



## NAIROBI CITY COUNTY ASSEMBLY

### OFFICIAL REPORT

#### Second County Assembly – Second Session

Tuesday 6<sup>th</sup> November, 2018

The House met at 2.30 p.m.

*(Hon. Acting Speaker (Mr. Chege Mwaura) in the Chair)*

#### PRAYERS

**Hon. Members:** *(Loud consultations) (Members hinder the Mace from being laid)*

**Hon. Acting Speaker:** Hon. Members please resume your seats! We are proceeding with business. Order Hon. Members! I direct that the Searjant-at-Arms free the Mace. Whoever touches the Mace, Standing Order 3 shall take effect. Order! The Standing Order number 3 protects the Mace and whoever interferes with the Mace the Standing Orders shall take effect. Take your seats and let us proceed.

Hon. Members, I want to read for you Standing Order number 1(10), “...except when passing to or from his/her seat or when speaking, every Member in the Chamber shall be seated and shall not at any time stand in any of the passages or the walkway”. So members, I am expecting to only see the Searjant-at-Arms on their feet. Hon. Members resume your seats. I have been informed that we have enough quorum so can we proceed with the agenda that brought us here today. Hon. Members, I welcome you back after the short recess and I have the following communication to make.

#### COMMUNICATION FROM THE CHAIR

Hon. Members, I welcome you back after the short recess and I have the following communication to make.

ON THE MATTER OF REMOVAL OF THE LEADER OF THE MINORITY PARTY OR COALITION OF PARTIES  
AND THE MINORITY WHIP OF THE MINORITY PARTY OR COALITION OF PARTIES AND APPOINTMENTS TO  
THE POSITIONS

My office is in receipt of several letters, relating to changes in the leadership of the Minority party in the Assembly. The first letter, of 25<sup>th</sup> October, 2018, is from the Hon. John Mbadi, CBS, M.P., Chairperson of the Orange Democratic Movement (ODM) Party, whose net effect is to effect changes to the Minority Party or Coalition of Party Leadership at the County Assembly pursuant to the provisions of Standing Order 21. This letter from the Party Chairman was conveying to my Office a decision of the ODM Party to remove the earlier designated Minority Leader, Hon. Elias Otieno Okumu, MCA and the Minority Whip, Hon. Peter A. Imwatok, MCA and appointing the Hon. Kennedy Odhiambo Oyugi, MCA as Minority Leader and Hon. Nicholas Okumu, MCA as Minority Whip, as stipulated in the County Assembly's Standing Order 21(7). For the benefit of the Assembly, I did respond to Hon. Mbadi's first letter on the same day, regretting that I was constrained from effecting the communicated changes on various grounds that I will set forth in this communication that I will read.

The second letter, dated 30<sup>th</sup> October, 2018, also emanated from the Hon. Mbadi, CBS, M.P., acting consequent to my response in the earlier letter. In this letter the Hon. Mbadi reiterated the Party's position as communicated *vide* his first letter and also detailed the basis for his actions, which he clarified was based on the ODM Party's Constitution and the provisions relating to the appointment and removal of its designated leaderships at the Assembly.

Hon. Members, the third letter on this matter is dated 30<sup>th</sup> October, 2018 and originated from one Oduor Ong'wen, the Executive Director, ODM, asking the Speaker to stay implementation of the decisions communicated to my Office by the ODM Party Chairman, Hon. John Mbadi, CBS, M.P.

The foregoing letter was followed by a Fourth letter, again from the Hon. Mbadi, CBS, M.P., dated 5<sup>th</sup> November, 2018, informing my office that the Party is currently engaged in resolving the matter, but that in the meantime, my office to ignore the earlier correspondences from any other quarters within the party, and to move to effect the changes he had communicated in his first letter.

Hon. Members, the fifth letter also came today from one Edwin Sifuna, the Secretary General of the ODM Party, arrived in my office today 6<sup>th</sup> November, 2018, communicating that the ODM party has invited its membership in the Assembly for a meeting to resolve the matters for which I have received the listed correspondences, and further communicating that accordingly, no changes are to be effected until such time as he shall communicate, noting that he is the Authorized Principal Officer, and the person mandated by the Constitution of the ODM Party to issue correspondences on behalf of the Party and all its organs.

Hon. Members, You can now understand the gravity of this matter. I would ordinarily have responded to the second and subsequent letters from the Chairman of ODM Party and that from the Party's Executive Director and even the Secretary General through letters from my Chambers but due to the weighty nature of this issue raised in those correspondences and the public notoriety the matter has gained, I found it prudent, as your Acting Speaker, to address the issues on this very floor of this Assembly

from which the authority vested in me is derived. However, before I address the matters at hand, first, I have reflected on the issues and isolated the following facts:

1. Whether the removal of the leaderships of the Minority in the House will be by individual party or a coalition of parties;
2. Who is the lawful authority to make and communicate the decision of the minority removing its leadership?
3. Whether the provisions of Constitution, the law and the Standing Orders have been complied with by the Minority coalition as regards the filling of its leadership positions.

Hon. Members, to begin with, the matters for which I am about to give directions are not unique to this Assembly. Indeed, a precedent was already set in the Senate, and in the National Assembly, and indeed across various jurisdictions in the Commonwealth. I therefore find it prudent to make reference to the precedents set elsewhere and draw on a full range of procedural information available to determine how the Standing Orders have been applied and interpreted in the past in relation to the matter at hand. In that sense, I have looked at directions provided by the Speaker of the Senate, Sen. Kenneth Lusaka, M.P., on 15<sup>th</sup> March, 2018 when a similar question on the recent removal of the Leader of the Minority Party was brought before him; I also considered the rulings by the Speaker of the National Assembly, the Hon. Justin Muturi, EGH, M.P., rendered on Thursday, October 12, 2017 and Thursday, 15<sup>th</sup> March, 2018 respectively; and indeed communications by Speaker Francis Ole Kaparo, EGH, M.P., amongst other Speakers of Parliament.

