



NAIROBI CITY COUNTY ASSEMBLY

OFFICIAL REPORT

Second County Assembly – Second Session

Tuesday 12th June, 2018

The House met at 2.30 p.m.

(Hon. Speaker (Ms. Beatrice Elachi) in the Chair)

PRAYERS

Hon. Speaker: Searjant-at-Arms, please ring the bell for ten minutes. Hon. Gikonyo, all the Members who have entered, do not walk out of this Chamber.

(Quorum Bell rang for ten minutes)

Hon. Speaker: There is quorum. I have just sent the Searjant-at-Arms to bring in a few people, they are seated somewhere. We just need four people and we can start.

COMMUNICATION FROM THE CHAIR

CONSIDERATION FOR NOMINEE FOR DEPUTY GOVERNOR

Hon. Speaker: Hon. Members, I have the following communication to make.

Hon. Members, rising on a Point of Order, under Standing Order 43 on Thursday 7th June, 2018, Hon. Member Peter Imwatok, MCA, sought the Chair's direction on the status of the nomination of Mr. Miguna Miguna for consideration as the Deputy Governor, Nairobi City County. I now wish to guide as follows:

Hon. Members, as you are aware, on 11th January, 2018 the Deputy Governor of Nairobi City County Hon. Polycarp Igate announced that he would resign from his seat effective Wednesday 31st January, 2018.

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Hon. Members, section 33(10) of the County Governments Act 2012 provides that a vacancy in the Office of the Governor or the Deputy Governor arising under this section shall be filled in the manner provided for by Article 182 of the Constitution. Unfortunately, Article 182 of the Constitution provides no specifics for the immediate circumstances of the resignation of the Deputy Governor. For that purpose, Hon. Members, two voters sought advisory opinion from the Supreme Court on the matter which advisory opinion was issued on March 9th, 2018 to the effect that the Deputy Governors position cannot be vacant until the new term.

Accordingly and amongst other things the Supreme Court gave Governors affected by a vacancy in the office of their Deputies 14 days within which to nominate Deputy Governors and subsequently forward the said nominees to the County Assembly for approval. On the other hand, Hon. Members, the Supreme Court gave County Assemblies whose Counties were affected by the advisory opinion and the circumstances 60 days within which to consider the nominees forwarded by the Governor. Hon. Members, the Governor of the Nairobi City County wrote a letter dated 16th May, 2018 and relayed a message to the Assembly regarding his nomination of Mr. Miguna Miguna as his Deputy. Indeed, the letter was received by the Office of the Speaker on the 17th May, 2018. Unfortunately the Assembly had then adjourned for recess.

Hon. Members, Standing Order 43(2) in realizing the provisions of Section 7(1) of the Public Appointments County Assembly's Approval Act 2017 provides that if a message is received from the Governor or the Senator for the County at a time when the County Assembly is not in session the Speaker shall forthwith cause the message to be transmitted to every Member and shall report the message to the County Assembly on the day the County Assembly next sits. Hon. Members, proceeding from the foregoing a question was asked when this matter was raised last Thursday 7th June, 2018 for directions as to what, when the Assembly next sits means in the context of Standing Order 44(2). The question is as open to interpretation as it is straightforward. In my mind when the Assembly next sits does not necessarily mean on the first day when the Assembly resumes from recess or a break. You will recall that the Assembly resumed its sittings on Tuesday 5th June, 2018 and in the circumstances Hon. Members, the Chair is indeed within the thresholds provided by the Standing Orders under Standing Order 44(2).

Hon. Member, Standing Order 43(3) provides that when a message from the Governor or the Senator of the County Assembly is read, the message shall be deemed to have been laid before the County Assembly and the Speaker may either direct the message to be dealt with forthwith or appoint a day for the consideration of the message or refer the message to the relevant Committee of the County Assembly for consideration. Hon. Members, it follows that if the Chair was to direct that the message be dealt with under Standing Order 43(c) the provisions of Standing Order 46 on committal to committees which the House wondered last week why the Chair had not done, would kick in automatically.

