



NAIROBI CITY COUNTY ASSEMBLY

OFFICIAL REPORT

Second County Assembly – Fifth Session

Thursday 11th February 2021

The House met at 9.30 a.m.

[Hon. Deputy Speaker (Mr. Geophrey Majiwa) in Chair]

PRAYERS

QUORUM

Hon. Deputy Speaker: Clerk, do we have quorum?

(Clerk-at-The Table confirmed there was quorum)

PAPERS

REPORT OF THE SELECT COMMITTEE ON THE COUNTY FINANCE, BUDGET AND APPROPRIATION ON THE FIRST SUPPLEMENTARY BUDGET ESTIMATES FOR THE NAIROBI CITY COUNTY GOVERNMENT AND THE COUNTY ASSEMBLY FOR THE FINANCIAL YEAR 2020/2021

Hon. Robert Mbatia: Thank you Mr. Speaker. I beg to lay the following Paper on the Table of this Assembly today the 11th March 2021, pursuant to Standing Order 191: The report of the select committee on the County Finance, Budget and Appropriation on the first supplementary budget estimates for the Nairobi City County Government and the County Assembly for the financial year 2020/2021. I beg to lay. Thank you.

(The Paper was laid on the Table of the Assembly)

NOTICES OF MOTION

Hon. Robert Mbatia: Thank you once again Mr. Speaker. I beg to give the following Notice of Motion; that this Assembly adopts the report of the select committee on the county Finance, Budget and Appropriation on the first supplementary budget estimates for the Nairobi City County Government and the County Assembly of Nairobi for the financial year 2020/2021 laid today Thursday 11th March, 2021. Thank you Mr. Speaker.

Hon. Deputy Speaker: Clerk!

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STATEMENTS**REQUEST FOR STATEMENT REGARDING THE ALLEGED IRREGULAR, UNLAWFUL AND ARBITRARY APPOINTMENTS OF SENIOR OFFICERS IN COUNTY ATTORNEY'S OFFICE**

Hon. Deputy Speaker: Hon. Millicent Okatch

Hon. Millicent Okatch: Thank you Mr. Speaker. Subject is alleged irregular appointments by the acting County Secretary. Hon. Speaker, pursuant to Standing Order 45 (2), I wish to request for a statement from the Chairpersons of the sectoral committees on Labour and Social Welfare, Justice and Legal Affairs regarding the alleged irregular unlawful arbitrary appointments of senior officers in the County Attorney's office by the office of the County Secretary.

Hon. Speaker, in February 2021, the acting County secretary allegedly issued appointment letters for positions of acting director Legal affairs department and acting County solicitor unilaterally against the laid down procedures, rules and enabling laws guiding the same.

Hon. Speaker, section 59 (1b) of the County Government Act 2012 confer upon the County Public Service Board the functions and powers to appoint persons to hold or act in offices of the County Public Service including in the boards of cities and urban areas within the County and to confirm appointments. In the same vain, section 63 (1) (2a) of the County Government Act 2012 confers upon the County Public Service Board power to make appointment including promotions in respect to offices in the County public service at the request of the relevant County chief officer of the department to which the appointment is to be made. Equally section 18 (1) of the County Attorneys Act 2020 provides that the County Public Service Board shall in consultation with the County Attorney appoint a County legal Counsel a case may be necessary for the proper and efficient discharge of functions of the office.

Hon. Speaker, the County Public Service Manual 2016 that is guiding document provides for clear guidelines to be followed on the issues of acting positions, appointments and promotions of staff in the County Public service. Hon. Speaker, it is further alleged that one of the holders of the above-mentioned positions resigned from the public service, as a law clerk in the year 2020 but it is not clear how such a person could be reappointed irregularly. Hon. Speaker, this is worrying trend of impunity and disregard of the rule of law within the executive arm has continued to demoralize many staff working in different sectors of the County who are suffering in silence in similar circumstances.

