

REPUBLIC OF KENYA
NYANDARUA COUNTY ASSEMBLY

1ST ASSEMBLY- 5TH SESSION

OFFICIAL REPORT

Thursday, 30th March, 2017

The Assembly met at the Assembly Chamber at 2:30 p.m.

[The Temporary Speaker, Hon. Dorcas Kihara, in the Chair]

PRAYER

QUORUM CALL AT THE COMMENCEMENT OF THE SITTING

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

Speaker: Quorum having not been achieved I, pursuant to the provisions of Standing Order No. 34, direct that the bell be rung for an initial ten minutes or until such time within the ten minutes that quorum will have been achieved.

*(The bell is rung for two (2) minutes and quorum is achieved
as confirmed by the clerk-at-the-table)*

Very well; quorum having been achieved we can proceed to transacting the business for the sitting.
First order.

COMMUNICATION FROM THE CHAIR

**REMOVAL FROM OFFICE OF THE SECRETARY TO THE COUNTY PUBLIC
SERVICE BOARD**

Hon. Members, I have a communication to make; the same relates to a petition that was filed with the Assembly by County Workers Union. The communication which is on the petition on the removal of the Secretary to the County Public Service Board is as follows:

Hon. Members, on Tuesday, 14th day of February 2017 the County Assembly through the Office of the Clerk received a petition for the removal of the Secretary of the Nyandarua County Public Service Board. The petition was presented by representatives of the Nyandarua County Workers Union in accordance with Section 88 of the County Government Act as read together

Disclaimer: *This is a draft Hansard Report and it is for information purposes only. A certified copy of the Hansard Report can be obtained from the Hansard Editor.*

with Article 192 of our Standing Orders. The Office of the Clerk confirmed that the petition met the requirements of the Standing Orders in terms of form, manner and content and pursuant to Article 193(5) of the Standing Orders forwarded the petition to my office on Wednesday, the 15th day of February 2017.

Hon. Members, I would like to bring to your attention the provisions of section 58(5) of the County Government Act which provides as follows:

The members of the Board may only be removed from office—

- (a) on grounds set out for the removal of members of a constitutional commission under Article 251(1) of the Constitution; and
- (b) by a vote of not less than seventy five percent of all the members of the county assembly

This then necessitates us to look at article 251(1) which, if you allow me, I will quote verbatim:

A member of a commission (other than an ex officio member), or the holder of an independent office, may be removed from office only for—

1. serious violation of this Constitution or any other law, including a contravention of Chapter Six;
2. gross misconduct, whether in the performance of the member's or office holder's functions or otherwise;
3. physical or mental incapacity to perform the functions of office;
4. incompetence; or
5. bankruptcy.

The Constitution is very categorical that a holder of the above offices can only be removed from office on one or more of the grounds above mentioned. The petitioners have alleged the following grounds; violation of the constitution, and gross misconduct and incompetence by the Secretary to the County Public Service Board. At this juncture it is imperative that I point out that these are merely allegations which must be proved by the petitioners. This House through its Committee will hear the matter in which it will act as a *quasi-judicial* body thus the rules of natural justice and fair hearing as stipulated under Article 50 of the Constitution must be upheld at all times during the process.

Hon. Members, I would now like to turn to the issue of the procedure for processing a petition for removal from office of constitutional and independent offices holders. The first legal regime I turned my attention to was our Standing Orders which I found did not contain any express provisions to cover the aforementioned petition. In the absence of an express provision in the Standing Orders I would like to draw your attention to the provisions of Article 1 of the Standing Orders which stipulates as follows:

In all cases not hereinafter provided for and subject to the Constitution and other written laws, the Speaker shall decide having regard to the Orders of the Assembly, the usages, forms, precedents, customs, procedures and traditions of the Assembly and the National Parliament and legislative assemblies from other jurisdictions in view of the constitutional principles, the practices in other parliaments in so far as the same may be applicable to this Assembly.

Further, I would like to draw your attention to section 8(2) of the County Government Act which stipulates that:

If a county assembly fails to enact any particular legislation required to give further effect to any provision of this Act, a corresponding national legislation, if any, shall with necessary modifications apply to the matter in question until the county assembly enacts the required legislation.

