

REPUBLIC OF KENYA

NYANDARUA COUNTY ASSEMBLY

1ST ASSEMBLY- 4TH SESSION

OFFICIAL REPORT

Wednesday 5th October, 2016

The Assembly met at the Assembly Chamber (P.C.E.A 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 no quorum as confirmed by the Clerk-at-the-table)

Speaker: Hon. Members, quorum having not been recognized, I now direct that pursuant to Standing Order No. 34, the bell be rung for ten minutes or until such time within the ten minutes that quorum will have been achieved.

(The division bell rings for 2 minutes and quorum is achieved as confirmed by the Clerk-at-the-table)

COMMUNICATION FROM THE CHAIR

PIC/PAC REPORT ON AUDITED FINANCIAL OPERATIONS OF THE COUNTY EXECUTIVE FOR THE PERIOD FROM 1ST JULY 2013 TO 30TH JUNE 2014

Hon. members, there is a communication and the same is on the report on PIC/PAC on Audited Financial Operations of the Nyandarua County Executive for the Period from 1st July 2013 to 30th June 2014 and the addendum thereto.

Attention is drawn to the plenary sitting of Thursday 29th September 2016 and in particular the report on PIC/PAC Audited Financial Operations of the Nyandarua County Executive for the Period from 1st July 2013 to 30th June 2014 and the addendum thereto.

During deliberations Hon. Sammy D Kamau, the member for Karau, on a point of order, sought guidance from the chair on which recommendations ought to be implemented or to take precedence where two committees consider the same matter and come up with conflicting recommendations.

Hon. Members the matter at hand concerns the procurement of feasibility study for Ol'kalou Town Sewerage System the Tahal Group or what is popularly known as the Tahal Water Project. In order to give a comprehensive ruling on the matter, same had to be considered in two aspects. One is that of the Ad Hoc committee and the other is on the PIC/PAC report on Tahal Company.

We shall start with the report of the Ad Hoc committee on Tahal Company. Hon. Members the report of the Ad Hoc committee on Tahal Company emanated from a report by the member for Magumu and the leader of minority in the House Hon. Githinji Ngumba on 17th July 2014 seeking that the house does address the following issues.

1. The extent and scope of engagement between the county government and the Israeli government or company.
2. The total cost and expenditure to be incurred, I am quoting that verbatim, in the project and monies paid to that end if any
3. The obligation of the county government and the Israeli government as to the cost
4. The requisition of any goods or services to the cost of the project.
5. Compliance of the same with the procurement and the applicable laws
6. Whether the county government has undertaken other similar ventures.

The committee considered the matter and made recommendations as contained in the report of 22nd July, 2015. The second report was the PIC/PAC report on Tahal Company. In retrospect, the report of PIC/PAC emanated from audit queries as contained in the report of the Auditor General with respect to the Financial Operations of the Nyandarua County Executive for the Period from 1st July 2013 to 30th June 2014. Among these queries was that of the alleged irregular procurement of feasibility study of Ol'kalou Town Sewerage System. The committee's deliberations and findings on this query is contained in page 68 to 78 of its report.

On tabling of the committee's report on 14th June, 2016 and the motion thereafter, the chairperson of the committee and the member for Githioro, Hon. Silvester Kagiri Mwangi, sought leave to allow for amendments. Paramount to this is the proposal for amendment of the

recommendations submitted to the committee by the member for Shamata, Hon. Kinyanjui Gachari. The proposal sought to expunge from the record the recommendations of PIC/PAC and replacing them with those of the Ad Hoc Committee.

On further consideration of the matter PIC/PAC upheld its earlier findings and declined to expunge and replace the recommendations as contained in pages 73 and 74 of its report safe as contained in the addendum thereof.

FINDINGS

Hon. Members, for us to appreciate the matter at hand, I seek to give a hide-side of the recommendations made in the said reports. The report by the Ad Hoc Committee on Tahal Company made the following findings on the issues as raised by the member for Magumu.

1. That the contract be rectified so that it reflects the correct parties and signatories to the contract before further payments can be made.
2. That the office of the governor ensures that the memorandum of understanding between all the parties involved is signed and brought to this House for adoption.
3. That the County Government must honour the remaining contract price so that the “plug and play” quick fix can be rolled out as soon as possible.
4. That before the county government and its entities enters into any form of agreement, written legal advice must always be sought and the approval of the executive committee obtained.
5. That the public-partnership node and all the necessary infrastructure be established in the county government to deal with all matters relating to public-private partnership.
6. That proper planning and budgeting must be complied with as provided under the Constitution, the County Government Act and the Public Finance Management Act

7. The Nyandarua county government act should strengthen its cooperation with the State of Israel for the benefit of the people of Nyandarua.

The report by the Public Investments and Accounts Committee made the following recommendations in its present report before the house:

1. That the EACC should interrogate the officers responsible for the irregular procurement of the contract to develop the Nyandarua Water Master Plan and to review the Ol'kalou Town Sewerage Design and signing a contract involving a substantial amount of funds without exercising due diligence.
2. H.E the Governor and the officers responsible should fully compensate the county government in the event that the contract does not materialize and if or the county government fails to get value for money injected into the project in view of section 226 (5) of the Constitution.
3. H.E the governor should solicit from the national government to fund the implementation of Nyandarua Water Master Plan which is expected to cost about Kshs. 2 billion and should be solely funded from the county treasury.

