

REPUBLIC OF KENYA
MURANG'A COUNTY ASSEMBLY
THE HANSARD

Wednesday, 14th November 2018

The House met at 2:40p.m.

[The Speaker (Hon. Nduati Kariuki) in the Chair]

PRAYER

COMMUNICATION FROM THE CHAIR

The Speaker (Hon. Nduati Kariuki): Honourable members I wish to make the following communication: pursuant to section 58 of the County Government's Act No. 17 of 2012 and section 6 of the Public Appointments and County Assembly Approval Act No. 5 of 2017, I wish to report that on Tuesday November 13, 2018 the County Assembly received notification of a nomination of Mr. Richard Maina Kamami for appointment to the position of member of Public Service Board following an interview conducted on 23rd October 2018.

Pursuant to section seven of the Public Appointments and County Assembly Approval Act No. 5 2017, the County Assembly vide advertisement to be put in the daily newspapers to notify the nominee of the time and place for holding the approval hearing. Subsequently pursuant to section 7 (10) of the Public Appointments and County Assembly approval Act No. 5 2017, members of the public will be invited to attend the approval hearing and or submit any information or comments on suitability or otherwise for appointment of the nominated person.

The submission will be in form of sworn affidavits and will be accompanied by any documents. It will be received by the office of the Clerk on a date determined by the Committee. Honourable members pursuant to section 17 (1) and (2) of the Public Appointments and County Assembly Approval Act 2017, the notification is hereby committed to the Committee on Governance, Labour, Justice and Legal Affairs which shall convene a meeting for the approval hearing, which shall not be later than 14 days from the date of committal of this notification.

Pursuant to section 9(2) of the Public Appointments and County Assembly Approval Act No. 5 of 2017, upon conclusion of the vetting exercise, the Committee will prepare a report on whether or not the nominee should be approved for appointment as a member of the County Public Service Board.

Honourable members, noting that the Assembly will soon adjourn for the long recess on Thursday December 6, 2018, and further noting that this approval has timelines which has to be met as stipulated in the Public Appointments and County Assembly Approval Act No. 5 of 2017, the Committee shall dispense on with the matter on or before November 29, 2018. Thank you very much.

STATEMENTS

**TENTATIVE BUSINESS OF THE ASSEMBLY FROM THE
WEEK COMMENCING TUESDAY NOVEMBER 20 TO
THURSDAY NOVEMBER 22, 2018**

The Speaker (Hon. Nduati Kariuki): Chairperson Agriculture?

(Hon. Lucy Ngugi rose on behalf of the Chairperson Agriculture)

Hon. Lucy Ngugi: Thank you Mr. Speaker. My Committee requests for more time to respond to the Statements. Thank you.

The Speaker (Hon. Nduati Kariuki): Hon. Caroline Njoroge, any response to that?

Hon. Caroline Njoroge: I am the one who requested for the Statement, although the Chairperson is not in the House, it has taken too long so I would wish I get the response very fast because I am waiting but I will go with what the member has said. Thank you. Hon. Speaker.

MOTION

ADOPTION OF COUNTY ASSEMBLY BUSINESS SEPTEMBER 2017- SEPTEMBER 2018

(Resumption of debate from Thursday 8th November 2018)

The Speaker (Hon. Nduati Kariuki): I will ask the mover to respond

Hon Erick Kimani: Thank you Mr Speaker, I am Erick Kimani, Leader of the Majority party, Mr Speaker, before the Speaker on that day pronounced that there was no quorum, the members had participated on the Motion and it was well supported, mine is to request the Hon. Members to adopt this report on the house. Thank you

(Question put and agreed to)

ADOPTION OF REPORT OF DELEGATED COUNTY LEGISLATION COMMITTEE ON BENCHMARKING VISIT TO THE SENATE FROM 1ST TO 2ND AUGUST 2018

Hon. Lilian Kabaya: I beg to move the following Motion;-

That this Assembly adopts the report of the select Committee on Delegated County Legislation on its benchmarking visit to the Senate held on 1st and 2nd August 2018 in Nairobi laid on the Table of the Assembly on Tuesday November 13, 2018.

Mr. Speaker, if you allow me, I will just highlight contents of our report, we visited the Senate and we had an interactive session with the members of the Senate, we also had an interaction with the staff who clarified more on the role of the Committee and the best practices in carrying out our duties. Mr Speaker, the objectives of the visit were to exchange parliamentary practice on the laws of the Committee, share experiences on the best practices when carrying out Committee business and to enable the Committee learn how to overcome its challenges.

The Committee gathered information in the following ways, presentation to the Committee by the Directorate of Committee Services in the Senate, attending of plenary sittings and attending the Committee sittings for Delegated Legislation. The Directorate for the Committee made two presentations to the Committee first defining the general operations of the Committees and second dealing with the roles and working of the Delegated Legislation Committee.

