



NAIROBI CITY COUNTY ASSEMBLY

OFFICIAL REPORT

Second County Assembly – Third Session

Tuesday 5th November 2019

The House met at 2.30 p.m.

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

PRAYERS

NOTICES OF MOTION

Hon. Nancy Maole: Thank you, Madam Speaker, I beg to give notice of the following motion: That aware that Article 42 of the Constitution 2010 provides for the right of every person to have a clean environment including the protection of environment for the benefit of the current and future generations.

Further aware that Part 2 of the Fourth Schedule to the Constitution provides for the function of the county government, which includes among others implementation of specific national government policies on natural resources and environmental conservation.

Recognizing that section 5 of the Nairobi County Solid Waste Management Act 2015 provided that every person within the county is entitled to a clean and health environment and has a duty to safeguard and enhance the quality of the environment.

Concerned that the recent month have witnessed cases of food contamination leading to death and hospitalization of Kenyans which has cast doubt on just how safe the food and foodstuffs are handled in the county. Such cases have mostly been reported in hostels, both high end and outside catering firms serving food at social events.

Further concerned that environment around some hotels in the county are below the required standards of sanitation and environmental beautification.

Noting that the optimal clean environment is vital in creating a hotel environment that leaves guests feeling satisfied, pampered and special. Thus improving not only the image of the hotel but the city at large.

This assembly urges the county executive to enforce the existing laws on food handling and environmental beautification by hotels to ensure clean and health environment in the county especially during the festive season. Thank you Madam Speaker.

(Point of order)

Hon. Speaker: Hon. Gari, what is the point of order?

Hon. Maurice Gari: Madam Speaker I am rising on a point of order 56(h) on privilege and if you may grant me leave I can go on with what I want to put across.

Hon. Speaker: Proceed, Hon. Gari.

Hon. Maurice Gari: Madam Speaker I beg to give the following notice pursuant to Standing Order 56 (h) of the Nairobi County Assembly.

Madam Speaker aware that Article 73 (2)(d) and (e) of the Constitution of Kenya provides for accountability of state officer for decision and action as key guiding principle of leadership integrity.

Further aware that section 18(2) of the County Assembly Service Act provides that the name of a person nominated by the board or appointed by the board as the Clerk of the Nairobi City County Assembly shall submit to the County Assembly his name for approval according to the Standing Order.

Madam Speaker if you go to this Standing Order it stipulates well how the Clerk of the assembly should be employed.

I am urging this assembly to resolve and revoke of appointment of one Jacob Ngwele as the Clerk of this county assembly on the following grounds:

1. Gross violation of section 18(2) of the County Assembly Service Act. As per the provision of this Act, the name of one Mr. Jacob Ngwele was not tabled in this assembly for approval. The appointment of the officer was an illegality.

(Point of information)

Hon. Speaker: Hon. Gari you are supposed to be informed before I rule on the same

Hon. Maurice Gari: I don't want information Madam Speaker.

Hon. Charles Wakarindi: Thank you Madam speaker, I want just to go on record that the Hon member is raising very important issues but it should be expunged from the records of this house that Ngwele is a Clerk. He is not.

We should be speaking of a person who has been performing the duties of a Clerk; we should be speaking of a person who extended his term as an interim official but not a Clerk. We do not have a substantive Clerk.

According to the Constitution and our Standing Orders, there was never an interview, there was never a name in the assembly and we all know that Ngwele just retired from the national Parliament in 2017 and the Act is very clear that the process should be competitive. That is the word. So a member referring to one Jacob Ngwele as Clerk is wrong. He should refer to him either in his capacity as a Kenya citizen or a person who has been performing duties of a Clerk but not a Clerk. Thank you Madam Speaker.

(Applause)

Hon. Maurice Gari: Madam Speaker the reason why I am bringing this motion is that this assembly has been held ransom with the person we have not confirmed in this assembly, taking us to courts round and round, jeopardizing the work of this assembly and Madam Speaker this house is like a high Court. Whatever we do here is the will of the people of Nairobi County who elected us.

We should follow the law and follow it in the right order. The law should not be lesser to some people and to some it works well. I want to urge you Madam Speaker to put this motion in a debate so that we bring this issue to rest once and for all. If you can grant us a chance to deliberate on this issue so that that name - if we can approve Ngwele as our Clerk let him be approved as the Standing Orders and Constitution stipulates.

Hon. Speaker: Order Hon. Gari. You know it is like you are debating and I thought you were moving. You have to do it in the correct way. you used Standing Order 56 and I agree. According to it, it is a motion raising a question of privilege. I will accord it but I want you to move so that if it is supposed to be debated then it is done in the right way. you must move the motion without debating and making it look as if we have already started a debate on it. Do you have the motion to move, Hon. Gari?

(Point of order)

Hon. Kennedy Oyugi: Madam Speaker I want to believe that Hon. Gari is quite in order because the point of order in which he is rising on allows him. It is a motion that can be moved without prior notice. I think Hon. Gari is quite in order.

Hon. Speaker: Yes, he is in order. I was saying that let him move the whole motion properly. I was not saying he was out of order. Based on Standing Orders he is in order. But let him move the motion correctly.

Hon. Maurice Gari: Thank you Madam Speaker for guidance. We are still on the process of learning. I beg to move the following motion based on Standing Order 56(h) Nairobi City County Assembly.

Aware that Article 73 (2)(d) and (e) of the Constitution of Kenya provides for accountability of state officer for decision and action as key guiding principle of leadership integrity.

Further aware that section 18(2) of the County Assembly Service Act provides that the name of a person nominated by the board or appointed by the board as the Clerk of the Nairobi City County Assembly shall submit to the County Assembly his name for approval according to the Standing Order.

This assembly to resolve and revoke of appointment of one Jacob Ngwele as the Clerk of this county assembly on the following grounds:

2. Gross violation of section 18(2) of the County Assembly Service Act. As per the provision of this Act, the name of one Mr. Jacob Ngwele was not tabled in this assembly for approval. This depicts that the appointment of the office bearer was an illegality.

Hon. Speaker: While I will allow that I want to put in a clear procedure. You know well that the same Clerk is in court and therefore the ground of what he is in court are that he will be victimized, suspended and anticipatory of the same.