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

1. Appropriate disciplinary action against the acting County Secretary for surpassing the powers not vested in him to make such appointments in total disregard of the law
2. Comprehensive list of all appointments made so far and measures taken by the County Public Service Board to uphold the rule of law and laid down procedures during such appointments
3. The received resignation letters from officers previously working in the County public service, minutes and resolutions reinstating them into the service
4. Measures taken and or advisory given to the County Attorney on irregular and unprocedural appointments particularly in the office of the County Attorney?

Thank you

Hon. Deputy Speaker: Chair, Labour and Social welfare? Chair, Legal?

Hon. Joseph Komu: We shall deal with the matter and dispense it off within two weeks

Hon. Deputy Speaker: Is that Okay Hon. Millicent?

Hon. Millicent Okatch: That is okay. Thank you.

Hon. Deputy Speaker: Chair Environment?

Hon. John Kamau: Thank you. Hon. Speaker, you recall the Nairobi City County Nuisance Bill 2020 underwent the first reading on 17th September 2020 and was thereafter committed to the sectoral committee on Environment and Natural Resources for scrutiny and reporting to the Assembly. The report on the consideration of the said Bill was adopted and thereafter laid on the table of the Assembly on Tuesday 16th February 2020 pursuant to Standing Order 131 (4). Hon. Speaker, during its day to day engagement with its key stakeholders, the committee has since noted and deliberated on significant emerging issues that would enhance the effectiveness of the proposed law when factored in the report of the said Bill as proposed amendments.

Hon. Speaker in this regard, the committee seeks your indulgence to withdraw the report of the sectoral committee on Environment and Natural Resources and consideration of the Nairobi City County Public Nuisance Bill 2020 that had earlier been tabled on Tuesday 16th February, 2021 with the view of tabling the adjusted version incorporating the said issues. Mr. Speaker, if you grant this then the committee assures this assembly that the final report will be ready for tabling today during the afternoon sitting. In this regard Hon. Speaker and on behalf of the committee, I kindly request for your indulgence to withdraw the committees earlier report as requested and invite members to peruse our adjusted version of the report to be laid in the afternoon and witness the remarkable new proposals. I thank you.

Hon. Deputy Speaker: Clerk

MOTION

ADOPTION OF THE REPORT ON THE FIRST SUPPLEMENTARY BUDGET ESTIMATES FOR THE FINANCIAL YEAR 2020/2021

Hon. Deputy Speaker: Chair Budget

Hon. Robert Mbatia: Thank you Mr. Speaker. I beg to move that this Assembly adopts the report of the select committee of the County Finance, Budget and Appropriations on the first supplementary budget estimates for the financial year 2020/2021 being for the County Government and the County Assembly. Mr. Speaker, on behalf of the members of the select committee of the County Finance and Budget and pursuant to the provisions of section 135 of the PFM act 2012, the PFM County government regulations and Standing Order 228, it is my pleasure to present to this Assembly this report on the supplementary estimates. Mr. Speaker, in the annual estimates for the financial year 2020/2021, the County Assembly had approved a total budget of Kshs 37.7billion out of which Ksh. 26.86 billion was meant for the recurrent expenditures and Ksh. 10.84 billion for the development programmes. Further as part of that approved budget, in the approved annual estimates the Nairobi Metropolitan was allocated Kshs 23.9 billion while the County Assembly had been allocated Kshs 2 billion for both recurrent and development initiatives. To fund approved budgets, the County anticipated to collect a total of Kshs 37.1 billion with Kshs 16.2 billion being on source revenue while the rest being mobilized through the National exchequer.

Mr. Speaker, the total County Budget has been maintained as the figure approved in the annual estimates for the FY2020/2021 but the total recurrent budget has been increased by Ksh. 360 million to Ksh. 27.22 billion while the development budget has been rationalized downwards by about Ksh 400 million. With these adjustments and in comparison to the approved annual budget, 71% goes to the recurrent expenditure while 29% goes to development programs. The development budget still falls short of the 30% mark required by the regulations.

Mr. Speaker, there is proposed adjustment in the overall budget for the transferred functions and the recurrent budget being reduced by Kshs.1.25 billion while the development budget is proposed for downward revision by Kshs.1.85 billion, thereby leading to an overall reduction in the budget by about Kshs.3.1 billion. The Committee in its review of the supplementary budget, noted that the adjustment for the NMS as submitted are global in nature hence making it very difficult to discern how the individual allocations for each of the transferred functions have been affected.

