



REPUBLIC OF KENYA
NYANDARUA COUNTY ASSEMBLY
1ST ASSEMBLY-4TH SESSION
OFFICIAL REPORT



(The Hansard)

Wednesday 10th February, 2016

The Assembly met at the Assembly Chambers at 2:30 P.M.

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 quorum

Speaker: Let us proceed to transacting the business for this afternoon.

First order.

COMMUNICATION FROM THE CHAIR

THE ANNUAL DEVELOPMENT PLAN FOR 2016/2017.

Speaker: Hon. Members, I have a communication to make on the Annual Development Plan for 2016/2017.

You recall that during the sitting of 9th of September, 2015, the Annual Development Plan 2016/2017 was tabled before the Assembly in line with the requirements of section 126 of the Public Finance Management Act, 2012.

You further recall that the Chair gave directions to the effect that every sectoral committee was to scrutinise sections relevant to its mandates and prepare a report for submission to the County Budget and Appropriations Committee in order for the latter to prepare a final report on the Annual Development Plan and table it in the House for debate and the necessary approvals.

The sectoral committees, it was expected, would prepare the said reports after extensive and all inclusive consultations with the relevant County Executive Committee

members from whom the said Plan emanated and who will put in their insights on areas of concerns to the members of the assembly. This way, the committees would clearly identify and agree on the critical projects for implementation by the county departments during the financial year 2016/2017.

Hon. Members, the Annual Development Plan is the basic and foundational instrument for implementing the county's five years County Integrated Development Plan. It sets and identifies the critical development projects to be undertaken by the County Government during the financial year to which it relates, thus setting the foundation upon which the County Fiscal Strategy Paper is built. The Plan must therefore be considered approved before the Assembly considers the Fiscal Strategy Paper.

Hon. Members, it is expected that not later than the 28th day of February, 2016, in line with the requirements of Section 116 of the Public Finance Management Act, this House will be seized of the County Fiscal Strategy Paper for consideration and approval. There must therefore be a resolution on the Annual Development Plan herein upon which the Assembly shall pass the County Fiscal Strategy Paper.

In light of the aforesaid Hon. Members, I believe that the sectoral committees shall have sufficient time to consider the Annual Development Plan and it is necessary to involve all the members of the Assembly so that there is general consensus on the projects to be scrutinised and prioritised by every department (of the Executive) during the next financial year, by this I mean even if the sectoral committees have worked on the areas of concerns in the Annual Development Plan.

Hon. Members, I am concerned that there is little time left for us to build a consensus and have the report by the County Budget and Appropriations Committee tabled in this House for consideration. We must therefore direct our focus, efforts and time towards this important matter.

Accordingly, having considered the circumstances contained herein, I am convinced that we have to suspend our sittings for the coming week, that is, the week beginning on Sunday, 14th of February, 2016 and ending on Sunday, the 21st February, 2016, to have a retreat/workshop whereupon all matters of concern within the Annual Development Plan should be conclusively considered.

I therefore request that the House does considers adjourning its sittings effective tomorrow, the 11th day of February, 2016, and resume on 23rd day of February, 2016 when the County Budget and Appropriations Committee is expected to file the final report.

Off the cuff Hon. Members, we cannot work on the ADP and build consensus on the same as sectoral committees and the committee of the whole House under the chairmanship of the Budget and Appropriations Committee and come up with the final report by the 23rd of February, 2016 as well as debate on the same by the 28th of February, 2016, if we do not move out and work on the ADP, which is very critical since it will inform all the projects that will be undertaken during the year 2016/2017.

Considering that this is an electioneering year we must have an ADP that will satisfy our manifestos that we will give to our people when we go to ask for their votes. In view of this the County Integrated Development Plan needs to be fully executed and conclusively discharged by both the Assembly and the Executive. It is critical for us to go and sit in order to look at the CIDP and consider what has been included in the ADP for 2016/2017 and agree on the route to take.

For this reason, I have directed the office of the Clerk to organise for a conducive venue so that Hon. Members can travel on Monday next week and come back on Friday the same week having built a consensus on the ADP so that the weekend after the said Friday, the Budget and Appropriations Committee can prepare the final report which should be tabled in the House on Tuesday, the 23rd of February, 2016. By 25th February, 2016 we should have finalised with the report so that when the Fiscal Strategy Paper is brought on 28th February, 2016 we shall have known how we will drive this county.

Next order

PROCEDURAL MOTION

Speaker: Yes member for Rurii and Chairperson the Committee on Delegated County Legislations, Hon. Wahome Kamoche.

