



NAIROBI CITY COUNTY ASSEMBLY

OFFICIAL REPORT

Second County Assembly – Third Session

Thursday 14th November, 2019

The House met at 2.30 p.m.

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

PRAYERS

COMMUNICATION FROM THE CHAIR

REMOVAL OF ELIAS OTIENO AS MINORITY LEADER

Hon. Speaker: Hon Members my office is in receipt of a letter from the Minority Whip pursuant to Standing Order 21(8) communicating the decision by the minority coalition on the removal of Hon. Elias Otieno Okumu MCA, member of Kileleshwa ward, as Minority Leader of the county assembly pursuant to Standing Order 21(1).

Hon members Standing Order 21 (7) states: *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 second largest party or coalition of parties in the county assembly.*

Hon Members, further Standing Order 21(8) states that: *the whip of the second largest party or coalition of parties in the county assembly shall for with 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 I have read the letter from the minority whip together with the minutes of the meeting in which the aforementioned decision was made to ensure that the provision of the Standing Order are satisfactory and adhered to.

Hon members in a meeting of the minority coalition held today 14th November 2019, 44 out of 55 members which is more than two thirds requisite resolved to remove Hon. Elias Otieno Okumu MCA as the minority leader to this assembly.

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Hon members Standing Order 21 (9) states: *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.*

Consequently, hon members I therefore direct that this minority coalition do designate a member as Minority Leader to replace Hon Elias Okumu (*Applause*) MCA provided for in Standing Order 21(1) within 48 hours pursuant to Standing Order 21(9). Always remember it is a political issue; you will have to go to your political party for the house to know who will be the Minority Leader. It is so directed.

(Applause)

PAPERS LAID

Hon. Mbugua Kabiro: Thank you very much Madam Speaker, pursuant to Standing Order 205 I beg to lay the following papers on the table of the floor today 14th November 2019, the report of ad-hoc committee on its investigation of the appointment of Mr. Jacob Ngwele as the Clerk of Nairobi City County Assembly.

Hon. Speaker: Hon Kabiro you lay it on the table. Majority leader?

Hon. Charles Wakarindi: Thank you Hon Speaker, pursuant to Standing Order 25(4) I beg to lay the following paper on the table of the assembly today the 14th of November 2019; address by the Speaker of Guateng provincial legislature of South Africa Hon LM Megkwe to the Nairobi City County Assembly.

Hon. Speaker pursuant to section 166(1) of the Public Finance Management Act 2012 I beg to lay the following paper on the table of the assembly today 14th November 2019; the Financial Year 2019/2020 First Quarter Consolidated Report and Financial Statements, thank you.

NOTICES OF MOTION

Hon. Speaker: Majority Leader?

Hon. Charles Wakarindi: Thank you, Hon Speaker I beg to give notice of the following motion: That the thank of the county assembly be recorded for the exposition contained in the address of Guateng provincial legislature laid on the assembly on Thursday 14th November 2019, thank you.

Hon. Mbugua Kabiro: I beg to give notice of the following motion: That this assembly adopts the report of ad-hoc committee on its investigation of the appointment of Mr. Jacob Ngwele as the Clerk of Nairobi City County Assembly laid on the table of this assembly on the Thursday 14th November 2019.

Hon. Mary Mwami: Thank you Madam Speaker for this great opportunity. I beg to lay the following motion before you: The removal of the Chairperson of the committees from office pursuant to Standing Order 15(5). Aware that Article 73 (1)(2)(ii) grant authority in trust to state officers to exercise such trust in a...

Hon. Speaker: Hon Mary you are supposed to just give us notice of motion.

Hon. Mary Mwami: Thank you Madam Speaker, thank you for the correction. As I talked the other day I have never done much in this house but thank you for this opportunity, I beg to lay this motion before you. Thank you.

Hon. Speaker: Proceed Clerk. Hon. Mary Ariviza, I want you to start by saying: 'I give notice' and you have to read what you are giving in the notice, because we don't know.

Hon. Mary Mwami: Thank you Madam Speaker for teaching me. I want to give notice of motion of removal of chairperson of committees from office pursuant to Standing Order 15(5). Aware that Article 73(1) (a)(ii)(iii) grants authority in trust to the state officers to exercise such trust in a manner that demonstrates respect for the people and to bring honour to the nation and the dignity to their office;

Further aware that Article 73 (2) (d)(c)(e) envisage guiding principles of leadership and integrity which includes objectivity and impartiality in decision making and ensuring the decision are not influenced by improper motives or corrupt practices, selfless service based on the public interest and discipline and commitment in service to the people;

Noting that Article 75 (a)(b) mandates state officers to behave whether in public official life and in private in a manner that avoids any conflict between personal interest and public and compromising any public or official interest in favour of a personal interest, further noting that the Leadership and Integrity Act of 2012 and Public Officer Ethics Act imposes a duty on state officers to carry out their duties on the best of their ability and to ensure that he services they provide are efficient and honest and always uphold the rule of law;

Deeply concerned that Nairobi County Assembly chairperson of committees or deputy Speaker has failed to provide such leadership in time of crisis at the county assembly and regretting that the conduct of Hon John Kamangu MCA through his actions and omissions has caused the assembly great embarrassment and brought the office of the chairperson of committees into disrepute contrary to the gamut of laws on conduct of state officers of his caliber.

This assembly resolves to sanction and remove the hon Kamangu as holder of office of chairperson of committees of county assembly of Nairobi city pursuant to Standing Order 15(5) on the following grounds:

1. Failure to show leadership.
Violation of Constitution of Kenya 2010, Leadership and Integrity Act 2012, the Standing Orders
 - a. Violation of Article 75 of the Constitution of Kenya on conduct of state officers by failing to advise the county assembly to respect the rule of law upon pronouncement of the High Court reinstating the Hon Beatrice Elachi as the Speaker of Nairobi City County Assembly.
 - b. Violation of Article 75 of the Constitution of Kenya on the conduct of state officers by attending press briefing condemning the office bearer of the office of Speaker, Nairobi City County Assembly.
2. Conflict of interest, gross violation of the Constitution of Kenya 2010, The Leadership and Integrity Act of 2012 and the Public Officers Act.
 - a. Violation of the Constitution of Kenya specifically Article 73 on responsibility of leadership which requires objectivity and impartiality in decision making and selfless service based on public interest demonstrated by honesty in execution of public duties and declaration of any personal interest that may conflict with public duties.

- b. Violation of section 16 of the Leadership and Integrity Act of 2012 which requires state officer to use the best effort to avoid being situation where personal interests conflict with state officer' official duties.
 - c. Violation of section 8(10) and (12) of Public Officers Ethics Act 2012 which requires public officers to perform their duties to the best of their ability and in carrying these duties to not violate the rights and freedoms of any person under the constitution for instances the continuous violation rights of Hon Beatrice Elachi upon the court pronouncing itself and confirming her as the substantive Speaker of the assembly by standing in solidarity with her with other members to violate her rights to hold her office as Speaker of the assembly.
3. Abuse of office and gross misconduct. Violation of the constitution of Kenya 2010, Leadership and Integrity Act of 2012 and the Nairobi City County Assembly Standing Orders:
- a. Violation of Article 178 of the constitution of Kenya by failing to provide leadership to the assembly in the absence of Speaker as contemplated in Article.
 - b. Violation of section 23(2) and (24) of Leadership and Integrity Act 2012 by engaging in political activities seeking to bar the office of the bearer of the office of Speaker from assuming her office despite a court pronouncing itself to it.
 - c. Gross violation of Standing Orders on 6th September 2018 by presiding and un-procedurally allowing an illegality of amendment of the Standing Orders by the Assembly Business committee with the full knowledge that the select committee on Rules and Procedures have not been constituted.

Madam Speaker I beg to lay the motion.

