

# REPUBLIC OF KENYA

## NYANDARUA COUNTY ASSEMBLY

### 1<sup>ST</sup> ASSEMBLY- 4<sup>TH</sup> SESSION

#### OFFICIAL REPORT

Wednesday 16<sup>th</sup> November, 2016

*The Assembly met at the Assembly Chamber (Manunga Catholic Hall) at 2:30 P.M.*

*The Speaker, Hon. Ndegwa Wahome, in the Chair.*

#### PRAYER

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

*(There is quorum as confirmed by the Clerk-at-the-table)*

**Speaker:** There being quorum we can proceed with the business of the session. First order

#### PAPERS

##### NYANDARUA COUNTY RATING BILL, 2015

Yes member for Geta and the chairperson of the committee on Lands Housing and Physical Planning.

**Hon. Githinji Mwaniki:** Thank you Mr Speaker, I beg to table the Report of the Committee on Lands Housing and Physical Planning on the Nyandarua County Rating Bill, 2015.

**Speaker:** Very well the report is duly tabled the House Business Committee will give directions on how the same will be processed.

#### MOTIONS

##### 1. REPORT ON THE DRAFT M.O.U BETWEEN THE NATIONAL HOUSING CORPORATION (NHC) AND THE COUNTY GOVERNMENT

Yes, member for Engineer and the chairperson of the committee on Finance and Economic Planning, Hon. Mwangi Gichuki.

*(Hon. Githinji Mwaniki rises on his behalf)*

Yes, member for Geta and the chairperson of the committee on Lands Housing and Physical Planning Hon. Githinji Mwaniki.

**Hon. Githinji Mwaniki:** Thank you Mr Speaker, on behalf of the chairperson I beg to move the following motion:

That this house does adopt the 1<sup>st</sup> report of the Joint Committee on Finance and Economic Planning and Lands, Housing and Physical Planning with regards to the Draft M.O.U between the National Housing Corporation (N.H.C) and the County Government and the recommendations therein as resolutions of this House.

Mr Speaker, I wish to go direct to the acknowledgement. The Joint Committee is greatly indebted to the office of the Hon. Speaker and that of the Clerk of Assembly for the logistical support received as it discharged its mandate and the Hon. Members and staff of the Committee for their input. The members of the committee are as listed.

Mr Speaker, I request that I be allowed to go through the report word for word so that the members can get the content of the report.

#### MEMORANDUM OF UNDERSTANDING BETWEEN THE NATIONAL HOUSING CORPORATION (NHC) AND THE COUNTY GOVERNMENT.

Mr. Speaker Sir, the office of the County Secretary and Head of Public Service, in a letter dated 2<sup>nd</sup> June 2016, forwarded to the Clerk of the County Assembly's office, a draft Memorandum of Understanding, hereinafter referred to as 'the MoU' between the National Housing Corporation (NHC) and the County Government. The essence of the letter is to have the County Assembly's approval of the draft MoU.

The NHC and the County Government intend to get into an MoU for the purpose of developing a housing project in Ol'kalou town.

#### The National Housing Corporation.

The National Housing Corporation is a statutory body established by an Act of Parliament, the Housing Act, Cap. 117. Section 3 of the Act establishes and constitutes the National Housing Corporation which shall be a body corporate by that name with perpetual succession and a common seal, and which shall perform the duties and have the powers conferred on it by the Act...

**Speaker:** Chairperson, just to interject that memorandum that you have annexed is between the County Government of Trans-Nzoia and the National Housing Corporation.

*(The Clerk-at-the-Table consults with the speaker)*

I think it has been explained and the contents are similar

**Hon. Githinji Mwaniki:** Yes, Mr Speaker, the contents are similar. We had to borrow a leaf from Trans-Nzoia. Trans-Nzioa's is signed but ours is a proposed draft.

Sub section 4 provides that the Corporation shall have power to enter into contracts, to hold and dispose of property both movable and immovable, and may sue and be sued in its corporate name.

