



COUNTY GOVERNMENT OF NAIROBI CITY

FIRST ASSEMBLY – (FOURTH SESSION)

NAIROBI CITY COUNTY ASSEMBLY

VOTES AND PROCEEDINGS

THURSDAY, MARCH 10, 2016

1. The Assembly assembled at Thirty Minutes past Two O'clock.

2. The Proceedings were opened with Prayer

3. COMMUNICATION FROM THE CHAIR

The Deputy Speaker conveyed the following communication;-

”Honorable Members, I have the following communications to make –

Honorable Members, as I informed you yesterday that the Assembly is in receipt of a Memorandum from H.E. the Nairobi County Governor on his refusal to assent the Nairobi City County Public Participation Bill, 2015.

The said Memorandum is undated, and therefore raises serious questions when determining whether the Refusal to assent is within the legally prescribed timelines. This matter shall be canvassed later in this opinion.

Most importantly, the Nairobi City County Public Participation Bill, 2015, was passed by the Assembly on Wednesday 2nd December, 2015.

Hon. Members, Section 24 of the County Governments Act, 2012, provides that the *Speaker shall, within fourteen days, forward a Bill passed by the County Assembly to the governor.* The said Section further provides that the governor shall within **fourteen days** after receipt of a Bill —

- a) assent to the Bill; or
- b) refer the bill back to the County Assembly with a **memorandum outlining reasons** for the referral.

Further, Section 24(3) provides that if the governor refers a Bill back to the County Assembly, the County Assembly may, following the appropriate procedures under this section —

- a) amend the Bill taking into account the issues raised by the governor; or
- b) pass the Bill without amendment.

Separately, Section 24(5) provides for a mechanism by which the Assembly can bypass the Governor's refusal to assent a Bill into law. The said Section provides that if a county assembly passes the Bill a second time, without amendment, or with amendments which do not accommodate the governor's concerns by a vote supported by two-thirds of members of the county assembly, the speaker shall within seven days re-submit the Bill to the governor and the governor shall within seven days assent to the Bill.

If the governor does not assent to a Bill or refer it back within the period referred to under this section, the Bill shall be taken to have been assented to on the expiry of that period.

Section 24 of the County Governments Act, 2012, is further domiciled in the County Assembly Standing Orders under Standing Order 135. The foregoing provides a fair background on the matter at hand, namely the refusal to assent to a Bill by the Governor and the underlying procedure.

Hon. Members, the question before us, which needs urgent settling, is whether the Governor is within the law to refuse to Assent a Bill after the lapse of the mandatory 14 day period provided for under Section 24(2) of the County Governments Act, 2012.

Firstly, the Memoranda detailing reasons for refusal to assent the Bill is undated, and can therefore only be judged on the basis of the date on which it was received by the Clerk's Office, as evidenced by the Stamp of receipt. The said date is **23rd February, 2015**.

The foregoing date then provides the basis for deciding the question of the 14 day period and the legal validity of the said Memoranda.

Hon. Members, as earlier intimated, the Bill was passed on **2nd December, 2015**, two days before the Assembly went on recess for the December holidays. However, it was received by the Governor's Office for Assent on **7th January, 2016**.

It must be noted that the timing of the forwarding for assent was similarly outside of the legally prescribed 14 days period.

Nonetheless, upon receipt, the Governor ought to expedite with Assent or refusal within 14 days of receiving such a Bill from the Speaker. From the evidence thus far adduced, the undated Memoranda for Refusal to assent from date of receipt by the Clerk's Office was about **48 Calendar days** after the Bill was received by the Governor's Office. It is my considered view therefore that the Memoranda does not pass muster on the foregoing account.

By operation of Section 24(6) of the County Governments Act, 2012, which provides that if the governor does not assent to a Bill or refer it back within the 14 day period, the **Bill shall be taken to have been assented to on the expiry of that period**. Therefore, the Nairobi City County Public Participation Act is presumed to have come into force on the **22nd of January, 2016**.

Therefore, to cure the irregularities around the period of forwarding and Assent or refusal to assent the Bill, it is my considered opinion that the best remedy is for the Governor to consider publishing an amendment Bill detailing the Sections of the Law he wishes to amend.