MOTION

ADOPTION OF REPORT OF AD-HOC COMMITTEE ON INVESTIGATION INTO THE CIRCUMSTANCES SURROUNDING THE EMPLOYMENT OF MR. JACOB NGWELE AS THE CLERK OF NAIROBI CITY COUNTY ASSEMBLY

Hon. Mbugua Kabiro: I beg to move that this assembly adopts the report of ad-hoc committee on investigation into the circumstances surrounding the employment of Mr. Jacob Ngwele as the Clerk of Nairobi City County Assembly.

Hon. Speaker the adhoc committee which was formed in previous sittings on Thursday 7th November in which moved a motion seeking that an ad-hoc committee looks into the situation which engulfed the employment of Mr. Jacob Ngwele and that motion was amended by Hon. Wilfred Odalo, it was adopted by this house and the members to that committee were clearly stipulated.

Madam Speaker I want to take you through the membership of that committee. There was:

- i. The Hon. Kabiro Mbugua, MCA – Chairperson
- ii. The Hon. Kennedy Oyugi, MCA – Vice-Chairperson
- iii. The Hon. Millicent Jagero, MCA
- iv. The Hon. Nancy Muthami, MCA
- v. The Hon. Julius Maina Njoka, MCA

- vi. The Hon. Elijah Mputhia, MCA
- vii. The Hon. Patricia Mutheu, MCA
- viii. The Hon. Rose Ogonda, MCA
- ix. The Hon. Peter Imwatok, MCA
- x. The Hon. David Ayoi, MCA
- xi. The Hon. Mary Arivisa, MCA

Hon Speaker I want to thank your office together with the members of this committee together with the secretariat for making sure that this report is done and within the time stipulated by the motion earlier presented by Hon Peter Inyule Imwatok.

Madam Speaker the riddle that surrounded the employment of Mr. Ngwele is something that amazes and still amazes me together with other members of this committee.

Ngwele was taken in this assembly during the transition times. In order to efficiently address the issues of devolution Ngwele was presented to us or rather the previous assembly by the Transition Authority in line with other Clerks in different counties and that was a good move. It has not negated the law because the Transitional Authority was rightful during the period.

In order to efficiently address the house resolution, the committee resolved to establish the following:

1. What was the employment status of Mr. Ngwele prior to his coming to the county assembly?
2. Was Mr. Jacob Ngwele among the persons recruited by the Transition Authority and subsequently seconded to the Nairobi City County Assembly as interim Clerk? What were the terms of his secondment?
3. Did the county assembly Service Board competitively recruit Mr. Jacob Ngwele as the Clerk of the assembly by advertising the position at the end of the transition period. Did they hold interviews and forth?

Was Mr. Ngwele submitted to the county assembly by the Service Board for approval in accordance to section 18 of the County Assembly Service Act, section 13 of the County Government Act 2012 together with the Parliamentary Service Act 2000 repealed in 2017.

4. What was the rationale and validity of the consent between the County Assembly Service Board and Mr. Jacob Ngwele regarding the former employment as the Clerk of the Nairobi City County Assembly?
5. Was there any collision between the board members and Mr. Ngwele to have confirmed the Clerk and was there any mischief hidden.
6. Has the county assembly been operating with an illegal Clerk?
7. Should the County Assembly Service Board proceed and competitively fill the position of the Clerk as required under the relevant legislation
8. Is there need for any further investigation and prosecution.

Hon. Speaker in its inquiry the committee invited members of the County Assembly Service Board who were serving during the period. They also invited Mr. Ngwele to the committee to provide both oral and written submission on the matter and all of them declined to appear.

Equally the committee also sought the opinion of Parliamentary Service Commission and reviewed the relevant documents on record with respect to the service of Mr. Ngwele in the County Assembly in accordance to the committee also considered all applicable legislation, policies, regulations. The committee further reviewed parliamentary practices, its traditions and precedents as they apply to the employment of the Clerk in a legislature.

Hon Speaker the Clerk of the Senate who was very helpful giving us documentary account of what happened during transition time and times when Ngwele was seconded to this assembly submitted to the committee and informed us as follows, as contained in one of the annexures of the reports submitted and which I have laid.

And if you look through the report, you will find the annex. Madam Speaker, the Clerk of Senate has signed a letter and I don't believe he would lie and I would like to read the account over which Jacob Ngwele came to this Assembly and I start.

- i) That Mr. Jacob Ngwele was deployed by the Transition Authority to serve as the Interim Clerk of Nairobi City County Assembly on secondment with effect from 12th of February, 2013. He was subsequently released by the PSC to report at the County Assembly on 29th April, 2013. And I would like the Hon. Members to look at the specific dates which are being mentioned so that we can have an interactive session immediately after.
- ii) That on 18th December, 2014, Mr. Jacob Ngwele wrote to the Clerk of the Senate/Secretary PSC requesting for an extension of his secondment to allow him complete the process of recruitment of a substantive Clerk of the Nairobi City County Assembly and oversee the smooth handing over of the Office by or before 30th June, 2015.
- iii) That on 19th of February, the PSC at its 205th meeting held on 19th February, 2015 granted Mr. Ngwele a six-month extension of his secondment to the Nairobi City County Assembly.
- iv) That on 19th of May 2015, the Speaker of Nairobi City County Assembly wrote to the Clerk of the Senate/Secretary, PSC requesting for an extension of Mr. Ngwele's secondment to the County Assembly for a period of three (3) years within which the Nairobi City County Assembly would be paying his salary and allowances. This was in order to assist the Assembly in implementing the plans and programs which the Board had put in place.
- v) That Mr. Ngwele subsequently wrote to Clerk of the Senate/Secretary, PSC requesting the Commission to grant him leave of absence for a period of three (3) years without pay. The PSC at its 214th meeting held on 24th August, 2015 granted Mr. Ngwele a three-year non-renewable leave of absence effective 1st of July, 2015.
- vi) That on the 21st of July, 2017, Mr. Ngwele tendered his resignation from the PSC effective 1st of August, 2017 on account of having been appointed as the Clerk of the County Assembly of Nairobi.

Madam Speaker, you will realize that this date is on the 1st of August 2017 and at that point, the Assembly was in *sine die*. So, the Assembly was not functioning. Yes, purportedly, Mr. Ngwele was employed as the County Clerk of Nairobi.

Hon. Speaker, the committee having considered the evidence of the Clerk of the Senate and other relevant documents on record, observed as follows. And we were able to look at the Hansard. We were able

to look at the Order Papers together with the board minutes just to furnish ourselves with information to guide us towards the determination of these issues.

1. That Mr. Jacob Ngwele was initially an employee of the Parliamentary Service Commission where he served as a Principal Legal Counsel (Litigation). And if you look at the report i.e. annex no. 3 (a) and (j),
2. That during the transition period, Mr. Jacob Ngwele was seconded to the County Assembly by the TA to serve as an Interim Clerk. The transition period was supposed to end in March, 2016. However, according to the PSC the secondment was to end on 31st December, 2014, meaning Mr. Ngwele was to serve as Interim Clerk for (1) year and 10 months. This is captured in annex no. 3(c).
3. That Mr. Ngwele together with the former Speaker Hon. Alex Ole Magelo made several requests to the Parliamentary Service Commission requesting the extension of the secondment period for Mr. Ngwele. The PSC granted the first extension up to 30th June, 2015 i.e. for six (6) months and later for three years fashioned as un-paid leave period which was to end on 1st of July, 2018. The objective of the extension as evidenced in Mr. Ngwele's letter of 11th December, 2014 was to allow for recruitment of a Clerk so that he can smoothly hand over to the new Clerk who was to be recruited. This never happened. Annexures 3 (e, f, g and h).
4. That despite both Mr. Ngwele and Hon. Magelo requesting the PSC to extend the secondment period for Mr. Ngwele up to 1st of July, 2018, the two had participated in a decision to confirm Mr. Ngwele as the Clerk of NCCA on 10th June, 2014. The two public officers misled the PSC that CASB had initiated a process to recruit a Clerk through a HR Consulting firm. As such, Mr. Ngwele was enjoying both benefits of a substantive Clerk of the Assembly and a Principal Officer of the PSC from June 2014 to July 2017 when the officer officially resigned from PSC. This amounts to unethical conduct and against our values as contained in the Constitution. Annexures 3 (e, f, g, h and k).
5. That CASB did not competitively conduct a recruitment process for the position of the Clerk of the Assembly as required under paragraph B.5 of the Human Resource Policies and Procedure Manual for the Public Service on recruitment and selection especially for such a senior position which provides that: -

'recruitment would be undertaken on the basis of competition and merit, representation of Kenya's diverse communities, adequate and equal opportunities to all gender, youth, members of all ethnic groups, persons with disabilities and minorities'.

