

GOVERNMENT OF NAIROBI CITY COUNTY



THE NAIROBI CITY COUNTY ASSEMBLY

OFFICE OF THE CLERK

THIRD ASSEMBLY

(SECOND SESSION)

NCCA/TJ/PL/2023(10)

15TH MARCH 2023

PAPER LAID


SUBJECT: REPORT OF COMMITTEE

Pursuant to Standing Order 196, I beg to lay the following Paper on the Table of this Assembly, today Wednesday 15th March 2023.

— THE REPORT OF THE SELECT COMMITTEE ON APPOINTMENTS ON INDUCTION WORKSHOP HELD FROM 29TH JANUARY TO 3RD FEBRUARY 2023 AT FLAMINGO BEACH HOTEL, MOMBASA COUNTY.

(Chairperson, Select Committee on Appointments)

Copies to:
The Speaker
The Clerk
Hansard Editor
Hansard Reporters
The Press

*Paper laid by the
Leader of Majority on
15/3/2023*


NAIROBI CITY COUNTY ASSEMBLY



THIRD ASSEMBLY – SECOND SESSION

THE SELECT COMMITTEE ON APPOINTMENTS

**REPORT ON COMMITTEE RETREAT HELD FROM 29TH JANUARY – 3RD
FEBRUARY, 2023 AT FLAMINGO BEACH HOTEL, MOMBASA COUNTY**

Clerk's Chambers
City Hall Buildings
NAIROBI

MARCH, 2023

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1.0 PREFACE

1.1. Committee Mandate

Hon. Speaker,

The Select Committee on Appointments is established under Standing Order No. 202, and its mandate amongst others, as outlined under Standing Order 202 (4) includes “*to consider, for approval by the County Assembly, appointments under Articles 179(2) (Members of County Executive Committee).*”

1.1 Committee Membership

The Committee Membership comprises of:-

1. Hon. Kennedy Ng’ondi, MCA- Speaker (Chairperson)
2. Hon. Peter Imwatok, MCA – Majority Leader
3. Hon. Anthony Kiragu, MCA – Minority Leader
4. Hon. Moses Ogeto, MCA – Majority Whip
5. Hon. Mark Mugambi, MCA – Minority Whip
6. Hon. Wilfred Odalo, MCA
7. Hon. Oscar Lore, MCA
8. Hon. Emily Oduor, MCA
9. Hon. Chege Mwaura, MCA
10. Hon. Susan Makungu, MCA

1.2 Retreat objectives and proceedings

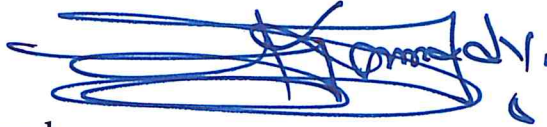
County Assembly Committees are extensions of the Assembly established under the County Assembly Standing Orders and in accordance with Section 14 of the County Governments Act, 2012. The Committees are to supposed to perform functions that the Assembly is not well fitted to consider in plenary. The Committee held it retreat from Sunday 29th January to Friday 3rd February, 2023 with the following objectives;

- i) Induct members with the Committee mandate
- ii) Understanding the Vetting process; and
- iii) Scrutinize the Public Appointments (County Assemblies) Approval Act, 2017.

1.3 Acknowledgement

On behalf of the Members of the Committee on Appointments, I wish to present the report of the Appointments Committee on the workshop held from Sunday 29th January to Friday 3rd February, 2023, at Flamingo Beach Hotel, Mombasa County.

Thank you.



Signed

Hon. Kennedy Ng'ondi (Chairperson)

Select Committee on Appointments

Dated this 09.....day of.....03.....2023

2.0 INTRODUCTION

The retreat addressed various topics which included a recap on the establishment and Roles of the Committee on Appointments, understanding the management of Committees and Committee business, overview of the Public Appointments (County Assemblies) Approval Act, 2017 and understanding the Vetting process.

3.0 RETREAT PROCEEDINGS

The facilitators took the Members through the establishment and roles of the Committee on Appointments, the management of Committees and Committee business, overview of the Public Appointments (County Assemblies) Approval Act, 2017 and understanding the Vetting process as follows: -

3.1 Establishment and Roles of the Committee on Appointments

3.1.1 Establishment of the Committee on Appointments

The participants were informed that the Committee on Appointments is established under Standing Order 202 and is appointed by the County Assembly within seven days on assembly of a new County Assembly. He mentioned that the first Committee serves for 3 years and the subsequent one serves for the remainder of term of Assembly.

