

# REPUBLIC OF KENYA

## NYANDARUA COUNTY ASSEMBLY

### 2<sup>ND</sup> ASSEMBLY- 2<sup>ND</sup> SESSION

#### OFFICIAL REPORT

Tuesday 27<sup>th</sup> March, 2018

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

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

Prayer

#### QUORUM CALL AT THE COMMENCEMENT OF THE SITTING

*(The clerk-at-the-table confirms that there is quorum)*

**Speaker:** Very well. Quorum having been recognized, we shall now proceed with business for the afternoon sitting.

First order.

#### COMMUNICATION FROM THE CHAIR

##### ORDERS FROM NYAHURURU HIGH COURT ON ELECTION APPEAL NO.13 OF 2018

Hon. Members, on the 21<sup>st</sup> day of March 2018, during the morning sitting, I made a communication declaring a vacancy in this Assembly of the seat previously held by the Hon. Geoffrey Ngaruiya Kariuki.

The said communication, as elaborately detailed, was informed by a court order from the Nyahururu Chief Magistrates court in election petition No.1 of 2017 dated and issued on the 27<sup>th</sup> February, 2018 and 2<sup>nd</sup> March, 2018 respectively.

The said orders had been fortified and operationalized by a certificate thereof under section 86 (1) of the elections Act, 2011 issued by the same court on the 6<sup>th</sup> day of March, 2018.

Hon. Members, the above order and certificate were shortly thereafter followed by yet another order in Nyahururu High Court election appeal No.13 of 2018. This order stayed the application of the aforesaid orders issued on 27<sup>th</sup> February, 2018 and any consequential action thereof. The beneficiaries of this particular orders were;

1. Hon. Margaret Wanjiru Ileri
2. Hon. Joseph Kariuki Waithera; and

3. Hon. Esther Wanjiku Muhoho.

On the 23<sup>rd</sup> day of March, 2018 the office of the clerk was served with an order in Nyahururu High Court Election Appeal No.13 of 2018. The said orders were to the following effect;

1. THAT the matter be and is certified urgent and service is dispensed with in the first instance.
2. THAT pending the hearing and determination of this application, this Honourable court be and is pleased to stay execution of the decree and judgment of 27<sup>th</sup> February, 2018 delivered in Nyahururu CMCC Election Petition No. 1 of 2017 and any and all such consequential orders arising therefrom nullifying the Election of 5<sup>th</sup> Respondent/Applicant herein and specifically any communications or moves taken by the Speaker of the Nyandarua County Assembly declaring the seat held by the 5<sup>th</sup> Respondent/Applicant vacant and that the 5<sup>th</sup> Respondent/Applicant do continue holding his said position uninterrupted.
3. THAT application be served upon all the Respondents.
4. THAT mention on 5<sup>th</sup> April, 2018 before the High Court in Nyahururu for further directions.

From the foregoing, it is explicit that the declaration of vacancy in this Assembly by myself in relation to Hon. Geoffrey Ngaruiya Kariuki remains immobilized until otherwise ruled by the court.

I wish to categorically state herein that court orders are never issued in vain. Whether in agreement or concurrence thereof or not; - obedient to the same is not a choice. The upshot of the foregoing is that the County Assembly of Nyandarua remains properly constituted as it has previously been prior to my aforesaid pronouncements of 23/3/2018.

*(Hon. Gathure Wambui rises on a point of order)*

Who is out of order, Member for Kaimbaga?

**Hon. Gathure Wambui:** No one is out of order Mr Speaker but I am seeking leave of the Assembly in accordance with Standing No. 2 under interpretation.

**Speaker:** In light of this ruling, you have issues you want interpreted?

**Hon. Gathure Wambui:** Yes Mr Speaker.

**Speaker:** By the Speaker?

**Hon. Gathure Wambui:** Mr Speaker, it is not exactly an interpretation but I was seeking leave that you grant this Hon. Members a chance to air their views in accordance with Standing Order No. 2 on the communication you have just made on order 2 of business for this sitting.

