

GOVERNMENT OF NAIROBI CITY COUNTY



THE NAIROBI CITY COUNTY ASSEMBLY

OFFICE OF THE CLERK

5TH SESSION

NBI CA. PLC. 2021 / (001)

15th January, 2021

PAPER LAID

Pursuant to Standing Order 191 I beg to lay the following Paper on the Table of the Assembly, today Friday 15th January, 2021

THE REPORT OF THE SELECT COMMITTEE ON APPOINTMENTS ON THE VETTING OF THE NOMINEE MS. ANN KANANU MWENDA FOR THE POSITION OF DEPUTY GOVERNOR FOR NAIROBI CITY COUNTY.

(Chairperson, Select Committee on Appointments)

Copies to:

The Speaker
The Clerk
Hansard Editor
Hansard Reporters
The Press

Approved
15/1/2021
[Signature]

Paper laid on
Friday 15/01/2021
by the Majority leader
[Signature]
Clerk

COUNTY GOVERNMENT OF NAIROBI CITY



NAIROBI CITY COUNTY ASSEMBLY
SECOND ASSEMBLY-FOURTH SESSION

*Paper laid by the
Leader of Majority
on 15/01/2021*

*[Signature]
Clerk
15/1/2021*

REPORT
OF THE SELECT
COMMITTEE ON APPOINTMENTS
ON

THE VETTING OF THE NOMINEE FOR THE POSITION OF DEPUTY GOVERNOR

Clerk's Chambers
City Hall Buildings
NAIROBI

JANUARY, 2021

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Ms. Ann Kananu Mwenda

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).*”

1.2. Committee Membership

Hon. Speaker,

The Committee on Appointments comprises of the following Members:-

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

1.3. Message from His Excellency the Governor

Hon. Speaker,

Vide a letter dated 6th January, 2020, H.E. the Governor, **Hon. Mbuvi Gideon Kioko Mike Sonko** forwarded to the Speaker of the Nairobi City County Assembly, the name of Ms. Ann Kananu Mwenda for vetting by the Select Committee on Appointments and consideration for approval by the County Assembly for appointment to the position of the Deputy Governor. In forwarding the name, H.E. the Governor was guided by the Supreme Court of Kenya Advisory Opinion Reference No. 1 of 2015 delivered on the 9th day of March, 2018. The position of the Deputy Governor had fell vacant following the resignation of Hon. Paul Igathe.

1.4. Committal to Committee on Appointments

Hon. Speaker,

Pursuant to Standing Order 43(1), the Honorable Speaker in a Special Sitting informed the Assembly on **9th January, 2020** that she had received the notification of the nomination. The Speaker did not commit the name to the Committee citing that a Supreme Court advisory had been sought on whether the Governor, who by then had been barred from acting in office could nominate a candidate. However, at a subsequent special sitting of the Assembly held on **22nd January, 2020**, the name of the nominee was eventually committed to the Committee for vetting and reporting pursuant to the provisions of Section 7(4) and 7(5) of the Public Appointments (County Assemblies) Approval Act, 2017.

The Committee held its first sitting on **4th February, 2020** in order to commence the vetting process. However, on **17th February 2020**, before the Committee concluded the vetting process, the High Court issued conservatory orders in *Peter Odhiambo Agoro v Ann Kananu Mwenda & Another; County Assembly of Nairobi & Another (Interested Parties)*, the effect of which was to prevent the Committee from proceeding with the vetting process.

On **7th January 2021**, the Court allowed the application for the withdrawal of the said petition, thereby vacating the conservatory orders referenced hereinabove. Consequently, vide a Memo dated **8th January, 2021**, the Speaker recalled the Committee from recess and directed the Committee to proceed and conclude the vetting of the nominee and table its report.