A brief analysis of the recommendations reveals that there is no similarities including the recommendation on the officials to be held responsible for breach of diligence in carrying out their respective duties.

In light of the above findings, it is imperative to take note of developments that have taken place in the course of time from when the Ad Hoc Committee delivered its report and when PIC/PAC compiled its report.

The report of the Ad Hoc committee was compiled following a statement sought as aforesaid on the subject matter by the member for Magumu and the leader of minority in the house Hon. Peter Githinji Ngumba. This was on 17th July 2015. On the other hand the report that contained the recommendations as made by PIC/PAC was as a result of the report of the Auditor General in its execution of its constitutional and statutory mandate as provided on our constitution and statutes. The committee was informed by the findings of this report upon which it conducted a further inquiry.

It would be important to note the developments therein and further the difference in time within which the two reports were delivered together with the recommendations therein. It is of salient need to consider and take note that the report of PIC/PAC was made in furtherance of the mandate of the select committee as provided for in the constitution, statutes and assembly standing orders. The same is anchored by the information that was unearthed by the report of the Auditor General which is the basis on which the PIC/PAC inquiry was grounded.

To this end it is my unequivocal findings that the Ad hoc committee on Tahal and PIC/PAC had different mandates which both committees have effectively discharged. The basis and grounds of their investigations or inquiry are also different and conclusions have different effects and implications in the face of the law.

It is fundamental to appreciate that the audit query which is the subject of the PIC/PAC report can never be deemed to have been answered by the Ad Hoc committee on Tahal. In any effect the audit query had not been raised at the time of the report of the Ad Hoc committee. In a nutshell the PIC/PAC committee has both the constitutional statutory burden to expedite on audit queries. This mandate does not fall on any other committee including an Ad Hoc committee. This House cannot therefore seem to contradict the mandate of PIC/PAC by vesting such authority on any other committee. The House will be acting ultra vires its constitutional and statutory mandate and further in contravention of its own standing orders if it allows such a development of procedure to crystalize into practice.

Therefore Hon. Members, the report of the PIC/PAC committee is properly before the House without breach of either the constitution or statutes and this House has all the legitimacy to decide on the same.

In conclusion, in the event there are resolutions of the Ad Hoc committee that are not yet implemented and which are in direct conflict with the recommendations of the PIC/PAC then the latter will take precedence in that such recommendations do emanate from the discharge of its mandate of its constitutional and statutory mandate while as the report on the Ad hoc committee emanated from the mandate granted to it by the standing orders. The principle of precedence in application of the law would therefore take effect in execution of the recommendations herein.

That is all. In short we are saying I do not see any contradiction and if there is any the recommendations of PIC/PAC which find force from the constitution would take precedence over any other recommendations of the Ad hoc committee which got the mandate from the standing orders. Next order

NOTICE OF MOTION

NYANDARUA COUNTY ANNUAL DEVELOPMENT PLAN FOR THE FY 2016/2017

Yes, the vice chairperson of the committee on Budget and Appropriations and the member for Mirangine, Hon. David Ndirangu Ngigi.

Hon. David Ndirangu: Thank you Mr Speaker I beg to give notice of the following motion;

That this House does adopt the report of the committee on budget and appropriations on the Nyandarua County Annual Development Plan for the FY 2016/2017 as a report of this House and the recommendations therein as resolutions of this House.

Thank you Mr Speaker.

Speaker: Very well the notice of that motion is duly given.

Next order

MOTIONS

1. REPORT ON AUDITED FINANCIAL OPERATIONS OF THE NYANDARUA COUNTY EXECUTIVE FOR THE PERIOD FROM 1ST JULY 2013 TO 30TH JUNE 2014

I think directions had been given on that after the ruling was delivered then the question would be put and therefore I am proceeding to put the question.

(Question put and agreed to)

The report and the addendum are both taken as reports of this House and the recommendations therein as resolutions of this House. This is a document that has far reaching recommendations and we are going to try as much as possible to make it as plain as possible to the executive about the expectations of this House on the implementation of this report. Where external government agencies are required to come in we are going to give timeline within which they will come in and expedite on the resolutions and recommendations made within this report. We shall also expect that within 60 days to be given a report to show the extent of implementation of this particular report. Next order.

2. REPORT ON STATUS OF GETA FARMER'S COOPERATIVE SOCIETY

Hon. Members, I think the chair who was there in the morning had given directions that the motion on the bill would be given precedence. I do not want to impeach that particular direction and therefore we shall go to the supplementary order paper which contains the business on the motion on the bill.

SUPPLEMENTARY ORDER PAPER**BILL***Second Reading*

NYANDARUA COUNTY ATTORNEY OFFICE BILL, 2015

Speaker: Member for Central, your motion is that the Bill be read a second time.

Hon. Peter Maina: Mr. Speaker, I beg to move that the Bill be read a second time. I call upon Hon. Nancy Ng'ang'a to second.

Speaker: Yes Hon. Nancy Ng'ang'a.

Hon. Nancy Ng'ang'a: Thank you Mr. Speaker, Sir. I second.