I believe the motion doesn't touch on the case in court so that we don't prejudice what is in court. You will agree with me that you will execute the motion in terms of understanding whether we have a Clerk and whether the Clerk was approved by the First or this assembly and lastly whether the consent in court that was done in July when the House was in sine die had consent with the Clerk. We should not touch on anything that is in court. Are we in order Hon Gari on how to execute the motion?

Hon. Maurice Gari: Much obliged Madam Speaker.

Hon. Speaker: I will give you time after we have finished the issues of the Order Paper.

STATEMENTS

Hon. June Ndegwa: Thank you Madam Speaker. I rise on Standing Order 32, but also to seek your indulgence, I would like to ask the assembly members who are in solidarity with our Governor maybe to just raise while I give a statement.

Madam Speaker we have seen our Governor getting into EACC and also being roughed up. He has already left the EACC. I wanted us to adjourn and go and support him in this cause. He is the Governor of Nairobi. We respect him as Governor of Nairobi and therefore if it is in your interest and if you agree with me that we just stand up in solidarity while you give direction to adjourn proceedings of this house today to be able to be with him then we will be grateful.

I ask my fellow members who are in solidarity with our Governor to rise.

(Members rose)

Hon. Speaker: Hon members what the hon members is saying - and I want you to sit because I can see you are in solidarity with the Governor. Can you kindly sit.

(Members took their seats)

The Governor is out of the Integrity center safely and he is not going to die and he is still going to remain the Governor of Nairobi.

(Applause)

Let us not joke but I agree there are serious business that we have. You have a serious business that Hon. Gari has brought in the house and therefore after that business, we will adjourn and we will go and stand with our Governor and we want to say as Nairobians that we have seen a lot of drama. I want to plead that they have to leave Nairobi to work.

This is a unique county with more than six million people. What these people want to see is more business. For me I want to plead, even with agencies, let us have a way of seeing that things are working in harmony than what we are seeing now happen. Let us execute the business we have and members will leave and go and stand with Governor and show solidarity with Nairobi that indeed we want peace.

(Point of order)

Hon. Charles Wakarindi: I rise on point of order 34 about adjournment on definite matters of urgency county importance. I seek the leave of the chair that we may forgo order 34(2) that seeks for me to have written to you two hours prior and if I get that favour I would like this assembly to adjourn and discuss the issue of the Governor being taken to EACC unfairly. The Governor has raised many issues that touch on the properties of the county. We need to respond. In my capacity as acting Majority Leader *(Applause)*, I need to take the business of this house in the right direction. I seek your indulgence, Hon. Speaker.

Hon. Speaker: Hon Members I now want us to respect our Standing Order. I will agree on both sides and I will have to quash the issue of adjourning and going to the Governor. If you want to discuss the issue we discuss it here on the floor of the house and we finalize it. Before that, we will do the business, then to Hon. Gari and finalize. Until the finish the orders of this house. is that okay? Are we in order in that?

(Hon. Charles Wakarindi spoke off-record)

We have agreed we finish the business and we will finish. You used the Standing Orders, it is not a motion where we have a paper. You either drop it completely but instead of dropping it let us discuss all the matters and we will finish. *Sawa?* Thank you. Proceed, Clerk. Hon. Silas? I remember you walked on this statement. Today I want to use the powers of the chair. I had given you an opportunity last time and you walked out on me...

Hon. Silas Matara: Hon Speaker before you pronounce yourself, on that material day I had a bad stomach!

(Laughter)

It is a serious matter. I stayed in bed for two days.

Hon. Speaker: I agree. And as long as you bring me a letter, I have no problem with that. I know you saw a doctor.

Hon. Silas Matara: Most obliged, Hon. Speaker.

Hon. Speaker: Okay.

REQUEST FOR STATEMENT REGARDING MERGER BETWEEN NATIONAL BANK AND KENYA COMMERCIAL BANK ON REVENUE COLLECTION IN THE COUNTY

Hon. Silas Matara: Hon. Speaker, it is unfortunate that these statements were supposed to be tabled in this House. They are dated 24th September 2019. So, in the interest of time, I will just proceed. Hon. Speaker, pursuant to Standing Order 45 (2) (c), I wish to request for a statement from the Chairperson of the Select Committee on County Finance, Budget and Appropriation regarding the application of the proposed merger between National Bank of Kenya and Kenya Commercial Bank on revenue collection in the county.

Hon. Speaker, as you may be aware, the contract between Nairobi City County and *JamboPay* on revenue collection lapsed. Subsequently, they agreed with National Bank to provide one module of the revenue collection process. In executing its oversight role, the Assembly has a responsibility to access and act on information regarding the use and management of public resources.

Hon. Speaker, in the statement, the Chairperson should inquire into and report on;

1. The implication of the new arrangement on revenue collection in the county and whether the towns will remain unchanged, and
2. Measures taken by the county to ensure public funds are secured and the interest of the residents are taken care of.

REQUEST FOR STATEMENT REGARDING IMPLEMENTATION OF PROVISIONS OF NAIROBI CITY COUNTY DISASTER AND EMERGENCY MANAGEMENT ACT 2015

In the second statement, pursuant to Standing Order 45 (2) (c), I wish to request for a statement from the Chairperson of the Sectoral Committee on Culture and Community Services regarding the implementation of provisions of Nairobi City County Disaster and Emergency Management act 2015. Hon. Speaker, section 8 of the Act provides for the establishment of the Nairobi City County disaster management plan that creates a system that addresses all phases of disaster including prevention, mitigation, preparedness, and the emergency responses as well as recovery and rehabilitation. However, the said plan has not been put in place despite the passage of the Act in 2015.

Hon. Speaker, in the statement the Chairperson should inquire into and report on;

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1. Measures put in place by the county executive to fully implement the provisions of the said act,
2. Reasons for the delay in the formulation of the disaster management plan that is key to the execution of the disaster management process.

REQUEST FOR STATEMENT REGARDING APPROVAL OF CONSTRUCTION STRUCTURES IN THE
COUNTY, MORESO LEARNING INSTITUTIONS

The third statement, pursuant to Standing Order no. 45 (2) (c), I wish to request for a statement from the Chairperson of the sectoral committee on Planning and Housing regarding the approval of construction structures in the county, more so in learning institutions.

Hon. Speaker, on the 23rd of September 2019, the county and the country at large woke up to the sad news of fatalities and injuries occasioned by the collapse of Precious Talent school classroom on pupils. This raises the concern on whether the county satisfactorily assesses the fitness of some of the buildings before granting approvals.