The above provisions thus gives the Speaker the authority to refer to national legislation in matters that are not provided for at the County level.

Hon. Members, on the basis of the provisions of both the Standing Orders and the County Government Act I borrowed from the National Assembly Standing Orders, which has the provisions on the removal from office of constitutional commissions and independent office holders which I will quote verbatim for the benefit of the Hon. Members;

Article 230(1): in addition to complying with the requirements of paragraphs (a), (b), (c), (d), (e), (h),(i),(j),(l) and (m) of Standing Order 223 (Form of Petition), a petition to the House for removal of a member of a Commission under Article 251 of the Constitution —

(a) shall indicate the grounds under Article 251(1) of the Constitution which the member of the commission is in breach;

(b) may contain affidavits or other documents annexed to it.

(2) The paragraphs (1), (3), (4) and (5) of Standing Order 220 (Submission of a petition), Standing Order 222 (Notice of Intention to Present Petition), Standing Order 225 (Presentation of Petitions), and Standing Order 226 (Comments on petitions), shall apply to a petition to the House for removal of a member of a Commission under Article 251 of the Constitution.

(3) Every Petition presented or reported pursuant to this Standing Order shall stand committed to the relevant Departmental Committee.

(4) Upon receipt of a petition under paragraph (3), the relevant Departmental Committee shall investigate the matter and shall, within fourteen days, report to the House whether the petition discloses ground for removal under Article 251(a) of the Constitution.

(5) The House shall, within ten days of the tabling of the report of the committee under paragraph (4) resolve whether or not the petition discloses a ground for removal under Article 251(a) of the Constitution.

(6) Where the House resolves that a petition discloses a ground for removal, the Speaker shall, within seven days of the resolution, transmit the resolution and the petition to the President.

Hon. Members, Article 230 of the National Assembly Standing Orders is very clear on the procedure and the timelines of processing a petition on the removal of constitutional commissions and independent office holders. This should be applied *mutatis mutandis* in the case of a petition for the removal of a member of the County Public Service Board by the County Assembly.

Hon. Members, I therefore wish in accordance to Article 198(2) (b) of the Standing Orders to report the petition on the removal of the Secretary to the Nyandarua County Public Service Board.

Hon. Members, at this point I will now read the petition before concluding the actual communication. The Petition is titled “Removal of the Secretary to the County Public Service Board.” It states as follows:

In the matter of section 88 of the County Government Act (No.17 of 2012) (Citizens Rights to petition the county government on any matter under the responsibility of the county government) and Article 192 of the Nyandarua County Assembly Standing Orders.

Petition by the Representatives of the Nyandarua County Workers Unions for the removal of the Secretary of the Nyandarua County Public Service Board.

The petition is dated 13th February, 2017 and addressed to the Clerk, Nyandarua County Assembly (the address is given in full).

PETITION

We the undersigned, members and officials of the Nyandarua County Workers Unions (Kenya County Government Workers Union, Kenya National Union of Nurses, Kenya Clinical Officers Union, Kenya Medical Practitioners and Dentists Union, and Union of Kenya Civil Servants) organisations composed of members representing workers working with the County Government of Nyandarua, do hereby seek the attention of the County Assembly to the following issues in relation to the conduct and misconduct of the Secretary to the County Public Service Board;

1. That the Secretary has violated the Constitution of Kenya 2010 and in particular Chapter Six by acting contrary to the authority vested in his office as at Article 73 of the Constitution on the responsibilities of leadership.
2. That the responsibilities of leadership as per Chapter 6 demand that a state officer conducts his office in a manner that:
 - a. demonstrates respect for the people;
 - b. brings honour to the nation and dignity to the office;
 - c. promotes public confidence in the integrity of the office.

The Secretary has failed to demonstrate the above by perennially showing disrespect, being rude and arrogant to workers and colleagues. He has in particular issued threats to workers who act contrary to his ill-advised directives. We refer to the Board’s letters dated the 13th December, 2016, 10th January 2017 and 30th January 2017.