Hon. Members, in the said Communications, similar facts, both on appointment and removal of Minority leaderships at the National Assembly and Senate, were presented to the Hon. Speakers for directions, which directions, in summary, they issued as follows:

On whether the Party represented at the National Assembly by Minority Leader is a Minority party or coalition of parties - Speaker Muturi found in the affirmative, and on the strength of a letter from the Registrar of Political Parties, that there indeed existed a pre-election in Coalition agreement in terms section 10 of the Political Parties Act, 2011 amongst the Orange Democratic Party, Wiper Democratic - Movement Party, FORD Kenya, Amani National Congress and Chama Cha Mashinani under the umbrella of the National Super Alliance (NASA) Coalition in terms of Section 10 of the Political Parties Act, 2011. Hence, all the aforementioned political parties constituted a coalition within the meaning of Article 108(3) of the Constitution as read together with Standing Order 20 of the National Assembly Standing Orders for purposes of election of the Leader of the Minority Party, the Deputy Leader of the Minority Party, the Minority Whip and the Deputy Minority Whip.

On the question of who is the lawful authority to make and communicate the decision of the Minority appointing its leadership - Speaker Muturi observed that Article 108 of the Constitution does not provide for the manner of election or removal of the Leader of the Minority Party for the National Assembly. The Speaker further noted that matters relating to political parties and coalitions are governed by the Political Parties Act, 2011, which has its own mechanisms for resolving disputes that may arise under the Act. Accordingly, the Speaker refrained from commenting on matters that fall under the purview of that Act and restricted himself to the requirements of the Standing Orders of the House. In this regard, the Speaker

was persuaded that the National Assembly Standing Orders as read together with the Political Parties Act contemplate that a decision appointing or removing the Minority leadership in the House ought to be made by the decision-making organ of the coalition of parties forming the Minority Coalition. Further, a decision made thereof is expected to be conveyed to the Speaker's office in writing by the Whip of the Minority Party or Coalition of parties who is also obliged to attach the minutes of the meeting at which the decision was made.

On whether the provisions of the Constitution, the law and the Standing Orders have been complied with by the Minority coalition as regards the filling of its leadership positions - Speaker Muturi made a determination that the Minority Party fell short of the prescribed procedure outlined in National Assembly Standing Order 20(4), which requires such communication to be made by the Whip and the minutes of the meeting in which the decision was made attached.

Hon. Members, a similar scenario was replicated in the Senate, with regards to the removal of the Hon. Sen. Moses Wetangula, M.P., as the Leader of the Minority Party in the Senate and his replacement thereof with Sen. James Orengo, MP, SC, pursuant to Standing Order No. 20, (4) (5) and (6) of the Senate Standing Orders. Unlike the route taken in the National Assembly, the decision to effect changes on the Senate Minority Party Leadership was communicated through a letter from the Senate Minority Party Whip, Sen. Mutula Kilonzo Jnr. on 15<sup>th</sup> March, 2018. This letter was premised on a letter from the ODM Party, with minutes of the resolution attached, as signed by 16 out of the 27 Senators affiliated to the NASA Coalition, confirming the said resolution. Strikingly, all the 16 Senators were drawn from only one affiliate party out of the five political parties that constitute the NASA Coalition. Nevertheless, Senate Speaker Kenneth Lusaka pended the removal until when the appointment of a new Senate Minority Party Leader was done and communicated by the Coalition in strict compliance with the Standing Orders of the Senate.

Hon. Members, I will now turn to the facts in issue in the instant case of the County Assembly Minority Leadership, which I had earlier identified as follows;

Whether the appointment or removal of the leaderships of the Minority in the House will be by individual party or a coalition of parties.

Hon. Members, I am inclined to follow the precedence from the Houses of the National Parliament, so far as settling the question of whether the appointment or removal of the leaderships of the Minority in the House will be by individual party or a coalition of parties with regard to the processes by which decisions to alter party leadership is concerned. Just to jog your mind Hon. Members, permit me to refer the House to the provisions of section 10 of the County Governments Act, 2012, which provides for the County Assembly party leadership as follows:

County Assembly Party leaders

*10 (1) There shall be in each county assembly a leader of the majority party and a leader of the minority party.*

*(2) The leader of the majority party shall be the person who is the leader of the largest party or coalition of parties in the county assembly.*

*(3) The leader of the minority party shall be the person who is the leader of the second largest party or coalition of parties in the county assembly.*

Whereas section 10 of the quoted Act establishes offices of party leadership within the Assembly, it is silent on the manner of the removal of the said leaderships. There is however no void on the matter, as the said lacuna is addressed through the Standing Orders, made pursuant to section 14 of the County Governments Act, 2012 that bestows power to a county assembly to provide for its own procedures and rules for the proper conduct of proceedings.

Hon. Members, the provisions relating to the matter in question are domiciled in Standing Order 21(7),(8) and (9) of the Nairobi City County Assembly Standing Orders. The said specific Standing Orders provide thus:

21....

*(7) A member designated under paragraph (1) 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;*

*(8) 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*

*(9) The removal of a member from office under paragraph (7) 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.*

The question that arises is whether the Assembly could proceed and effect changes on Minority Party Leadership on the basis of a communication from the ODM Party in its singular entity or as part of the Coalition within the meaning of section 10 of the Political Parties Act, 2011 and Standing Order 21.

