



## NAIROBI CITY COUNTY ASSEMBLY

### OFFICIAL REPORT

#### Second County Assembly – Third Session

Thursday 31<sup>st</sup> October 2019

The House met at 2.30 p.m.

[Hon. Speaker (Beatrice K. Elachi) in the Chair]

#### PRAYERS

#### COMMUNICATION FROM THE CHAIR

##### GROSS AND GRAVE DISORDERLY CONDUCT IN THE ASSEMBLY

**Hon. Speaker:** Hon. Members, I wish to make a communication relating to caution on gross and grave disorderly conduct in the Assembly.

Hon. Members, I have no doubt that you are all aware that it is the duty of the Speaker to maintain order in the Assembly Pursuant to provision of Standing Order No. 104 which states as follows, and I quote; - *“Order shall be maintained in the County Assembly by the Speaker and in a Committee of the whole County Assembly by the Chairperson of such Committee but disorder in Committee may be censured only by the County Assembly on receiving a report thereof.”*

Hon. Members, you are aware that in the recent sittings, the debate in the Assembly has not been decorous and rules of the debate have largely been breached. Hon. Member, I am certain that as leaders, you are aware of the requirements of Chapter Six of the Constitution of Kenya 2010, the mechanism provided by the Nairobi City County Assembly Standing Orders and the County Assemblies Powers and Privileges Act, 2017 on how to deal with misconduct or disorder within the Assembly.

For avoidance of doubt or speculations, Hon. Members, Standing Order No. 113 (1)(g) inter alia provides that conduct is grossly disorderly if the Member concerned abuses his or her privileges and (j) *“commits any other breach of these Standing Orders that in the opinion of the Speaker constitutes gross disorderly conduct.”*

Further to that, Hon. Members, I remind you the provision of Standing Order No. 114 on Grave Disorderly Conduct, and in particular, 114 (1) (d) which also inter alia state that conduct is gravely disorderly if a Member; *“persistently and wilfully causes actual disorder that obstructs the Assembly from transacting business.”*

Having said that Hon. Members, you may vividly recall, that on Tuesday, 29<sup>th</sup> October 2019, the Minority Whip – Hon. Peter Imwato, MCA, while seeking a Statement in the Assembly, drew the Speaker’s attention to the Provision of Standing Order No. 115 (1) which states as follows, and I quote; *“Any Member may at any time, on a point of order, invite the Speaker or the Chairperson of Committees to name another Member for grossly disorderly conduct, but the decision whether or not to do so shall remain with the Speaker or Chairperson.”*

The Hon. Minority Whip proceeded by mentioning one Hon. Anthony Ng’ang’a Gatune, MCA, Member for Kahawa West Ward for interrupting the Assembly’s proceeding, defying the Speaker’s Orders and behaving in a most-undignified and despicable manner.

Upon careful examination of the matter, I wish to convey as follows;-

Hon. Members, while the greatest majority of House Membership conduct themselves honourably, a few have continued with attempts of disrupting Assembly proceeding. It is indeed disturbing, Hon. Members, cognizant to the Provision of Article 1, Sub-article (1) and (2) of the Constitution of Kenya, 2010 which dictates that;- *“All sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this Constitution.”* And that; *“The people may exercise their sovereign power either directly or through their democratically elected representatives.”* In this case, it is disturbing, very unfortunate, quite dishonourable and total misrepresentation of the sovereign interest of the residents of Kahawa West by their democratic elected Member.

Hon. Members, Standing Order No. 115 (2) provides that, and I quote; *“Whenever a Member shall have been named by the Speaker or by the Chairperson, then – (a) if the breach has been committed by such Member in the County Assembly, a Motion shall be made by any other Member present “That, such Member (naming the Member) be suspended from the service of the County Assembly,” and the Speaker shall forthwith put the question thereon, no amendment, adjournment, or debate being allowed;”*

Further, Hon. Members, Standing Order No. 116 (1), (2) and (3) provides that; (1) *“Whenever a member has been named in accordance with Standing Order 115 (Member may be suspended after being named), the Speaker shall order the Member to withdraw from the Chamber and the precincts of the County Assembly.”*

(2) *“Any Member who is ordered to withdraw under Standing Order 113 (Gross Disorderly conduct) and Standing Order 114 (Grave Disorderly conduct) or who is suspended from the service of the County Assembly under Standing Order 115 (Member may be suspended after being named) shall forthwith withdraw from the precincts of County Assembly and shall during the period of such withdrawal or suspension forfeit the right of access thereto and shall forfeit all allowances payable during the period of such suspension.”*

(3) *Any Member who demonstrates or makes disruptive utterances against the suspension of a named Member shall be deemed to be disorderly in accordance with Standing Order 113 (Gross Disorderly conduct).*

On the foregoing Hon. Members, the Office of the Speaker wishes to caution such behaviour and issue a last warning to the said Hon. Member.

Lastly, Hon. Members, I wish to instruct the Office of the Clerk, with facilitation from the Serjeant-At-Arms Office, to furnish the Office of the Speaker with the Incident report of the unfortunate incident that occurred in the Tuesday, 29<sup>th</sup> October 2019 sitting alongside the CCTV recordings of the same before Monday, 4<sup>th</sup> November 2019 for further examination.