3.1.2 Composition of the Committee on Appointments

- Speaker as a Chairperson,
- The Leader of the Majority Party,
- The Leader of the Minority party and not more than seven (7) other Members nominated by the County Assembly Business Committee.

The Committee learnt that the Speaker presides over meetings of the Committee and in the absence of the Speaker, a member of the Committee is elected to chair. He added that the quorum of the Committee is one half of the Members of the Committee and that the Speaker is not counted for the purposes of quorum and shall not vote.

3.2 Role of the Committee on Appointments

The presentation covered extensively the role of the Committee on Appointments.

3.2.1 Role of Committee on Appointments

The Committee on Appointments draws its mandate from Standing Order 202 (4). The Committee's role is to consider, for approval by the County Assembly, appointments made by the Governor under Articles 179(2) (Members of County Executive Committees) and Section 32D of the County Governments (amendment) Act, 2020 (Filling of a vacancy in the office of Deputy Governor).

The Committee should assist the Assembly to make an informed decision on a nominee. In exercise of its mandate, the Committee should determine whether or not:

- the constitutional & statutory requirements (general and for the position) were fulfilled;
- the appointment procedure was followed;
- nominee meets requirements of Chapter 6;
- the nominee is suitable for the position (academically, professionally and personal)

3.3 Managing Committee Business

The presentation focused on the effective management of a Committee & Committee business.

Effectiveness of a Committee & effective management of Committee business results from:

- effectiveness of the Committee as a corporate;
- effectiveness of the leadership (Chair & Vice);
- effectiveness of Committee Members;
- proactiveness of the Secretariat;
- synergy with Leadership, Liaison & Assembly Business Committee; and
- effective involvement of stakeholders

3.3.1 Attributes of an effective Chairperson of a Committee

The Chairperson is expected to demonstrate leadership in the exercise of his/her functions to ensure it performs optimally. The committee Chair must possess the following features;

- Sound planning and advance preparations for meetings;
- Control over deliberation;
- Effective use of the Standing Orders;
- Encourage Members' participation;
- Guide the deliberations in terms of focus and relevancy;
- Keep a firm hand on the proceedings by managing time and being consistent in applying the legislative rules; and

It was mentioned that any question arising in a select committee shall be decided by vote and a good Chairperson would be advised to avoid taking a decision on a controversial matter without significant number of Members being present.

3.3.2 Attributes of effective Members of a Committee

Performance of every Committee is dependent on active participation of its Members who are expected to observe the following;

- Punctuality - Adjournment due to lack of quorum – (30 minutes of the appointed time) S.O 181;
- Avoid technical appearance during meetings;
- Members of any Committee should respect the office of the Chairperson;
- Members should avoid discussing about the subject of the approval hearings in public until their report is laid on the Table of the House so as not to pre-empt the debate; and
- Prior to a meeting, it is important that the Committee meets at least thirty (30) to prepare Members and strategize for the meeting – housekeeping.

3.3.3 Role of the Committee Secretariat

The presenter highlighted the role of the secretariat as follows:

- Prepare and circulate Notices of Meetings;
- Handle all Correspondence;
- Taking of Minutes;
- Determine Quorum;
- Procedural Adviser– to the Chairperson and the Members;
- Planning and coordination of Committee's programmes and meetings

- Preparing the Chairperson’s brief;
- Administration of oath or affirmation to nominees;
- Preparation of Draft Report– for consideration and resolution by the Committee; and
- Preparing Committee Work plan

3.4 An overview of the Public Appointments (County Assemblies) Approval Act, 2017

The presentation focused on general overview of the aforementioned Act:

— The key objects and purposes of this Act are to—

- (a) provide for the procedure for the approval of public appointments by County Assemblies; and
- (b) provide clarity and guidance to the County Assemblies as they exercise their functions of approving public appointments. Section 3.

— An appointment under the Constitution or any other law for which the approval of a County Assembly is required shall not be made unless the appointment is approved by the relevant County Assembly in accordance with this Act. Section 4.

