



NAIROBI CITY COUNTY ASSEMBLY

OFFICIAL REPORT

First County Assembly – Fifth Session

Thursday 27th September, 2018

The House met at 2.30 p.m.

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

PRAYERS

QUORUM

Hon. Acting Speaker: Clerk, confirm if there is quorum. Serjeant-at-Arms, ring the bell was five minutes.

(Quorum bell was rang)

Deputy Leader of Majority, there are washrooms on this other end. There is quorum now, let us proceed.

MESSAGES

Hon. Acting Speaker: Hon. Members I have a message from the Governor of Nairobi.

PROPOSED CONSTRUCTION OF NEW PUMWANI HOSPITAL AND RECONSTRUCTION OF MUTUINI HOSPITAL

The Nairobi City County Government in a bid to improve and expand Health facilities within the County has identified two existing hospitals; Pumwani and Mutuini for upgrading and redevelopment. The County Government intends to undertake this project through engineering, procurement and construction (EPC) turnkey lump sum contract. This is therefore to request the Assembly to approve this contract.

Hon. Members, since the matter relates to hospital matters under the docket of Health, I direct that the Committee on Health looks into the letter and give us a brief in the shortest time possible.

Chair for Health.

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Hon. Peter Warutere: Thank you, Hon. Speaker. I take this opportunity to congratulate you for taking this very important task of taking us to the next level.

I have seen that letter and we need to see the nitty-gritties of the contractual agreement. Therefore, I beg the majority Leader or the Executive to furnish us with the contractual agreement, the framework of that project so that we can act expeditiously and report to this House by next week.

Hon. Acting Speaker: Thank you.

(Point of Order)

Hon. Member for Waithaka, you have a Point of Order?

Hon. Anthony Karanja: I rise on a Standing Order No. 39 regarding the communication from the Governor. Since when did we start approving project for the Executive? This is very strange. I have been here for the last six years and this is the first communication of that kind I have heard because we have been asked to approve a project. What is the rationale for that?

Hon. Acting Speaker: Thank you. The Member for Waithaka has brought an interesting angle. But then since there was a communication to the office of the Speaker, my business is to transact and give it to the relevant committee. However, the issues that you have raised are also interesting, and before I direct what the Committee should do, the leader of the Government side wants to have a word on the matter.

Hon. Abdi Hassan: I want to inform the Member that we are not engaging on procurement matters but what we are engaging in is policy because this project is of high magnitude of close to Ksh.4 billion. I think this House needs to approve---- I am not debating but informing the Member on the same so that he should not think that this House is engaged with procurement issues. We are not dealing with procurement issues at all.

Mr. Speaker, you are also aware we are having policy matters on housing---

(Hon. Member spoke off the record)

Hon. Acting Speaker: Let him finish so that you can interrogate it.

Hon. Abdi Hassan: As my colleague is saying, that matter will be conversed when the Committee on Health brings the report to the floor of the House. Thank you, Mr. Speaker.

Hon. Moses Ogeto: Hon. Speaker, on your communication as per the Standing Order No.1, you could have also requested for a report on what happened in Pumwani.

Hon. Acting Speaker: You are out of Order! We are in communication and I am giving people leeway for people to express themselves on the message from the Governor. Hon. Osman, do you have an issue?

Hon. Osman Adow: My friend, Hon. Majority Leader talked of policy document. Where is the policy document you are discussing that we are passing? That is what we need to know.

Hon. Acting Speaker: Order! Hon. Osman you are a senior member and you know that this Committee or any other Committee in the House has the privilege to summon the Executive to bring any document or commit it in the report that they were not sufficiently supplied. They might even say that the project should not continue if they do not have the necessary documents. Hon. Minority Whip.

