

GOVERNMENT OF NAIROBI CITY COUNTY



THE NAIROBI CITY COUNTY ASSEMBLY

OFFICE OF THE CLERK

**SECOND ASSEMBLY
(FIFTH SESSION)**

NCCA/TJ/PL/2021(28)

28th September 2021

PAPER LAID

Hon. Speaker, Pursuant to Standing Order 191, I beg to lay the following Paper on the Table of the Assembly today, Tuesday 28th September 2021:

- **THE REPORT OF THE SELECT COMMITTEE ON DELEGATED COUNTY LEGISLATION ON CONSIDERATION OF THE KENYA GAZETTE SUPPLEMENT NO. OF 2021 (THE PUBLIC FINANCE MANAGEMENT –NAIROBI CITY COUNTY BURSARY AND SCHOLARSHIP FUND, REGULATIONS, 2021).**

(Chairperson, Select Committee on Delegated County Legislation)

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The Speaker
The Clerk
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NAIROBI CITY COUNTY



**NAIROBI CITY COUNTY ASSEMBLY
SECOND ASSEMBLY - FIFTH SESSION**

**THE REPORT OF THE SELECT COMMITTEE ON DELEGATED COUNTY
LEGISLATION**

**ON
THE CONSIDERATION OF THE PUBLIC FINANCE MANAGEMENT (NAIROBI
CITY COUNTY BURSARY AND SCHOLARSHIP FUND) REGULATIONS, 2021**

Clerk's Chambers
Nairobi City County Assembly
City Hall Buildings
Nairobi

September 2021

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1.0. PREFACE

1.1. Establishment of the Committee

The Select Committee on Delegated County Legislation is established under Standing Order 202 as follows: -

- 1) There shall be a select Committee to be known as the Committee on Delegated County Legislation;
- 2) Whenever a statutory instrument is submitted to the County Assembly pursuant to the constitution, any Law or these Standing Orders, the instrument shall, unless a contrary intention appears in the relevant legislation, be laid before the County Assembly by the Chair of the relevant Sectoral Committee, or any other member and shall thereafter referred to the Committee on Delegated County Legislation..
- 3) The Committee shall consider in respect of any statutory instrument whether it-
 - a) is in accord with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written law;
 - b) infringes on fundamental rights and freedoms of the public;
 - c) contains a matter which in the opinion of the Committee should more properly be dealt with in an Act of Parliament;
 - d) contains imposition of taxation;
 - e) directly or indirectly bars the jurisdiction of the Courts;
 - f) gives retrospective effect to any of the provisions in respect of which the Constitution or the Act does not expressly give any such power;
 - g) involves expenditure from the Consolidated Fund or other public revenues;
 - h) is defective in its drafting or for any reason the form or purport of the statutory instrument calls for any elucidation;
 - i) appears to make some unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which it is made;
 - j) appears to have had unjustifiable delay in its publication or laying before the County Assembly;
 - k) makes rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
 - l) makes rights, liberties or obligations unduly dependent upon non-renewable decisions;

- m) inappropriately delegates legislative powers;
 - n) imposes a fine imprisonment or other penalty without express authority having been provided for in the enabling legislation;
 - o) appears for any reason to infringe` on the rule of law;
 - p) inadequately subjects the exercise of legislative power to County Assembly Scrutiny; and
 - q) Accords to any other reason that the Committee considers fit to examine.
- 4) (4) If the Committee –
- a. Resolves that the statutory instrument, be acceded to, the Clerk shall convey that resolution to the relevant county department or the authority that published the statutory instrument.
 - b. Does not accede to the statutory instrument, the Committee may recommend to the County Assembly that the County Assembly resolves that all or any part of the statutory instrument be annulled and if the resolution is passed by the County Assembly within twenty days on which it next sits after the instrument laid before it under paragraph (2), that all or part of the statutory instrument or part thereof shall henceforth stand annulled.

