

**REPUBLIC OF KENYA**  
**NYANDARUA COUNTY ASSEMBLY**  
**2<sup>ND</sup> ASSEMBLY- 2<sup>ND</sup> SESSION**  
**OFFICIAL REPORT**

Tuesday 13<sup>th</sup> March, 2018

*The Assembly met at the Assembly Chamber at 2.30 pm.*

*[The Speaker (Hon. Ndegwa Wahome) in the Chair]*

Prayer

**QUORUM CALL AT THE COMMENCEMENT OF THE SITTING**

*(The clerk-at-the-table confirms that there is no quorum)*

**Speaker:** Hon. Members, quorum having not been recognized, I will invoke the provisions of Standing Order No. 35 and direct that the bell be rung for an initial ten minutes or until such a time within the ten minutes that quorum will have achieved.

*(Quorum bell is rung for an initial ten minutes and quorum is not achieved  
as confirmed by the clerk-at-the-table)*

Hon. Members, quorum having not been achieved at the close of the ten minutes, I will use my discretion pursuant to Standing Order No. 35(2) and direct that the bell be rung for a further five minutes.

*(The bell rings for one minute and quorum is achieved  
as confirmed by the clerk-at-the-table)*

If there is quorum or rather quorum has been recognized, we can proceed with business for this sitting.

First order.

**COMMUNICATION FROM THE CHAIR**

PETITION ON THE INTERVENTION OF THE ASSEMBLY ON THE ISSUE OF  
MIDLANDS COMPANY LTD

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Hon. Members, I have a communication as promised on 28<sup>th</sup> February 2018. The same is that, by a petition dated 23/2/2018, some residents of this County namely; Ayub Kamau, Paul Mwangi and Patience Nyambura sought the intervention of this Assembly on the emotional and energy sapping issue of Midlands Company Ltd.

This intervention was sought under the Constitution of Kenya and the County Government Act No.17 of 2012. Under part XXIII article 196 of our Standing Orders, it is dictated as follows:

For purposes of this part, a Petition means a written prayer to the Assembly by a member of the public requesting the Assembly to consider any matter within its authority, including enacting, amending or repealing any legislation.

Article 197 of our Standing Orders provide that:

The clerk shall, if satisfied that the petition meets the requirements under paragraph (3), forward the petition to the Speaker for tabling in the Assembly.

Further Article 202 (2) (b) provides that:

When the order “petitions” is read, the Speaker shall - In case of a petition presented through the clerk report the petition to the Assembly.

Hon. Members when the present petition was brought to the House on the 28/2/2018 as aforesaid, the Speaker undertook to give directions on the same. This position was informed by the fact of a previous petition which was tabled in this House in September, 2015 and where the same had sought for the intervention of the House in the same matter of Midlands Company Ltd.

By resolutions of the 1<sup>st</sup> Assembly made on the 30/3/2016 and duly signed by the Speaker on the 12/4/2016, the House exhaustively and wholesomely dealt with the issue of the company for the larger interest of the people of Nyandarua.

The aforesaid resolutions were by a letter by the Speaker dated 12/4/2016 forwarded to H.E. the 1<sup>st</sup> Governor of Nyandarua Hon. Daniel Waitthaka Mwangi for action by the Executive Committee pursuant to Article 183 of the Constitution. The Resolutions were as follows;

1. That the Government through the Ministry of Agriculture should withdraw its claim to the parcel of land allocated to Midlands Limited on which the processing factory stands in recognition of the immense value addition that is carried out therein.
2. That in the event of the Ministry of Agriculture and the EACC failing to withdraw the Complaint in Civil case No. 195 of 2013 at Nakuru, the Nyandarua County Government should enjoin itself in the said suit as an interested party to be able to articulate the position of the County Government with regard to the importance of Midlands Company to the economic development of the County.
3. That the Nyandarua County Government being the owner of the land parcel no Nyandarua/Njabini/5851 that was a resultant of the subdivision of the parcel number LR Nyandarua/Njabini/530 further being the beneficiary of the land parcel no LR Nyandarua/ Njabini/5852 in the event of success of the EACC in the recovery proceedings in Civil case No. 195 of 2013 should declare and submit it has no objection to the possession of the said land to Midlands Limited.
4. That in the event any steps were omitted in the allocation of parcel number LR Nyandarua/ Njabini/5852 to midlands limited, the same can be validated through the