Section 7 provides the **Corporation's powers** as follows:

“(1) The Corporation may, from the Housing Fund and from time to time, in the manner provided by this Act—

- (a) Lend or grant money to any local authority, for the purpose of enabling the authority to exercise any of the powers conferred upon it by this Act;
- (b) make loans to any company, society or individual person for the purpose of enabling such company, society or individual person to acquire land and construct thereon approved dwellings or to carry out approved schemes;
- (c) Make loans to organizations established for promoting the development of housing;
- (c) Construct dwellings, carry out approved schemes and lay out and provide services for approved schemes;
- (d) Acquire any land or building, or estate or interest therein, for any of the purposes of this Act;
- (e) Maintain any land or building, or estate or interest therein, for any of the purposes of this Act;
- (f) Appoint and employ on such terms and condition...

*(Hon. Wahome Kamoche rises on a point of order)*

**Speaker:** What is it member for Rurii?

**Hon. Wahome Kamoche:** Mr Speaker, I would like to enquire whether the report being read here is in our files.

**Speaker:** I can see that the other members have copies. Can it be confirmed whether the member's file has a copy.

*(Hon. Mwangi Gichuki rises on a point of order)*

**Speaker:** What is it member for Engineer, Hon. James Mwangi Gichuki?

**Hon. Mwangi Gichuki:** Mr Speaker may I inform you because it seems like you did not hear that, it is in order for the member sitting directly opposite me to insult the member for Rurii. He is said he is useless.

**Speaker:** The word that the member for Engineer mentioned will be captured in the HANSARD and if the member, I do not know why the member for Rurii did not capture that. If the person that was supposed to be addressed that word did not hear it... member for Rurii have you seen that document? Member for Geta proceed

**Hon. Githinji Mwaniki:** We proceed;

- (f) Appoint and employ on such terms and condition as the Corporation may determine such officers and servants as it may deem necessary;
- (g) Pay such allowance to members of the Corporation as the Minister may, in writing, approve”.

Section 7B. Provides for ‘other powers of the Corporation’ listed as follows: The Corporation may—

- (a) Undertake and encourage research and experiment in housing related matters, and undertake and encourage the collection and dissemination of information concerning housing and related matters;
- (b) Take part in housing exhibitions and other forms of publicity;

- (c) Undertake and encourage the provisions of training in furtherance of the purposes of this Act and provide training for members of its staff;
- (d) Perform such other duties connected with housing as the Minister may direct;
- (e) to operate a housing finance institution with powers to borrow funds from the Government, overseas agencies, pension and trust funds and any other institution or persons, as well as to collect deposits and savings from the public to be applied to the financing of residential housing development and related matters; and
- (f) To establish, promote or aid in establishing or promoting, constitute, form or organise companies syndicates or partnerships alone or in conjunction with any other person or institutions for the carrying on of any such functions as the Corporation is empowered to carry on under this Act.

Its primary mandate is to play a principal role in implementing the Government's Housing Policies and Programmes. The Corporation is mandated to promote low-cost houses, stimulate the building industry and encourage and assist in housing research. It also provides technical know-how/consultancy in housing development

The National Housing Corporation (NHC) has its origin in 1953 when the colonial Government of Kenya created a Central Housing Board through the Housing Ordinance. The Board was the principal medium through which the colonial Government could promote the development of houses for Africans.

In 1959, the Board's activities were extended beyond the promotion of African housing in order to cater for Europeans and Asians. In 1965, the Board decided to undertake direct construction of dwelling in areas where Local Authorities were unable or unwilling to do so. In the same year through an amendment of Housing Ordinance of 1953, National Housing Corporation (NHC) was established thereby replacing the Central Housing Board.

The Corporation was mandated to continue the functions of the Board, with wider powers to promote low-cost houses, stimulate the building industry and encourage and assist housing research. The NHC became the Government's main agency through which public funds for low cost housing would be channelled to Local Authorities, and for providing the technical assistance needed by those authorities in the design and implementation of their housing schemes.

The Corporation has previously assisted Local Authorities in building decent affordable houses through its various schemes such as Tenant Purchase, Outright Sale, Rural and Peri-Urban Housing Loans and Rental Housing.

