



**REPUBLIC OF KENYA**



**NYANDARUA COUNTY ASSEMBLY**

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**1<sup>ST</sup> ASSEMBLY – THIRD SESSION – 2015**

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**REPORT OF THE COMMITTEE ON DELEGATED COUNTY  
LEGISLATIONS**

**ON THE**

**PUBLIC FINANCE MANAGEMENT (NYANDARUA COUNTY  
EMERGENCY FUND) REGULATIONS, 2015**

**The Clerk's Office  
Nyandarua County Assembly  
P.O. Box 720 – 20303  
Ol Kalou  
February 2015**

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## PREFACE

Mr. Speaker Sir,

The Public Finance Management (Nyandarua County Emergency Fund) Regulations, 2015 were tabled in this House on 10<sup>th</sup> of February 2015 by Hon. James Gachomba and pursuant to Standing Order 185 stood referred to the Committee on Delegated County Legislations.

The Terms of reference in regards to any Statutory Instrument are set out under Statutory Instruments Act 2013 and Standing Orders 185 of the Nyandarua County Assembly Standing Orders.

### *Committee members*

Mr Speaker Sir,

Members are;

- |                              |                   |
|------------------------------|-------------------|
| 1. Hon. Peter Wahome Kamoche | -Chairperson      |
| 2. Hon. Jane Mwathe          | -Vice Chairperson |
| 3. Hon. Edinald Wambugu      | -Member           |
| 4. Hon. James K. Gachomba    | -”                |
| 5. Hon. Patriciah Wanjugu    | -”                |
| 6. Hon. Joseph Mumba         | -”                |
| 7. Hon. Kimani Njiraini      | -”                |

## ACKNOWLEDGEMENT

**Mr. Speaker Sir,**

The committee is alive to the immense contributions and support accorded to it by the Members of the County Assembly through their concern and contribution. Their immense contribution cannot be over looked.

On behalf of the Committee Members, I wish to extend our sincere appreciation for the invaluable support accorded to the committee by Your Office and the Office of the Clerk to ensure the Committee delivers its mandate.

**Mr. Speaker Sir,** I would also like to sincerely thank the Members of the Committee on Delegated County Legislation for the commitment exhibited during the scrutinizing and the compiling of this report. I also appreciate the work of our Secretariat comprising of Mureithi Wairimu (Deputy Clerk) and Joel Gicheha (Committee Clerk Delegated County Legislations Committee) who worked tirelessly to compile this report. We would also like to appreciate the contributions of Daniel Kamau the Commissionaire who worked with the committee during the entire period and Ranges View Hotel Fraternity who offered an enabling environment.

Finally, **Mr. Speaker Sir,** it is now my pleasure, on behalf of the Committee to present this report to the House for adoption.

Signed.....

**Hon. Peter Wahome Kamoche**

**Chairperson, Committee on Delegated County Legislations**

## INTRODUCTION

### LEGAL BACKGROUND

**Mr. Speaker Sir,**

The concepts and principles of democratic governance anchored in the Constitution of Kenya 2010 expressly provides for unfettered sovereignty of the people of Kenya, and like in any democracy, a democracy is a government of the people, by the people and for the people. Thus, power is vested in the people and should only be exercised in accordance with the Constitution. The explicit power and sovereignty of the people of Kenya, as the custodian of the authority and power to govern includes its apportionment to designated state organs, institutions and offices, who exercise the same on behalf of the people pursuant to the Constitution of Kenya. The clearer division of mandate, role, function to govern between the main stakeholders and arms of the state and government, i.e. the Parliaments, the Executive and the Judiciary must be exercised in accordance with the Principles of Separation of Powers and Checks and Balances.

**Mr. Speaker Sir,**

Article 1 (2) and (3) provides that the people shall exercise Sovereign power under this Constitution through democratically elected representatives. The Constitution delegates this people's power to Parliament and the legislative assemblies in the county governments, the national executive and the executive structures in the county governments and the Judiciary and independent tribunals which perform their functions in accordance with the

Constitution. The sovereign power of the people is exercised both at the national and the county levels.

Article 94 of the Constitution of Kenya delegates all legislative authority of the people to Parliaments at the National level while Article 185 provides for the exercise of Legislative authority of the People at the County Government level to the County Assemblies.

**Mr. Speaker Sir,**

Though it is a general concept and principle that a delegatee cannot further delegate the delegated power and which has been a contentious issue in most jurisdictions including the United States of America, it has been a general practice in Kenya that the Executive can make some legal instruments that are used to govern the people through the guidance of the *Interpretations and General Provisions Act Cap. 2 of the Laws of Kenya and the Statutory Instruments Act 2013*, subject to the *Enabling Act*. The Statutory Instruments Act and the Interpretations and General Provisions Act which are creation of Parliament were enacted to *inter alia* guide the procedure of exercise of this delegated power to legislate and also give the same parliament some hand in approving the legislations passed by the Executive. It is in this light that the Regulations have been tabled in the County Assembly for scrutiny and approval in accordance with the relevant Acts and the Nyandarua County Assembly Standing Orders.

## COMMITTEE DELIBERATIONS

### *SCRUTINY OF NYANDARUA COUNTY (EMERGENCY FUND) REGULATIONS, 2015*

Mr. Speaker Sir,

Under the Public Finance Management Act 2012, the County Executive Committee member responsible for Finance is mandated pursuant to Section 110 to establish the Nyandarua County Emergency Fund and by so doing is expected to make regulations which shall guide the operationalization of the same.

The Regulations were forwarded to the Assembly for approval in June 2014 but have had undue delay motivated by communication hiccups. Notwithstanding the aforementioned, the committee of Budget and Appropriation and Delegated County Legislations sat and scrutinized the Regulations pursuant to the requirements of the Nyandarua County Assembly Standing Orders and the Statutory Instruments Act 2013. The committee recommended some amendments to the executive which were approved and adopted by this House and the CEC Member for Finance reintroduced the same Regulations having followed the recommendations of the Joint Committee.

