



REPUBLIC OF KENYA
NYANDARUA COUNTY ASSEMBLY
1ST ASSEMBLY-3RD SESSION
OFFICIAL REPORT



(The Hansard)

Saturday 20th November, 2015

The Assembly met at the Assembly Chambers at 10:35 A.M

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

Speaker: Hon Members, I now think the order paper is properly before the house and in total compliance with standing order number 30, 3, (2). What is it the Deputy Speaker and member for North Kinangop, Hon Edinald Wambugu King'ori.

Hon. Wambugu King'ori: Thank you Mr. Speaker, I rise to seek for clarification because my understanding is that this is a second sitting today because we had adjourned the House and though I stand to be guided, I think the proper procedure was not followed because the speaker didn't even say the prayers and that is why I seek your guidance Mr Speaker.

Speaker: Member for North Kinangop, we adjourned on very clear grounds, so that the order paper could be properly presented in the House. The prayer had been said, and as you are aware, unless there is determination after the expiry of the time provided by the standing orders, there cannot be a second sitting. Unless there was a motion moved that the debate would exceed the time allocated and therefore there would be another sitting after the initial time of sitting. I am not sure whether the word adjournment was the right word to use but what I am sure of is that we are properly convened in this House.

Next Order.

The next order is read as administration of oath.

Hon Kinyanjui Gachari Rises.

Administration of oath and you are on a point of order?

Members observe that they don't have order papers.

Yes! You mean you don't have order papers?

Members loudly affirm.

Consultations

The Sergeant-at-arms hurriedly distribute the order papers to members.

Very well. The concern raised by the majority whip was then well meant, that members didn't have order papers.

Next order.

Hon. Kinyanjui Gachari rises on a point of order.

What is it Member for Shamata?

Hon. Kinyanjui Gachari: Mr. Speaker, Sir, I rise on Standing order number 18, section 5. This concerns the elections that were done for the position of the Majority Leader.

The election was done on second July, 2014, at 2: 45 P.M. This is an issue that has been waited for, for quite a long time. I communicated to the sitting Speaker, as the Chief Whip of this House, though an order from the High Court was brought later, but I had actually communicated about the elections. Let me read in bits Mr Speaker, if you would allow me, the minutes of the meeting.

TNA minute four, two, seven; fourteen (Min4/2/7/14). Elections to remove the leader of the Majority Party.

I know you have this document which I gave to your office.

The majority whip called upon the members to vote for or against the Leader of Majority party, as provided for by the standing order, 18 (3). The voting was by secret ballot. A total of 36 members voted as follows;

11- Voted that Hon. Mwangi Gichuki be reinstated, 25- voted that he be removed from the position of the majority leader. The results were announced by the Majority Chief Whip, who said that Hon. James Mwangi Gichuki was no longer the Leader for the Majority Party, Nyandarua County Assembly.

Mr Speaker, for over one year now, the members have been struggling because the case has been in the High Court but according to the records, mine was just to communicate to the Speaker. I did my duty.

During the Elections, the name of Hon. Mwangi Gichuki was proposed but it was not seconded. The person who was elected is Hon Kariuki Muchiri, with a total of twenty five votes. I therefore donate one minute to...

Speaker: Member for Shamata, the Majority whip, let us for once get serious because we are discussing a very serious issue. You want to donate a minute to another member yet you are on a point of order?

Excessive laughter.

Hon Kinyanjui Gachari: Thank you very much Mr. Speaker, Sir. I have realised I am not supposed to donate time to another member because I am on a point of order. However, let it remain that the Leader of the Majority Party, and who was elected to replace the former one is Hon. Kariuki Muchiri. I actually communicated the same through this document and if you allow me Mr. Speaker, I will give it to you...

Speaker: We have the document which is properly received in the office of the Speaker, effective the second of July, 2014. It is also in the records of the Clerk.

Hon Kinyanjui Gachari: Thank you Mr. Speaker.

Speaker: I actually have two documents, one by the majority Whip, and another by the Minority Whip. I wanted to know whether the Minority Whip had anything to say on that point of order, so that I can respond effectively on the same.

Yes, Member for Karau.

Laughter

Hon. Kamau Ngotho: Mr. Speaker, Sir, I wish to make the following communication pursuant to Standing order 19 (5).