Hon. Members, I advise the foregoing having in mind that an irregularity cannot be cured by another irregularity. As such, the Assembly is best advised to not act on the Governor's Memoranda and instead request the Governor to forward an amendment Bill as soon as is possible on the Public

Participation Act, 2015, which became law by automatic operation of Section 24(6) of the County Governments Act, 2012.

Thank you.”

4. STATEMENT PURSUANT TO STANDING ORDER 41(2)(C)

Pursuant to Standing Order 41 (2) (c) the following Members requested for Statements:-

- i. Hon. Petronilla Nafula requested for a statement from the Chairperson of the Sectoral Committee on Transport and Public Works regarding the introduction of yellow boxes on major junctions in the Central Business District (CBD); and
- ii. Hon. Osman Adow requested for a statement from the Chairperson of the Water and Sanitation Committee regarding the processing of water bills.

Pursuant to Standing Order 41 (2) (c) the following responses to statements were given:-

- i. The Vice-Chairperson of the Sectoral Committee on Planning and Housing gave a response to statement requested by Hon. Hashim regarding the County Executive abandoning its interest on its properties in County Government owned houses;
- ii. The Vice-Chairperson of the Sectoral Committee on Planning and Housing gave a response to statement requested by regarding the construction of new Housing units in Makadara Ward by the Nairobi City County Government;
- iii. The Vice-Chairperson of the Sectoral Committee on Planning and Housing gave a response to statement requested by regarding a private piece of Land LR. 1/150 at Kitale Lane Kilimani Ward; and
- iv. Hon. Nelson Masiga gave a response to statement requested by Hon. Manoah Mboku regarding the sale of Mariakani Estate in South B.

5. PROCEDURAL MOTION - APPROVAL OF MEMBERS TO VARIOUS COMMITTEES**Motion made and question proposed;**

THAT, pursuant to the provisions of Standing Order 156 (1), this Assembly approves the appointment of the following Members nominated by the Committee on Selection to their respective Committees;

1. Hon. Margaret Sewe be appointed to the Sectoral Committee on Transport and Public Works;
2. Hon. Alex Otieno be appointed to the Sectoral Committee on Trade, Tourism and Cooperatives;
3. Hon. Ronald Milare be appointed to the Sectoral Committee on Transport and Public Works; and
4. Hon. Clarence Munga be appointed to the Sectoral Committee on Culture and Community Services.

(The Leader of the Majority Party)

6. MOTION - ADOPTION OF THE REPORT OF THE SECTORAL COMMITTEE ON AGRICULTURE AND ENVIRONMENT ON THE STATUS OF WASTE MANAGEMENT WITHIN NAIROBI CITY COUNTY**Motion made and question proposed;**

THAT, this Assembly adopts THE REPORT OF THE SECTORAL ON AGRICULTURE AND ENVIRONMENT ON THE STATUS OF WASTE MANAGEMENT WITHIN NAIROBI CITY COUNTY, laid on the Table of the Assembly on Wednesday 10th March, 2016.

(Hon. Alexander Mulatya, MCA)

Debate Arising;

Mover replied;

Question put and *Agreed to*

7. MOTION - ADOPTION OF THE REPORT OF THE SECTORAL COMMITTEE ON HEALTH SERVICES ON SITE VISIT TO MUTHURWA MARKET***Mover on the floor;***

THAT, this Assembly adopts THE REPORT OF THE SECTORAL COMMITTEE ON HEALTH SERVICES ON SITE VISIT TO MUTHURWA MARKET, laid on the Table of the Assembly on Wednesday 10 March, 2016.

(Chairperson, Sectoral Committee on Health Services)

Rising in her place on a Point of Order, Hon. Moses Ogeto drew the attention of the Deputy Speaker to the fact that there was no Quorum in the Assembly;

And the Deputy Speaker having confirmed that there was no Quorum caused the Division Bell to be rung;

And there being **no** Quorum after expiry of five minutes;

And the time being twenty minutes past Four O'clock, the Deputy Speaker interrupted the proceedings and adjourned the Assembly without Question put pursuant to the Standing Orders.

8. ASSEMBLY ROSE - At twenty Minutes past Four O'clock.

MEMORANDUM

The Speaker will take the Chair on
Tuesday, March 15, at 2.30 p.m.

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