

GOVERNMENT OF NAIROBI CITY COUNTY



THE NAIROBI CITY COUNTY ASSEMBLY

OFFICE OF THE CLERK

SECOND ASSEMBLY- FOURTH SESSION

NBI CA. PLC. 2019 / (066)

1st December, 2020

PAPER LAID

Pursuant to Standing Order 191, I beg to lay the following paper on the table of the Assembly, today Thursday 1st December 2020.

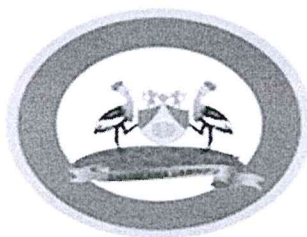
THE REPORT OF THE SELECT COMMITTEE ON APPOINTMENTS ON COMMITTEE RETREAT HELD FROM 5TH TO 8TH NOVEMBER, 2020 AT SAI ROCK HOTEL, MOMBASA COUNTY.

(Chairperson, Select Committee on Appointments)

Copies to:
The Speaker
The Clerk
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The Press

*Paper laid by Hon.
Peter Wanyenze, MC
Deputy Majority Lead
on 01/12/2020*

NAIROBI CITY COUNTY ASSEMBLY



SECOND ASSEMBLY – FOURTH SESSION

THE SELECT COMMITTEE ON APPOINTMENTS

**REPORT ON COMMITTEE RETREAT HELD AS FROM 5TH TO 8TH
NOVEMBER, 2020 AT SAI ROCK HOTEL, MOMBASA COUNTY**

Clerk's Chambers
City Hall Buildings
NAIROBI

NOVEMBER, 2020



Contents

| | |
|---|----|
| 1.0 PREFACE | 3 |
| 1.1 Committee Membership | 3 |
| 1.2 Retreat objectives and proceedings | 3 |
| 1.3 Acknowledgement | 4 |
| 2.0 INTRODUCTION | 5 |
| 3.0 RETREAT PROCEEDINGS | 5 |
| 1.4 Establishment and Roles of the Committee on Appointments | 5 |
| 1.5 Role of the Committee on Appointments | 6 |
| 1.6 Managing Committee Business | 6 |
| 1.7 An overview of the Public Appointments (County Assemblies) Approval Act, 2017 | 8 |
| 1.8 The Vetting Process | 11 |
| 3.5.1 The Pre-vetting process | 11 |



1.0 PREFACE

1.1. Committee Mandate

Hon. Speaker,

The Select Committee on Appointments is established under Standing Order No. 196, and its mandate amongst others, as outlined under Standing Order 196 (4) includes “*to consider, for approval by the County Assembly, appointments under Articles 179(2) (Members of County Executive Committee).*”

1.1 Committee Membership

The Committee Membership comprises of:-

- | | | |
|-------------------------------|---|------------------------|
| 1. Hon. Benson Mutura, MCA | - | Speaker (Chairperson) |
| 2. Hon. Abdi I Hassan, MCA | - | Leader of the Majority |
| 3. Hon. Michael Ogada, MCA | - | Leader of the Minority |
| 4. Hon Paul Kados, MCA | | |
| 5. Hon. Peter Imwatok, MCA | | |
| 6. Hon. Waithera Chege, MCA | | |
| 7. Hon. Paul Ndung'u MCA | | |
| 8. Hon. Millicent Jagero, MCA | | |
| 9. Hon. Elias Okumu, MCA | | |
| 10. Hon. Emily Oduor, MCA | | |

1.2 Retreat objectives and proceedings

County Assembly Committees are extensions of the Assembly established under the County Assembly Standing Orders and in accordance with Section 14 of the County Governments Act, 2012. The Committees are to supposed to perform functions that the Assembly is not well fitted to consider in plenary. Following the reshuffle of Committees the Select Committee on Appointments held its induction workshop from Thursday 5th Sunday to 8th November, 2020. The objectives of the retreat included the following;

- i) Recap on the establishment and Roles of the Committee on Appointments;
- ii) Understanding the management of Committees and Committee business;



- iii) An overview of the Public Appointments (County Assemblies) Approval Act, 2017; and
- iv) Understanding the Vetting process

1.3 Acknowledgement

On behalf of the Members of the Committee on Appointments, I wish to present the report of the Appointments Committee on the induction workshop held from Thursday 5th to Sunday 8th November, 2020, at Sai Rock Hotel, Mombasa County.

