



NAIROBI CITY COUNTY ASSEMBLY

OFFICIAL REPORT

First County Assembly – Fifth Session

Wednesday, 24 May, 2017

The House met at 2.30 p.m.

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

PRAYERS

PETITIONS

Hon. Speaker: Order Hon. Members! Kindly consult while seated.

STATEMENTS

Hon. Speaker: Hon. Leah Mumo? We have a statement requested by Hon. Marion Githinji from the Chairperson of the Sectoral Committee of Agriculture, Environment and Natural resources regarding noise pollution in Kilimani area and a statement requested by Hon. Elkana Mauti on the Sectoral Committee on Early Childhood and Vocational Training regarding processing of bursaries. Chair Environment?

Hon. Nominated Member (Ms. Petronilla Achieng): Thank you Mr. Speaker sir. I have the statement but I cannot see Hon. Marion Githinji in the House. Do I go ahead and read it?

Hon. Speaker: Proceed.

Hon. Petronilla Achieng: Mr. Speaker sir, on Wednesday 22 February 2017, the Hon. Marion Githinji, MCA rose on the floor of the Assembly pursuant to Standing Order 41 (2) (c) and requested the



Chairperson of Sectoral Committee of Agriculture, Environment and Natural Resources regarding noise pollution in Kilimani area. She further requested the Chairperson to inquire into and report on;

- I. Confirm that clubs in the Ward comply with the sound level directives
- II. Measures being taken by the County to curb the noise nuisance in Kilimani Ward

Mr. Speaker sir, the Committee wrote to the County Executive on Thursday 2nd March requesting to be furnished with a written response to the statement by the Hon. Member. The Committee received a response from the Chief Officer Environment, Energy and Water sector via a letter REF: CEO (EEW)/133/102 dated 6th March 2017. In this regard Mr. Speaker---

Hon. Speaker: Hon. Jacky Nyangala, we cannot conduct business like this. Let us respect one another. Order! Hon. Nyangala, you are to be removed from the Assembly. You cannot argue with the speaker. Proceed.

Hon. Petronilla Achieng: In this regard Mr. Speaker sir, I wish to report to the Assembly as follows

THAT;

1. Confirm the clubs in the Wards comply with the County sound levels directive.

The Chief Officer Environment stated that complaints have been received in relation to the following clubs and places of worship. Space Lounge and Grill, Kiza lounge and restaurant, B club, Grizzly Restaurant, G. spot restaurant, World Harvest International Church and Jesus Live Ministries. She further stated that noise pollution has been evident in some residential areas afflicted by excessive noise and from places of worship and noise clubs. The Environment, Energy and Water sector has undertaken the duty to investigate such complaints and to take action if the noise is considered to be a statutory noise and nuisance. All those premises mentioned were visited since the complaints were found to be evidently producing sound above 55 decibels but have since then complied

2. Measures being taken by the County to curb the noise nuisance in Kilimani Ward

Mr. Speaker sir, the Chief Officer Environment informed us that the team of environment---

Hon. Nominated Member (Mr. William Abuka): Point of Order Mr. Speaker.

Hon. Speaker: Yes Hon. Member.

Hon. William Abuka: I do not have a copy of what is being read.

Hon. Speaker: Hon. Member, please come again?

Hon. William Abuka: I don't have the statement that is being read on my tablet.



Hon. Speaker: This is a statement that was requested for by Hon. Marion and this is a response by the Chairperson

Hon. William Abuka: Thank you

Hon. Petronilla Achieng: Thank you Mr. Speaker sir. She further stated that the management of two establishments; Space lounge and Kiza restaurant undertook the audit and submitted to the department. The audit revealed that indeed the clubs were emitting loud noise. Space lounge was issued with an intent for closure notice and this made them take the County to court. In March 2016, they were able to obtain a court order barring the County from attempting to enforce environmental laws and regulations against noise pollution. The court injunction was lifted when Kilimani Foundation filled a case joining the County against Space Lounge and Grill. Milimani Law court on 17th August 2016 ordered temporary closure of Space Lounge located along Ngong road until they furnish---

Hon. Speaker: Hon. Manoah, where is your card? Order Hon. Members!

Hon. Member for Nairobi South Ward (Mr. Manoah Mboku): Mr. Speaker, I don't see the need for the Chairperson to read through the whole response when the Hon. Member is not in the House. She is reading the whole Bible.