It is so directed. I thank you, Hon. Members.

### PAPERS

*(Hon. Kennedy Obuya stood on a point of order)*

**Hon. Speaker:** What is the point of order?

**Hon. Kennedy Obuya:** Hon. Speaker, I wanted to bring to your attention that today...

**Hon. Speaker:** Hon. Members, I hope you have not just taken public resources and walked out. We are not going to allow that. When Nairobian are sleeping hungry, Hon. Members walk in, clock in and walk out. Not in this Chamber. We will respect public resources. The country is dry. It doesn't have money. Let us respect that. I want to see the names of those who just walked out. Serjeant-at-Arms, make sure you avail the names of those who have just walked out.

*(Applause)*

Proceed, Hon. Obuya. You had a point of order.

**Hon. Kennedy Obuya:** Thank you. Madam Speaker, I have taken with keen interest incidences and happenings within the precincts of the Nairobi City County Assembly today. And it is worthy to bring to your attention that in the Bill of Rights, every citizen has a right to protection. Hon. Speaker, this is parliament. This is a gazetted Assembly. This Assembly has got structures. We have the office of the police attachees headed by one inspector Mureithi. We also have the office of the Chief Serjeant-at-arms. I don't think it is right for the Assembly to allow armed persons to escort any person be it an MCA or any staff or guest without the Speaker's approval. Hon. Speaker, I wanted you to look into the law and give directives to the police attachee who is assigned by Security of Government Buildings (SGB) and also the Chief Serjeant-at-Arm that any person who is assigned declares at the entrance and they be handed over to the security that were assigned to protect any person and the building that we operate in. Kindly.

*(Applause)*

**Hon. Speaker:** Hon. Members, you will wait for the statement when we are at order no. 7 and I will give an opportunity. Let us proceed. Budget. Leader? Hon. Waithera?

**Hon. Waithera Chege:** Pursuant section 118 (4) (a) of the Public Finance Management Act 2012, I beg to lay the following paper on the Table of the Assembly, today Thursday 31<sup>st</sup> October 2019. I beg to lay.

*(The paper was laid)*

**Hon. Speaker:** Thank you Whip. Do you have another one?

**Hon. Waithera Chege:** Yes.

**Hon. Speaker:** Proceed.

**Hon. Waithera Chege:** Pursuant to Standing Order no. 191 (6), I beg to lay the following paper on the Table of the Assembly today Thursday 31<sup>st</sup> October 2019. I beg to lay.

*(The paper was laid)*

**Hon. Speaker:** Which is that paper?

**Hon. Waithera Chege:** That is the report of the Select Committee on the Selection of the constitution of the Assembly committees.

**Hon. Speaker:** Is it the one requesting to bring back one of the Members in a committee?

**Hon. Waithera Chege:** No.

**Hon. Speaker:** Okay. There is a procedural Motion, which I am going to defer. I am going to defer the procedural Motion because the majority side, Jubilee, knows very well that they had their sessions in their party. They know the rules that they agreed on and they agreed in their party that whenever you are returning a Member, you must consult with your party and a letter must come. Therefore, this is your regulation. That is what you agreed with your Secretary General and I have a letter on the same. That we cannot remove anyone from a party and we cannot. So, I order, based on the letter that came from Jubilee, it was ordered that all their members should be in two sectoral committees as per the law to ensure everyone at least is in three committees. So, therefore, I will differ this. You will go and sit down as Jubilee, bring a list of all your Members based on how you agreed with the party.

*(Applause)*

Proceed, Clerk. Hon. Waithera?

**Hon. Waithera Chege:** Madam Speaker, under Standing Order no. 55 (1), I had instructions to withdraw the Motion. Thank you.

**Hon. Speaker:** Thank you. Proceed, Clerk.

## STATEMENTS

**Hon. Speaker:** Is Hon. Silas Matara in? I want to put now on notice to the Jubilee Members and I will send a letter to Secretary-General (SG) because you cannot have a Chairman, who is in the Speaker's panel but cannot obey the House. Therefore, that letter will go in the evening for the party to know that we need another person to be within the Speaker's panel. Hon. Stazo!

*(Applause)*

**Hon. Stazo Elijah:** Thank you Madam Speaker, the report of the Auditor General of Nairobi City Sewerage and Company Financial Statement for the year-ended 30 June 2018 was tabled on the floor of the Assembly and thereafter committed to the Public Investment Committee, pursuant to Article 229 (8) of the constitution of Kenya for scrutiny and reporting within 90 days. The due date for tabling of the Committee report was on 15 October 2019.

However, Madam Speaker as you are aware, this Assembly adjourned before the due date. In this regard, on the behalf of the Committee, I kindly request that you grant us an extension until 28 November 2019 for us to finalize our report writing subsequently table our report. Thank Madam Speaker.

**Hon. Speaker:** Hon. Chair, your wishes are granted and ensure that you finalize that report. Do we have the Chairperson of Sectoral Committee this is the response to statements. The Chairperson do you have a response for Hon. Daniel Ngangi? How many Chairpersons do we have in the House? I know I have my Senior Budget Chair.

