



COUNTY GOVERNMENT OF NAIROBI CITY

THIRD ASSEMBLY - (FIRST SESSION)

NAIROBI CITY COUNTY ASSEMBLY

VOTES AND PROCEEDINGS

THURSDAY, DECEMBER 1, 2022 AT 2.30 P.M.

1. The Assembly assembled at thirty minutes past Two O'clock.
2. The Proceedings were opened with Prayer

QUORUM OF THE ASSEMBLY

The Hon. Speaker having confirmed that there was Quorum at the commencement of the Assembly called the Assembly to order.

3. COMMUNICATION FROM THE CHAIR: -

The Speaker conveyed the following communication: -

**RESUMPTION OF VETTING OF NOMINEES FOR APPOINTMENT AS
COUNTY EXECUTIVE COMMITTEE MEMBERS**

"Hon. Members,

I have the following Communication to convey regarding the resumption of vetting of nominees for appointment as County Executive Committee Members: -

Hon. Members,

1. You will recall that on **Thursday, 27th October, 2022**, I conveyed a message to this House from H.E. the Governor forwarding names of nominees for appointment as County Executive Committee Members for vetting and approval. Pursuant to the Public Appointments (County Assemblies Approval) Act, 2017, I committed the names of the nominees to the **Select Committee on Appointments** for vetting and reporting.

Hon. Members,

2. As soon as the Committee commenced the vetting exercise, on **9th November, 2022**, the Employment and Labour Relations Court in **ELRC Petition No. E184 of 2022; the Association of Muslim**

Lawyers and Nubian Rights Forum versus the Governor, County Government of Nairobi and the Speaker, County Assembly of Nairobi, granted *Ex-parte* Conservatory Orders, suspending the approval process pending the hearing and determination of the application.

Hon. Members,

3. As the Chair of the Select Committee on Appointments, I immediately suspended the vetting process following a resolution of the Committee at its sitting held on **10th November, 2022** pending the outcome of the judicial process. This was informed by my and the Committee's appreciation of the provisions of Article 3(1) of the Constitution which obligates me and the House to respect, uphold and defend the Constitution and by extension the rule of law which includes obeying Court Orders. I immediately thereafter instructed our Litigation Counsels to move with speed and set-aside the *Exparte* Orders based on various legal grounds and particularly lack of jurisdiction by Courts to interfere with active parliamentary and legislative processes.
4. Accordingly, **Hon. Members**, the County Assembly challenged the petition since the Court was in contravention of the principle of separation of powers and that the petitioners were inviting the Court to determine an active matter under the exclusive jurisdiction of the County Assembly under Article 179(2)(b) of the Constitution, Section 35 of the County Government Act, 2012 and the Public Appointments (County Assemblies Approval) Act, 2017,

Hon. Members,

5. In its ruling delivered on **Wednesday, 30th November, 2022**, the Court agreed with our submissions that that the County Assembly has exclusive original jurisdiction to first carry out the approval process before the court can intervene. The Court also observed that the doctrine of separation of powers as provided for in the Constitution ought to be respected and upheld at all times. The court therefore paved the way for the resumption of the vetting and approval process noting that the application was baseless, frivolous, vexatious and pre-mature. The Court also noted that the County Assembly must be allowed to carry out its legislative mandate without any undue interference by any person or arm of government.

Hon. Members

6. I wish to commend this very progressive view taken by the Court on this matter. Whereas every Kenyan has a constitutional right to

approach the courts of law to seek reliefs, this House must be allowed to carry out its constitutional mandate without interference. I am persuaded that the petitioners lacked information and legal guidance since they could have brought the issues they raised in the petition before the Select Committee on Appointments.