Hon. Speaker: Hon. Manoah, Member of Assembly Vihiga. Thank you.

Hon. Manoah Mboku: Mr. Speaker, I am not a member for Vihiga but of Nairobi South

Hon. Speaker: I beg your pardon. Hon. Chairperson, kindly table the report and thank you very much Hon. Manoah. Hon. Leah Mumo, kindly read your statement please. Next time be in time for your statement. You can read on her behalf if she is indisposed.

Hon. Minority Chief Whip (Mr. Hashim Kamau): Thank you Mr. Speaker pursuant to Standing Order 41 (2) (c) she wish to request for a statement from the Chairperson of Sectoral Committee on Planning and Housing and Justice and Legal Affairs regarding the grabbed parcel of land ref 187/1/217 Ring Road, Westlands road.

Mr. Speaker in the statement the Chairperson should inquire into and report on:

1. Whether the said parcel of land was at one time owned by the defunct Nairobi City Council and If it currently owned by the Nairobi City County
2. If it had County staff houses
3. Whether Mr. Nduidi the Chief Officer, Sub County Administrator Mr. John Magere, Sectional Head Inspectorate, Ms Mary Afande amongst others were some of the occupants of the said staff houses.

4. Whether the aforementioned staff had binding legal consent or authority from Nairobi City County Executive to negotiate, dispose and transfer the said parcel of land reg. 1870/1/217 to Mr. Anil Vamal Shah, director, Sato properties on behalf of Nairobi City County government.
5. Reasons as to why the afore stated staff executed an undertaking to give vacant possession of the same and receive cash by producing copies of their national identity cards and reasons as to why Mr. John Ndudi was referred as the chairman of the negotiating committee or a go between
6. Whether other staff vacated voluntarily or there were some elements of threats from Mr. Anil Shah and reason as to why the remains of buildings were deposited or dumped on a parcel of land owned by Mr. John Toiti at Kasarani constituency, Nairobi County and whether the aforesaid staff breached chapter 6, Article 73 of the Constitution and if they are fit to hold office.
7. Whether they should be recommended to be charged in a court of law for conspiracy to defraud County Government assets, misuse and abuse of office, whether they were the makers of fake title documents which were used by Sato Properties and
8. measures that the County Executive were using to ensure the officers don't defraud the County Government office assets and other measures taken to the said staff to recover the assets.

Thank you Mr. Speaker.

Hon. Member for Kogogocho Ward (Mr. Maxwell Ochar): Thank you Mr. Speaker, we request to be given two weeks because the Committee of Planning is going out tomorrow for five days in Mombasa so I think the whole Executive on our side will be in Mombasa so I request for two weeks, thank you.

Hon. Deputy Speaker (Mr. Ken Ngondi): Mr. Speaker I don't think the Chair for Planning is actually sincere with this Assembly because giving us two weeks and the Assembly is supposed to die *sine die* around mid of next month surely that will leave us no option but to defer this up to the next Assembly sitting. So maybe if he could bring it down a bit.

Hon. Speaker: Hon. Ochar, can we give you one week to deal with it because they are very simple issues?

Hon. Maxwell Ochar: Mr. Speaker because am a good citizen as you directed, one week, thank you.

Hon. Speaker: Next order please, Early Childhood from Hon. Mauti?

Hon. Alexina Mudi (Nominated Member): Thank you Mr. Speaker sir, this is in response for the Hon. Mauti on Sectoral Committee on Children and Early Childhood Education, Mr. Speaker sir on Wednesday 15th March 2017 Hon. Mauti rose on the floor of the Assembly pursuant to Standing Order

41 (2c) and requested for a statement from the Chairperson of Sectoral Committee on Children, Early Childhood Education and Vocational Training regarding processing of bursaries.

Mr. Speaker sir, the Hon. Member sought to know the following:

1. The current status of bursary forms and the cheques not issued;
2. The cost of delaying processing the forms; and
3. Action that the County Executive is taking to ensure that the bursaries are given on time

Mr. Speaker sir the Committee wrote to the Chief Officer responsible for Education, Children, Youth and Gender Affairs, Culture and Social Services on the 21st of March 2017 requesting to be furnished with a written response to the statement sought by the Hon. Member.