Let us go to the role of the county government...

*(Hon. Kariuki Muchiri rises on a point of order)*

**Speaker:** What is it member for Murungaru and the leader of majority party?

**Hon. Kariuki Muchiri:** Mr Speaker is it in order for any member to be reading a newspaper while the session is ongoing? Hon. Ndirangu is reading a paper in the house Mr Speaker

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

**Speaker:** Order member for Gatimu. You are putting the chair on a very awkward position, the last time I saw the member for Mirangine he was folding his hands

*(Laughter)*

What is it member for Gatimu?

**Hon. Kieru Wambui:** Thank you Mr Speaker, about the member that you have said that he was folding his hands, the last time I was dressed the way he is dressed, you threw me out and you said that I was not properly dressed.

*(Hon. Ndirangu exits the chambers)*

*(Laughter)*

**Speaker:** I need not to make a ruling on that but members, I made a very elaborate communication on the mode of dressing while in this House. The member was not properly dressed but the speaker does not see unless that is brought to his attention. Member for Geta, proceed.

## The Role of the County Government in Provision of Affordable Housing in Kenya

### (i) The Constitutional Right to Housing

Mr. Speaker Sir, since the early times, man has made relentless efforts to obtain food and shelter. The struggle for these basic needs has increased progressively as the human race advances in numbers and cultural diversity.

Housing forms an indispensable part of ensuring human dignity. "Adequate housing" encompasses more than just the four walls of a room and a roof over one's head. It is essential for normal healthy living. It fulfils deep-seated psychological needs for privacy and personal space; physical needs for security and protection from inclement weather; and social needs for basic gathering points where important relationships are forged and nurtured. In many societies, a house also serves an important function as an economic centre where essential commercial activities are performed.

The first comprehensive Housing Policy for Kenya was developed in 1966/67 as Sessional Paper No. 5. At that time Kenya's population was just over 9 million people growing at a rate of 3 percent per annum for the whole country and 5 to 6 percent per annum in the urban areas. The annual housing requirements then were 7,600 and 38,000 new units in urban and rural areas respectively. The policy directed the Government "to provide the maximum number of people with adequate shelter and a healthy environment at the lowest possible cost".

Housing is recognized as a basic human right in the Kenyan Constitution. The adoption of a national land policy in 2009 was a positive step towards resolving the protracted question of the reliability, accuracy and legitimacy of the land administration system in the country. With the introduction of the Land Registration Act and the Land Act, the land laws have been simplified and harmonized, and have introduced transparency and accountability to land

transactions. The laws have also seen the introduction of equitable mortgages which have made lending easier and reduced the conveyance process. Of importance also is Article 2 (5) of the Constitution which states that the general rules of international law form part of the Kenyan Laws. Article 2(6) of the Constitution of Kenya, 2010, provides the basis for the direct application and invocation of treaties or conventions ratified by Kenya.

The Universal Declaration of Human Rights of 1948 recognizes the right to adequate housing as an important component of the right to adequate standard of living. This has been further reaffirmed by subsequent various international instruments including the International Covenant on Economic, Social and Cultural Rights of 1966, the Istanbul Declaration and Habitat Agenda of 1996 and the Declaration on Cities and Other Human Settlements in the New Millennium of 2001. Of significance to note is that Kenya is a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), having ratified it in 1972.

Article 43 of the Constitution recognizes housing as an economic and social right with Article 43 (1) (b) stipulating that “every person has the right to accessible and adequate housing and to reasonable standards of sanitation”.

Mr. Speaker Sir, Despite having entrenched the right to housing as a part of the larger right to human dignity, right to equality, social and economic rights, the basic provisions, which form the spirit of the right to housing, are yet to be implemented in Kenya.

- (ii) Cooperation between the National Government and County Government; the Role of the State in offering Affordable Housing.

**Article 189 of the Constitution** provides for cooperation between the national and county governments. Further, the County Government Act grants the county government the powers, functions and responsibilities to undertake development projects at the county level.