- appropriate mechanisms in law. Any commission or omission or an act that constituted a criminal act under the laws of Kenya in the process of allocation of the land should be pursued in isolation to any further action that would hinder the progress of optimal operation of the company.
5. That the County Government should constitute a task force to workout modalities in which the County Government and the wider public (in the county) shall participate in the agro processing projects for optimal returns to the county.
  6. The County Government should approach the National Government for grants and/or soft loans to enable the County venture into crop value chain addition by establishing an industry and seek to partner or merge with other players in the industry including Midlands Company to revive the agriculture sector and push it to achieve its optimal potential.
  7. That the company should ensure strict adherence to the law and rules of corporate governance in its operations. The company's audited accounts and annual returns should be made before any drive on investment in the company is made. Due diligence should be exercised on all aspects of corporate governance and strategies to revive the company as well as the ability of the company to pay its large debts and make profits in future.
  8. That the County should be guided by the legal framework provided under the Public Finance Management Act, 2012, Public Finance Management (County Government) Regulations, Private Public Partnerships Act and Regulations and all other relevant laws in coming up with an investment policy that will guide any proposal for investment in all sectors of the County economy.
  9. That in implementation of the recommendations herein, the same should be subjected to public participation for their input.

The Speaker further forwarded to His Excellency the 1<sup>st</sup> Governor the Report of the Joint Committee of Agriculture, Livestock Development and Fisheries and that of Industrialization, Trade, Cooperatives, Tourism and Wildlife dated 10<sup>th</sup> - 15<sup>th</sup> March, 2016.

Hon. Members, the present petition sought for the following reliefs; That the County Assembly;

1. does investigate the matter and assess whether the company benefits the residents of Nyandarua through employment and purchase of produce from the farmers of Nyandarua;
2. ensure that its resolutions on this matter are implemented; and
3. does use all possible means to ensure that the land cases are withdrawn or that they are expedited to conclusion to ensure that the full potential of the Company is achieved and that the company remains the property of the people of Nyandarua for their benefit as originally planned.

In my well-considered opinion, the past and the present petitions are in all fours. They dealt with the fate and future of Midlands Ltd with a view to seizing it to its true and legitimate owners who are the people of Nyandarua.

Hon. Members, the 1<sup>st</sup> Assembly having competently, exhaustively and wholesomely delivered itself on the matter of Midlands Company Ltd, our position in the current Assembly becomes *res parliamentum* (This is to mean that we are *functus officio* and without jurisdiction to deliberate on the same matter).

I however would prevail on H.E the Governor Hon. Francis T. Kimemia and his Executive Committee to critically look into my said letter dated 12/4/2016, the resolutions thereof and the report of the Joint committee and pursuant to Article 183 of the Constitution and in consultation with the Ethics and Anti-Corruption Commission (EACC) ensure that the cloud of deceit around the Midlands Company Ltd is removed and/or cleared and that the land is put into possession of its true owners who are the farmers of Nyandarua as resolved by this House.

It is my very considered opinion and I believe of this Assembly that proper handling of this matter of Midlands Company Ltd will help in realizing/actualizing both Vision 2030 and H.E. President Uhuru Kenyatta's Big Four (4) agenda particularly on Food Security, Manufacturing and Industrialization. By achieving this, the Nyandarua Farmer shall be the main beneficiary.

This is therefore a cry by the people of Nyandarua that all the stakeholders both at the County and National Government and all the involved agencies of Government to come together and ensure expedient, fair and judicious settlement of the matter of Midlands Company Ltd.

Finally and from the foregoing, I direct the office of the Clerk to forward the content of this communication to the Petitioners pursuant to Article 205 of our Standing Orders. Hon. Members, when we talk about being *res parliamentum*, this a matter that has already been decided by the First Assembly. We cannot touch on it because those resolutions are still on record and therefore, it is a call to H.E. the Governor and all the relevant agencies to confront this issue and come up with a decision or conclusion as per the resolution of this House, which is to give that company to Nyandarua farmers regardless of the route that will be followed. We are going to task the Committee on Implementation to follow up on these resolutions and on the report that is with H.E. the Governor to see that this happens.

Hon. Members, I was also to give another communication but I was not able to do it for reason that the Clerk who I had delegated to get me the requisite materials is away attending a funeral and I will deliver the same on Thursday afternoon.

Next order.