Speaker: The ruling has been made that once the motion on the Bill is moved, the question is proposed and the floor is opened for the Members to debate. After the question is put on the same the Bill will be read a second time and the House moves on to the Committee of the Whole House.

For purposes of record, we should revisit the procedure. So I will call the Member for Central again to move the motion on the second reading of the Bill after which the question will be proposed to open the floor for the Members to make their contributions.

So, proceed Hon. Peter Maina.

Hon. Peter Maina: Thank you Mr. Speaker for your guidance. I rise to move the motion, 'that the Nyandarua County Attorney Office Bill, 2015' be read a second time.

Speaker: Now discuss the report Hon. Peter Maina.

Hon. Peter Maina: Thank you Mr. Speaker. The Bill was referred to the Committee on Justice, Legal Affairs and Public Service for it to come up with a report on the same. The Constitution of Kenya 2010 has established the office of the County Attorney under article 156.

The County Governments Act provides, under Section 43, that a County Government may, pursuant to Article 156(4) of the Constitution request the Attorney General to represent a County Government in court or in any other legal proceedings to which the county government is a party other than in criminal proceedings. The counties have not been offered any assistance from the Attorney General's office since the office is overwhelmed by the various tasks in the various government departments.

This brings forth the issue of efficiency in governance of County Governments as is required of all the county government organs it is important that the County Government has a principal legal advisor. This will go a long way in enhancing effectiveness and efficiency in County Governments thus saving public resources that goes to legal fees to consultants on legal matters. The county governments have also been involved in drafting or engaging in contracts that have been found to be faulty thus causing massive losses to the County Governments. The county government is supposed to be advised by principal legal advisor. Nyandarua county government sources legal advisor externally which is very expensive.

Mr. Speaker Sir, the following are the main duties and functions of the County Attorney;

- (a) Being the principal legal adviser to the County Government;
- (b) Attending the county executive committee meetings as an ex-official member
- (c) Representing the county government in court or in any other legal proceedings to which the county government is a party, other than criminal proceedings;
- (d) Advising county government departments on legislative and other legal matters;
- (e) Negotiating, drafting, vetting and interpreting documents and agreements for and on behalf of the County Government and its agencies;
- (f) Revising of county laws;

- (g) Representing the County Government in all civil and constitutional matters;
- (h) Representing the County Government in matters before courts and tribunals within the country;
- (i) Liaising with the Office of the Attorney- General when need arises; and
- (j) Performing any other function as may be necessary for the effective discharge of the duties and the exercise of the powers of the County Attorney.

These functions are very crucial in the running of an effective and efficient government. However, there are two important functions which Nyandarua County require namely; representation in Courts and drafting of policies and laws. Since the inception of the County Government there has been several court cases filed against the County Government of Nyandarua. This has resulted to high legal fees which has resulted from hiring advocates from the various firms and the government has some of the pending legal fees as pending bills.

This can be reduced drastically if there is a fully fledged County Attorney office in the County. It is envisioned that the office of the County Attorney will have a litigation directorate which will handle all litigations on behalf of the County Government. It further expected that any contract or agreement that the County Government or its agencies enters into shall be drafted by the Office of the County Attorney. It is important to note that the county government has lost money or has not received value for money through contracts that have not been drafted properly. This will be a thing of the past as the county Attorney office will have qualified counsels who will draft and scrutinize the contracts and agreements.

Another important role is that one of drafting policies and county laws. One of the main role of the County Assembly is legislation. This cardinal role has been seriously hampered by lack of proper legal systems and personnel. This is informed by the fact that a law is ideally supposed to start at the policy stage from which then laws are developed. A policy is a course of action that is adopted or proposed by a government. Since the inception, the County Government has not tabled a policy in this House. The County Assembly has however passed several Acts even in the absence of a policy in place. This should not happen as laws are developed from policies as the foundation which the drafters get the intention of the government or what the government intends to achieve. There has been concerns from the Law society of Kenya and the office of the Attorney General that the quality of the bills from the County Assemblies are of low quality and there is need for an office that will assist the County Governments in coming up with good laws that are of high quality.

The committee is aware that the Senate has appreciated the need to have County Attorneys and have even began started the process of putting a law in place to establish such office. While the committee lauds the effort from the Senate it must be stated that the process has taken too long and thus the Committee came up with this law. This is because the office is very critical and the effects of not having a County Attorney are adverse.

During the public participation the Committee conducted public forums at the following places; Catholic Church at Mairo Inya, P.C.E.A Church Ol-Joro-Orok at Ol-Joro-Orok, ACK church at Ol Kalou, Geta Social Hall at Geta, Engineer Catholic Church at Engineer and finally at AIC church hall at Kwa Haraka. The committee further scrutinized the bill and the following issues arose both during public participation forums and committee's scrutiny of the Bill;

1. That the numbering of the Bill under the arrangement of clauses does not tally with that that is outlined in the body of the Bill. The members noted that the discrepancy started from clause 10 of the Bill.
2. That Clause 1 of the bill on short and long title and commencement does not state where it will be published and how long it will take to take effect after its publication. It was resolved that an amendment be added to the Bill to state that "on the fourteenth day after its publication in the County Gazette and Kenya Gazette".
3. That under Clause 2 on interpretations that definitions of legal counsel and deputy county would change in terms of clauses establishing them due to the changes in the numbering.
4. That the Clause on the application should be separate from that one on objects and purpose. The members resolved that Clause 3 would be on application whereas Clause 4 would be objects and purpose that the bill should be amended accordingly.