Mr. Speaker Sir, the State obligations *vis a vis* the right to adequate housing are frequently misunderstood. They do not mean that the State is required to build housing for the entire population, or that housing should be provided free of charge to the populace, or even that this right will manifest itself in the same manner in all places at all times. Rather, recognition of the right to housing by a State means:

- The State undertakes to endeavour by all appropriate means to ensure that everyone has access to affordable and acceptable housing.
- The State will undertake a series of measures which indicate policy and legislative recognition of each of the constituent aspects of the right to housing.
- The State will protect and improve houses and neighbourhoods rather than damage or destroy them.

Mr Speaker, in chapter two we have the observations and finding;

Analysis of the Memorandum of Understanding (MoU) and the Findings and Observations therein

### 1. The Overall Intent

Mr. Speaker Sir, the NHC and County Government intends to get into a MoU for the purposes of developing a housing project in Ol'kalou town. Clause 2 of the MoU requires that the County Assembly approves the MoU prior to the signing.



That is the reason we have tabled this report and we intend that it be discussed.

The idea of seeking approval from the County Assembly is sound. Indeed our responsibility for the legislative process and representation, we have a key function in providing oversight of the county executive on behalf of the public.

The county government shall provide suitable land measuring 6.2 HA (approx. 15.32 acres) land that is situated in Ol'kalou, for the development of the Housing Project.

In the development plan there is that part of the land marked as block J and it has no encumbrances. In the Part Development Plan approved on the 11<sup>th</sup> of November 2015 by the then Cabinet Secretary, Ministry of Land, Housing and Urban Development, Hon. Fred Matiang'i, for proposed public purposes in Ol'kalou, the said land parcel assigned for county housing estate is marked J.

## **2. The Parties**

The Parties to the agreement are described in page one of the draft Memorandum of Understanding (MoU) as the National Housing Corporation (NHC), a statutory Corporation and Nyandarua County, a county government constituted under the Constitution of Kenya.

## **3. Responsibilities**

Clause 1 on the role of the parties describes the roles of each party. It describes each parties' roles separately beginning with the items that are a parties' sole responsibility, followed by a description of shared roles. Some of the key roles assigned to parties are:-

- Project management to be undertaken by the Corporation
- Provision of land to be undertaken by the County
- Provision of the County Assembly's resolutions authorizing the County to partner with the Corporation to be undertaken by the County
- Provision of the Project Finance shall be undertaken by both parties.

## **4. Third Party Approvals**

Clause 4 provides for any Third party approvals and consents required be obtained as soon as possible.

## **5. Use of the Expanded Polystyrene (EPS) Technology**

The use of EPS panels enables the construction of residential and industrial houses using a construction system that replaces the traditional reinforced concrete and masonry in both horizontal and vertical parts that is, for roofing, walling and flooring. The major advantages of the EPS panel system are that construction is fast and economical while providing building product that is superior in most respects to the traditional house.

The EPS panels have the following characteristics that make it advantageous as a new construction material and technology.

- i. High load bearing capacity at low weight.
- ii. Sound insulation.

- iii. Fire and heat insulation.
- iv. Crash and earthquake resistance.
- v. Absolute water and vapour barrier.
- vi. Air-tightness for controlled environments.
- vii. Long life, low maintenance.
- viii. Lightweight, fast and economic construction.
- ix. Most cost effective insulation material available.

## **6. Non-Disclosure and Non-Circumvention**

In clause 7, the parties are expected to accept and agree to be governed by the provisions of the International Chamber of Commerce (ICC), on non-circumvention and non-disclosure.

Mr. Speaker Sir, the International Chamber of Commerce was founded in 1919 to serve world business by promoting trade and investment, open markets for goods and services, and the free flow of capital. The ICC's International Court of Arbitration was created in 1923.

The ICC has three main activities:

- Rule setting,
- Dispute resolution, and
- Policy advocacy.