## PAPERS LAID

### 1. NYANDARUA COUNTY TRADE FUND REGULATIONS, 2016

Yes, Member for Rurii and Chairperson, Committee on Delegated County Legislation, Hon. John Mburu Githinji

**Hon. Mburu Githinji:** Thank you Mr Speaker. I beg to table the report of the Committee on Delegated County Legislation on the scrutiny of the Nyandarua County Trade Fund Regulations 2016. I table.

**Speaker:** Very well the report is duly tabled and becomes the property of the House.

Next order.

### 2. NYANDARUA COUNTY ALCOHOLIC DRINKS CONTROL BOARD FOR THE PERIOD BETWEEN JUNE 2015 AND JUNE 2017

Yes, the Chairperson of the Committee on Education, Gender Affairs, Culture and Social Services, Hon. Simon Sambigi Mukuriah.

**Hon. Sambigi Mukuriah:** Mr Speaker, I have the report of the Committee on Education, Gender Affairs, Culture and Social Services on consideration of the report of the Nyandarua

County Alcoholic Drinks Control Board for the period between June 2015 and June 2017. I however beg to have it tabled tomorrow by my Vice Chairperson because we have a function with the Governor and it is very crucial for us to be there because it entails the launch of the bursaries for the county.

**Speaker:** Is that a good reason? Unless, Chair, you are telling me that the bursaries impact directly on your department, the program and the time table of this Assembly must always run unless it has been moved otherwise by this House.

**Hon. Sambigi Mukuriah:** I stand guided. I wish to table the report.

*(Laughter)*

**Speaker:** You have the report with you so that you can table?

**Hon. Sambigi Mukuriah:** Yes, I do. The launch of the bursaries was one reason why I wished not to table the report right now. The other reason is that the committee has not approved the report.

**Speaker:** So, you need time to proof read the report and have it tabled?

**Hon. Sambigi Mukuriah:** Yes. I will table it on Tuesday next week.

**Speaker:** What date will that be? I am being very accommodative to you Chair because I have seen in the Hansard that there was another leave granted to the same committee. Today is 13<sup>th</sup> March 2018. So, are you talking about 20<sup>th</sup> March Tuesday at 2.30 p.m?

**Hon. Sambigi Mukuriah:** Yes.

**Speaker:** Very well. It means that the notice you were to give also goes.  
Next order.

## NOTICE OF MOTION

### 1. ADOPTION OF THE REPORT ON NYANDARUA COUNTY TRADE FUND REGULATIONS 2016

Yes, Member for Rurii and Chairperson, Committee on Delegated County Legislation, Hon. John Mburu Githinji.

**Hon. Mburu Githinji:** Thank you Mr Speaker. I beg to give notice of the following motion:

That this House does adopt the report of the Committee on Delegated County Legislation on the scrutiny of the Nyandarua County Trade Fund Regulations 2016 as a report of this House and the recommendations therein as the resolutions of this House.

Thank you Mr Speaker.

**Speaker:** Very well the notice is duly given.  
Next order.

## MOTIONS

### 1. PROCEDURAL MOTION

Yes, Member for Rurii and Chairperson, Committee on Delegated County Legislation,  
Hon. John Mburu Githinji

**Hon. Mburu Githinji:** Thank you Mr Speaker. I beg to move the following motion:

That with the leave of the House and pursuant to Standing Order 230 (Exemption of Business from the Standing Orders), the motion; “THAT this House does adopt the report of the Committee on Delegated County Legislation on the scrutiny of the Nyandarua County Trade Fund Regulations 2016 as a report of this House, and the recommendations therein as the resolutions of this House” be exempted from the requirements of Standing Order No. 48 (5) (b) which requires that a notice of motion to be given at least one (1) day before a motion appears on the order paper.

Mr Speaker, the regulations were brought on 14<sup>th</sup> February 2018, which was Valentine’s Day. According to the section 15 (2) of Statutory Instruments Act, 2013:

Where the Committee does not make the report referred to in subsection (1) within twenty eight days after the date of referral of the statutory instrument to the Committee under section 12, or such other period as the House may, by resolution approve, the statutory instrument shall be deemed to have fully met the relevant considerations referred to in section 13.

Therefore, if the House does not pass this today, the regulations will be deemed to have fully met the relevant considerations and passed. Thank you Mr Speaker. I now call upon Hon. Wangari Methu to second.