*(Loud Consultation)*

You have a response for Ngengi for Environment, where is your Chairman?

*(Loud Consultation)*

**Hon. Fredrick Okeyo:** Thank you Madam Speaker, on Thursday 8 August 2019 Hon. Ngengi MCA rose on the floor of the Assembly pursuant to Standing order 45 (2) (c) and requested for a statement from the Chairperson Sectoral Committee on Environment and Natural resource regarding the collection of garbage within Nairobi CBD and its Enviro....

*(Statement deferred)*

*(Point of Order)*

**Hon. Speaker:** What is the point of order Moses Ogeto.

**Hon. Moses Ogeto:** Am on a Point of Order 45 on the statement and the precedence of this House. There was a ruling that was made before this House that if the Member who had requested for the statement is not in the House as the Member needs to say that he is satisfied or not from the findings of the same Sectoral Committee.

Therefore, I do not see it is proper for Hon. Okeyo to proceed to give a statement to a Member who had requested and he is not in the House. I beg your indulgence, Hon. Speaker to make a ruling on the same.

**Hon. Speaker:** Thank you, Hon. Ogeto and I think that I made the ruling long so it is still there. Since Hon. Ngengi is not in the House, I will request Hon. Fredrick to keep the response and I will give you a chance next week when the Hon. Member is the House.

**Hon. Fredrick Okeyo:** Hon. Speaker, I agree with you but just an addition. I think when a Committee sits down and invites a Member and comes for a response and sit with the Committee, a Member should not hold a Committee at ransom and the business of the Committee because he was part and parcel.

Therefore, I would like you to review whatever decision you said so that we can move forward we do not want to be postponed because he was invited and he was there and given the response. Thank you.

**Hon. Speaker:** Agreed if he was given the response then you will table it on Tuesday, I will give you that chance to table it on Tuesday. I know that the Chairperson of planning is not there and Hon. John Kamau is not in the House. Therefore, we will proceed to order nine because we deferred it. Hon. Ruth Ndumi what is it?

**Hon. Ruth Ndumi:** The Member who requested is Hon. Mutheu and she is in the House.

**Hon. Speaker:** Do you have the response?

**Hon. Ruth Ndumi:** Yes!

**Hon. Speaker:** You can proceed!

**Hon. Ruth Ndumi:** Thank you Madam Speaker on Tuesday 26 February 2019 Hon. Mutheu MCA rose on the floor of the Assembly pursuant to Standing Order 45 (2) (c) and requested a statement from the Chairperson Sectoral Committee on Water and Sanitation regarding measures for promoting and sustainable use of scarce water resources in the County.

The Member sought to know:

1. Measures the County Government has put in place for promoting the sustainable use of the available water resource;
2. Measures put in place for creating public awareness on the sustainable use of available water resources;
3. A report detailing enforcement on standards for piping, transporting and delivery of water to avoid leaks and wastage across the City;
4. Report of enforcement of the law against persons found stealing or irregularly diverting water from the County's supply lines since 2013; and
5. Measures, if any, put in place to promote sustainable water harvesting to supplement existing resources,

Madam Speaker, the Committee wrote to the County Executive Committee Member for Environment, Energy Water and Natural Resources on 26<sup>th</sup> March 2019 requesting to be furnished with a written response to the statement sought by the Hon. Member.

In this regard, Madam Speaker, I wish to report to the Assembly that the Chief Officer responsible for Water, Sanitation, and Energy responded as follows;

1. Measures the County Government has put in place for promoting the sustainable use of the available water resources;

Madam, Speaker, the Chief Officer reported that the under listed are the measures that have put in place, amongst others;

- a) That the County has developed draft County Water Policy and a County Water and Sanitation Bill already presented to County Assembly to undergo enactments process. Moreover, this policy legislative and regulatory instrument comprehensively handles the issue of sustainability in terms of conservation presentation and wastage control, standard, usage, and development.

**Hon. Speaker:** Hon. Ndumi, I can see that the response is so wide and I would like to know if the Member was in the Committee.

**Hon. Ruth Ndumi:** No!

**Hon. Speaker:** She was not there so she has not seen the response. I will give Hon. Ndumi a chance to summarize and then you will seat down because it is a very wrong response. It will be unfair to make her read the whole report while it is good for you to have it and read it.

Hon. Ndumi, you can summarize it and I believe that there are some recommendation behind. If they are you can try and summarize them and then she can come to the Committee for more explanation because now she has not read and it is like a booklet.

**Hon. Ruth Ndumi:** Thank you Madam Speaker we will call her to the Committee.

**Hon. Speaker:** Thank you so much. It is a very wide elaborated statement so you need to go to the Committee for it. Hon. Minority Whip you wanted to say something.

**Hon. Peter Imwatok:** There is a comment I wanted to make.

**Hon. Speaker:** On the same because it has been already overtaken by events.

**Hon. Peter Imwatok:** Madam Speaker, I wanted to rise on Standing order 80 on a personal statement.

*(Laughter)*

**Hon. Speaker:** Okay and do it rightly.

**Hon. Peter Imwatok:** As you are aware am the only leader around, am the leader of Majority, Minority, Minority whip, Majority whip. Sorry, the Deputy Minority Leader is here and I have just said that I appreciate the Deputy Minority Leader who is in the House I had not seen him.