5. The members observed that Clause 4(1) on establishment of County Attorney office needed some redrafting so that it would read as follows; “there is established in Nyandarua County, the office of the County Attorney which shall consist of-”.
6. Clause 5 provides that County Attorney Shall be competitively appointed by the Governor and approved by the County Assembly, from amongst persons who have at least 5 years’ experience as an Advocate of the High Court. The members of the public were of the opinion that the experience required for a county attorney was low and that it required at least seven years. The committee members discussed this issue at length in which they were guided by the Senate’s Office of the County Attorney Bill which had stipulated a five years’ experience for the County. Further the County Government Act stipulates that the County Executive Committee members requires at least five years’ experience and the County Attorney would occupy a similar position thus it was agreed that the proposed experience was sufficient.
7. On the duties and responsibilities of the County Attorney the members felt that there was need to amend clause 6(e) by adding the duty to draft county laws in addition to revision of the County Laws. This is in line with ensuring that the laws that are passed in the County are of quality standards and are in conformity with the Constitution and other laws.
8. Clause 8 provides that the County Attorney shall be appointed for a term of eight (8) years and grounds for removal. The members of the public had suggested that eight (8) years suggested in the Bill was too long and that it needed to be reduced to a shorter term.

During the committee deliberations, the committee members felt that clause 8 should be separated into distinct clauses. The first one on the term of office and the second one on removal from office.

On the terms of office it was agreed that the County Attorney should serve for a term of five (5) years which should be renewable once.

On the removal from office the committee members felt that the following clause would be added:

“Notwithstanding the provisions of subsection (1), the Governor may, upon election under the Constitution, appoint a person who is qualified, as County Attorney in accordance with the provisions of this Act. This was informed by the provisions of the office of the Attorney General’s Act and the County Attorney Bill by the senate and the Office of the Attorney General Act which contains a similar provision.”

9. Clause 6 provides the main duties and responsibilities of the County Attorney.

The Committee members felt the following duties should be added;

- Ensure that the County laws are published in the Gazette.
- Ensure the safe custody of County Laws, Legal Documents and Agreements signed for or on behalf of the County Government
- Conduct Public sensitization for and civic education across the County on County laws from time to time.

10. Under clause 8, sub-clause (5), the Bill provides that a taskforce formed by the Governor to consider removal of County Attorney from Office for any of the factors mentioned in Clause 8 (1), shall report to him within 60 days from the date of appointment. The committee members deliberated on this and it was their opinion that it was too long and that it may compromise investigations and that the period would put the person under investigations in limbo for too long. It was resolved that the days should be reduced to thirty (30) days.

11. Clause 11 (3) (a) provides that the Deputy County Attorney should have experience of at least 3 years as an Advocate of the High Court of Kenya. During public participation it was raised that the experience was not enough and that the period should be increased. The committee discussed the matter at length and found that the period stipulated in the bill was sufficient. In its decision the Committee was guided by the County Government Act that stipulates that a chief officer should have the relevant skill and experience without stipulating the number of years of experience required. Given that the Deputy County Attorney will hold a similar position the Committee felt that the three years were sufficient.

12. The Committee discussed the terms of employment for the deputy County Attorney which was raised during public participation where some people wanted it to be on permanent and pensionable basis while others wanted it to be on or contractual basis. After lengthy deliberation it was resolved that the Deputy County Attorney should be employed on contractual basis for a term of six years. The term of six years was informed by the need for continuity so that a new county attorney would find a Deputy County Attorney who will assist in the transition period. The Committee further agreed that the procedure of recruiting the Deputy County Attorney should be similar to that one used to recruit chief officers where the CPSB shall recruit and forward three names to the Governor who shall nominate and forward one name to the County Assembly for approval and then the Governor appoints the approved person.

The sixth year, Mr. Speaker, would allow for easy transition in the office of the Deputy Attorney General.

13. Clause 14 provides that the County Attorney, Deputy County Attorney and County Legal Counsel shall not engage in any other gainful employment that may result in a conflict of interest. Members should deliberate and make recommendations that regulation to be developed to consider payment of non-practicing allowances for such officers. Direction on what happens where one is a partner with a practicing law firm should also be defined.
14. Under Clause 18, there is need for recommendations on formulation of regulations to govern the scope/ terms of procuring services from such other services for the purposes of assisting the Office in performance of its functions. Such terms should factor;
 - a. Level of skills currently available in the Office of the County Attorney
 - b. Level of staffing and workload
 - c. Complexity of the issue at hand that may require expert interpretation/ engagement.
 - d. The Committee should deliberate on applicable fine for a person who uses information gained in course of official duties without the authority of the County Attorney.
 - e. Under Clause 20, Regulations on establishment of County Legal Registry and controls should be spelt out.

15. The committee members felt that there was need to add another role to the office of the County Attorney that one of ensuring that all the laws are published in the Kenya and County Gazette.