Thank you.

Signed *P. N.*

Hon. Paul Ndung'u, MCA
(Chairperson)
Select Committee on Appointments

Dated this *1* day of *12* 2020

2.0 INTRODUCTION

The retreat addressed various topics which included a recap on the establishment and Roles of the Committee on Appointments, understanding the management of Committees and Committee business, overview of the Public Appointments (County Assemblies) Approval Act, 2017 and understanding the Vetting process.

3.0 RETREAT PROCEEDINGS

The facilitator, Mr. Benson Inzofu, an expert on parliamentary issues and an officer of the Parliamentary Service Commission took the Members through an in-depth induction/refresher on the establishment and roles of the Committee on Appointments the management of Committees and Committee business, vetting process and overview of the Public Appointments (County Assemblies) Approval Act, 2017as follows:-

3.1 Establishment and Roles of the Committee on Appointments

3.1.1 Establishment of the Committee on Appointments

The facilitator informed the participants that the Committee on Appointments is established under Standing Order 196 and is appointed by the County Assembly within seven days on assembly of a new County Assembly. He mentioned that the first Committee serves for 3 years and the subsequent one serves for the remainder of term of Assembly.

3.1.2 Composition of the Committee on Appointments

- Speaker as a Chairperson,
- the Leader of the Majority Party,
- the Leader of the Minority party and

The Committee learnt that the Speaker presides over meetings of the Committee and in the absence of the Speaker, a member of the Committee is elected to chair. He added that the quorum of the Committee is one half of the Members of the Committee and that the Speaker is not counted for the purposes of quorum and shall not vote.



3.2 Role of the Committee on Appointments

The presentation covered extensively the role of the Committee on Appointments.

3.2.1 Role of Committee on Appointments

The Committee on Appointments draws its mandate from Standing Order 196 (4). The Committee's role is to consider, for approval by the County Assembly, appointments made by the Governor under Articles 179(2) (**Members of County Executive Committees**). The jurisdiction of the Committee is confined to vetting of CEC Members

The Committee should assist the Assembly to make an informed decision on a nominee.

The Committee should determine whether or not:

- the constitutional & statutory requirements (general and for the position) were fulfilled
- the appointment procedure was followed
- nominee meets requirements of Chapter 6
- the nominee is suitable for the position (academically, professionally and personal)

3.3 Managing Committee Business

— The presentation focused on the effective management of a committee & committee business.

— Effectiveness of a Committee & effective management of committee business results from:

- effectiveness of the committee as a corporate;
- effectiveness of the leadership (Chair & Vice);
- effectiveness of committee Members;
- proactiveness of the Secretariat;
- synergy with Leadership, Liaison & ABC;
- effective involvement of stakeholders; and
- support of the CASB

3.3.1 Attributes of an effective Chairperson of a Committee

- Sound planning and advance preparations for meetings



- Control over deliberation
- Effective use of the Standing Orders.
- Encourage Members' participation
- Guide the deliberations in terms of focus and relevancy
- Keep a firm hand on the proceedings by managing time and being consistent in applying the legislative rules.
- Drawing upon the talents and expertise of other Members
- Personal persuasions and management skills a critical asset
- Any question arising in a select committee shall be decided by vote and a good Chairperson would be advised to avoid taking a decision on a controversial matter without significant number of Members being present.

3.3.2 Attributes of effective Members of a Committee

- Committee Members should be committed and devoted and take their Committee assignments seriously so as to improve the level and quality of Executive accountability to the public.
- Punctuality - Adjournment due to lack of quorum – (30 minutes of the appointed time) S.O 177
- Avoid technical appearance
- Members of any Committee should respect the office of the Chairperson.
- Members should avoid discussing about the subject of their inquiry in public until their report is laid on the Table of the House so as not to pre-empt the debate.
- Prior to a meeting, it is important that the Committee meets at least thirty (30) to prepare Members and strategize for the meeting – housekeeping.