*(Laughter)*

*Point of Order*

**Hon. Patrick Musili:** Thank you Madam Speaker, I respect my senior here Hon. Imwatok, but when you look at our Standing order it says that when the Minority Leader is not there the Deputy Minority Leader...

*(Loud consultation)*

Madam Speaker, I need your protection from *Mheshimiwa* Ogeto he is seated in the wrong seat. Thank you for your protection.

*(Loud consultation)*

*(Laughter)*

**Hon. Speaker:** I agree with my Deputy Minority Leader.

*(Laughter)*

**Hon. Peter Imwatok:** Thank you Madam Speaker, I am a happy man the House is getting enlightened each day. Thank you, Deputy Minority Leader, for ascertaining your power and as a whip, I make sure when the Minority Leader is not there, you will take your sit. That must be respected as said by senior Odalo.

**Hon. Speaker:** Power is grabbed and not given.

*(Laughter)*

**Hon. Peter Imwatok:** Madam Speaker, as much as I am talking on light note not and I am very happy that this House has come a long way. My elder in church elder Obuya pulled out a very important issue as a leader of this County Assembly.

If I do not add my voice, it will be a precedent set. That when I will walk in this Assembly with my goons from where I come from and walking in because I am a leader without following parliamentary practices and then I come and hurt somebody whom I feel as gone astray with my Hon. Deputy, it will be a case.

Madam Speaker, the powers and privileges act are very clear, that for anybody to access the precinct of the House under the Speaker's rules it must be by the authority of the Speaker. We cannot as elected leaders and leaders chosen by our own parties and special elects be living within the precinct of the house protected by the powers and privileges in fear.

*(Applause)*

Madam Speaker, we are going to do a notice of Motion next week on Tuesday that stipulates anyone walking in this County Assembly as a security agency must be cleared by your office to enforce the powers of powers and privileges.

This is because I do not understand because we have six armed security officers seconded in this County Assembly and my extension of all civilian firm holders including me who is now in court we have never been allowed to close that path our respective offices or to Committee rooms armed with a firearm.

*(Applause)*

Madam Speaker, as we are speaking here on a Point of Order No.80 my life is on security threat because I do not know whom am I meeting on this corridor. He has no identity and he has not explained to the security agency of this county Assembly, Speaker who is the custodian of my security and he is not sure or aware who is here in any office armed.

Madam Speaker, failure to which we will protect ourselves as Hon. Members and evict every civilian, and every police officer who is not accredited to this County Assembly because we are politicians. We have heard many cases in courts that police are murderers, it is not only civilians who are killing people out there even police are involved in cases like that of the late Wakili, the case is still in court. It is the police officer who hijacked him and ended up killing him. At what point did he know him? He might be at his place of work or in court.

Madam Speaker I request you on behalf of all members present that from Tuesday if we have to exercise the rule of law if you have any court order, it must be enforced properly. Today I passed at a police station and asked the OCS to give me four police officers to bring me here because the Powers and Privileges Committee has written a report on me. Madam Speaker, this is a House of rules and procedures, we cannot violate the rights of an individual as enshrined in the Constitution. We all have rights.

*(Point of Order)*

The senior is speaking---

**Hon. Speaker:** But he is also on a Point of Order, we can't have two point of orders. Madam Speaker---

**Hon. Peter Imwatok:** Mheshimiwa from Highrise, I am on a Point of Order No. 80.

**Hon. Speaker:** Do you want to be informed?

**Hon. Peter Imwatok:** For him, I will allow.

**Hon.Oyugi:** Thank you Madam Speaker, I am really at a loss. Is the Minority Whip insinuating that there are intruders in this Assembly who are armed? If so, who are they? And who brought them. Thank you.

**Hon. Speaker:** Minority Whip, proceed and tell us, do we have intruders in the precincts of the assembly?

**Hon. Peter Imwatok:** Madam Speaker the Standing Orders require that we have a substantive motion on mentioning every individual in this House. That is why I have said that I want to ascertain as a leader of this assembly that every visitor who has appeared in the precincts of the assembly today, was he or she recorded by the Serjeant-at-Arms? If not, I want to bring a Substantive Motion on Tuesday that no other person will be allowed in this assembly apart from the Hon. Members of the County Assembly, the staff of the assembly, security agencies accredited to this Assembly and the Serjeant-at-Arms.

Therefore Hon. Tatura, indeed there are strangers within the precincts of the assembly, in the Clerk's office. The Clerk is a staff of the County Assembly of Nairobi and if indeed he is the Clerk of the Assembly within the law, there is no need for fear for serving the Members of the County Assembly and the staff.

*(Applause)*

Madam Speaker, I want also to understand the four persons who are within the precincts are from which police station? Personally, I will walk tomorrow to the relevant police stations around this City, the police station number one is housed at International Life House, a sub-station, another one at KICC and the major one is Central Police Station. Who have jurisdiction as per Police Office Act that every police station has specific jurisdiction. We want to know the so called police stations, we don't know *Mamlukis*. Even Atur Margayan and Salgayan went even in the Office of the president pretending to be security agents.