Speaker: Member for Karau, you cannot make any communication in the House. You already made your communication to the speaker.

Excessive laughter.

Hon. Kamau Ngotho: Mr. Speaker, pursuant to the expiry of the stay orders granted to the applicants that was ending effective, midnight yesterday, I wish, as the minority whip to inform you of the election that was done and whose minutes were duly tabled and

communicated to the Speaker on the 3rd of July, but the effective date is today, when we have this sitting Mr Speaker.

Speaker: Okay. Hon Members, I wish to respond to those issues, and the issues I would respond to is that it is actually true that the Majority whip and the Minority whip, did communicate to the Office of the Speaker, and the same was also forwarded to the office of the clerk, for record. This to the effect that there happened an election, for the office of the majority Leader for Nyandarua County Assembly, and the office of the Minority Leader for the Nyandarua County Assembly.

When those communications were done, in the reading of standing order 18 (5), and standing order 19 (5), it is provided that after the party members comprised of the members of the Assembly have contacted there elections, they are expected to communicate in writing to the office of the Speaker, and that is what the Standing orders say. That applies in both the case of the Majority and that of the Minority Leader.

That communication to the Speaker is supposed to be done by the respective parties, and it is expected as a flow of things and issues, that the speaker now should come and communicate to the house the decision of the respective parties, because TNA members are not supposed to know what the DP members have done and vice versa, it is only the Speaker they have communicated to. How does the Speaker pass that information to the house, for the members to realise the true position of the leadership of the political parties?

Before that communication could be made to the House, is when there was served a Court Order by the High Court, stopping the Speaker from proceeding in any way with that communication that had been forwarded to him by the whip for the Majority Party and the whip for the minority party and therefore the Speaker never presented that information to this House so that it could take effect because what the Speaker had received was from the different parties caucuses.

After those orders were granted, and they have been in place all through until Friday the 13th Of November, 2015, when the Court issued its ruling (when the judgement was done), the suit was dismissed, and the Court decided that it had no jurisdiction to entertain the matters taken before it.

The Court advised that the parties should go to their respective parties' Dispute Resolutions Mechanisms or alternatively, to go to the political parties Dispute Resolutions

Mechanism and its after they have exhausted that particular mechanism, that they should proceed to the High Court and not the other way round, as it had happened in Nyandarua.

On those orders being made, the lawyers for the respondents, who is the current leader of the Minority and the Leader of Majority applied to the Court for stay of execution of that dismissal, and they further sort for leave to appeal against the decision of the High Court indicating that it had no jurisdiction to determine or deal with this matter. Consequently, the Court granted a stay; so the stay was first and second, the appeal. The leave was for seven days, which was expiring at midnight of Friday the 20th of November, 2015.

Before midnight of that day, and I was to make that communication from the chair, the Leader for the Majority and the Leader for the Minority approached the Court, which extended the orders until Monday, when the inter-parties hearing of the application for stay pending appeal should be canvassed before the High Court at Nakuru and with that, the point of order would therefore obviously not attract a lot of merit and I would not uphold it, for the reason that I have been served with a court order. Immediately it was received yesterday I, instructed my agent, who is my personal assistant, which is allowed under order five of the Civil Procedure rules, that if it is a public office, anybody working in that office can receive on behalf of the principal, I therefore instructed my PA to receive on my behalf, I have the order with me, and it was dispatched to all your pigeonholes, and so for now, until further notice by the court on Monday, we cannot touch that matter because it is within the jurisdiction of the court.

Yes member for Gatimu.

Hon. Kieru Wambui: Mr. Speaker, I appreciate that you have communicated that information because I have seen something in my pigeonhole but I don't know the reason why I have the same in my pigeonhole.

Mr. Speaker I have two issues to raise. I completely disagree with the procedure in which this matter is being handled. You are one person, Mr. Speaker, who quotes precedencies. You are one person who really researches on opinions based on the best past practises. I would therefore wish to bring to the attention of this Hon. House through your chair, what actually transpires or what happens when the election of any of the two offices is done, i.e. when a majority leader is elected, and when a minority leader is elected.