Because its member companies and associations are themselves engaged in international business, ICC has unrivalled authority in making rules that govern the conduct of business across borders. Although these rules are voluntary, they are observed in countless thousands of transactions every day and have become part of international trade.

## **7. Law and Dispute Resolution**

Clause 8 provides that the MoU shall be construed according to the laws of Kenya. Further the clause provides that any differences shall first be settled through arbitration.

Mr. Speaker Sir, the Arbitration Act, 1995 was assented on 10<sup>th</sup> August, 1995 and came to force on 2<sup>nd</sup> January, 1996. It repealed and replaced Chapter 49, Laws of Kenya, which had governed arbitration matters since 1968.

The Act is applicable to both domestic and international arbitration save as limited by its provisions. Section 3(2) of the Act defines when arbitration is domestic while section 3(3) stipulates the requisite conditions for an arbitration to qualify as an international one.

## **8. Authorized Representatives of the Parties to witness the MoU**

The individuals listed to witness the MoU on behalf of the Parties are; the NHC's Managing Director on behalf of the Corporation and the County Secretary and Chief Officer in charge of Lands, Housing and Physical Planning on behalf of the County Government.

### **A comparative look at a similar MoU undertaken between the NHC and Trans Nzoia County.**

Mr. Speaker Sir, the NHC got into an agreement with the County Government of Trans Nzoia to build classrooms and houses. In the Memorandum of Understanding, the NHC took up the project management role and was to build 100 ECDEs classrooms.



The NHC is also to build affordable housing using industrial building systems consisting of expanded polystyrene (EPS) technology and light gauge steel as well as offer technical advice.

The Joint Committee did a comparative analysis of the MoU between the NHC and Trans Nzoia County Government and noted the following striking similarities:

- a. The MoU is drawn by the firm of K.K Munala Advocates, based at the NHC House, along the Aga Khan walk, Nairobi.
- b. The roles of the Parties i.e. the Corporation and the County Government are largely similar.
- c. The third party consents and approvals e.g. consents of which shall be required are similar
- d. The clauses on capacity of parties, Non-Disclosure and Non Circumvention, Law and Dispute resolutions are also similar.

The major **striking difference** is that the parties to execute the MoU in the case of the MoU between NHC and County Government of Trans Nzoia are:

- NHC's Managing Director
- Chairman – NHC Board of Directors
- The County Governor
- County Secretary

While the parties to execute the MoU in the case of the MoU between NHC and County Government of Nyandarua are:

- a. NHC's Managing Director
- b. Chairman/Director – NHC Board of Directors
- c. The County Secretary
- d. County Chief Officer Ministry of Lands and Housing

Another striking difference is that the MoU between the NHC and the County Government of Trans Nzoia has a duration of the MoU which is given as five years while the MoU between the NHC and the County Government of Nyandarua does not stipulate the duration of the MoU.

Probably the silence on time is because after the assembly approves the draft MoU then we shall have its final MoU and we request that before it is signed the actual MoU should be taken back to the committee for examination. The one we currently have is shallow but the moment the county assembly approves it then we shall get a detailed one. For instance this one is also silent on funds that the county government is supposed to have to parent with NHC.

### **Significant issues noted by the Committee**

#### **Lack of County Investment Policy & Framework**

Mr. Speaker Sir our County does not have in place a policy and legal framework to promote, attract and retain investors. The Department of Finance and Economic Planning is in the process of coming up with such framework which seeks *inter alia* to attract investment

within and out of the county through an integrated approach and give priority areas of investment in the county.

Mr. Speaker Sir, there is need to establish a legal and institutional framework for county investment and development in order to:

- a. enhance financial and economic prudence in county government investments;
- b. establish an efficient and effective instrument for managing county government investments;
- c. enhance competitiveness of county government investments;
- d. promote local investment and economic development;
- e. enhance county revenue base, and,
- f. Provide for mobilization of finances for investments.

Further, a County Investment Policy and Framework shall provide for the following:

- a. investment in socially beneficial projects;
- b. facilitate investments by county residents;
- c. coordinate and facilitate investments in the county; and,
- d. Enable the county government to undertake public private partnerships and joint ventures in areas that are beneficial to the county.