Now, Hon. Members, the Chair appreciates but this matter has raised considerable controversy not just within these precincts but also beyond the realms of our hallowed precinct. It is a matter of public interest that the nominee in question is still in court seeking to enforce his right to Kenyan citizenship having been alleged found to be in Kenya illegally and accordingly removed as we would treat any other illegal alien. Hon. Members, article 78 of the Constitution provides that a person is not legible for election or appointment to a State office unless the person is a citizen of Kenya. Further, the said article provides that a State officer or a member of the defense forces shall not hold dual citizenship.

Further, Hon. Members, section 8(b) of the Public Appointments County Assemblies Approval Act 2015 provides for issues to be considered by the relevant County Assembly in relation to any nomination which includes but is not limited to any Constitutional or statutory requirements relating to the office in question. In the above regards Hon. Members, the County Assembly of Nairobi is not in a position to vet the nominee as under statutory requirements, required document were not provided. Clearance such as good conduct, certificate from the Criminal Investigation Department, the clearance certificate from the Higher Education Loans Board, the compliance certificate from the Kenya Revenue Authority and clearance from the Ethics and Anti-Corruption Commission. Hon. Members, flowing from the foregoing and therefore wish to direct us to the pursuant supervisions of Standing Order 1, the name of the nominee for the position of the Deputy Governor of the Nairobi City County be referred back to the appointing authority for further validation.

PAPERS

Hon. Speaker: Chair, Budget. Chair, I hope you have read my concerns first. You do not need to announce them but I hope you have read my concerns.

Hon. Robert Mbatia: But let me first read them and then we consult. Madam Speaker, Pursuant to the Public Finance Management Act, I beg to lay the following paper on the Ttable of the Assembly today on Tuesday 12th June 2018. This is the Nairobi City County Government Supplementary budget to Estimate for the financial year 2017/2018. Madam Speaker I beg to lay.

Hon. Speaker: Thank you Chair. I commit the document to the Budget Committee, the Public Works Committee and the Ward Development Fund since this is the only sector affected. It is understood that we are committing it to three committees and I hope you will be able to communicate with them. Thank you, Hon. Chair.

Hon. Robert Mbatia Hon. Speaker, I stand to be guided.

NOTICES OF MOTION

Hon. Speaker: Hon. Whip, do you have any Notices of Motion? An establishment of an ad hoc committee?

Hon. Chege Mwaura: Madam Speaker, it is in the works, maybe tomorrow we shall be reading.

Hon. Speaker: Okay, thank you.

MOTION

Hon. Speaker: Hon. Jayendra.

Hon. Jayendra Malde: Thank you, Madam Speaker. I will read the Motion: That aware that Article 176(2) of the Constitution provides that the County Government shall decentralize its functions and provision of its services to the extent that it is efficient and practicable to do so; Further aware; that Article 175(b) of the Constitution on the principles of devolved government provides that County Governments shall have reliable sources of revenue to enable them govern and deliver services effectively; Noting that for a long period of time the management of the City Inspectorate has been marred with a number of challenges with

regards to institutional and structural arrangements such as understaffing, poor quality of service, inadequate service facilities, insecurity, health and safety of personnel; Appreciating that the new County administration has shown a willingness to reform the Inspectorate Department as enumerated by the Governor on various occasions and through budgetary provisions for retraining and recruitment of competent personnel; Regretting that despite the foregoing efforts and other interventions including the consideration and passage of the Nairobi City County Inspectorate Services Act, 2017, not much has changed in the way of anticipated change for lack of implementation of proposals for reform; Recognizing that as a result of such systemic and institutional challenges the City Inspectorate staff establishment has developed a poor attitude towards their work characterized by frequent violent confrontations between City *Askaris* and the Nairobi business community more so the hawkers and harassment of the general citizenry, resulting in a general lack of public trust with the department; Concerned that despite the violent confrontations with the public and the loss of life on both ends, conflicts persist and no tangible solutions have emanated from the Department on how it plans to fix its image and the challenges it faces, necessitating a rethinking of enforcement strategies; Observing that one of the major revenue streams for the Nairobi County Government is through the business establishments in the City with a potential to contribute immensely to the City's kitty through levies and daily taxes as well as create job opportunities if the Inspectorate Department can be re-engineered to return public trust and ensure seamless working; Keeping in mind that Nairobi is the Capital City of Kenya and gateway for both domestic and foreign direct investment, conferences and the seat of the National Government as well as a Diplomatic City, whose image often time has suffered battering arising out of the actions of "Council *Askaris*" or commonly known as "*Kanjo*";

