



NAIROBI CITY COUNTY ASSEMBLY

OFFICIAL REPORT

Second County Assembly – Fifth Session

Thursday 11th November 2021

The House met at 2.30 p.m.

(Hon. Temporary Deputy Speaker (Ms. Immapet Kemunto) in the Chair)

PRAYER

COMMUNICATION FROM THE CHAIR

DELEGATION FROM KILIFI COUNTY ASSEMBLY

Hon. Temporary Deputy Speaker: Hon. Members, today we are delighted to be visited by Members of the County Assembly of Kilifi. They have not arrived yet but we want to recognize them and appreciate their coming. From the communication that I have, I want to recognize Hon. Maitha Maisha, Hon. Loise Ngare, Hon. Felistas Messu, Hon. Hon. Winfred Mwangome, Hon. Margaret Ndama, Hon. Christopher Mwambire, Hon. Hassan Seid, Hon. Reuben Katana, Hon. Dickson Sabana, Hon. Elina Baro and the secretariat.

On behalf of the Speaker of the Nairobi City County Assembly, I wish you fruitful deliberations and safe stay in Nairobi. Remember to observe the Covid 19 guidelines and protocols as directed by the Ministry of Health. Welcome and we appreciate you.

PAPERS

Hon. Wilfred Odalo: Hon. Speaker, for the record, my card is not here. Thank you Hon. Speaker, pursuant to Standing Order No.191, I beg to lay the following Paper on the Table of the assembly today Thursday 11th November 2021:

The report of the Select Committee on Public Accounts on the consideration of the report of the Auditor General on the financial statement of the Nairobi City County Executive for the year ended 30th June 2018.

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

Hon. Peter Wanyoike: Thank you Madam Speaker. Hon. Speaker, Standing Order No.191, I beg to lay the following Paper on the Table of the assembly today Thursday 11th November 2021:

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The report of the Sectoral Committee on Planning and Housing on the consideration of the Nairobi City County Evictions, Resettlements and Demolitions Bill 2020. I beg to lay.

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

NOTICES OF MOTION

Hon. Wilfred Odalo: Madam Speaker, this assembly adopts the report of the Select Committee on Public Accounts on the consideration of the report of the Auditor General on the financial statement of the Nairobi City County Executive for the year ended 30th June 2018 tabled in this assembly today Thursday 11th November 2021. Thank you.

Hon. Temporary Deputy Speaker: Hon. Kados! Oh, you are standing in for him?

Hon. Peter Wanyoike: Yes. Thank you Madam Speaker. On behalf of Hon. Kados, I beg to give Notice of the following Motion: that, aware that the Constitution of Kenya 2010 under Paragraph II of the Fourth Schedule provides for roads as a function of the County Government whose purview---

Hon. Temporary Deputy Speaker: Order! Hon. Mark Mugambi please go out and you are banned from this assembly for today's sitting.

Hon. Mark Mugambi: Thank you.

Hon. Peter Wanyoike: Thank you Madam Speaker. Let me read the Motion after the disruption. I beg to give Notice of the following Motion: That, aware that the constitution of Kenya 2010 under Paragraph II of the Fourth Schedule provides for roads as a function of the County Government whose purview primarily deals with county roads under the enabling legislation; noting that the Nairobi Metropolitan Services and the county government as well as the national government has provided support which has various roads across the county tarmacked or brought to the motorable standards to the great benefit of the residents; deeply concerned that in some estates across the city residents associations have instead blocked off access and easement of the newly paved roads under the pretext of security measures effectively privatizing public roads and greatly inconveniencing other users; recognizing that some of the residents associations are demanding gate passes or even charging for roads use and erecting barriers preventing some vehicles and pedestrian traffic from accessing the said public roads; aware that the assembly in 2014 passed a resolution requiring that all barriers erected on public roads within residential areas be removed without condition the same opened to public use; reiterating that while the county took action to implement these resolutions, seven years have since lapsed and residents associations seem to have gone back to business as usual with every estate currently with public access road now blocked or barriers erected and passing only possible through the gate passes. This assembly resolves that the County Executive with conjunction with the Nairobi Metropolitan Services take immediate action to remove any barrier erected on public roads within the residential estates with a view to restore such roads to public use and to ensure that no such barriers are erected in future in public roads with the county authority. Thank you Madam Speaker.