- **Duration of the MoU**

The period of validity of the Memorandum of Understanding has not been given by the said MoU.

- **Intention of the Parties**

Mr. Speaker Sir it is trite law that in deciding disputes, it is the court's duty to give effect to the intention of the parties. The parties' intention is discernible from the documents and conduct of the parties. However, onerous a document or contract may be, the court's duty is to give effect to it.

A look at the intention of the parties, the parties do not intend to make a binding agreement at all unless they execute a formal contract. The Memorandum of Understanding is non-binding and is subject to the content of the formal agreements that will be entered into by the parties.

Mr. Speaker Sir such agreements are often used to set out the parties preliminary intentions with respect to the proposed arrangement and to assist them to work out commercial details, so that the preparation and finalisation of any formal development agreement based on those general terms can proceed more smoothly. It also serves as an indication of some commitment by the parties to proceed with the project (even though it is legally not binding)

It is the Committee's decision that the MoU is a preliminary agreement to be utilized for the purpose of entering into an interim or initial agreement or understanding pending the parties entering into a formal contract.

Finally we have the recommendations of the committee.

The Joint Committee hereby recommends that the following be the resolutions of this Honourable House:

- 1) THAT this House approves the Memorandum of Understanding (MoU) between the National Housing Corporation (NHC) and the County Government,
- 2) THAT the County Secretary ensures that the draft formal agreements with respect to the partnership between the National Housing Corporation (NHC) and the County Government are forwarded to the County Assembly prior to their signing.
- 3) THAT the County Executive Committee Member in charge of Finance forwards to the County Assembly, the County Investment Policy within thirty days.

In conclusion, Mr. Speaker Sir, increasing access to high quality affordable housing has a profound impact, both for the individual and society at large. Yet, housing is a challenging and capital-intensive sector characterized by delays and regulatory difficulties, and as a result, it rarely gains the limelight for impact investors and social entrepreneurs.

The proposed working partnership with the NHC shall positively impact on the right to affordable housing and I urge the House to support this report so as to jump start the partnership.

I urge the member to approve this memorandum. The rest are the annexures and I hope that the member have gone through them. I call upon Hon. Mwangi Gichuki to come and second the report.

**Speaker:** Yes, member for Engineer and the chairperson of the joint committee, Hon. Mwangi Gichuki.

**Hon. Mwangi Gichuki:** Thank you Mr Speaker, I second the report. The report is elaborate and all that we focused on is to establish the specific roles of the county \*establish that the county government's main role was to provide land.

The other issues in the MoU that we have recommended that they be addressed we ask that they be addressed adequately. The other concern of the committee was who would be the first beneficiaries of this project and though it is not clear, the beneficiaries will be Nyandarua residents, mostly civil servants.

Ol'kalou is our headquarters and it is time that we start showing confidence in its growth. This project will add value to the county headquarters when the project will be complete. It will help us lift the status of the county headquarters.

The huge concern that we had is the time that the department of lands had taken to clear some of the issues. Even if we have a land marked J in our development plan, we know that development of land in Ol'kalou town has stalled for a while. A report on the same was done which was meant to clear those issues and paved a way for people to be able to invest comfortably in Ol'kalou.

Now that this is government to government project we may not have land issues coming up. However, the people and the investors demand that the lands department come out clear about the land ownership and allocation issues in Ol'kalou.

The other recommendation we have made to the executive and we hope that H. E the governor will gladly take is that in any further engagement with any organization should be open as this was so that everyone gets to know about it.

There was general feeling that in most of the memorandum of understanding the governor should be a signatory. We need to separate between an MoU and a contract. What I believe that it is illegal, is the governor signing a contract. An MoU of the country with any organization is signed by the president so that there will there will be political goodwill. We realized that the signatories to that MoU are civil servants. This means that it may not proceed if at any point there is no political goodwill. However, if we take it back to have the governor become a signatory we saw that it will pull us so many steps behind. The project has already taken so much time even the member for Karau is complaining.