Therefore, this Assembly resolves that the County Executive establish a multi-agency Task Force consisting of the following Members:

- i. County Secretary as Chairperson;
- ii. Chairperson, County Public Service Board;
- iii. Two (2) nominees from County Public Service Management Department;
- iv. One (1) nominee from the Office of the Inspector General of Police;
- v. Two (2) nominees from the Office Of The County Attorney;
- vi. One nominee (1) from the Department Of Finance and Economic Planning;
- vii. One (1) nominee, qualified as a Security Consultant, to be sourced by the County Secretary from amongst qualified persons; and
- viii. Two (2) nominees from Two (2) registered Business Associations in Nairobi City County.

With the following Terms of Reference, namely to: -

1. Review existing policies and institutional structures of the Inspectorate Department, and to recommend comprehensive reforms that would enhance effectiveness, professionalism, and accountability in the inspectorate services department and propose changes where necessary;
2. Review the Terms of Service of the City Inspectorate staff establishment and propose measures to improve service delivery and the image of the Department;

3. Review the Policy and Legal framework establishing the Inspectorate Services Department, including the framework proposed under the recently enacted Nairobi City County Inspectorate Services Act, 2017, and propose changes where necessary; and
4. Report to the County Assembly with a Comprehensive Report within three (3) months from the date of establishment of the Task Force.

Thank you. Madam Speaker, Members may be aware that the Nairobi City County Inspectorate Bill 2017 was passed on a day like this one year ago on Tuesday, 13th June, 2018 and assented thereafter becoming an Act.

Hon. Speaker of the Inspectorate Act sought to cure a number of mischiefs Key among such provision are like:

1. Establishment of Inspectorate Service which is functioned as contained in Section 4 of Act.
2. A provision requiring the training of the Inspectorate Officers as contained in section 10 of the Act.
3. Provision of limitation of lights and fundamental freedom of Inspectorate Officers in the execution of their mandate as contained in Section 16 of the Act
4. A provision requiring officers to perform their functions and exercise powers confirmed to the Act to no one means as contained in section 23 of the Act.
5. Provision of making unlawful for an Inspectorate Officers to subject any person to toucher or other clues inhuman or degrading equipment as contained in section 29 of the Act.
6. Provision of protecting Inspectorate officers from assault obstruction in execution of duties and taking anyone's belongings to inspectorate Office or intentional or recklessly destroy inspectorate property by any person and as such person violating the provision shall be considered to have committed an offence and liable to a commission to a fine not exciding 100,000 or imprisonment of not exciding one year. This is well expressed in section 31 of the Act.

Hon. Speaker, the Bill, now an Act was a well-done legislation, however...

Hon. Speaker: Hon Jayendra, are you reading another document or are you now reading your notes to support this Motion?

Hon. Jayendra: To support this Motion, Hon. Speaker.

Hon. Speaker: In parliament, you don't read, you talk about it. So try and summarize what you have and just try and relate on it.

Hon. Jayendra: Thank you Madam Speaker. Allow me to call Hon. Moses Ogeto, the Committee Vice-Chairperson and who was also in the first Assembly to second this Motion. I thank you Madam Speaker.

Hon. Speaker: Thank you Chair. Hon. Moses.

Hon. Moses Ogeto: Thank you Madam Speaker, as I try to second my Chairman I want to remind him that he should not be reading after the Motion. Chairman, as much as I want to second you on this...

Hon. Speaker: Thank you Chair, Hon. Moses.

Hon. Moses Ogeto: Madam Speaker, as I second my Chairman I want to remind you that we should not be reading after the Motion has been read. It is good Mr. Chairman and as much as I want to second you on this Motion, I am confused on how long the Motion is because it is more than two pages. However, it is okay and I second the Motion.

Madam Speaker, the spirit of this Motion is very good. It is a Motion that I have encountered with in the history of this Assembly and I wish also that when our secretariat are doing this, they try to shorten such Motions since we can fall asleep because such a Motion is so ambiguous. Notwithstanding Madam Speaker, he is trying to make the City Inspectorate come with a very good framework of policy and try to establish a Board like structure which will be only accountable to this Assembly.

