



REPUBLIC OF KENYA
NAIROBI CITY COUNTY ASSEMBLY
SECOND ASSEMBLY – (SECOND SESSION)

ORDERS OF THE DAY

THURSDAY, 6TH SEPTEMBER, 2018

ORDER OF BUSINESS

PRAYERS

1. Administration of Oath
2. Communication from the Chair
3. Messages
4. Petitions
5. Papers
6. Notices of Motion
7. Statement
8. * **PROCEDURAL MOTION – EXEMPTION OF BUSINESS UNDER PROVISION OF THE STANDING ORDER 240(3)**

THAT, the business appearing in today's Order Paper be exempted from the provisions of the County Assembly Standing Order 240 (3).

(Leader of Majority)

9. * **PROCEDURAL MOTION – EXEMPTION OF BUSINESS UNDER PROVISION OF THE STANDING ORDER 247**

THAT, the business appearing in today's Order Paper under Order No. 9 be exempted from the provisions of the County Assembly Standing Order 247(2), (3) and (6).

(Leader of Majority)

10. PROCEDURAL MOTION – EXEMPTION OF BUSINESS UNDER PROVISION OF THE STANDING ORDER 247(1)

THAT, notwithstanding the provisions of Standing Order 247 (1), this Assembly resolves in the absence of the Select Committee on Procedure and Rules, that the Select Committee on Assembly Business table its Report of the amendments to the Standing Orders pursuant to Standing Order 163(4) (f).

(Leader of Majority)

11. * MOTION – REPORT OF THE SELECT COMMITTEE ON ASSEMBLY BUSINESS ON THE AMENDMENTS TO THE STANDING ORDERS

THAT, this Assembly adopts the Report of the Select Committee on Assembly Business on the Amendments to the Standing Orders.

(Leader of Majority)

12. * MOTION – REMOVAL OF SPEAKER FROM OFFICE PURSUANT TO STANDING ORDER 65

Hon. Speaker, I beg to give Notice of the following Motion –

AWARE, that *Article 73(2) (d) and (e)* of the Constitution of Kenya provides for accountability of a state officer to the Public, for decisions and actions as a key guiding principle of leadership and integrity; **FURTHER AWARE**, that on fiscal responsibility of public and state officers, Article 201 of the Constitution is explicit on the principles of financial management, which is further reinforced for County Public Officers under Section 162 of the Public Finance Management Act, 2012; **NOTING** that the Leadership and Integrity Act, 2012 and the Regulations emanating thereby further provide extensively for the specifics of the conduct of State officers, **REGRETTING** that the conduct of the Hon. Beatrice K. Elachi, through her actions and omissions, has caused the Assembly great embarrassment and brought the Office of the Speaker into disrepute contrary to the gamut of laws on conduct of State officers of her caliber, this Assembly **RESOLVES** to sanction and remove the **Hon. Beatrice Elachi** as holder of the office of the Speaker of the County Assembly of Nairobi City, pursuant to Section 11 of the County Governments Act, 2012, Section 21(5)(c) of the Elections Act, 2011, on the following grounds;

1. Conflict of Interest - Gross violation of the Constitution of Kenya, 2010; The County Governments Act, 2012; The Public Procurement and Disposal Act, 2015 and The Leadership and Integrity Act, 2012.

Violation of Chapter Six of the Constitution, specifically Article 73 on *Responsibilities of leadership* which requires objectivity and impartiality in decision making, and in ensuring that decisions are not influenced by nepotism, favoritism, other improper motives or corrupt practices; violation of Article 75(1)(a), (b) and (c), violation of Article 201 (a) of the Constitution on *Principles of Public Finance*, violation of Section 16 and 17 of the Leadership and Integrity Act, 2012, violation of Sections 176(a), (d), and (g) of the Public Procurement and Disposal Act, 2015 by aggressively and contrary to the law, interfering with procurement processes with a view to have tenders awarded to parties close to her or their proxies, for

- a) instance in the controversial purchase of the residence of the holder of the Office of Speaker, where she actively interfered, including threatening, bullying and intimidating staff to have a party close to her win the award for the purchase of the said residence despite that party having clearly failed the mandatory criteria for award of the tender, and having quoted Kshs125 million when the recommended price was Kshs100 million,
- b) creating a markup of Kshs25 million above what the market survey Report recommended, evidence of which is available from procurement records, audio recordings and electronic correspondences with the said party and her proxies, which tender has since been refloated and bids received, an action which prompted her deleterious unilateral decisions over the preceding weeks to the embarrassment of the County Assembly Service Board and the Assembly;

2. Undermining the Authority of the County Assembly Service Board - Gross Violation of the Constitution of Kenya, 2010; County Assembly Services Act, 2017; The Public Officer Ethics Act; The Leadership and Integrity Act, 2012.