The provisions of Standing orders 18 (5) and 19 (5), as most of us know, have been done previously in Nyandarua County Assembly and other County Assemblies in Kenya and also in the National Assembly and the Senate. What happened some time ago is that TNA party, where I belong, did an election and elected Hon. Kariuki Muchiri as the Leader for the Majority party. The chief whip for the majority party wrote and communicated to the Speaker's office on the same.

These are constitutional offices provided for by the County Government Act that says, there shall be a Majority Leader of a County Assembly. They therefore do not hold leadership positions only on the floor of this house, but they hold the leadership positions by the virtue that there positions are provided for by the County Government Act. The procedures are outlined by the standing orders and the second schedule of the County Government Act.

When this Communication is done to you Mr. Speaker, it is done purely for information and notification. It's not that you come and communicate the resolutions of the party. When Aden Duale was elected in the National Assembly, and confirmed this with Hon. Gichigi Mr. Speaker, that the house is actually informed through a point of order, of the structure of the leadership of a party and the Speaker, while seated on the bench, confirms with the minutes that were forwarded to him by the whip, whether really what the point of order raised by the whip is what is according to the minutes or the document you have on your bench Mr. Speaker.

Two days ago, I confirmed, though a call, from the Speaker of Nyeri County Assembly, as they had elections yesterday, I asked him how he transacted the business of delivering the leadership of the County Assembly in the house despite having a court order, and he categorically stated that he is not interested in anyway in the political matters of the County Assembly, but that he is only interested in the leadership of the County Assembly, whereby he was served by the party with a report of their election and when the election results were tabled to him, he only confirmed whether what the whip was reading was truly what he was served with. Today Mr. Speaker, therefore, we have the new leader for the majority and the new leader for the Minority, why? Because the Chief whip for the minority and the chief Whip for the Majority have communicated to you Mr. Speaker, and this house.

Hon. Kamau Ngotho was not served with any court order to bar him from communicating or stating the new leadership, neither was the Majority Chief Whip, Hon. Gachari served with any court order and therefore, the court order that you have, which is

also mistakably in my pigeonhole, was erroneously given to me, because you have said that it was served to you, and your PA received it. Hon Gachari wasn't served and Hon. Ngotho wasn't served. I therefore wish to declare here Mr. Speaker, that we have a new leader for the Majority, and new leader for the Minority.

Applause.

The whips have communicated to this house Mr. Speaker.

Secondly, I have an order which, okay, I have no authority to quote from it Mr. Speaker, lest I be accused of contempt of court. The Orders are said to have been received by the office of the Speaker, Nyandarua County Assembly, yet it does not even have a date of when it was received by the office of the Speaker, because a document is supposed to be received and the date when it is received indicated on it. This court order that I have Mr. Speaker, which I found in my pigeonhole does not even have a date of when it was received on it! Do I have to trust it? Or does yours has a date on it Mr. Speaker?

The Order is received and kept on your desk, the question is, when was this Court order received? If it was received, it was received only by your office, and therefore today Mr. Speaker, we have a new leader for the majority and a new leader for the minority because the whips have adequately communicated. Using those past precedencies Mr. Speaker therefore, it is not for the speaker to communicate but it's for the whips, and yours is just to confirm what the whips have said.

Thank you Mr. Speaker.

Applause

Speaker: Member for Gatimu, you have defeated all your submissions by stating that the whips communicate and the speaker confirms. The speaker cannot confirm because there is a court order. You want to put the speaker into unnecessary problems. We have been working on the same court orders, it is nothing special, because those court orders have only been extended. They are the same court orders that have been working from the second of July, 2014, up to date. Nothing fresh has been issued. Those orders have only been extended and I don't know why you think that those orders are now not applicable, yet they were applicable on the second of July, 2014!

The other issue is what you have said, and I had actually directed the office of the Clerk to get me the HANSARD of the National Assembly but they were not able to get it on time because I would have really wanted to have it. Actually, that leadership must be confirmed in the House. It was not able to be confirmed because a court order was received. We have lived with that court order from the second day of July, 2014 to date, and nothing has changed with that court order because it has been extended every day that it's about to expire.

What you have, member for Gatimu, is a photo copy of the original court order, my office cannot be such reckless that it cannot even indicate the date it receives a document, least, a court order. It is stamped and indicates the date of twentieth (20th) but maybe the stamp does not come out clearly in the photo copy.