Madam Speaker, you do realize that whatever is happening now in our departments there is that a very senior officer who doesn't speak and a very junior officer is the one who speaks before the press. I don't understand how the Government works. I know very well like the Kenya Police, we have a Police Spokesman who speaks on behalf of the police in any serious statements. So Madam Speaker, looking at the content of the same, let this one be actualized and ensure that in future some mistakes which are repeatedly done by our officers in the Executive should embrace such Motions and ensure that there is protocol and a chain of command especially when the Chairman is trying to say that even some budget should be factored.

So Madam Speaker I support the Chairman and I believe the House will ensure that the *Muhindi mmoja* - because I know he is the only one in this House - gets support for the same Motion. I support, Madam Speaker.

Hon. Speaker: Order! Did you just say *Muhindi mmoja*?

Hon. Moses Ogeto: Madam Speaker honestly---

Hon. Speaker: Just use the parliamentary language.

Hon. Moses Ogeto: Madam Speaker but he is the only one. He is the only Hon. Member who is coming from the Hindu region that is it.

Hon. Speaker: That is okay.

Hon. Moses Ogeto: He is the only one and I don't know whether there is another one.

Hon. Speaker: Just withdraw from the *HANSARD Muhindi mmoja*, Hon. Member.

Hon. Moses Ogeto: I withdraw.

Hon. Speaker: Thank you.

(Question proposed)

Hon. Peter Imwatok: Madam Speaker it is a borrowed microphone. Please allow me to say thank you so much for giving me this opportunity to contribute on this very important Motion by my friend Malde, a great Chairman of the Legal and Justice Committee despite the fact that Malde's language sometimes confuses me because of the heritage but he has the brains to come up with ideas that are so pertinent to this County.

Madam Speaker, I also want to congratulate you as the Hon. Speaker of this House for being straight forward and being committed to the spirit of the common practice of the Assembly and more so to be a reader of the law and one who understands the law. Thank you for the communication you have given us. Now, as a County we have a way forward and I believe the Executive too will have the way forward to now hasten the process subject to the advisory of the Supreme Court which was given on the 9th of March on the issue of the Deputy Governor of this great City County which I have said every now and . it is not a favour but a constitutional right of Nairobians, thank you so much Madam Speaker. Madam Speaker, to support this Motion I would like to say from the onset that this is a very important Motion. Even now as am seated here I have just been called by a member from my Ward crying that his motorcycle was picked from Jogoo road by

Kanjo askaris and it is unfortunate there is no humane face in this sector. By putting up this sub-committee maybe I can now understand that this is not a city council *askaris*; this now is an Inspectorate of a City County. A City County must reflect in its actions and the way they handle their residents, even those who are offenders as by law are innocent before taken to court of law.

Madam Speaker I think looking at the mood of this House this Motion is very timely. We want a new Inspectorate. An Inspectorate with a face. I remember the Chair bringing a Bill, bringing a requirement to the Budget Committee last week requesting uniformity of these Inspectorate officers from the shoe to the head. But we cannot just clothe the face without the inside reforms. The culture change within this sector must be enshrined. Failure to would be doing a zero job, whether to give new boots, suits, *kofias* it will be a zero job. I beg to support, Madam Speaker.

Hon. Osman Adow: Thank you Madam Speaker, I also stand to support the Motion. If the Minority Leader can remember I brought such Motion about five years ago and it passed but I think we have a very weak implementation system and our Implementation Committee all they do is go for retreats and not follow up what is actually on paper and that is one thing we need to address in this House.

One of the important things that came up in discussion about this is for the Inspectorate to be trained so that they can move with the times. Times have changed from the old city council to where we are now and that is the theme on this Motion that retraining of staff and culture change as mentioned earlier. I would add an HR consultant to the people we suggested here as members to the multi task agency. I do support the Motion.

Hon. Kennedy Obuya: Thank you Madam Speaker. I rise to support the Motion. Having in my previous life served very closely with the County Inspectorate Department, I am privy to the challenges they face as an institution. This is one of the best Motions that is looking forward to giving the Inspectorate a lifeline. I have read and gone through the Motion and I would encourage Members to pass the Motion. I also request you with your guidance that in future we do an amendment to this Motion in the constitution of members to the task force. We also include members of this great Assembly. Members represent the majority, the people of Nairobi. The formation of this task force is in order that Members of the Assembly should and must be represented. I beg to support.