Mr. Speaker, according to the submitted documents, the proposed reduction on the budget for the transferred functions is meant to take care of the pending bills related to the transferred functions, with an allocation of Kshs.2 billion being set aside for settlement of pending bills. The budget shows that out of Kshs.1.6 billion earmarked for settlement of development related pending bills, the County Assembly also intends to be granted Kshs.246 million being the entire amount required to fully implement the car grant for the Members of the County Assembly. This makes the management of the grant being independent of the car loan and the mortgage.

In addition, the Committee observed that the County Assembly budget is proposing for reallocation that would have the net of creating an additional allocation of Kshs.19.7 million for committees' quarterly retreats, Kshs.17 million for the County Assemblies Sports Association (CASA) tournaments, and deletion of the entire allocation for the foreign travel under the budget for the financial year 2020/2021.

Hon. Speaker, the Finance Committee has been coherent in dissuading sectors from using supplementary budgets to amend the budget upwards. It is not worth it that the Committee noted that majority of the resources earmarked for reallocation to cater for payment of pending bills in this supplementary budget had already been either spent or committed by the NMS. The Committee shall hence be making recommendations meant to cure all these.

Mr. Speaker, arising from the recommendations from the Sectoral Committees and the deliberation with the County Executive Committee Member for Finance and the NMS, Finance, Budget and Appropriations recommends the following:

On Policy

In addition, and in furtherance of the recommendations already contained in the body of this report, the Finance Committee recommends the following policy measures:

1. That in order to ensure that allocations for transferred functions are in tandem with the deed of transfer of functions at the County Allocation of Revenue Act,2020, the County Treasury and the Nairobi Metropolitan Services shall henceforth ensure that the budget estimates submitted for approval are classified by respective sectors; that is the functions;

2. That the County Treasury shall by 30th April 2021 submit to the County Assembly for noting together with annual budget estimates for the financial year 2021/2022, the list of all pending bills paid per sector for each of the transferred functions;
3. That in accordance with the provisions of Section 7 (4) of the Allocation of Revenue Act, 2020, the Cabinet Secretary for the National Treasury in liaison with the NMS, shall ensure that quarterly reports in respect of expenditure of funds for the transferred functions is submitted as required;
4. That in submission of any budgetary reports to the County Assembly, the respective sectors shall ensure that the same is in tandem with the program based approach to budgeting and those that fail to comply, be considered inadmissible; and
5. That the Liquor Licensing Board takes note of and fully adheres to the provisions of the Nairobi City County Alcoholic Drinks Control and Licensing Act of 2014 as amended through the Nairobi City County Finance Act, 2018, to limit the appropriation in aid for the Board to not more than 50% of their revenues.

The proposed adjustments and reallocations are as follows:

Mr. Speaker, rising from the recommendations from the Sectoral Committees and deliberations with the County Treasury, the Finance, Budget and Appropriations Committee recommends that the following changes be made in 2020/2021 supplementary estimates:

Revenue projection

That to accommodate the additional revenue being granted for frontline health workers from the Ministry of Health and surplus cash balances to the resource envelope. We increase the resource envelope to Kshs.37.881 billion and revenue figures be approved as contained in Schedule 1 of the report.

Budgetary allocations

That in line with the revenue figures in Schedule 1, budget reallocations be approved as contained in Schedule 2 of the report.

Budget reductions

That following reductions be made on the budget of respective sectors as contained in Schedule 2.

That in order to fully finance the transfer of Kshs.246 million to cater for car grant, the development budget for the County Assembly Service Board be reduced by Kshs.500 million and the recurrent budget for the liquor licensing Board be reduced by Kshs.75 million.

Budget increases

That the following increases be made on the budget in respect of the sectors as contained in Schedule 2.

That the allocation for the other creditors under the Finance and Economic Planning Sector be allocated Kshs.550 million to cater for the most urgent bills that will spur growth in the entire Nairobi County.

That the budget for the Inspectorate Services be increased by Kshs.25 million to cater for recruitment of security personnel for all the County Government installations.

