

REPUBLIC OF KENYA

NYANDARUA COUNTY ASSEMBLY

1ST ASSEMBLY- 5TH SESSION

OFFICIAL REPORT

Wednesday 1st March, 2017

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

(The Clerk-at-the-Table confirms that there is no quorum)

Speaker: Very well, Hon. Members, I will invoke in my discretion the provisions of Standing Orders No. 34 and direct that the quorum bell be rung for an initial ten minutes or until such a time within those ten minutes that the quorum will have been achieved.

(Quorum bell is rung for eight minutes and quorum is not achieved as confirmed by the Clerk-at-the-Table)

Very well, quorum having been achieved, we can now proceed with the business for the sitting but pursuant to the arrangement of the business is that there is a Communication from the Chair which shall be made but not on the slotted time because unfortunately, it was in my official vehicle and it has left. It will be brought and I will read it immediately it is delivered. The other businesses will be transacted as slotted in the order paper.
First order.

COMMUNICATION FROM THE CHAIR

ABSORPTION OF CASUAL WORKERS

I can now read the communication before we proceed with the business of motions and bills.

Hon. Members this is one of the two communications that I had promised but I am still working on the one on the Petition on the Office of the Secretary to the County Public Service Board and it will be delivered as early as tomorrow because we are proceeding to recess. The communication I have is on the matter of the casual workers and the same is as follows;

Hon. Members, on Wednesday 15th February, 2017 during the morning session, the member for Rurii Hon. Peter Wahome Kamoche rose on a point of order, on a matter of county importance as provided for under Standing Order No. 33. The requirement of the Standing Orders were fulfilled and the House was suspended to discuss the issue of casual workers. After the debate, the speaker of the day Hon. Edinald Wambugu King'ori communicated that a Joint Ad-Hoc Committee comprising of the following Committees: Justice Legal Affairs and Public Service, Implementation, Delegated County Legislation and Education Labour and Social Services, would be formed to look into the matter. He further directed that in accordance with Standing Orders No. 152 (5) (f), the House Business Committee would select the membership of the aforesaid Ad-Hoc Committee. However, the Deputy Speaker and the Speaker of the day stated that the chair would in due time make the final communication on the way forward.

Hon. Members, it is important to note that this House has passed and adopted three reports in relation to casual workers all of which have recommended that the casual workers should be absorbed on permanent and pensionable basis. The first report was dated 26th February, 2014 by the committee on Justice, Legal Affairs and Public Service and was titled 'The Status of Casual Workers on Employment'. The second report was titled as 'The Status of Casual Workers on Contract in the Health Department' and was done by the Joint Committees of Justice Legal Affairs and Public Service and Health Services. This report was dated 19th December, 2015 and was passed and adopted by this House in 2nd March, 2016. The resolutions and report were forwarded to the County Executive Committee Member Health Services and copied to the County Secretary, the County Executive Committee Member, the Chairperson County Public Service Board and the Chairperson Committee on Implementation on 10th March, 2016 and receipt acknowledged on the same day by all those offices.

The third and final report titled 'The Current Status of the 96 Casual Workers Engaged and Working for the County Government' was done by the Joint Committee on Justice Legal Affairs and Public Service, Implementation and Education Labour and Social Services. This report was discussed and passed by this House on 21st July 2016. The resolutions and report were sent to the County Secretary and copied to the Secretary to the County Public Service Board and the chairperson to the board on 6th October, 2016. The resolutions were received by the Office of the County Secretary on 6th October, 2016.

Hon. Members, from the foregoing, it is very clear that this House has discharged its legal mandate by debating and passing resolutions relating to the issue of casual workers. The same resolutions have been duly forward to various relevant offices in the Executive for their action.

Hon. Members, I want to draw your attention to article 181 of the Standing Orders which states that;

Within sixty days of a resolution of the Assembly or adoption of a report of a select committee, the relevant Executive Committee Member under whose portfolio the implementation of the resolution falls shall provide a report to the relevant committee of the Assembly in accordance with Article 183(3) of the Constitution.

I am not aware of any Committee to this Assembly that has received any report on the resolutions. I would further draw your attention to article 186 of the Standing Orders on the mandate of the Implementation Committee which includes but not limited to scrutinizing Assembly's resolutions including Committee Reports. The Implementation Committee has been given authority to recommend sanctions against a member of the County Executive Committee who fails to report to the relevant select committee of the status of implementation of its resolutions without justifiable reasons. I therefore find no reason for formation of an Ad-Hoc Committee to deal with this matter, as the Assembly has delivered itself unequivocally on

the issue of casual workers. The three reports are a testament to this position and I do not think another committee will come up with different resolutions on the same. What is required is for the relevant committees to address the matter within the mechanisms provided in our Standing Orders and ensure that the resolutions of this House in relation to this matter are implemented.