Hon. Pius Mbono: Thank you Madam Speaker, I also rise to support this Motion. Before I continue let me say that I am the Vice Chair of Implementation Committee and Hon. Adow has said the Committee only goes for retreats and nothing comes to this Assembly. Sometimes in February I put to this Assembly that during the last Assembly and government implementation status was below 30% because there was no goodwill from the Executive. We have summoned those departments, we have done a retreat with them, we are preparing a report to this House. In fact we are supposed to have brought the report but four departments did not show up so we have requested that we need to sit with them so that we bring a comprehensive report that covers all the sectors. The Inspectorate Department did not show up and I think that is where much of the Members are arguing. We are going to bring that report to the Assembly and much of those things are captured there.

The mover of this Motion is the Chair, Justice Committee. It seems that so much things are overwhelming because he has so much information of what is happening and it looks like now he wants the Assembly to come in and help this department because being the Chair maybe he is feeling that things must

be done and done the right way. I agree with Hon. Adow that such Motions and Bills were brought here and nothing was done. It is upon this Assembly to also pass this Motion so that we bring all the views so they have weight. The Executive should move with speed and make sure this department is restructured. Nairobians are suffering. Whatever they are doing is inhuman. I do support the Motion.

Hon. Herman Azangu: Thank you Madam Speaker, I support the Motion. I think every person here can say about the Inspectorate as harassing people; even my people in the Ward of *Landmawe*-those women who are selling food in industries have been experiencing a lot of problems from these Inspectorates. They just arrest, take money from women and don't bring the money to the County as revenue. They just benefit themselves. This will help, I support the Motion, thank you.

Hon. David Ayo: Thank you Madam Speaker, this is a timely Motion and indeed our Chair Hon. Malde. We have been actually experiencing a lot of problems from the Inspectorate department and indeed this is the time where we need a structured taskforce that is mandated to handle the human resource. The human resource that we have is the people we are mandated to safeguard. There is need to ensure that the Inspectorate department is well versed with information.

Madam Speaker, I have the following to elaborate, I have noted them in point form. Kindly follow me as I deliberate on them. We have the County Secretary as the Chairperson, who is justified according to Section 44 (3) (a) of the County Government Act, is the head of Public Service in the County hence qualified to chair.

The Chairperson of the County Public Service Board, under Section 49 (1) (h) of the County Government Act, 2012, mandates the County Public Service Board to advise the County Government on human resource management and hence the Chairperson of such Board fits to be a member. We need a person who is conversant with human resource management to head such a department.

Madam Speaker, on the nominee from the County Public Service Management department, we need officers who understand day to day operations on the Inspectorate officers with a clear understanding of the County HR policy and the manual.

Madam Speaker, on the nominee from the office of Inspector General of police, we are all aware that security is not a devolved function but since there is a thin line between Inspectorate Department function within security, such representation is of essence. We need one from Inspector General to guide us on how to handle these issues.

Madam Speaker, on the nominee from the County Attorney, this will enable multi-agency taskforce to effectively examine and evaluate the Nairobi City County Inspectorate Service Act, 2017 with a view of recommending amendments where necessary for effective operations of the department.

We need a nominee from the Department of Finance and Economic Planning to help us restructure this body. We also need a qualified consultant to be sourced by County Secretary from amongst qualified persons. We also need one from registered Business Association of Nairobi City County. The personnel should be well equipped with knowledge on how to handle these people. I beg to support the Motion.

Hon. Speaker: The mover to reply.

Hon. Jayendra Malde: Thank you, Madam Speaker. I thank Members for their contribution to this Motion. Let us keep in mind that the Inspectorate officers are the ones who are in contact with the general

public and their conduct matters a lot. I also wish to extend hand to Members who are yet to make up their minds to support this Motion. Thank you, Madam Speaker, I beg to reply.

(Question put and agreed to)

ADJOURNMENT

Hon. Speaker: There being no any other business, the House stands adjourned to Wednesday, June 13, 2018 at 2:30p.m.

(The House rose at 3:50 p.m.)