Hon. Members, to answer the foregoing, the Chair is in possession of information from the Office of the Registrar of Political Parties (ORPP), on the Coalition agreements deposited by the ORPP prior to the 8<sup>th</sup> August, 2017 General Election. Amongst these agreements, is the agreement deposited on 22<sup>nd</sup> February, 2017 by the National Super Alliance (NASA) Coalition, comprising of the Orange Democratic Movement Party, Wiper Democratic - Movement Party, FORD Kenya, Amani National Congress and Chama Cha Mashinani.

For our purposes, Standing Order 2 provides for a County Assembly Party, thus, a County Assembly Party means a party or a coalition of parties consisting of not less than five percent of the membership of the County Assembly. Additionally, and in the instant case, the said Standing Order 2 provides for the Minority Party as the second largest party or coalition of parties in the County Assembly. You will note that party arrangements as established outside of these precincts are not the purview of the Speaker. The Chair merely concerns himself with how the Assembly under its own rules and the enabling law recognizes a Party or Parties or Coalition of Parties for purposes of dispensing with our business.

Clearly, Hon. Members, I find that the Minority Party in the Assembly is a coalition of parties on the basis of a pre-election agreement entered by the aforementioned parties within the meaning of section 10 of the Political Parties Act, 2011, Section 10(3) of the County Governments Act, 2012 and Standing Order 21 for purposes of election of the Leader of the Minority Party and the Minority Party Whip. It follows, then, that the removal and replacement of the said leaders ought to comply with the manner prescribed in paragraphs (7), (8) and (9) of the said Standing Order 21.

Hon. Members, the second question is, *who is the lawful authority to make and communicate the decision on the removal and replacement of the leadership of the minority party leadership?*

As earlier noted in this communication, which I now reiterate, section 10 of the County Governments Act, 2012, does not provide for the manner of election or removal of the Leader of the Minority Party. I have indeed demonstrated that these matters are provided for in the Standing Orders as the basis for the same. I will therefore limit myself to dispensing with the question of *who is the lawful authority to make and communicate the decision of the minority removing or changing its leadership* on the basis of Standing Order 21(8). For clarity, the Standing Order 21(8) provides thus -

*21(8)...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.*

Hon. Members, paragraph 3 of the Third Schedule to the Political Parties Act, 2011, prescribes what must be provided for in a coalition agreement, amongst which is the criteria or formula for sharing of positions in the coalition structure, roles and responsibilities *and the decision making structure, rules and procedures of the coalition*. My reading of the coalition agreement establishing the Minority Party (*NASA Coalition*) in the County Assembly, specifically under Article 7 of the coalition agreement, leads me to the considered finding that the decision-making organ of the minority coalition is its Summit. Indeed, we must note that the enabling law, whose provisions I have restated repeatedly, makes no distinctions between the operations of parties as far as their interplay with the Senate, the National Assembly or the County Assembly is concerned.

Hon. Members, in my mind, the work of the Speaker, where these matters have not been provided for, would have been to refer back to Standing Order 1, which gives the Chair the power to settle such procedural questions based on the Constitution of Kenya, statute law and the usages, forms, precedents, customs, procedures and traditions of Parliament and of County Assemblies of Kenya and other jurisdictions to the extent that these are applicable to Kenya.

In the instant case, however, Hon. Members, I am constrained, and therefore I can only proceed on the basis of the express provisions contained in the County Assembly's Standing Orders on these matters, for which I am bound to enforce without fear or favour.

Hon. Members, the threshold as so established by the law, and by the precedence set by the Hon. Justin Muturi, EGH, M.P., Speaker of the National Assembly, in his Communication suffice, and I am inclined to agree with that position. Even so, I am alive to the disputes around the matters for which the Chair is providing direction and the fact that the Chair can only go as far as the Standing Orders and the rules of the County Assembly permit. I have had to carefully navigate the path of the Chair with great restraint, keeping in mind that there are dispute resolution mechanisms outside of this House's purview provided for in law for settling the said disputes under the Political Parties Act, 2011.

Hon. Members, this was noted in 2002, by the Hon. Jonathan Lucas Hunt, M.P., then Speaker of the New Zealand House of Representatives. While giving direction on the nexus between Parties and the House, and how their affairs in as far as the House is concerned, are to be given life by the House, Speaker Hunt averred, 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 (the emphasis is mine). 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.*

Hon. Members, be that as it may, I am persuaded to make a similar finding by the precedence so referenced in the Assembly Standing Orders, though taking a different path, contemplate a decision removing the Minority leadership in the House to be made by a vote by two thirds of the membership of the a Party or Coalition of Parties forming the Minority Coalition and further that the decision be conveyed to the Speaker's office, in writing by the Whip of the Minority Party or coalition of parties who is also obliged to attach the minutes of the meeting at which the decision was made.

On the question of whether the provisions of Constitution, the law and the Standing Orders have been complied with by the Minority Coalition as regards the removal and filling of its leadership positions; I wish to refer you to the provisions of Standing Order 21, which provides as follows, here now reproduced in its entirety -

**21. (1)** *The second largest party or coalition of parties in the County Assembly shall designate a member of the County Assembly belonging to the party or coalition of parties to be the Leader of the Minority Party;*

*(2) The second largest party or coalition of parties in the Assembly shall designate a member of the County Assembly belonging to the party or coalition of parties to be the Assembly Deputy Minority Leader;*

*(3) The second largest party or coalition of parties in the Assembly shall designate a member of the County Assembly belonging to the party or coalition of parties to be the Minority Whip;*

*(4) The second largest party or coalition of parties in the Assembly shall designate a member of the County Assembly belonging to the party or coalition of parties to be the Deputy Minority Whip;*

*(5) In the absence of both the Assembly Minority Leader and the Deputy Assembly Minority Leader, the Assembly Minority Whip shall perform the functions of the office of the Assembly Minority Leader;*

*(6) Whenever the Assembly Minority Leader is absent or unable to perform his or her functions, the Deputy Assembly Minority Leader shall perform the functions of the office of the Assembly Minority Leader;*

*(7) A member designated under paragraph (1) 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;*

*(8) 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*

*(9) The removal of a member from office under paragraph (7) shall be followed by the designation of such a member in his place in the manner provided for under paragraph 1 of this Standing Order within 48 hours.*

Hon. Members, Standing Order 21(8) requires the Whip of the second largest party or coalition of parties in the County Assembly to forthwith, upon a decision made under this Standing Order, to

communicate to the Speaker, in writing the decision together with the minutes of the meeting at which the decision was made.