3. That authority assigned to State Officers vests the responsibility to serve the people, rather than the power to rule them.
4. That the Secretary has violated the provisions of Article 73 (b) of the Constitution on guiding principles of leadership and integrity by —

- a. demonstrating nepotism and favouritism or improper motives and corrupt practices in recruitment of County staff,
 - b. being dishonest in the execution of public duties; and
 - c. failing to show commitment in service to the people (workers).
5. That the Secretary has overstepped his mandate contrary to the provisions of the County Government Act by acting unilaterally; making and communicating sole decisions as decisions of the Board. In particular, we have brought to the Board's attention several letters on the matter of casual workers, signed by the Secretary on behalf of the Board, but which other members claim they are not privy to.
 6. That the Secretary has demonstrated sheer incompetency by acting in disregard of his role as a Secretary to the Board. He has for instance, failed to keep minutes of the Board meetings.
 7. That the Secretary has demonstrated incompetency by constantly drafting and dispatching letters that do not reflect the dignity and status of his office and in particular threats and letters that manifestly show impunity and insubordination to other authorities within the County Government. We, in particular refer to the Board's letter dated 30th January 2017.
 8. That the Board through the Secretary has failed to implement the recommendations of various stakeholders including the County Assembly and the County Executive on absorption of casual workers and CHS workers on contract.
 9. That one of the tenets of good governance is involvement of all the stakeholders in decision making which in this case have not been observed.
 10. That the grievances raised in this petition amount to gross violation of the Constitution, gross misconduct in performance of his office functions and incompetency as stipulated in Article 251 (1) of the Constitution.
 11. That the issues raised herein by this petition are not pending before any court of law or any tribunal or a *quasi-judicial* body for that matter.
 12. That the Constitution bestows the oversight powers in Counties with the County Assemblies which includes consideration of petitions for removal of members of the County Public Service Board.
 13. That the prayers sought by the petitioners are within the mandate of the Nyandarua County Assembly and can be granted.

That our humble prayers to the County Assembly are as follows:

1. That the Assembly treats this petition as a matter of great importance and utmost urgency.
2. That the County Assembly does consider this petition with the aim of forwarding the same to the Governor for his further action.
3. That the County Assembly does recommend to the Governor the investigation of the conduct and misconduct of the Secretary to the CPSB by a tribunal in accordance with Article 251 of the Constitution.

The same was signed by:

4. Ernest Macharia, the Chairperson of Kenya County Government Workers Union.
5. John K. Gachara, the Secretary of KNUN.

6. Alfred Kimani, the Chairperson of KCOA.
7. Dr Patric Kiruki, County Coordinator.
8. Moses M. Njoroge, the Secretary of URCS.

The petition was copied to the Governor (of Nyandarua County) and the Speaker (of the County Assembly), which obviously was not necessary.

Hon. Members, I wish to direct that the Committee on Justice, Legal Affairs and Public Service shall look at the petition and process it accordingly. In processing the aforementioned petition they shall observe the rules of natural justice and fair hearing. The same Committee should report back to this House within 14 days as stipulated by Article 230 of the National Assembly Standing Orders. Thereafter, Hon. Members, the House will be expected to deal with the matter within seven (7) days and make a resolution whose backing shall meet the threshold of seventy five percent (75%) of the Members of the County Assembly. The House will then report to the Governor the outcome of the process.

I cannot see the Chairperson of the Committee on Justice, legal Affairs and Public Service, but the Vice Chairperson and the County Member from Charagita, Hon. Miriam Wahura, is present. Taking cognisance of the fact that we are proceeding for recess on 7th April, 2017, if the Committee could start dealing with the matter effective today and complete it by 10th April, 2017, then the House can address the matter within seven days. So it shall have completed the same by 17th April, 2017, some days just before we go to nominations on 21st April, 2017. The County member from Charagita should tell the House whether the Committee will be up to the task to deliver a report on the matter. The Committee shall require the petitioners to appear before it to prove the allegations. In addition, the Committee, applying the rules of natural justice and fair hearing under Article 50 of the Constitution, shall require to call the 'petitionee' to appear before the Committee to give his side of the story before compiling a report with recommendations for tabling before the House for consideration and vote on the same.