**Speaker:** Communication by the Speaker does not attract any debate and in any event, I don't think it will be healthy or serve any purpose. I have delivered my communication very clearly and what we are doing here is not a matter of interpretation. It an answer to what the court has

said. It has spoken previously and it has spoken again. We have communicated what the court has said and I think that rests the matter.

**Hon. Gathure Wambui:** But Mr Speaker, I am seeking leave.

**Speaker:** I have declined it.

*(Hon. Wambugu King'ori rises on a point of order)*

*(Hon. Gathure Wambui remains on his feet)*

Order Member for Kaimbaga! Both of you cannot be on your feet. Order Members! Order Members! Order! You know there is no way the Speaker will address both of you when you are on your feet, it will not happen. Order Members!

*(Hon. Gathure Wambui resumes his seat)*

What is it Member for North Kinangop, Hon. Edinald Wambugu King'ori?

**Hon. Wambugu King'ori:** Mr Speaker, Standing Order No. 2, on interpretation, clearly speaks about the leave of the House. Under your discretion and with two other members other than the one who rose on a point of order, the leave can be granted.

**Speaker:** Where is that Member for North Kinangop?

**Hon. Wambugu King'ori:** Standing Order No. 2 on Interpretation of the leave of the Assembly.

**Speaker:** What is the leave about Member for North Kinangop? Because, this is the leave of the Assembly where the Assembly can give leave and dispense with requirements, may be, of one day for a motion to come here. This is a communication that has been made by the chair. Where does the issue of leave come in?

**Hon. Wambugu King'ori:** Mr Speaker, the matter on the floor of the House is hefty and being the Chair and presider of this Hon. House, it is important that you allow members to air their views on what you have communicated now and what you communicated earlier on. It is important that you allow the members to discuss this matter as you normally and traditionally do.

**Speaker:** Hon. Members, I will respectfully not allow that and the only reason for that is that this matter is in court and is not debatable. It would amount to *sub judice*. I have not interpreted anything either on 23<sup>rd</sup> of March or what I have communicated today. What I have done here is what has come from the court. We cannot debate a matter that is in court. That is against the *sub judice* principle because this matter is actively before the court and actually, it will be back in court on 5<sup>th</sup> of April 2018 and therefore, this House is incapacitated to ventilate on the matter at all.

Next order.

**Hon. Gathure Wambui:** Mr Speaker, we are not seeking to deliberate the matter before the court. We want to deliberate the actions of this House. Declaring the seat of Hon. Kariuki Ngaruiya as vacant was an action this House because you are the one who made the declaration. These are not actions of the court. What we want to discuss is you, your authority and jurisdiction. Is it within your jurisdiction to declare a seat of Hon. Member vacant? You are aware that you have no such authority. The only body that does have an authority to declare a seat vacant is IEBC...

**Speaker:** Order Member for Kaimbaga! Order! I think members that that is not the route to follow. The law is very clear. It says who is to declare the seat vacant. The court cannot declare a seat vacant. The court will make an order but the Speaker is the person to declare the seat vacant and if the Speaker did anything wrong, the concerned member has gone to court and it will decide. That is why I am saying that this matter is *sub judice* and anyway, for me, I have said I am only obeying the court order because there is no other choice. I might or not agree with what the court has said but it is upon the court to decide on the 5<sup>th</sup> of April, 2018 and therefore, let that matter rest in peace. We have acted according to the directions of the court and this House will proceed with the matter as the court rules or gives directions on the 5<sup>th</sup> of April, 2018.

**Hon. Gathure Wambui:** Mr Speaker, the integrity of this House is in jeopardy. If that order was from the court, the law cannot be applied selectively. There was an appeal by the Hon. Members; Hon. Joseph Kariuki...