It is important to appreciate the clarification of a statutory instrument pursuant to Standing Order 202(5), which states that a: -

“Statutory instrument” means any rule, order, regulation, direction, form, tariff of costs or fees, letter patent, commission, warrant, proclamation, by-law, resolution, guideline or other instrument issued, made or established in the execution of a power conferred by or under an Act of the County Assembly under which that statutory instrument or subsidiary legislation is expressly authorized to be issued”

1.2. Membership of the Committee

The Membership of the Committee is as follows:

1. Hon. Peter Wahinya Kimuhu, MCA - Chairperson
2. Hon. Kariuki Wanjiru, MCA - Vice- Chairperson
3. Hon. Mwangi Njihia, MCA
4. Hon. Jeremiah Themendu, MCA
5. Hon.Samora Mwaura, MCA
6. Hon. Naftaly Ogola, MCA
7. Hon. Kabiru Mbugua, MCA
8. Hon. Geoffrey Nganga, MCA
9. Hon. Joseph Ndonji, MCA
- 10.Hon. Omar Nimo Hajji, MCA
- 11 Hon. Fuad Hussein,MCA
12. Hon. Husni Lawi, MCA
13. Hon. Paul Shilaho,MCA
14. Hon. Jane Muasya, MCA
15. Hon. Eve Malenya, MCA
16. Hon.Herman Azangu
17. Hon. Jairus Omayya, MCA
18. Hon. David Mbithi, MCA
19. Hon. Wilson Ochola, MCA
20. Hon Elijah Stazo Omunga'ala
21. Hon Charles Thuo,MCA
22. Hon Jacinta Wanjiru,MCA
23. Hon Mark Ndung'u, MCA
24. Hon Millicent Mugadi,MCA
25. Hon Naftaly Mathenge, MCA
26. Hon.Ann Thumbi, MCA

1.3. Acknowledgement

The Committee wishes to thank the Offices of the Speaker and the Clerk of the Assembly for the support extended to it.

Mr. Speaker Sir,

It is my pleasant duty, pursuant to Section 17 of the Statutory Instruments Act, 2013 and Standing Order 202(4b), to present the Report of the select Committee on Delegated County Legislation on the **Consideration of Kenya Gazette Supplement No. 14 Of 2021 (The Public Finance Management- Nairobi City County Bursary and Scholarship Fund, Regulations, 2021).**

Signed *For Kenani*

Date *27/09/2021*

For

HON. WAHINYA KIMUHU,
CHAIRPERSON

SELECT COMMITTEE ON DELEGATED COUNTY LEGISLATION

2.0. INTRODUCTION

On 26th January, 2021 the Nairobi City County Government published the **Public Finance Management (Nairobi City County Bursary and Scholarship Fund) Regulations, 2021** in the Kenya Gazette under Legal Notice No. 1 of 2021. The said Regulations were tabled in the Assembly pursuant to section 12(1) of the Statutory Instruments Act, 2013 and the County Assembly Standing Order 202(2); and subsequently stood referred to the Select Committee on Delegated County Legislation for scrutiny.

The County Executive through the Sector of Education, Social Services and Gender forwarded the said Regulations on 28th August 2021 for further scrutiny by the Assembly and the Select Committee on Delegated County Legislation pursuant to Standing Order 202(2). Therefore, on 9th September 2021 the aforementioned Regulations were tabled in the County Assembly.

On 20th September, 2021 the Select Committee on Delegated County Legislation held a joint meeting with County Executive Committee Member responsible for Education, Social Services and Gender Via Zoom Teleconferencing to deliberate on the views of the members and thereafter, make amendments to the **Public Finance Management (Nairobi City County Bursary and Scholarship Fund) Regulations, 2021** upon advice by the invited Committee Members.

During the said joint meeting, the Regulation Making Authority who in this case is the County Executive Committee Member responsible for Education, Social Services and Gender, and the members of the Committee on Delegated County Legislation found a number of gaps in the **Public Finance Management (Nairobi City County Bursary and Scholarship Fund) Regulations, 2021** that needed to be addressed.

3.0. LEGAL AUTHORITY AND OBJECTS OF PUBLIC FINANCE MANAGEMENT (NAIROBI CITY COUNTY BURSARY AND SCHOLARSHIP FUND) REGULATIONS, 2021

3.1. Legal Basis of the Public Finance Management (Nairobi City County Bursary and Scholarship Fund) Regulations, 2021

Section 116. (1) of the Public Finance Management Act, 2012 provides for the power of the County Executive Committee member for Finance to establish other public funds with the approval of the County Executive Committee and the county assembly. Under Section 116(2), the law provides that for every county public fund established, the County Executive Committee member for Finance shall designate a person responsible for administering that fund. Critically though, the Public Finance Management Act, 2012 contemplates that the Officer administering the fund to administer the County Bursary Fund for the county government in accordance with a framework and criteria approved by the County Assembly.