Hon. Moses Ogeto: Thank you Madam Speaker. I beg to move the following Motion: That, aware that the Climate Act of 2016 being an Act of parliament intended to provide regulatory framework for enhancement because of climate change and provide mechanism and measures to achieve low carbon; further aware that Nairobi in particular gradually is becoming vulnerable to effects of climate change as a result of increased construction of buildings whose approval by the county government do not expressly

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obligate developers to set aside reasonable space for tree cover; cognizant that existing planning framework and building regulations need to integrate tree cover as a key component for all prospective property developers whereby they must comply before constructions are approved and certificates of compliance issued; noting that effects of climate change are real and lack of enough tree cover in the city will in the long run result into devastating effects that will impede other generations from enjoying the benefits accruing from the natural environment; deeply concerned that the little or lack of vegetation cover increases air pollution which reduce the quality of health and lowers the life expectancy; observing a clean health environment is a right to every person, this assembly urges the County Executive with conjunction with the Nairobi Metropolitan Services to urgently develop a coherent and unified framework that makes necessary for all property developers and constructions in the city to strictly integrate climate smart actions and obligatory set aside reasonable amount of space to be used to eliminate tree cover vegetation in the city.

Madam Speaker, I beg to move the Notice of motion.

Hon. Temporary Deputy Speaker: Clerk, I think there is another Notice of Motion from Hon. Wanyoike.

Hon. Peter Wanyoike: Thank you Madam Speaker. I beg to give Notice of the following Motion: That, aware that Article 43 of the Constitution of Kenya 2010 provides that every person has the right to education; further aware that Part II of the Second Schedule of the County Government Act 2010 apportion the education function of village polytechnics and home craft centres to county government and that, the social pillar of Kenya's Vision 2030 underscores the importance of education and training to the realization of the objective of realizing of a newly industrialized middle income country providing a high quality of life to all its citizens by 2030 in a clean and secure environment; cognizant that technical and training institution offer a unique opportunity to students who graduate from secondary schools, who failed to meet the requisite threshold to join tertiary institutions; acknowledging that in response to demand for technical and vocational training in Kenya, Parliament passed The Technical and Vocational Education Act, 2013 that is comprehensive on the overall government objective towards educating its citizens; observing that the National Government in its quest to enhance enrolment into primary and secondary school rolled out raft of measures, including provision of subsidies, and whereas this is the help loaned to university students is repayable advancement, it has helped many students to realize their potential in eliminating the interruption factor of the fee arrears; concerned that the bursaries advanced to trainees by the County Government notwithstanding, many students are currently missing out on the training programs offered by the village polytechnics because of lack funding; this Assembly urges the County Executive to domesticate the National Government subsidy and scholarship program for students being enrolled or already enrolled in village polytechnics and home craft centers that are under purview of County Government mandate. Thank you, Madam Speaker.

Hon. Temporary Deputy Speaker: Next Order!

STATEMENTS

Hon. Temporary Deputy Speaker: Hon. Komu.

PROGRESS STATEMENT ON THE RECOMMENDATIONS REGARDING INQUIRY INTO THE ADMINISTRATION OF STAFF AFFAIRS AT THE COUNTY ASSEMBLY ON OR ABOUT THE YEAR 2020

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Hon. Joseph Komu: Thank you, Hon. Speaker. This is a progress statement on the Sectoral Committee on Justice and Legal Affairs on the recommendations of its 6th Report regarding inquiry into the administration of staff affairs at the County Assembly on or about the year 2020.

Hon. Speaker, the Sectoral Committee on Justice and Legal Affairs is one of the sectoral committees of the County Assembly established pursuant to Standing Order No.203, with a mandate to amongst other things, investigate, inquire into and report on all matters relating to the mandate, management, activities, administration, operations, and estimates of the assigned departments.

At the Assembly sitting of Tuesday 28th September 2021, a statement requested by the Hon. Abdi I Hassan, MCA, was committed to the Sectoral Committee on Justice and Legal Affairs for consideration. The statement sought an inquiry and information regarding complaints of illegality arising from breaches of the law and Constitution, unfairness and discrimination in the administration of the County Assembly, particularly the carrying out of promotions and other administrative acts thereto.