If the report could be ready in ten days, instead of incurring further costs of gazetting a special sitting to discuss the report, the House, when adjourning on 7th April, 2017, can defer the matter to an appropriate date on which it shall debate a motion on the report.

Yes, County Member from Charagita.

Hon. Miriam Wahura: Thank you Mr Speaker. Since the matter is of county importance, the Committee will burn its midnight oil in order to come up with the report in ten days.

Speaker: That is commendable. The House Business will sit and communicate to this House the date when you will debate on the report. Next week on 7th April, 2017 the Leader of Majority will move a motion to adjourn the House to a date, other than the Calendar date, when we shall agree to deliberate on the report.

Next order.

(The order on Papers is read)
(Hon. Kariuki Muchiri rises on a point of order)

What is it Hon. Kariuki Muchiri?

Hon. Kariuki Muchiri: Mr Speaker, I rise on Standing Order No. 44 on Statement Hour. Although we have not done this before, the said standing order stipulates that a few minutes before 3.00p.m. (on Thursday) the Leader of Majority or the Leader of Minority, or a designated Member of the House Business Committee, shall rise and give the notice paper for the coming week. We

have been doing this after the business of the day. But I think we should adhere to the Standing Orders Mr Speaker.

Speaker: Hon. Members, the intervention by the Leader of Majority is timely and well founded under Standing Order No. 44. Having sought to optimise the application of the said standing order I will give him the floor to make his presentation in not more than ten (10) minutes.

Hon. Kariuki Muchiri: Thank you Mr Speaker for allowing me to present to the House the notice paper for the sittings starting from 4th to 6th April, 2017 pursuant to the said standing order.

NOTICE PAPER

DATE	BUSINESS	MOVER
Tuesday 4 th April 2017 2.30 p.m.		
	Communication from the Chair	Hon. James Ndegwa Wahome (Speaker, Nyandarua County Assembly)
	Governor's Address to the Assembly	H.E. Daniel Waithaka Mwangi (Governor, Nyandarua County)
Wednesday 5 th April 2017 9.00 a.m.		
	Papers	
	i) The Address of the Governor to the Assembly	Hon. Kariuki Muchiri (Leader of the Majority Party)
	Notices of Motion	
	i) Notice of motion "that the Thanks of the Assembly be recorded for the exposition of public policy contained in the Address of the Governor, Nyandarua County"	Hon. Kariuki Muchiri (Leader of the Majority Party)
	Statements	

DATE	BUSINESS	MOVER
	i) Response to the Statement sought by Hon. Suleiman Kihika Kimani on land parcels in Kanjuiri Ward Motions and Bills <u>Motion</u> i) Motion that the Thanks of the Assembly be recorded for the exposition of public policy contained in the Address of the Governor, Nyandarua County.	Hon. John Githinji Mwaniki (Chairperson, Lands, Housing and Physical Planning) Hon. Kariuki Muchiri (Leader of the Majority Party)
Wednesday 5 th April 2017 2.30 p.m.		
	Papers Notices of Motion Motions and Bills <u>Motion</u> i) Motion that the Thanks of the Assembly be recorded for the exposition of public policy contained in the Address of the Governor, Nyandarua County (<i>continuation</i>).	Hon. Kariuki Muchiri (Leader of the Majority Party)
Thursday 6 th April 2017 2.30 p.m.		
	Papers Notices of Motion Statements i) Statement from the Chairperson, Committee on Water Environment and Natural Resources Committee on Ol'kalou Water and Sanitation Company's water tariffs and acute water shortage Motions and Bills <u>Motion</u>	Hon. Sammy D. Kamau Ngotho (MCA Karau Ward)

DATE	BUSINESS	MOVER
	i) Motion that the Thanks of the Assembly be recorded for the exposition of public policy contained in the Address of the Governor, Nyandarua County (<i>continuation</i>).	Hon. Kariuki Muchiri (Leader of the Majority Party)
	ii) Motion of adjournment of the Assembly for long recess	Hon. Kariuki Muchiri (Leader of the Majority Party)

Thank you Mr Speaker.