Further, during the pendency of the aforementioned orders, the Governor of Nairobi City County, Mike Mbuvi Kioko Sonko was removed from office by impeachment. However, the impeachment did not have any legal effect on his choice of a Deputy Governor since the same had been done way before his removal from office and as such, could not be reversed save for the fact that the vetting had been suspended by the High Court which suspension was vacated. In addition, on **Thursday, 14th January, 2021**, the nominee moved to the High Court seeking orders to stop any election for the

position of Governor in Nairobi City County since proceeding with the elections would be prejudicial to her rights as her vetting by the County Assembly was on course. Consequently, the Court suspended the gazette notice that called for the elections thus paving way for the approval hearing and the entire vetting and appointment process.

The Clerk of the County Assembly placed an advertisement in the in the local dailies, specifically the Daily Nation Newspaper and the Star Newspaper on Friday 8th January, 2021 inviting the public to submit memoranda by way of written statements on oath (sworn affidavits) on the suitability or otherwise of the nominee in conformity with Section 7(10) of the Public Appointments (County Assemblies Approval) Act, 2017.

1.5. Committee Meetings

Hon. Speaker,

The nominee appeared before the Committee on Friday 15th January, 2021 and was vetted in accordance with the provisions of the Constitution, Public Appointments (County Assemblies Approval) Act, 2017, and the County Assembly Standing Orders on her suitability for appointment to the position of Deputy Governor. In total, the Committee held three Sittings to consider this matter.

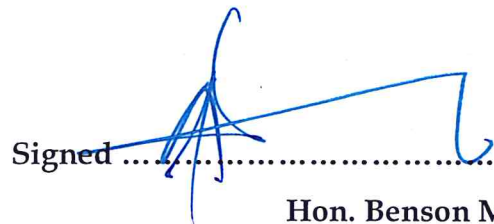
1.6. Acknowledgement

Hon. Speaker,

May I take this opportunity to thank Members of the Committee for their input and valuable contributions during the deliberations and vetting exercise. The Committee also takes this opportunity to thank the Offices of the Speaker and of the Clerk of the County Assembly for the logistical support accorded to it during the vetting exercise. The Committee is grateful to the staff of the County Assembly attached to the Committee for their services rendered to the Committee. The Committee is also grateful to the media for their coverage of the proceedings of the Committee, thus enhancing accountability and transparency of the vetting exercise.

Finally, on behalf of the Select Committee on Appointments, it is my pleasure and duty to present to the Assembly, the Committee's Report on the vetting of Ms. Ann Kananu Mwenda nominee for appointment to the position of Deputy Governor to the Assembly for adoption pursuant to the Standing Orders of the County Assembly and other enabling provisions of the Law.

Thank you.

Signed


Hon. Benson Mutura, MCA

(Chairperson)

Select Committee on Appointments

Dated this 15TH day of JANUARY 2021

2.0. BACKGROUND

2.1. Establishment of the Select Committee on Appointments

The Select Committee on Appointments is one of the Select Committees established under Standing Order No. 196 with the mandate to consider, for approval by the County Assembly, appointments under Articles 179(2) of the Constitution and Section 35 of the County Governments Act, 2012. Pursuant to Supreme Court of Kenya Advisory Opinion Reference No. 1 of 2015 delivered on the 9th day of March, 2018, H.E. the Governor, Hon. Mbuvi Gideon Kioko Mike Sonko submitted the name of the nominee to be considered for approval by the County Assembly for appointment to the position of Deputy Governor.

2.2. The Legal framework, the procedure adopted by the Independent Electoral and Boundaries Commission (IEBC) in filling vacancies in the Office of the Deputy Governor and other legal matters.

2.2.1. The Supreme Court Advisory Opinion Reference No. 1 of 2015

At the time of resignation of **Hon. Polycarp Igathe** from the Office of the Deputy Governor, the statute law as was then posited did not provide for a procedure for filling of a vacancy in the Office of a Deputy County Governor, if a vacancy was to arise as contemplated by law. However, on 9th March, 2018, the Supreme Court issued an advisory opinion Reference No. 1 of 2015 *in the matter of the Speaker of the County Assembly of Embu which comprehensively addressed the issue and gave directions on how to respond in filling the vacancies*. This advisory opinion formed basis upon which the nomination of Ann Mwenda Kananu is premised.