3.2. Objects of the Public Finance Management (Nairobi City County Bursary and Scholarship Fund) Regulations, 2021

The objects and purpose of the Public Finance Management (Nairobi City County Bursary and Scholarship Fund) Regulations, 2021 is to operationalize specific provisions of Section 116 of the Public Finance Management Act, 2012 and to provide for a bursary scheme for the provision of financial assistance to indigent students.

4.0. SCRUTINY OF THE INSTRUMENT AND COMMITTEE OBSERVATIONS

The Public Finance Management (Nairobi City County Bursary and Scholarship Fund) Regulations, 2021 seek to provide guidelines on the management and administration of Nairobi City County Bursary and Scholarship Fund to ensure financial assistance to indigent students.

4.1. Committee analysis of the Regulations

- a) Regulation 3 provides for the establishment of a Fund to be known as Nairobi City County Bursary and Scholarship Fund;
- b) Regulation 4 provides for the object and purpose of the fund as captured in the overview;
- c) Regulation 5 states the initial capital of the fund to consist of monies standing to the credit of the account on the date of coming into operation while Regulation 6 enumerates the sources of the fund key being additional monies appropriated by the County Assembly and sums received as contributions, gifts or grants;
- d) Regulation 7 details the beneficiaries of the fund being indigent students of the following institutions;
 - Secondary schools
 - Vocational Training Centers
 - Colleges
 - Special needs institutions
 - ECD Training Institutions
 - Education Teacher Training Centres
 - Registered Driving schools
- e) Regulation 8 bestows the responsibility of fund administration to the Chief Officer in charge of matters related to education who shall administer the fund, be responsible for day to day activities of the Fund, provide an Information Communication Technology based Bursary Management System that will manage the entire Bursary life cycle from applicants raw data to EFT bank processing and tracking of students' progress and also supervise the administration of the Fund;

- f) Regulations 9 and 10 provides for Fund Administrator to keep books of accounts and prepare financial statements for audit by Auditor General and presentation before County Assembly respectively;
- g) Regulation 11 provides for the establishment of Executive Bursary and Scholarship Coordination Committee appointed by CECM for Education and the composition of the committee, election criteria of Chair and vice and term limits for some of the members while Regulation details the functions of the Executive Coordination Committee. Key being receiving all successful applications from ward Bursary Committee for further processing as well as receiving and considering applications for scholarship;
- h) Regulation 13 provides for establishment of Ward Bursary Committee that shall be domiciled in the ward office of the elected Member of the County Assembly as well as the composition, criteria for electing the chair and vice, the education qualification and term limit of 3 years and shall be eligible for re-appointment for one more term;
- i) Regulation 14 enumerates the functions of Ward Bursary Committee key being to receive and consider applications for bursaries;
- j) Regulation 16 elaborates on the payment of allowances to Executive Committee and Ward Committee with a minimum of 2 sittings and a maximum of 8 sittings in a year as shall be determined by CECM Finance and SRC;
- k) The Regulation further provides that the Ward Committee shall retain 2% of the total amount of bursary allocated to the Ward to cover administrative costs and payments of allowances;
- l) Regulation 20 clearly spells out the conditions for award of bursary to be considered by the Ward Bursary Committee which shall include the indigence of vulnerability of the applicant as to whether is;
 - A total or partial orphan
 - A child of a single parent
 - A person with disability
 - Does not exceed the maximum of 20 applicants per institution per Ward

- A student in levels listed in Regulation 7
- m) Regulation 22 spells the procedure for considering and disbursement of bursaries;
 - n) Regulation 23 specifies on the minimum and maximum amounts the Ward Committee may allocate being Ksh.5,000 and Kshs.53,000 respectively or as per the Ministry of Education school fees guidelines to each applicant per year;
 - o) The regulation further limits the amount to applicants in a Driving School at a maximum of Ksh.20,000;
 - p) Regulation 24 gives the Ward Committee 30 days of receipt of the applications to process the Bursary forms and forward the successful applications;
 - q) The regulation further gives the Executive Committee to consider and determine beneficiaries of the Bursary within 30 days of receipt of successful applications forwarded by the Ward Committee;
 - r) Regulation 25 provides for what happens to cash balances in case of winding of the Fund while Regulation 27 gives room for the Executive Committee to from time to time recommend to the CECM for Finance any amendments to the regulations;
 - s) Regulation 28 emphasizes that the Public Finance Management (Nairobi City County Bursary and Scholarship Fund) Regulations, 2016 are repealed and the new regulations on coming into effect shall have all the assets and liabilities of The Public Finance;
 - t) Management (Nairobi City County Bursary and Scholarship Fund) Regulations, 2016 transferred to and vested in the Fund;
 - u) Regulation 29 stipulates the offences and penalties on any person found guilty of misrepresentation or giving false information in the application form for bursary or scholarship as being disqualified from the Fund;
 - v) Two application forms annexed being application form for Secondary/ Vocational training students and middle level learning institutions and application form for Nairobi City County Executive Scholarship.