Hon. Peter Imwaotok: Hon. Speaker, first of all congratulations for being elected as the Acting Speaker. In my mother tongue, they say “if I die in a war, tell my mama I did my best.” Before we discuss about the communication from the Governor in this House, allow me to ask Members of this Assembly, with your permission to stand and give respect---

Hon. Acting Speaker: Order! You are out of order, have your seat. Hon. Members, I allowed that debate so that we kill the culture that any communication that has been brought has a sinister motive. I want to take you to County Governments Act, 2012. Article 8 talks about the role of the County Assembly. 8(1) says, “*The county assembly shall:*

- (a) vet and approve nominees for appointment to county public offices as may be provided for in this Act or any other law;*
- (b) perform the roles set out under Article 185 of the Constitution;*
- (c) approve the budget and expenditure of the county government in accordance with Article 207 of the Constitution, and the legislation contemplated in Article 220(2) of the Constitution, guided by Articles 201 and 203 of the Constitution;*
- (d) approve the borrowing by the county government in accordance with Article 212 of the Constitution;*
- (e) approve county development planning; and*
- (f) perform any other role as may be set out under the Constitution or legislation.”*

So, it is within our mandate to approve County Development Planning.

Further, under Article 43(3) of our Standing Orders says “*When a message from the Governor or the Senator of the County is read, the message shall be deemed to have been laid before the County Assembly and the Speaker may either:*

- (a) direct that the message be dealt with forthwith; or*
- (b) appoint a day for the consideration of the message; or*
- (c) refer the message to the relevant Committee of the County Assembly for consideration.*

As far as those two legal passages that I have read, I think that it is in order that the message of the Governor regarding the development of Pumwani and Mutuini be committed to the relevant committee which is Health and they have given us a day.

I have another message from the Governor.

APPROVAL AND VETTING FOR APPOINTMENT OF COUNTY CHIEF OFFICER

Pursuant to Section 8(1) of the County Governments Act, 2012 and Section 5 of the Public Appointments County Assemblies Approval Act, 2017, the following persons have been nominated from amongst persons competitively sourced and recommended by the County Public Service Board through the office of the Chief Officer vide the letter No. NCBSB/HRM/8/VOL4 (70) dated 12th September 2018.

1. Alkano Dida Waqo – County Chief Officer for ICT

He therefore requests that the letter be forwarded through the County Assembly for approval and vetting. With the same, I want to direct that the communication from the Governor be committed to the ICT

Committee for vetting and give us direction at the earliest possible time. Is the Chairman of ICT here? Hon. Osman.

Hon. Osman Adow: Mr. Speaker--- I still have a problem with that word.

Hon. Acting Speaker: Order! What do you have a problem with?

Hon. Osman Adow: You've elevated to be the Speaker. I almost said "Thank you, Hon. Chege" instead of saying Mr. Speaker.

(Laughter)

Hon. Acting Speaker: But Hon. Osman, that is my name and I have no problem being called Chege, Mwaura or Sheii.

Hon. Osman Adow: Thank you for that directive, Mr. Speaker. We will do it according to---

Hon. Acting Speaker: Hon. Member, you are under no obligation to refer me to the title. You can refer me to the name that appears on my Identity Card.

Hon. Osman Adow: Thank you, Hon. Chege.

(Laughter)

Hon. Acting Speaker: Proceed.

Hon. Osman Adow: We will undertake it within the timeframe provided within the law.

Hon. Acting Speaker: Thank you. Next Order.

NOTICE OF MOTION

Hon. Acting Speaker: There is a notice of Motion. Chairperson Sectoral Committee on Culture and Community Services? The Vice Chair? Hon. Mwangi Njihia, I am aware that he is out of the Country. Who is the Vice Chair of Culture? Who is the Vice Chair of Culture? Hon. Gatune? Who are the members from this Committee that can... Or do we defer it? I think what we do, the Leader of Majority and--- I cannot see your Whip, I want you to take this undertaking, that if there is an issue that is being brought on the floor the member is supposed to be made aware of it. If the Chair is not there then the Vice Chair or at least any one member should be ready for it otherwise it will not look okay on the management of the committee. I want you to put in your word.

Hon. Abdi Hassan: Thank you, Mr. Speaker sir. I want to undertake that I will make sure that Chairpersons of the committees or their deputies must be present in the House to take the business of this House serious. Thank you Mr. Speaker. Mr. Speaker, you need to protect me from the Minority Deputy Whip, he should know that when the Majority Leader is on the floor he has no business speaking when I am speaking and the Standing Order protects me on that. He must respect seniority. Thank you, Mr. Speaker sir.

