

THIRD ASSEMBLY
NAIROBI CITY COUNTY ASSEMBLY - (THIRD SESSION)

COMMUNICATION FROM THE CHAIR
No. _ of 2024

ON THE MATTER OF THE MINORITY PARTY LEADERSHIP

Honourable Members,

1. My office is in receipt of several correspondences dating as far as **October, 2023** to as recent as yesterday **22nd April, 2024** from the United Democratic Alliance (UDA) Party (the Minority Party) relating to the Party's leadership in the Assembly. While I would have ordinarily responded to the letters from my Chambers, I have reviewed the correspondences and found it prudent that due to the serious legal and procedural issues it raises, I need to address those issues on the floor of this Assembly and put to an end to the speculations regarding the minority leadership and for orderly conduct of the house business.

Honourable Members,

2. On Monday, **23rd October, 2023**, I received a letter dated **22nd October, 2023** from Hon. Joyce Muthoni, MCA (Deputy Minority Whip) communicating the removal of Hon. Anthony Kiragu, MCA and Hon. Mark Mugambi, MCA from the offices of Leader of Minority and Minority Whip respectively. Equally, I received a letter Ref. **UDA/1/NCA/04/2023** dated **23rd October, 2023** from the Secretary General of UDA Party (the Minority Party), the Hon. Sen. Cleophus Malalah communicating the replacement of the aforementioned Members. Further, I received a subsequent letter from the said Secretary General Ref. **UDA/1/NCA/05/2023** dated **23rd October, 2023** raising concerns on the validity of the process used to remove Hon. Anthony Kiragu and Hon. Mark Mugambi from their respective leadership offices.

Honourable Members,

3. As if that was not the end, I was served with Interim Orders issued on 24th October, 2023 by the Political Parties Dispute Tribunal (PPDT) in Case No. PPDTC/E020/2023 *Anthony Karanja & Mark Mugambi v United Democratic Alliance (UDA) & Others* restraining me from enforcing and/or effecting the changes communicated by the UDA Party. This was followed by another letter from the UDA Secretary General REF. UDA/1/NCA/07/2023 dated 25th October, 2023 suspending its desire to change its leadership in the House. However, on Monday, 22nd April, 2024, I received another letter from the Deputy Minority leader dated 20th April, 2024 now requesting me to effect the changes as communicated by Hon. Joyce Muthoni, MCA (Deputy Minority Whip).

Honourable Members,

4. Faced with such conflicting correspondences, I have distilled the following two issues requiring my guidance:
- 1) **Whether the provisions of the Constitution, the law and the Standing Orders have been complied with by the Minority Party as regards the proposed changes in its leadership in the House.**
 - 2) **Who is the lawful authority to make and communicate the decision of the Minority removing and replacing its leadership?**

Honourable Members,

5. On the **first issue**, our Standing Orders and the established precedents either in this House or in comparable jurisdictions are very clear on the procedure for removal and replacement of the House leadership. From the onset, I wish to make it clear that the Chair is blind to affairs of political parties represented in the County Assembly. My role, if any, is to arbitrate conflicts that may arise on the floor and ensure strict adherence to our Standing Orders and precedents set.
6. I therefore strongly associate myself with the views expressed in a ruling of **Hon. Jonathan Lucas Hunt, M.P.**, the then Speaker of the New Zealand House of Representatives whom while giving direction on the nexus between Parties and the House, and how their affairs in as far as the House is concerned, noted as follows, and I quote:-

“... that whether under the Standing Orders or the Electoral Act, the Speaker is not concerned with what persons outside the House do, but only with what members of the House do by way of giving formal advice of changes to party arrangements through the mechanisms provided for in the Standing orders. That the Speaker only

acts on formal advice and does not take the initiative. How members conduct themselves politically is a matter for them to determine (sic)".

Honourable Members,

7. The Chair as an independent and impartial arbiter, I am only guided by the law as presently enacted and with democratic principles set in the Constitution of Kenya (2010). Indeed, on many occasions, myself and other Chairs who have occupied this seat have always rose to the occasion and provided the necessary guidance when questions of law and procedure have been raised.