In this regard I wish to report to the Assembly as follows:

The County Secretary responded via a letter response GL/NC/147C/9 and indicated as follows:

1. In regard to the current status of bursary forms and cheques not issued:
 - a) the department received bursary forms from 84 Wards which were all processed and 547 files forwarded to accounts department for processing of cheques
 - b) The department had received a total of 62 files from accounts section with cheques for 27 Wards, the total number of cheques released were 3179, and therefore the cheques were worth Ksh. 16758000.
2. In regard to the cost in delaying processing the bursary forms

Mr. Speaker sir the response says all the forms have been processed at the department level from 84 Wards with the exception of Airbase Ward whose forms were received on 30th March 2017 and are also being worked on.

3. In regard to the action that the County Executive is taking to ensure that the bursaries are given on time

A bursary team is in place for the purpose of receiving processed files and issuing of cheques received from accounts section to respective MCAs. This task is done at Education department offices on the 9th floor City Annex building.

Mr. Speaker sir here attached on this response is the submission from the County Executive Member responsible for Children, Early Childhood Education and Vocational Training. I beg to lay this response, thank you.

Hon. Speaker: Hon. Mauti.

Hon. Member for Kwa Reuben ward (Mr. Elkana Mauti): Mr. Speaker I was saying I can not disagree with the report because of the time factor only that the system that was used took long time, even up to now there are some Wards which have not received their cheques. So it only the Committee that will go down and advise the department to change the system that they used, thank you.

Hon. Speaker: Chairlady you have heard the sentiments of Hon. Member?

Hon. Alexina Mudi: Thank you Mr. Speaker once again this afternoon. I do appreciate the Hon. Member, this has been a fall back issue but at least finally we are somewhere, thank you.

COMMITTEE OF THE WHOLE ASSEMBLY

(Order for Committee read)

(Mr. Speaker left the Chair)

IN THE COMMITTEE

[Mr. Chairman (Mr. Ken Ngondi) took the Chair]

THE COUNTY ATTORNEY BILL 2016

Hon. Chairman: Hon. Members you may be seated. We are to consider the Governor's recommendation on Clause 19 of the Nairobi City County Office of the County Attorney Bill 2016, Assembly Bill No. 4 of 2016

Hon. Member for Kilimani Ward (Mr. Moses Ogeto): Mr. Chairman I wish to go to Standing Order No. 135, 139 and 131. Mr. Chairman I wish this Hon. House would give the Committee more time to discuss this issue---

Hon. Chairman: You have said 130?

Hon. Moses Ogeto: I have said 139, 131 and 135, all of them Mr. Speaker. Mr. Chairman since I am a member of the same and looking even at the House, I can say there is no quorum to discuss this important Bill which has very serious recommendations which should be looked into by the Justice and Legal Affairs Committee. So Mr. Chairman if you go to those Standing Orders or those clauses which I have specifically said and being the Vice-Chair of the same Committee and my Chairman as the one who had delegated me to inform you Mr. Chairman, I wish you give us guidance from where you are sitting.

Hon. Chairman: Thank you Hon. Ogeto.

Hon. Minority Chief Whip (Hashim Kamau): I am opposing that the Committee be given more time because the issue that was taken to that Committee of Justice was an issue of Deputy County

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Attorney to be replaced by the County Solicitor. So to have a time just to discuss a small issue like this one Mr. Speaker, I don't think it will be right. The issue that was taken back here by the Committee is this one issue alone. So I don't think see the reason why the Committee should be given more time just to replace a title from Deputy Attorney to Solicitor.

Hon. Chairman: Thank you. Hon. Members you are very much aware when the Speaker made that communication---

Hon. Leader of Minority (Abdi Hassan): Thank you Mr. Chair I do agree with my Whip here, who is the Chairman of independent that the recommendation herein is just that of changing from the Deputy County Attorney to the County Solicitor General Mr. Speaker. As you can remember last week that the Speaker had given a ruling concerning the memoranda of the office of the Governor, most of the memoranda were declared unconstitutional by the Speaker Mr. Chair. So I don't see the reason why the Chair of Legal and Justice Committee should bring the issue of memoranda of the Governor here which already has a ruling from the Speaker of this Assembly. Thank you, we need your guidance on that.

Hon. Chairman: Thank you Hon. Members and the Hon. House, without any conflict of interest in any way, I would like us to concentrate on the communication of the Chair on this issue of the Bill and this as was directed by the Speaker. The Bill was actually taken back to the Justice and Legal Committee which was to table a report before the Assembly and in this case we would wish to get the correct position from the Chair of Legal and Justice Committee on the resolutions of the Committee before first we move on, Hon. Chair.