Hon. Speaker, the Committee after assessing the statement and establishing that its veracity was such that a full-blown inquiry was necessary, resolved to undertake an inquiry for that purpose, which inquiry resulted in a comprehensive report that was tabled before the Assembly and adopted as such on October 26 2021.

Hon. Speaker, this progress statement and or report is as a result of the report's recommendation which required that the House be abreast on the implementation of its adopted report within 14 days of adoption. As earlier indicated, the Committee conducted a comprehensive inquiry based on the statement whose outcome was a comprehensive report with far reaching observations, findings and recommendations.

The report was tabled on the floor of the Assembly on 26th October 2021 and subsequently debated and adopted by the House on the same day. Amongst its recommendations, was the following:

That given the veracity of the recommendation herein, the Committee on Justice and Legal Affairs to report back to the House on the implementation of these resolutions within 14 days of the adoption of this report and recommend any sanctions for noncompliance. The 14 days have elapsed.

The Committee invited the Secretary to the Board, being the Acting Clerk of the County Assembly, to its meeting held on 10th November 2021 for purposes of appraising the Committee on progress regarding implementation of the recommendation of the report to enable the Committee equally report its progress to the House as obligated by the House's resolutions.

The Committee therefore wishes to update the House as follows: The House resolutions have been implemented as follows:

1. That the Nairobi City County Assembly Service Board, being a statutory body established by the County Governments Act and the County Assemblies Services Act, like every other statutory body, entity or agency subject to the Constitution oversight powers of the County Assembly and provisions of Article 185 of the Constitution. The report was duly tabled before the County Assembly Service Board on 22nd October 2021 for its noting and adoption for implementation. The Board took note of the contents of the report and adopted the same. With respect to this resolution, it was cognizant of this resolution and accepted it as such.
2. Regarding the second resolution, like every other statutory body, entity or agency legally established, they are obligated to comply with the provisions of the law. The Board was equally

cognizant of this resolution and accepted it as such. Further, resolution one to three were indeed self-executing, legal secretary statement which did not need any further action by the Board or the Office of the Clerk, except for noting.

3. Regarding the fourth resolution on senior management positions for the different cadres, Scale 9 and above, which were declared illegal, null and void, and recommended for revocation in totality. The Board adopted the same for immediate implementation, which revocation has since been effected following directions from the Board at its meeting held on 27th October 2021. Service to say, the Board agreed with the Committee's resolutions after reviewing the provisions of the law and the provisions of the human resource policies, noting that indeed there were omissions and instances of noncompliance. Accordingly, the Board has since reconstituted the Staff Advisory Committee by virtue of Section 28 of the County Assemblies Act, 2017 whose key role in the immediate instant would be to recommend officers in acting capacity to fill the gap existing in department or post for the revocation, for continuity. --the Advisory Committee makes those recommendations. The Secretary to the Board will table the same to the Board for the Board's adoption. We have commitment that would be done as early as next week.
4. Resolution five regarding culpability of the former Chairperson of the Board, the Hon. Beatrice K. Elachi, in the impugned organization review and the irregularities that occasioned the inquiry, has been effected. A letter dated 28th October 2021, was dispatched to the relevant investigatory bodies with the report and all evidence annexures attached, to enable them carry out further investigation with a view to bring legal action against the culprit.
5. Resolution six regarding the promotions made in the common cadre category, from scale 5 to 6 and Scale 7 to 8, but not more than two scales above an officer's scale as provided for in the 26, have been retained and were not affected by the occasions.

(Point of Order)

Hon. Moses Ogeto: Thank you, Hon. Speaker. I am on point of Order under Standing Order No.45 (2) (f). With respect to my Chairperson, is he reading a report or responding to a statement which was requested by a Member before this House? He is reading resolutions of the House and the Board's resolutions. It is prudent before this House to understand who was this Member of House? That Standing Order is clear that if the statement is satisfactory to that Member, we could understand the genesis of my good Chairperson. I wish he could clarify that.