**Speaker:** Very well, County Member from Kipipiri, Hon. Wangari Methu.

**Hon. Wangari Methu:** Thank you Mr Speaker. I second.

*(Question proposed)*  
*(Question put and agreed to)*

**Speaker:** Next order.

## 2. ADOPTION OF THE REPORT ON NYANDARUA COUNTY TRADE FUND REGULATIONS 2016

Yes, Member for Rurii and Chairperson, Committee on Delegated County Legislation,  
Hon. John Mburu Githinji.

**Hon. Mburu Githinji:** Thank you Mr Speaker. I beg to move the following motion:

That this House does adopt the report of the Committee on Delegated County Legislation on the scrutiny of the Nyandarua County Trade Fund Regulations 2016 as a report of this House and the recommendations therein as the resolutions of this House.

The Nyandarua County Trade Fund Regulations, 2016 were tabled in this House on 14<sup>th</sup> of February 2018 by Hon. Catherine Njane and pursuant to Standing Order No. 191 stood referred to the Committee on Delegated County Legislation of the Nyandarua County Assembly.

The Committee membership and the able secretariat is as listed. The committee draws its mandate from Standing Order No. 191 and you can get that from page 5 of the report. Mr. Speaker Sir, delegated legislation was an important creation that allowed the Legislature to donate the power to make secondary laws to the Executive. The consideration of statutory instruments by the House is governed by the Statutory Instruments Act, 2013 (Act No 23 of 2013) and Standing Order No.191.

I will move on to the procedure for consideration of statutory instruments on page 9. Mr Speaker. Under section 12 of the Act, every statutory instrument tabled stands referred to the Committee on Delegated County Legislation. Section 13 of the Act then sets out principles which the Committee should be guided by in carrying out its scrutiny of the statutory instrument.

Mr Speaker, we will move to page 12 of the report which I think is the most important chapter of the report. It is on the committee's findings and observations. As noted previously, the Nyandarua County Trade Fund Regulations, 2016 were transmitted and duly tabled on the 14<sup>th</sup> day of February 2018.

The intention of the Regulations was to amend Regulation No. 5 on the capital allocation from 5% administrative fee to 3% administrative fee to comply with The Public Finance Management Act, 2012. You can find the annexures attached at the back of the report.

Mr. Speaker, Sir, guided by the above, the Committee's report to the House has therefore complied with this statutory requirement, as is shown in its recommendation. There are reasons of disapproving these regulations. First is the date which the regulations were tabled in the House. The said Regulations were published on the 4<sup>th</sup> of May 2016, during the term of the 1<sup>st</sup> Assembly. The then CECM responsible for the drafting of the Regulations was Hon. Judy N. Mwangi, who has since left office.

Under section 11(4) of the Statutory Instruments Act, 2013, if a copy of a statutory instrument that is required to be laid before the House is not so laid within seven (7) sitting days after its publication, the statutory instrument ceases to have effect immediately after the last day for it to be so laid. For the avoidance of doubt, the said provision reads:

'If a copy of a statutory instrument that is required to be laid before Parliament is not so laid in accordance with this section, the statutory instrument shall cease to have effect immediately after the last day for it to be so laid but without prejudice to any act done under the statutory instrument before it became void.'

The second reason for disapproval of the regulations is that they lacked explanatory memorandum. Section 2 of the Act defines an explanatory memorandum as follows: "explanatory memorandum" in relation to a statutory instrument, means a statement that—

- (a) is prepared by a regulation-making authority;
- (b) explains the purpose and operation of the statutory instrument;
- (c) if any documents are incorporated in the statutory instrument by reference, contains a description of the documents so incorporated and indicates how they may be obtained;
- (d) if consultation was undertaken before the statutory instrument was made, contains;
  - (i) a brief statement of the way the consultation was carried out;
  - (ii) an outline of the results of the consultation; and

(iii) a brief explanation of any changes made to the legislation as a result of the consultation;

(e) if no such consultation was undertaken, explains why no such consultation was undertaken;

(f) contains such other information as is prescribed.

Mr Speaker, the Committee took note of the fact that an explanatory memorandum as required by the law did not accompany the Regulations. The committee recommends that the Nyandarua Trade Fund Regulations, 2016 be annulled. Thank you Mr Speaker. I now call upon...

**Speaker:** Sorry Chair, I think there is a conclusion on page 15 of the report.

**Hon. Mburu Githinji:** Mr. Speaker Sir, having noted that the Committee is obliged to scrutinize the statutory instrument in accordance with the criteria set out in the Statutory Instruments Act and the Standing Orders, and upon completion of its scrutiny, there is no contemplation of any motion for approval or amendment of the statutory instrument, except for a motion of annulment where the Committee has recommended so.