3.3.3 Role of the Committee Secretariat

- Prepare and circulate Notices of Meetings
- Prepare Programme of Sittings
- Handle all Correspondence
- Taking of Minutes



- Determine Quorum
- Procedural Adviser– to the Chairperson and the Members
- Planning and coordination of Committee’s programmes and meetings
- Summoning of witnesses – upon resolution by the Committee and approval by the Speaker
- Preparing the Chairperson’s brief
- Administration of oath or affirmation to witnesses
- Maintaining and safe record
- Preparation of Draft Report– for consideration and resolution by the Committee
- Responsible for Committee Budget and Finances
- Preparing Committee Work plan and Budget/Finances

3.4 An overview of the Public Appointments (County Assemblies) Approval Act, 2017

The presentation focused on general overview of the aforementioned Act:

— The key objects and purposes of this Act are to—

- (a) provide for the procedure for the approval of public appointments by County Assemblies; and
- (b) provide clarity and guidance to the County Assemblies as they exercise their functions of approving public appointments. Section 3.

— An appointment under the Constitution or any other law for which the approval of a County Assembly is required shall not be made unless the appointment is approved by the relevant County Assembly in accordance with this Act. Section 4.

— Approval hearing , Section 7 provides that;

- (a) Following the receipt of the notification of nomination under section 6(3)(b), the Speaker shall report the receipt of the notification to the County Assembly, following which the notification shall be committed to the relevant committee of the Assembly.
- (b) Subject to subsection (3), the chair of the committee shall determine the



time and place for the holding of the approval hearing which shall not be later than fourteen days from the date of the committal of the notification to the committee.

- (c) The approval hearings shall be held in a public place and shall be conducted during working hours.
- (d) The Clerk shall notify a candidate of the time and place for the holding of an approval hearing by notice in at least two newspapers of national circulation and by writing and such other form of communication as the Clerk shall consider appropriate.
- (e) The committee shall, by notice in at least one newspaper of national circulation, notify the public of the time and place for holding an approval hearing at least seven days prior to the hearing.
- (f) Subject to this Act, all committee proceedings on public appointments shall be open and transparent.
- (g) Despite subsection (6), a committee may, on its own motion or on the application of a candidate or any other concerned person, determine that the whole or part of its sittings shall be held in camera.
- (h) An approval hearing shall focus on a candidate's academic credentials, professional training and experience, personal integrity and background.
- (i) The criteria specified in the First Schedule and the assessment form specified in the Second Schedule shall be used by a committee during an approval hearing for the purposes of vetting a candidate.
- (j) Any person may, prior to the approval hearing, and by written statement on oath, provide the Clerk with evidence contesting the suitability of a candidate to hold the office to which the candidate has been nominated.
- (k) A candidate shall have a right to be heard on any statement or evidence submitted to the Clerk contesting the suitability of the candidate to hold the office to which the candidate has been nominated.
- (l) A candidate may, at any time, by notice in writing addressed to the Clerk, withdraw from the approval process and the candidate's nomination shall thereupon lapse.



— Section 8, Issues for consideration;

The issues for consideration by the relevant County Assembly in relation to any nomination shall be—

- (a) the procedure used to arrive at the nominee including the criteria for the short listing of the nominees;
- (b) any constitutional or statutory requirements relating to the office in question; and
- (c) the suitability of the nominee for the appointment proposed having regard to whether the nominee's credentials, abilities, experience and qualities meet the needs of the body to which the nomination is being made.

— Section 9, Period for consideration and report

- (a) Unless otherwise provided in any law, a committee shall consider a nomination and table its report in the County Assembly for debate and decision within twenty-one sitting days from the date on which the committee first sits to consider the nomination;
- (b) At the conclusion of an approval hearing, the committee shall prepare its report on the suitability of the candidate to be appointed to the office to which the candidate has been nominated and shall include in the report such recommendations as the Committee may consider necessary including a recommendation on whether or not the nominee should be approved for appointment to public office.