Hon. Acting Speaker: Hon. Ogeto, I know that you are very well versed in the Standing Orders and you know that if the Leader of Majority is on the floor or the Minority Leader that he takes precedence. Do you want to add something to it?

Hon. Moses Ogeto: Yes, I wanted to remind the Leader of Majority that his members who are Chairpersons and Vice Chairpersons are failing this House. Hon. Speaker there is nowhere I have seen in

any parliament where the Chairperson, Vice Chairperson are not in the House so the Leader of Majority should whip his members so that they can be part of this Assembly.

Hon. Acting Speaker: I hear you but Hon. Ogeto, the Majority Leader has committed to take that undertaking otherwise... You want to say something Majority?

Hon. Abdi Hassan: Yes I want to inform my good friend here, if you see the Chair or the Deputy is not here they must be out on official duty so he should not condemn my Chair for no apparent reason. Mr. Speaker, thank you.

Hon. Acting Speaker: I agree with him that... Hon. Whip you know that the role of a member is not only legislation, it is also representation and he might be out but what we have said is that - Hon. Gatune is in the country, he is not outside the country. The office of the Clerk should ensure that any time a paper is being laid that the member who is supposed to be on it or a designated person be given the chance. So let us proceed. We will drop this issue to Tuesday next week. Hon. Whip do you have something to say on that issue?

Hon. Peter Imwatok: Mr. Speaker, as the leader of the opposition we are very concerned with the absentia of the Chairpersons and the Vice Chairpersons. Yesterday I said here to the Hon. Majority Leader and now I am shifting the gears to the Chair of chairs who should give us the time to ensure that our questions are answered by his cabinet. The cabinet for this Assembly comprises the chairpersons and the vice chairpersons and I will still repeat, Chair, and with respect Speaker, that if possible we rearrange the front seats on the Government side so that we see the morphology of these people, the body language and if they are able to lead us in these committees...

Hon. Acting Speaker: Order! Hon. Whip, you cannot purport... No member can look like he is not able to transact business so I will allow your sentiments to also go to the Chair of the Liaison Committee and he has also taken an undertaking that he will work with his Chairs. Next order please. Chair of Liaison, do you want to add your voice on this?

Hon. Acting Speaker: Thank you, Hon. Speaker. I just want to echo what the Hon. Majority has said, that when you see a member, Chair or a Vice is not here he has other Government business or he is out of the country but what I am saying is that I am also going to undertake the same, it is a concern that affects everybody and I am going to take the matter seriously and it will never be repeated again. Thank you very much, Mr. Speaker.

Hon. Peter Imwatok: The opposition can bring a Motion next week.

Hon. Acting Speaker: Order Minority Whip, you are out of order. Next order.

STATEMENTS

Hon. Acting Speaker: Hon. Majiwa, you have a statement?

Hon. Geoffrey Majiwa: Thank you Mr. Speaker. I expect to be read for a statement, it is not me but it is being read for me, I asked a question.

Hon. Acting Speaker: Okay. Chairperson for Sectoral Committee on Labour and Social Welfare.

Hon. Peter Wanyoike: Thank you, Mr. Speaker. The Sectoral Committee on Labour and Social Welfare response to a statement requested by Hon. Geoffrey Majiwa, MCA from the Chairperson of the sectoral Committee of Labour and Social Welfare. Mr. Speaker, on 20th February 2018 Hon. Geoffrey Majiw. The MCA rose on the floor of the Assembly pursuant to Standing Order 45(2)(c) and requested for a statement from the Chairperson of the Sectoral Committee on Labour and Social Welfare regarding the

disciplinary procedures of the County Public Service Board specifically on employee management. In the statement the member requested that the Chairperson should enquire into and report on:

1. Why the Board has refused to reinstate the affected employee whose appeals are successful such as Mary Githara; and
2. What consequences if any has the Board or its membership suffered for derailing the course of justice of faulty labour laws and laid down procedures in the handling of employee related disputes.