Hon. Speaker, the list of unfit structures in the county is long but this specific one has raised an alarm on structural fitness of most buildings in the county. Hon. Speaker, therefore, in the statement, the Chairperson should enquire into and report on;

1. The criteria and parameters used by the planning department in the issuance of approval for constructions in the county more so in learning institutions, and
2. Steps the county executive has taken to ensure that both private and public institutions comply with the law guiding approval for the construction.

Thank you, Hon. Speaker. Before I sit down, I would urge the Members of this House to join in prayers for this Assembly because we need to clear with this stalemate and get back to business. Thank you.

Hon. Speaker: Thank you very much. Chairperson, Budget, can I give you two weeks on that?

Hon. Robert Mbatia: Hon. Speaker, nine plenary days will be appropriate for us.

Hon. Speaker: Thank you. I know the Chair of Culture is committed to Kibra. Do we have a member of Culture to take that statement for Hon. Njihia? Culture? Hon. Jagero?

Hon. Millicent Jagero: We will give a response in two weeks' time.

Hon. Speaker: Okay. Hon. Bishop walked out. Hon. Ndumi. Queue in. Okay.

Hon. Ruth Ndumi: Thank you, Hon. Speaker. Give us two weeks.

Hon. Speaker: Okay. Hon. Nyambura. I said if you walk out and you have a statement, that statement is canceled until the next three months. I will have to put a regulation so that we respect it because when you put it on the paper, we expect you to...Hon. Ngengi, you have a response for Transport? Is it your statement for which you need a response?

Hon. Daniel Ngengi: Yes, Hon. Speaker.

Hon. Speaker: Okay. Is Hon. chair there? He walked out. Tell him that he has to meet Hon. Ngengi tomorrow and ensure he replies to the statement. Clerk, proceed.

MOTION

INCREASE BUS STOPS ON THE COUNTY ROADS

Hon. Speaker: Hon. Matara.

Hon. Silas Matara: Thank you, Hon. Speaker. In light of the wish of the Members on the solidarity with the Governor, I will take a few minutes.

Hon. Speaker, I beg to move this motion. That, aware that under the Article 186 (1) of the Constitution of Kenya, and Fourth Schedule, the functions and powers of County Government, among others, covers County transport including county roads, street lighting, public road transport traffic, and parking;

Further aware that the City has designated preferential bus stops throughout the City County roads; noting that recent years have witnessed a marked increase in the number of public service vehicles plying various routes in the County;

Concerned that most pedestrian walkways and unmarked bus-stop areas along various County roads have been illegally turned into bus stops for picking and dropping of passengers by not only the public services vehicles but also private vehicles, this has led to increased traffic congestion and accidents including deaths to pedestrians; further noting that the allocation of parking, picking and dropping zones for public service vehicles was last done in the year 2000, this Assembly urges the County Executive to increase the picking and dropping areas in the County roads and rehabilitate the existing ones with adequate passenger waiting cabins.

Hon. Speaker, everyone in this House is aware that when the roads in Nairobi were designed back in the 60s, most of the infrastructure is still the same. We are also aware that the number of public service vehicles has increased to a big number.

This motion is to urge the executive to institute measures to ensure that bus stops can handle the huge number of *matatus* and other public service vehicles. We are also aware that the population of Nairobi, the master plan that built most of the infrastructure was designed to handle 400,000 people, but currently, we have a situation whereby during the day, we have a population of 6 million during the day and at night it is around 5 million.

So, with that in mind, it means we have a lot of passengers plying those various routes and using the public service vehicle. So, measures should be put in place to be commensurate with the increase in the number of pedestrians and passengers. The design of the roads should be alive to the facts of the current situation of Nairobi. We realize that even in the new projects being implemented in the various projects, they get to use the old design, neglecting the inclusion expanded or a large number of bus stops and waiting bays for the public service vehicles.

Therefore, the situation with the few bus stops that are available, it creates a situation whereby there is a conflict between the *matatu* operators and the police because they are normally arrested for picking and dropping passengers on the road. Honestly speaking, it is a misgiving of the county or the government because it is our mandate to ensure that we create adequate infrastructure for the use of the public service operators. It might also be an avenue to raise revenue because we can bring in the *matatu* operators to buy in so that we either raise the amount charged on them for their respective parking fees so that we can be able to find money to finance the projects to include the bus stops.

Hon. Speaker, there is also a conflict among the respective *matatu* operators because they get to compete for the scarce resources, that is the limited number of bus stops and waiting bays. Hon. Speaker, we also know that Nairobians walk to work. But most public and private vehicles occupy the walkways. That

makes it hard for the people who walk to work to use the walkways. So, it is important and prudent that the county puts that into consideration.

Hon. Speaker, lastly, we realized that on the respective bus stops, there are no shades such that when it rains, the people are not able to wait for the *matatus* in the respective stages. So, it is important that Nairobians who get to pay taxes to the county are facilitated by being provided with the requisite and important shades in the respective stages. Thank you. I ask Hon. Kamau to second the motion.

(Hon. Speaker left the Chair)

(Hon. Emily Oduor took the Chair)

Hon. Temporary Deputy Speaker: Hon. Kamau.

Hon. John Kamau: Thank you Madam Speaker. I rise to support the motion. Thank you.

(Question proposed)

Hon. Temporary Deputy Speaker: The floor is now open for debates. Hon, Millicent Okach. Who is using Okach's card?

Hon. David Okelo: Thank you Hon. Speaker. You happened to give me a chance, but the card is for Millicent Okatch.

Hon. Temporary Deputy Speaker: Where is your card?

Hon. David Okelo: I think I lost my card somewhere. It must be somewhere here.

Hon. Temporary Deputy Speaker: Okay, go ahead.

Hon. David Okelo: Madam Speaker, I rise to support the motion, but since we have other engagement. You know what happened to our Governor. We want to go and stand in solidarity with him. So, we need to request you to give Members time and we adjourn very fast. Even the issue of Mr. Maurice Gari or our purported Clerk is weightier than this one. But all in all, we request you to do it very fast and give us time, call the mover and we finish with it. We then go to the motion of Mr. Gari. Then we go to Upper Hill and support our Governor who has been teargassed at EACC. Thanks, Madam Speaker.