Indeed my office received a letter dated 25<sup>th</sup> October 2018 from the 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, appointing the Hon. Kennedy Oyugi, MCA as Leader of the Minority and Hon. Nicholas Okumu Ouma, MCA as Minority Whip.

Hon. Members, I did respond to the said letter, on the same day, being the 25<sup>th</sup> October, 2018, highlighting the relevant areas of our Standing Orders in so far as the powers conferred on me by the Standing Orders allow, for which my office felt the letter fell short of the compliance test, *ab initio*.

Accordingly, firstly, and in similar vein, it is my considered finding, that in terms of compliance with the requirements of Standing Order 21(7), the ODM Party is a Party within the NASA Coalition and therefore cannot speak for the Summit in appointing leadership of the Minority Party, which is the rightfully recognized decision making organ of the Coalition per the Coalition's agreement deposited with the Registrar of Political parties, this being a matter of public notoriety.

Were we to rely on precedence from the Senate, and for a minute focus purely on the numbers, and whether the end might be the same were the Minority Coalition's Whip to write to my Office, seeing as a majority of the Members of the Minority Party in the Assembly are from the ODM Party, the Standing Orders would still demand evidence of a resolution supported by a two-thirds majority as contained in Minutes of the said meeting at which the resolution was made.

Secondly, 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, and other subsequent letters from the Party. This contradicts the provisions of Standing Order 21(8), which domiciles the authority to communicate such party decisions in the ambit of the Minority Party Whip. It need not be emphasized that the Hon. John Mbadi, CBS, M.P., is not, and indeed cannot purport to be, the Minority Party Whip for the Assembly of Nairobi to which he does not belong! Further, the said Communication, supposing we were to entertain it as it were, was not accompanied by minutes as earlier noted, and therefore falls at fault of Standing Order 21(8).

To that extent, I am afraid that the Hon. Mbadi has no jurisdiction on the matters at hand as their transmission to the Office of the Speaker rests entirely within the purview of the party leadership within the County Assembly. Attempting to dispose of those matters in a manner and procedure other than the one set out in Standing Order 21 is tantamount to sidestepping the clearly laid down procedures, which, as your Acting Speaker, I swore to safeguard with utmost fidelity.

Hon. Members, when faced with similar matters, the venerable Hon. Francis Ole Kaparo, M.P., made a finding I am inclined to share. My interest was especially piqued by the Communication issued by the Hon. Ole Kaparo, M.P., on the question of internal changes to the then official opposition Party, KANU, and who then was the Leader of Opposition for purposes of recognition for the said party in the National Assembly.



In summary, the then Speaker of Parliament, like Hon. Hunt in New Zealand at the time, noted that party proceedings are foreign to the House unless properly and formally introduced through established mechanisms, surmising, and I quote, that the “.... *registration of political party officials.... is extraneous, foreign and inconsequential to the conduct of Parliamentary business or proceedings in this House. The constitutional responsibilities of conducting, managing, regulating and guiding Parliamentary business lies nowhere else on earth, but on the shoulders of the Chair.*”

In the absence of communication notifying the Speaker of whatever changes in the leadership of the then Opposition Party through formal procedural mechanisms as established in the Standing Orders, the Chair ruled that the Leadership of the Opposition Party in the House remains as was.

Hon. Members, having carefully set out and analyzed the issues for determination as I had identified, it is evident, that:

1. The communications I have received from the Minority Party relating to the filling of its leadership positions have all fallen short of fulfilling the requirements of Standing Order 21(8) in terms of who should communicate and how the communication ought to be done to the extent that they originated from a source foreign to the Assembly and its Standing Orders;
2. The perceived appointment of Hon. Kennedy Oyugi, MCA as the Minority Leader and Hon. Nicholas Okumu, MCA as Minority Party Whip by the Chairman of the ODM Party through his letter, dated 25<sup>th</sup> October, 2018 falls at fault of the Standing Orders, which contemplate such decision ought to have been made by the decision making organ of NASA Coalition; and
3. The perceived removal of Hon. Elias Otieno, MCA as the Minority Leader by the Chairman of the ODM Party through his letter, dated 25<sup>th</sup> October, 2018 falls at fault of the Standing Orders, which contemplate such decision carrying evidence of a two thirds vote by the membership of a Party or Coalition of Parties in the Assembly, as evidenced by Minutes of such Resolution and as communicated by the Whip of the Minority party or Coalition of Parties; and therefore,
4. In view of the foregoing, I am unable to act on the correspondences from the Chairman of the ODM 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 those governing the Coalitions of parties.

Finally, Hon. Members, as the Acting 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.

The House and indeed all parties interested in the matter are accordingly guided. I thank you, Hon. Members.

## PAPERS

**Hon. Acting Speaker:** Chairman, Transport Committee?

**Hon. Fredrick Njogu:** Thank you Mr. Speaker, pursuant to Standing Order 191 (6) I beg to lay the following paper on the Table of the Assembly today 6<sup>th</sup> November 2018, the Report of delegation that conducted study visit to the Republic of Singapore from 5<sup>th</sup> to 12<sup>th</sup> August 2018.