Mr. Speaker, in conclusion, and pursuant to the provisions of Section 135 (2) and (4) of the PFM Act, 2012 and the Standing Order 222 and 228, the County Finance, Budget and Appropriations Committee recommends that this County Assembly adopts the report of the Select Committee on the County Finance,

Budget and Appropriations for the First Supplementary Budget Estimates for the Nairobi County Government and the Nairobi County Assembly for the financial year 2020/2021.

Mr. Speaker, I beg Hon. Komu to second me. Thank you

Hon. Joseph Komu: Thank you, Mr. Speaker. I stand to second the first supplementary on the basis it is harmonizing the operations of the NMS and the County Government of Nairobi. This is a document that is not contested. We had series of meetings to bring to book and highlight the priority issues, especially on ongoing projects and the pending bills. It is a highly negotiated document, and therefore we request Members to pass it. I second, thank you.

(Question proposed)

Hon. Pius Mbono: Thank you, Mr. Speaker. I rise to support the report hoping that things will now move with speed, including the WDF projects. But I was hoping that the budget would allocate payment for the 'ten over ten' youths that were contracted by the County. The contract was stopped and the youths were sent home without payment for several months. I would like the Chair Budget to elaborate on how the 'ten over ten' will be paid. Thank you.

Hon. Peter Warutere: Thank you, Mr. Speaker. Allow me also to stand up and support this important document. I call upon the general membership of this House, you realize that for the last one week COVID 19 is almost getting out of hand. I think it is imperative for all of us, particularly this Assembly and out there to tell people that we must now start taking COVID 19 seriously. For the last one week realized the positivity rate actually yesterday was standing at 14.3%. Yesterday alone 713 people contracted COVID and I hope right from here we must lead the example and we must take matters very seriously. We are on the third phase, things are getting out of hand and you can see so much is going to this particular item of COVID. Therefore, as we go out there let us be ambassadors to tell people that we need to sanitize, safely keep our distance and as well we need to put masks the way it is supposed to be done.

Having said that, Hon. Speaker, allow me as well to also congratulate the Committee of Finance and Budget for attributing and seeing it fit to work on the issue of pending Bills. It has been a matter of concern at my department and also looking on what has been put in preventing and promoting care services on the issue of creative care, general administration planning and supportive services basically the budget of health and other functions that has been transferred looks like they have been taken care off. I think now we need to appropriate this to the next level and let us get things done and we thank the leadership and entire assembly that for the last one-month things now seems to be moving in the right direction.

We hope that his budget will now clear the gaps that will be there and one year now to the next election at least we will have something to show Wanjiku. Thank you, Hon. Speaker, I rise to support this good document.

Hon. Deputy Speaker: Thank you. Members online? Hon. Mary Mwami.

Hon. Mary Mwami: Thank you, Mr. Speaker Sir, I stand to support the Motion that is before us for the budget and I just wanted Mr. Chair of the budget to clarify to me if he has included the money for setting up people leaving with disability board. Moreover, the money that will be able to run and support the activities that are related to the people living with disability. I think we had talked about this in Mombasa but I do not think I have heard but I think there is so much detail.

So it might bypassed me so I would like the chair for Budget to explain if he has put it because this has been pending for very many years and it is important that people living with disability are included and they feel part of Nairobi. Especially, people living with disability in Nairobi they have felt that we have not kept anything for them in spite of the Act having been put in place in 2015. The people that were gazetted in 2016 to have taken the role of the board for people living with disability. In spite of them been gazetted, they were never given letters of appointment.

Therefore, I would like to know through your Chair, Mr. Speaker if the Hon. Chair of Budget has put aside some money that will be able to cater for people living with disability, at least the setting up of the Board and the functioning of people living with disability including the sports. They were supposed to participate in sports and I know even with COVID there are some activities that they are supposed to be able to participate include the culture which they have not been catered for at all in our stay in the County.

When I meet them in meetings we still stand condemn, therefore I would like him to address that. Thank you, Mr. Speaker Sir.