Hon. Joseph Komu: Thank you, Hon. Speaker. Unless my able senior is not aware of the progress of this report, it is unfortunate. He is a Member of this noble Committee, and we have been ventilating on this issue for the last one month. This is a result of House resolution that the report tabled in this House and adopted by the House gave the mandate to Justice and Legal Affairs Committee to report back on the recommendations. We have had several sittings close to seven. Sorry, Hon. Member you have missed them and action should be taken against you for coming to embarrass this House yet you are a Member of the Committee. Thank you. I proceed, Hon. Speaker.

6. Resolution seven regarding the Officers affected by the annulment of the illegally created and filled positions not be surcharged for the salaries, benefits and allowances paid to date, was effected. No officer has been surcharged--- No officer has been surcharged for whatever.

7. In keeping with recommendation No.8, the County Assembly Service Board was required to note the recommendation of the report adopt them and take such action necessary to implement the report in totality. As earlier noted the board adopted the report on 27th October 2021 and directed the secretary to the board the acting Clerk to effect recommendation No.8 accordingly. The office of the Clerk has since implemented resolution No.8 taking such measures as appropriate to realize its direction as detailed herein.
8. Hon. Speaker, resolution No.9 regarding the board taking such measures as appropriate to address the budget deficit as necessary to restore CRA confirmed benefit to all Members of the County Assembly. The board is currently preparing the budget for the year 2022/23 and has taken up this recommendation on a priority basis.
9. Recommendation No.9 requiring the board to implement the report of Deloitte and Touche on the Organization review within a period of not more than 90days in strict complaisance with the law is also been implemented. The office of the clerk is currently preparing necessary paperwork and arrangement to enable the board to carry out fresh processes within the timeline and has started the process. At its sitting, on 10th November 2021, the board adopted a board paper recommending the establishment of a staff technical committee to oversee the implementation of this resolution within 90 days. The technical committee is expected to urgently revisit duly report to details to its implementation within the House timeline. We have a commitment that the technical committee will commence its work early next week and expedite the same. This will include ensuring compliance with the law and supporting other engagements such as those between the board and SRC and the board and CRA within the period of 90 days. Notable because of these resolutions the new promotion process that had begun and which culminated with the recent interviews has equally been shelved because of the committee findings on the issues identified as having affected the first promotion also affected the planned second promotions. Therefore, a new exercise is to be carried out within the provision of the law and committee recommendations and timelines.
10. Resolution 11 is the precursor to this progress report and therefore, fully implemented.
11. Resolution 12 Hon. Speaker, regarding the automatic coming into force the recommendation of the committee of the board fails to act within seven days have since been overtaken by events since the board acted before the lapse of seven days.
12. Resolution 13 regarding the Clerk of the County Assembly within seven days forwarding adopted report to Auditor General, EACC and DCI for appropriate action has been effected. The report together with annexures and all the evidence brought on record has been forwarded to the above agencies; find a letter dated 28th October 2021.

Hon. Speaker and Hon. Members the committee wishes to thank the office of the Speaker and Chairperson of the board for the speedy implementation of the committee report as adopted by the House of this Assembly. Hon. Speaker, we remain committed to this process and will keep the House updated on the implementation of the resolution accordingly. I thank you, Hon. Speaker.

Hon. Jared Akama: Thank you very much Madam Speaker, Pursuant to Standing Order 45 (2) (c) I wish to request for a statement from the Chairperson of Sectoral ...

(Loud consultation)

Hon. Temporary Deputy Speaker: Order Hon. Ogeto the Hon. Member in order please stop interrupting.

REQUEST FOR STATEMENT REGARDING AN ARRANGED GRABBED PUBLIC LAND PLOT LR.NO./BLK/60/493
IN MUGUMOINI WARD MEANT TO BE A PLAYING GROUND

Hon. Jared Akama: Thank you Madam Speaker for protecting me. Hon. Speaker, pursuant to Standing Order 45 (2) (c) I wish to request for a statement from the Chairperson of Sectoral on Planning and Housing regarding an arranged grabbed Public land plot LR.No./BLK/60/493 in Mugumoini Ward meant to be a playing ground.

Hon. Speaker, the residents' group have raised concerns regarding the state of the above-mentioned land, which was irregularly allocated to an individual who was subsequently sold it to a private developer who is currently electing a building with a capacity of approximately 400 persons' right in the middle of Moi residential estate.