The speaker displays the original court order for the members to confirm.

The Court Order was actually received yesterday, Members, this is the date in the stamp, my stamp is self-dating, it indicates twentieth of November, 2015. What I am saying, therefore, is that there are no any new materials that would add any value, in us, trying to interpret this matter otherwise. We were not able to confirm this new leadership on the second of July, because there was a court order that is still in existence for now, until Monday.

Why do you that we should go back to that issue?

Yes member for Rurii.

Hon. Wahome Kamoche: Mr Speaker you have actually communicated but what I just wanted to know is, this court order is served to the speaker and Nyandarua County Assembly, which I am a member.

Excessive consultations.

Speaker: Order, order member for Kaimbaga.

Hon. Wahome Kamoche: When this order came Mr. Speaker, we were served because after the Majority and the minority leaders were removed, they went to court and they were given the stay orders. The court order was coming to expiry and before it could expire, we are served with another court order. What is worrying me is the court orders upon court orders. Can we get a clarity of this because the issue of the overriding orders is confusing?

Speaker: Member for Rurii, to respond to that issue, you remember the original suit that was taken to court, the leader for the majority and the minority had sued the speaker and the assembly. They had not sued anybody else, because I believe, in there thinking, was that the whips had already done their work, and for sure they had done their work! That is the reason that whatever the whips had done their work, they had communicated to the speaker and there was nothing the court would have stopped them from doing.

That is why they were not even sued, because they had done and finished their work. The person who was sued was the speaker, to stop him from communicating in the House, or confirming the proceedings in the House. Therefore member for Rurii, you remember that the chief whips for the majority and the minority, and the other members, about three of them, approached the court and said they are interested parties. They went to court as interested parties so as to protect the interests of their parties, the interest here being the elections that had happened, and they have been protecting it very effectively. They have no any other business, except to protect the interest of the elections that had happened.

For the respondents, they sued the speaker and the assembly so as not to make the communication because the whips had done their work. The whips, even today cannot be stopped because even the orders cannot have any effect on them. The order is only effective to the clerk as the person in charge of the assembly's matters on administration, i.e. preparing the processes, who receive the court orders and other court processes and the speaker of the County Assembly, who would be making the communication here.

There are no two orders here, there was an order that ran from the second of July 2014, to the 13th of November, 2015. That same order was extended for seven days, to the 20th of November, 2015. Before expiry of the same orders, they were extended until Monday. Therefore there has never been any two orders.

Yes, Deputy Leader of Majority, Hon. Michael Njoroge Kirumba.

Hon. Michael Kirumba:

Hon. Michael Kirumba: Thank you Mr. Speaker. I am experiencing some difficulties and I can only express myself on the floor of this House. Right from the onset, we knew that Nyandarua County Assembly had been enjoined in the case as a respondent.

The Assembly is an entity and not a one-person affair. In our wisdom, we thought that we could have representatives of interested parties who were elected by the membership of

this House so that our opinions and views are equally represented. If the Assembly had been enjoined in the case as interested parties, applicants and the Speaker would be the respondents in the case. We therefore came on board and we were trying to handle the emerging issues amicably.

Mr. Speaker, the previous stay order was issued by a different judge and I still have another one issued by another different judge. This makes me unable to fathom all these issues. If this was actually the situation, we could be going from one judge to another and thereby create confusion of the whole process. I want to be on record that I cannot comprehend the rationale behind the issuance of different stay orders by different judges. In fact, the stay order that I found in my pigeonhole is from A.K. Ndung'u, which came even before the expiry of the previous stay order as highlighted by Hon. Peter Kamoche.

Even though I am not a professional in legal matters, I have my doubts. It is only fair if we accord everyone the same treatment. As a Kikuyu saying goes, '*wa mweka uciruo ta wa muru*' and '*wa muthini uciruo ta wa gitonga*'. That is the only way that people will feel that fairness has prevailed. We have gone on record numerously for saying that we are leading for posterity and that is how it should be. Thank you Mr. Speaker.

Speaker: Very well. I would like to clarify some issues because some of us who have been practicing in courts are very clear on these matters. Member for Kipipiri, the only reason that would have worried me is if the order had come from a different file.