16. The members further noted that there was need for an amendment on the memorandum of objects and reasons so that it could be compliant with article 114 of the Standing Orders in relation to delegated legislative authority, limitation to fundamental rights and financial implication. The members agreed that the Bill was not a money bill as per section 21 of the County Government Act though it occasioned use of public funds.

Mr. Speaker, the committee came up with various recommendations as follows:

1. That Clause 1 of the Bill be amended by inserting the words “on the fourteenth day after its publication in the County Gazette and Kenya Gazette” immediately after the word “and” and immediately before the word “upon” and that the words “upon publication” be deleted.
2. That Clause 2 on interpretation be amended by deleting the number 11 immediately after the word “section” and immediately before the word “of” and inserting thereof the number 12 and further by deleting the number 10 immediately after the word “section” and immediately before the word “of” and inserting thereof the number 11.

3. That a new Clause 3 is inserted as follows “This Act shall apply to the County Attorney, the Deputy County Attorney, County Legal Counsel or such other officers who perform or discharge legal functions and such other duties as may be assigned to them in the Office of the County Attorney.”

4. That Clause 3(1) of the bill be renumbered as Clause 4 and that sub-clause 3(2) be wholly deleted.

Mr. Speaker, the recommendations I have already read and the ones I have not read amount to the amendments that will be moved during the Committee of the Whole House. It is important that there be established a County Attorney Office in our county government to be in service of the latter as it delivers its mandate. I now call upon Hon. Dorcas to second. Thank you.

Speaker: Yes County Member from Githioro, Hon. Dorcas Kihara.

Hon. Dorcas Kihara: Thank you Mr. Speaker. I rise to second the motion on the Nyandarua County Attorney Office Bill, 2015. Lack of a county attorney office in our county government is a big gap. It is important to enact the Bill. The office of the county attorney will make our county government fully functional in legal matters. I beg to second. Thank you Mr. Speaker.

(Question proposed)

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

Hon. Kamau Ngotho: Thank you Mr. Speaker. I rise to support the motion on the Nyandarua County Attorney Office Bill, 2015. The Bill is timely. The county governments are replicas of the national government. The Bill states that:

Clause 8 provides that the County Attorney shall be appointed for a term of eight (8) years and grounds for removal. The members of the public had suggested that eight (8) years suggested in the Bill was too long and that it needed to be reduced to a shorter term.

I was consulting with one of the table clerks on the terms of service for the Attorney General; the term of the Attorney General is not given. Why should we limit the term for the county attorney?

The old Constitution provided that the Attorney general was an ex-official member of parliament. He was just like a civil servant. My take is that what should remove the county attorney from office is violation of provided requirements but not expiry of a stated period.

I do not know how I should move it since I had not forwarded it as an amendment before. The office of the county attorney replicates that of the Attorney General. Why should we limit the time in office of the county attorney. Why should we have a county attorney who is toothless?

Speaker: Member for Karau, you should consider that if the term in office of the county attorney is not stipulated that means that the county attorney will not have security of tenure. If there are no term limits for the county attorney, a governor can just remove them from office. In addition, they may be subjected to a lot of manipulation. That is why there should be term limits for the office of the county attorney. Further, with the term limits, the county attorney will have independence of service. But that is food for thought.

Hon. Kamau Ngotho: How is the Attorney General protected by law?

Speaker: His office is protected by security of tenure which is provided by the Constitution. Security of tenure of the county attorney is not provided for in the Constitution. Neither is it provided for in the County Government Act.

Hon. Kamau Ngotho: I did not know that.

A term of five years for the county attorney is short. Remember this is a person dealing with legal matters and some legal matters span five years. For me the eight year stated in the Bill is what should remain.

I am in support of the Bill at hand.

The Chief Officer for the Department of Justice, Legal Affairs and Public Service is not a legal expert. But the Director of the same is a legal expert. The county government would cut cost of legal cases, including litigations, if an office dealing with them is established.

I remember that there was a case in Naivasha and the county legal team was not aware; even if they were aware they were not responding to the court. Eventually the court sent sermons to the Nyandarua County Government.

Speaker: The motion mover.

Hon. Peter Maina: Mr. Speaker I thank your office and that of the clerk for enabling my committee compile the report on the Bill through guidance and facilitation respectively. I also thank the House for supporting the report with the recommendations therein.

To respond to Hon. Kamau Ngotho's point, the committee proposed eight years in office for the county attorney on the higher side. An incoming governor may find it difficult to work with the county attorney whom they find in office. That is why the committee proposed six years for the deputy county attorney. The sixth year which would allow for transition after the expiry of the political term.

The Bill has provided for positions of legal counsels who will be permanent and pensionable. So there will be officers to help in the transition at the expiry of a political term.

I beg to move. Thank you Mr. Speaker.

Speaker: Hon. Members, the motion on the Nyandarua County Attorney Office Bill, 2015 having been exhausted, I now direct that the Bill be read a second time.

(The Nyandarua County Attorney Office Bill, 2015 is read a second time)

Hon. Members, the Nyandarua County Attorney Office Bill, 2015 having been read a second time I now pronounce that the House should move on to the Committee of the Whole House.