Pursuant to Standing Order 191(6) I beg to lay the following paper on the Table of the Assembly today Tuesday 6<sup>th</sup> November 2018, the Report of Sectoral Committee on Transport and Public Works on the workshop held from 11<sup>th</sup> to 14<sup>th</sup> October 2018 at Flamingo hotel, Mombasa. I beg to lay.

**Hon. Acting Speaker:** The Leader of Majority?

**Hon. Abdi Hassan:** Thank you Mr. Speaker sir, pursuant to Public Finance Management Act section 161 I beg to lay the following papers on the Table of the Assembly today Tuesday 6<sup>th</sup> November 2018, the Nairobi City County First Quarter 2018/2019 Financial Report, thank you.

*(The paper was laid)*

**Hon. Acting Speaker:** Thank you.

**Hon. Abdi Hassan:** Pursuant to Section 164(1) of the Public Finance Management Act, I beg to lay the following Paper on the Table of the Assembly today, Tuesday 6<sup>th</sup> November, 2018: The Nairobi City Assembly Consolidated Financial Statement for the financial year ended 30<sup>th</sup> June, 2018.

*(The paper was laid)*

Pursuant to Article 229(7) of the Constitution of Kenya, 2010, I beg to lay the following Paper on the Table of the Assembly today, Tuesday 6<sup>th</sup> November, 2018: The Report of the Auditor General on the financial statement of the Nairobi City County Assembly for the year ended 30<sup>th</sup> June, 2017. Thank you, Mr. Speaker sir. I think with your communication, we should not see what we have seen in this Assembly again. Thank you.

*(The paper was laid)*

**Hon. Acting Speaker:** Thank you. The Table Office will forward the various Papers laid to the relevant committees. Next Order.

## NOTICE OF MOTION

**Hon. Acting Speaker:** Chairman of Transport.

### NAIROBI CITY COUNTY ASSEMBLY DELEGATION ON A STUDY SITE VISIT TO THE MINISTRY OF TRANSPORT AND INFRASTRUCTURE OF THE REBUPLIC OF SINGAPORE

**Hon. James Wamboi:** Thank you, Mr. Speaker sir. I beg to give notice of the following Motion: THAT, this Assembly adopts the report of the Nairobi City County Assembly delegation that conducted a study site visit to the Ministry of Transport and Infrastructure of the Republic of Singapore from 5<sup>th</sup> to 12<sup>th</sup> August, 2018, laid on the table of the Assembly on Tuesday, 6<sup>th</sup> November, 2018.

**Hon. Acting Speaker:** Thank you. The House Business will allocate time for it. Proceed to the next Order.

### STATEMENTS

**Hon. Acting Speaker:** The Chairman of Trade, you have a response to make.

#### RESPONSE TO A STATEMENT ON THE CONSTRUCTION OF KAREN MARKET

**Hon. Jeremiah Themendu:** Thank you, Mr. Speaker. I have a response to a statement requested by Hon. David Mberia. Hon. David Mberia, MCA, pursuant to Standing Order 45 (2) (c) requested for a statement from the Chairperson of the Sectoral Committee on Trade, Tourism and Cooperatives regarding the constructions status of Karen Market in Karen Ward.

He further asked the Chairperson to inquire into and report on:

- i) Measures put in place to ensure the project is completed within the current fiscal year; and
- ii) Measures put in place to ensure the contractor is paid his arrears so that he can retake the site and complete the pending works within this fiscal year---

*(Point of Order)*

**Hon. Acting Speaker:** Hon. Kennedy Oyugi. Chair of Trade, let us hear what his Point of Order is. Have your seat.

**Hon. Kennedy Oyugi:** Mr. Speaker, there is a tendency of a Hon. Member taking pictures of his colleagues without their consent. As we are speaking, Hon. Palapala is busy taking photos of Members here. When we were on a retreat in Mombasa, he took picture of his colleague while he was eating and circulated it on social media. Can you reprimand this Hon. Member? You cannot take a picture of your colleague without his consent.

**Hon. Acting Speaker:** Noted. Hon. Alvin, have you taken any photos?

**Hon. Alvin Palapala:** I have a right to take pictures.

**Hon. Acting Speaker:** Order!

**Hon. Alvin Palapala:** There are no pictures here, I think they are just worried.

**Hon. Acting Speaker:** Proceed, Chair of Trade.

**Hon. Jeremiah Themendu:** Thank you. Hon. Speaker, on the day of the meeting, the Hon. Member was unable to attend the said meeting of the Committee, however, the relevant Officers from the County Executive attended the meeting.

Hon. Speaker, the County informed that the Karen market was razed down by fire on 4<sup>th</sup> June, 2014. Authority was given to reconstruct the 60 gutted stalls estimated at a cost of Ksh.20 million and a tender awarded to Telemart Construction Company. The contractor moved to the site on 10<sup>th</sup> July 2016. A certificate of Ksh.2.5 million was paid. On 6<sup>th</sup> of May, 2017, the contractor moved out of site for lack of payment of a raised certificate of Ksh.2.3 million at which time the completion rate of the project was 35%.

- a) Measures put in place to ensure the project is completed within the current fiscal year;

The County Executive informed that in the current fiscal year's development budget, Ksh.50 million was set aside for rehabilitation of markets and Karen is one of the projects prioritized for completion from the budget.

- b) Measures put in place to ensure the contractor is paid his arrears so that he can retake the site and complete the pending works within this fiscal year.

The County Executive informed that the payment had been uploaded in the payment system and was with the pending bills Committee awaiting approval for payment upon which the contractor will be expected to resume work.

Hon. Speaker, the County Executive Sector of commerce, Tourism and Cooperatives is committed to ensure all payments are done once the pending bills Committee approves them.

Hon. Speaker, I beg to lay this response. Thank you.