Judges found the succession file of Mbiyu Koinange in which, 28 judges had acted on. In fact, the twenty-eighth judge was the one who made the final decision. Therefore, the main issue is that all the 28 judges had a chance to look at the materials contained in one file. This order was thus made within the same file and I believe that it has been served to the respondents (The Assembly). There are no sinister motives when different judges issue an order.

Speaker: Yes, Member for Karau, Hon. Kamau Ngotho.

Hon. Kamau Ngotho: Mr. Speaker, I wish to refer to a Standing Order that cuts across all the Common Wealth Countries. It states categorically that only two businesses take place in any parliament. That is, parliamentary and party businesses. Who communicates party business to the members? Who communicates parliamentary business to the members? I think we need to have a distinction of the two.

In South Africa, a common wealth country, it is stated categorically that the Majority and Minority Leaders are political parties' functionaries. The Whips communicate all issues touching on their respective parties. The issue of party election is a party issue and should be

communicated in the House by Whips and not the Speaker. The entire Article 18 of the Standing Orders does not point out any role of the Speaker in party issues.

The reason is that the Speaker was not elected on a political party platform. All parties in the House participated in voting for or against the Speaker. It is not the Jubilee Coalition members only who voted for the Speaker of the National Assembly, Hon. Justin Muturi. He was voted across the political divide. This is the case with our Assembly. Members of all parties participated in the voting process of our Speaker.

To ensure proper functioning of the House, the presiding officers are assisted by the Whips. Whips are political party functionaries. He or she is a member elected by his party to assist in organizing party business, keeping members informed of party and parliamentary businesses. Thus, the work of keeping the members informed on parliamentary and party businesses is a role of the Whips. Communicating for instance that the House has changed its Majority Leader is not the work of the Speaker but the Whip.

The Speaker can only swear in (administer oath to) the persons forwarded by the Whips as the Majority and Minority Leaders. This is the practice in all parliaments despite the fact that the Standing Order is silent on the issue. The reason is that the Whips speak on behalf of the members of the parties in the House and the fact that the work of the Speaker is ceremonial. He just administers the oath. It is therefore important that we follow the right way so that we do not fall on the wayside.

Speaker: Hon. Members, I do not know how far we can go on this issue. We are talking of an in-house matter and then, you refer to foreign parliamentary practices. We have a court order asking the matter ought not to be discussed. The Speaker presides over this House...

Loud consultations

Order members!

In fact, the motion that Member for Gatimu moved asked the Speaker to communicate about the change of leadership in the House. I did not want to go to that. Then you bring up new issues. Members, I would like you to recall the issue of Embu County. The Speaker, Hon. Mate would now be in jail for allowing a matter before the court to be discussed in the House were it not for the stay order issued by the Supreme Court.

He attempted to say that the order paper is usually prepared by the clerks and that the House voted yet he has no vote but he was told that he had allowed the discussion to take place in the House against a court order. The members should read the ruling of the 3-judge bench in Nyeri on the issue led by Okoth Odek and Martha Koome. They said court orders are not funerals where people mourn and bury their loved ones and then leave. Court orders

are to be obeyed and are not ceremonies. Indeed, the Speaker of Embu County Assembly had been sent to Kirinyaga for sentencing were it not for the Supreme Court just because he presided over a House that discussed an issue that was in the court.

Why would we want to change things? We have lived with this court order from 2nd July 2014. Why is it that we think that the court order is inapplicable here? Again, this matter will arise once more in courts on Monday. Besides, the standing orders are very explicit on the communication of the Whip to the Speaker. We have never handled such issues again and in fact, I would very much wish to see the Official Report (Hansard) from the parliament. Since I value research very much, I will research on the issue of party communications in the House because I need to make a very serious ruling on the issue being the first Speaker of this House. For the time being, the court order that refused these people to assume to the position on 2nd July 2014 is still in place today.

Yes, Member for Gatimu, Hon. Kieru Wambui.

Hon. Kieru Wambui: Mr. Speaker, I would like to bring something to your attention. The court order you have is okay. If I am sued and told not to do something, then, the names that appears on the court order have been confused, it implies that the court order has no effect on me because the court order will have been served erroneously. Therefore, the court order was served to the Speaker instead of the Majority or Minority Whips. I see no wrong when this House continues to conduct its business and communicate because the court order was served erroneously.