In addition, the recruitment was evidently contrary to Section 18 of the County Assembly Services Act, 2017, Section 13 of the County Governments Act, 2012 and the Parliamentary Service Act, 2000 (repealed, 2017) which was the national legislation on employment of a Clerk of Parliament during that period.

Instead, the CASB on 10th June, 2014 purportedly confirmed Mr. Ngwele in the position and purportedly consented with him on 21st July, 2017 confirming his employment.

6. That the following were the anomalies in the appointment and confirmation process as noted by the Committee thus rendering the whole process a nullity: -

- i) The position was not advertised and the need for confirmation was allegedly through a petition by Hon. Diana Kapeen and Hon. Wilson Ochola to the Board. There is no advert for the position nor the alleged petition by the two Honorable Members.
- ii) Since the position was not advertised to allow for competition, there was no list of applicants, long-listed and shortlisted persons. Equally, interviews were not held.
- iii) There is no any scientific report of an appraisal to confirm that Mr. Ngwele had performed exemplary as alleged in the Board's minutes to warrant a decision to confirm him to the position.
- iv) Recruitment is a process and not an event that can be concluded in a day as evidenced in the Board minutes and the confirmation letter for Mr. Ngwele. The speed at which the exercise was conducted raises suspicion Annexures 3 (I).
- v) There is no offer letter and appointment letter indicating terms of service issued to Mr. Ngwele by the Board as required under HR practices.
- vi) The authenticity of the Board minutes where Mr. Ngwele was confirmed are in doubt. Madam Speaker, I would like to highlight this. When we were looking into the documents, we interacted with a signature purportedly for the former Speaker of this Assembly having signed minutes of a board that does not look exactly as the signature in which the Hon. Alex Magelo signed while he was transmitting the letter of extension of Mr. Jacob's secondment to the PSC. That is a glaring anomaly and it should be investigated by the relevant authority. There is no offer letter.
- vii) Mr. Ngwele who was the subject of discussion was present in a meeting he was being confirmed/discussed hence raising a question of conflict of interest. Best practice would have been that another officer would be present to provide secretarial services. In these minutes, Mr. Ngwele is the one who signs it as the person who sat through the proceedings of that discussion that appointed him as the clerk and confirmed him.

Notably though, the letter minutes were signed on the 10th of June. On the same date, 10th June, we find the confirmation letter written and signed. The minutes were done on the same day, 10th of June 2014, the minutes were confirmed on the 10th June 2014 and the appointment letter was done on the 10th June 2014.

7. That Mr. Ngwele despite having been confirmed by the Board on 10th June, 2014, he continued being an employee of the PSC until 1st August, 2017 meaning he was holding two public positions. Apparently the same date he sent a letter of resignation to the PSC i.e. 21st July, 2017 is the same date he entered consent in court over his employment. Kindly take note of these dates. The 21st of July 2017 is the same date in which he entered consent in court over his employment case that was filed in 2014. 21st of July is a date of interest. In fact, it is now evident that the Legal Department of the Assembly was not involved.
8. That despite CASB having failed to conduct a competitive recruitment exercise for the position of the Clerk, it knowingly refused to submit the name of Mr. Jacob Ngwele to the Assembly for approval before his appointment contrary to Section 18 of the County Assembly Services Act, 2017 and

Section 13 of the County Governments Act, 2012. In addition, this went against the established parliamentary practices, traditions, and precedents as set by other national and sub-national Assemblies/Parliaments especially from the Commonwealth. Madam Speaker, I am still asking for my commonwealth trip to be given by this Assembly.

9. That the purported consent, annexure 3(m), dated 21st July, 2017 entered between CASB, Speaker of the County Assembly and the County Assembly and Mr. Ngwele on the other side regarding Mr. Ngwele's appointment as Clerk of the County Assembly of Nairobi City has no force of law since it was aimed at sanitizing a fatally flawed legal process and should be disregarded as never entered and termed as an abuse of the court process.

In fact, the same was entered at a time the Board comprised of only two (2) Members in accordance with Section 5(a) (i) of the County Governments Act, 2012 since the Assembly had adjourned. Equally, the County Assembly which was party to the consent was non-existent since it had adjourned sine die awaiting general elections. Such a significant decision of the magnitude of employment of a Clerk of the Assembly could not have happened during such a period of temporary incumbency hence the actions borders on collusion and fraud. In addition, there is no evidence that the Legal Department of the Assembly was involved in the consent process. Madam Speaker, one day, we will go on sine die when Members of this House will go to seek votes. And at that time, illegalities should not be done.

10. That the argument that County Assembly approval process for the Clerk was not a requirement under the legal regime at that time does not hold water. In any case, the Section 13 of the County Governments Act, 2012 provided in mandatory terms for the approval of the Clerk by the Assembly irrespective of whether the person holding the position was on secondment or not. Any other interpretation should be disregarded. The defunct TA's interpretation of the aforesaid section of the law was misleading and cannot be used to circumvent the law. In fact, TA has no mandate of interpreting the law. In addition, Section 8 of the same Act rightly provided that on matters not legislated at that time the national legislation would apply with necessary modification. Indeed, established parliamentary practice demand approval of Clerks of Parliaments.
11. That Nairobi City County Assembly cannot be exceptional in the appointment process of its Clerk by creating its own procedure. All the forty-seven (47) County Assemblies have competitively recruited their Clerks after the transition (secondment) period and their names approved by their respective Assemblies. The recent Assembly to go through the process was Kakamega County Assembly which finished its recruitment in the month of November, 2019. There is no hurry in employing a Clerk. If Kakamega has taken this long to recruit a clerk, we shouldn't be hurried to a process we cannot justify.
12. That the actions of CASB in recruitment of Mr. Ngwele have put the Assembly in an awkward position in as far as the position of the Clerk is concerned since one cannot explain under what circumstances has Mr. Ngwele been serving in the Assembly in the period between the end of secondment period (June, 2014) and when the House adopted the resolution on his re-vocation on Tuesday, 5th

November, 2019. The actions of the Clerk who is an authorized officer may be put to question. I would like to thank Hon. Maurice Gari for bringing that beautiful motion on that day.

13. That Mr. Jacob Ngwele as the Interim Clerk and a Lawyer himself knowingly refused to advise the Board on the recruitment process of a Clerk. The instantaneous confirmation of the Officer by the Board in a meeting in which he was the Secretary explains the sinister motive behind the process.

14. That the malpractices committed in the irregular recruitment of Mr. Jacob Ngwele warrants further investigations of all the persons involved in the process by the Director of Criminal Investigations (DCI), the Auditor General and the Ethics and Anti-Corruption Commission (EACC). In particular, the investigations should center on Mr. Ngwele's actions as the Accounting Officer of the Assembly since he has been serving in that position since 2013.

Hon. Speaker, the Committee has made the following recommendations: -

1. The County Assembly upholds its decision to revoke the appointment of Mr. Jacob Ngwele Muvengi as the Clerk of the County Assembly since the same was irregular.
2. That once orders barring the County Assembly Service Board from performing its duties are vacated, the Service Board should immediately commence the process of recruiting a Clerk of the County Assembly in accordance with Section 18 of the County Assembly Services Act, 2017, Section 13 of the County Governments Act, 2012 and all other enabling legislations. Mr. Jacob Ngwele should be at liberty to apply for the position just like any other Kenyan. In the meantime, due to the centrality of the Office of the Clerk in the operations of the County Assembly, the Assembly should support the decision of CASB to designate another Officer within the Assembly Service to act in the position of the Clerk in accordance with Section 21 of the County Assembly Services Act, 2017.
3. That the purported consent dated 21st July, 2017 entered between the CASB and Mr. Jacob Ngwele regarding the former's appointment as Clerk of the County Assembly of Nairobi City has no force of law since it was aimed at sanitizing a fatally flawed legal process and should be disregarded as never entered and termed as an abuse of the court process.