2.2.2. Procedure adopted by the IEBC

In order to give effect to the Supreme Court Advisory, the IEBC developed and adopted the following as the procedure of filling vacancies arising in the office of the Deputy Governor:-

i) Vetting of the Proposed Nominee

The Commission shall appoint through a Gazette Notice, the County Returning Officer and his/her deputy to vet the proposed nominee pursuant to the constitutional and statutory qualifications. Subsequent to which the Commission shall issue the nominee with a nomination clearance, a copy of which is forwarded to the County Governor.

ii) Consideration and Approval by the County Assembly;

Once the County Governor receives the nomination certificate of the nominee he/she shall thereafter forward the nominee's name to the respective County Assembly for vetting, deliberation and possible approval.

iii) Transmission of the Approval to the Commission;

Once the Nominee has been approved by the County Assembly, the Speaker to the Assembly shall forward to the Commission in writing the resolution of the Assembly with recommendations approving the nominee to the office of the Deputy County Governor.

iv) Publication of the Nominee as the Deputy Governor;

Upon receipt of the Assembly's resolution from the Speaker, the Commission shall publish in the Kenya Gazette the appointment of the Deputy Governor. The Commission shall also notify the Chief Justice who by law is expected to appoint via the Kenya Gazette the Judge or Chief Magistrate before who the Deputy Governor nominee may take his or her oath of office in accordance with the County Governments Act, 2012.

v) Oath of Office;

Upon Gazettement, the Speaker of the County Assembly shall take necessary steps to facilitate the New Deputy Governor to take the Oath of office.

2.2.3. Other legal matters

Following the submission of the name of the nominee to the County Assembly, several legal matters arose which include court cases. As already indicated, on 17th February, 2020, the High Court issued conservatory orders in *Peter*

Odhiambo Agoro v Ann Kananu Mwenda & Another; County Assembly of Nairobi & Another (Interested Parties), the effect of which was to prevent the County Assembly from proceeding with the vetting of the nominee. However, on 7th January 2021, the Court allowed the application for the withdrawal of the said petition, thereby vacating the conservatory orders allowing the Committee to proceed with the vetting process.

Further, during the pendency of the aforementioned orders, the Governor of Nairobi City County was removed from office by impeachment. However, the impeachment did not have any legal effect on his nomination of a Deputy Governor since the same had been done way before his removal from office. In addition, on Thursday, 14th January, 2021, the nominee moved to the High Court seeking orders to stop any election for the position of Governor in Nairobi City County since she would be prejudiced as her vetting by the County Assembly was on course. Consequently, the Court suspended the gazette notice that called for the elections thus paving way for the approval hearing and the entire vetting and appointment process.

In addition, Parliament has since amended the County Governments Act, 2012 through the County Governments (Amendment) Act, 2020 which in Section 32 D anchors the procedure adopted by the IEBC in law.

2.3. Notification to the Public

Section 7(4) and (5) of the Public Appointments (County Assemblies Approval) Act, 2017 respectively provides that-, *“any person may, prior to the approval hearing and by a 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”* and *“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”*.

Pursuant to the above provisions of the law, the Clerk of the County Assembly placed an advertisement in the in the specifically the Daily Nation Newspaper and the Star Newspaper on Friday 8th January, 2021 inviting the public to submit memoranda by

way of written statements on oath (sworn affidavits) on the suitability or otherwise of the nominee in conformity with Section 7(10) of the Public Appointments (County Assemblies Approval) Act, 2017. The said memoranda were to be submitted be sent or hand delivered to the Clerk or by email so as to be received by close of business 14th January 2021. By close of the submission process only one (1) memorandum had been received. The said memorandum was in support of the nominee.

Further, in accordance with the provisions of Article 118 of the Constitution and section 7(4) of the Public Appointments (County Assemblies Approval) Act, the general public was also notified in the local dailies by the Clerk of the County Assembly of the intention of the Committee on Appointments to conduct the vetting and approval hearing of the nominee on Friday 15th January, 2021.