**Speaker:** Order Member! You are talking about the integrity of this House?

*(Hon. Gathure Wambui affirms while seated)*

You cannot be answering me from there member. Even today, as you seat there, there is no appeal in court by this particular member. So, when you talk about some funny issues here, you might be driven by other agenda but not justice. To date, as I seat here, there is no appeal by that particular member. Even this application, he filed it on an appeal by filed by other people. That matter is closed there and if anybody feels that he or she would like to be enjoined as an interested party, he or she should go ahead. For me, I have to be enjoined as an interested party on 5<sup>th</sup> April 2018 because I have been directed that I did something wrong and I have to go and absolve myself. Otherwise, that matter is squarely and very actively in court and will be back in court in about seven days and the court will deliver its ruling on that issue.

Next order.

*(Hon. Gathure Wambui rises)*

Order Member for Kaimbaga! Please resume your seat! Order!

Next order!

**Hon. Gathure Wambui:** Mr Speaker, we should be allowed to air our views. The Hon. Members have the right to...

**Speaker:** Order member for Kiambaga! This is a House of rules and procedures...

**Hon. Gathure Wambui:** But you are playing politics Mr Speaker. The leadership of this House has no right to play politics. Hon. Members have the right to play politics but the leadership ought to be nonpartisan and the law should not be applied selectively. What if the High Court threw out the appeal by the Hon. Member...

**Speaker:** Order Member for Kaimbaga! Next order.

## PAPER LAID

REPORT ON COUNTY INTEGRATED DEVELOPMENT PLAN, (CIDP 2) 2018-2022

Yes Member for Kanjuiri/Ridge, Hon. Suleiman Kihika Kimani.

**Hon. Suleiman Kimani:** Thank you Mr Speaker, I rise to table the report of the Committee on Finance and Economic Planning on the consideration of the County Integrated Development Plan, (CIDP 2) 2018-2022 and I lay on the table.

**Speaker:** Very well Hon. Members, that document is duly laid and is now a property of the House. The House Business Committee shall give directions on how the same shall be processed if at all it has not given such directions.

Next order.

### NOTICE MOTION

#### ADOPTION OF THE REPORT ON COUNTY INTEGRATED DEVELOPMENT PLAN, (CIDP 2) 2018-2022

Yes Member for Kanjuiri/Ridge, Hon. Suleiman Kihika Kimani.

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

THAT this House does adopt the report of the Committee on Finance and Economic Planning on the consideration of the County Integrated Development Plan, (CIDP 2) 2018-2022 as a report of this House and recommendations therein as the resolutions of the House. Thank you Mr Speaker.

**Speaker:** Very well, the notice of that particular motion on the report is duly given and the House Business Committee shall give directions on the same if at all it has not done so.

*(Hon. Kieru Wambui rises on a point of order)*

**Speaker:** What is it Member for Gatimu, Hon. John Kieru Wambui?

**Hon. Kieru Wambui:** Thank you Mr Speaker. I appreciate the magnitude and the nature of the report whose notice has been given. It regards the county integrated Development Plan, 2018-2022. It is my opinion that we have these copies because I believe that the motion might be coming soon. Remember these are development projects starting this year all the way to 2022. It is important that we interrogate the report before it is moved probably on Thursday although I don't know when the House Business Committee has allocated time for it to be moved but it is paramount that we have the copies.

**Speaker:** Hon. Members, that is a valid concern considering the importance of this document. Unfortunately, the secretariat was not able to make copies because the document has just been signed shortly before the sitting. Copies are being run and tomorrow since we have plenary in the morning, members will get copies then. We hope that the members will be able to go through the document before the motion is moved in the afternoon. Although the report is not as lengthy, I don't know whether the chairman will be able to move it, have it seconded and members debate on it but I believe that it will still happen. I hope that the members are able to interrogate the report when it comes in at 9.00 am and then contribute at 2.30 pm. For the members with email facilities, we shall ensure that you get a softcopy of the document so that you can go through it overnight before you get the hardcopies tomorrow in the morning.

Next order.

### ADJOURNMENT

Hon. Members, the business for the sitting having been exhausted, this House will rise and adjourn to tomorrow, Wednesday, the 28<sup>th</sup> day of March 2018.

*(The House rose at 2.54 pm)*