Hon. Temporary Deputy Speaker: Hon. Okelo, there is no issue that is weightier than the other when it comes to this House. I know we need to discuss the issue but don't say that this one is weightier than the other. I will give the opportunity to one more person and then the mover will reply after that. Hon. Julius Manina Njoka.

Hon. Julius Njoka: Thank you Madam Speaker. I rise to support the motion.

Hon. Temporary Deputy Speaker: Mover.

Hon. Silas Matara: Thank you Hon. Speaker. Let me take this opportunity to extend my heartfelt gratitude for the silent support of this motion by colleagues and with that, I beg to reply. Thank you.

(Question put and agreed to)

(Hon. Speaker resumed the Chair)

Hon. Speaker: Hon. Gari you know you need to proceed but I need a copy of what you have so that I may be able to read your motion and remember that it does not have a vote; we are just discussing.

Hon. June Ndegwa, Hon. Kathundo [Wakarindi] is also around; if he is not you will take over on what he wanted to do because I think it is just a motion to stand in solidarity with the Governor.

Hon. June Ndegwa: Yes, Madam Speaker, as I was saying earlier that as Nairobians we have seen and we have suffered enough and our Governor has done a lot as well in this County of Nairobi. We

would like to stand with him and tell Nairobians that we need to work. We respect the institution that has been placed by the Government but then also we need to be left alone and do what we need to do.

We are happy that you are back and the Assembly is properly constituted and has a substantive Speaker. We want our Governor to be able also not be diverted and bring a lot of diversional tactics that he can comfortably go and answer a lot of questions that he is being asked because we respect the EACC; he should also be left to work.

Madam Speaker, this is because it gets tiring; we are human beings. When it is all about poking and trying to just insinuate things and make things bigger by creating a mountain out of moles it does not help Nairobians. What we are saying is that we want to concentrate on our development agenda for Nairobians.

Hon. Speaker: I was just asking: are you going to execute now that Hon. Charles Thuo is not there?

Hon. June Ndegwa: Yes, thanks.

Hon. Speaker: Proceed Hon. Gari!

MOTION

REVOKING THE APPOINTMENT OF JACOB NGWELE AS THE CLERK OF THE ASSEMBLY

Hon. Maurice Gari: Madam Speaker, I will read then I give Serjeant-at-Arm to supply you with a copy. Madam Speaker, I beg to give the following motion pursuant to Standing order 56 (h) of Nairobi County Assembly: Aware that article 73 (2) (d) and (e) of Constitution of Kenya provides for accountability of a state officer for decision and action as a key guiding principle of leadership and integrity.

Further, aware that Section 18 (2) of the County Assembly Service Act provides that the name of the person nominated by the Board for appointment as a Clerk of Nairobi City County Assembly shall be submitted to the County Assembly for approval in accordance with the Standing order of this County Assembly.

This Assembly resolves to revoke the appointment of Mr. Jacob Ngwele as the Clerk of this Assembly on the following grounds; Gross violation of section 18 (2) of the County Assembly Service Act as a per provision of this Act. The name of Jacob Ngwele was not tabled on the floor of this Assembly for approval. This depicts the appointment of the office bearer was an illegality.

Madam Speaker, I think this House is guided by the rules and procedures of the Assembly and the County Government Act, the Standing Orders as well and we have the Assembly Service Act.

Madam Speaker, one Mr. Jacob Ngwele is a lawyer by profession and in his capacity, he should be advising the board on what to do. Mr. Jacob Ngwele did not advise the board to table his name in the Assembly for approval so that we can have smooth transactions of the business.

Madam Speaker, very soon if we do not put this matter to rest we will see many petitions coming to this Assembly and many court cases coming to this Assembly on the issue of approval of one person to serve as the Clerk.

Madam Speaker, I think the law should be followed to the latter, we follow the law the way other Kenyans are doing because that is what we have been elected to do; we will not be spending public funds in the wrong way.

Madam Speaker, if we leave a vacuum, any member of the public can come and petition this Assembly or take this Assembly to the court that the board did not do. The board did the right procedure but the adviser to the board did not advise the board to table his name for approval.

Madam Speaker, this is a violation of the same article of the County Service Act and County Government Act. We are in the Second Assembly and I do not want to go to history with blames that when we were in this Assembly we did not do one or two things. The board ought to be advised that there is one person who has not brought his name to the Assembly for approval.

Madam Speaker it seems that we are dealing with a stranger and we understand here that any person has a right to rush to any court corridors to sue the Assembly. Without taking much time, the same person that we saw his letters from the Parliament that he resigned from Parliament on 21 July 2017 then again he entered the consent on the same date.

Therefore, I do not know if we are dealing with an employee or a politician. If we are dealing with a politician well and good, we can leave it on a blanket note. But if we are dealing with an employee, someone who is working for our benefit and for the benefit of Nairobi at large!

Madam Speaker, I hope we should put things right and let not history judge us harshly. I will call upon Hon. Kabiro to second the motion.

Hon. Speaker: Hon. Kabiro!

Hon. Mbugua Kabiro: Thank you very much Madam Speaker, I would like to second this motion and I would like to say a few things. The procedures for employment are things that are public and we Members understand the law. I have seen several other people in the public being humiliated for seeking employment in the wrong way later been summarily dismissed.

The question, which Hon. Gari is presenting before this House is someone whose procedure of coming into the office has violated a certain section of the law that affects this House.

Hon. Speaker: Hon. Members I would like to rise on the same Standing order 56, which is a motion on Privilege. Before I read the motion, I want to reiterate because I know someone will think that we have decided to deal with the matter that is in Court. I think the matter in the House is a matter to deal with the process of how the recruitment was done.

Therefore, I want it to be clear in the HANSARD so that we are not told by anyone that we went and discussed a different thing and therefore, I read.

(Question proposed)

Hon. Speaker: Hon. Peter Imwatok Minority Whip.

Hon. Peter Imwatok: Madam Speaker, allow me to add my voice to this particular motion or support this motion. Madam Speaker, when you read Article 195 of the Constitution if allowed, I will quote for the purpose of HANSARD so that no one can ever assume that we can transact our business without being the preview to the Constitution with supreme law of the land.