I urge the members to agree with the committee and approve that this MoU be agreed upon between our government and the National Housing Corporation for the purpose of adding value to our county and especially its headquarters. I second.

*(Question proposed)*

**Speaker:** Yes, Member for Rurii, Hon. Peter Kamoche.

**Hon. Peter Kamoche:** Thank you Mr Speaker. I rise to support this motion but with a few questions that require legal interpretation.

The National Housing Corporation is a statutory body established by an Act of Parliament. Housing Act Cap 117, Section 3 establishes and constitutes The National Housing Corporation which “shall be the body corporate by the new and perpetual succession and common seal and which shall form the duties to have the powers conferred by the Act.”

Section 4 of the Act indicates clearly that the Corporation shall have powers to enter into contract and dispose property, both movable and immovable. It may sue and be sued.

In the Memorandum they have agreed that they can only go to a tribunal. I want this clarified. The Corporation can sue or be sued. But on the other end there is an arbitration. Section 6 indicates that whenever there is an arbitration, unless it is not practicable, the court cannot proceed with such matter until it is referred to a tribunal.

I was wondering whether in the MoU there should be a clause giving the county government the capacity to sue the Corporation should it breach the contract. Standing Orders 187 allows this House to question whether a Memorandum breaches the fundamental rights of the public. A Memorandum can be passed where a party to it can impose taxation or bar court decision.

So in this Memorandum there should be a clause through which we should have a hand to protect our people. The county government is the one giving out the land. The National Housing Corporation, on the other hand, is an investor...

*(Hon. Mwangi Gichuki rises on a point of order)*

**Speaker:** What is it Member for Engineer, Hon. Mwangi Gichuki?

**Hon. Mwangi Gichuki:** Mr Speaker I just want clarity. Does the member feel that, looking at the MoU, the people of Nyandarua have not been effectively protected? That my Committee has exposed them such that the Committee on Delegated County Legislation should re-look into what my Committee has done?

**Speaker:** I think the Member for Rurii is emphasizing on more protection; I do not think he is doubting the protection the people of Nyandarua have been accorded in the Memorandum. But there is an important aspect that the Member for Rurii might be overlooking: The mover of the motion clearly indicated that apart from the MoU there will be the contract itself which shall contain the finer details, including the timelines, money to be put in and the rights of the parties in the contract. These cannot be captured in the MoU. We have said that the Assembly will look at the Memorandum before it is executed.

Proceed Member for Rurii.

**Hon. Peter Kamoche:** Thank you Mr Speaker. In view of this and considering that we have seen many Memoranda, whenever a line is left in a Memorandum people or organizations capitalize on that mistake. When we entered into this Memorandum...

**Speaker:** Member for Rurii, there is no mistake in this Memorandum. The Memorandum is very clear; it gives the guidelines and outlines the responsibilities of the parties engaged. These will be crystalized and affirmed in a contract which is not yet done. It is the contract documents that will be submitted to the Assembly as per their recommendations that will allow us to critically look at the finer details.

Proceed Member for Rurii.

**Hon. Peter Kamoche:** Okay. Having gone through the Memorandum and considering what has been cited, I support the motion. But I so reservedly believe that different people have different understanding. According to my understanding of the Standing Orders that relate to the matter at hand, I will say that we adopt the report with an addition say, when this happens to this, this is where we are. That is what I was saying Mr Speaker.

Thank you.

**Speaker:** When he was concluding, I heard the Member for Rurii say something to the effect that that he will support the report today but something will happen tomorrow. What is it?

**Hon. Peter Kamoche:** Mr Speaker, I agreed to sell some of my property to an organization. We entered into a memorandum but we left out a line in it. I was later told to argue out my position as a party to the memorandum but I was challenge due to the said loophole. That is why I was saying that we should have a leeway. You know things happen I have no problem with the Memorandum. So should these people go wrong then we should have a way out of it. But I support the report.