COMMITTEE OF THE WHOLE HOUSE

(The Speaker, Hon. Ndegwa Wahome, leaves the Chair)

IN THE COMMITTEE

(The Chairperson, Hon. Wambugu King'ori, takes the Chair)

NYANDARUA COUNTY ATTORNEY OFFICE BILL, 2015

Chairperson: Hon. Members, we will start with clauses without amendment.

Clauses without Amendment

*(Question on Clauses 5, 7, 9, 10, 12, 13, 14, 15, 16,
17, 18, 19, 21, 22, 23, 24, 26 proposed)*

*(Question on Clauses 5, 7, 9, 10, 12, 13, 14, 15, 16, 17,
18, 19, 21, 22, 23, 24, 26 put and agreed to)*

CLAUSES WITH AMENDMENTS

Clause 3

(Question on Clause 3 proposed)

Chairman: Yes, Chairperson Committee on Legal Affairs Justice and Public Service, Hon. Peter Mwangi.

Hon. Peter Mwangi: Thank you Mr Chairman. I propose that clause 3 of the bill be amended by fully deleting sub clause 3(2) and further change the serialisation by deleting the number 3 and inserting thereof the number 4 and henceforth serialization of subsequent clauses 4 to 27 . I now move Mr Speaker.

(Question on amendment proposed)

(Question on amendment put and agreed to)

(Question on Clause 3 as amended put and agreed to)

Chairman: Next order.

Clause 4

(Question on Clause 4 proposed)

Chairman: Yes, Chairperson Committee on Legal Affairs Justice and Public Service, Hon. Peter Mwangi.

Hon. Peter Mwangi: Thank you Mr Chairman I propose that the clause 4(1) be amended by deleting the word “hereby” immediately before the word “established” and deleting the word “for” and inserting thereof the word “in” immediately before the words Nyandarua county and further deleting the word “government” immediately after the word “county”. I now call upon Hon. Nancy Ng’ang’a to second the amendment.

Chairman: Yes, County Member from Kipipiri, Hon. Nancy Ng’ang’a.

Hon. Nancy Ng'ang'a: Thank you Mr. Chairman. I second.

(Question on amendment proposed)

(Question on amendment put and agreed to)

(Question on Clause 4 as amended put and agreed to)

Chairman: Next

Clause 6

(Question on Clause 6 proposed)

Chairman: Yes, Chairperson Committee on Legal Affairs Justice and Public Service, Hon. Peter Mwangi.

Hon. Peter Mwangi: Thank you Mr Chairman. I propose that sub-clause 6 (e) be amended by inserting the word "drafting" immediately after the word "the" and immediately after the word "revision". I now call upon Hon. Miriam Wahura to second the amendment.

Chairman: Yes, County Member from Charagita, Hon. Miriam Wahura.

Hon. Miriam Wahura: Thank you Mr. Chairman. I second.

(Question on amendment proposed)

(Question on amendment put and agreed to)

(Question on Clause 6 as amended put and agreed to)

Chairman: Next

Clause 8.

(Question on Clause 8 proposed)

Chairman: Yes, Chairperson Committee on Legal Affairs Justice and Public Service, Hon. Peter Mwangi.

Hon. Peter Mwangi: I propose that Clause 8(1) of the bill be amended by deleting the word "eight" after the word "of" and immediately before the word "years" and inserting thereof the word "five" and inserting the following words "which may be renewed once" immediately after the word "years" and further adding the following;

"8 (2) Notwithstanding the provisions of subsection (1) the Governor may, upon election under the Constitution, appoint a person who is qualified as County Attorney in accordance with the provisions of this Act."

- That sub-clause 3(a) be amended by inserting the following words” who shall be the chairperson” immediately before the word “and”
- That sub-clause (5) be amended by deleting the word “ sixty” immediately after the word “within” and inserting thereof the word “thirty”
- That sub-clause 2 of the bill be amended by deleting the number “2” and inserting thereof the number “3” and henceforth re-serialize the subsequent sub-clauses chronologically.

I now call Hon. Dorcas Kihara to second.

Hon Dorcas Kihara. Thank you Mr Chair. I second the amendment.

(Question on amendment proposed)

(Question on amendment put and agreed to)

(Question on Clause 8 as amended put and agreed to)

Chairman: Next

Clause 11

(Question on Clause 11 proposed)

Chairman: Yes, Chairperson Committee on Legal Affairs Justice and Public Service, Hon. Peter Mwangi.

Hon. Peter Mwangi: Thank you Mr Chair. I propose that clause 11(1) be amended by deleting the word “appoint” immediately after the word “shall” and inserting thereof the word “competitively recruit” and adding the following words “and forward three names to the Governor who shall nominate one name and with the approval of County Assembly appoint the Deputy County Attorney” and further adding the following;

“11(2). The deputy County Attorney shall serve for a term of six years which may be renewed once”. I call Honorable Nancy Ng’ang’a to second.

Hon. Nancy Ng’ang’a. Thank you chair. I second.

(Question on amendment proposed)

(Question on amendment put and agreed to)

(Question on Clause 11 as amended put and agreed to)

Chairman: Next.

Clause 20

(Question on Clause 20 proposed)

Chairman: Yes, Chairperson, Committee on Legal Affairs Justice and Public Service, Hon. Peter Mwangi.

