



REPUBLIC OF KENYA

NAIROBI CITY COUNTY ASSEMBLY

FIRST ASSEMBLY – (FOURTH SESSION)

ORDERS OF THE DAY

WEDNESDAY, OCTOBER 12, 2016 AT 2.30 P.M.

ORDER OF BUSINESS

PRAYERS

1. Administration of Oath
2. Communication from the Chair
3. Messages
4. Petitions
5. Papers
6. Notices of Motion
7. Statements
8. *. MOTION – (Hon. Samuel Nyang'wara, MCA)

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 Section 30(2) of the County Government Act, 2012 provides for the functions and responsibilities of a County Governor, noting that *Section 30(3)* provides for ways in which the Governor's functions ought to be performed, this Assembly **RESOLVES** to remove the Hon. (Dr.) Evans Kidero from office of the County Governor of Nairobi City, pursuant to *Article 181(1)(a), (b), (c)* of the Constitution, Section 33 of the County Governments Act, 2012, and Standing Order 60 of the Nairobi City County Assembly Standing Orders, on the following grounds;

1. **Gross violation of the Constitution, 2010; The County Government Act, 2012; The Public Procurement and Disposal Act, 2015; and the Public Finance Management Act, 2012.**

- a) Inability to control and manage County debt, leading to the unmitigated accrual of debt, which has ballooned the County's overall debt to unmanageable levels, rising from Kshs 12 billion when he took office in 2013 to the current Kshs 42 billion, within three years, thus creating paralysis in funding for projects and programs; debts which were not disclosed in the Debt Management Paper, 2015 and 2016 and the County Fiscal Strategy Paper, 2015 and 2016, violating Articles 201(e), of the Constitution, Section 123 and 207(2)(e) of the Public Finance Management Act, 2012.
- b) Violation of the *Articles 201 (a), (d), (e)* of the Constitution of Kenya on principles of Public Finance and *Article 226(5)* on the audit of Public entities, as well as *Article 227(1)* on procurement of goods and services, and the Public Procurement and Disposal Act, 2015 by flouting the principles of public finance management in as far as public procurement of goods and services is concerned, where the Auditor-General faulted the procurement process. The system was set up by a private company whose selection criterion was made under suspicious and illegal circumstances. Citing numerous missteps in the procurement process, Auditor-General, Mr. Edward Ouko, concluded that the 4.5 per cent of all transactions retained by JamboPay are too high compared to what the Kenya Revenue Authority charges. The auditor found that two other bidders, Virtual Mobile and Craftsilcon, had bid to charge 2.5 per cent of the transaction costs, but were not considered. A review of the cost-impact using the actual revenues for the 2012/2013 financial year established that the county government will spend an enormous Sh767.4 million in the five years the contract is supposed to run.
- c) Violation of the *Articles 201 (a), (d), (e)* of the Constitution of Kenya on principles of Public Finance and *Article 226(5)* on the audit of Public entities, as well as *Article 227(1)* on procurement of goods and services, and the Public Procurement and Disposal Act, 2015 by flouting the principles of public finance management in the unilateral signing of an agreement with Foton for the supply of buses, a matter which the EACC is investigating.
- d) Violation of the *Articles 201 (a), (d), (e)* of the Constitution of Kenya on principles of Public Finance management, the Public Finance Management Act, 2012 and the County Allocation of Revenue Act, 2015 on the use of conditional grants from the National Government, where the Governor in the 2014/15 and 2015/16 Financial Years diverted or negligently caused to

- be diverted Conditional Funds meant for the free Maternity program and user fees foregone to other unrelated programs, to the great detriment of City residents struggling to access better healthcare, contrary to the regulations that govern the use of conditional grants from the National government;
- e) Violation of the *Articles 201 (a), (d), (e)* of the Constitution of Kenya on principles of Public Finance management, the Public Finance Management Act, 2012 on the authorization of expenditure of revenue collections at source across the City, leading to heavy revenue leaks and missed targets, which has greatly affected the implementation of County programs aimed at uplifting the lives of residents, leading to stalled projects and unpaid contractors contrary to Statute and Constitutional provisions of the procedure for collection, withdrawal and usage of public funds.
 - f) Violation of *Article 176(1)* and *185* on the creation and authority of County Assembly as an arm of County Government by undermining the Assembly's legitimate authority to make laws, through willful refusal to implement resolutions of the County Assembly, such as a freeze on employment, which the Governor has ignored and undertaken advertisements for employment twice, ignoring implementation of the Nairobi City County Wards Development Fund Act, 2014, even after assenting to the Bill, and in the absence of any directions on the illegality of the Act, any of its provisions or otherwise from the High Court under *Article 165 (3)(d)(i)* and *(iv)* of the Constitution.
 - g) Violation of *Section 4* of the County Governments Act, 2012 and *Section 3* of the Nairobi City County Flags and Other Symbols Act, 2013, by refusing to implement the approved symbols as provided for in the Act.