Madam Speaker, our lives are at risk, as a mother, as the Speaker of this County Assembly, you should not fear anything but exercise authority and invite all the accredited officers to a meeting and give them instructions that from tomorrow anyone who is not accredited as an officer and you have not at any given time given a written allowance to come to this House armed. Therefore, Madam Speaker, we put our lives in your hands as the Speaker of this House.

*(Applause)*

**Hon. Speaker:** Minority Whip, I agree that I am very much responsible and I---

*(Point of Order)*

Oder! There is nothing like on the same Point of Order. You either clarify something.

**Hon. Maurice Gari:** I am rising on Point of Order No. 80.

**Hon. Speaker:** That is what the Hon. Whip was dealing with.

**Hon. Maurice Gari:** Point of Order No. 80, I will just tell you what it does---

**Hon. Speaker:** Hon. Gari, do you want to clarify it because that is what the Hon. Member---

**Hon. Maurice Gari:** On the Personal Statement, Madam Speaker. I am also disturbed with the same because as we walked in this Assembly from yesterday, we were being searched by the Serjeant-at-Arms when coming in and going out. But when these strangers walked into the Clerk's Office, nobody searched them. Are we operating two assemblies or is it one entity? Is there any other boss apart from you Madam Speaker?

Madam Speaker, this is a grave concern and a grave matter. Something will happen here and all the blame will be on you Madam Speaker. I think you should take this one with speed and ask the Serjeant-at-Arms why they are allowing strangers without the authorization from your office and searching Members and not searching the strangers.

*(Applause)*

Madam Speaker, we live it at that level, I think you are only being good and favourable to the Members because we are not armed – like me I am not. If someone comes here with a gun, I will be very restless, Madam Speaker. I rest my case.

**Hon. Speaker:** Hon. Obuya, you know you are the one who started this matter. Can you finalize it properly, and you need to cue in.

**Hon. Kennedy Obuya:** Hon. Speaker, it is true like my senior and Hon. Imwatok has just said. Hon. Speaker, this is a gazetted parliament of Nairobi County. It is a government facility, its security is charged with the specific unit of police called SGB, and it is headed by an Inspector.

This parliament is headed by the Chief Serjeant-at-Arms. If a member has committed an offense either civil or criminal to be arrested, there must be communicated through your office. We have leadership in this assembly and they have got security and the security have numbers or man numbers. And the arms they carry have security serial numbers that are attached to either their man numbers or police service numbers. However, it is their right to have security and bodyguards but they are supposed to hand them over to the specific security seconded by the National Police Service identified through your office and the office of the Chief Serjeant-at-Arms.

I pray that through your wisdom you direct the Chief Serjeant-at-Arms today, because our lives are at risk, and properly inform them that those agents (I do not know) they are agents actually have gone to the extent of carrying other gadgets than the firearms that they carry, they have tweezers, they have ad---- do not misquote me, pepper spray and I do not know if they could be carrying any other arms. Please direct with your wisdom the Serjeant-at-Arms and the officer of the police f government buildings from now, any other person carrying firearms and any other weapon, be it a sidearm or an iPhone should be handed over to the OCPD Central Police Station. Thank you.

**Hon. Speaker:** Hon. Members, let me dispense this, I know that I gave the Serjeant-at-Arms invoking the Privileges Act and allowed for the safety of Members through the right channel to have a few other officers and I think the Serjeant-at-Arms will avail the names of those officers who were given. Therefore, those ones are okay within the precincts of this Assembly. I would like to tell my Clerk that he is so safe and nobody is going to victimize him, beat or rough him up. These are Hon. Members and they understand and we respect the court orders. We have respected the court orders just the same way he should respect other court orders. I will order him that by today by the end of this House, he needs to release the security or the strangers who are in his office to go back to their stations and I want the Serjeant-at-Arms to give me their names because I will indeed ask their bosses whether they had been given permission to come and safeguard the Clerk.

I also want to tell him that he has to be free if he knows that everything is right, he does n't need to have fear. We will follow and obey the law until--- He is the one who went to court, I don't know why he is fearing. He is the one who has taken himself to court and has to follow the court processes and in the end decide whether he wants to work or not. He should not curtail the institution not to move because he has the powers.

*(Applause)*

We are not going to allow that and I want to tell him freely because we will take it to court for infringing the rights of all the Members and the staff and also sabotaged the institution from moving on. I think I have dispensed that, let us proceed.

Hon. Members there was a list, Minority Whip, you were supposed to table names and since you have not brought them. I order that let us finalize the process on Tuesday. Next order!