Mr. Speaker, I believe we have all been inducted on the roles of the Committees so allow me to skip that and go straight to the roles of the Delegated Legislation Committee and its role is to scrutinize delegated legislation and protect the public from unjust and unfair conditions in

rules and orders. Most delegated legislations are developed by the County executive and the committee Ensures that there is a balance in the interests of the County executive and the electorate. Further, the Committee is key in minimizing incidences of delegated legislation being subjected to judicial process on grounds of being unconstitutional.

Attending the plenary sittings, the Committee attended the plenary sittings where it witnessed debate on the Floor and noted strict adherence during sittings and robust debate and contribution to the members. On this day, Mr. Speaker, we witnessed debate on a report on the victims at Solai Dam, it was very intense and all members were keen on participating.

Procedure on making the delegated legislation; the Committee attended a sitting of the Senate Committee on Delegated Legislation where it witnessed consideration of the traffic, driving schools and driving instructors and licenses rules 2018) The Committee noted that the agenda of the day was the draft Nairobi Coffee Exchange Rules 2018, the draft regulations were forwarded to the Committee before gazettelement as a process of consultation to ensure the final document is agreed upon by the Committee and the agencies before gazettelement and for more tabling in the Senate.

Thereafter the delegated legislation is committed to the Committee for review where it is either approved or annulled in part or in whole. It is worth noting that in order for the Committee to solve quorum some issues a sub-Committee can be formed to undertake Committee and report its deliberations to the whole Committee as was the case here. The findings of the Committee were: the Committee on Delegated Legislation at the Senate normally discusses draft regulations they are usually forwarded to the Committee for debate before gazettelement as a process of consultation between executive agencies and the Committee.

Mr. Speaker, The law says that upon gazettelement of rules and any other statutory instrument this should be taken to the Committee for approval or annulment, however to avoid such instances after gazettelement of the rules there is usually a consultative process before. This is the case that is happening members in the issues of Murang'a Municipality Charter. It is currently with the Committee on Delegated County Legislation for consultation so that we can give our input before the Charter gazetted to avoid annulment after gazettelement.

It is the work of the Committee to remind the relevant executive department of any Acts that have been enacted without regulation and demand for them. Further it is the responsibility of the Committee to research whether there are any regulations that have expired and demand for their reformulation by the necessary department. All regulations forwarded to the Senate Committee on Delegated Legislation are accompanied by an explanatory memorandum which informs the Committee whether the regulations have undergone all required process by law including public participation and evidence thereof of such process. This was key, it kept being highlighted on its importance not just public participation for the sake of it but where they list down all the stakeholders who attended; they attach signatures and minutes of these public participation forums. We wish to inform the House that as a Committee we will ensure that whatever public participation has been done on the Charter has not only been done properly but have involved all stakeholders and that the content of the stakeholders was taken into account.

All statutory instruments come into force once they are published; nullification of statutory instruments can be in whole or a section part as the Committee deems necessary mostly where it offends the law or the Constitution. After nullification of statutory instruments by the Committee the same can be republished and re-submitted to the Committee for consideration in line with the Statutory Instruments Acts 2013. Members, this is key to note once a statutory

instrument has been nullified by the Committee that is not the end of road, the executive can make the requisite correction and resubmit to the Committee and this time I fit is in line with the law it can be operational.

This is just to note, sometimes when a Committee raises issues you are told you have issues with the executive but you are just making the necessary correction to protect the public and public funds as well. Some statutory instruments are technical in nature and this requires that the Committee on Delegated Legislation seeks professional expertise in reviewing them. There is need also to audit statutory instruments to identify those which have expired including the by-laws. That New Zealand and Brazil being Commonwealth countries have some of the best Statutory Instrument Acts. The Murang'a Assembly Committee on Delegated Legislation can visit and learn more on these procedures. We shall be requesting for a benchmarking visit as a Committee to learn more on these countries with the best practices. These are the Committee's recommendations following the visit:

1. That before any instrument is tabled in the Assembly the draft regulation should be discussed by the Committee and the respective Committee Executive Committee Member (CECM) responsible, this we are already adopting.
2. That it is only on discussing and reviewing the draft copy of the statutory instrument that CECM responsible will gazette it for formal submission to the Assembly for tabling. This procedure will minimize chances of the Committee rejecting the regulations since the Committee will have been involved in its formulation.
3. That CECM should immediately draft pending regulations contained in all Acts that have been passed by the last Assembly. When we look at the Alcoholic Drink Control Act there are some regulations that have been pending for a long time; which the CECM Health promised this Assembly that there are yet to be submitted months later.
4. That public participation should be undertaken before the gazettment of any statutory instruments.
5. That after the adoption of this report, any further regulation forwarded to the County Assembly should be accompanied by an explanatory memorandum as required by section 11 of the Statutory Instruments Act, and the same should be forwarded to the Committee to enable it to make an informed decision.
6. That immediately after adoption of this report, the CECM should undertake an audit of all regulations in operation in the County. Further, a Report on the audit should be submitted to the Assembly within 60 days from the date of adoption of this Report.

