

COUNTY GOVERNMENT OF NAIROBI CITY



**NAIROBI CITY COUNTY ASSEMBLY
THIRD ASSEMBLY
(SECOND SESSION)**

**COMMUNICATION FROM THE CHAIR
1st November 2023**

**REFUND OF INVALIDATED TAX CHARGED ON MOTOR VEHICLE RE-
IMBURSEMENT BENEFIT**

Hon. Members,

Good afternoon, I have the following Communication to convey regarding refund of invalidated income tax that was charged on motor vehicle reimbursement:-

Hon. Members,

You will recall that at the Assembly Sitting held yesterday **Tuesday 31st October 2023**, Hon. Kennedy Oyugi rose under Standing Order No. 59 (h) and requested the Chair to address the Assembly on the status of reimbursement of the invalidated tax charged on motor vehicle reimbursement benefit to Members of the County Assembly. Accordingly, I made an undertaking to guide the Assembly on the subject matter during today's Sitting.

Hon. Members,

As you are all aware, vide a Gazette **Notice No. 8791** dated **22nd July 2022** Volume CXXN No. 145, the Salaries and Remuneration Commission conferred the Motor vehicle reimbursement benefit of Kshs. 2, 212, 000 to each Member of County Assemblies. This benefit was accorded for purchase of a vehicle not exceeding 1800 CC and is payable once in a County Assembly term. Accordingly, the then Car Grant benefit was revoked.

Hon. Members,

At the commencement of the implementation of the benefit in question, the Kenya Revenue Authority (KRA) deemed the Car Reimbursement a taxable benefit and all County Assemblies Service Boards were required to effect the same in accordance with Section 3 of Income Tax Act, Cap 470.

Hon. Members,

In this regard, the said benefit was subjected to 30% taxation in line with Section 3 of Income tax Act, Cap 470. Therefore, the computation brought the total tax to Kshs. 663,600 on each Member's Car Reimbursement benefit. However, **Hon. Members,** via **Petition No. 4 of 2023**, the County Assemblies Forum (CAF) filed a case in the High Court of Kenya seeking a declaration that Members of County Assembly Car Reimbursement amount does not fall within the ambit of Section 3 and 5 of the Income Tax Act, Cap 470 amongst others.

Hon. Members,

Upon hearing, Hon. Justice J.K Serгон sitting in Kericho High Court delivered a judgement virtually on **12th October 2023** to the effect that Motor vehicle reimbursement amounts does not fall within the scope of the said sections of the income tax statute, hence the amounts are not taxable. Accordingly, the import of the said judgement is that Members of County Assembly should be refunded by KRA the amount that was deducted as tax on Car Reimbursement benefit.

Hon. Members, by the time the said judgement was being delivered, the County Assembly had deducted and remitted to KRA a total amount of **Kshs 71,734,440.00**. You will recall that at the time of disbursement of the benefit, we engaged KRA and agreed on a plan where Hon. Members had option of either being deducted at once the full amount of Kshs 663, 600 or pay monthly installments through payroll

deductions. Indeed, the amount already paid to KRA for each Member reflects in individual Member's KRA P9 Form.

Hon. Members,

In light of these new developments, I wish to inform the Assembly as follows:

- i) That the Nairobi City County Assembly Service Board has found it justifiable that in line with the judgment delivered on 12th October 2023, Members of County Assembly should be refunded, in full, the monies deducted as tax on Car Reimbursement Benefit;
- ii) That the Clerk has since written to KRA requesting for the refund to each individual Hon. Member deducted amounts. In the meantime, for the Hon. Members who had opted for monthly installments, no further deductions shall be effected on the affected Member's monthly salary.

The Assembly is so guided.

I thank you.


1st/11/2023

SPEAKER, NAIROBI CITY COUNTY ASSEMBLY

Wednesday, 1st November, 2023