Hon. Wahome Kamoche: Thank you Mr. Speaker, I beg to move the following procedural motion;

That the motion on the Report Of The Committee On Delegated County Legislations On 'The Public Finance Management (Nyandarua County Civil Servants Car Loan And Mortgage Scheme Fund) Regulations, 2015 And The Public Finance

Management (Nyandarua County Assembly Staff Car Loan And Mortgage Scheme Fund) Regulations, 2015' be exempted from the provisions of Standing Order Number 46 that Notice of motion to be given at least one day before the motion.

I call Hon. Njiraini to second.

Speaker: Member for Rurii does the motion capture both regulations?

Hon. Wahome Kamoche: Yes, Mr. Speaker.

Speaker: Okay; proceed member for Kaimbaga

Hon. Kimani Njiraini: I second.

Question proposed

Question put and agreed to.

Speaker: Next order.

MOTION

REPORT OF THE COMMITTEE ON DELEGATED COUNTY LEGISLATIONS ON THE PUBLIC FINANCE MANAGEMENT (NYANDARUA COUNTY CIVIL SERVANTS' CAR LOAN AND MORTGAGE SCHEME FUND) REGULATIONS, 2015 AND THE PUBLIC FINANCE MANAGEMENT (NYANDARUA COUNTY ASSEMBLY STAFF CAR LOAN AND MORTGAGE SCHEME FUND) REGULATIONS, 2015

Speaker: Yes member for Rurii and chairperson committee on Delegated County Legislations, Hon. Wahome Kamoche.

Hon. Wahome Kamoche: Thank you Mr. Speaker, I beg to move the motion that:

This House does adopt the Report of the Committee on Delegated County Legislations on the Public Finance Management (Nyandarua County Civil Servants' Car Loan and Mortgage Scheme Fund) Regulations, 2015 And the Public Finance Management (Nyandarua County Assembly Staff Car Loan and Mortgage Scheme Fund) Regulations, 2015.

Allow me to highlight the pertinent issues in this document. The committee went through the document and the legal notices number 5 and 6 which guided the committee in coming up with these regulations. The committee also proposed some amendments to the regulations, one on page 6:-

That the House does adopt the annul Regulation 16 (1) and (2) and Regulation 22 (1) of the Public Finance Management (Nyandarua County Assembly Staff Car Loan and Mortgage Scheme Fund) Regulations, 2015 and urge the County Executive Committee Member in charge of Finance to amend the same by deleting the Words “Nyandarua County Government” and instead inserting there at the words “Nyandarua County Assembly” wherever the words Nyandarua County Government appears under Regulations 16(1) and (2) and Regulation 22 (1).

Loud consultations

Speaker: Order members! My concern was only whether the member for Rurii can propose amendments on the floor of the House but I have learnt that they have included the amendments in the report and therefore member for Rurii, you need not propose the amendments now. Once the report is adopted in the House, the amendments will also have been adopted. Proceed.

Hon. Wahome Kamoche: Much obliged Mr. Speaker. The Public Finance Management (Nyandarua County Civil Servants’ Car Loan and Mortgage Scheme Fund) Regulations, 2015 and the Public Finance Management (Nyandarua County Assembly Staff Car Loan and Mortgage Scheme Fund) Regulations, 2015 were tabled in this House and pursuant to Article 187 of the Standing Orders, stood committed to the Committee on Delegated County Legislations. The Terms of reference are set out under Statutory Instruments Act 2013 and Article 187 of the Nyandarua County Assembly Standing Orders, 2015.

Committee Members

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

Secretariat

1. Joel K. Gicheha Committee Clerk

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| 2. Moses Kinyua | Clerk Assistant |
| 3. Stephen Mwangi | Sergeant-At-Arms |
| 4. Daniel Mucheru | Secretariat's Driver |

The Committee members are grateful for the great contributions made by the Honourable members of this August House through their concerns and support. On behalf of the Honourable Members of the Committee, I wish to extend our sincere appreciation for the invaluable support accorded to the Committee by the Office of the Speaker and the Office of the Clerk in ensuring that the Committee delivers on its core mandate optimally.

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 scrutiny of the Regulations and the compiling of this report. I also appreciate the work of our Secretariat comprising of Joel Gicheha (Committee Clerk) and Moses Kinyua (Clerk Assistant) who worked tirelessly to compile this report. I would also like to appreciate the contributions of Stephen Mwangi, the Sergeant-At-Arms attached to the Committee during the entire period, last but not least, the Jumuaia Guest House (Nakuru) 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.