4.2. Committee Reservations

Having examined the **Public Finance Management (Nairobi City County Bursary and Scholarship Fund) Regulations, 2021**, and the Statutory Instrument Act (No. 23 of 2013), the Committee observed the following salient matters:-

1. Statutory Timelines-Section 11 of the SI Act-The Public Finance Management (Nairobi City County Bursary and Scholarship Fund) Regulations, 2021 were published in the gazette on 26th January, 2021 vide L.N. No 1 2021, submitted to the Clerk of the Nairobi City County Assembly on 23rd August and laid on the house on 9th September, 2021 being not within the requisite statutory timeliness under section 11(1) of the Statutory Instrument Act, 2013;
2. The inclusion of members of the County Assembly as part of Ward Bursary Committee as per **Regulation 13** goes against the provisions of the County Governments Act, 2012. Section 9(2) provides that a member of the county assembly shall not be directly or indirectly involved in the –
 - ✓ executive functions of the county government and its administration; or
 - ✓ delivery of services as if the member were an officer or employee of the county government.

From the foregoing, the administration of the Bursary is an executive function hence involvement of members will make the regulations to go against the law. This was the case when the Office of the Controller of Budget insisted on removal of Members of the County Assembly from the Ward Development Fund Committees that was effected by amending the Ward Development Act to remove them since the same was an executive function. This should be adhered to avoid annulling the regulations at a different stage when disbursement of funds will be required and the same will have to pass through the Office of the Controller of Budget.

3. The Regulation 22 spelling the procedure for considering and disbursing the Bursaries but wrong inferences has been made i.e. in Regulation 24(g), 24(h) (iii) and 24(2) where paragraphs 5 and 7 have been referred to though they do not exist. This should be reviewed to ensure the referred sections are the correct ones;
4. The offences and penalties stipulated under Regulation 29 is just disqualifying one from the Fund if found guilty for misrepresentation or giving false information. The penalty given do not correspond to circumstances involving misappropriation and loss of funds. Stiffer penalties should therefore be given to those who defraud the fund who have the administration roles as well as applicants who misrepresent or give false information.
5. Fines should be imposed on those who defraud the Fund resulting into losses to ensure the fund is safeguarded;
6. Regulation 13 establishes the Ward Bursary Committee as well as the membership while regulation 14 enumerates the functions of the Committee. One of the members of the committee as provided under Regulation 13(3)(d) is the elected member of the County Assembly from the ward who shall be an ex- officio member.
7. The functions in Regulations 14 are to be undertaken wholly by the Committee and no provisions has been given for them to be undertaken by selected member or members of the Committee. In annexure one that contains the application form for Secondary/ Vocational training students and middle level learning institutions under part D, the Ward Bursary Committee have been given powers to recommend or not to recommend bursaries as well as the amounts which is in conformity to the provisions of the regulations. However, Part E of the form gives the Member of the County Assembly powers to approve or not approve the Bursary. This goes against the Regulations as this power has not been provided for anywhere in the Regulations.
8. The form should therefore be amended since the Member of the County Assembly is a member of the Ward Bursary Committee and the decisions made by the Ward Bursary Committee cannot be overturned by an individual. There could also be back and forth between the Ward Bursary Committee should they recommend applications

to the Executive Committee yet the Member of County Assembly fails to approve the applications.