- a) General violations of Section 12 of the County Governments Act, 2012 and Section 12 of the County Assembly Services Act, 2017 on *Powers of the Board as a body corporate* by undermining the authority of the County Assembly Service Board through her actions and omissions by purporting to unilaterally undertake the functions of the Board and inviting investigators to probe the conduct of officers of the County Assembly and the Board's prior decisions despite there not having been a board meeting to address

the said matters and give express authorization for such action as contemplated by law as the Board saw fit;

- b) Violation of Section 12 of the County Governments Act, 2012 and Section 12 of the County Assembly Services Act, 2017 on *Powers of the Board as a body corporate*, through purporting to secretly and unilaterally appoint officers of the service as accounting officers through defining mandates at the Central Bank of Kenya (CBK), IFMIS and Internet Banking (IB) without consulting the CASB nor having express authority from the Board for such actions, which actions saw her forced to retrieve the appointments when the matters became public;
- c) Violation of Section 12 of the County Governments Act, 2012 and Section 12 of the County Assembly Services Act, 2017 on *Powers of the Board as a body corporate* by inviting investigators to probe alleged irregularities in Procurement matters falling squarely under the purview of the Board, which matters she should have, by the Board's own regulations and practice, tendered before the Board for consideration before inviting third parties without the Board's prior consent and knowledge;
- d) Violation of Section 23 of the County Assembly Services Act, 2017 and Standing Order 92 by unilaterally purporting to allow debate on the conduct of the Clerk of the County Assembly on Thursday 14th June, 2018 ostensibly under Standing Order 1 contrary to the provisions of the law and the Standing Orders, which require such debate to be only conducted *upon a specific substantive Motion of which at least three days' notice has been given*, thus undermining the authority of the Board which has exclusive mandate to recommend the suspension or removal of the Clerk where it considers it necessary to remove the Clerk under section 22 of the said Act.
- e) Violation of Section 11, 12 and 23 of the County Assembly Services Act, 2017, Section 12 of the County Governments Act, 2012 by unilaterally, unprocedurally and illegally usurping the functions of the board, thereby purporting to take certain actions which can only emanate from the Board as a consequence of its decisions while exercising its functions under the said Acts, in so doing greatly undermining the authority of the board and bringing its reputation as a body Corporate into disrepute, circumstances which render her unfit to hold the seat of the Chairperson of the Board;

- f) Violation of the County Assembly Services Act, 2017, the County Assembly Powers and Privileges Act, 2017, on legal protections for officers of the service by pursuing the malicious prosecution of officers of the Service who coincidentally sat in the Ad Hoc Tender Evaluation Committee which denied her proxies and their associated companies the irregular award of an exaggerated contract for the purchase of a Residence for the Speaker of the County Assembly.

3. Abuse of Office/Gross misconduct – Violation of the Constitution of Kenya, 2010; Leadership and Integrity Act, 2012; County Assembly Powers and Privileges Act, 2017.

- a) Violation of *Article 201(d)* the Constitution on prudent and responsible use of public resources, and violation of Section 162 of the Public Finance Management Act, 2012, by inappropriately expending public funds on a visit to Dubai, UAE, to ostensibly receive a fake Honorary Doctorate Degree
- b) from the “London Graduate School,” which is affiliated to a “Commonwealth University” which university is suspiciously registered in Belize, a tiny Country in Central America, and run from Nigeria, upon payment of USD5,500/- or roughly Kshs550,000 of taxpayers monies, as part of a suspicious “Dubai Leadership Summit,” knowing fully aware the costly and fake Honorary Doctorate Degree was a ploy by Nigerian fraudsters in what are commonly known as 419 Scams, which Scam renowned media personalities such Mr. Larry Madowo and Mr. Boniface Mwangi even highlighted in their social media platforms when they received similar invitation letters from the Nigerian scammers to pay to receive the Honorary Doctorate, an expenditure which would have been personal but which she procured payment for by intimidation, improperly and unprocedurally to have the public fund her deceptive personal travels, evidence of which is readily available online and attached herewith;
- c) Violation of *Article 201(d)* the Constitution on prudent and responsible use of public resources, and violation of Section 162 of the Public Finance Management Act, 2012, by inappropriately expending public funds on dubious travel to Dallas, Texas, USA ostensibly for a Diaspora Women Network conference when in actual sense she was travelling for plastic surgery and knee surgery, as evidenced by an insurance claim from CIC Insurance totaling Kshs 1,000,000/-, whose payment was similarly procured through deceit and intimidation.