Hon. Member for Korogocho Ward (Mr. Maxwell Ochar): Mr. Speaker first of all I would like to bring to the attention of this House that there is no quorum to discuss such a kind of a very important Motion, Mr. Speaker. There is no quorum in the House, number two Mr. Speaker we as the legislators we are not---

Hon. Chairman: Order Hon. Ochar! You have actually requested to know whether there is quorum in the House and you may not proceed due to that.

Hon. Maxwell Ochar: Yes Mr. Speaker.

Hon. Chairman: So first of all let the Clerk confirm whether we have the quorum and actually I am ruling you out of order Hon. Ochar because you have not even quoted the Standing Order which upon you are requesting the House to adjourn. Hon. Jaffer Kassam you may proceed.

Hon. Member for Parklands Ward (Mr. Jaffer Kassam): What we received was a memorandum from the Hon. Speaker's office and from the Secretariat and we went through clause by clause and there was nowhere that we disagreed with that memo. But technically there was a typographical error which was in Part 4 Clause 19, where they were talking about the Deputy Attorney General which we wanted to replace it with the Solicitor General. So as far as we are concerned, we went through that, I repeat and

there was nowhere we disagreed because there was mention of the Constitution, there was mention of County Attorney position being non-existent and then it also mentioned about the Assembly having authority to create positions such as Accounting Officer which in this case we were talking in reference to the Solicitor General.

So with that Bwana Chair we were in 100% agreement with the recommendations from the Speaker and the Secretariat and there is nowhere where we agreed for replacement or any amendment to our earlier Bill. Thank you Bwana Chairman.

Hon. Chairman: Chairman, what you are trying to say is that the position of the Committee of Legal and Justice Affairs, you are not in agreement with the amendments?

Hon. Jaffer Kassam: The recommended amendments by the Governor, we are not in agreement. What we have brought this afternoon was about the error in typing where we mentioned about the Solicitor General and the Deputy County Attorney where there is no such a thing as Deputy County Attorney and we would like the amendment to read Solicitor General.

Hon. Chairman: So what would you advise the Committee of the Whole Assembly?

Hon. Jaffer Kassam: Well, after going through this document here, I stand a bit confused because our report was that we stick to our earlier Bill the way it appeared and of course the typing error should be amended. That was our position. In fact in our minutes Bwana Chairman, if you refer to, we said status quo to remains. It is only that issue which was brought up which we discussed today and we said that the typographical error be amended.

Hon. Chairman: Hon. Bishop Abuka.

Hon. Bishop Abuka (Nominated Member): Mr. Speaker I just want to support what Hon. Moses Ogeto said. I find a lot of wisdom also judging by the two, three last speakers that we are dealing with a case where even the members of that Committee themselves are yet to agree to read from the same page. Mr. Speaker the two positions of the Solicitor General and the position of the Deputy Attorney--- I beg your attention Mr. Chairman. Mr. Chairman these positions that we are reading here are two different positions. I think the onus is on the members of this Committee to try and convince and teach the Hon. House the difference between the two because the functions that go with these two different positions will determine the success levels of the office we are discussing; which is the Office of the County Attorney.

It is very important for them first to have consumed the product before they try to sell it to somebody else. Now we are having a situation where the Chairperson, the representative of the Executive on that Committee is himself not very convinced in which direction he is going with that Committee and specifically the issues at state that we are discussing here. I think I would be of the same opinion as my brother guided by a lot of wisdom, Moses Ogeto, that we prescribe more time to discuss this and allow the House to consume a product that we believe can take this County Government to another level. Otherwise

we are going to be mixed up, confused and rendered irrelevant in so far as the hiring of the County Attorney is concerned.

We would want a situation where Bills, Motion and the execution of those functionalities helps us to succeed as a Government and I hope that the Hon. Members that are here and are going to exit, we are going to be judged by history how we handled ourselves at the tail end of our being Members of this Hon. House. Therefore, I would want to persuade you and I believe that you are persuadable because you are man of great wisdom that we go by that wisdom and say let this Committee be given a week or two or whatever timeframe that in your wisdom you can judge prudent and they come back to us and they say that they are now reading from the same page and they now understand the positions of the Solicitor the Deputy and County Attorney and they would like to convince this House to go by the script they are putting on the table. Thank you, Hon. Chairperson.

Hon. Deputy Speaker: Thank you Hon. Abuka. Hon. Chairperson for Legal & Justice.