Honourable Members

8. The procedure for the removal of party leadership which applies to both sides of the majority and minority is provided for in Standing Orders 22 and 23 respectively of our Standing Orders. However, in the interest of the present matter, Standing Order 23 (8, 9 & 10) provides:-

*“(8) A member designated under paragraphs (1), (2), (3) or (4) may be removed by the party or coalition of parties that designated him or her by **two thirds of votes of all members** of the second largest party or coalition of parties in the County Assembly;*

*(9) The Whip or the Deputy Whip in absence of the Whip of the second largest party or coalition of parties in the County Assembly shall forthwith, upon a decision being made under this standing order, communicate to the Speaker, in writing the decision together **with the minutes of the meeting at which the decision was made;** and*

*10) The removal of a member from office under paragraph (8) shall be followed by the **designation of such member in his place** in the manner provided for under paragraph 1 of this Standing Order within **48 hours.***

Honourable Members,

9. For the benefit of the House and for future reference, I will now turn and in detail with precision guide the House on the steps that must be followed in the removal of the House leadership as contemplated under Standing Order 22(8) and 23 (8) to ensure compliance with the provisions of Articles 47, 49 and 50 of the Constitution of Kenya upholding the rules of natural justice and the rule of law. The steps are as follows:-
- (i) **Issuance of a Notice** - Sufficient notice by a member sponsoring the removal and enumerating the charges against the leader need to be issued to the leader and

copied to the Party Whip requesting the convening of a meeting of the Party Members to deliberate and resolve on the intended removal. This should be supported by signatures of Members in support of removal. Currently, for the Majority Party its 46 Members while Minority Party it is 35 Members.

- (ii) **Meeting to resolve the removal** – The Party Whip upon receipt of the notice mentioned above should convene a meeting of all the Party Members by issuing a notice to all Members containing the **agenda** and **venue** of the meeting for the removal of the accused leader. The meeting should be attended by all Hon. Members of the Party i.e. both those in support and against the removal but should not be less than two thirds of the party membership. The meeting should be chaired by the Party Whip or in the absence a neutral person as the party may decide. The accused leader need to respond on the charges leveled against him or her. Finally, Members to vote on the question of removal and the minutes and attendance of the meeting to be recorded. The attendant register should indicate the name, signature and for elected Members the Ward while the nominated Members it should be indicated as such.
- (iii) **Conveying to the Hon. Speaker the decision on the removal** – The decision on the removal to be communicated by the Party Whip or Deputy Party Whip. However, if all have been removed a member so designated by the Party in writing to communicate. The communication to the speaker to be supported by the following:-
- (a) A letter by the Party Whip/Deputy Whip conveying both decisions (removal & replacement);
 - (b) A letter from the Party forwarded by the Party Whip/Deputy Party Whip communicating the replacement of the removed leaders;
 - (c) Minutes of the meeting held to make the decision on the removal including the venue and proceedings of the meeting and the attendance as mentioned herein; and
 - (d) A copy of the list of Members in support of the removal with attendant signatures.
- (iv) **Replacement** – The Party should communicate the replacement of the leaders through the Party Whip or Deputy Party Whip or in their absence a Member designated by the Party in writing within 48 hours of the removal.

(v) **Effecting the changes** - The speaker having reviewed compliance with the Standing Orders and the law shall inform the assembled House the changes. The changes to take effect upon communication by the Speaker. Before communicating, the Speaker shall confirm whether threshold required for the changes has been met particularly on the following:-

- (a) *Notice of the meeting (to include; venue, agenda and charges)*
- (b) *A register of attendees.*
- (c) *Evidence of service of invitation to the accused leaders to attend the said meeting together with charges preferred against them.*
- (d) *Evidence of taking of a vote on the matter.*

Honourable Members,

10. The above process is aimed at ensuring that while political parties are at liberty to change their leadership, they must do so while respecting the Bill of Rights and the principles of natural justice and fair administrative action enshrined in the Constitution under Article 47. I have had the benefit of reviewing the correspondences from the Minority Party particularly the Minutes of the meeting of **17th of October, 2023** and the judgement of the UDA Internal Dispute Resolution Committee on this matter and I have noted a number of issues in conflict with the procedure I have enumerated herein.

Honourable Members,

11. The centrality of the Bill of Rights in the architecture of our Constitution cannot be gainsaid. Indeed, human rights are one of our national values and principles of governance under Article 10 of the Constitution. Article 47 on the right of fair Administrative Action and Article 232 (2) (b) of the Constitution which requires due process of law to be followed before removal of a holder of an office, finds the basis in the Bill of Rights. These rights accrue to every person, including Members of the County Assembly and cannot be limited except in the manner provided for under Article 24 of the Constitution.

Honourable Members

12. Whereas Article 22 and Article 165 of the Constitution confer the exclusive jurisdiction to the High Court to determine the question of whether a right or fundamental freedom in the Bill of Rights has been violated, Article 3 of the Constitution obligates the Speaker to uphold, defend and respect the Constitution. It is important also to note that under Article 20 of the Constitution, the Bill of Rights binds all state organs and persons. Further, pursuant to Article 21 of the Constitution, every State Organ is under a duty to observe,

respect, protect, promote and fulfil the rights and fundamental freedoms in the Bill of Rights.