The day before yesterday, a court order was issued to Nyeri County Assembly particularly to PNU party. The judge denied the party the chance to have a new Majority Leader. However, since this was erroneous and the court ought to have indicated TNA instead of PNU, the County Assembly went ahead and elected a new Majority Leader. In other words, we are saying that the court order is yours and it does not prevent the Whips from making their communications.

Speaker: You know Member for Gatimu, I admire you because you try to create so many issues to drift my focus from the real issue. The real issue is that this very order has always been addressed to the Speaker from the onset i.e. 2nd July 2014.

Nothing has changed for us from that day unlike in Nyeri where they are citing PNU and other issues. I would not let you make such a move. It would be a clear case of contempt to the judiciary because I have been obeying the order right from the start. You want me to say that I am not concerned and when I am called upon Member for Gatimu, you will be serving your people in Gatimu Ward.

Yes Member for Kipipiri, Hon. Michael Kirumba.

Hon. Michael Kirumba: Mr. Speaker, I think this is the right forum because in this of things of ‘gearing in and out’, we will not get a solution. I have said earlier before that my background is not anchored in legal matters. However, there was no reason for serving the Speaker of the County Assembly. The lawyer of Nyandarua County Assembly has said the same thing.

The speaker of this Assembly ought to have absolutely nothing to do with the political leadership of this Assembly and we ought to see, especially from you, Mr. Speaker, with your legal background that you respect impartiality. Look at what has happened for the last one year and probably next year we will be working under a stay. That is why we are concerned. I understand that a court order must be obeyed but really, why should we allow for an extension? This ought to be sorted out now for posterity purposes. In future, the members of the second or even third parliament will see that despite the fact that we were not lawyers, we were able to set a workable precedence.

We need to have an understanding. If the people of Kipipiri voted me out this day, it would be foolhardy for me to insist that I must remain there. The same case applies in marriage. If my wife said enough is enough Kirumba, I would simply pack up and leave. I cannot continue to force myself on her. It would be sacrilegious. It is time we came out of our cocoons and face this issue head on. The role of the speaker should be impartial otherwise, without that, it would be very unfortunate.

Speaker: I feel I need to respond to the submissions of the member for Kipipiri, I would be very disappointed if anybody would doubt the impartiality of the chair because that is what the member for Kipipiri has implied.

From the word go, when this issue went to court on the second of July 2014, I, in writing, instructed the lawyers representing the assembly and the speaker to indicate, to the courts, that their clients are not siding with anybody in that matter and that we were leaving it to the courts to make their ruling, independently. When you moved a motion here that I communicate on the change of leadership, I allowed it even without notice so that the members would have their day.

What I am enforcing is what has been enforced since the 2nd of July unless anybody has any illusion that the speaker has a role to play in the issuance of this court order, which is definitely unfounded.

I have played my role with impartiality for the sake of posterity and I have tried to be as fair as possible. These orders and petitions, although not served personally to the majority

and the minority whips, they were served to their advocate and it is on record. What the court is simply saying that the status quo remains. Yes member for Kaimbaga, Hon. Kimani Njiraini

Hon. Kimani Njiraini: Thank you Mr. Speaker, we appreciate that you are well versed with legal matters but; you remember when the time this House felt we needed new leaders, the majority and minority leaders did not honour that and they ran to court. Unfortunately, the court granted them a stay order, which members of this Hon. House respected.

This House was hoping that, on expiry of the stay order, it would enjoy the leadership of the members they had, themselves, voted in. We have 41 members in this House, does it mean that they do not know what they want? In my wisdom, this House is in a quagmire. If an election was conducted today, I am sure 90 percent would vote against the incumbent leader of majority and minority. Mr. Speaker, please save this House.

Speaker: That was an advisory from the member for Kaimbaga and I need not respond to it. Yes member for Gathanji, Hon. Sam Thuita

Hon. Sam Thuita: Thank you Mr. Speaker. Close to one and a half years now since the tabling of the court order, the chronology of events that have taken place, these members feel you have a hand in it; all you do is guide those who have been voted out and to say they are disappointed is an understatement.