Hon. Members, I would also like to refer you to the provisions of article 179 of the Constitution which vests the county executive authority in the County Executive Committee. This means that all the Executive decisions should be made by the Executive Committee. Further article 183 of the Constitution as read together with section 36 of the County Government Act No. 17 of 2012 outlines the functions of the County Executive Committee. Amongst the listed functions is implementation of both National and County Legislations and management and coordination of administration of county functions.

I would further like to bring to your attention the provisions of section 63 (2) (a) of the County Government Act, which requires the County Public Service Board to recruit upon request from the relevant chief officers. This provision is premised on the need for proper planning which requires that resources should be available before recruitment can take place.

The above legal provisions are meant to ensure that there is coordination in the county government and that the responsibility for all the major decisions taken are squarely placed on the County Executive Committee. It is therefore clear that the County Executive Committee should have directed the chief officers in all the departments to write to the County Public Service Board requesting it to absorb the casual workers.

This decision can be made by the County Executive Committee either *suo moto* or on the strength of the resolutions from the County Assembly. I am not aware of any formal written communication to the board from the Executive requiring them to absorb the casual workers as per recommendations of this House or even as a decision of the County Executive Committee on their own motion.

Hon. Members, I therefore wish to direct that the Committee on Implementation should follow up on the matter to find out which office is responsible for the state of inertia with the aim of resolving this issue once and for all. In conducting its work, the committee should establish whether there is any communication from the County Executive Committee to the chief officers requiring them to write to the board for the absorption of the casual workers and if so, whether the same was communicated to the board by the chief officers. The same committee should report back to this House within thirty days so that this House can be able to take the appropriate action.

Members, you were forming a forth committee to make the same resolutions. This House cannot be acting in vain. We have delivered ourselves very clearly that we required the casual workers to be absorbed. It was upon the Executive Committee which is led by H. E the Governor to look at our recommendations and adopt them with or without amendments or on their own motion make it an agenda in the Executive Committee and discuss this issue and resolve to absorb these casual workers. Without the Executive Committee doing that and instructing the chief officers who under the law, are the only authorized officers to request for employment. If the County Executive Committee does not authorize the chief officers to write to the board requesting for this employment or confirmation of employment the board is not able to move even an inch and if it does, then it will be an illegality.

The Governor of Embu County irregularly removed the chairperson of the board and he was ordered individually to pay damages of Kshs.5 million because that was an act that was not within the law and it was irregular and illegal. As an assembly, someone wants to put us in the same path and where we allow illegalities to happen, we are made to move in circles yet we equivocally delivered ourselves on what should be done. It is therefore expected that the Committee on Implementation will get to the root of this issue and know whether the Executive Committee of this County has ever resolved to employ these casual workers and if they ever

resolved that, we want to see the minutes and know the date of that resolution and whether they communicated the same to the relevant chief officers to request for the employment of these persons. If they were requested, we want to see the letter directing them to request the board to employ the casuals. We want to know whether the chief officers were instructed to do that by their respective CECM and if so, whether the board has complied and if it has not, that is insubordination. We cannot allow people in authority in this county to be using the junior officers as scapegoats when they fail in discharging their mandate. People should carry their own cross. The law is very clear and the duty of every officer is defined and everybody in view of the law should carry their own liability either criminal or civil so that we can be said to be people who are of total fidelity to the law.

Next order.

MOTION TO BE MOVED

INSECURITY AT J. M MEMORIAL HOSPITAL AND OL'KALOU SUB COUNTY

Yes, County Member from Kipipiri Hon. Nancy Wambui Ng'ang'a.

Hon. Nancy Ng'ang'a: Thank you Mr Speaker, sir. On behalf of the chairperson of the Committee on Justice, Legal Affairs and Public Service, I beg to seek leave because he is held up somewhere and so is the vice chairperson.

Thank you Mr Speaker.

Speaker: I thought that any member of the committee can move the motion because this is a joint and collective business of the Committee on Justice, Legal Affairs and Public Service. This is a matter that the members of the committee present should have been requested to act on early enough. That is what county member from Kipipiri should be telling us, that she was called and told to move the motion. If she had been requested earlier, she would have gone through the report and be able to move the same. Members we are sending a very grave signal that we can come and sit for five minutes and adjourn the House when there is business to be transacted. I do not know whether the County Member from Kipipiri had been given signal in good time or was it a short notice and therefore the reason for seeking leave?

Hon. Nancy Ng'ang'a: Mr Speaker, the Chairperson called me about twenty minutes ago. I was not in the precincts of the Assembly and therefore I'm not ready to move the motion.

Speaker: I think we are left with no option but to defer the matter. Unfortunately the House will proceed for short recess tomorrow and I do not know when this issue will be dealt with. I think what you need to communicate to your chair is that this it is not fair to the House. This is a matter that we would have understood that he was not ready to deal with today and give requisite notice to a member of the committee to move the motion. We have to defer the matter with a lot of disappointment. The House Business Committee will allocate the matter another date.

Next order.

ADJOURNMENT

Hon. Members, the business of the sitting having been exhausted this House adjourns to tomorrow Thursday 2nd March 2017 at 2.30 p.m.

The House rises at 3.00 p.m.