## MOTION

DEVELOPMENT OF A POLICY TO REGULATE PARKING CHARGES BY PRIVATE HOSPITALS IN THE COUNTY

**Hon. Speaker:** Proceed, Hon. Ann.

**Hon. Ann Thumbi:** Thank you so much Madam Speaker and welcome back once again. That aware that, Article 186 of the Constitution of Kenya 2010 and Paragraph 5 of the 4<sup>th</sup> Schedule to the Constitution

provides for the functions and powers of the County Government on the County Transport including county roads, street lightings, public roads, transport, traffic lights, and parking; Further aware that recent years have witnessed a mass increase in the number of private hospitals with well-developed parking slots where patients and other visitors are charged parking fee at the entry to the premises; Concerned that there are no regulations for private parking in the County which has resulted to extortion of parking fees in some private hospitals in the county causing stressful situations to patients and visitors who visit with a suffering family member; Acknowledging that private hospitals may impose parking fees to visitors to deter mischievous motorists who visit a facility for the simple purpose of parking their automobiles and proceeding to their businesses. This Assembly urges the County Executive to develop a policy to regulate parking charges by private hospitals in the County to avert exploitation of owners of the premises through high parking fees when patients and the general public visit their premises for the services.

Madam Speaker, on 22<sup>nd</sup> August 2010 we voted for the new Constitution with a very big margin of 67% approval. Article 186 is very clear on the separation of power, the functions of the National Government and those of the County Governments. One of the functions of the County Governments is controlling street lighting, county roads, county transport for example matatus, bodabodas and the parking. This means that it is the responsibility of the county to control and regulate parking whether private or public.

However, Madam Speaker, the private hospital parking don't have regulations as per now. I have realized with a lot of concern having worked in some of these private hospitals that they charge a lot of money on parking. If you go to some countries like England, Scotland, you find that parking in private hospitals is free. In some countries, you find that parking fees charged in private hospitals are regulated. Patients with terminal illnesses like cancer, kidney failure, and other terminal illnesses are not charged, Madam Speaker.

In other countries, patients with disabilities are not charged parking fees. In others, patients who have taken a long time in hospitals are charged parking fees.

Madam Speaker, exploitation at our private hospitals is very high. We are urging the Executive to come up with regulations that will control private parking. They are collecting millions of money from these premises but the county doesn't get anything. If we can get money from their parking collection, we will be able to increase our revenue. This will enable us to upgrade our hospitals like Mama Lucy, Mbagathi, Mutuini and others to the next level.

Madam Speaker, I urge Members from this House to support this motion because it is going to help many Nairobians. I request Hon. Imwatoke, the president of the County Assemblies Sports Association (CASA) to second. Thank you.

**Hon. Speaker:** Did I hear the name 'President of CASA?' Hon. Minority Whip, you have so many hearts. Proceed.

**Hon. Peter Imwatoke:** In the federation, there are no chairmen, they are called presidents. I am the second federation president in Kenya after Nick Mwendwa.

Madam Speaker, allow me to first congratulate Hon. Ann Thumbi, who by profession is a medic. She asked me from the moment she was drafting this motion that I second the motion.

I encountered a scenario when I went to a hospital for treatment and delayed there. The parking fee I was charged was KShs.120 but I only had KShs.100. I had to reverse my car to look for KShs.20 to be able to pay. If you look at the design of many buildings in particular Nairobi, including the airport, it is a business thriving entity. Parking is primarily the function of the county government. If private entities must do it, there must be some consensus for the interest of the public. On that day, I stayed there for some time waiting for

someone to send me KShs.20 via my Mpesa to be able to exit the parking lot. Assuming someone with an emergency maybe the wife is expectant and almost giving birth and has rushed to the hospital without a wallet. When he comes out of the hospital after 30 minutes, he is unable to exceed the hospital. It is a serious thing that the county government should look into.

Nairobi as always led. We started the issue of Ward Development Fund and has been adopted by all the counties in Kenya. Nairobi must also lead. Hospitals, instead of 30 minutes allowance, we must have a good concession time or to be scrapped completely. We are losing lives as people are negotiating to get support somewhere because there is no parking lot. This is a business that is run by cartels without the interest of patients in the hospital. Private hospitals should be sanctioned to subsidize what the National Government does. Assume Mbagathi Hospital decides also to do the same. In fact, Kenyatta has done it.

It is important for these hospitals to separate those who want to take advantage of these parking and park the whole day because the hospital is safe. Let us also define well. What I want to encourage Hon. Thumbi is to come up with a bill stipulating how these private parking can be guided.

I urge the entire House to support this important motion on behalf of Nairobians who are unable to carry money all along. Thank you, Madam Speaker.

*(Question proposed)*

**Hon. Speaker:** Hon. Moses Ogeto.

**Hon. Moses Ogeto:** Thank you, Hon Speaker, I stand to support this motion but with reservations. In the implementation of the motion, Article 40 of the Constitution should be considered: The right to own property. It says,

40 (2) *Parliament shall not enact a law that permits the State or any person—*

*(a) to arbitrarily deprive a person of property of any description or of any interest in, or right over, any property of any description*

Standing Order No. 1 is very clear that legislations which you must make in this parliament must be confined within the Constitution of Kenya. I encourage Hon. Thumbi to bring a Bill that will sanitize private parking developers. Private developers should not be deprived of their rights. The same legislation which we may make today may turn against us in the future. Remember when the security laws which were made by the National Assembly, Sen. Orendo told the Jubilee side that some laws which they make in the Assembly might come later and turn against them. They will consume first those who supported before the ones that opposed it.