Madam Speaker, I quote *“(1) A County Assembly or any of its committees have the power to summon any person to appear before it for the purpose of giving evidence or providing information. (2) For the purposes of clause (1), an Assembly has the same powers as the High Court”*.

Madam Speaker, without using a lot of legal language on this the Constitution under Article 195 it is very clear, that this Assembly has a jurisdiction equivalent to High Court. Many are a time when people will run to different jurisdictions with a different motion to move the courts. Therefore, I support this motion

purposely because Hon. Gari has moved to the [High Court of] Nairobi City County Assembly that this motion should be adopted.

Madam Speaker, indeed we cannot pretend and this Assembly does not need the Clerk, because the constitutionality of the Assembly constitutes of the following according to the County Government Act: 1. Speaker, 2. Members of the County Assembly and then 3. The clerk of the County Assembly who runs the entire secretariat or the staff. There is no doubt about it that this Assembly of Nairobi requires to have Clerk.

Madam Speaker, I am privileged as among a few in 2013 I was given a chance by hon people of Makongeni, Mbotela to be the first MCA ever to be elected from the minority by extension by two wards which were merged into one.

Madam Speaker, when I was elected here for those who were not here, we were having the first Assembly in Charter Hall, it was empty and with plastic chairs. I remember, I was sworn in and before I was in and it can go on HANSARD, we were introduced to one Jacob Ngwele as the Interim Clerk seconded by the Transition Authority to the County Assembly.

Madam Speaker, the Transition Authority clause was very clear that out of all 47 Counties Assemblies at the expiry of the Transition Authority period, which was three years for setting up structures for every 47 Counties Assemblies. Every County Assembly ought to have undertaken a competitive process under section 18 (1) (2) of County Assembly Service Act to recruit a Clerk of County Assembly.

Madam Speaker, for the purpose of HANSARD we must also go to the reading of this Act on what it says. The Act says that the Clerk of the County Assembly out to be recruited competitively and approved appointed by the board who then transmit his name to the County Assembly for approval.

Madam Speaker, why was the statutory document and vision that the Assembly has to approve because under Article 1 of the Constitution the powers of the people of Nairobi are vested by people themselves and can only be delegated to elected and special elect in the Assembly.

That is why this statute envisions that after the board delegated obligation by the members that this board will do a competitive process to recruit and bring now that name to the sovereignty of the people which is invested by the people themselves and delegated in this Assembly.

Madam Speaker, I had a chance to see a letter by our Hon. Board then, which said "this is a letter of confirmation of appointment" which is right and I do not know whether the English is right, because when you go to the employment you have a letter called letter of confirmation of appointment. In my small English, I know any appointment letter is very clear letter of appointment and a narrative, on why you were appointed and terms of the condition of appointment.

Madam Speaker, subject to this, therefore, this Assembly is supreme to any Board where the previous board or the current board and that is why in the County Assembly Service Board Act, it requires the Service Board at every quarter to relieve their report of operation in this Assembly. Why? This is because it is a supreme body that is delegated by the people of Nairobi currently as of 4.2million census as of yesterday.

Madam Speaker, looking at the shenanigans that the County Assembly is going through, it is prudent that this supreme power that is vested know at this Assembly be exercised.

Hon. Peter Imwatok: ...I am happy I was privileged today to be in court and the Judge was very courteous, he said yes, I have jurisdiction in this court and the same case with the Nairobi County Assembly to exercise it as per their rules and regulations, which is our Standing Orders. Therefore, it would

be a fallacy for us on behalf of the people of Nairobi not to exercise a role that has been delegated to us within the premise of law. It is very clear Article 18 (1) (2) of the County Assemblies' Act must be observed first. In my little knowledge of the law, it says that the law does not work retrogressively but also the law cannot be skipped for it to progress for the interests of others. That is why you see there is a GR in every court of law because when you have a case and you feel that it has not been determined well, you can go to the same court.

The board today through the insertion of Hon. Gari, has reverted back to this High Court which is the Assembly of Nairobi. The resolution of the board is therefore returned back to the board so that we re-energize this process that a Clerk will serve in the interests of Nairobians and Members should be brought before this assembly.

(Applause)

Madam Speaker, I agree you have reiterated that we should not speak anything that is prejudice to the case in court, it is true, let us be distinct on this. We are talking about Section 18 (1) (2) on the processes of appointment of subsequent approval of our chief of staff, in other words, the head of the secretariat of the Assembly. The assembly in its wisdom is saying, we did not follow the right process, therefore, the board should take back its process and we restart the process by recruiting a Clerk. This Madam Speaker does not say in whatsoever language, that one Jacob Ngwele is excluded from this process. He is also included in this process in conformity with the statute.

Therefore, Madam Speaker, I move the House, I want us to be very sober, that this assembly is bigger than me the son of Teso, it is bigger than the Speaker (Ms. Beatrice Elachi), bigger than the opposition and the government side, I must set precedence for the future. I remember in PAC Committee where I sit and Hon. Odalo, the same question was brought by the Auditor General's office, how the recruitment process was done. It was questioned by an outside authority. We don't want a situation where another authority comes to question the eligibility of the Clerk of this House.

Madam Speaker I beg to ask the Hon. Members that there is a time that will not require any of us to falter, sleep and say, I am on a comfort zone. This is the time to stand up and be counted that we will form this assembly and be counted as part of people who corrected what was wrong in the future. I beg to support Madam Speaker.

Hon. Millicent Mugadi: Thank you Madam Speaker. I rise to support this motion and I would say that we are the capital city of this country and we need to lead other counties by example. What has been happening in this assembly is not right to Nairobians and to us. We are having a stranger by the name Jacob Ngwele running our issues and affairs, and advising us on how to do our county proceedings. How sure are we whether most of the things we are doing are legal and binding and won't backfire on us?

It is a bit scary because we have a stranger in charge of even money and advising on policies and regulations of Nairobi County. We need to do this in a genuine manner, appoint a Clerk by following the law, we need Nairobians to see that we have a Clerk that they can also trust. At this point, we are up and down running, arguing and having mental and emotional fights with that specific office. It is not fair for Nairobians and us. We need your guidance Madam Speaker and we need also to show Nairobians that we are capable of following the law.

We need to advertise for this position and let Kenyans come out, those people who feel that they can work as the Clerk of Nairobi County be given the opportunity and let us employ someone who needs

this job because since 2013 we have been working with a stranger. This is a very serious issue for Nairobians and if they would follow it up they would be amazed by what the County Assembly of Nairobi has been doing. We are working with someone who has not been confirmed and who is not officially employed and who is in charge of a lot of money from this County Assembly.