— Rejection of nomination, Section 10 provides that;

- (a) Where the nomination of a candidate is rejected by a County Assembly, the appointing authority shall submit to the County Assembly the name of another candidate, and the procedure for approval specified in this Act shall apply accordingly.
- (b) A nominating authority shall not resubmit the name of a candidate whose nomination has been rejected by the County Assembly unless the circumstances relied on for the rejection of the appointment of the candidate did not exist or ceased to exist at the time of rejecting the nomination of the candidate.



— In exercising power of High Court over nominees (s.12) it is important for the Committee to:

- (a) handle a nominee with courtesy/respect
- (b) respect the privacy of nominee
- (c) accord the nominee opportunity to be heard on adverse memoranda/statements objecting to the nomination
- (d) uphold the right of witnesses under Powers & privileges Act

3.5 The Vetting Process

The presentation covered;

- (a) The Pre-vetting process;
- (b) Approval Hearings/actual vetting; and
- (c) Consideration by the Assembly.

3.5.1 The Pre-vetting process

— The presenter highlighted the pre-vetting process as follows;

- 1) Note statutory timeline s. 7 for date of approval hearing & 9 for tabling Report and prepare work plan;
- 2) Process notifications ... s. 7(4) for nominee and s. 7(5) for public;
- 3) Dispatch Questionnaire to nominees (s. 7(9) & First Schedule);
- 4) Invite memoranda/statements from public on suitability or otherwise of nominee... s. 7(10);
- 5) Check if mandatory documents (*from appointing authority & nominee*) required during vetting process were provided;
- 6) Check requirements of the Constitution and relevant laws for appointment to the position;
- 7) Check the nominee's resume & certificates for qualifications and experience vis-à-vis requirements for appointment;
- 8) Declare any potential conflict of interests that may influence objectivity of vetting process;
- 9) Avail all memoranda/statements to the nominee for defense (*s. 11*);
- 10) Undertake preliminary consideration of public memoranda/statements to determine admissibility & implications on appointment;
- 11) Review the returned questionnaire to identify any gaps to be questioned at vetting;



- 12) Seek requisite clearance certificates (DCI, EACC, KRA, HELB, CRB) and assess report;
- 13) Form a preliminary assessment of suitability or otherwise of nominee;
- 14) Prepare Chairperson's and Members' briefs to guide the process;
- 15) Formulate appropriate questions to assist the Committee to validate the preliminary assessment of suitability or otherwise of nominee at vetting stage; and
- 16) Prepare necessary instruments for taking oath or affirmation.

3.5.2 Actual vetting/approval hearing

— Actual vetting process was highlighted as below;-

- 1) Settle in advance and have a pre-hearing briefing by Chairperson;
- 2) Agree on ground rules for the vetting exercise;
- 3) Engage the nominee to establish suitability or otherwise using questions formulated at pre-vetting stage & requirements of the law and position;
- 4) Form a preliminary assessment of suitability or otherwise of nominee;
- 5) Prepare Chairperson's and Members' briefs to guide the process;
- 6) Formulate appropriate questions to assist the Committee to validate the preliminary assessment of suitability or otherwise of nominee at vetting stage; and
- 7) Prepare necessary instruments for taking oath or affirmation.

3.5.3 Post-vetting stage

- 1) Make observations on the nominee (based on pre-vetting assessment and actual vetting)
- 2) Make recommendations based on the observations made on suitability
- 3) Agree on the text of the Motion to the Assembly
- 4) Adopt the Committee Report
- 5) Table the Report and give Notice of Motion
- 6) Support adoption of the Report by the Assembly



4.0 CONCLUSION AND WAY FORWARD

At the conclusion of the retreat, the following was agreed upon as the way forward:

1. The Chairperson to ensure that Members work together and with decorum while conducting vetting process;
2. The secretariat to work professionally with Members in assisting them to discharge their mandate as far as the Committee is concerned;
3. The Committee to make recommendations based on the observations made on nominees suitability;
4. The Committee not to grant conditional approval of nominees; and
5. Members not to divulge deliberations of the Committee before a report is tabled in the Assembly;