Accordingly, the Committee having recommended to this House that the instrument be annulled, it is the Committee's hope that the relevant CECM in charge of trade will move with speed and comply with the Statutory Instruments Act, 2013 so that we can operationalize the Trade Fund.

Thank you. I now call upon my Vice Chair to second the motion.

**Speaker:** Very well. Member for Kipipiri, Hon. Paul Ngeche Wambaire.

**Hon. Paul Ngeche:** Thank you Mr Speaker Sir. Having gone through the trade fund report, I do second. We found that the document has some anomalies. The CECM at the time is different from the one we have now. Besides, there is also the issue of changes in percentages. We need more time to look deeper into the document and ensure that it is aligned to the law.

Thank you, I second.

*(Question proposed)*

**Speaker:** Yes Member for Geta, Hon. John Githinji Mwaniki.

**Hon. Githinji Mwaniki:** Thank you Mr Speaker. I rise to support the report. Issues of law are very tricky. If you put a comma in a full stop's place, it changes the meaning. The committee has advised us accordingly and it would be prudent that the CECM in charge do the necessary amendment for the regulations to be approved by this House. This will ensure that our people benefit from these funds before the end of this financial year. I support the motion. Thank you.

**Speaker:** Member for Wanjohi, Hon. Isaac Kung'u.

**Hon. Isaac Kung'u:** Thank you Mr Speaker. I also rise to support this motion and also say that I agree with the conclusion that the committee has made. The current CECM should be quick to make sure that this Act is operational. We don't know whether this was a delaying tactic because the law states clearly when you should request for amendment of statutory instruments.

We have heard the current regime talking about a lot of funds. For example, we have heard of cooperative fund, trade fund, youth fund and I have even heard of 'wazee' fund. There is a law that supports trade fund and I think this should be the first to be enacted. So, the CECM should move with speed. I have gone through the Act and it seemed good to me and if it is fully

implemented, it will be of benefit to our people especially for the young people who want to venture into business. They will get money to engage in trade.

I support this report and I call the mover to respond.

**Speaker:** So, the mover and the Chair for the Committee, Hon. John Mburu Githinji.

**Hon. Mburu Githinji:** Thank you Mr Speaker Sir. Being the Chair of this Committee, I thank all the members for supporting this report and in future, let us be guided by the law for it is clear. If we follow the law, everything will be well in our county.

I beg to move. Thank you.

*(Question put and agreed to)*

**Speaker:** The resolutions of the House shall be communicated to the Executive for appropriate action. I am hoping that the Committee on Delegated County Legislation shall not wait for the Committee on Implementation to act. This is a matter of utmost urgency. There is money lying in that fund and therefore the committee should follow up together with the CECM in charge to ensure that this document is re-submitted.

What requires to be done to this document to be within the framework of the law is something that can be done by a lawyer within thirty minutes. It's nearly a memorandum and capturing changes in the percentage of administrative cost from 5% to 3% and then submitting the document afresh. This was what the CECM ought to have done after realizing that the document had expired. She should have recalled the document for purposes of re-submitting the same and for complying with the resolutions of this House on the 3% and accompany the document with a memorandum for explanation purposes. Therefore, I can assure you that my office will communicate this immediately; latest by tomorrow.

Next order.

## ADJOURNMENT

Before adjourning, I think that the Chair of the Committee on Implementation and also the Member for Wanjohi, Hon. Isaac Kung'u is now here. We have given directions on the issue of Midlands Company Ltd. The resolutions of the First Assembly were delivered on 30<sup>th</sup> March, 2016 and communicated to the Executive on 12<sup>th</sup> April, 2016. The documentation that was forwarded to the Executive included a letter from the Speaker, the 9 resolutions of the House and the report of the Joint Committee of the Committee on Agriculture, Livestock Development and Fisheries and that of Industrialization, Trade, Cooperatives, Tourism and Wildlife. Therefore, Chair, follow up on the issue so that that 'demon' hanging over the whole thing can be brought to rest for the people of Nyandarua and the company to move on. We now adjourn to tomorrow, Wednesday, the 14<sup>th</sup> day of March 2018 at 9.00 a.m.

*(The House rose at 3.18 pm)*