Hon. Jeremiah Themendu: Thank you, Hon. Speaker, for giving me this opportunity to support the report and the concerns that I have is that I concur with Hon. Pius, concerning the issues of those laborers who are doing big jobs of cleaning our drainages. Those young boys and girls have not been able to be paid for about seven months. I remember asking the statement in this Assembly and I do not know where it has reached because I asked through the Environment Committee. It is about now one month without any response.

I would also like confirmation from the Chairperson Budget whether he has increased money for the ECDE because the last time when we had a supplementary we heard that the budget from the education sector had been reduced. I do not know whether it has been increased now and I would like to urge those mandated to do the procurement to speed up because the time is not on our side we are remaining with about four months to the end of this financial year. We need to be seen we have done something on the ground, people are yearning for service delivery and we are late, which we should speed up. Hon. Speaker with that few remarks, I beg to support the report thank you.

Hon. Peter Wanyoike: Thank you, Mr. Speaker, I arise to support this Motion and let me first congratulate the Budget committee for the good work they have done. Mr. Speaker, we have been facing a very big problem that is of health workers, whereby those who have been seconded to the County and those of County workers. They have been earning different salaries and with this budget, it has catered and given a solution to harmonizing the salary of our workers.

Mr. Speaker, I can see we were facing a problem whereby our mortgaged fund was to be killed because of the issue of grant and this report has catered for that so that our workers and the Members of this House can continue enjoying these mortgaged funds with that I beg to second. Thank you.

Hon. John Kamau: Thank you, Mr. Speaker, first is to congratulate the Budget Committee for the work well done and I know they have spent their time coming up with this very good document. Mr. Speaker when I raised to support the document and in this regards Mr. Speaker, across our Ward roads have stored, contractors have not been paid and as we go through this document they have at least pinpointed the need for the contractors before NMS came we had contractors.

These contractors were not paid so what does mean? That means when contractors are not paid, what they will do because most of them use their money what means they are going to down their tools. Therefore, Mr. Speaker, as you read this document the Budget committee has factored that some of the money that will go toward the NMS part of it should be used to pay the contractors so as they can return to our Wards so that they can finish what they were supposed to do.

Secondly, Mr. Speaker, this issue of 10/10 the youths that were working, I would urge the Chairman Budget maybe please because it majorly falls under the Environment department. To look into it so that at least if we can set aside some funds, I do not know where we are going to get the funds but if we are going to set at least we get some funds even if it is not all the funds, some of the funds so that we can pay these youths.

Mr. Speaker, it is in the record that these youths worked and we did not pay them and we have their records. So Mr. Speaker, I urge the Chairman Budget and the Committee and we know the good work you are doing please look into it that at least we get some funds at least to pay this 10/10 youths. We are not saying that we are going to pay all of them to put if we get some funds at least to pay them even if it is for the two months so that they can see we are still thinking about them. Therefore, Mr. Speaker, I stand to support the document thank you.

Hon. Immapet Kemunto: Thank you Mr. Speaker. I rise first to appreciate the Budget Committee for the effortless work they have done. Being a member of the committee, I want also to give a reminder on the voluntary health workers. The money is there but we need to push so that our Governor ascends the Bill and so that the volunteer health workers get paid and do their work without any limitations.

Secondly, the Members who had not gotten their car grants can now get it and enjoy what the National Government had promised them. I appreciate the Chair of Budget Committee and the entire assembly for the great work. Thank you.

Hon. Deputy Speaker: Mover!

Hon. Robert Mbatia: Thank you Mr. Speaker. First, I want to appreciate your office for the support you have given us as we went through this very important document - the supplementary estimates. Normally, supplementary budgets come to reorganize and to re-strategize the efforts mid-stream as people get realistic on the planning they had done at the beginning of the financial year.

Having said that Mr. Speaker, there are realities that come in play which are; one, the diminishing own source revenue and the strain in the National Government in matters on revenue such that even the cash transfers from the National Government have not being forthcoming as they should. We have been straining with the own source revenue. There was need that we sit down and get low lying fruits so that we can be able to make an impact in Nairobi with the little resources that we have.