Hon. Speaker, some Kenyans might take advantage of this situation and park the whole week, especially Aga Khan and Nairobi Hospitals which are near town. By doing this, patients will lack space to park. This will also deny the county parking fees.

As I rest my case, my Whip said that exploitation by these private parkings have become rampant. When you go to a mall like Yaya, the moment you enter, they charge you KShs.50. Even if you stay for a minute, you will pay Kshs.50. That is what should be regulated to ensure that there is a duration of time to be on the premise. If you come to drop a patient, you can't do that for one hour, even if it is an emergency. This will allow more patients to be dropped.

We may create a law which has a lacuna. Hon. Speaker, one time you will say you were presiding a law that violated the right to property under Article 40 of the Constitution. I beg to support the motion.

**Hon. Speaker:** Hon. Mbugua Kabiro.

**Hon. Mbugua Kabiro:** Thank you very much, Madam Speaker, I support this motion.

Just like I said yesterday that health is a fundamental right under Article 43 of the Constitution, it, however, doesn't say that paying of parking is a fundamental right. Private hospitals and other places of social gatherings have charged parking without remitting anything to the county. It is high time that we consider those as revenue streams for the county. I am not in any way saying that those people who go and park their cars should not be penalized. It is like the County Government; we have avenues of getting those people who are flouting rules that have been set for parking. They are punished properly. If I went to Aga Khan, Nairobi Hospital or any other hospital that my insurance, First Assurance allows me to go, I should not be allowed to pay parking. I should have my card validated by the doctor so that I do not have to go back and pay for parking after paying for my services.

Madam Speaker, I am a good friend of Hon. Maurice Gari. When he was appointed by his party to sit in the Assembly Board, he asked me to go with him to Intercontinental Hotel to have lunch. We spend hours there and while we were exiting, Hon. Gari who had his car parked, went and validated his card and didn't pay anything. Such services are required in our hospitals. They should not profit from us paying parking fees but concentrate majorly on treating and caring patients to the highest attainable level.

I support the motion and I ask to be implemented the earliest. Thank you.

*(Applause)*

**Hon. Speaker:** Hon. Emmily

**Hon. Emily Oduor:** Thank you, Madam Speaker, I stand to support this motion, but at the same time, there is something that I want to bring to your attention. If you look at the finance bill that we passed last year, this was well articulated. The people who are failing us is the Executive. We agreed that all these hospitals and even the malls are supposed to pay revenue for parking because their core business is parking. We gave the Executive a go ahead to charge them. We even gave them methods on how to charge these institutions. It was a very big revenue stream that we included there. Unfortunately, one year down the line, the Executive has not effected that. They keep sweeping it under the carpet. We sat down as a committee and agreed that we must collect revenue. They either give the county revenue or they give us free parking. So, I think it is important to bring it up so that the Executive can realize that we are very serious about parking in these institutions.

Hon. Imwatok, you talked about private hospitals. But do you know even Kenyatta Hospital charges parking?

The thing has gone so far; even public hospitals are charging; unfortunately, the other time I was charged for parking when I went to St Andrews church. I think we need to drop this issue of charging at every place you go to. When I go to the Junction just to get money from ATM I pay Kshs 50 but that money does not come back to the county. I support but at the same time we need to follow up with the executive and let them implement. If they are not able to implement, the assembly will come up with a way forward. The implementation committee should also follow up. Thank you, Mr. Speaker, I support.

**Hon. Patrick Mbangula:** Thank you Madam Speaker, I rise to support this motion and to say we need to be kind to those suffering in hospitals. As my whip had spoken earlier and said he was forced to go and look money to pay extra Ksh. 20 for parking it also happened to me in Nairobi hospital. I took a cancer patient there and he was forced to pay almost Ksh. 700 because we spent the entire day there waiting for

the treatment. This is high time we put a regulation on how we can stop this overcharging and exhorting public and sick people. Thank you, I rise to support this motion.

**Hon. June Ndegwa:** Thank you Madam Speaker. I would like to thank the Hon member for bringing this motion to the house. I would like to urge this hon house to expedite this motion. I have just done a simple calculation that this is a revenue stream the county could take up. We are going through a rough patch in this country and we need all the revenue streams. If these private hospitals are taking advantage of our patient and people who go to shopping malls and the hospitals, I think the county also needs to benefit so that we can be able to beef up even our dispensaries and hospitals and use the revenue for something else to help the Nairobian.

Quick math: if a hospital has 100 spots for parking and charges a minimum of Kshs 100 for 30 minutes to an hour, that is Kshs 10,000 in an hour, Kshs 80,000 in a day. Considering there is night, that is Kshs 2 million in a month on the lower side. If we have 10 hospitals that are close to Ksh 12 million. This county could use the Kshs 12 million. I want to urge the house that we need to do the necessary and stop charging our patients or the money need to come to the County. Thank you Madam Speaker.

