



## NAIROBI CITY COUNTY ASSEMBLY

### OFFICIAL REPORT

#### First County Assembly – Fifth Session

Tuesday, 16 May, 2017

The House met at 2.30 p.m.

*Hon. Speaker (Mr. Alex Ole Magelo) in the Chair*

### PRAYERS

### COMMUNICATIONS FROM THE CHAIR

#### DIRECTION ON THE NAIROBI CITY COUNTY APPROPRIATION BILL, 2017

**Hon. Speaker:** Honorable Members, you will recall that the County Assembly passed The Nairobi City County Appropriation Bill, 2017 (Assembly Bill No. 7 of 2017) on April 6<sup>th</sup> 2017 in line with the revised Budget Calendar.

Honorable Members, while preparing the vellum for the said Bill for the Governor's Assent, the Clerk's attention was drawn to some material defects with respect to Section 129(7) of the Public Finance Management Act, 2012 (PFM), which defects the Clerk reported to the Speaker for further direction before the Bill is forwarded for Assent under Section 24 of the County Governments Act, 2012.

Honorable Members, the said defects in the consideration and passage of the Nairobi City County Appropriation Bill, 2017 arose out of missteps by the County Finance and Economic Planning Department with regards to Section 129 of the Public Finance Management Act, 2012, which requires the *County Executive Committee Member to submit budget estimates and other documents to County Executive Committee for approval* before publishing an Appropriation Bill.

Specifically, Honorable Members, Section 129(7) provides thus, *upon approval of the budget estimates by the county assembly, the County Executive Committee Member for Finance shall prepare and submit a County Appropriation Bill to the County Assembly of the approved estimates.*

Accordingly, Honorable Members, the County Assembly considered and passed the Report of the Select Committee on Finance, Budget and Appropriations on the submitted Budget Estimates for the Financial Year 2017/2018 on the 5<sup>th</sup> of April, 2017.

Honorable Members, authority to publish an appropriation Bill in line with Section 129(7) of PFM Act, 2012 was subsequently issued the same day vide a letter dated 5<sup>th</sup> April, 2017, Ref. NCCA/T&J/CORR/2017/ (16).

However, Honorable Members, contrary to Section 129(7) of the PFM, Act, 2012, as highlighted above, the County Finance and Economic Planning Department had already published The Nairobi City County Appropriation Bill, 2017 (Assembly Bill No. 7 of 2017) on the 4<sup>th</sup> of April, 2017.

Honorable Members, it is important to point out that on the said date, 4<sup>th</sup> April, 2017, there was no authority from the County Assembly for the decision to publish the Appropriation Bill, which as shown earlier should only be entertained once estimates have been passed and the relevant County Economic and Finance Department given the green light to proceed with Publication of an appropriation Bill. The Budget Estimates had not been passed as of the purported date of publication of an appropriations Bill.

Inadvertently, Honorable Members, in the urgency to pass the Bill as forwarded by the County Executive Finance and Economic Planning Department, which forwarding was further accompanied by no official letter on the record, the Assembly entertained a defective Bill which I now realize can arise serious litigation as to render the passed law invalid if the identified critical material defects are not cured at once.

Accordingly therefore, Honorable Members, I directed the Clerk to halt preparations for the Vellum of The Nairobi City County Appropriation Bill, 2017 (Assembly Bill No. 7 of 2017) and now instruct the Assembly to write immediately to the County Executive Committee Member for Finance and Economic Planning to forward a properly Published Appropriation Bill in accordance with Section 129(7) of the PFM, Act, 2012 for the Assembly's prompt consideration.

It is so directed. I thank you.

## MESSAGES

### MESSAGE FROM THE GOVERNOR

**Hon. Speaker:** Hon. Members message from the Governor. Hon. Members Standing Order 39(1) relating to the message from the Governor provides that the Speaker shall read to the County Assembly

any message from the Governor or the Senator of the County delivered to the Speaker for communication to the County Assembly.

It is in this regard I wish to report that I have received a message on 6<sup>th</sup> December 2016 from the Governor via the letter dated 5<sup>th</sup> December 2016.

Hon. Members the message regards the refusal to assent to the Nairobi City County Office of the County Attorney Bill 2016.

Hon. Members I now wish to convey the following message: Refusal to assent to the Nairobi City County Attorney Bill 2016 pursuant to section 24 (2) (b) of the County Government Act 2012 and Standing Order 135 (2) (b).

Hon. Members you may recall that on 24<sup>th</sup> November 2016 during the last part of the Fourth session of the County Assembly the Assembly passed the Nairobi City County Office of the County Attorney Bill 2016, therefore I presented the Bill to His Excellency the Governor on 30<sup>th</sup> November 2016 in accordance with provisions of section 24 of the County Government Act 2012 and Standing Order 135. However on 6<sup>th</sup> December 2016 His Excellency the Governor by way of memorandum referred the Bill back to the County Assembly for reconsideration pursuant to the provision of section 2 (4)(b) of the County Government Act and Standing Order 132(2)(b).