**Hon. Acting Speaker:** Thank you. Hon. David Mberia. Clerk, you will ensure the Member does not come and argue that the response was not done. Make sure that he has a copy of the response so that if he has any issues he can raise them appropriately.

Chairman, Legal Affairs.

#### RESPONSE TO A STATEMENT REGARDING STREET URCHINS IN THE STREETS OF NAIROBI

**Hon. Jayendra Malde:** Thank you, Mr. Speaker. I have a response to a statement requested by Hon. Ann Thumbi.

Mr. Speaker, on 2<sup>nd</sup> October, 2018, Hon. Ann Thumbi rose on the floor of the Assembly pursuant to Standing Order 45 (2) (c) requested for a statement from the Chairperson of the Sectoral Committee on Justice and Legal Affairs and on Children, Early Childhood Education and Vocational Training regarding the street urchins in the streets of Nairobi.

According to the Hon. Member, the number of street children begging and selling sweets and other items in the streets at night and during evening hours is becoming an epidemic that must be arrested before it spirals out of control. The children peddling sweets in the streets are young and vulnerable to pedophiles and have been denied their fundamental right to education and this has far reaching effects on the socio-economic fabric of the County and the Country at large.

Hon. Speaker, in the statement, the Member requested the Chairperson to inquire into and report on:-

- i. Measures put in place by the County Executive to help the children get back to school; and
- ii. Measures put in place by the County Executive to ensure that the streets urchins are not exploited by the parents/guardians and pedophiles.

Mr. Speaker, the Committee wrote to the Chief Officer Security and Compliance and the Chief Officer Education, Children, Youth Affairs and Gender Affairs, Culture and Social Services on 4<sup>th</sup> October, 2018 inviting them to a meeting of the Committee on 18<sup>th</sup> October, 2018.

The Committee met the Chief Officers on Thursday 18<sup>th</sup> October, 2018 at 11:30 am. The purpose of the meeting was to enable the Chief Officers furnish the Committee with a response to the statement requested by the Member.

In this regard, Mr. Speaker, I wish to report to the Assembly as follows;

Regarding the number of street children begging and selling sweets and other items in the streets at night and during evening hours; The Committee was informed that some of the children are in school and are usually accompanied to the streets by their parents/guardians commonly during the weekend because they cannot make it to town on daily basis due to distance from Central Business District and where they stay.

The Committee was further informed that---

*(Point of Order)*

**Hon. Acting Speaker:** Hon. Ochola, what is your Point of Order? Chair of Justice, give him a chance.

**Hon. Wilson Ochola:** We do not understand what he is saying.

**Hon. Acting Speaker:** You will be given a copy of the response so that you can follow through. Chairman, proceed.

**Hon. Jayendra Malde:** Thank you, Mr. Speaker.

The Committee was further informed that the rise of street connected children has been as a result of two elements; pull and push factors.

i. Push Factors

These are the issues that cause children to leave their homes and seek solace in the streets. Some of the resulting factors can be due to;

- Poverty (especially in informal settlements)
- Family breakdown
- Abandonment

ii. Pull factors

These are the issues that make living/working in the streets look enticing to children. Some of the reasons leading to this include;

- Criminal gangs that use children to peddle drugs, weapons, etc.
- Parental negligence (sending children to the streets or coming with them for begging purpose)
- Lack of County punitive laws to arrest and prosecute parents for parental abuse neglect.

Measures put in place by the County executive to help the children get back to school

Mr. Speaker, the Committee was informed that the Act stipulates that it is the responsibility of the parent and the government to observe the rights of a child. That the Act also states that all actions concerning children, whether undertaken by public or private social welfare institution courts of law administrative authorities' legislative bodies the best interest of the child shall be a primary consideration. The Committee was further informed that The County under the Sector of Education and Social Services has undertaken measures to address the street children menace through Rescue, Rehabilitation and Re-integration

a) Rescue/Removal of Street Children

This is undertaken in two ways i.e.

## (i) Care and compassion method

This is a social rescue plan conducted by County Children Officers who approach street connected children and convince them to leave the streets by placing them in various children centers. The aim is to seek and understand why these children are in the streets and pursue ways of addressing the issue.

## (ii) Law and order method

This has become a prevalent method as it entails forceful removal of the street children by the County enforcement officers. These children are thereby transported and placed in the various County institutions.

This is a continuous exercise carried on a daily basis using the two methods above.

Below is the table highlighting the number of street children rescued/removed from the streets (1<sup>st</sup> January-12<sup>th</sup> October, 2018).

CHILDREN INSTITUTIONS	JAN	FEB	MAR	APRIL	MAY	JUNE	JULY	AUG	SEP	OCT	TOTAL
Kayole	3	3	2	5	5	1	-	4	6	-	<b>29</b>
Shauri Moyo	1	3	5	4	15	3	10	3	2	2	<b>48</b>
Joseph Kang'ethe	3	2	2	-	1	1	4	-	1	14	<b>28</b>
Makadara	11	15	35	11	75	13	17	111	37	27	<b>352</b>

**Total No. of children rescued 457 children**

## b) Rehabilitation of Street Children

Upon rescue/removal from the streets, the children are placed in the County Children and Rehabilitation centers for further care and protection. The Rehabilitation process involves

- Guidance & counselling
- Child trauma & therapy
- Non formal learning
- Sports & co-curriculum activities/games.

Within the current year, the Sector has been able to Rehabilitate and enroll children to educational institutions according to their age and abilities as tabulated below.