(Applause)

4. That the DCI, the EACC and the Auditor General should form a multi-agency team to investigate all the persons involved in the irregular appointment of Mr. Jacob Ngwele as the Clerk of the County Assembly of Nairobi City and if a sinister motive is detected, those culpable should be prosecuted by the Director of Public Prosecutions (DPP). In particular, the investigations should center on Mr. Ngwele's actions as the Accounting Officer of the Assembly since he has been serving in that position since 2013.

(Applause)

5. That the Nairobi City County Assembly Service Board once operational should surcharge benefits the Officer drew from the Assembly while serving irregularly as the substantive Clerk of the Assembly

and the same time as the Principal Legal Counsel in Parliament. For avoidance of doubt, the period should cover between 10th June, 2014 and 1st August, 2017.

Madam Speaker, I urge the hon. members in this House to support this report in order to restore sanity in this Assembly. I am happy with the processes that are happening, and I am so sure that one day in this Assembly we will be speaking, legislating and doing our work of oversight and representing our people properly because we are properly supported by the structures that we are calling the institution

Madam Speaker, at this juncture, I wish to call the Hon. Oyugi to second this motion. Thank you.

(Applause)

Hon. Kennedy Oyugi: Thank you, Madam Speaker for the opportunity to second this motion. I want to put my emphasis on the last page of this report. I want to encourage members to look at the committee recommendations. We will take the shortest time possible as a House to pass this motion because it entails everything.

Madam Speaker, I had an opportunity to sit in the committee where we were perusing the process of Mr. Ngwele's recruitment. I am short of words to explain why this guy has been in this Assembly as the Clerk for all this long with all the malpractices that were done by the previous Board.

If you look at the recommendation number three, *'That the purported consent dated 21st July, 2017 entered between the CASB and Mr. Jacob Ngwele regarding the former's appointment as Clerk of the County Assembly of Nairobi City has no force of law since it was aimed at sanitizing a fatally flawed legal process and should be disregarded as never entered and termed as an abuse of the court process.'*

Madam Speaker, I was in agreement that the DCI, The EACC and the Auditor general should be invited to investigate further and let the law take its course. As Assembly, it is regrettable that we have been led by a stranger, an intruder and a scam. I am even a short of words to describe him. Let me thank the member who introduced this motion. By so doing, we have realized that we have been dealing a con. I am not sorry to refer Mr. Ngwele as a con.

With those few remarks, I second the motion. thank you.

(Applause)

(Question proposed)

Hon. Speaker: Hon. Majority Leader.

Hon. Charles Thuo: Thank you, Madam Speaker, I wish to support the motion by the Ad Hoc Committee. I think this sitting of the Assembly surpasses all other sittings that have taken time to discuss that issue. The approach this time is different and seems conclusive. It is about time that we got to conclude the business of the appointment of the Clerk so that the Assembly can move on.

Hon. Speaker, the Clerk of the County Assembly is not just any other position, he is the CEO, AIE holder, and in charge of all administrative issues. The core performance of this Assembly depends on the abilities and the character of the Clerk. One of the three roles that we play is oversight. It is then not right to

pretend that we can oversight the Executive when we are being headed by a person who has been wrongly appointed and is earning salary illegally, knowingly and in deceit. The issue surrounding the appointment of the Clerk is simply mockery of justice.

Hon. Speaker, when you hear people saying that they sat on a board, and that meeting included the person who was being hired, that s mockery of justice. It goes against the simplest laws of natural justice that you cannot be a judge of your own course. It is very clear.

Hon. speaker, every Kenyan deserves to serve the position of the Nairobi County Assembly Clerk as long as they qualify for the position. The people who drafted our Constitution envisaged that. That is why they said that the position of the Clerk should and must be competitively recruited. The committee has presented evidence that the Clerk was an employee of the Parliamentary Service Commission. He was serving here albeit on unpaid leave but still an employee until June of 2017 when he resigned for the purposes of taking up the job of the Clerk, which he claims to have gotten. If he resigned in June of 2017, how then was he appointed in 2014? How was he appointed as a Clerk in 2014 but resigned from the National Assembly in 2017? It cannot apply.

Members may not be aware, but I was with the Clerk just a few hours ago. I met him at the Senate. I was going about my business then I was told there is a meeting of Devolution Committee that is discussing issues of Nairobi City County Assembly. I popped in and found the Clerk and two members of this Assembly. They were discussing a lot of issues. The person who is purporting to be the Clerk claimed that he is a Clerk because the Transition Authority (TA) gave the Board an option of absorbing him as a Clerk or letting him go. That Board chose to absorb him and stayed with that decision themselves and excluded 126 members who were in that Assembly.

They now want to force the Clerk down our throats. It is not going to happen. We are not against him. Personally, I think he is an excellent officer and can perform duties of the Clerk. He is very knowledgeable in law, articulate and strict as administrative officer ought to be. But that notwithstanding, he should be hired legally. It is very simple.

(Applause)

Hon. Speaker, you are the Chair of the Board. When you get to interrogate those issues as the Board, you must make it very clear to the person purporting to be the Clerk, Mr. Jacob Ngwele, that this Assembly nor the Board is opposed to him being the Clerk. All we are saying is that he should go back through the steps like any other employee.

Hon. Speaker, at the onset of the County Government, I stated here before that two senior people were seconded by the TA. One of them was the County Secretary, Madam Lillian Ndegwa and the other the Clerk of the County Assembly, Mr. Jacob Ngwele. When the County Public Service Board was put in place, and at the end of the transition period, they advertised the position of the County Secretary. Lillian Ndegwa was serving in interim capacity but she applied after they advertised the position and did an interview. Her name was brought into this Assembly for approval. That is the course that has been taken by all the officers who were sent to counties to help set up structures by the TA. I don't know the exception Mr. Ngwele has. I don't think we should be debating about this.

The Assembly Service Board must move with haste and start the recruitment process of the Clerk of the County Assembly, giving Mr. Ngwele a chance to apply for that job. In as much as you believe he is qualified and a good Clerk, we still do not know whether he is still the best out there. We want the best for our Assembly. It is not about this Assembly but about posterity, generations, the rule of law and setting proper precedence. I beg to support.

(Applause)

Before I sit down, allow me to mention what I have heard, surprisingly, a motion being moved on no confidence on the Deputy Speaker of this Assembly. I know there are laws that pertain to that and we cannot circumvent them. But, Madam Speaker, the Deputy Speaker is a member of this side of the coalition. Through the handshake, I request the Acting Minority and the Whip to kindly implore on the member to withdraw that motion for further consultations.

(Applause)

Hon. Speaker: Hon. Maurice Gari.

Hon. Maurice Gari: Thank you, Madam Speaker for giving me this opportunity. I am not a good reader, but at times, it is good to go through documents and know what is going on. I urge every member, even if you don't like to read, take your time to peruse the document before you.

Madam Speaker, in annex 3 (e), Mr. Jacob Ngwele was talking about resecondment to the County Assembly. If you go down the letter, he said;

"I have discussed issue of my secondment to the County Assembly with the Nairobi City County Assembly Service Board and I have communicated to the Board of my intention to terminate my secondment to the County Assembly and resume my duties with parliamentary Service Commission immediately and Board recruits a substantive Clerk for me to hand over to."

Further down, he goes on:

"The Board will commence the process of recruitment of substantive Clerk once the Assembly resumes for December recess next year. I expect that the process will be over on or about April or May 2015, given that the Board intends to engage the service of HR consultancy firm to undertake the process on its behalf, and therefore anticipate that I will have completely handed over by 30th June 2015 and report back to Parliament by 1st July 2015."