The County Assembly has a budget of almost 1.2 billion if I am not wrong. What are we trying to tell Nairobians? We are busy trying to fight corruption yet in our own House we have not fixed things. We need to fix things Madam Speaker, you are back, we need every law to be followed, every policy to be confirmed that is right for the sake of Nairobians and also for our welfare, and also for our safety. I don't want that when I leave politics in 2022 EACC coming to me and telling me, Millicent you were in the previous assembly and you owe us an explanation of what happened. I didn't waste my voice, I am here and I am standing as a witness to say that, we need a substantive Clerk. I need to leave politics in peace without the worry of EACC coming after my back. Thank you.

Hon. Clarence Munga: Thank you Madam Speaker for giving me an opportunity. Having served in the First Assembly and having the honour to serve in this Second Assembly, on the issue of the Clerk, I remember very well as Mheshimiwa Jateso has said, that we got a brief and all elected members and the nominated members were called and informed that one Jacob Ngwele was seconded to the County Assembly of Nairobi so that he can take us through on how to run this new county assembly.

He was there to ensure that we have our Standing Orders, and how to run our affairs in this assembly. He was given three years to ensure that we learn and understand the procedures of the county assembly.

Madam Speaker, I think he achieved that. On him being employed by the National Government, I don't think it is a question that he is still an employee of the Nairobi County Assembly. Because the procedure of employing a Clerk is well stipulated in the County Government Act whereby the Clerk is supposed to be approved by the County Assembly. At no point have we ever approved one Jacob Ngwele in this County Assembly.

(Applause)

Madam Speaker, we cannot be having a Clerk who is taking us round and moving in the corridors of the judiciary, and taking us to court all the time. Is he above the law? Is he above this County Assembly? I think he is a junior member here, he is not above the Hon. Members of this County Assembly, we are his boss. That is why we need either to approve him or decline his appointment. Madam Speaker in a nutshell, what I am trying to say is that we have a jurisdiction of ensuring that we place things in order so that we set a bar so that when next time when a person is seconded by the National Government comes and want to stick here and blind the Majority that he is employed, where?

Madam Speaker, let the board go ahead advertise this position, and let Nairobians apply for this job. I know there the majority of Nairobians who are qualified for this position including him, we have not locked him out, all Kenyans at large. Let him apply for that position and if he qualifies, let the Members of this County Assembly approve his name. If he will not qualify we are ready to employ any other Kenyan who qualifies as the Clerk. Much has been said, I support the motion brought by Hon. Gari. Thank you Madam Speaker.

Hon. Kennedy Oyugi: Thank you Madam Speaker for the opportunity to contribute towards this motion. I am happy that we have Members who have institutional memory like Hon. Gari and Hon.

Imwatok. I have been wondering why this man Ngwele has been behaving like that, little did I know that we have been dealing with an intruder in the House. No wonder he has got so little interest in members of the assembly and staff. Once more our new board member Hon. Gari, I want to thank you for the motion.

Allow me to declare the following; for this assembly to end impunity, Ngwele must go.

(Applause)

For this assembly to end nepotism, Ngwele must go.

(Applause)

For this assembly to have the betterment of Members of the County Assembly and the staff, Ngwele must go.

(Applause)

For this assembly to end arbitrary suspensions and expulsions of members of the staff, honestly, Ngwele must go.

(Applause)

For this assembly to end human trafficking, honestly, Ngwele must go.

(Applause)

With those few remarks, I want to congratulate once more, that for us to end corruption, Ngwele must go. If we had a Substantive Clerk, I want to believe that the first year when we passed a budgetary allocation to buy members Ipads, honestly, if we had a Substantive Clerk, as we are talking, we would be having them.

If we had a substantive Clerk, Ward offices would have been constructed as we are talking for those members who did not have them. Despite the fact that we had a budgetary allocation that was brought here and passed, no wonder dealing with an intruder is very bad. Thank you, I support.

Hon. Speaker: Hon. Oyugi, did you say trafficking?

Hon. Kennedy Oyugi: Yes.

Hon. Speaker: In what?

Hon. Kennedy Oyugi: Human trafficking.

(Power outage)

Madam Speaker, I was saying for purposes of clarity, for us as an assembly to end human trafficking in this assembly, Ngwele must go. For purposes of clarity, if you want me to repeat, I am ready. I beg to support the motion.

Hon. Speaker: It is okay. You will substantiate that later and table the trafficking in the House.

Hon. Kennedy Oyugi: Right.

(Power outage)

Hon. June Ndegwa: Thank you, Hon. Speaker. I don't know whether this is spiritual or sabotage--- But all the same, the business of this House must continue. Hon. Speaker this Ngwele story is very funny. After all, is said and done we need to sit down and write a book about it. It reminds me of a movie called; 'Catch me if you can' of somebody who was trained as a pilot but was not employed by any airline but he could fly planes because he knew how to get away around the airports and even around the plane.

Madam Speaker, in 2017, there was a consent that was done and in the consent Ngwele, and remember the assembly was in *sine die* in July, we need to know where that consent is. The same July

Ngwele again resigned from Parliament which was the second resignation. We need to authenticate this resignation from the Senate.

How do you resign in 2017 yet you had resigned in 2014? This was the transition period and many Clerks had been seconded from Parliament to county assemblies. What was he resigning from and after that, how did he resign again in 2017? That is why I have said this is a case of a man who knows his way around Parliament and can be able to pull strings.

Madam Speaker, I am privileged to be in the PAC Committee and my very good Chairman has taught me to speak about facts and evidence based. We need to get the letters, the consent and the resignation letters to prove that Ngwele is not who he says he is.

I don't know even think that he knows who he is. Fact number one is that Ngwele has never been approved by this assembly. Number two, he is hiding something, maybe something to do with the corruption that we are trying so hard to finish in this country and he is fighting for a position in the board and still takes the same to the court.

Madam Speaker, fact number three, is that Ngwele is not Clerk of Nairobi City County Assembly, that needs to go on HANSARD. Number four is that he has had so many court cases and he uses the same Judge for all the cases. Number five is that he is an imposter. That is a fact. I am asking this Assembly and the Executive to do is to substantiate whether Ngwele is the Clerk of Nairobi City County Assembly and whether his appointment is legitimate. Thank you Madam Speaker.