It is worth noting that the memorandum was received while the Assembly had adjourned for recess. Hon. Members while refusing to assent to the Bill His Excellency the Governor had expressed reservations on the provisions of clause 4, 19 and 34 of the Bill. The Governor avers that clause 4(3) which provides that the County Attorney shall be appointed by the Governor with the approval of the Assembly fails to provide for competition and merit in the appointment process. Further the Governor argues that clause 19 creates position of the County Solicitor which is in his opinion such position ought to be established by the County Public Service Board.

On the same, His Excellency the Governor argues that designating the County Solicitor as the accounting officer of the office of the County Attorney is against the provision of section 148 of the Public Finance Management Act 2012 which bestows powers and designation of accounting officers to the County Executive Committee Member for Finance.

Lastly His Excellency the Governor opines that clause 34 is unfairly to remove the person currently holding the position of the County Attorney and therefore it is inconsistent with the provision of Article 236 of the Constitution of Kenya.

Hon. Members Standing Order 135 (c) is explicit on procedure for consideration for the Governors memorandum, I have pursued the memorandum and wishes to observe that there are procedural and policy issues which can be addressed via amendments and substantive constitutional issues which requires the chair informed.

Hon. Members the Chair will issue a communication tomorrow 17<sup>th</sup> May on the consideration of the Governor's memorandum on Nairobi City County Office of the County Attorney Bill 2015, I thank you.

## **BILLS**

### **FIRST READINGS**

1. **THE NAIROBI CITY COUNTY CHILD CARE FACILITIES ASSEMBLY BILL NO.6 OF 2017  
AN ACT OF THE NAIROBI CITY COUNTY ASSEMBLY TO PROVIDE FOR THE  
REGISTRATION, LICENSING AND INSPECTION OF CHILDCARE FACILITIES IN THE  
COUNTY AND FOR CONNECTED PRUPOSES, FIRST READING**
  
2. **THE NAIROBI CITY COUNTY EVICTIONS, RESETTLEMENT AND DEMOLITION BILL 2017,  
ASSEMBLY BILL NO. 10 OF 2017**  
  
**AN ACT OF THE COUNTY ASSEMBLY OF NAIROBI CITY TO PROVIDE FOR PROCEDURE  
FOR EVICTION, DEMOLITION AND RESETTLEMENT AND FOR MATTERS INCIDENTAL  
AND RELATED THERETO, FIRST READING**
  
3. **THE NAIROBI CITY COUNTY SPORTS MANAGEMENT BILL 2017, ASSEMBLY BILL NO. 9  
OF 2017**  
  
**AN ACT OF THE COUNTY ASSEMBLY OF NAIROBI CITY TO PROVIDE FOR  
MANAGEMENT, PROMOTION AND REGULATION OF SPORTS IN NAIROBI CITY COUNTY  
AND FOR CONNECTED PURPOSES, FIRST READING**
  
4. **THE NAIROBI CITY COUNTY OPEN SPACES USE AND MAINTENANCE BILL 2017,  
ASSEMBLY BILL NO. 12 OF 2017, FIRST READING**  
  
**AN ACT OF THE COUNTY ASSEMBLY OF NAIROBI CITY TO PROVIDE FOR THE  
REGULATION OF PUBLIC OPEN SPACES WITHIN THE COUNTY AND PROVIDE FOR  
MATTERS INCIDENTAL THERETO, FIRST READING**
  
5. **THE NAIROBI CITY COUNTY EARLY CHILDHOOD EDUCATION BILL 2017 ASSEMBLY  
BILL NO. 4 OF 2017, SECOND READING**

**Hon. Member for Kahawa West Ward** (Mr. Chege Ngaruiya): Thank you Mr. Speaker for giving me this opportunity. Hon. Speaker sir, I beg to move that the Nairobi City County Early Childhood Education Bill 2017 be read a second time. Hon. Speaker sir, the Kenya Constitution recognizes that every person has the right to compulsory basic education. It is in this spirit that the Committee admits that this proposed legislation will intensely aid in promoting and providing for Early Childhood Education in Nairobi City County. Hon. Speaker sir, as such the Committee fully supports the Bill since it seeks to address these

issues. However, the Bill requires fine tuning through proposed amendments so that it can serve the intended purposes. In summary, the Bill addresses the following:

The principle objective of the Bill is to regulate the provisions of Early Childhood Education in Nairobi City County. Part I deals with Clause I which gives the short title of the Bill while Clause II gives the interpretations of some of the terms used in the Bill. Part II deals with administration and curriculum which prescribes a curriculum framework as well as the administrative requirements for licensed Early Childhood Services.