Madam Speaker, I think the Clerk, Mr. Jacob Ngwele, being in legal practice, he took advantage of the then Service Board because they didn't know anything.

Hon. Speaker: Order! What do you mean by 'they didn't know anything' yet they served?

Hon. Maurice Gari: They didn't have any legal knowledge or advice, this letter dated 11th December 2014, the Clerk requested that by 1st July 2015, he would have reported back to Parliament. This is a person who has been dilly dallying with the future of the Assembly and the Board at large. This is a person that should not take the Board to court. He has nothing tangible that was confirmed by the Assembly. I want to urge the judge who is dealing with this case---

Hon. Speaker: Order! Withdraw! We cannot interfere with his lord's jurisdiction.

Hon. Maurice Gari: I withdraw. I want to bring to your attention that this Assembly is like high court. Whatever we are discussing here should not be jeopardized by the court.

Hon. Speaker: Hon. Maurice Gari, you can have your seat! While I appreciate what you say, remember we also have a case in court. When we were doing this, we agreed that the process we are dealing with is a process of recruitment procedure, which is not contested in court. So, I would like you to align yourself within the framework that we put in place so that we should not interfere with the jurisdiction of the court. We respect each other and I know this House also has powers just like high court and nobody can gag it. Let us respect the precedence that we have set in terms of appreciating law. Proceed.

Hon. Maurice Gari: *(Inaudible)* We found that due process was not followed for recruitment and employment of Mr. Jacob Ngwele. It is high time the Assembly moves with speed to advertise the position and recruit a new Clerk. This is a position that we should have everything in order because if someone runs away and says he was not employed in a right way--- Let us say there is misappropriation of funds and if you want to take someone to court, the person can say that he was not employed there. You cannot win that case. We need to recruit and the Board brings the name for the Assembly to approve. By that, we will be following the law. Thank you, I beg to support.

Hon. Speaker: Minority Leader.

Patrick Mbangula: Thank you, Madam Speaker. our side, the Minority side just received a request from the Majority Leader that we consider the withdrawal of that notice of motion on Chairperson of Committees. In the spirit of the handshake, we are going to consult and then come back to the office of the Majority Leader in the course of the day.

Madam Speaker, thanks for this opportunity. Board Member, Hon. Gari is calling me the caretaker Minority Leader. I don't know whether that one is in our Standing Orders.

(Laughter)

I want to promise this House and the Minority side that during this time of transition, I will do the most needful thing to show leadership. Indeed, I got the opportunity to sit in this committee that was looking into Mr. Ngwele's recruitment and his position as a Clerk of this Assembly and we confirmed that illegality was committed. This illegality was committed in full watch of the Former Board Members; this are the people and technocrats, if I may say, that were appointed to this position to work in the interest of Members.

Madam Speaker, instead of serving this great House they were serving their own interest. This was in total violation of the leadership and integrity Act and the Public Officers Ethics Act which says that a state officer should carry out their duties in their office in accordance with the law.

Madam Speaker, we confirmed that the one Mr. Muthengei was in that office illegally, he was not competitively recruited and even the opportunity that was given by the commission of National Assembly being seconded to this House - he even abused that opportunity.

Madam Speaker, the opportunity that we have now is to sanitize and clean this House. I can assure you that you have valiant soldiers that are behind you and we must not leave any stone unturned.

(Applause)

The decision that we are going to make in this House to ascent beyond tribal cocoons and we do suggest that action should be taken against the former Clerk of this House because illegality was committed and even in our recommendation he should not only be banned to access this place but should be prosecuted. *(Applause)* Madam Speaker, if found guilty let him be jailed. Thank you Madam Speaker.

Hon. Nancy Muthami: Thank you, Madam Speaker, I being a Member of the Adhoc Committee Member No.4. Hon. Members, let it be in the record that the courts can never and will not appoint someone to a position instead consent can be reinstated so the purported consent should be reinstated and dismissed. I stand to support this motion and I want to thank you very much the nominated Hon. Mbugua Kabiro.

(Applause)

Hon. Peter Imwatok: Madam Speaker, my conscious tell me that it important for me, for my voice to be heard in this HANSARD for the history to be written in black and white. That in history of our life each one of us at any given time to write his own history day by day, minute by minute, week by week, month by month and year after year.

Madam Speaker, this journey was started by some few of us from 2014. If you see, the chronology of all these documents I have just seen in this report, indeed history has vindicated a few of us whom I can mention few of them like Clarence Munga, Masika, Herman Azangu, the current Majority Leader, Wanyoike who were there and we did our best and that what has brought these shenanigans being put that now Ngwele purports to be the Clerk of this County Assembly. Our conscious was very clear that indeed there was a violation of the Constitution and enabling laws of this land.

Madam Speaker, allow me to say that unless this Assembly moves forward to enact laws, to discuss legislation, motions, statements that bring substance to the people of Nairobi the Issue of Ngwele has to be brought to rest as a House and as Hon. Gari, the Member of the Board has said, that we cannot justify illegality under the Constitution as a court because every court has its own Jurisdiction. The Constitution says that the Assembly and its committees including the adhoc Committee have the powers equivalent to the High Court. It means that this High Court has jurisdiction and you can file your petition, notice of motion to move a High Court in any form you want.

Madam Speaker, this High Court that is now sitting today on 14 November 2019 has been moved, by a motion of its own standing adhoc Committee, which was formed and rectified in this House. That the recommendations are clear that one Jacob Ngwele should not be allowed to step or participate on any affairs of this County Assembly as the 'High Court' of Nairobi City County Assembly.

(Applause)

Madam Speaker, I want to urge the entire House as the way the Majority Leader as just said and the Acting Minority Leader under the Standing Order 21 (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*".

Therefore, Madam Speaker I also want to urge us to an end that this Assembly must move forward. As it moves forward let us allow the Majority Leader and the new leadership of the Jubilee party to make some decision on behalf of the Jubilee Party. Also, allow the ODM Party to make its own decision on behalf of the ODM Party because some decisions need to be consulted even with higher authority of our parties.

Therefore, Madam Speaker without much more ado allow me to invite the mover of the motion if my Member wants to contribute allow me to support the motion. Thank you.

Hon. Speaker: Hon. Majority Whip, just give Obuya and then I will get back to you.

Hon. Kennedy Obuya: Thank you, Hon. Speaker, just like the way my party leader here has just said that he wants history and he wants it to be on records on this great day.

Hon. Speaker: Did you say the party leader?

Hon. Kennedy Obuya: Yes, my party leader in this Assembly, Hon. Speaker.

Hon. Speaker: Just use the right word.

Hon. Kennedy Obuya: Thank you, I stand guided Hon. Speaker.

Hon. Speaker: He is the Right Hon. Prime Minister Raila Amolo Odinga, is he?

Hon. Kennedy Obuya: I stand guided. your wisdom is super, Hon. Speaker.

Hon. Speaker: The Party leader of Jubilee is His Excellency the President Uhuru Muigai Kenyatta. Use the right words.

Hon. Kennedy Obuya: Your wisdom is super My Hon. Speaker, and I withdraw that. My Minority Whip I just want to concur. Hon. Speaker in the interest of time I just wanted also for purposes of records and for the people that elected me to this House the people that I represent I want to stand here on the right side of history.

Hon. Speaker, on annex three there is a letter of communication from the Clerk of Senate Parliamentary Service Commission one Mr. D. A. Nganga. Hon. Speaker this is a communication to one Mr. Jacob Ngwele, which refers as an extension of the secondment period.

Hon. Speaker, the Parliamentary Service Commission during its 205 meetings held on 19 February 2015 considered your request, for an extension of your secondment period and approved six months' extension, commencing 1 January 2015 up to 30 June 2015.

Hon. Speaker, it is a matter of interest and I want to politely disagree with my good friend my Majority leader, however even though that Mr. Jacob Ngwele is very capable and qualified. However, Madam Speaker, I cannot agree that one person is competent and qualified, but does not respect the constitution and the rule of law that says we should not engage in an unconstitutional and in corruption.