Hon. Kennedy Obuya: Thank you Hon. Speaker. I am rising to support this motion, which is a matter of county importance. Madam Speaker I will not interfere with the judicial processes but I am standing today as an elected member representing the people of Imara Daima Ward.

Hon. Speaker, constitutionalism and the rule of law are principles that every citizen must adhere to and observe. So much has been said by Hon. Members.

{EXPUNGED}

I do not have a problem with Mr. Ngwele personally, but I have a problem with his entry to the office that he holds today.

He was seconded to the First Assembly through a Transitional Authority Act, which had a time frame of three years.

For an officer in a cadre of a clerk of an assembly, there has to be a gazette ment once employment has been approved. But I don't think there is any gazette notice in our archives. I don't think there are any records of the County Government or the National Government showing appointment and approval of Clerk of the Second Assembly of Nairobi City County Assembly.

Hon. Speaker, the Second Assembly when you were sworn in--- I don't want to question the authority of the Office of the Speaker irrespective of who has ever held it, but I know after you have resumed the office on the 7th of September 2017, to date, you have never gazetted any Board Member or the Clerk. Just like Hon. Oyugi has said, Mr. Jacob Ngwele is a stranger. My biggest question is, would it be Mr. Jacob Ngwele has been acting, signing, consenting to financial transactions on behalf of the citizens of Nairobi as the Clerk of the City County Assembly as a stranger? That is my worry.

This is an independent institution and we are not supposed to interfere with judicial processes, it is a fact. The Judiciary is equally an independent institution, but we cannot forget our role as elected and

nominated representatives of the people. If the question of holding public finance is in question---like I heard in court that some transfer had been done a fortnight ago of a tune of KShs.65 million, my conscience cannot allow me to be a party to that. I beg to support, thank you.

Hon. Speaker: Hon. Obuya, we cannot discuss the conduct of the judge. We cannot allow that. Our content of debate is under Standing Order No.92. I want that to be expunged from the Hansard. It would be wrong for us to---

Hon. Kennedy Obuya: Hon. Speaker, I don't question judicial processes, but I observed the principal who was sitting as an individual and not the court.

Hon. Speaker: Hon. member, I will still repeat---

Hon. Kennedy Obuya: I withdraw because I stand guided.

Hon Speaker: Thank you. We can't discuss the conduct of the judge.
Hon. Immapet.

Hon. Immapet Kemunto: Thank you once more, Madam Speaker for the opportunity. I stand to support the motion. All of us here are politicians, each member in this House was once a candidate and went to wananchi and was elected. I don't see why Mr. Ngwele could chest thump and tell us he is the Clerk of Nairobi City County. He should make an application and we will not deny. Undertakings in his office are illegal. I support strongly, and as a woman and a youth, we are not taking it for granted. Thank you.

Hon. Speaker: Hon. Ndonji.

Hon. Joseph Ndonji: Thank you, Madam Speaker, I rise to support the motion. I have some observations. The vigor with which this guy is fighting to retain this position means there is something. I also wonder what coincidence is there where 16 cases from one person would go to the same judge. I have a diploma in Labour Laws. I have not seen anywhere an employee contesting leave, especially when it is a paid leave. How do you contest a leave that you are being paid salary? This indicates that there is something.

A situation where a person can withdraw KShs.65 million but we have not been paid salaries. He is insisting on an advertisement; this means there is something seriously wrong. This person must go. There are many things that he is hiding. Thank you.

Hon. Speaker. Hon. Rose Adhiambo.

Hon. Rose Ogonda: Thank you, Madam Speaker, I rise to support the motion. First of all, I apologize to the members who were voted in 2017 and the nominated members because we didn't do what was needed to be done. I was nominated in 2013. We came in late and found the elected members already sworn in.

Before I was elected as MCA of Kware Ward in 2017, each ward office was allocated KShs. 79,000, but it was reduced to Kshs. 57,000. With this money, you have to pay your driver, your ward manager, and your secretary. There was no written document telling us why it was reduced to KShs. 57,000. The lady in charge of ward offices walked round and noted how our officers were. I hear that there is a development fund, I don't know what is the purpose of that fund.

If Mr. Ngwele continues to be in the office, maybe I will suffer a lot. It seems I am just there as a stool and I cannot, as a member of Kware Ward, ask him anything. If he continues to be the Clerk, we as MCAs will not have a good relationship with our staff. I support the motion that Ngwele must go.

(Applause)

Lastly, Madam Speaker, if I can reflect, the same motion was brought by Hon. Gari in the last Assembly but people saw Hon. Gari to be fighting Mr. Ngwele. I still remember being called by our party leader to support Mr. Ngwele. From that day, I have never seen him.

When we were about to go for games, I walked to Mr. Ngwele's office. My team doctor was busy campaigning in Kibra. I asked Mr. Ngwele to coopt *Mheshimiwa* Catherine to be the team manager. He told me that if Hon. Catherine is not among the 15, I should not say anything. When I reached Eldoret, I say a person who cannot play being funded by Mr. Ngwele. She only went for one day and came back. For that reason, I become mad with Mr. Ngwele. He must go. Thank you.

(Applause)

Hon. Speaker. Hon. Ayoj.

Hon. David Ayoj: Thank you, Madam Speaker. Before I begin my speech, I congratulate you on coming back as our substantive Speaker.

I would like to make a few reservations here. I know very well that this matter is sub judice. But as you said, we are not discussing a matter in court but about the procedures that were overlooked in employing Mr. Jacob Ngwele. He was seconded to come and hold brief for somebody who was supposed to be competitively chosen by this August House. Unfortunately, due procedures that are laid out in our County Assemblies Act, were not followed. I am very sure the manner in which this guy purporting to be our Clerk and going all over the courts, could be having some other forces that are holding him strongly in this County Assembly.

(Applause)

I want to remind those forces that indeed sometimes the forces might be weak because the members have decided to follow the law. That is why we are here. I will echo my sister who said that for us to be here, we followed the due process by going to the elections and wananchi gave us the mandate to represent them in this Assembly. We need a procedure that is laid out in the law to be followed. We are not denying this brother of ours to apply. We want this thing to be advertised and let the due process be followed. He should also apply. A lot has been spoken here about him and he has done more harm than good to the members. This guy should have been advocating for the welfare of the members. But we have doubt about him. In essence, we are in court because he has taken us to court. We never took him to court but we are in court because he is fighting to be here for reasons that he knows better than us. He is doing fishy things.