Hon. Speaker, the Committee wrote to the Public Service Board on the 21st march 2018 inviting them to a meeting on a committee that was to be held on 10th April, 2018 at the County Assembly pursuant to Standing Order 45(2)(d). Hon. Speaker in attendance was the Hon. Majiwa who requested for the said statement and the Secretary to the Board. The purpose of the meeting was to enable the County Public Service Board to furnish the Committee with the response to the statement requested by the Member. In this regard, Hon. Speaker, I wish to report to the Assembly as follows.

1. *Why the Board has refused to reinstate the affected employee whose appeals are successful – Ms. Mary Githara* - Hon. Speaker, the Committee was informed that Ms. Githara was dismissed from service with effect from 9th April, 2014 on account of gross misconduct resulting from grossly exaggerated bids resulting in a loss of public funds of KSh.1.5 million and KSh.3.88 million respectfully for 2 tenders. The officer was also accused of manipulating the minutes of the Tender Evaluation Committee making them unreliable. It also emerged that she has an interest in Skeltek Enterprise and Rota Trading Limited associated with one Esther Njoki Githara who is her sister a fact that she did not declare contrary to Section 12 of the Public Officer Ethics Act.

The Director of Investigations and Information Analysis conducted an investigation and on the basis Ms. Githara was arrested and arraigned in court on 6th June, 2014 with forgery of documents contrary to Section 351 read with 349 of the Penal Code. The County Human Resource Management Advisory Board (HRMAB) deliberated on the matter and resolved to discuss the officer on account of gross misconduct. The officer appealed the decision to the Board on the 18th June, 2014 when the appeal was dismissed for lack of new material evidence to warrant a review of the decision of the HRMAB.

Therefore, Ms. Githara requested a review of the decision by the Board on compassionate grounds which the Board considered and upheld the dismissal on 15th June 2017. She then sued the County Executive in the Employee and Labour Relations Court claiming that there was malice in determining her matter. The case is still pending determination and the Board does not wish to go into more details on the matter due to the rule of subject. The Committee wrote to the County Public Service Board asking to review its decision to dismiss the officer from service on humanitarian grounds and the Board declined stating that it was unable to revisit the matter as there is a case pending determination in court.

2. *What consequences if any has the Board or its membership suffered from derailing the course of justice of flouting Labour Laws and laid down procedures in the handling of employee relations disputes* - Hon. Speaker, the Committee was informed that the County Public Service Board has not had cases of its memberships who have been accused of derailing the course of justice or who have flouted labour laws and laid down procedures in the handling of employee related disputes. The Board or its membership has therefore not suffered any consequences on the same. Hon. Speaker, the Committee was not satisfied with the response given by the County Public Service Board and therefore it resolved to conduct an investigation

on the matter and table the comprehensive report with recommendation. Hon. Speaker, I beg to lay this statement. Thank you.

Hon. Acting Speaker: Hon. Majiwa, are you okay with the response?

Hon. Geoffrey Majiwa: Thank you, Mr. Speaker. I am okay with the statement with a hope that as the Chairperson has read, that they are going to conduct an investigation and that will be concluded in the shortest time possible so that we can assist where possible. Thank you.

Hon. Acting Speaker: Okay thank you. The Chairperson of Sectoral Committee on Planning and Housing.

Hon. Peter Imwatok: This is a response to a statement requested by Hon. Chege Mwaura.

Hon. Acting Speaker: Chairperson, you will respond on the second... Because Hon. Chege Mwaura is not in you will respond on the second statement that was requested by Hon. Joseph Wambugu.

Hon. Peter Imwatok: Protect me from harassment by the Majority Whip.

Hon. Acting Speaker: Whip, just a minute, let him finish I will give you a chance.

Hon. Peter Imwatok: *(Inaudible)*

Hon. Acting Speaker: On which Point of Order are you standing on?

Hon. Peter Imwatok: Number 80, statements.

Hon. Acting Speaker: Okay.