**Hon. Mary Arivisa:** Thank you Madam Speaker, it is very sad that we are one of the most taxed countries in the whole world yet we are not very rich. We are charged and taxed on everything. I want to thank Hon Thumbi for bringing this motion. I support it 100%. If it can be extended to malls because when I go to malls like Nakumatt Prestige and I buy a receipt, there is VAT charged on everything I buy. When I come out, you find you have to pay Kshs.50 for parking, and as the previous speaker has said if you calculate it is a lot of money. They may even be getting more money per day thorough the parking than the things they are selling. It should be extended; not just to hospitals. Our people are poor; struggling with healthcare issues. Most of these hospitals like Kenyatta, Mbagathi may go the same way and if they do that we shall make the lives of our people even harder.

If I go to the hospital, I already gave them services and paying them. It should not be that I will be charged for parking again. This motion should be done expeditiously. We need to stop it. Our referral hospital Kenyatta National hospital started it and soon we will find that even the other hospitals countrywide will start doing the same. We should not be charged from hospital areas where we need other services because we pay them money. It is sad St Andrews is doing the same. I have seen Christian Science next door also saying that there is available parking. We as a church are losing it. We don't need to become commercialized in our mind that we lose our human part. I support the motion.

**Hon. Margaret Mbote:** Thank you Madam Speaker. I rise to support this motion. It is a pity because sick people don't have money. Most of them solicit money through fundraising, harambees and they go through tough times to get the money.

It is very unreasonable that hospitals charge them for parking. This is high time the issue can be addressed to help our people. Diseases are becoming more; people are dying everyday leaving behind huge bills. Hospitals should help not charging for parking. I stand to support the motion and urge that it should be taken seriously and action taken against those violating. Thank you.

**Hon. Kennedy Obuya:** Hon Speaker most of my observations have been shared by hon members. I rise to support this motion and I also wanted to encourage the county executive not only to look into hospitals but also other facilities like shopping malls. Other than KRA as a revenue collection point for the government, the county governments are also charged for collecting revenue. It is preserved for county government to

regulate facilities that charge parking fees from private entities, public hospitals or any other public access facilities by guiding not only the collection but also the rates to be charged. I beg to support.

**Hon. Donji:** Thank you Madam Speaker. I want to give it a different angle. I am supporting it. These people are in business and as a businessman, I would say that they should do their business. We should devise a method where we can take a certain percentage. We encourage them to have private parking. The county should take about 30%. For me to invest in the private parking and the county takes everything I will not have value for money. As a businessman I want the county to take a certain percentage, even if it is 30% and they continue charging the parking. Thanking very much. I support.

**Hon. Kennedy Odhiambo:** Thank you Madam Speaker. I am contented with the motion however I have a concern. Based on revelation by Hon Emily the Budget committee had given the same recommendation on what we are debating. My fear or concern is, is there a way we can amalgamate what the Budget Committee and the Hon member has in mind rather than debating an issue that already lies with the executive. That is the concern, otherwise, I am in support.

**Hon. Speaker:** Let us debate and finish and when they get there they will sit down. I will urge the Member who has brought the motion to sit down with them and see way forward. But let us finalize the motion and pass it if you want to pass it. Millicent Okatch?

**Hon. Millicent Okatch:** Thank you Madam Speaker and welcome back. I wish to support the motion but I have a different view. Why not waiver for the patient and charge those who park an hour?

**Hon. Millicent Mugadi:** Thank you Madam Speaker. I rise to support the motion but with a bit of advice on how it is going to be implemented because as you know private hospitals are private as the word says. We as a county need to negotiate for Nairobi residents to have a fair fee because people don't go to hospitals for fun. They go there because something wrong is happening to their bodies and as you know with our health system medicines are expensive and we are having a lot of sickness coming up because of diet, chemicals and also the environment around us.

To help patients that have unfortunately turned to be customers of private hospitals I will suggest that the county should come up with a committee that will negotiate on their behalf when it comes to parking. We don't have a lot of ambulances or public vehicles that drop people to hospitals. Most people tend to use private hospitals and would wish the vehicles to wait for them outside as they are being treated. I suggest we come up with a way to negotiate with those private hospitals so that they don't feel we are interfering with their business. This is a good motion for Anita. Her being a nurse she has experience with patients and she has seen how Kenyans are struggling with their medicals expenses.

**Hon. Anita Thumbi:** Thank you much Madam Speaker. Hon Jateso, Hon. Ogeto, Hon. Mbugua, Hon. Emily, Hon. Musili, Hon. June, Hon. Mary Arivisa, Hon. Mbote, Hon. Ken Obuya, Hon. Donji, Hon. Oyugi, Hon. Millie Okatch, Hon. Millie Mugandi and the whole House at large, thank you so much for supporting this Motion.

Madam Speaker, we all agree that we need regulation on parking fees in our private hospitals. Like I had said before especially our patients with terminal illnesses they are suffering. Patients with conditions like cancer who frequently go to hospitals for radio and chemo are patients who go for kidney failure and dialysis. It takes six to seven hours a day. They spend a lot of money. I want to thank this House for supporting this Motion. I beg to reply.

*(Question put and agreed to)*

**ADJOURNMENT**

**Hon. Speaker:** Hon. Members, there being no other business, this Honorable House adjourns to next Tuesday at 2.30 p.m.

*(The House rose at 4.15 p.m.)*