Part III of the Bill sets out the licensing and certification provisions which provide that no service provider shall operate an Early Childhood Education and Care Centre unless that service provider is licensed to operate the centre. Part IV provides powers of entry and inspection which gives the right of entry to a parent or guardian to a licensed Early Childhood Service provider where a licensed home based education and care is provided whenever their child is there.

Part V provides for the funding of Early Childhood Education Services out of money appropriated by the County Assembly. Part VI provides for miscellaneous provisions for offense and penalty of where a person intentionally insults, abuses or intimidates a Teacher or member of staff of an Early Childhood Education and Care Centre.

Clause 14, creates an offense for obstructing power of entry A person who commits this offense is liable of conviction to a fine not exceeding 100, 000/= Clause 15 provides for the general penalty which is a fine not exceeding 100,000/= or to a term of imprisonment not exceeding one year or both. Clause 16 provides that the Executive Committee Member may make regulations for the better carrying into effect of the provisions of this Act.

Hon. Speaker sir, pursuant to Article 196 (b) of the Constitution of Kenya and Standing Order 121 (3), the Committee placed an advert in the local dailies calling for any representation and amendment from the public. Following the notice, the Committee received a memoranda form the following stakeholders; KENATCO Kenya National Commission for UNESCO, Kenya Christian Professionals Forum and East African Centre for Law and Justice.

All the stakeholders were agreeable on principle with the Bill although they proposed amendments to certain Clauses. Hon. Speaker, the Committee will propose amendments to the Bill to Clauses

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2,3,5,6,8,12 and 16. Some of the amendments are editorial while others are to cater for concerns of the stakeholders. Hon. Speaker sir, I beg to move and call upon Hon. Karen Wanjiku to second. Thank you.

**Hon. Karen Wanjiku** (Nominated Member): Thank you Mr. Speaker sir. I stand to second the Nairobi City County Early Childhood Education Bill 2017. As you know members ECD education has been devolved to the counties and it is our mandate. Therefore it has come at a good time though it might be a little bit late but all the same it will help the children of Nairobi County.

Mr. Speaker sir I believe this will ensure ECD is free and we shall have a feeding programme and other things that we have talked about in our Motion. I believe that most of our Motions have been combined here including even the Children's Department which we brought a Motion and without a Children's Department we will not be able to implement this Bill.

I believe if that Department is there and this Bill is passed as we had gone through it in our Committee we saw that it is a good Bill, when it comes you will see the right of a parent, Child, Teacher and all that. As we know we have not employed ECD Teachers for more than 20 years now. I believe we will be able to employ more for our children, because education is supposed to be free and compulsory according to our Constitution. I second, thank you Speaker.

**Hon. Speaker:** Thank you, very much. Hon. Karen!

*(Question Proposed)*

**Hon. Speaker:** Hon. Members, I call the mover of the bill to reply.

**Hon. Member for Kahawa West Ward** (Mr. Patrick Ngaruiya): So thank you Mr. Speaker, I want to thank Hon. Members, silence means the Members are in agreement that it be forwarded to the next level. Thank you, Mr. Speaker.

*(Question that the Bill be read a second time put and agreed to)*

**An Act of the County Assembly of Nairobi City to provide for Early Childhood Education in Nairobi City County and other connected purposes.**


***(Second reading)***

## MOTION

INSPECTION VISIT TO KIMONDO ROAD, KWARE WARD

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**Hon. Speaker:** The Chairperson Sectoral Committee on Transport & Public Works.

**Hon. Member for Lucky summer Ward** (Mr. Kennedy Oduru): Thank you, Hon. Speaker sir, the debate was interrupted so I think we were to resume with the Debate process since it is not a fresh one. Thank you

**Hon. Speaker:** Hon. Members, I therefore call Members to contribute before we call the mover of the Motion to reply. This is a report of the Sectoral Committee on Transport and Public Works on the inspection visit to Kimondo Road, Kware Ward, laid on the Table of the Assembly on Thursday, 16<sup>th</sup> March, 2017, with the Resumption of Debate Interrupted on Tuesday 9<sup>th</sup> May, 2017 at 2.30 p.m. Hon. Members.

Hon. Members, I now call the mover of the Motion to reply.

**Hon. Kennedy Oduru:** Thank you, Hon. Speaker sir; I take this opportunity to congratulate Members. Even though on that day Hon. Kagiri stated very clear that he wanted the current report regarding the road.

Hon. Speaker, it's that the road itself is in a pathetic situation and it is currently with our recommendation which were tabled in our reports. Therefore it is upon our County Government to move with speed and implement what we recommended in the report. Otherwise it was a nice report and I thank Members for their contribution and cooperation together with the Members of the Committee. Thank you very much Hon. Members.

*(Question put and agreed to)*

## ADJOURNMENT

**Hon. Speaker:** Hon. Members, the Assembly is adjourned until tomorrow on Thursday 17<sup>th</sup> at 2.30 p.m. The House business Committee met at the rise of the Assembly. Thank you.

*(The House rose at 3.16 p.m.)*