13. Therefore when a process which affects the rights of Members, the Speaker cannot ignore and fail to act in blindness of the express requirements of the provisions of the Constitution that I have cited. Looking at the minutes and the judgement, I note serious procedural and legal lapses that are at the core of a fair administrative action in line with Constitution and Standing Order 23. In particular, the minutes, supporting documents and the judgement reveal the following:-

- (i) No evidence that **sufficient notice** was issued to the accused leaders with the charges leveled against;
- (ii) No evidence that the leaders responded to the charges leveled against them or failed to respond to the charges preferred against them;
- (iii) No evidence that the meeting was properly convened and presided over by a neutral party to ensure impartiality and that the meeting was actually held at City Hall as alleged; and
- (iv) No evidence that there was actual voting to resolve on the removal.

14. With such serious questions touching on the Bill of Rights and the procedure established by this House lingering on my mind and remaining unresolved, **it is my conclusion that the provisions of the Constitution, the law and the Standing Orders were not complied with by the Minority Party as regards to the removal of its leadership as presented to me.**

15. However, **Hon. Members**, as I have observed earlier, addressing this issue exhaustively requires the involvement of other competent constitutional and statutory bodies besides the Speaker. Whereas the Speaker may in the interim interventions to facilitate the continuity of business of the House, the final interpretation and enforcement of the rights and freedoms lies with the Judiciary as outlined under Article 165 of the Constitution.

Honourable Members

16. The **second issue** has partly been addressed in my analysis above. However, this is not a new matter in this Assembly since it was previously handled by Hon. Chege Mwaura, MCA and Hon. Beatrice Elachi while in this Chair.

17. In the matter handled by Hon. Chege Mwaura which is now the classic case on this issue, Hon. Chege Mwaura communicated that he had received a letter dated 25th October 2018 from the Chairperson of the ODM Party, Hon. John Mbadi, M.P., communicating the ODM

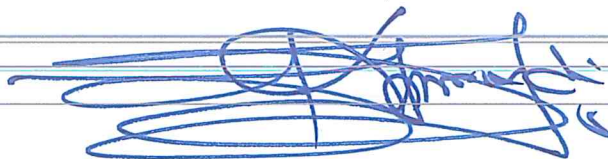
Party's decision to recall its earlier letter appointing the Hon. Elias Otieno, MCA, as Leader of the Minority and the Hon. Peter Imwatok, MCA as the Minority Whip and in their respective places, appointed the Hon. Kennedy Oyugi, MCA as Leader of the Minority and Hon. Nicholas Okumu Ouma, MCA as Minority Whip.

18. In his finding, Hon. Mwaura observed that since the said communication emanated from the Office of Hon. John Mbadi, M.P., being the Chairperson of the ODM Party and the Minority Party Leader in the National Assembly, it contradicted the provisions of Standing Order 20 (8) (as were then), which domiciles the authority to communicate such party decisions in the ambit of the Minority Party Whip. The Chair held that Hon. John Mbadi, CBS, M.P., is not, and indeed cannot purport to be, the Minority Party Whip for an Assembly to which he does not belong. Further, the Chair noted that the said communication was not accompanied by minutes of the NASA coalition's meeting, and therefore did not comply with Standing Order 20 (8). To that extend, Hon. Mwaura declined to effect the changes in the Minority Coalition as communicated by the ODM Chairman.

Honourable Members

19. In the present case, the letter informing me to effect the changes in the Minority Party emanates from the Deputy Majority Leader, Hon. Waithera Chege contrary to the express provisions of Standing Order 23 (9).
20. Accordingly, **I find that only the Party Whip or the Deputy Party Whip are the lawful authority to make and communicate the decisions of the Minority Party removing and replacing its leadership and therefore the letter by Hon. Waithera Chege has no force of law.**
21. In view of the foregoing, **I am unable to act on the correspondences from the UDA Party (the Minority Party) and cannot effect the desired changes in the form so presented, until such a time when the Minority Party acts in strict fulfillment of the laid down procedures including compliance with the Constitutional provisions on the Bill of Rights.**
22. Finally, **Honourable Members**, as the Speaker of the Assembly, I am bound to apply the rules of the Assembly without fear or favour, especially in cases where the Standing Orders have expressly provided for the matter in question. To ensure the orderly flow of business, and the maintenance of stability, this Assembly observes parliamentary rules and traditions, both written and unwritten. It is the Speaker's duty to interpret these rules impartially, to

maintain order, and to defend the rights and privileges of all Members regardless of their positions.

A handwritten signature in blue ink, appearing to be 'Kennedy O. Ng'ondi', is written over two horizontal lines.

THE HON. KENNEDY O. NG'ONDI, MCA
SPEAKER, NAIROBI CITY COUNTY ASSEMBLY

Tuesday, 23rd April, 2024