Hon. Peter Mwangi. Thank you chair. I propose that Clause 20 of the bill be renumbered as clause 21(1) and further be amended by inserting the following; “20 (2) the office of the County Attorney shall ensure that all the laws are published in the Gazette. I now call honourable Miriam Wahura to second.

Hon. Miriam Wahura: Thank you chair. I second.

(Question on amendment proposed)

(Question on amendment put and agreed to)

(Question on Clause 20 as amended put and agreed to)

Chairman: Next

Clause 25

Chairman: Yes, Chairperson Committee on Legal Affairs Justice and Public Service, Hon. Peter Mwangi.

Hon. Peter Mwangi: Thank you Mr Chair. I propose that Clause 25 of the bill be amended by deleting the number (23) and inserting thereof the number 25. I now call Hon. Nancy Wahura to second.

Hon. Nancy Ng’ang’a: Thank you chair. I second.

(Question on amendment proposed)

(Question on amendment put and agreed to)

(Question on Clause 20 as amended put and agreed to)

Chairman: Next

NEW CLAUSES

Clause 3

(Question that the New Clause 3 be read a Second Time, proposed)

(Question, that the New Clause 3 be read a Second Time, put and agreed to)

(The New Clause 3 was read a Second Time)

(Question on be added to the Bill New Clause 3 proposed)

Chairman: Yes, Chairperson Committee on Legal Affairs Justice and Public Service, Hon. Peter Mwangi.

Hon. Peter Mwangi: I propose that a New Clause 3 be included as follows:

“3. This Act shall apply to the County Attorney, the Deputy County Attorney, County Legal Counsel or such other officers who perform or discharge legal functions and such other duties as may be assigned to them in the Office of the County Attorney.” I call upon Hon. Dorcas Kihara to second.

Chairman: Yes County Member from Githioro Ward.

Hon. Dorcas Kihara: Thank you Mr. Chairperson, I second.

(Question that New Clause 3 be added to the Bill proposed)

(Question that the New Clause 3 be added to the Bill, put and agreed to)

Clause 28

(Question that the New Clause 28 be read a Second Time, proposed)

(Question that the New Clause 28 be read a Second Time, put and agreed to)

(The New Clause 28 was read a Second Time)

Chairman: Yes, Chairperson Committee on Legal Affairs Justice and Public Service, Hon. Peter Mwangi.

Hon. Peter Mwangi: I propose that a New Clause 28 be included as follows:

“28. Upon of coming to effect of this Act all the officers working in the directorate of legal affairs shall be absorbed in the office of the County Attorney.” I call upon Hon. Kariuki Muchiri to second.

Chairperson: Yes, the Leader of Majority Party.

Hon. Kariuki Muchiri: Thank you, I second.

(Question that New Clause 28 be added to the Bill proposed)

(Question that the New Clause 28 be added to the Bill, put and agreed to)

SCHEDULES WITH AMENDMENTS

MEMORANDUM OF OBJECTS AND REASONS

(Question on memorandum of objects and reasons proposed)

Chairman: Yes, Chairperson Committee on Legal Affairs Justice and Public Service, Hon. Peter Mwangi.

Hon. Peter Mwangi: Thank you Mr. Chair I propose that the memorandum of objects and reasons be amended by inserting the following:

“(i) Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms. The Bill confers on the County Attorney the powers to make regulations under the Act for the purposes of operationalizing the Act in order to implement the objectives set out in clause 4 of the Bill. The Bill does not limit any fundamental rights or freedoms

ii) Statement that the bill is not a money bill

This bill is not a money bill within the meaning of section 21 of the County Government Act. Though it will occasion expenditure of public funds for defraying expenses of operationalization of the Act but the allocation will done in another law through the Appropriation Acts” I call Hon. Nancy Ng’ang’a.

Hon. Nancy Ng’ang’a: Thank you chair. I second.

(Question on amendment of memorandum of objects and reasons proposed)

(Question on amendment of memorandum of objects and reasons put and agreed to)

Chairman: Next

INTERPRETATION

Clause 2

(Question that clause 2 stands as part of the bill is proposed)

Chairman: Yes, Chairperson Committee on Legal Affairs Justice and Public Service, Hon. Peter Mwangi.

Hon. Peter Mwangi: Thank you Mr Chair. I propose that clause 2 be amended by deleting the number 11 immediately after the word “section” and immediately before the word “of” and inserting thereof the number 13 and further by deleting the number 10 immediately after the word “section” and immediately before the word “of” and inserting thereof the number 12. I call upon the leader of majority, Hon Kariuki Muchiri to second.

Hon Kariuki Muchiri: Thank you Mr Chairman. I second the amendment.

(Question on amendment proposed)

(Question on amendment put and agreed to)

(Question on Clause 2 as amended put and agreed to)

Chairman: Next

LONG TITLE

(Question on long title proposed)

(Question on long title put and agreed to)

Chairman: Next

SHORT TITLE AND CITATION

Clause 1

(Question on Clause 1 proposed)

Chairman: Yes, Chairperson Committee on Legal Affairs Justice and Public Service, Hon. Peter Mwangi.