Political leadership should be left to the members of the political parties. If I were the leader of majority. Clearly, the morale of the members has hit a new low. The political leadership should be left to the party members, not to the speaker.

It is the opinion of the members that the speaker has a strong hand in that and if that is the case, you will be disappointed.

Speaker: Member for Gathanji, I don't want to respond to that again but, I would like you to read on the case of the speaker of Embu, the judgment of professor Odek, S.Makadia and the judgment of Martha Koome on the role of the speaker and court orders. Then, you will disappoint the Speaker. Yes member for Leshau Pondo. Hon. Josphat Kamau.

Hon. Josphat Kamau: Thank you Mr. Speaker; I must to confess, right from the onset, that I do not have any legal background but, you said, in your submissions, that the speaker's office and here, I do not necessarily mean Ndegwa Wahome but also the deputy speaker and the speaker's panel, has no influence on this matter.

With your indulgence, I will go to the genesis of this matter: The day the two parties conducted an election and, democratically, elected their new leader of majority and minority, I want to bring to your attention that the business of the day was illegally delayed for 30

minutes. This was orchestrated in order for the court order to arrive from Nakuru. This was a great illegality. If the office of the speaker was impartial, the sitting should have started at the usual time. Should the Assembly have started in time, the two chief whips would have communicated to the speaker on the decision of the members and all these incessant wrangles would not have found their way here.

When the petition was received by your office, we were given one hour to go through the arbitration and I remember we had 21 days. The complainant/ petitioners said they had no business in arbitration and they rushed to courts. In Meru, there is a council known as Njuri Ncheke that is always being consulted and although they have no legal background, the judgment they give is upheld. Why then, must we always seek justice in courts?

According to the Constitution, each arm of the government works independently. We have three arms of the government; the Executive, the Legislature and the Judiciary. Mr Speaker, I think our county's legislature, which I am part of, has been denied its independence. I think the Supreme Court is safeguarding the interests of both the Leader of Majority and the Leader of Minority.

Mr. Speaker, you are setting a very good precedent. I hope the Deputy Speaker who will come after Hon. Wambugu King'ori will do the same. Let me use Zimbabwe as an example. Zimbabwe's economy is deteriorating because of President Mugabe's dictatorship. Despite his advanced age he insists that he is the only person worthy leading the country. In relation to this, why are the two leaders (the Leader of Majority and the Leader of Minority) insisting that they are the only people with powers to lead this assembly?

Hon. Wambui Kieru rises on a point of order

Speaker: No, Hon. Josphat Kamau is on a point of order.

Proceed Hon. Josphat Kamau.

Hon Josphat Kamau: Why must the two, who were voted in by this House, insist that they must remain in their positions? It might be that they are safeguarding other interests other than those of the members of this assembly.

Mr Speaker, where are the people of Nyandarua if the elected members of this assembly, who are among the high ranking people in our government, are being dictated upon by two members of this assembly? This being the case, we are headed in the wrong direction. I rest my case. Thank you.

Speaker: I wish to respond to some issues raised by the member for Leshau Pondo. Firstly, that this House was delayed to wait for a court order is actually a complaint I have never heard.

Murmurs

I am saying, I have never been told by anyone of you that this House was delayed to wait for a court order, either formally or otherwise. I have heard it today.

On the issue of arbitration, both the parties in question came to me. Consequently, as they can confirm, I called their respective lawyers. I talked to the lawyers for the interested parties and the respondents and told them to advise their parties on the way to institute the arbitration process and left it at that.

Member for Leshau Pondo has cited a community that relies on Njuri Ncheke instead of courts. The Njuri Ncheke cannot outstate the jurisdiction of courts. It is only that the community in reference agrees to be bound by the dictates of the Njuri Ncheke. In our case we use the court. However, it is advisable if the relevant parties sit and agree on the way forward because if the court intervenes things may be complicated. Remember the issue of Makueni County; Hon. Kivutha Kibwana was supposed to appear before the Senate, but the court advised against it.

Governor Wambora has remained in the position of governor because of an order by the court. Such things are not new in Nyandarua.

The Speaker will not intervene if the parties in question decide to solve their cases together. Where does the Speaker come in in all of these? The three arms of the government are respected and they check each other and there is not much that the Speaker can do when it comes to the situation at hand.