Speaker: Thank you for that intervention. We are now almost in full compliance with the requirements of the Standing Orders.

Next order.

STATEMENTS REQUESTED

1. STATUS OF PYRETHRUM FARMING AND PROCESSING IN THE COUNTY

(Hon. Margaret Wamuyu rises on behalf of Hon. David Ndirangu (Nominated))

Speaker: Yes, County Member from Leshau Pondo; I believe you are rising on behalf of the County Member from Weru, Hon. David Ndirangu Mwangi.

Hon. Margaret Wamuyu: Thank you Mr Speaker. I hereby seek a statement from the Chairperson of the Committee on Agriculture, Livestock Development and Fisheries on the status of pyrethrum farming and processing in the county addressing the following concerns:

Aware that Paragraph 1 of Part 2 of the Fourth Schedule to the Constitution of Kenya provides that Agriculture which includes crop husbandry is a devolved function;

Further aware that the County Department of Agriculture, Livestock Development and Fisheries has previously allocated funds to the pyrethrum sector;

Concerned that most of the Pyrethrum Board of Kenya assets are lying idle and their state is still unknown;

Further concerned that the farmers are suffering due to the uncertainty created by lack of clear policies from both the National Government and the County Government;

Arising from the foregoing, I seek that the Chairperson of the Committee on Agriculture, Livestock Development and Fisheries provides information on the following:

- i) Whether the pyrethrum sector is fully devolved from the National Government including the assets of the Pyrethrum Board of Kenya;
- ii) The policies guiding the pyrethrum sector on farming and processing;
- iii) How funds allocated to the sector by the County Government have been utilised; and

- iv) The steps being taken by the department to increase production in the sector and establishment of proper processing mechanisms.

Thank you Mr. Speaker, Sir.

Speaker: Very well; the statement is duly sought. I will give a window for a Member with an addendum that they would wish be considered in the statement request to present it, considering that the Chairperson of the Committee on Agriculture, Livestock Development and Fisheries is present.

Yes, the Deputy Leader of Majority and the Member for Kipipiri, Hon. Michael Kirumba.

Hon. Michael Kirumba: Thank you Mr Speaker. Thank you for opening the window. It is important that a verification of the assets in possession of Kenya Pyrethrum Board in the county is done. In Kipipiri ward, for example, the Kenya police premises sit on a parcel of land belonging to the Kenya Pyrethrum Board. In case the board wishes to repossess the parcel of land, the police would be displaced and this may cause a security challenge. The Committee on Agriculture, Livestock Development and Fisheries could also capture this. Thank you.

Speaker: Thank you for that intervention which, I think is very valid. We should have a catalogue of the landed properties owned by the Pyrethrum Board of Kenya in the county.

Chairperson of the Committee on Agriculture, Livestock Development and Fisheries, what time would your committee require to bring a report on the statement?

Hon. Kimani Njiraini: Since the matter requires a comprehensive report, my committee needs thirty (30) working days to bring the report.

Speaker: The Clerkship should liaise with the Committee on Agriculture, Livestock Development and Fisheries to ensure that the report is tabled in thirty days.

Next order.

(Hon. Michael Kirumba rises on a point of order)

What is it Hon. Michael Kirumba?

Hon. Michael Kirumba: Mr Speaker, I would like to cite Standing Order No. 44 that has been cited by the Leader of Majority on Statement Hour. The standing order provides that the notice of paper should be given on Thursday before 3.00p.m. From where you are sitting Mr Speaker I could see you trying to check time on a clock hung on the wall above the exit door when the Leader of Majority cited the aforementioned standing order. From where I sit I cannot check time from the clock. Only Members sitting near the Speakers area can read time from the said clock. So Mr Speaker, you could give directions that another clock be mounted atop the Speaker's mould so that Members occupying the seats in the area near the exit door could read time from it. This would help them comply with the times stipulated by the Standing Orders. In addition, with full operationalization of the digital conference system Members will be required to contribute for a specific number of minutes and the clocks will come in handy.