Hon. Members,

7. I reiterate the findings of the Court that one organ of government should not interfere in an active matter being considered by another organ of government where such organ has exclusive original jurisdiction on the matter being considered. Indeed, under our Standing Order No. 97 on the *sub-judice* rule, this Assembly is prohibited to consider any matter that is active in the Court of Law. In the same vein, the Courts are expected to exercise restraint when asked to intervene on matters under active consideration by the County Assembly. I am glad that this a Constitutional principle that has been upheld by the Court in today's ruling. Going forward, as the County Assembly, we shall vehemently uphold and respect this principle.

Hon. Members

8. Following this ruling of the Court, I wish to guide the Select Committee on Appointments, this Assembly and indeed the general public as follows: -

- (i) That the suspension of vetting of persons nominated to serve as County Executive Committee Members is hereby lifted.**
- (ii) That the Select Committee on Appointments is directed to immediately resume and conclude the vetting process and table its report for consideration by the House.**
- (iii) That in the event the Committee concludes the vetting process while the House is on long recess, a Special sitting may be convened pursuant to Standing Order No. 32 to consider the approval Motion.**

The House is so guided.

I thank you”.

4. PETITIONS: -

Pursuant to Standing Order 214 (1) (b), the following petitions were tabled:

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- a) Hon. Kennedy Swaka, MCA tabled a petition on behalf of the residents of Patanisho in Lower Savannah Ward regarding settlement formalization project of commercial plots 667-730 within Nairobi County. – *petition committed to the Sectoral Committee on Lands, Planning and Housing; and*
- b) Hon. Jared Akama, MCA tabled a petition on behalf of the Dam Estate Residents Association regarding noise pollution and land grabbing by Helicopter Church in Lang’ata, Nairobi City County. *Petition was committed to the Sectoral Committees on Lands, Planning and Housing; and Environment & Natural Resources.*

5. PAPERS LAID: -

The following papers were laid on the Table of the Assembly: -

- a) **THE REPORT OF THE AUDITOR GENERAL ON SPECIAL AUDIT ON PUBLIC PARTICIPATION IN THE COUNTY BUDGET MAKING PROCESS FOR THE FINANCIAL YEAR 2022-2023.**

(The Leader of Majority)

- b) **THE FIRST REPORT OF THE SECTORAL COMMITTEE ON CULTURE AND COMMUNITY SERVICES ON THE COMMITTEE’S INDUCTION WORKSHOP HELD FROM 10TH TO 13TH NOVEMBER 2022 IN MOMBASA COUNTY.**

(Chairperson, Sectoral Committee on Culture & Community Services)

- c) **THE FIRST REPORT OF THE SECTORAL COMMITTEE ON AGRICULTURE, LIVESTOCK AND FISHERIES ON THE COMMITTEE’S INDUCTION WORKSHOP HELD FROM 17TH TO 20TH NOVEMBER 2022 IN MOMBASA COUNTY.**

(Hon. Emmy Isalambo, MCA)

- d) **THE FIRST REPORT OF THE SECTORAL COMMITTEE ON ROADS, TRANSPORT AND PUBLIC WORKS ON THE COMMITTEE’S INDUCTION WORKSHOP HELD FROM 14TH TO 17TH NOVEMBER 2022 IN MOMBASA COUNTY.**

(Hon. Musango Maithya, MCA)