Hon. Speaker, therefore the allegations regarding irregular allocation of Public utility Land within Moi and Otiende Estate in Langata. The allocation was done without participation, which was adversely mentioned in a report of the Ndugu land commission as well as in a petition to the Nairobi City County Assembly.

Hon. Speaker, the residents continue to raise grievances regarding the irregular land grabbing and want such land urgently reverted for public use.

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

1. The reason the County Government has allocated a private developer to elect a building on land largely allocated irregularly
2. Submission of approval document by the County Executive and Nairobi Metropolitan Services NMS ongoing construction
3. Measures the Government the County Government and NMS are putting in place to prevent private developers from grabbing public land in the County.

Thank you Madam Speaker.

Hon. Temporary Deputy Speaker: Chairperson Planning Committee or other Member from Planning.

Hon. Peter Wanyoike: Thank you, Madam Speaker, let me take the undertaking and report back in two weeks.

Hon. Jared Akama: Madam Speaker, I accept that it is a tradition in this House to give two weeks. However, I think some things require urgent action based on humanitarian grounds.

Madam Speaker, as we are speaking the developer is on-site and it is in the middle of the estate and the lives of the residents are a very pathetic situation because of the movement. We are talking about construction in the middle of an estate and I particularly take the cry of one Justus who lives just next to a very old mzee. As you know these are old people who bought houses within the estate. There is a neighbour who is sick just next to the construction, so the movement and construction are affecting his health.

Hon. Speaker, I also want to bring to your attention that this is not a new matter in the House. In 2017 in the last Assembly this matter was brought to the hon House and the Hon. Committee on Planning, did a visitation and gave a report. So again, the matter reoccurred in 2018, we got assistance, and these people were banned from accessing the area. Even the area was blacklisted in terms of getting a plan.

Therefore, overnight I do not know what changed because people have been given a renewal on the previous plan. Therefore, this is something which is not new to this House, and therefore it will not require two weeks to give a direction.

At the same time Madam Speaker, based on the trend of two weeks, I remember a month ago we did seek for a statement regarding bursaries up to date and I know through your wisdom, you are going to give a ruling on the matter. We have not received feedback on the same. This is a very serious matter based on our children being chased away from school. Without mixing matters Madam Speaker, I beg that you give direction without necessarily negotiating with Majority Leader; you give direction on this matter based on urgency and I know you are a mother and this thing is affecting families.

Therefore, I will depend on your wisdom and humanitarian heart toward this matter because it is very urgent and it is very serious. Two weeks has never been very serious in this House. Thank you Madam Speaker.

Hon. Temporary Deputy Speaker: Hon. Akama, I do not want to look biased and I will let the matter be decided by the committee. Therefore, for me, I would also want to ask if the Deputy Majority Leader to give a date of the response. Please consider his plea and give a reasonable timeline.

Hon. Peter Wanyoike: Thank you Madam Speaker and I am aware that this issue was brought in the first Assembly and we have a report of the same but as you are aware that we have to write to the Executive and a notice of seven days. I will liaise with the Chair for Planning and the relevant offices so that they stop the construction then we report to the House in two weeks.

Hon. Temporary Deputy Speaker: Is that okay Hon. Akama?

Hon. Jared Akama: Sounds fair especially on the line on stopping the construction as we wait for a comprehensive feedback within the two weeks. Having said that Madam Speaker, I am looking forward to your ruling on the statement we sought on the floor regarding bursaries. I do not know whether the Majority is still sleeping on the two weeks

Hon. Temporary Deputy Speaker: Very much in order. Hon. Ogeto

Hon. Moses Ogeto: Thank you Madam Speaker. I wish that my Chair Hon. Komu would have been in the House. However, I want it to be on record under Standing Order number 201 (2) and 45 (2f) because I do not know when this Assembly discharged the responsibility of the Implementation committee to the sectoral committee of Justice and Legal affairs.