- d) Violation of *Article 201(d)* of the Constitution on prudent and responsible use of public resources, and violation of Section 162 of the Public Finance Management Act, 2012, by inappropriately expending public funds on the purchase of a First Class ticket to Texas, USA, at Kshs1,500,000/- on 23rd May, 2018 in contravention of all practice and relevant regulations on travel by State officers, which demands that all State officers, even at her level, travel Business Class, which was originally valued at Kshs900,000/-, but whose highly irregular upgrade to First Class she procured through intimidation, leading to loss of public monies;
- e) Violation of *Article 75(1)(c)* of the Constitution on conduct of State Officers that is demeaning to the offices they hold and Section 11 of the Leadership and Integrity Act, 2012, first by threatening, intimidating and harassing officers of the County Assembly Service exercising their duties as assigned by the Board, undermining the office of the Clerk of the County Assembly through various correspondences to Constitutional Commissions such as the Commission on Revenue Allocation, Salaries and Remuneration Commission and the Auditor General seeking to unilaterally control all administrative affairs relating to the intergovernmental function of those offices with the County Assembly contrary to law.
- f) Violation of the County Assembly Powers and Privileges Act, 2017 and long running traditions of Parliament by repeatedly inviting the Ethics and Integrity Commission (EACC) and other investigatory agencies to investigate the conduct of Members of the Select Committee on Labour and Social Welfare knowing fully well the Select Committee on Powers and Privileges had every intention to seize itself of the matters and investigate any breaches of privilege per the County Assembly Powers and Privileges Act, 2017 and recommend appropriate actions, subsequent to which any further referrals would be made to the external agencies per practice while respecting the sanctity of the powers and privileges of the Assembly;
- g) Violation of the County Assembly Powers and Privileges Act, 2017 by unprocedurally and frequently authorizing entry into Assembly precincts by Police officers not assigned to the County Assembly contrary to laid down law and provisions of the Standing Orders for purposes of arresting officers of the Assembly Service and intimidating the Assembly service at her request;

4. Failure to show leadership - Violation of the Constitution of Kenya, 2010; Leadership and Integrity Act, 2012; the Standing Orders;

- a) Violation of *Article 75(1)(c)* of the Constitution on leadership and integrity by interfering with the legitimate results of the Women Caucus elections where she unilaterally cancelled the results of a legitimate vote and ordered a fresh election, clearly abusing her office;
- b) Repeatedly commencing Assembly proceedings without the requisite Quorum, and proceeding with Assembly sittings where the Question of Quorum has been raised, and acceded to, contrary to the Standing Orders;
- c) Violation of *Article 75(1)(c)* of the Constitution on leadership and integrity through tribalism and nepotism by continually preferring members of a certain community for special favors in the exercise of the powers of her office, and extending the same to Staff, by repeatedly warning staff members from certain tribes to toe the line or face the consequences for unknown offenses;
- d) Violation of *Article 75(1)(c)* of the Constitution on leadership and integrity through her concerted efforts to interfere with a Report of the Select Committee on Public Accounts to achieve recommendations aligned with her personal objectives contrary to the Standing Orders and provisions of the Leadership and Integrity Act, 2012.

(Hon. Anthony Kiragu Karanja, MCA)

13. * MOTION – STATUS OF THE COUNTY GOVERNMENT

THAT, aware that Article 185 Sub-article 3 of the Constitution of Kenya (2010) provides that the County Assembly while respecting the principle of separation of power may exercise oversight over the County Executive Committee; **FURTHER AWARE** that the County Assembly received and approved various development plans from the County Executive, in addition the assembly has passed several resolutions which are vital for the development of the County if implemented by the County Executive; ...

CONCERNED that the County Assembly is yet to receive a satisfactory report on the implementation of the County plans and policies almost a year since the inception of the current administration; **FURTHER CONCERNED** that officers of the County Government are in limbo with the recent reshuffling and suspension of some of them which has hampered service delivery to the residents of Nairobi; **DISTURBED** that the current administration despite the numerous reshuffling of cabinet members, has not been able to conduct cabinet meetings, in addition to the Governor often missing from office; **FATHER DISTURBED** that since the 9th March 2018 Supreme Court Advisory on the Nomination of a Deputy Governor for subsequent approval by the Assembly; **OBSERVING** that there have been high number of demolitions of properties without clear procedures and framework; **FURTHER OBSERVING** that the County Government is seen to be working to bring sanity in various departments to enhance service delivery, however, nothing tangible has been done so far, this Assembly **RESOLVES** as follows, **THAT**:-

- i. H.E the Governor of Nairobi City County to move with speed and forward a name of the nominee for the position of Deputy Governor of Nairobi City County for subsequent approval by the Assembly;
- ii. The County Executive Committee (cabinet) to be proactive in development of public policies and subsequent forwarding of legislations for enacted by the Assembly for effective service delivery; and,
- iii. The Management, Operations and Governance of Nairobi City County to be conducted, executed and implemented within the jurisdiction of the gazette headquarter of Nairobi City County, which is at City Hall save for the decentralized units.

(Hon. Moses Ogeto, MCA)

NOTICES

The Assembly resolved on Wednesday, February 14, 2018 as follows:-

- I. **THAT**, notwithstanding the provisions of Standing Order 103(4), this Assembly orders that, each speech in a debate on any Motion, including a Special motion be limited in the following manner:-A maximum of three hours with not more than twenty (20) minutes for the Mover and ten (10) minutes for each other Member speaking, except the Leader of the Majority Party and the Leader of the Minority Party, who shall be limited to a maximum of fifteen (15) minutes each, and that ten (10) minutes before the expiry of the time, the Mover shall be called upon to reply; and that priority in speaking be accorded to the Leader of the Majority Party, the Leader of the Minority Party and the Chairperson of the relevant Sectoral Committee, in that Order.
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