Hon. Speaker the intent alone of the previous service board and of Mr. Jacob Ngwele by extending his secondment to this Assembly was un-procedurally and unconstitutionally. I wanted to urge the current board members to come up with a recommendation to the DCI to investigate the previous board, as I fear for the public resources that have been in their position for the financial years 2014/2015 to 2017 and 2018/2019.

I want to second this motion and urge Hon. Members and the present service board that we come up with a policy to not only throw away one Jacob Ngwele but also to make sure that he is taken to court and he is investigated. In addition, his accomplices who were there in the board to be also investigated and if it is true that anomalies were done against the PMF Act, then these belong to jail Hon. Speaker. I beg to second.

Hon. June Ndegwa: Madam Speaker, a lot has been said about one Jacob Ngwele, who without fear of contradiction I can actually say he is an imposter in this House. He is like the Waiganjo of the Police Service Commission who imposed himself and became the police.

Madam Speaker, Jacob Ngwele was a junior clerk at the Parliamentary and that does not mean that he did not deserve to be brought to this House to serve. During the transition period, we realized that a lot was happening and a lot of confusion was in the room because of how long should some stay or how does it take to build an institution, what are the laws, what are the irregularities that needed to be done at that time.

What Jacob Ngwele perfected to do is to take up that confusion and fool this House for seven years. It is time, as we as a house stand strong to respect institutions that have been built in this country. Madam Speaker, we cannot have a Clerk who in his right mind, decides to control and become the AIE holder without the following procedure and yet he wants us to go to court and sanctify his mistakes or make them right.

I think he should go down for lack of respect for the institution and I think he should serve as an example of people like Waiganjo out there. We should give a strong warning in this Assembly and say that this should stop and the Waiganjo should go home. Ngwele himself should excuse himself, apologize and pay back the Country what he has taken illegally.

He is trying to use a legal court to make legal his mistakes and yet he knew very well he was performing illegality. For that one fact and for the lack of respect for constitutionally he should go down for it. I also want to say that most of the fights and infights that we have had in this Assembly starting from the board it is because of what Ngwele has done.

Madam Speaker, he is part of the corruption at the board that he was there before and we cannot have him to be part of something that we are creating a new and starting afresh at this County. Therefore, whatever the board did I hope and pray that we will be able to create an adhoc Committee to look at what that board has done for them to explain what we ought to understand why we are holding this man Ngwele so much.

He is not the most qualified and it means that there is something that they have done in that board that needs to be brought to light. *(Applause)* Without much further ado, I beg to support. Thank you.

Hon. Mark Ndungu: Thank you, Madam Speaker and reading the mood of the House, I would like you to call the mover to reply. Thank you.

Hon. Speaker: Hon. Mark this is a very serious motion. I know I have three people to contribute, so I will bring in Hon. Doris Kanario Ayo, Aliviza and then we shall close with Elijah.

Hon. Doris Kanario: Thank you, Hon. Speaker for giving me this opportunity and I stand to support this motion. For the nominated members of this Assembly in order to get to their staff and offices, Ngwele must go. Hon. Speaker for equity in this Assembly, Ngwele must go. For intimidations to end in this Assembly, Ngwele must go. For prudent utilization of resources in this Assembly, Ngwele must go. For the proper functioning of this institution, Ngwele must go. For the Staff to exhibit their professionalism and ethics in their work, Ngwele must go. Lastly Madam Speaker for peace to prevail in this Assembly, Ngwele must go. I stand to support.

(Applause)

Hon. Mary Mwami: Thank you, Madam Speaker I was part of the adhoc Committee that was formed to look into this issue. As a former civil servant and now a public officer, I just want to bring about a few observations that we made in this recruitment and I want you to look at the annexe that shows the letter to Senate that was written by Ngwele to the Clerk of Senate on 11 December 2014. The Senate received it on 18 December 2014.

Mr. Ngwele wrote many things but amongst it, he said that he had requested the commission to extend his period of secondment as an interim Clerk at Nairobi County Assembly by further period of one year, with effect from May 2014. It means actually Mr. Ngwele was not supposed to have stayed here for many years from 2013 and by May 2014; he was supposed to have already gone, so he wanted an extension of this.

Secondly, he also says that his: *"secondment to the County Assembly with Nairobi County Assembly Service Board and I have communicated to the Board of my intention of termination and secondment to the Assembly and resume my duties with Parliament Service Commission immediately the board recruit substantive Clerk for me to hand over to"*.

I see deceit in a public officer, which makes him be short of integrity because I do not think there was any intention on this particular officer to ever go back to the Parliamentary Service Commission. Therefore, if he was saying that he was there for the substantive recruitment it is not true.

This is because we see again he requested for three years for him to be given unpaid leave immediately. Then he also said that *"the Board recommends the process of recruitment of a substantive clerk once the Assembly resume from December recess next year and I expect the process will be over in May 2015 given the board to get the service of human resource consultancy"*.

From our research and consultation, we never saw any Human resource consultancy that was done. Therefore, we see man that had intentions and he was hiding it until 2017 July. He also says that *"in reference, therefore, I request you to consider the earlier request made by the Speaker of the County Assembly and myself to enable me complete smooth transition process for which I was seconded to the Assembly to perform by handing over"*, which he was not intending and that is why he asked for three years.

Therefore, my conclusion unto this as a former civil servant and public officer, he falls short of constitution threshold of a person of integrity and as a person that stands for the right thing and integrity. Again, on Public and Civil Service, the letter he wrote on 2017 when he purportedly made the substantive Clerk of the County Assembly, which was written on 21st and by first of August there is a response from the Senate and by 8th we received the fact that he had now been made a full Clerk.

This is ethical and I can assure you he needs to be investigated. As some of us have already said he was supposed to have given one month's salary in lieu because he did not give enough time of one month so that he can give the Parliamentary Service Commission time to be able to recruit another person. Remember earlier on he had already said that he was to go back, so they were expecting him. He needed to have given them enough time of notice so that he can get another person.

If he did not give that lieu he was supposed to have given Parliamentary Service Commission three months' notice that he would not be going back. Therefore, we see a fraudster, a person who does not stand for integrity and fall short of the threshold of integrity according to our constitution.

Secondly, under recruitment process, when you are part of the person that is been recruited if he had integrity he should have been able to excuse himself and the Speaker at that time should have been able to bring in a person.

Thirdly, we do not see any company that would be used to recruit, as there was no advert done whether internally or externally to this group to have been able to recruit a Clerk. Therefore, the Clerk of the Assembly was a fraudster, a person that has no integrity and at the same time with all the cases that are going on, we have just learnt from one of our members that he is already in the Senate trying to represent us. If he was somebody of integrity, he should have come through Madam Speaker and say; I have applied for my case to be heard at the Senate, can you bring somebody so that we can sort this out. We are seeing someone who wants to remain here using whichever means possible whether courts or arbitration when he is alone; he wants to come back here.

On this note Madam Speaker, I stand with my committee to say that the termination of one Mr. Ngwele must be done quickly and the process of recruiting a substantive Clerk of this County Assembly must be started quickly.

I recommend and I stand to be corrected is that even though the court process is going on, we have our own internal processes to start our own advertisement and recruitment of a Clerk in spite of whatever he is doing in the courts. Because it looks like we cannot stay here for a very long time looking for a Clerk. Like now Madam Speaker is working all by herself although we have the Acting Clerk who is helping out. We want this process to go on quickly because of these allegations that are there with documents, we need to go ahead and start the process.

Madam Speaker, secondly on consultation there was our Majority Leader who stood to say that we need to consult on the motion that I had stood to put across. I would like to withdraw the motion so that we can be able to consult as a group because of the 'handshake'. Thank you very much.

(Applause)

Hon. Elijah Mputhia: Thank you Madam Speaker. I rise to support the motion. I happen to be in the adhoc Committee and from what the members have informed here, you realize that employment should be competitive, transparent and open. At the same time, employment is a process and not an event.