Mr. Speaker, I wish to highlight that this is very important because there are so many regulations that can come up every single day. We are told that, from now on, matatus will be doing a, b, c, d, boda bodas are regulated in a certain manner and bars of a certain class have now been closed. We have no idea where these regulations come from and they are not forwarded to this Assembly.

That, after the audit, the CECM in charge should submit draft regulations of all expired statutory instruments, including the by-laws which are still operational despite passing of the new Constitution, to the Committee for consideration in line with the Statutory Instruments Act.

That, the Assembly allocates some funds for international travel in the upcoming Supplementary Budget so that a delegation of the Members of the Committee can visit one of the Commonwealth countries to learn more on procedures for delegated legislation.

Mr. Speaker, that is the report of our Committee and I urge the Members of this House to adopt the recommendations as they are key in ensuring that we carry out our business effectively, that we protect the public from arbitrary orders of the Executive which have not been ratified by this House.

On the last one of international travel, we note that we have not been having much and the Members would like to have exposure from other countries; it is very important that we learn to be able to perfectly execute our duties. I will now invite Hon. Nyoko to second the Motion.

Hon. Sospeter Nyoko: Thank you Mr. Speaker, I am the Member of County Assembly (MCA) for Mugoiri Ward and a Member of the Delegated County Legislation Committee. I stand to second the Motion. Thank you, Mr. Speaker.

The Speaker (Hon. Nduati Kariuki): Thank you, before I propose the question and to assist your Committee, Madam Chair, there was a small error and for prosperity, we want the filing of accurate and well informed reports. To correct you just a small thing, that Brazil is not a member of the Commonwealth; you said that, 'New Zealand and Brazil being members of the Commonwealth'. Brazil is not a Member of the Commonwealth. I will now propose the question.

(Question proposed)

Hon. Pelagiah Muthoni: Thank you Mr. Speaker, I am the MCA for Kakuzi/Mitubiri Ward. I want to draw your attention to number eight in the findings, where we are saying that there is need to audit all the statutory instruments to identify those which have expired, including the by-laws. In Murang'a, we are having so many co-operatives such as the women co-operatives and the boda bodas. Most of these co-operatives have their b-laws. It is the mandate of this Committee, even if they are not going to audit all of them, to sample and check the by-laws because some could have expired long time ago and they need to be upgraded. They need to be checked so that they can be in line with the statutory instruments. I support and urge Members to support this report so that we can go round and check whether these by-laws comply. Thank you, Mr. Speaker.

Hon. Murigi Amos: Thank you, Mr. Speaker, I represent Kimorori/Wempa and first is to note the good work done by this Committee, especially on its findings and recommendations. As a County, we are very poor when it comes to the issue of regulations and apart from that, we also have a problem with some of the policies and I know there are some of them. As an Assembly, we should make sure that we have gone through this policy before anything is done. I am in the Education Committee and the Health Committee and what I have seen is a lot of money being pumped into some of the programs which have been started by this County. There is absence of a serious policy and I think it should be a requirement before they do, they should be furnishing this particular House with the policy. When you scrutinize some of the issues like if you look at the issue like school feeding programme and milk programme there was a policy to that effect but when you go through that policy it is not being followed. What is the responsibility of this honourable House? Sometimes when there is a policy to the executive this is just a requirement and it is not being followed.

I know this Committee needs to take this issue into consideration and we make sure we also demand for these policies, especially now that we are in Budget cycle for next financial year sometimes there is no need of giving money to the executive in absence of a policy as this one can negatively affect service delivery. With that I stand to support.

The Speaker (Hon. Nduati Kariuki): I ask the mover to respond.

Hon. Lilian Kabaya: Thank you Mr. Speaker I thank the members who have contributed to the debate. On Hon. Pelagiah's point on co-operatives, we agree there is a very huge gap on co-operatives. The Committee wrote to the CEC member in charge to furnish us with any regulations that are guiding operations of all these co-operatives which the County Government has been forming. We have not received any response yet but we shall follow up and even summon him and we shall ensure there is a proper framework by which all the co-operatives operate so that co-operatives don't go forming their own by-laws which are oppressive to members.

I thank you Hon. Murigi for your contributions as well, you have talked of policy. Mr. Speaker I wish to state that when it comes to policy, the respective Committees are the ones to follow up with respective CEC members because the Committee on Delegated Legislation only looks at statutory instruments and policies does not fall under. However, that the policies should be there and they should follow up with their respective heads to make sure that policies are in place before we pass Budget. I thank you Mr. Speaker.

(Question put and agreed to)

ADJOURNMENT

The Speaker (Hon. Nduati Kariuki): Honourable members the House is adjourned until tomorrow 2:30 p.m. Thank you very much.

The House rose at 3:10p.m.