Hon. Jaffer A Kassam(Member for Parklands/Highridge): Hon. Speaker, while listening to Hon. Abuka, Bishop, I am not disagreeing with him but there was a Communication from the Hon. Speaker which was communicated, okay what we saw in our files was a Communication from the Speaker and the recommendation from the Secretariat. Unfortunately we do not have it here because we would have read it again, so there is nowhere where we have contravened and gone against the original Bill which had been discussed in this House and approved and sent for assenting. So, there is nothing new that we are introducing here that we will need a lot of time to go and discuss.

The only thing which appeared here and which had a typographical error was that the Governor's position was that we do not need a Solicitor General and what we were looking at was the Bill of the Attorney General where there is the Solicitor General and the Attorney General. In our case the Attorney General would be the CEC and the Solicitor would be the Chief Officer. That was our position and that is what we were guided by. However, I have no objection to whatever ruling that you will make and we will be ready to go over it again and again until when the Hon. House will be satisfied. Thank you, Speaker.

Hon. Deputy Speaker: After we have deliberated on this issue and several requests have been floated up in the Assembly, I think it would be wise that in line with the Communication of the Speaker who actually directed the Legal and Justice Affairs Committee to go through the memorandum and report the same to the Assembly, I would only wish that the Legal and Justice Committee table the report in an official way, at least in a Parliamentary way, of given reports so that we can get accounts for future references. So, I direct that we defer the amendments until we get the clear position.

I have been advised by the Clerk I was not there to adjourn the Committee of the Whole Assembly but I am making a direction where you, the Legal and Justice Committee will have to revisit the previous Communication by the Speaker so that you can table a substantive position and the resolution of the

Committee of Legal and Justice Affairs before the Assembly on the memorandum of understanding as forwarded by the Governor. Hon. Members we revert back to the Plenary. Thank you.

(The Plenary resumes. The Speaker, Alex Magelo takes the Chair)

Hon. Speaker: Very well, Hon. Chairperson.

Hon. Deputy Speaker: Hon. Speaker, while in the Committee of the Whole Assembly consider the amendments on the Nairobi City County Office of the County Attorney Bill No. 4 of 2016. There has been a request from the Committee of Legal and Justice Affairs and the Hon. Members as well that they be given time to consider your Communication in relation to the Memorandum of Understanding as forwarded by the Governor. The request was actually anonymously agreed on by the Members and for that reason the Committee of the Whole Assembly considered and agreed on their request and we have given up to next week around Tuesday or Wednesday. Mr. Speaker, this came up because, one, dealing with the Bills and Motions we need a substantive way forwarded and in this case the Committee of the Legal and Justice Committee were only able to tell us the position of the Committee verbally. However, Hon. Speaker, in this case we would like to get a report as directed by your Chair through a Communication, a printed report for future Terms of Reference. Thank you, Mr. Speaker.

Hon. Speaker: I beg your pardon, you said they received the report---

Hon. Deputy Speaker: They received your Communication which you directed to the Legal and Justice Committee but when they were reporting on your Communication they did not actually have the report in any form of soft or hard copy, it was communicated verbally.

Hon. Speaker: Verbally by whom?

Hon. Deputy Speaker: The Chairperson, Legal and Justice Affairs.

Hon. Speaker: Okay, I agree with you but the Chairperson should have the soft copy and the report with him and so should his Committee Clerks.

Hon. Deputy Speaker: Thank you very much, Hon. Chairperson. I do agree with the House in regards to Clause 19, proposed amendments. Hon. Members, my Communication is explicit and it has the details of the Parliamentary ways and means and there is no way that this Assembly can have its powers removed and taken to another entity. The power to hire is the Governors but the duty to vet officers cannot be removed from the County Assembly to the County Service Board. There is no way that I as the Speaker will surrender your sanctity as the Assembly. Therefore, my Communication was clear to that effect and I warn the Committee on Legal Affairs to go and bring the Clause 19 proposed amendments. That is all that

you need to do but you will be given the Communication that will give you guidance as far as the powers of the Assembly are concerned.

ADJOURNMENT

Hon. Deputy Speaker: I thank you and I ask the Committee of Legal and Justice to bring us this on Wednesday next week at 2.30 p.m. Any other business? Hon. Members, there being no other business of the Assembly I adjourn the Assembly until Tuesday, 30th May 2017. I thank you.

(The Assembly adjourned at 3.36 p.m.)