2.4. Clearance Requirements

To ensure compliance with the provisions of Chapter 6 of the Constitution, the nominee submitted her clearance status with the following institutions for the vetting exercise –

- a) Kenya Revenue Authority (KRA)
- b) Criminal Investigation Department (CID)
- c) Higher Education Loans Board (HELB)
- d) Credit Reference Bureau (CRB) and
- e) The Ethics and Anti-Corruption Commission (EACC)
- f) IEBC nomination form.

The clearance by the foregoing institutions was primarily meant to provide information about the nominee on: -

- a) Matters touching on her integrity;
- b) Tax compliance;
- c) Loan repayments; and
- d) Presence or absence of criminal records.

3.0. VETTING OF DEPUTY GOVERNOR NOMINEE

In conducting the vetting process, the Select Committee on Appointments examined the nominee against the following criteria, amongst others, as set out in the Public Appointments (County Assemblies Approval) Act No. 5 of 2017–

- i) Academic qualifications.
- ii) Employment record
- iii) Professional associations.
- iv) Potential conflict of interest.
- v) Knowledge of the relevant subject.
- vi) Overall suitability for the position.
- vii) Tax compliance.
- viii) Integrity.

During its Sittings held on **Friday 15th January, 2021** at the Plenary Chamber, Assembly Precincts, City Hall Buildings from 9:00am, the Committee interviewed the nominee. The minutes of the vetting proceedings are attached to this report.

3.1. Appearance before the Committee by Ms. Ann Kananu Mwenda

The Deputy Governor nominee, **Ms. Ann Kananu Mwenda**, appeared before the Committee on **Friday 15th January, 2021** at **9.00 am** and was informed by the Chairperson that in line with the provisions of the Public Appointments (County Assemblies Approval) Act No. 5 of 2017 the Committee invited submissions from the Public on her suitability or otherwise for appointment to Public office. She was further informed that a memorandum in support of her nomination for the position of Deputy Governor from the Nakuru County Public Opinion Consultative Initiative was submitted.

While under oath, she proceeded to inform the Committee as follows:-

A. With respect to self-introduction, knowledge, experience and qualification;

The nominee stated as follows:

- a) That she was born on 1st May, 1980.

- b) She holds a Bachelor of Science in Criminology and Security Management (Forensic Science and Criminal Investigation) from Dedan Kimanthi University and also holds a Diploma in Criminology and Security Management.
- c) She also holds a Certificate in Public Relations and in Human Resource management both from University of Nairobi.
- d) She is currently the Nairobi City County Chief Officer, Disaster Management and Coordination Sector.
- e) She attended other professional courses at various institutions, as well as seminars and workshops.
- f) She is a member of the International Civil Aviation Organization.
- g) She previously worked as a Security Officer in charge of Quality Control and Training at the Kenya Airports Authority between 2005 and 2018, H. Mogambi & Co. Advocates Personal Assistant from 2003 to 2004 and a Customer Service at Mokir Enterprises from 2002 to 2003.

B. In response to questions put to him by Members of the Committee, Ms. Ann Kananu Mwenda stated as follows:-

I. With respect to her understanding of the devolution and the legal-framework for devolution in Kenya -

The nominee stated as follows –

That:

- a) A Devolution is decentralization of power and services from the National Government to the local Government
- b) Article 6 of the Constitution on territory of Kenya defines the organization of the State and Country
- c) There are various laws such as the Public Finance Management Act, 2012, the County Governments Act, 2012, the Public Health Management Act which govern management of Counties.

II. On the responsibilities of the Job and Challenges and how she would navigate

The nominee stated as follows-

- a) The role of the Deputy Governor is vague and not properly delineated in the Constitution of Kenya
- b) As the Principal Assistant of the Governor, the holder of the position can be assigned other roles by the Governor
- c) Currently the Deputy Governors are barred from taking certain actions when acting as Governor
- d) That she shall address the challenges through the formal mechanisms such as consultations with Members of the County Assembly, summit of the Council of Governors and the Ministry of Devolution

III. On how she would ensure adherence to the rule of Law

The nominee stated as follows -

That she:

- a) Would ensure enforcement of the PFM regulations on resource management
- b) Ensure that the rule of law is respected and ensure accountability
- c) Insist that Accounting Officers stick to the rule of law and ensure that the CEC Member for Finance would not interfere with their roles
- d) She would not intimidate any office to perform anything outside the law.
- e) Insist on work based on annual procurement plans without deviation

IV. On her understanding of Nairobi City County and its challenges -

The nominee stated as follows -

- a) Nairobi City County is a unique county and should be accorded the special status
- b) She identified the following as some of the challenges facing the County
 - i. Political interference;

- ii. Bloated workforce;
- iii. Delays with disbursement of funds;
- iv. Legal framework for streamlining operations and service delivery between the county and NMS.

V. Regarding her opinion on reverting Nairobi City County to the National Government;

The nominee stated as follows:

- a) That the Nairobi City County ought to remain as a county;
- b) The NMS came on board arising from the leadership gap;
- c) Going forward, the leadership vacuum and issues therewith can be fixed, and as such the County should remain as is.
- d) The outcry from residents was based on poor leadership in the County'
- e) If appointed, her first priority would be to form a Liaison Committee to spearhead the work of the County and the NMS to ensure synergies in exercise of function.

VI. Regarding her handling of traffic congestion and garbage collection;

The nominee stated as follows:

- a) That she will implement available legislation on Transport.
- b) She will work with the relevant parties to move public vehicles from the CBD to their respective terminus.
- c) Noted that the revamping of the railway system will greatly help decongest the city.
- d) As to garbage collection, she will equal implement the solid waste management act to streamline garbage collection operations.
- e) Further, that she will work to secure the necessary support for the commissioning of the relevant works to convert waste to energy.
- f) She will equally enhance garbage collection by streamlining and adding points of garbage collection across the city in conjunction with landlords.

VII. Regarding her knowledge of Cartels and their influence on service delivery, and how she plans to deal with it.

The nominee stated as follows –

That she:

- a) The Nairobi City County is indeed famous for Cartels, who she described as people who influence processes for their selfish ends.
- b) She will ensure efficient service delivery to stop cartels, arguing that cartels had thrived where service delivery was poor e.g. delays in planning approvals.

VIII. Regarding her knowledge of audit issues and related procedures -

The nominee stated as follows –

That she:

- a) She is aware that the biggest audit issues facing the County is the absence of clear records on the property the County owns. \
- b) The foregoing circumstances had enabled the uncontrolled grabbing and illegal allocation of county property.
- c) Further, procurement issues have equally caused audit queries, particularly where such projects have come under heavy influence.
- d) She will put in place the necessary mechanisms to address these issues to ensure the County does not suffer this audit issues going forward is appointed.

IX. On her handling of favors from friends and family etc. -

The nominee stated as follows –

That she:

- a) Has been in the public service collectively for around 19 years, and that she will stick to the rule of law to avoid these conflicts.
- b) Will not interfere with processes for favors.

X. Experience that demonstrates commitment to chapter 6 of the Constitution

The nominee stated as follows –

That she:

- a) Has been in the public service for decades, first having worked at KAA for thirteen years and at the Nairobi County for three years. In all this time, she has never had any integrity issues.
- b) Has always respected systems and processes.

XI. Regarding her relationship former governor;

The nominee stated as follows –

That she:

- a) Had a professional, working relationship with the governor.
- b) Is aware of the videos circulating online regarding recordings of her and the former governor in conversation, and that they did not depict in any way that her nomination was revoked and that her relationship with the governor was anything but professional.