CHILDREN INSTITUTION	WARD	ACCESS TO EDUCATION	
Joseph Kang'ethe (boys)	Woodley	Primary	31
		Secondary	14
		Non-formal	33
		<b>Total No.</b>	<b>78</b>
Shauri Moyo (Youth)	Pumwani	Secondary	4
		Vocational	27
		University	1
		Non-formal	11
<b>Total No.</b>	<b>43</b>		
Kayole (girls)	Kayole North	Primary	26
		Secondary	18
		Vocational	2
		Non-formal	10
<b>Total No.</b>	<b>56</b>		
Makadara (boys)	Makadara/ Hamza	Primary	63
		Secondary	29
		Vocational	2
		University	1
Non-formal	34		
<b>Total No.</b>	<b>129</b>		

**Total children placed in Education Institutions- 306**

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## c) Re-integration

One of the key objectives for rescue and rehabilitation is re-uniting the children with their families. Within the current year, the Sector has carried out home tracing and assessment and has successfully managed to re-integrate 48 children back to their homes.

Measures put in place by the County Executive to ensure that the street urchins are not exploited by the parents/guardians and pedophiles.

Mr. Speaker, the Committee was informed that the County Executive is promoting good upbringing of children by their families through the establishment of suitable oriented programs and through the creation of department to deal with the rights and welfare of children, public awareness and the coordination of relevant program to support initiatives from different social sub-sectors.

In addition, Mr. Speaker the Committee was informed that the role of Security and Compliance is to discourage the children from the streets. That the department regularly round them up and hand them over to the Technical Officers from the Social Service Department.

The Committee was further informed that the Sector continuously undertakes child advocacy both at community and family level. It has programs driven by 28 children officers and social workers at the community level to educate and sensitize on parental abuse & neglect, effective parenting and child exploitation. That the County Government has introduced free ECD and free milk program to increase access and retention of young children in schools thus preventing them from exploitation by parents /guardians.

In addition the Sector continues to work closely with the County enforcement team to round up street children from the CBD and placing them in children institutions for rehabilitation.

Mr. Speaker, Hon. Ann Thumbi was satisfied with the response given by the Chief Officer Security and Compliance and Chief Officer Education, Children, Youth Affairs and Gender Affairs, Culture and Social Services

Mr. Speaker, a copy of the detailed response has been given to Hon. Ann Thumbi who requested for the statement and a further copy is hereby attached to this report.

**Hon. Acting Speaker:** Order! Hon. Ann Thumbi, allow him to finish so that you can respond. Proceed Chairman.

**Hon. Jayendra Malde:** Mr. Speaker, a copy of the detailed response has been given to Hon. Ann Thumbi who requested for the statement and a further copy is hereby attached to this report. Mr. Speaker, I beg to lay this statement. Thank you.

**Hon. Acting Speaker:** Thank you. The Hon. Ann Thumbi.

**Hon. Ann Thumbi:** Thank you Mr. Speaker. It is not right for the Chair, Legal, to mislead the House by saying that I was satisfied by the report. First, the report I have is not on what I requested. I requested for the data, a comprehensive data. The data should show where these kids are rescued from, the schools that they are going to, the date they were rescued and it was not done. So, I request for the Committee to do a comprehensive report and ensure that these kids are back to school because they are still on the streets selling sweets and paper bags around supermarkets. Thank you.

**Hon. Acting Speaker:** Are you saying that you are not satisfied? The Chairman, Justice?



**Hon. Jayendra Malde:** Mr. Speaker, Hon. Ann Thumbi was in the Committee and she was satisfied with the answer and she is now refusing.

**Hon. Acting Speaker:** This is not going to be back and forth. Since you are on record saying that you are not satisfied, I will return the matter back to the Committee so that you agree on the matter she is uncomfortable with and then we can move it up from there. Is that okay, Hon. Thumbi?

*(Hon. Thumbi agreed off the mic)*

Chairman, is that okay?

**Hon. Jayendra Malde:** Thank you Hon. Speaker. We will do so. Thank you.

**Hon. Acting Speaker:** Thank you. The Hon. Chair, Finance, Budget and Appropriations. Vice Chair.

**Hon. Patrick Karani:** Hon. Speaker, on 2<sup>nd</sup> October 2018, Hon. Mwangi Njihia, MCA, rose on the floor of the House pursuant to Standing Order no. 45 (2) (c) and requested the Chairperson of Committee on Finance, Budget and Appropriation to respond to a statement regarding bank accounts of Nairobi City County Government. Hon. Speaker, I have just received the report and I need some time to internalize the report so that I can be able to read. I request the Hon. Member to give me some time so that I can read it tomorrow. Thank you Mr. Speaker.

**Hon. Acting Speaker:** You do not want to be in trouble with the questions that can come from the report. Hon. Member from Woodley, are you comfortable with the request by the Chair of Budget?

**Hon. Mwangi Njihia:** Hon. Speaker, I can give them more time because what I need is a comprehensive report especially on question no. B. Thank you.

**Hon. Acting Speaker:** I think that they have the report, it is just that the Chair wants to internalize it so that he can come when he is fully prepared because there are questions that may arise. Have you been supplied with the Statement?

**Hon. Abraham Njihia:** Yes, but I was not satisfied with question No. B.

**Hon. Acting Speaker:** So, Chairman of Budget, in your next meeting you should call him so that you can sort it out before you read it so that you do not fall in the problem of an unsatisfactory answer. Chair Budget.

**Hon. Patrick Karani:** I stand guided, Mr. Speaker.

**Hon. Acting Speaker:** Thank you. The Chairman of Culture, do you have another question? You had two questions.

**Hon. Abraham Njihia:** Hon. Speaker, yes I had two statements and in the second statement, I am comfortable.

**Hon. Acting Speaker:** Okay, thank you.

**Hon. Abraham Njihia:** But Hon. Speaker, maybe I would like to seek your indulgence. I was called to the Budget Committee by relevant authorities who were there and I recalled those statements because what they had supplied me was not right and I told them to let me agree that I am satisfied and I will bring the same questions but in another version. Thank you, Mr. Speaker.