9. Regulation 8 be amended in Paragraph 3(c) by deleting the words "Electronic Fund Transfer Bank Process "and replace with the words "disbursement of funds "thereof.
10. Regulation 22 be amended as
 - a) In paragraph 3 to effect only Executive scholarships funds but for Ward bursaries funds be disbursed by cheques;
 - b) From paragraph 4 to 10 by deleting any reference to vouchers and same be replaced with reference to Cheques; and
11. Regulation 23 need to be amended by deleting the provisions on minimum amount.

5.0. COMMITTEE RECOMMENDATIONS

The Committee recommends this Assembly to annul Gazette Notice No 1 of 2021 on the Public Finance Management (Nairobi City County Bursary and Scholarship Fund) Regulations, 2021 and further task the County Executive address all the salient matters that the Committee picked out during its analysis of the aforementioned instrument.

MINUTES OF THE 45TH SITTING OF THE NAIROBI CITY COUNTY ASSEMBLY SELECT COMMITTEE ON DELEGATED COUNTY LEGISLATION ON THURSDAY 23RD SEPTEMBER, 2021 VIA ZOOM TELECONFERENCING APP AT 1:00PM.

PRESENT

1. Hon. Peter Wahinya, MCA Chairperson
2. Hon. Kariuki Wanjiru, MCA Vice- Chairperson
3. Hon. Elijah Stazo Omunga'ala, MCA
4. Hon. Themendu Jeremiah, MCA
5. Hon. David Mbithi, MCA
6. Hon. Fuad Hussein, MCA
7. Hon. Kabiru Mbugua, MCA
8. Hon. Jane Muasya, MCA
9. Hon. Wilson Ochola, MCA
10. Hon. Geoffrey Nganga, MCA
11. Hon. Eve Malenya, MCA
12. Hon. Husni Lawi, MCA
13. Hon. Herman Azangu, MCA

ABSENT

14. Hon. Naftaly Mathenge, MCA
15. Hon. Jairus Omay, MCA
16. Hon. Jacinta Wanjiru, MCA
17. Hon. Omar Nimo Hajji, MCA
18. Hon. Samora Mwaura, MCA
19. Hon. Paul Shilaho, MCA
20. Hon. Charles Thuo, MCA
21. Hon. Mwangi Njihia, MCA
22. Hon. Millicent Mugadi, MCA
23. Hon. Naftaly Ogola, MCA
24. Hon. Joseph Ndonji, MCA
25. Hon. Mark Ndung'u MCA

SECRETARIAT

1. Ms. Rose Edna Kanana- Clerk Assistant

AGENDA

1. Preliminaries (prayers & adoption of the Agenda)
2. Consideration and Adoption of the report on the revocation of Kenya gazette supplement no.1 of 2021 (The Public Finance Management (Nairobi City County Bursary and Scholarship Fund) Regulations, 2021.
3. Any Other Business
4. Adjournment

MIN.012/SEPT/2021 - PRELIMINARIES

The presiding chairperson Hon. Jeremiah Themendu called the meeting to order at Five minutes past one and there after the secretariat led the members in a word of prayer. Hon. Themendu welcomed Hon Members to the Meeting and then took the members through the agenda of the sitting which was adopted after being proposed and seconded by Hon Jane Muasya, MCA, and Hon. Heman Azangu, MCA respectively.

MIN.013/SEPT/2021 – CONSIDERATION AND ADOPTION OF THE REPORT ON THE REVOCATION OF KENYA GAZETTE SUPPLEMENT NO.1 OF 2021 (THE PUBLIC FINANCE MANAGEMENT (NAIROBI CITY COUNTY BURSARY AND SCHOLARSHIP FUND) REGULATIONS, 2021.

The committee members unanimously adopted the Report on the revocation of Kenya gazette supplement no.1 of 2021 (The Public Finance Management (Nairobi City County Bursary and Scholarship Fund) Regulations, 2021. The adoption was proposed and seconded by Hon. Fuad Hussein, MCA, and Hon. Wanjiru Kariuki, MCA.

MIN.011/ SEPT/2021 – ANY OTHER BUSINESS & ADJOURNMENT.

There being no any other business considered by the committee and the time being Fifteen minutes past one O'clock, the Presiding Chairperson adjourned the meeting. The next virtual meeting was to be held on Thursday, 30th September, 2021 at 1.00 p.m.

CONFIRMED AS TRUE COPY OF THE PROCEEDINGS

CHAIRPERSON Fel. Kariuki.....

DATE 28/09/2021.....

CLERK ASSISTANT [Signature].....

DATE 28/09/2021.....