6. NOTICE OF MOTION – HON. DAVIDSON DNG NGIBUINI, MCA

THAT, aware that paragraph 3 of Part Two of the Fourth Schedule of the Constitution of Kenya, 2010 provides for the functions and powers of County Government on control of air pollution, noise pollution, and other public nuisances; **further aware** that the County Assembly passed the Nairobi City County Public Nuisance Act, 2021 which provides for the control of public nuisance within the County, Section 20 of the Act provides that *a person shall not upon other premises play, operate, cause or allow to be played or operated, any musical instrument, wireless, gramophone, amplifier or similar instrument thereby making, causing or authorizing noise to be made which is loud and continuous or repeated as to constitute a nuisance to the occupants or dwellers of any premises in the neighborhood or to passersby on the street*; **concerned that** in recent years there has been an upsurge in noise pollution especially from bars, nightclubs and religious buildings near residential areas which has caused discomfort and lack of peace among residents; **further concerned** that such noise has health effects which include but are not limited to impairing cognitive functioning in children, affecting people's sleep and concentration levels, as well as biological stress among others; **acknowledging that** the National Environment Management Authority developed the Environment Management and Coordination (Noise and Excessive Vibration Pollution Control) Regulations, 2009 that prohibit the production of loud, unreasonable, unnecessary or unusual noise which annoys, disturbs, injures or endangers the comfort, repose, health or safety of others and the environment; **further acknowledging** that Paragraph 10 of Part Two of the Fourth Schedule of the Constitution requires the County to implement specific national government policies on environmental conservation, this Assembly resolves that the County Executive to: -

1. Implement all the legislations both at the County and National Levels on noise pollution to control all forms of public nuisance which has resulted in public outcry;
2. Develop regulations on noise mitigating measures pursuant to provisions of Section 35 of the Nairobi City County Public Nuisance Act, 2021 to curb all forms of noise pollution in residential areas in the County; and
3. Mandate proprietors to effect and install noise reduction and containment measures such as soundproofing, cut-offs, installing glass shields, repositioning of speakers and internal self-regulation mechanisms to minimize noise within the County.

7. NOTICE OF MOTION – HON. PERPETUAL MPONJIWA, MCA

THAT, aware that the functions of public entertainment and public amenities including county parks, recreation facilities and sports activities and facilities are vested in County Governments pursuant to paragraph 4 of Part Two of the Fourth schedule to the Constitution of Kenya 2010; **noting that** Parks and green spaces occupy a critical place in the urban

environment, providing opportunity for recreation and wellness, as well as environmental management promotion and sustainability for urban communities; **appreciating** the rehabilitation of Uhuru Park, Uhuru Gardens, Central Park Jeevanjee Gardens and Hon. Michuki Memorial Park; **recognizing** that Nairobi residents need to continue accessing the newly refurbished Uhuru Park both for rest and recreation, this is Assembly urges the County Executive to establish a public resource centre (mini-library) at the newly refurbished Uhuru Park to act as an open source library stocked with reading materials for all age categories, a free area for board games and other appropriate indoor amenities that shall be accessible by all members of the public free-of-charge.

8. STATEMENTS PURSUANT TO STANDING ORDER 47(2)(C)

Pursuant to Standing Order 47(2) C, the following Members requested for Statements: -

- a) Hon. Hashim Kamau, MCA requested for a Statement from the Chairperson of the Sectoral Committee on Culture and Community Service, regarding Moi International Sports Centre, Kasarani and Nyayo National stadia sports facilities currently managed by the National Government;
- b) Hon. Samuel Kago, MCA requested for a Statement from the Chairperson of the Sectoral Committee on Health Services regarding the lack of medical supplies in County health facilities, particularly Mwiki Health Centre located in Mwiki Ward;
- c) Hon. Joseph Ndung'u, MCA requested for a Statement from the Chairperson of the Sectoral Committee on Transport and Public Works regarding dilapidated roads across the city, particularly Makongeni Road in Ruai Ward;
- d) Hon. Jared Akama, MCA requested for a Statement from the Chairperson of the Sectoral Committee on Lands, Planning, and Housing regarding the mismanagement of housing estates owned by the County;
- e) Hon. Samuel Kago, MCA to requested for a Statement from the Chairperson of the Sectoral Committee on Energy and Information, Communication and Technology regarding records management in the County Executive;
- f) Hon. Kamau Fiunifiu, MCA requested for a Statement from the Chairperson of the Sectoral Committee on Water and Sanitation regarding the number of boreholes drilled and water points by the defunct Nairobi Metropolitan Services (NMS) across the County;