Hon. Peter Mwangi: Thank you Mr. Chair. I propose that Clause 1 be amended by inserting the words “on the fourteenth day after its publication in the County Gazette and Kenya Gazette” immediately after the word “and” and immediately before the word “upon” and that the words “upon publication” be deleted.” I call upon hon. Miriam Wahura to second.

Hon. Miriam Wahura: Thank you chair. I second.

(Question on clause 1 proposed)

(Question on clause 1 put and agreed to)

(Question on clause 1 as amended put and agreed to)

Chairman: Yes, Chairperson Committee on Legal Affairs Justice and Public Service, Hon. Peter Mwangi.

Hon. Peter Mwangi: Thank you Mr. Chair. Hon. Chairperson, I beg to move that the Committee do report to the house its consideration of the Nyandarua County Attorney Office Bill, 2015.

(The House resumes)

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

(The mace is raised)

REPORT AND THIRD READING

Speaker: Very well. We have resumed the business for the rest of the session. The Chairperson of the Committee of the Whole House has some reports to make. Proceed member for North Kinangop and the chair of the Committee of the Whole House.

Hon. Wambugu King'ori: Thank you Mr Speaker. Hon. Speaker, I beg to report that the Committee of the Whole House has considered Nyandarua County Attorney Office Bill, 2015 and approved the same with amendments.

Speaker: I now call upon the mover, Member for Ndaragwa Central, Hon. Peter Mwangi.

Hon. Peter Mwangi: Thank you Mr Speaker. Hon. Speaker, I beg to move that the House do agree with the Committee in the said Report.

Speaker: Very well. Hon. Members I will propose the question, which is that the House do agree with the Committee in the said Report.

(Question proposed)

(Question put and agreed to)

Speaker: Very well. I now call upon the mover, Member for Central, Hon. Peter Mwangi.

Hon. Peter Mwangi: Thank you Mr Speaker. Hon. Speaker, I beg to move that Nyandarua County Attorney Office Bill, 2015 be now read a Third time.

Speaker: Hon. Members. I will propose the question, which is that the Nyandarua County Attorney Office Bill, 2015 be now read a Third time.

(Question proposed)

(Question put and agreed to)

(The Bill is accordingly read the third time and passed)

Very well I thank the honourable members and in particular the committee on Justice and Legal Affairs for achieving another milestone and another bill in as many months. We are encouraging other committee that have bills under their custody to expedite, as an assembly we shall mainly be judged by the legislative framework that we set for our county upon which the growth that we all desire will be triggered from. Now as earlier directed we shall refer to the original order paper to transact the remaining business.

Proceed Clerk.

MOTION

1. REPORT ON THE STATUS OF GETA FARMER'S COOPERATIVE SOCIETY

Speaker: Very well, on Daniel Kibebo the chairperson committee on trade cooperatives and enterprise development and member for Gathaara.

Hon Daniel Kibebo: Thank you Mr Speaker Sir, Mr Speaker I need your guidance, I was to move this motion but the mood of the house is low, I therefore seek leave and request that I move the motion tomorrow in the afternoon. Secondly, it's a very important report and the person who brought it is absent. It's necessary that all members be present.

Speaker: Who sought for the statement?

Hon Daniel Kibebo: The statement on Status of Geta Farmers' Cooperative Society was sought by Hon John Githinji Mwaniki.

Speaker: The main fear Hon. Member, is that we are not assured that the member for Geta will be there tomorrow. The matter was placed on the order paper today and he has not sought to be present during the moving of the motion. My opinion is that the house should be able to transact the business in the order paper and continue with the same unless there are very compelling reasons.

Hon Daniel Kibebo: Thank you Mr. Speaker. I beg move the following motion;

That this house adopts the report on the ...

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

Speaker: What is it member for North Kinangop, Hon Wambugu King'ori?

Hon. Wambugu King'ori: Thank you Mr Speaker. I think the mover of the motion should give a very compelling reason why he is seeking leave. Mr Speaker it is however provided in the standing orders no motion should be moved without quorum and as it is there is no quorum in the house.

Speaker: Very well. What is it member for Central.

Hon. Peter Maina: Mr Speaker I want to add on what Hon. Wambugu says and as much as we could rule out on grounds of quorum. The committee members are not present. We therefore feel that the chairman should dispense the report tomorrow with your permission, when the committee members are present.

Speaker: Very well, the chair has been put in a very difficult situation. We cannot adjourn a house because members have gone home, there is the right procedure to do so. I therefore act on the issue that the Deputy Speaker has raised and direct the clerk to confirm if there is quorum.

(There is no quorum as confirmed by the clerk-at-the-table)

There being no quorum Honourable Members, I will invoke the provisions of Standing Orders No. 35 and direct the bell be rang for eight minutes.

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

ADJOURNMENT

Speaker: Okay, Hon. Members, considering standing orders no (2), If on the count under paragraph (1) a quorum does not appear to be present, the Speaker or the Chairperson shall cause the division bell to be rung as on a division, and if no quorum is present at the expiration of eight minutes-

- a) If the Speaker is in the Chair, the Speaker shall adjourn the Assembly until the next sitting without question put;

Therefore the assembly stands adjourned until the next sitting which is tomorrow Thursday 6th October 2016 at 2:30 p.m.

(The house rises at 4.08 p.m.)