I have been away for two weeks and I don't know if the Standing Orders were changed during that time. I want to take you to the book of Psalms 82 (2) which reads "Give justice to the weak and fatherless and maintain the right to the afflicted and dispute"

One time when the former speaker Hon. Elachi was chairing the session, I mentioned that this government will eat its own people and the same injustice that is being committed in the Assembly through the leadership. Injustices are happening and our ancestors will judge us because we are not going to live long. I therefore wish that I could have reminded my Chairman of sectoral committee on Justice on this

because the precedence set here will come to haunt us someday. I told the same to Hon. John Kamangu and with those few remarks, I beg to move the following statement.

REQUEST FOR STATEMENT REGARDING INCREASE GRABBING OF PUBLIC LAND ACROSS THE CITY BY PRIVATE DEVELOPERS

Hon. Moses Ogeto: Pursuant to Standing Order number 45 (2c), I wish to request for a statement from the Chairperson of the sectoral committee on Planning and Housing regarding increase grabbing of public land across the city by private developers.

Hon. Speaker, it is saddening that private developers are in cohorts with county employees grab public land meant for utility such as playgrounds and open spaces and obtain leases through crooked means. The said developers then obtain approvals from the county and put up various developments on the property.

In Babab Dogo for instance, public land LR. No. 336/667/64 set aside for utilities has been fenced off by a private developer despite the historical protests by residence. In June 2017, residents of the area petitioned the County Assembly regarding grabbing of the land, which the petition was considered and a comprehensive report prepared, and the County Government was directed to repossess the land. It was established that the land was public land set aside for establishment of public utilities for residents. The lease having expired and implementing the County resolutions, the planning department instead proceeded to issue a developer with a new lease and approvals who has now fenced off the property to the dissatisfaction of the residents.

Efforts by the area Member of County Assembly, Deputy Speaker Hon. Majiwa and other leaders to pursue the matter with the County planning department has been unsuccessful out of frustrations. Hon. Speaker, in the statement the Chairperson should inquire and report on;

1. Status and implementation of the Assembly resolutions on the petition by residents of Baba Dogo regarding the irregular ownership of use of LR. No. 336/64 originally LR. No. 333/12?
 2. Authorization for the develop to carry out a construction on the said property despite clear recommendations by this County Assembly?
 3. The status of the said plot LR. No. 336/64 originally LR. No. 333/12 including the original ownership and how it came in the hands of a private developer
 4. Measures taken to county planning officers who collude with land grabbers to authorize the approvals and construction by private development on grabbed public land across the County
 5. Urgent measures to rectify legal occasions on grabbing of said land and stop construction of the said property
 6. When the land will be restored to public use?
 7. Immediate stoppage of ongoing construction as the county provides information regarding the above.
- Hon. Speaker, the norm is that Hon. Wanyoike takes charge of this. May he do so?

Hon. Temporary Deputy Speaker: Hon. Wanyoike?

Hon. Peter Wanyoike: The Planning Committee now has two statements to report to. We will therefore work on them concurrently and report back in two weeks. Madam Speaker, keep in mind that it is within law that we give a notice to the Executive for them to give a response, thereafter the committee sits and comes up with a recommendation.

Hon. Temporary Deputy Speaker: Yes Hon. Ogeto

Hon. Moses Ogeto: Hon. Speaker, this was a resolution of the Assembly after a petition said that this property belongs to the public. A public developer is on the ground developing---

Hon. Temporary Deputy Speaker: Order Hon. Ogeto

Hon. Moses Ogeto: I accept the two weeks Hon. Speaker. However, there is a petition brought to this House by the residents of Baba Dogo where Hon. Majiwa represents. I am requesting that the ongoing construction be stopped. I will be bringing a Notice of Motion for impeachment of the Minister of Lands and I hope you will approve it. Thank you.

Hon. Temporary Deputy Speaker: Are you okay with the two weeks wait?

Hon. Moses Ogeto: Yes. We are asking that the construction be stopped.

Hon. Temporary Deputy Speaker: Hon. Ogeto, he has heard you. So wait for the committee's action. Next order

MOTION

Hon. Temporary Deputy Speaker: Hon. Members, with due respect to Hon. Patricia Mutheu, she has deferred her motion to next week Tuesday afternoon.

(Motion deferred)

ADJOURNMENT

Hon. Temporary Deputy Speaker: Hon. Members, there being no other business of the House we adjourn till next week Tuesday and I wish you well.

The House rose at 3:05 p.m.