It is a practice especially in common law jurisdictions that the legislative assemblies make law on behalf of the people. The Constitution of Kenya 2010 has codified this practice under Article 1 (2) and (3) which provides that the people shall exercise sovereign power under this Constitution through democratically elected representatives. The Constitution then 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, 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.

Under Article 94 of the Constitution, legislative authority is vested in Parliament at the National level while Article 185 provides for the exercise of Legislative authority at the County Government level to the County Assemblies. However, as a matter of practice, most jurisdictions have systems where the Executive arm of government and its agencies have an exclusive responsibility of making secondary legislations. This responsibility however is

subjected to parliamentary scrutiny. The Statutory Instruments Act No. 23 of 2013 was enacted to guide the procedure of legislating subsidiary legislation and their scrutiny. The Article 187 of the Nyandarua County Assembly Standing Orders also provide for the procedure of the scrutiny of the subsidiary legislations. It is my view that this House has the mandate to look into all legal matters affecting the county.

The Public Finance Management (Nyandarua County Civil Servants' Car Loan and Mortgage Scheme) Regulations, 2015 and the Public Finance Management (Nyandarua County Assembly Staff Car Loan and Mortgage Scheme) Regulations, 2015 has been made in line with Section 116 of the Public Finance Management Act 2012. Thus, in the scrutiny of the regulations, reference must be made to the Public Finance Management Act 2012 which is the Parent Act in this case.

The establishment of funds under Section 116 of the Public Finance Management Act requires that upon establishment by the County Executive Committee Member in charge of Finance, such funds need to be approved by the Executive Committee and the County Assembly. Section 116(2) of the Public Finance Management Act mandates the Executive Committee Member for Finance to designate a person responsible for administering that fund while Section 116 (9), provides that the establishment of the funds may be through a regulation. It is thus the mandate of the Assembly to approve the establishment of the fund and the committee thus has a responsibility of looking into the merit of the establishment of the fund and recommending to the Assembly the approval or disapproval thereof.

The committee also has a responsibility, under Section 13 of the Statutory Instruments Act 2013 and Article 187 of the Nyandarua County Assembly Standing Orders, to scrutinize the regulations. The Constitution of Kenya 2010 provides under Article 207 (4) (b), that an Act of Parliament may be enacted to provide for the establishment of county funds and the management of those funds. The Public Finance Management Act 2012 was enacted under the above Constitutional provisions and Section 116 provides that;

1. A County Executive Committee Member for finance may establish other public funds with the approval of the County Executive Committee and the County Assembly.
2. For every county public fund established, the County Executive Committee Member for finance shall designate a person responsible for administering that

fund.

3. The administrator of a county public fund shall ensure that the earnings of, or accruals to a county public fund are retained in the fund, unless the County Executive Committee Member for finance directs otherwise.
4. The administrator of a county public fund shall ensure that money held in the fund, including any earnings or accruals referred to in subsection (3) is spent only for the purposes for which the fund is established.
5. The County Executive Committee Member for finance may wind up a county public fund with the approval of the County Assembly.
6. On the winding up of a county public fund—
 - a. the administrator of the fund shall pay any amount remaining in the fund into the County Exchequer Account; and
 - b. the County Executive Committee Member for finance shall, with the approval of the County Assembly, pay any deficit in the fund from the County Exchequer Account.
7. The administrator of a county public fund shall—
 - a. prepare accounts for the fund for each financial year;
 - b. not later than three months after the end of each financial year, submit financial statements relating to those accounts to the Auditor-General; and
 - c. present the financial statements to the County Assembly.
8. The administrator of a county public fund shall ensure that the accounts for the fund and the annual financial statements relating to those accounts comply with the accounting standards prescribed and published by the Accounting Standards Board from time to time.
9. Regulations may provide for the establishment, management, operation or winding-up of county public funds under this section.

10. This section does not apply to the County Revenue Fund established under section 109 of this Act.

11. The funds and usage of money through the funds shall be published and publicised.

12. In this section—

"Administrator", in relation to a county public fund, means a person designated by the County Executive Committee member for finance under Subsection (2) to administer the fund;

"County public fund" means a public fund established under Subsection (1).

Pursuant to the provisions of the Public Finance Management Act 2012, the prerogative of creation of a fund is bestowed on the CEC Member for Finance but with the approval of the County Assembly. Thus, the committee learnt that apart from the scrutiny of the Regulations, the committee was supposed to table a report seeking approval of the Creation of the fund in accordance with Section 116 (1) of the PFM Act. The Constitution of Kenya 2010 provides under Article 230 that the Salaries and Remuneration Commission has the mandate of advising the National and County Governments on the remuneration and benefits of all the public officers.