Now that we have all discussed about this, I agree that the law was flouted and we should not entertain it anymore. However, now that it was never advertised and brought to this assembly for discussion, I think we should not waste a lot of time reading from the mood of the House. We all agree that you can revoke section 100 and then the mover to reply, and we call it a day. And we should go home any time, thank you.

Hon. Speaker: Lastly Hon. Ayoi and then the mover to reply after that.

Hon. David Ayoi: Thank you Madam Speaker. I also take this opportunity to thank the new leadership; our Majority Leader Hon. Charles Thuo, Hon. Millicent Mugadi and Hon. June Ndegwa. Thank you very much men and women for the opportunity that you have been awarded.

Thank you so much Madam Speaker you will be remembered in history for giving us the opportunity to air our reservations as the Hon. Members in this August House. I would like to support the motion by saying that one Jacob Ngwele was not competitively recruited in this August House. This man Ngwele was seconded

to this Assembly by the Parliamentary Service Commission from 2013 and served a period from 2013-16. He was under the Transition Authority from the Parliamentary Service Commission.

What I would like also to learn from here is, was he earning salary from Parliamentary Service Commission and at the same time drawing salary from the Nairobi County--- Hon. Speaker, I need your protection please.

Hon. Speaker: Hon. Member consult in low tones.

(Point of Order)

Hon. Speaker: What is the Point of Order Hon. Okumu?

Hon. Nicholas Okumu: Madam Speaker, one David Ayoj must be suffering from the village mentality, no one is harassing him. Why should he ask for protection?

Hon. Speaker: Did you just say village--- Withdraw, that is not parliamentary language. Withdraw that Hon. Okumu.

Hon. Nicholas Okumu: Madam Speaker, with all due respect in my village there is what we call *chiwawa* ama *nyawala*---

Hon. Speaker: Withdraw. *Chiwawa* is a dog.

Hon. Nicholas Okumu: Not the dog species. Because no one is confronting or attacking him and he is seeking protection. From what?

Hon. Speaker: Hon. Okumu, Order!

Hon. Nicholas Okumu: We are consulting in low tones. Madam Speaker you are not giving me a chance to contribute, am I---

Hon. Speaker: Withdraw, it is unparliamentary language. I am wondering, what was out of order?

Hon. Nicholas Okumu: I beg to withdraw Madam Speaker. Thank you.

Hon. Speaker: Hon. Ayoj, finalize.

Hon. David Ayoj: Thank you so much one wonderful Beatrice Elachi, iron lady our Hon. Speaker. I was debating on the fact that one Jacob Ngwele was seconded to this August House in 2013 to 2016. Thanks to Hon. Maurice Gari who really fought to find out whether Ngwele was legitimate to transact for this assembly. He was actually overpowered but thanks to you Hon. Speaker for coming out clearly to elaborate that Ngwele was not competitively vetted to transact business in this House.

In our findings, when Ngwele was seconded to this House in 2013 to 2016, in fact I wanted to delve in this matter to find out if this guy was drawing salaries from the Parliamentary Salaries Commission and at the same time from our end. That is my concern and that is why I am concerned with this motion. I beg to support this motion. Thank you so much Madam Speaker.

Hon. Speaker: Mover?

Hon. Mbugua Kabiro: Thank you very much Madam Speaker. I can confirm to you that today the fuel prices have gone up. The body mandated in reviewing the fuel prices has increased the prices to close to 2.50 shillings. That is a decision that is affecting millions of Kenyans who are going to suffer at the pump price.

Madam Speaker, this assembly consists of 123 Hon. Members deciding on the fate of one person, someone called the Clerk of this Assembly Mr. Jacob Ngwele. We have deliberated and looked at the report

and it is worthy. I would like to thank the Hon. Members for supporting this report and the motion therein, together with the secretariat and the staff who took part in the development, we want to say thank you. I take this opportunity to reply, thank you.

Hon. Speaker: Hon. Paul, I am on my feet. Hon. Members, before I put the question, I want to request the committee, because when I listened to you there was some issues that you raised about some members that you summoned not coming. Therefore, if the committee feels they need to look at this issue further, I have given you an extension of two weeks to do that. Then you close it completely because you have to write a report of the reasons why they didn't come. If it is the Clerk, or the Speaker without jeopardizing because when it goes for investigations, you have just said you are a High Court. Therefore, someone can just say that you didn't give him time to appear and that the reason they didn't appear.

Let us not close this chapter and then it can bring us issues. I have given you two weeks to finalize completely and you shall lay the report in this House at that time.

(Question put and agreed to)

(Applause)

Hon. Speaker: Hon. Ariviza, when you were contributing you decided to withdraw your Notice of Motion and now I want to advise you to do it in the right manner according to Standing Order No. 55. You follow that procedure and there after I will ask the House whether they agree with your withdrawal, so proceed.

Hon. Mary Mwami: Madam Speaker, thank you once again for this great opportunity. I am learning, thank you. Pursuant to Standing Order No. 55 (1) and (2), I beg to move a motion to withdraw the Notice of a Special Motion given today 14th November 2019, touching on the removal of the Chair of Chairs, Deputy Speaker. I call upon Hon. Musili, the Acting Minority Leader to second this motion. Thank you.

Hon. Patrick Mbangula: Thank you Madam Speaker. I stand to second this motion and also invite my counterpart the Majority Leader to say something about this motion.

Hon. Speaker: Order, let me first propose.

(Question proposed)

Hon. Charles Thuo: Hon. Speaker, I am very grateful that the Hon. Members, my brothers and sisters in the 'handshake' and in partnership in doing business and developing Nairobi, have agreed that the motion should be withdrawn pending further dialogues and discussions. Without much ado and without having a lot of contributions Madam Speaker, I support the motion and also request you to ask the mover to reply so that we can dispense that business as fast as possible. Thank you.

Hon. Speaker: Hon. Mary, you can bow or reply.

Hon. Mary Mwami: Thank you Madam Speaker, I reply.

(Question put and agreed to)

MOTION

EXPOSITION CONTAINED IN THE ADDRESS OF THE SPEAKER OF GUATENG PROVINCIAL
LEGISLATURE

Hon. Speaker: Majority Leader, proceed with your motion.

Hon. Charles Thuo: Hon. Speaker, the address of the visiting Speaker of Gauteng Provincial Legislature. That the transactions of the county assembly be recorded to expositions contained in the address of the Speaker of the Gauteng Provincial Legislature laid on the table of the assembly on Thursday 14th November 2019.

Hon. Speaker: Who is seconding?

Hon. Charles Thuo: I ask the Hon. Leader of Minority to second the motion.

Hon. Patrick Mbangula: Thank you Madam Speaker. Let me say briefly that it was a privilege to have in this great House all the way from South Africa to pay us a visit in this great country and this capital city Nairobi. Madam Speaker, when I listened to your colleague, I found that they have got keen interest in this country and it is also a chance as a House to know we have got something that can be emulated by other Houses.

Madam Speaker, without saying much on this, we need to establish and confirm this relationship so that we build it and also that Hon. Members can benefit and learn from their counterparts from South Africa. Thank you, I second this motion.

(Applause)

(Question proposed)

Hon. Speaker: Majority Whip, June Ndegwa.

Hon. June Ndegwa: Madam Speaker, it was such a great pleasure to host the delegation from South Africa and have so many insights from them. One thing that I noticed, is that they appreciated the fact that we start with prayers in this assembly unlike in Gauteng Province where it is a very secular state or city. The interaction with members of the Gauteng Province was fantastic one of them being a bishop who is an ordained Bishop. He said that activism is what brought him into politics but he realizes that he has to do the right thing. A lot of things that we had to note and a lot of collaboration even as the Speaker was giving her address; a lot of collaboration between Kenya and South Africa and what we can be able to learn from them.

Madam Speaker, I just want to encourage if we can get more of this where people from outside coming to benchmark instead of us going to benchmark in other countries because we do not get to know what we have here unless other people come and pinpoint and tell us what we have.

It would be a good thing and I hope from your office you can be able to invite even other cities and states that run county assemblies or local governments, we will be grateful to see what we have before we go out there to look for stuff that we do not even know and maybe we have it here. Thank you Madam Speaker.