**Hon. Acting Speaker:** I think the Chair of Budget has taken your sentiments, so in the meeting he will call you so that to try and align out those things so that when you come back you are also comfortable and the questions are sufficiently answered.

### MOTION

**Hon. Acting Speaker:** Chair, Culture.

**Hon. Abraham Njihia:** Thank you, Hon. Speaker, I want to debate on a Motion but I want to seek for your indulgence. I have also consulted with my Members in the Committee of Culture and Community Services. If I take it back to House Business Committee (HBC) for allocation, when will it be ready to debate, Hon. Speaker?

**Hon. Acting Speaker:** I will refer back your question to the House Business Committee so that they can give you another time if you wanted to follow through a few things.

*(Motion withdrawn)*

Hon. Nicholas, you had requested something.

**Hon. Nicholas Okumu:** Thank you, Mr. Speaker. First of all, the incident that has taken place in this Assembly is regrettable and I wish to convey my apologies on behalf of all Members.

Mr. Speaker, it will be good for you to note that I am not a mad man to have sat on the seat of Minority Whip. I was doing that on the strength of the letter that was sent, it should not be termed as if I tried to forcefully take over the seat. I am the youngest in NASA but over six men have rained blows on me. From here I have to go for a checkup. It is good to note that you cannot stop an idea whose time has come. *(Applause)* If it comes, the most important thing you can do is to release it and therefore Mr. Speaker---

*(Point of Order)*

**Hon. Acting Speaker:** Order! There is a Point of Order on your remarks. No, he was not on a Point of Order. I had given him a chance because he had requested to say something. Hon. Deputy Minority Whip, what is your Point of Order.

**Hon. Moses Ogeto:** Hon. Speaker, under Standing Order No. 1, you have made a communication which is very clear. Is he challenging the communication from you as the Chair under Order Paper No. 2? If those things he wants to speak about happened, we have the Serjeant-at-Arms. I do not want to comment because you made a communication and the same should not be challenged in either way.

Hon. Speaker unless a substantive Motion will be brought which has happened in the precincts and also remember the case of Hon. Muturi, there is a Motion which was tabled to challenge his conduct. Unless he brings that substantive Motion and you approve it, is then when you can allow him to speak what he wants to speak before this House.

**Hon. Acting Speaker:** Thank you. The Hon. Deputy Minority Whip is rising on a Point of Order that the matters that you are talking about have already been ruled in the communication from the Chair. The reason as to why I was giving you a chance is that you said you wanted to make some remarks which I allowed because I have been seeing you on record. Also I have seen Minority Whip he is also on record. I

had chosen not to give you an opportunity but since you had requested, I asked you to use your time wisely and do not refer to matters that have already been ruled upon because I am not going to make a second ruling on it.

Otherwise, I will give you a final chance and I do not think that you are referring to matters that have already been ruled. I think what you have raised is the fracas that happened and I will ask the Serjeant-at-Arms to give us a report on the incident so that we know what happened and be able to make a determination to what has happened in this House.

**Hon. Nicholas Okumu:** Thank you, Mr. Speaker, I rose on a Point of Order 56 (h) on privileges---

**Hon. Acting Speaker:** No, you did not rise on a point of Order, Hon. Njihia requested that the Motion be deferred and because there is no other business, I am supposed to close. I do not want to go when someone has something in his heart, so I gave you that chance because you had approached and requested to speak.

**Hon. Nicholas Okumu:** Thank you Mr. Speaker. That was the basis as to why I rose. As I have said earlier, it is regrettable. In Nairobi County we set the precedence for other Counties. I am not challenging the report that you have read because I will go personally and look at it and I will have a Motion on that, I am challenging the impunity---

**Hon. Acting Speaker:** Order, Hon. Member! You would have raised the issues that some Members threw blows on you. I was not aware of it, when I came in the House there were no blows. I would have given you a chance to go and report that matter because the office of Serjeant-at-Arms handles those requests and I thought that was the issue that you had in mind. So, if that is the issue, it has been taken up. I think we have sorted them out in the communication.

**Hon. Nicholas Okumu:** Hon. Speaker, I am talking about the impunity that has happened here. How would Members over six of them rain blows on me? You are supposed to protect me because I am in the chambers, Mr. Speaker.

**Hon. Acting Speaker:** Order! Hon. Member, now I will allow you to sit down. I have given you a chance and you have raised the issue of you being attacked and I have given you directive that there is an office that handles those matters so that you can go and report. If you felt that your privileges were infringed by any other Member, then the office of the Serjeant-at-Arm will give us an incident report and then we will follow it up from there, so I will allow you to sit down.

I had also seen the Minority Whip wanted to say something burning so I will give him a chance and then we can close it up.

**Hon. Peter Imwatok:** Thank you, Mr. Speaker. Allow me first of all to say thank you so much. As Hon. Nicholas Okumu has said it is regrettable what has taken place, allow me to add a voice as per the Standing Order 21 that, as the Minority side of party we will accept your verdict and ruling in your communication. As the Minority Whip of the party, I am taking the cognizant of the fact that you have raised and I am going to address the coalition party on the same issues. Therefore, on our side I believe the entire House will bear witness we are okay as a party. We promise peace and this House will be peaceful and we assure you as the Minority of the coalition side, I will make sure I follow up Standing Order 21 to the latter in case of any request to do so. Thank you, Mr. Speaker.

**Hon. Acting Speaker:** Thank you.

### ADJOURNMENT

**Hon. Acting Speaker:** There being no other business, the House stands adjourned till tomorrow 7<sup>th</sup> November, 2018 at 2.30 p.m. The House Business Committee will meet at the rise of the House. Thank you.

*(The House rose at 4.01 p.m.)*