— Approval hearing , Section 7 provides that;

- (a) Following the receipt of the notification of nomination under section 6(3)(b), the Speaker shall report the receipt of the notification to the County Assembly, following which the notification shall be committed to the relevant committee of the Assembly.
- (b) Subject to subsection (3), the chair of the committee shall determine the time and place for the holding of the approval hearing which shall not be later than fourteen days from the date of the committal of the notification to the committee.
- (c) The approval hearings shall be held in a public place and shall be conducted during working hours.
- (d) The Clerk shall notify a candidate of the time and place for the holding of

an approval hearing by notice in at least two newspapers of national circulation and by writing and such other form of communication as the Clerk shall consider appropriate.

- (e) The committee shall, by notice in at least one newspaper of national circulation, notify the public of the time and place for holding an approval hearing at least seven days prior to the hearing.
- (f) Subject to this Act, all committee proceedings on public appointments shall be open and transparent.
- (g) Despite subsection (6), a committee may, on its own motion or on the application of a candidate or any other concerned person, determine that the whole or part of its sittings shall be held in camera.
- (h) An approval hearing shall focus on a candidate's academic credentials, professional training and experience, personal integrity and background.
- (i) The criteria specified in the First Schedule and the assessment form specified in the Second Schedule shall be used by a committee during an approval hearing for the purposes of vetting a candidate.
- (j) Any person may, prior to the approval hearing, and by written statement on oath, provide the Clerk with evidence contesting the suitability of a candidate to hold the office to which the candidate has been nominated.
- (k) A candidate shall have a right to be heard on any statement or evidence submitted to the Clerk contesting the suitability of the candidate to hold the office to which the candidate has been nominated.
- (l) A candidate may, at any time, by notice in writing addressed to the Clerk, withdraw from the approval process and the candidate's nomination shall thereupon lapse.

— Section 8, Issues for consideration; The issues for consideration by the relevant County Assembly in relation to any nomination shall be—

- (a) the procedure used to arrive at the nominee including the criteria for the short listing of the nominees;
 - (b) any constitutional or statutory requirements relating to the office in question;
- and

(c) the suitability of the nominee for the appointment proposed having regard to whether the nominee's credentials, abilities, experience and qualities meet the needs of the body to which the nomination is being made.

— Section 9, Period for consideration and report

(a) Unless otherwise provided in any law, a committee shall consider a nomination and table its report in the County Assembly for debate and decision within twenty-one sitting days from the date on which the committee first sits to consider the nomination;

(b) At the conclusion of an approval hearing, the committee shall prepare its report on the suitability of the candidate to be appointed to the office to which the candidate has been nominated and shall include in the report such recommendations as the Committee may consider necessary including a recommendation on whether or not the nominee should be approved for appointment to public office.

— Rejection of nomination, Section 10 provides that;

(a) Where the nomination of a candidate is rejected by a County Assembly, the appointing authority shall submit to the County Assembly the name of another candidate, and the procedure for approval specified in this Act shall apply accordingly.

(b) A nominating authority shall not resubmit the name of a candidate whose nomination has been rejected by the County Assembly unless the circumstances relied on for the rejection of the appointment of the candidate did not exist or ceased to exist at the time of rejecting the nomination of the candidate.

— In exercising power of High Court over nominees (s.12) it is important for the Committee to:

(a) handle a nominee with courtesy/respect

(b) respect the privacy of nominee

(c) accord the nominee opportunity to be heard on adverse memoranda/statements objecting to the nomination

(d) uphold the right of witnesses under Powers & privileges Act

3.5 The Vetting Process

The facilitator defined vetting as the process of assessing integrity to determine suitability for public employment.

In his presentations the presenter explained the importance of vetting exercise. He pointed out that vetting process is aimed at;

- (a) identifying suitable public servants with capacity to transform institutions into public bodies that enjoy civic trust and protect human rights;
- (b) excluding from public service persons with serious integrity deficits; and
- (c) mitigating corruption and abuse of office.

The presentation covered;

- (a) The Pre-vetting process;
- (b) Approval Hearings/actual vetting; and
- (c) Consideration by the Assembly.