The Regulations having been referred to the Committee on Delegated County Legislations, the Committee sat at Ranges View Hotel to scrutinize and compile this report.

*Conformity to the Statutory Instruments Act 2013 and Standing  
Order 185*

**Mr. Speaker Sir,**

The Statutory Instruments Act 2013 provides for several procedural and substantive issues that are requirements of any Statutory Instruments.

As a matter of procedure, the Instruments must first be published and serialized pursuant to Section 22 of the Statutory Instruments Act. It should then be forwarded to the Assembly within seven (7) days after publication pursuant to Section 11(1) of the Act. Under Section 11(2), the Instrument is supposed to be forwarded with an explanatory memoranda attached to it as set out in the Schedule. The Explanatory Memoranda should contain Regulatory Impact Statements. The Regulatory Making Authority is also supposed to subject the Instrument to consultation with the persons likely to be affected by the Instrument. The Committee found out that the regulations were published but an Explanatory Memoranda was not provided for. However, the enabling Act which is the Public Finance Management Act provides for the reasons of the establishment of this Fund. In addition, Section 9 provide for exceptional circumstances where regulatory impact statements would be unnecessary. Thus, the committee found the requirement unnecessary for these particular regulations.

**Mr. Speaker Sir,**

Under Section 13, the Committee is required, while carrying out its scrutiny of any statutory instrument be guided by the principles of good governance, rule of law and shall in particular consider whether the statutory instrument:



- a. is in accord with the provisions of the Constitution, the Act pursuant to which it is made or other 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 Parliament;
- k. makes rights , liberties or obligations unduly dependent upon non-reviewable decisions;
- l. makes rights , liberties or obligations unduly dependent insufficiently defined administrative powers;
- 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 parliamentary scrutiny; and
- q. accords to any other reason that the Committee considers fit to examine.

**Mr. Speaker Sir,**

On this, the committee found out that the Regulations:

- a. are in accord with the provisions of the Constitution, the Public Finance Management Act or other written laws;
- b. Do not infringe on fundamental rights and freedoms of the public;
- c. Do not contain a matter which in the opinion of the Committee should more properly be dealt with in an Act of Parliament;
- d. Do not contain imposition of taxation;
- e. Do not directly or indirectly bar the jurisdiction of the Courts;
- f. Do not give retrospective effect to any of the provisions in respect of which the Constitution or the Act does not expressly give any such power;
- g. Do involve expenditure from the County Revenue Fund appropriated through the PFM Act 2012 and approved through these Regulations;
- h. Are not defective in their drafting and do not for any reason in their form or purport call for any elucidation;
- i. Do not make some unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which they are made;

- j. Did not appear to have had unjustifiable delay in the publication or laying before the Assembly;
- k. Do not make rights, liberties or obligations unduly dependent upon non-reviewable decisions;
- l. Do not make rights, liberties or obligations unduly dependent insufficiently defined administrative powers;
- m. Do not inappropriately delegates legislative powers;
- n. Do not impose a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
- o. Do not appear for any reason to infringe on the rule of law;
- p. Do not inadequately subject the exercise of legislative power to the County Assembly scrutiny; and
- q. Do not for any reason in its content or form provide a ground for disapproval.

**Finally Mr. Speaker Sir,** the Sections 15, 16, 17, 18 and 19 of the Statutory Instruments Act provides for the procedures of laying before this House any Instrument that is to be partly or wholly annulled. It is a practice that if an Instrument is approved at the committee level, it is not necessary to subject it to the House for approval but only for annulment.

However, Mr. Speaker Sir, the committee found these regulation exceptional in the sense that they are made to establish a fund which should be approved by the County Assembly pursuant to Section 110 (1) of the Public Finance Management Act 2012. Thus, the Committee upon deliberation approved the regulation and hereby presents these regulations to this Honourable House for approval of the establishment of the Fund.

## COMMITTEE RECOMMENDATIONS

Mr. Speaker Sir,

Upon deliberations, the committee recommended the following;

1. That the House does approve the establishment of an emergency fund in accordance with the Section 110 (1) of the Public Finance Management Act 2012 to be known as Public Finance Management (Nyandarua County Emergency Fund) Regulations, 2015.
2. That arrangements should be made by the relevant authorities including the County Assembly's Budget and Appropriation Committee to allocate funds equivalent to the remaining part of the financial year for the purposes of the emergency fund regulations requirement.
3. That the Executive should now publish the regulations with the Kenya Gazette pursuant Section 23 of the County Government Act 2012 which requires County Legislation to be published as a supplement in the County Gazette and the Kenya Gazette.

## CONCLUSION

Mr. Speaker Sir,

This Assembly has a responsibility in legislating, representation and oversight. On these functions, this Assembly should while working within the ambits of the law, the principles of separation of powers and checks and balances, diligently deliver optimally. Some of the tasks involve scrutinizing, approvals or disapprovals of executive powers. Some of these executive powers are delegated powers. The PFM Act does provide for the creation of an Emergency Fund by the CEC Member Finance which should be approved

by the County Assembly. The CEC Member for Finance did create the fund and brought the regulations into the Assembly for approval.

Thus, I urge the members of this Honourable House to adopt this Report with its recommendations to operationalize the emergency fund regulations in accordance with the PFM Act 2012.

Finally **Mr. Speaker**, it is my pleasant duty and privilege, to on behalf of the Committee on Delegated County Legislation move a motion for adoption of report.

Thank you **Mr. Speaker Sir**, God bless this Assembly, God Bless Nyandarua County.