Speaker: Very well; that is a very valid concern. Every Member should know how time is running within the Assembly. If time for contributions in the house is set at three minutes Members should use the clock to time themselves. So that is a concern that should be addressed.

Next order.

2. STATUS OF CATTLE DIPS IN NYANDARUA COUNTY

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

Disclaimer: This is a draft Hansard Report and it is for information purposes only. A certified copy of the Hansard Report can be obtained from the Hansard Editor.

Hon. Miriam Wahura: Mr Speaker, Sir, I hereby seek a statement from the Chairperson of the Committee on Agriculture, Livestock Development and Fisheries on the status of cattle dips in Nyandarua County addressing the following concerns:

Aware that Paragraph 1 of Part 2...

Speaker: County Member from Charagita, I am not the one who approved the statement request. Nonetheless, Hon. Members, if you jog your mind, we addressed the matter through a statement and had a comprehensive report on the same in this House. We debated on the same and passed resolutions.

(The Speaker consults with the clerk-at-the-table)

I am being told that the statement was sought by *Mheshimiwa* Dorcas Kihara. I remember two cattle dips in Mirangine were addressed in the statement. If I was the one approving the statement requests I would have remembered this and I would not have allowed this particular statement request to be presented in the House.

Hon. Miriam Wahura, this is a matter we dealt with and the Standing Orders are very clear. Unless you wish to follow up with Hon. Dorcas Kihara on the said report concerning the matter.

The report can be availed to you if you feel there are areas that need implementation you can seek a statement from Implementation Committee on the status of implementation; for example, how many titles have been acquired and how many dips are running. I remember there were some issues with the cattle dips in Mirangine.

(Hon. David Ndirangu (Mirangine) rises on a point of order)

What is it Member for Mirangine?

Hon. David Ndirangu (Mirangine): Thank you Mr Speaker. I have an issue with statements. Response has never been given on a statement I sought from the Committee on Roads, Public Works and Transport last year. The committee clerk has been willing to visit the roads stated in the statement request but the committee Members have not been available for the same. Mr Speaker, I do not know how we are going to go about this.

Speaker: That is a concern that has been raised Hon. Members. The same was raised by the Member for Kipipiri and the Member for Kanjuiri Ridge. I gave very serious directions to the clerk of the House Business Committee to compile a list of all statement requests that have not been responded to so that chairpersons of the relevant committees can bring progress reports on the same next week.

Yes, Member for Gathanji, Hon. Samuel Mwangi Thuita.

Hon. Samuel Thuita: Thank you Mr Speaker. I thank the Members of the Committee on Agriculture, Livestock Development and Fisheries because they are all present in the House. Considering the statement requested by Hon. Miriam Wahura, there is a great problem in the implementation of the recommendations of committees and resolutions of this House.

When committees invite CEC Members and other officers to provide information on issues and the latter do not respond, it follows that individual committees through their chairpersons or members revert to seeking statements on the floor of the House on the issues in question. This is a concern that should be addressed.

Speaker: That is another issue. Hon. Members, how are we going to address it? It is a very serious issue; that unless a matter is delegated directly by the House, the Executive deals very casually with the same at the committee level. But I think it is an issue that I can address with His Excellency the Governor. Issues need not always be brought to the House when committees have oversight authority bestowed upon them by the Constitution and the County Government Act to address the same. I will actually address the issue with His Excellency the Governor through a letter to the effect that when officers from the Executive are invited by House committees they should always come prepared to deliver results.

Next order.

ADJOURNMENT

Hon. Members, before we adjourn, though I know the same will be communicated formally, as the Leader of Majority read from the notice paper, we shall have a state of the county address next week. The same might be covered live by media. Therefore it is important that we prepare to be well seated before the entry into the House by His Excellency the Governor at 2.30p.m. The House adjourns to Tuesday, the 4th day of April, 2017 at 2.30p.m.

(The House rose at 3.16p.m.)