4.0. COMMITTEE'S OBSERVATIONS AND FINDINGS

4.1. General Observations

The Committee having considered the nominee's filled Questionnaire pursuant to the Public Appointments (County Assemblies Approval) Act, 2017, her Curriculum Vitae and having heard her oral submissions during the vetting exercise observed that the nominee satisfy the requirements of Chapter Six of the Constitution of Kenya on leadership and integrity in that:-

- i) The nominee has been cleared by the Ethics and Anti-Corruption Commission (EACC), Directorate of Criminal Investigations (DCI), Kenya Revenue Authority (KRA), Higher Education Loans Board (HELB) and the Credit Reference Bureau (CRB).
- ii) The nominee has not been charged in a Court of Law.
- iii) The nominee does not exhibit a potential conflict of interest.
- iv) The nominee satisfies the Constitutional and statutory qualifications attendant to that office as contained in Article 193 as read with Article 182(2) of the Constitution as read with Sections 17, 18, and 22 of the Elections Act, 2011 thus she has been cleared by the IEBC.
- v) The nomination and vetting process of the nominee is in conformity with the Supreme Court of Kenya Advisory Opinion Reference No. 1 of 2015 delivered on the 9th day of March, 2018, the procedure adopted by IEBC on filling of vacancies arising in the Office of the Governor as anchored in Section 32 D of the County Governments (Amendment) Act, 2020; and
- vi) The vetting of the nominee did not offend any legal provisions since the conservatory orders issued on 17th February, 2020 by the High Court in *Peter Odhiambo Agoro v Ann Kananu Mwenda & Another; County Assembly of Nairobi & Another (Interested Parties)*, were vacated on 7th January 2021 allowing the County Assembly to proceed with the vetting process. Further, the removal of the Governor from office did not in any

way affect the vetting of a person he had already nominated and only suspended by the court which has since vacated the orders.

4.2. Committee's specific observations

The Committee made the following specific observations on the nominee:-

- a) She holds a Bachelor of Science in Criminology and Security Management (Forensic Science and Criminal Investigation) from Dedan Kimanthi University and also holds a Diploma in Criminology and Security Management.
- b) She also holds a Certificate in Public Relations and in Human Resource management both from University of Nairobi.
- c) She is currently the Nairobi City County Chief Officer, Disaster Management and Coordination Sector.
- d) She attended other professional courses at various institutions, as well as seminars and workshops.
- e) She is a member of the International Civil Aviation Organization.
- f) She previously worked as a Security Officer in charge of Quality Control and Training at the Kenya Airports Authority between 2005 and 2018, H. Mogambi & Co. Advocates Personal Assistant from 2003 to 2004 and a Customer Service at Mokir Enterprises from 2002 to 2003.
- g) She has never been charged in a Court of Law, has no potential conflict of interest, and has fully complied with her tax obligation and other relevant clearances from state agencies as required.
- h) She has never been dismissed from office for contravention of the provisions of Article 75 of the Constitution which deals with conduct of state officers that are adversely mentioned in any investigatory report of Parliament or any Commission of Inquiry.

The Committee found the nominee suitable and qualified for appointment to the position of Deputy Governor.

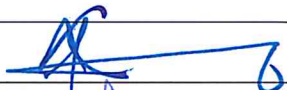


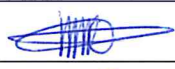


5.0. RECOMMENDATION

Pursuant to the Supreme Court Advisory Opinion Reference No. 1 of 2015, Paragraph 32(D) of the County Governments (Amendment) Act, 2020 and Section 9 of the Public Appointments (County Assemblies Approval) Act, 2017, the Committee recommends:-

THAT, this Assembly approves the nomination of Ms. Ann Kananu Mwenda for appointment to the position of Deputy Governor, Nairobi City County.

**ADOPTION OF THE COMMITTEE REPORT ON THE VETTING OF THE
NOMINEE FOR THE POSITION OF DEPUTY GOVERNOR**

The following members appended their signatures to signify their agreement with the report:-

No.	NAME	SIGNATURE
1	Hon. Benson Mutura, MCA (Chairperson)	
2	Hon. Abdi Ibrahim Hassan, MCA	
3	Hon. Michael Okumu Ogada, MCA	
4	Hon. Paul Kados Kiguathi, MCA	
5	Hon. Peter Imwatok, MCA	
6	Hon. Elias Otieno, MCA	
7	Hon. Emily Ondeje Oduor, MCA	
8	Hon. Waithera Chege, MCA	
9	Hon. Paul Ndung'u, MCA	