- g) Hon. Eric Murigu, MCA request for a statement from the Chairpersons of the Sectoral Committee On Culture and Community Services and Select Committee on Public Investments regarding the status of ownership of Eastleigh Social Hall that is allegedly owned by a private developer, Machais Limited;
- h) Hon. Emily Oduor, MCA request for a Statement from the Chairperson of the Sectoral Committee on Labour and Social Services regarding the interdiction of staffers serving in the Nairobi City County Executive sector, Department of Urban Planning, Compliance and Enforcement;

9. STATEMENTS PURSUANT TO STANDING ORDER 47(2)(f): -

Pursuant to Standing Order 47(2) (f), the Chairperson of the Sectoral Committee on Children, Early Childhood Education and Vocational Training responded to a Statement requested by Hon. Malyun Ali Abdi regarding the increased presence of street children in the Central Business District and various parts of the County, especially in the Eastleigh and slum areas.

10. MOTION – ALTERATION OF THE ASSEMBLY CALENDAR

Motion Moved and Question Proposed;

THAT, pursuant to the provision of Standing Order 31(4), this Assembly resolves to alter its Calendar to adjourn on **Tuesday, 13th December, 2022.**

(The Majority Leader)

Debate Ensued;

Mover Replied;

Question put and Agreed to.

11. MOTION – DEVELOPMENT OF STRATEGIES AND PROGRAMMES ON CLIMATE CHANGE AND IMPLEMENTATION OF THE NATIONAL CLIMATE CHANGE PLAN ACROSS ALL THE SECTORS IN THE COUNTY

Motion Made and Question Proposed: -

THAT, aware that Article 42 of the Constitution of Kenya, 2010 provides for the right to a clean and healthy environment for every Kenyan, which includes the right to have the environment protected for the benefit of the present and future generations; **further aware** that climate change is a complex social and scientific issue which is characterized by uncertainty and is a global nightmare with consequences that are already quite visible across the globe; **cognizant that** Article 12 of the Paris Agreement espouses the enhancement of climate change education,

training, public awareness, public participation and public access to information; **noting that** climate change education explores mitigation and adaptation at both local and global level, critical, creative thinking and capacity building that will enable youth to engage with the information, inquire, understand, ask critical questions and take what they determine to be appropriate actions in response to climate change; **Concerned that** human activities have substantially been increasing the atmospheric concentrations of greenhouse gases, this in turn enhances the greenhouse effect that will result in additional warming of the Earth's surface and atmosphere and may adversely affect natural ecosystems and humankind **acknowledging that** the Climate Change Act 2016 provides that the County Government shall, in performance of its function, integrate and mainstream climate change actions, intervention and duties set out in the Act and the National Climate Change Action Plan into various Sectors. The County Government in development, updating and approval of County Integrated Development Plan and County Sectoral Plans mainstream implementation of National Climate Change Action Plan, taking into account National and County Priorities; **further acknowledging** that paragraph 10 of the Fourth Schedule to the Constitution of Kenya 2010 provides that the County Government is to implement specific national government policies on natural resources and environmental conservation, **now therefore** the County Assembly urges the County Executive to: -

1. develop strategies and education programmes on adaptability to climate change within the County;
2. develop a policy on climate change; and
3. Implement the National Climate Change Plan across all the Sectors in the County.

(Hon. Silas Matara, MCA on behalf of Hon. Waithera Chege, MCA)

Debated ensued;

Rising from his seat pursuant to Standing Order 38 (1), Hon. Kamau Fiunifiu, MCA informed the Speaker that there was no quorum in the Assembly.

The Speaker having confirmed that there was no Quorum, adjourned the Assembly.

There being no Quorum and the time being twenty-three minutes to Five O'clock, the Hon. Speaker adjourned the Assembly without Question put pursuant to the Standing Orders.

12. ASSEMBLY ROSE - at Twenty-three Minutes to Five O'clock.

MEMORANDUM

The Speaker will take the Chair on
Tuesday, December 6th, 2022 at 2.30 p.m.

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