Hon. Peter Imwatok: Mr. Speaker, I appreciate the Chair of Labour and the Hon. Member Majiwa for asking this very pertinent question on the issue of the staff. Mr. Speaker, I also want to implore the Chair that as they do investigations on that single incident of the member of staff who was fired as the Chair put it, that so far the Service Board has not given us a satisfactory answer. Mr. Speaker, we would also wish the Chair of Labour to understand how many members of staff have been fired arbitrarily...

Hon. Acting Speaker: Order Hon. Whip. Standing Order number 80 does not say what you are talking about, it talks about something else so you are out of order and it is wrong to mislead the House...

Hon. Acting Speaker: So, you are out of order. Continue ... and it is wrong to mislead the House.

Hon. Anthony Karanja: Thank you Hon. Speaker. This is a response to a statement requested by Hon. Joseph Wambugu MCA from the Chairperson of Planning and Housing Committee. Hon. Speaker on Wednesday---

Hon. Acting Speaker: Is Hon. Wambugu in the House?

Hon. Anthony Karanja: Yes he is

Hon. Acting Speaker: Okay, proceed.

Hon. Anthony Karanja: On 15th August 2018, Hon. Joseph Wambugu MCA, rose on the floor of the Assembly pursuant to Standing Order 45 (2) (c), and requested the Chairperson Planning and Housing Committee for a statement regarding the ongoing construction on riparian land along Karura River in Karura Ward. According to the Member, a private developer is currently constructing a building on plot L. R No. 209/870/7&8 at City Park Estate off Limuru Road thus blocking a main stream that sustains Karura Forest ecosystem.

The Member further asked the Chairperson to inquire into and report on:

1. Who authorized the development on the riparian land;
2. Proof of documents for the approval of the development; and
3. Approval for change of user for the said land

Hon. Speaker the committee wrote a letter to the County Executive Committee Member responsible for Lands, Urban Renewal and Housing on 22nd August 2018 where the contents of the request were outlined. Further, the CECM for Lands, Planning and Housing delivered a written response to the Committee on 18th September 2018 on the issues raised. In this regard Hon. Speaker I wish to report to the assembly that:

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1. Who authorized the development on riparian land?**Response**

- Change of user of the development of office to apartments was done by Nairobi City County
- The site was visited on 5th September 2018 and it was established that the developer had encroached by 2 meters into the riparian reserve.
- An enforcement notice to ensure the 9 meter riparian and threshold reserve was subsequently issued
- No construction is going on since the developer had been advised to comply with the 9 meters riparian reserve

2. Proof of document for the approval of the development (are attached herewith)**3. Approvals for the change of user for the said land are attached (attached herewith)**

Hon. Speaker we gave all these documents to Hon Wambugu and I believe he was satisfied with the response.

Hon. Acting Speaker: Hon. Wambugu, are you satisfied?

Hon. Joseph Wambugu: Yes Hon. Speaker I am satisfied.

Hon. Acting Speaker: I have not permitted you. I think statements are not supposed to be dependent....you are a senior member you understand better. Next order!

MOTION

Hon. Kennedy Obuya: Mr. Speaker I believe it is my time?

Hon. Acting Speaker: Yah it is so ordered.

Hon. Kennedy Obuya: I need your protection, thank you so much.

Hon. Acting Speaker: What is it Chairman?

Hon. Robert Mbatia: Mr. Speaker we had a response to make to Hon. Majiwa and the Chair instructed that it has to be done today, that was from yesterday. So I don't know whether we were slotted time or not. But we had a response to make on a statement by Hon. Majiwa and the Chair instructed us to give it today.

Hon. Acting Speaker: It is not scheduled in this Order Paper. I think you can bring it on Tuesday next week. Proceed.