3.5.1 Positions that Require County Assembly Approval

The presenter mentioned the following as the positions that needed approval by the County Assembly;

- Deputy Governor (In case of a vacancy arising)
- CEC Members
- County Secretary
- County Attorney
- Chief Officers
- Members and Secretary to the County Public Service Board
- Clerk of the County Assembly
- Two (2) external Members of the County Assembly Service Board

3.5.2 The Pre-vetting process

Pursuant to Public Appointments (County Assemblies) Approval Act, 2017 the presenter highlighted the pre-vetting process as follows;

- 1) Statutory timeline – Pursuant to Section 7 the Chair of the Committee determines the time and place for the holding of the approval hearing which shall not be later than fourteen days from the date of the committal of the notification to the committee .& 9 for tabling Report and prepare work plan.
Section 9 provides that the Committee shall consider nomination and table its report in the County Assembly for debate and decision within twenty-one sitting days from the date on which the committee first sits to consider the nomination.
- 2) Process notifications –section 7(4) provides the Clerk to notify a candidate of the time and place for the holding of an approval hearing by notice in at least two newspapers of national circulation and by writing and such other form of communication as the Clerk shall consider appropriate.
- 3) Dispatch Questionnaire to nominees – this is specified in the First and Second Schedule of the said Act.
- 4) Invite memoranda/statements from public on suitability or otherwise of nominee- Section 7(10) provides that any person may, prior to the approval hearing, and by written statement on oath, provide the Clerk with evidence contesting the suitability of a candidate to hold the office to which the candidate has been nominated.
- 5) The Committee ought to check whether mandatory documents (*from appointing authority & nominee*) required during vetting process were provided and the requirements of the Constitution and relevant laws for appointment to the position.
- 6) The Committee needs to check the nominee's resume & certificates for qualifications and experience vis-à-vis requirements for appointment.
- 7) Members are required to declare any potential conflict of interests that may influence objectivity of vetting process.
- 8) The Committee should undertake preliminary consideration of public memoranda/statements to determine admissibility & implications on appointment. Additionally it should review the returned questionnaire to identify any gaps to be questioned at vetting.
- 9) It's a requirement for the Committee to seek requisite clearance certificates (DCI, EACC, KRA, HELB, CRB) and assess report and form preliminary assessment of suitability or otherwise of nominee;
- 10) It's the obligation of the secretariat to;

- a. prepare Chairperson and Members' briefs to guide the process;
- b. Formulate appropriate questions to assist the Committee to validate the preliminary assessment of suitability or otherwise of nominee at vetting stage; and
- c. Prepare necessary instruments for taking oath or affirmation.

3.5.3 Actual vetting/approval hearing

Actual vetting process was highlighted as below;-

- 1) Settle in advance and have a pre-hearing briefing by Chairperson;
- 2) Agree on ground rules for the vetting exercise;
- 3) Engage the nominee to establish suitability of otherwise using questions formulated at pre-vetting stage & requirements of the law and position;
- 4) Form a preliminary assessment of suitability or otherwise of nominee;
- 5) Prepare Chairperson's and Members' briefs to guide the process;
- 6) Formulate appropriate questions to assist the Committee to validate the preliminary assessment of suitability or otherwise of nominee at vetting stage; and
- 7) Prepare necessary instruments for taking oath or affirmation.

3.5.4 Post-vetting stage

- 1) Make observations on the nominee (based on pre-vetting assessment and actual vetting)
- 2) Make recommendations based on the observations made on suitability
- 3) Agree on the text of the Motion to the Assembly
- 4) Adopt the Committee Report
- 5) Table the Report and give Notice of Motion
- 6) Support adoption of the Report by the Assembly

3.5.5 Do's and Don'ts

The facilitator highlighted the following as the right practice during vetting;

- 1) Conduct professional approval hearings – irrelevant issues need not to be raised. Reasonable and open ended questions were recommended;
- 2) Respect for nominees time – the Committee was advised to adhere vetting schedules and timings;

- 3) Committee to maintain arm's length operations with the nominees- Committee was counseled to avoid being very close to or friendly with the nominees;
- 4) Disclosure of content of the ongoing vetting process – Members not to leak any information as regards the vetting/avoid leakage;
- 5) Committee resolutions may only be amended by the Committee, not the Assembly leadership or the secretariat; and
- 6) Have comprehensive planning, committee ought to understand and internalize questions.

4.0 CONCLUSION AND WAY FORWARD

At the conclusion of the retreat, the following was agreed upon as the way forward:

1. The secretariat to work professionally with Members in assisting them to discharge their mandate as far as the Committee is concerned;
2. The Chairperson to ensure that Members work together and with decorum while conducting vetting process;
3. The Committee to make recommendations based on the observations made on nominees' suitability during vetting;
4. The Committee should not grant conditional approval of nominees; and
5. Members should not divulge on deliberations of the Committee before a report is tabled in the Assembly.