Yes member for Magumu and the Leader of Minority

Hon. Githinji Ngumba: Thank you Mr. Speaker. I rise to shed more light on why I was in court. I went to court...

Speaker: Member for Magumu, the matter you want to address is still in court and that is why I have not given any communication on it because it is the court that will decide on the matter. I think you have presented the reason why you opted to go to court to the court itself for it to make the decision on the same. So we cannot deal with that matter now.

Hon. Githinji Ngumba: Thank you Mr Speaker. But there are words that have been written to the effect that I want to implicate the Office of the Speaker...

Speaker: If I were you, the Leader of Minority, I would keep off from this debate.

Hon. Kinyanjui Gachari rises

Majority Whip, do you still want to revisit this matter?

Hon. Kinyanjui Gachari: Yes Mr. Speaker

Speaker: Okay, proceed

Hon. Kinyanjui Gachari: Thank you Mr. Speaker. We want to heal the wounds that beleaguer this assembly. Remember our days are few in this assembly. It is due to lack of satisfaction that sometimes we come to the Debate Chambers, just bow and go out.

Let it be known today that we are working and we are not going to be dictated upon by anybody. Members of this assembly are all leaders. I compare the case at hand with a woman who is being raped. The rapists are not real men. Real men woo women and get what they want.

Laughter

Rapists can even kill their victims in a bid to satisfy their carnal desires. This is serious. Let us be independent. We cannot be forced...

Hon. Mwangi Gichuki rises on a point of order

Speaker: The Leader of Majority, you know Hon. Kinyanjui Gachari is on a point of order. Majority Whip, you should deliver your presentation in a better manner.

Hon Kinyanjui Gachari: Mr. Speaker, I have delivered my message; that we want peace and independence.

Thank you Mr. Speaker.

Speaker: Yes member for Engineer and the Leader of Majority

Hon Mwangi Gichuki: Thank you Mr. Speaker. I wish to comment on the issue of the raped and the rapist. Even rapist considers who he is being raped. We should consider who is being raped and ask ourselves whether anybody will be interested in raping them. One should consider their age and use statements that would make them be respected not only by the people they work with but also their grandchildren.

Laughter and murmurs

In relation to this, let nobody at any given time think that they can abuse me because they are big. If one thinks that they are gentleman enough and you cannot rape, try to be raped...

Loud laughter and murmurs

Speaker: Order! Order! Order!

I think, Majority Whip, you have made your conclusive remarks and the Leader of Majority has had his time as well, as the Leader of Minority. Therefore, that debate has been exhausted and the requisite directions have been given.

Let us proceed to the next order.

Hon. Members stream out of the chambers.

Hon. Rahab Wanjihia rises on a point of order

What is it county member from Kanjuiri Ridge?

Hon. Rahab Wanjihia: Mr. Speaker sir, there is no quorum

Speaker: Clerk, confirm whether there is quorum

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

Lack of quorum having been confirmed, I direct that the bell be rung for eight minutes or until such time that quorum will be achieved, within the eight minutes.

I also request the Whip to remember that we have very serious business in the order paper. It will be a very serious indictment to this House if a nominee for the position of CECM in our county government is appointed without this House having its word on the same. So, Whip, let the members know that if this happens, the repercussions will affect them even when they go back to their people. It would be unfortunate that nominees for positions of ministers in our county government could go through without this House approving or disapproving them on the basis of their credentials just because the House lacked quorum.

The bell is rung for eight minutes and quorum is not achieved as confirmed by the clerk-at-the-table

ADJOURNMENT

Speaker: Hon. Members, lack of quorum having been confirmed after the bell has been rung for eight minutes, pursuant to standing order no. 35 (2), this House stands adjourned until Tuesday — the 24th day of November, 2015 — at 2:30p.m. Hon. Members, for purposes of record, the House will be sitting at Manunga Catholic Hall in Kipipiri Sub-county from that day, that is, the 24th day of November, 2015, while the assembly committees will start convening at the same venue from 23rd November, 2015. The assembly will be conducting its businesses at the said premises until 4th of December, 2015 — the day on which the House will break for recess.

The House rose at 11:21 A.M.