2. Crimes under National Law

- a) Violation of *Articles 201(d)* of the Constitution on principles that guide all aspects of public finance in the Republic, and *227(1)* on Procurement of public goods and services, and the provisions of the Public Procurement and Disposal Act, 2015 by awarding the revenue collection tender controversially to JamboPay, with a costly charge of 4.5 per cent of all transactions retained by JamboPay, which the Auditor noted as too high compared to what the Kenya Revenue Authority charges and what other bidders have proposed in the tender document;

- b) Violation of *Articles 201* of the Constitution and the Public Finance Management Act, 2012 on principles that guide all aspects of public finance in the Republic where the Governor either intentionally or negligently has presided over massive loss and theft of County public funds in the four years he has been office, as evidenced by the Auditor General's Report of 2013/2014, where the auditor raised the red flag over failure by the Nairobi county government to bank some Shs252 million, which is part of Shs5.5 billion collected as revenue by the county. Records made available for audit revealed that during the period 1st January, 2013 and 30th June, 2013, a total of Sh 5,511,732,231.00 was collected from the various sources of revenue but only Sh5,258,849,088.00 was banked resulting to under banking of Sh252,883,143.00, partly leading the arrest and prosecution of Senior Officers in the Finance Department who report directly to him, as well as the theft of public resources through wasteful procurement and payment for non-existent services, for instance exaggerated legal fee notes to certain lawyers and law firms, with legal debts standing Shs5 billion.

3. Abuse of Office/Gross misconduct

The County Governor of the Nairobi City exhibited gross misconduct/abuse of office as follows: -

- i. 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 assaulting a Member of Parliament, an elected leader from Nairobi City County, a matter which legal redress was sought, forcing the Governor to settle out of Court, and that recently he again allegedly assaulted another Member of Parliament, to the dismay of the Public when he was invited by the Senate of Kenya to answer audit queries relating to expenditures by the Nairobi City County Executive.
- ii. Creation of the Office of the County Attorney contrary to *Section 62(2)* of the County Governments Act, 2012.

9. *. **MOTION** – (Chairperson, Sectoral Committee on Culture & Community Services)

THAT, this Assembly adopts **THE REPORT OF THE SECTORAL COMMITTEE ON CULTURE AND COMMUNITY SERVICES ON INQUIRY INTO MODALITIES AIMED AT ENHANCING CAPACITY OF THE NAIROBI CITY COUNTY LIQUOR BOARD AND SITE INSPECTION TO THE NAIROBI CITY COUNTY LIQUOR BOARD OFFICES, SOUTH C ESTATE**, laid on the Table of the Assembly on Tuesday, 2nd August, 2016 .

(Resumption of debate interrupted on Wednesday, 5th October, 2016)

10.*. **MOTION** – (Chairperson, Sectoral Committee on Labour and Social Welfare)

THAT, this Assembly adopts **the REPORT OF THE SECTORAL COMMITTEE ON LABOUR AND SOCIAL WELFARE ON THE SESSIONAL PAPER NO. 1 OF 2016 ON THE NAIROBI CITY COUNTY STRATEGIC PLAN 2015 – 2025**, laid on the table of the Assembly on Thursday 4th August, 2016.

NOTICES

I. **Assembly resolved on Wednesday, February 10, 2016 as follows:-**

THAT, notwithstanding the provisions of Standing Order 94(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.

...../Notices

II. Assembly resolved on Wednesday, February 10, 2016 as follows:-

THAT, notwithstanding the provisions of Standing Order 94(4), this Assembly orders that, each speech in a debate on a **Report of a Committee**, a Sessional Paper or any other Report submitted to the Assembly, be limited as follows: - A maximum of sixty (60) minutes for the Mover in moving and thirty (30) minutes in replying, and a maximum of ten (10) minutes for any 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 priority be accorded to the Leader of the Majority Party and the Leader of the Minority Party, in that Order.

*** Denotes Orders of the Day**
