawyers and Nubian Rights Forum versus the Governor, County Government of Nairobi and the Speaker, County Assembly of Nairobi**, granted *Ex-parte* Conservatory Orders, suspending the approval process pending the hearing and determination of the application.

Hon. Members,

3. As the Chair of the Select Committee on Appointments, I immediately suspended the vetting process following a resolution of the Committee at its sitting held on **10th November, 2022** pending the outcome of the judicial process. This was informed by my and the Committee's appreciation of the provisions of Article 3(1) of the Constitution which obligates me and the House to respect, uphold and defend the Constitution and by extension the rule of law which includes obeying Court Orders. I immediately thereafter instructed our Litigation Counsels to move with speed and set-aside the *Exparte* Orders based on various legal grounds and particularly lack of jurisdiction by Courts to interfere with active parliamentary and legislative processes.
4. Accordingly, **Hon. Members**, the County Assembly challenged the petition since the Court was in contravention of the principle of separation of powers and that the petitioners were inviting the Court to determine an active matter under the exclusive jurisdiction of the County Assembly under Article 179(2)(b) of the Constitution, Section 35 of the County Government Act, 2012 and the Public Appointments (County Assemblies Approval) Act, 2017,

Hon. Members,

5. In its ruling delivered on **Wednesday, 30th November, 2022**, the Court agreed with our submissions that that the County Assembly has exclusive original jurisdiction to first carry out the approval process before the court can intervene. The Court also observed that the doctrine of separation of powers as provided for in the Constitution ought to be respected and upheld at all times. The court therefore paved the way for the resumption of the vetting and approval process noting that the application was baseless, frivolous, vexatious and pre-mature. The Court also noted that the County Assembly must be allowed to carry out its legislative mandate without any undue interference by any person or arm of government

Hon. Members

6. I wish to commend this very progressive view taken by the Court on this matter. Whereas every Kenyan has a constitutional right to approach the courts of law to seek reliefs, this House must be allowed to carry out its constitutional mandate without interference. I am persuaded that the petitioners lacked information and

legal guidance since they could have brought the issues they raised in the petition before the Select Committee on Appointments.

Hon. Members,

7. I reiterate the findings of the Court that one organ of government should not interfere in an active matter being considered by another organ of government where such organ has exclusive original jurisdiction on the matter being considered. Indeed, under our Standing Order No. 97 on the *sub-judice* rule, this Assembly is prohibited to consider any matter that is active in the Court of Law. In the same vein, the Courts are expected to exercise restraint when asked to intervene on matters under active consideration by the County Assembly. I am glad that this a Constitutional principle that has been upheld by the Court in today's ruling. Going forward, as the County Assembly, we shall vehemently uphold and respect this principle.

Hon. Members

8. Following this ruling of the Court, I wish to guide the Select Committee on Appointments, this Assembly and indeed the general public as follows: -
 - (i) That the suspension of vetting of persons nominated to serve as County Executive Committee Members is hereby lifted.
 - (ii) That the Select Committee on Appointments is directed to immediately resume and conclude the vetting process and table its report for consideration by the House.
 - (iii) That in the event the Committee concludes the vetting process while the House is on long recess, a Special sitting may be convened pursuant to Standing Order No. 32 to consider the approval Motion.

The House is so guided.

I thank you.

The Hon. Kennedy Okeyo Ng'ondi, MCA
SPEAKER, NAIROBI CITY COUNTY ASSEMBLY

Thursday, 1st December, 2022