In a circular by the Salaries and Remuneration Commission (SRC) dated 17th December 2014 and Referenced SRC/ADM/CIR/1/13 Vol. III (128), the Commission advised that all State Officers and Public Officers are supposed to benefit from a Car Loan and Mortgage Scheme. The scheme is aimed at motivating public officers and also ensures attraction and retention of requisite skills in the public service in accordance with the provisions of Article 230 (5) of the Constitution. The circular states that the beneficiaries of the scheme are the public servants employed on permanent and pensionable basis and state officers who are either in full time or part time employment.

During the scrutiny of the regulations, the Committee members agreed that there was nothing to show that consultation had taken place as required by section 5 of the Statutory Instruments Act. The said provision requires consultation with those affected before making a statutory instrument. The CEC member for Finance should have tabled the regulations with the Regulatory Impact Statements, Explanatory Memoranda and Evidence that consultation

took place in accordance with the Statutory Instruments Act just like there is a requirement for a policy paper/ sessional paper or legislative proposal in regards to any Bill introduced in the House. However, Pursuant to Section 9, the Statutory Instrument Act 2013 provide for exceptional circumstances where regulatory impact statements would be unnecessary. Thus, the Committee found the requirement unnecessary for these particular regulations.

The Committee members also noted that the Regulations were gazetted as provided for under the Statutory Instruments Act. The Public Finance Management (Nyandarua County Civil Servants' Car Loan and Mortgage Scheme Fund) Regulations, 2015 and the Public Finance Management (Nyandarua County Assembly Staff Car Loan and Mortgage Scheme Fund) Regulations, 2015 are gazetted under *Nyandarua County Gazette Supplement No. 24* and *Nyandarua County Gazette Supplement No. 23* respectively and are *Legal Notice No. 6* and *Legal Notice No. 5* respectively.

The Public Finance Management (Nyandarua County Civil Servants' Car Loan and Mortgage Scheme Fund) Regulations, 2015

Key observations made upon scrutiny were;

1. Grammatical and drafting errors;
 - a. The usage of the apostrophe.

The use of an apostrophe is to show possession. It was noted that at page one, three and four, there is an omission of an apostrophe in the word servants in the title of the regulations and the fund and it should read as "Nyandarua County Civil Servants' Car Loan and Mortgage Scheme Fund Regulations".

- b. Capitalization

It was noted that several words that should start with upper case letters did not appear as such in the Regulations. This ought to be rectified.

- c. Semi-Colon

After every sentence in the interpretation, there should be a semi-colon and the word "and" after the second last sentence.

2. Under the circular issued by the Salaries and Remuneration Commission, the Commission advised the County Government to issue car loan and mortgage to the public servants under the county government. The advisory provides *inter alia* that the loan shall transcend the term office of the members and terms of the loan shall remain in force in the life of the loan unless in a case where the member leaves public office on disciplinary grounds or default in which case it reverts to commercial terms.

Mr. Speaker, employees of government, whether on permanent or contractual terms, must strictly stick to the period of their employment. The regulatory making authority did not take into consideration the above advisory opinion of the Salaries and Remuneration Commission (SRC) which derives its mandate from Article 230 (4) (b) of the Constitution. The Commission is mandate to advise various public institutions and organs of government on the remuneration of public officers whose advisories are termed persuasive but may not be binding. However, for the purposes of uniformity of application throughout the Republic, such advisories ought to be taken into consideration.

In the Employment and Labour Relations Court ruling on the labour dispute between the *Teachers Service Commission Vs. The Kenya National Union of Teachers (Knut) and the Kenya Union of Post Primary Education Teachers (Kuppet)*, Justice Nduma Nderi stated *inter alia* that the TSC must take into consideration the advisories of the SRC but is not necessarily bound by them.

It was submitted by Salaries and Remuneration Commission that *Article 259(11)* of The Constitution provides that;

“...If a function or power conferred on a person under this constitution is exercisable by the person only on the *advice* or recommendation, with approval or consent of, or on consultation with, another person, the function may be performed or the power exercised *only on that advice*, recommendation, with that approval or consent or after that consultation, except to the extent that this constitution provides otherwise.

And therefore, this provision of the constitution renders the advice given by SRC to TSC binding.” However Mr. Speaker Sir, the Court was of the view that “...TSC is not bound by the advice by SRC...” and that “...SRC has an advisory role on both the determination of basic salary and benefits payable... including the conduct of a job, evaluation exercise...”