Hon. Speaker: Mover

Hon. Charles Thuo: Madam Speaker, I am appreciative to the fact that this Assembly had the opportunity to be addressed by such dignitaries. It is quite telling that amongst the 47 county assemblies in this Country, they chose Nairobi. This is not by mistake but by design and it means that the world is taking cognance of our ability and willingness to discuss, dispose of business and also serve the people who elected us. It is a great honor that a country of such economic standing like South Africa would find it in their will to learn something from us.

We all know how much South Africa is developed and the strides they have made in terms of democracy, sports and their economy. This is something that we must pride ourselves in. It means that we are in the right path and Hon. Speaker when the time is right, I would suggest that you arrange for a delegation of representatives from our Assembly to visit their Assembly and learn from them. Thank you Madam Speaker.

Hon. Speaker: Clerk, proceed. This is a motion that we do not out a question to.

MOTION

POLICY ON DIVERSITY AND INCLUSIVITY OF ALL VULNERABLE GROUPS

Hon. Speaker: Hon. Sylvia

Hon. Sylvia Moseiya: Madam Speaker, I wish to read the following motion; that aware that Kenyans legal framework lays a firm foundation for the principles of diversity, gender equity and equality in the Country's politics and government. Noting that these key principles are supported by the Constitution upheld by legislation regulating elections and political parties, judicial decisions and complimented by a body of international treaty and conventions.

Deeply concerned that unfortunately this critical legal standard of diversity, gender equity and equality has not been completely met not just at the National but even at County level in terms of representation of diverse groups in critical county governance structures and entities. Observing that making diversity a reality in the County requires not only a conducive legal framework but also collaborative efforts of relevant state and non-state actors. Recognizing that a customized policy framework that borrows from existing legal framework provides for effective diversity and inclusion of all groups whether the minority is gender sensitive or other vulnerable groups in public service at the devolved level within the City County would best serve this purpose.

This assembly urges the County Executive to explore mechanisms for developing a diversity and inclusivity policy for the County and in the meantime enforce the provisions of the existing National laws to promote diversity and inclusion of all vulnerable groups in County governance. In short, Madam Speaker, this is a straight forward and I do not need to discuss much of it. There is no technicality except that we have so many laws and there is very little being done to ensure gender inclusivity of both minority groups and PWDs.

The order is that we make laws and regulations to make those laws and policies. It is inconsequential if we have laws and there is no framework that sustains that law to be implemented. I call upon Hon. Jagero to second my motion. Thank you

Hon. Speaker: Hon. Millicent Jagero

Hon. Millicent Jagero: Thank you Madam Speaker. I rise to second this motion. As per Article 10 of the Constitution on the national values and principles of governance, it states on inclusivity, equality, equity and public participation. But many a times these are not considered whenever any decision making process is taking place and there is no legal framework or policy to guide on the same. It is therefore prudent for this County to put in place a legal framework whereby in case it has not been implemented then there are consequences and policies that will guide on the same.

If you check on the universal declaration on human rights Article 1, it states that they do not want any form of discrimination regardless of the race, tribe, religion or whatever comes along with it. Therefore it is prudent to come up with a policy that will guide on the same. I beg to second the motion

(Question proposed)

Hon. Speaker: Hon. Mbugua

Hon. Mbugua Kabiro: Thank you very much Madam Speaker. I wish to thank Hon. Sylvia Moseiya for coming up with this motion that seeks to urge the Executive to develop a diversity and inclusivity policy that is very necessary especially for progression in any institution that is looking into the future.

There are those vulnerable groups of people we call the minority who are predisposed either by their tribes, ethnicity or the regions they chose to settle while migrating into Kenya. It is a high time that we take care of their interests because we do not know whether one day they will become the majority and we will have to ask them to include us as well.

I know and recognize the fact that I am nominated in this House because of the marginalization section of the nomination list and I am nominated to represent the interests of the youth. Were it not that the drafters of the constitution allowed that such a provision is available for me to come to this House. Many other women and men like Hon. Sylvia Moseiya is from a minority tribe in Nairobi and it is proof enough that for her to submit this motion then we should take care of the minority groups.

Diversity is broad and inclusivity is a choice so if we choose to include the people who are disadvantaged then it is our decision. We should not submit that decision to any tom, dick or harry. We want it to be settled in a policy that inclusivity is a must and we should dictate how it is supposed to be done.

Madam Speaker, I would like to urge that this policy be developed with speed and it be operational at the earliest. I thank you for this opportunity and support this motion. Thank you

Hon. Speaker: You support. Mary Arivitz

Hon. Mary Mwami: Thank you Madam Speaker and Hon. Moseiya for bringing this good motion. Our city has many people who are disadvantaged including the people with disabilities. When I was younger, public transport had a seat immediately at the door designated for people with disability, elderly and pregnant women but over the years that has been left out. Nowadays when we use the public transport we struggle and some of the young men and women are not as respectful.

Therefore, I find this to be a good motion. Buildings are also not constructed with people with disabilities in mind yet there is a law that states that every building going beyond four floors should have a lift. I stand to support this motion and hope that our County Government takes the initiative and reinforce every statute that upholds the rights of people who are minorities.

Secondly looking at this policy, I believe that it should encompass the way we employ people. When the population census came out, the big four tribes were found to be dominating the civil service. It is important Madam Speaker that we do not leave out other tribes when employing people.

It is important that we as Nairobi be diverse as much as possible and not allow ourselves to employ only people from our ethnic groups. I stand here to support the motion that we should be able to take care of people from minority groups.

Foreign ideologies are being brought to this Country and we must fight the likes of homosexuality. While this policy must be made, we must not go against our 2010 constitution by allowing young men and women to involve themselves in same sex involvements. They need counselling and research shows that they were not born into lesbianism but it is an acquired process. Most of them were either molested or sodomised in high school and parties so they need sympathy and counselling. Therefore, I beg to support this motion. thank you Madam Speaker

Hon. Speaker: Lastly Hon. Anita Thumbi

Hon. Anita Thumbi: Thank you so much Madam Speaker. I want to take this opportunity to support this motion and congratulate Hon. Moseiya. She comes from the maasai community, a tribe called Yakuu and I understand that her tribe is less than 10,000 people. I have noted with a lot of concern that some of these tribes get forgotten to the extent that they do not find job opportunities.

Here in Nairobi we have tribes like the Nubi in kibra who have not a single appointment by the Government. It is a pity that in this era we can experience such. The constitution is very clear that we are all equal in law regardless of the tribe you come from. I support the motion. Thank you

Hon. Speaker: Hon. Margaret Mbote

Hon. Margaret Mbote: Thank you Madam Speaker. I stand to support this motion and thank my colleague Hon. Sylvia Moseiya for introducing this motion. I believe that if implemented it will help people with disabilities and the youths who are mostly left out when implementing laws in Kenya. Most of the people are left out hence it is good to come up with this motion so that we strengthen inclusivity in tender issuance and other areas. I support

Hon. Speaker: Mover

Hon. Sylvia Moseiya: Madam Speaker I wish to move the motion; that aware the legal framework lays a firm foundation for principles of diversity, gender equity and equality in the country's politics and government, noting that these key principles are supported by the constitution upheld by legislation regulating elections and political parties. Deeply concerned that unfortunately this critical legal---

Hon. Speaker: Hon. Moseiya, you do not have to read the whole document. Maybe you can appreciate the members

Hon. Sylvia Moseiya: Sorry Madam Speaker, I am not in my right state of mind. I appreciate my colleagues for the support and wish to say that Nairobi belongs to all of us and it is not a good thing when we start questioning who belongs where. Given that bearing, I would want that this policy makes it comfortable for all of us to feel like we belong here and that we can thrive. I beg to move. Thank you.

(Question put and agreed to)

Hon. Speaker: Hon. Members, there being no other business the House stands adjourned to 19th November, 2019 at 2:30 p.m.

The House rose at 4.52 p.m.