**Speaker:** I emphasize that the joint committee was very very careful with the report. I am not supporting the report; I'm actually reading from it. The Committee says in the report that the Memorandum of Understanding is not binding; what will be binding is the contract. So the Memorandum is itself a framework guiding the parties that will enter into the contract. The Committee has said in the report that it is the contract that will be binding. This is a very cautious report that was done by the joint Committee.

Yes Member for Engineer and the Leader of Majority, Hon. Kariuki Muchiri

**Hon. Kariuki Muchiri:** Thank you Mr Speaker; but I am not the member for Engineer.

*Laughter*

**Speaker:** Oh sorry; Member for Murungaru

**Hon. Kariuki Muchiri:** Thank you Mr Speaker. I rise to support this motion. I belong to the Committee on Lands, Housing and Physical Planning Committee that formed the joint committee. So I find it prudent to rise and support motion on our report urging this Hon. House to adopt the recommendations in the report as resolutions of the House.

Mr Speaker, we had seen the issue that has been raised by Hon. Peter Kamoche. That is why we were very careful to note that the Memorandum was just a framework; but in the contract every detail will be captured.

Mr Speaker this is a very noble idea if it is executed, since Ol'kalou is our county headquarters and there are no government houses. By not having government houses, the county is really losing a lot of revenue, because the senior people and even the others don't reside here, most of them reside in Nyahururu, Gilgil, Nakuru and others as far as Nairobi. If we have these houses it will go a long way in improving the revenue base for this county because the officers will bring their families to town and the economy of Ol'kalou will be improved.

We hope once the assembly passes this report which actually has taken a lot of time, because it came as I left the position of chairperson for lands, I hope the executive will fast track so that the contract is done and everything put in place. The other issue I want to highlight is the issue of investment policy, it is unfortunate that this is our fourth year and up to now we have never had any investment conference. The reason why we decided to put this recommendation here and give it thirty days, is so that the executive can come up with an investment policy, and once they come up with an investment policy it will stipulate the mode in which investors will be invited.

Once we have it in place it means we shall be having regular or annual investment conferences, again with an investment policy, I think even the issue on lands will be seriously looked into and fast tracked, because we cannot do any investment without land. I am sure when this policy is put in place all the contentious issues, all the disputes in terms of land will have been solved and our county especially the headquarters will grow because I believe one day Ol'kalou will be a city in this county. It is only that we have just started, devolution has kicked off but I believe in the next a hundred years possibly we might not reach there but I pray to God that he keeps us to see Ol'kalou become a city. I beg to support this report and by the look of the mood in this house, I wish to call the mover to respond.

**Speaker:** The mover, who is the chairman of the committee on Lands Physical and Housing Planning and the member for Geta, Hon. John Githinji Mwaniki.

**Hon. Githinji Mwaniki:** Thank you Mr. Speaker. I wish to thank all the members for their contributions, actually let's try to attract investors by putting the right policies in this county, there is no way investors will come and invest in this county without proper guidelines or proper laws, with those few remarks I beg to move.

*(Question put and agreed to)*



**Speaker:** The motion is taken and the clerk should ensure that these resolutions are extracted with immediate effect. I think it is a matter that should not wait and they should be able to forward the resolutions to the executive, so that we have the draft agreement to be able to look at it and ensure that it is signed so that the least expected of us is to ensure the ground breaking for this particular project is done within our first assembly, so that we can lay foundation for ourselves and those who come after us.

Next order.

3. EXPOSITION OF PUBLIC POLICY CONTAINED IN THE ADDRESS OF THE  
SENATOR

On that one, it is only that the order paper could not be changed because it reads the business that was there in the morning and members are aware the house business committee could not sit and remove that particular business in the order paper, I will therefore make amendments in the morning for reasons that the senators did not have a written speech and Hansard department will transcribe from the recording and come up with the document communicating the words of the senator which we shall table in the house on Tuesday afternoon.

Next order.

ADJOURNMENT

Very well, Hon. Members the business for the session having been exhausted, this house will now adjourn to tomorrow Thursday 17<sup>th</sup> November 2016 at 2:30 p.m.

*(House rose at 3.46 p.m.)*