There is a letter that is being circulated around. He has been taking people outside the country who are not members of this House. That is why somebody said human trafficking. He is trafficking people on foreign trips yet some members have never traveled abroad.

(Applause)

This is a shame to this House. We cannot allow this intruder to take us in circles. For this matter, I support my brother, Hon. Gari that this guy ought to follow the due process that is laid out in the Constitution. I beg to support.

Hon. Speaker. Hon. Michael Ogada.

Hon. Michael Ogada: Thank you, Madam Speaker. Many people have been congratulating you for coming back. I have always been telling them you have been the Speaker all along.

(Applause)

I did say this because your removal was very illegitimate and was going nowhere.

I wish to add my voice on what the members are discussing. Madam Speaker, as an Assembly, it is our business to provide leadership in terms of oversight. As we oversight, it is well known that it is the business of this House to oversight also the Service Board of this Assembly because we are the overall organ.

We have been overlooking the Executive nobly and the problem that we have experienced is that appointments have been coming from the Executive, which we are to look at and ensure their legitimacy. The problem is that the guiding principle who has been leading us to look at the legitimacy of appointments from the Executive was an illegitimate person. It is wrong to tell the Executive to follow procedures if we do not follow them. It is not right and it is the business of this House to make sure that things are done in order and procedurally.

We have been in this House for more than two and a half years and maybe remaining with one year in the House yet there has been confusion in this House day in day out. We cannot work and serve our electorates effectively because of the unending confusion. This makes us be a laughing stock and not a single day passes without someone asking me why we are confused as an Assembly.

I am ashamed of what we are as elected members. People voted and realized that we are the ones who can give them guidance and this is not right. We need to stand our ground and take a position as people who have been given the mandate by the people to guide them and provide leadership.

It is your business as the leader of this House to put your feet down and provide guidance and leadership to this County. Otherwise, this County shame will never leave us even when we go to the ground. A time is coming when we will not have security and we will be reduced to the people who we are looking down upon outside there. It is us to make sure that things are done properly and procedurally.

I am an accountant by profession and we watch things from far. When we go to auditing, we want to audit the person who talks the most because that is who we perceive as the thief. If you find a person who is always a whistleblower, then try to dig around them and you will find issues.

There are things that we look at and I discovered that there is a lot of confusion, intimidation, manipulation, dictatorship within this Assembly. We must stand our ground as leaders and not come here to be intimidated and given handouts. It is not right. You cannot intimidate us by giving us handouts and trips! It cannot work like that.

People must get these things on merit, we are all equal within this House, and before the law and therefore we must be respected as the people's representatives. Madam Speaker, during the transition, every County was given somebody in acting position and have you ever found out how many counties

absorbed their Clerks? They must be very few and if there is any then they must have followed due process.

Here, we did not follow due process because no name has been brought before us for rubberstamping. This means that you consider us a bunch of fools who do not understand anything. We need to give guidance as the County of Nairobi because most counties follow our trend. When you were illegitimately removed from office, other Counties like Homa Bay started the same but now you are back and I believe that in two weeks they will all be back in the office.

Madam Speaker, you need to put your feet down and not fear people. You are here legally. Let us work with reason and procedurally and not follow people here like *mbuzis*. I don't wish to talk much and I wish to support the motion.

Hon. Speaker: You were just about to get me worried Hon. Ogada. Hon. Mary Ariviza

Hon. Mary Ariviza: Thank you Madam Speaker. I stand here strongly to support this motion. Procedures are very important because once you are illegitimate in office then you engage in the hullabaloo we find in Nairobi County that honorable members have spoken about. Let me give an analogy of marriage even though most of you will say that I am not married and should therefore not talk about it.

When you go into marriage illegally then you are always looking onto your shoulder to see who their husbands and wives are talking to but when you know that you are married legally then you know that if some other person comes in then you are the main one who cannot be overthrown. Therefore, the hullabaloo that is in this County Assembly is because some people got in illegitimately, they have to sustain and protect that, and we as the members of the County Assembly must say no to that.

As hon. Ogada has said and what happened here when I stood my ground on some issues, we need to redeem ourselves. People may not tell us now but once we are out of this House then we will be in a lot of trouble simply because of the way we have carried ourselves. We need a secretariat that is orderly, one that believes in the rule of law and just. We are not against an individual, we are just for processes to be redone. Let us go ahead, advertise, and let everyone apply so that we vote and move on.

I have been saddened by the way our young men and women have been handled within the secretariat. It is so sad. I lectured one of the staff here and he has been mishandled properly courtesy of this person who came in illegitimately. It is sad that we as an Assembly get to praise mediocre and punish others. I look forward to a day when we can appreciate people for their efforts and brains and not hypocrisy.

The other day I presented a motion on education on short notice to staff and he did it very fast in that I was able to present it before the House and I hope that Hon. Mugadi will be able to give me an answer. What am I saying? We have brilliant men and women and we need to honor and respect them. We are all someone's children and God will ensure that when you mishandle someone then your children will also be mishandled. I did not come from heaven like Mary the mother of Jesus. So let us handle each other with care because God in heaven sees all things. Let me stop there. Let the Hon. Clerk apply but I am not for him. Thank you very much Madam Speaker.

Hon. Speaker: You are anticipating a very different debate, Hon. Ariviza. Mover

Hon. Maurice Gari: Thank you Madam Speaker. This is history and the beginning of new things in this Assembly. I do not want to talk much because a lot has been said. I want us to employ somebody that we can entrust with our funds. Let the process be competitive so that men and women who are qualified can apply. I beg to reply.

Hon. Speaker: Hon. Members, I want to repeat that we have to be very careful about what we discuss and what is in the courts. Therefore, for the purpose of the media, we are discussing the procedure of appointing the clerk. I don't want to find articles written about the House.

(Question put and agreed to)

ADJOURNMENT

Hon. Speaker: Hon. Members, there being no other business, the Assembly adjourns to tomorrow 6th at 2:30 p.m. The House Business Committee meets after this.

(The House rose at 5.00 p.m.)