The need also for this supplementary budget was because there was a new administration in the Executive and so we had to – as much as we were not departing from the fiscal policy that we had set earlier but priorities could have been changing. That is why as the Budget Committee we agreed that it was needed and we supported the imitative Mr. Speaker.

Mr. Speaker, as I continue to thank your office, the fiscal analysts supported us as well as the Office of the Clerk. We also want to appreciate the good working relationship between the Nairobi Metropolitan

Services and the Executive currently. We were able to sit with both of them they are now seeing each other eye to eye, and we were able to discuss as one house because at the end of the day Nairobians want service delivery.

Mr. Speaker, I cannot ignore Hon. Mwami's question. She is my Hon. Chair in Agriculture, and she went virtual and then came physically in the assembly and so you cannot ignore her. I would have still answered her and I want to start with her response. It is true that there is a very important group amongst us for the people living with disability and I want to assure her that the initial budget that we had planned of Kshs.37.7 billion, members of PWD had been factored. I know that there is a board which is almost in place and that needs to be taken care of in terms of allowances and operations.

In the coming fiscal strategy paper that is already on our desk, we plan to make sure that the activities of the PWDs is well factored and they should give us the programs that they want to undertake in the financial year with the indicators of the performance. I want to assure *Mheshimiwa* Mwami that PWDs having been well taken care of.

Mr. Speaker, the other burning issue is that of the ten by ten. I have just overheard, and I know you have heard also that they are already outside there demanding for their pay. We need to be realistic and tell the truth. As much as we seconded these people and they come from the 85 Wards, we have a challenge with documentation. Recently we enquired from the Executive how much their bill was, one team gave us Kshs.80 million and another team gave us Kshs.50 million for the pending bill.

It is true that we have initiated - and let this go on record especially to the elected Members - that we have initiated the process of payment. The first step is that we have moved the vote from the Environment Sector to the Sub-county administration. We have also asked that those records be brought to us for each member and what is owed to every member because it is not standard as they are not owed the same amount of money, it is subject to their attendance. With the records we will subject this to audit because we have the Internal Audit and even the external auditors. We will ask them to fast-track the activity such that we will factor in the next few days as we anticipate that we will have a Supplementary Two. We will allocate the money then when we know how much is being owed.

We have already started the paying process which is compiling the records, then go to audit. I want to assure members that it will not be a long audit, as the Budget Committee we will make sure that we pursue that. We will also request the Environment Committee and Legal Affairs Committee to assist us in this such that we have verifiable records of the payments so that we do not lose money or deny money to the rightful owners, that should go on record.

Mr. Speaker, the other issue which is a plus in this document is that, we have been outsourcing security services to all the institutions that the county has; the hospitals and the schools. The services of private security have been a huge bill to the county. We have factored the enrolment of County Constables for these institutions for Kshs. 25 million. This will go a long way in cutting the cost of security services that we have been incurring in the last five years.

Mr. Speaker, I know the members of the Fourth Estate are here and the enquiry has been where car grant has been. I urge them to be friendly to us we are good people, MCAs are representatives of people and have been elected from communities. Having said that, I want to state clearly that we have forgone the

luxury of having offices to get car grants first and then we can prioritize the offices later. The car grant money is coming from the allocation we had done for the offices for the County Assembly. We have agreed as a committee and also with the Board that we forgo this for this time so that members can be able to move around their wards with vehicles and access the electorates.

Having said that, I want to appreciate the membership of the Committee of Budget and Appropriations for what they have done in a very short time, they have sacrificed to have meetings even late in the day in order for us to have this wonderful document. I want to appreciate all the members of the committee; I want also to appreciate very much the Fiscal Analysts that we have through the Budget Office, the Budget Office from the Executive for the wonderful job they have done, the Budget Office from the Nairobi Metropolitan Services for the cohesion that we had.

Mr. Speaker with that, I reply. Thank you.

(Question put and agreed to)

ADJOURNMENT

Hon. Deputy Speaker: Hon. Chair of Environment, remember to drop your notice in the office of the Speaker for processing before it is read in the afternoon. There being no other business, the assembly stands adjourned to 2.30 p.m.. Thank you Members.

The House rose at 10.57 a.m.