Hon. Kennedy Obuya: Thank you Hon. Speaker. Hon. Speaker I beg to move a Motion; AWARE that Paragraph 8 (e) of Part II of the 4th Schedule of the Constitution of Kenya 2010 provides for County Planning and Development particularly on electricity and gas reticulation and energy regulation as a County function; FURTHER aware that Section 6 (2) (c) of the County Government Act 2012 gives power to the County Governments to delegate any of its function to its officers, the centralized units or any other entities in the county; NOTING that Nairobi County is yet to realize its potential on renewable energy from resources such as solar, bio gas, bio mass, wind and by recycling of solid waste; FURTHER NOTING that Energy sub-sector in the financial year 2018-19, budgetary allocation had a total budget of 360 million, with an allocation of 340 million under development and 20 million under recurrent to promote use of clean and affordable energy for Nairobi and its visitors; CONCERNED that the sector lacks sufficient capacity to implement key

renewable energy projects such as solar lighting...Mr. Speaker I am begging Hon. Members to --- this is a crucial Motion.

Hon. Acting Speaker: Hon. Members, Hon. Majiwa please consult in low tones.

Hon. Kennedy Obuya: Thank you Hon. Members, thank you Hon. Speaker. FURTHER NOTING that any energy sub-sector in the financial year 2018-19 budgetary allocation had a total budget of 360 million with an allocation of 340 million under development and 20 million under recurrent to promote use of clean and affordable energy for Nairobi and its visitors, CONCERNED that the sector lack sufficient capacity to implement key renewable energy projects such as solar lighting, bio mass technology among others. APPRECIATING that there is need for the County Governments to build the existing capacity Mr. Speaker of the sector to enable them engage in effective Public Private Partnerships where necessary as contemplated in Section 6 (3) of the County Government Act of 2012; This Assembly Mr. Speaker Urges the County Executive to move with speed and establish a fully-fledged Electrical Engineering Directorate under the existing energy sector to enable the County to maximize on the existing renewable energy projects in the County for cost effective gains.

Mr. Speaker I am pleading and praying to my fellow colleagues in this Hon. House that with the vision of 2030 it is important as a nation as the capital Assembly of this great nation, that we have to move with speed to capture effects of global warming and also advance and put our government to also advance with the same space. Hon. Speaker I am appealing as I look at the mood of the House and also Hon. Wambugu to second the Motion. Thank you Hon. Speaker.

Hon. Joseph Wambugu: Thank you very much Hon. Obuya for allowing me this opportunity to second this Motion and Hon. Speaker thank you for sitting on your seat. For the benefit of the nurses in the House like Anita, renewable energy are energy sources that are collected from renewable resources and these are some of the things that we are asking the County to harness in order for this County to benefit from the vast natural renewable resources that are available within the County. These range from solar, wind, bio gas and other natural gases among other renewable resources. So, we are asking the County to just set up a department that will not only formulate policies to enable the implementation for these renewable resources but also to allow the utilization of the budget for this County.

Looking at the previous finances for the County, there was a very low uptake when it came to development vote of about 4% and this should not be repeated in the next financial year. So, ICT and energy having been allocated a budget of this 340 million should then focus on getting this department set up and allowing this department to come up with policies that will make sure that implantation of energy, renewable energy sources are well harnessed from the Ward level up to the County level.

You realize we pay a lot of bills on electricity so as much as we have a lot of street lighting programme we are paying a lot on electricity bills. So these renewable resources will cut down on our spending because if only we can think about the street lighting programme being harnessed by using renewable resources, we will save a lot of money to the tune of millions per year just by implementing this renewable resources programme.

I second the Motion and I urge the members in the House to support it. Thank you very much.

Hon. Acting Speaker: Thank you very much Hon. Wambugu for the seconding the Motion.
(Question proposed)

Looking at the mood of the House, the mover to reply.

Hon. Kennedy Obuya: Thank you Hon. Members. Hon. Speaker I want to thank my Chairman for Energy and the Committee Clerks for Energy and ICT, we worked as a committee to the interests of this motion Hon. Speaker and as members of the Committee we were also looking at the greater picture to the interests of all representatives both nominated and elected and the residents and citizens of this great County.

Hon. Speaker I beg to move.

(Question is put and agreed to)

ADJOURNMENT

Hon. Acting Speaker: There being no other business, the House stands adjourned till next week on Tuesday 2nd October, 2018 at 2.30 p.m.

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