RECOMMENDATIONS

From the foregoing, the Committee members recommended as follows:

1. That pursuant to Section 116 (1) of the Public Finance Management Act, 2012 which allows the County Executive Committee Member for Finance to establish other public funds with the approval of the County Executive Committee and the County Assembly:
 - i. The House does approve the establishment of the Nyandarua County Civil Servants' Car Loan and Mortgage Scheme Fund 2015; and
 - ii. The House does approve the establishment of the Nyandarua County Assembly Staff Car Loan and Mortgage Scheme Fund 2015.
2. That the House does annul Regulation 13(6) of the Public Finance Managements (Nyandarua County Civil Servants' Car Loan and Mortgage Scheme Fund) Regulations, 2015 and urge that the Executive Committee Member for Finance does amend the same to insert the words "on disciplinary grounds" between the words "public service" and "or on default" to read as "in case a member of the scheme leaves public service on disciplinary grounds or on default".
3. That the House does annul Regulation 16 (1) and (2) and Regulation 22 (1) of the Public Finance Management (Nyandarua County Assembly Staff Car Loan and Mortgage Scheme Fund) Regulations, 2015 and urge the County Executive Committee Member in charge of Finance to amend the same by deleting the Words "Nyandarua County Government" and instead inserting thereat the words "Nyandarua County Assembly" wherever the words Nyandarua County Government appears under Regulations 16(1) and (2) and Regulation 22 (1).
4. That the regulatory making authority does provide for the duration under Regulations 21 on both the Public Finance Managements (Nyandarua County Civil Servants' Car Loan and Mortgage Scheme Fund) Regulations, 2015 and the Public Finance Management (Nyandarua County Assembly Staff Car Loan and Mortgage Scheme Fund) Regulations, 2015 upon which the discharge certificates should be forwarded to the Registrar of Motor Vehicles.

5. That the County Executive Committee Member in charge of Finance does issue certificates of rectification to correct all grammatical and drafting errors noted herein by the committee in both regulations.

CONCLUSION

This Assembly has a responsibility in legislating, representation and oversight. Under the principles of separation of powers and checks and balances, the County Assembly is mandated to carry out its function and not interfere with the work of other arms unless under the provision of the law. The Statutory Instruments Act gives the Assembly powers to check on the exercise of the executive powers executed through statutory instruments. Some of the tasks involve scrutiny, approvals or annulment of statutory instruments.

The Public Finance Management Act, 2012 does provide for the creation of Public Funds by the Executive Committee Member Finance which should be approved by the County Assembly. The Executive Committee Member for Finance did establish the County Civil Servants' Car Loan and Mortgage Scheme Fund, 2015 and the County Assembly Staff Car Loan and Mortgage Scheme Fund, 2015 through these regulations that were tabled in this Honourable House for approval.

Though the committee recommends the approval for the establishment of the funds, the members also recommend the annulment of various provisions of the Regulations and urge the Executive Committee for Finance to amend the provisions. Thus, I urge the members of this Honourable House to adopt this Report with its recommendations to operationalize Nyandarua County Civil Servants' Car Loan and Mortgage Scheme Fund) Regulations 2015 and the Nyandarua County Assembly Staff Car Loan and Mortgage Scheme Fund Regulations 2015 in accordance with the Public Finance Management Act 2012.

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

In view of the above Mr. Speaker, I urge this House to adopt this report for it to be forwarded to the Executive for the necessary action. Considering that we are approaching the election year any hiccups pertaining to implementation of this report should be discouraged.

Remember we had problems in the consideration of the car loan and mortgage regulations and this House had to give a timeline on the same.

In order to leave a mark in this Assembly, we should adopt this report. This is in consideration of the fact that the regulations at hand will benefit not only members of this

assembly but the staff thereof. I therefore urge prioritise these regulations in the budget making process. With that Mr Speaker, I call Hon. Kimani Njiraini to second.

Speaker: Yes member for Kaimbaga, Hon. Samuel Kimani Njiraini.

Hon. Kimani Njiraini: Thank you Mr. Speaker. This mortgage scheme is necessary for our people. Let our staff also enjoy being part of the government. Remember this was occasioned by a directive from the salaries and remuneration commission and ours was only to domesticate it. Thank you Mr. Speaker, I second

Question proposed

Question put and agreed to

Speaker: The report having been adopted, the necessary communication is going to be communicated to the executive for immediate action.

ADJOURNMENT

Speaker: Having exhausted the business on today's order paper, this House will adjourn to tomorrow the 12th day of February, 2016 at 2.30 pm. In the meantime, Hon. Members, there will be a *Kamukunji* immediately we adjourn the House today so members please be ready to reconvene. This House stands adjourned.

The house rose at 3.24 pm.

