

SIAYA COUNTY ASSEMBLY

OFFICIAL REPORT

First County Assembly- Third Session

Thursday, 19th February, 2015

The House met at the County Assembly Chambers at 2.30 p.m.

[The Speaker (Hon. Okode) in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

Hon. Speaker: Members, allow me to make Communications today in 2 parts. I'll first of all deal with the circulars that came during our recess, and then at the tail end of our stay here, I will give direction on a matter touching on a Bill that had been referred back by the Governor.

I will start with:-

1. Mileage Allowance.

Salaries & Remuneration Commission sent a circular to us dated 27th January, 2015 on Mileage Allowance for Members of County Assemblies. And it reads:-

Following the Commission's earlier advice on Mileage Allowance through its Circular Ref. No. SRC/TS/CGOVT/3/16 dated 27th November, 2013; the Commission hereby wishes to clarify as follows regarding mileage.

1. That claims will only be made based on the distance between the County Headquarters and the Member's home and NOT the farthest end of the Ward. The claims are limited to one claim per week to facilitate Members to undertake their representative functions.

2. The Members of the County Assembly to be held responsible for the improper use of the mileage claims.

The Commission is available for any clarification and hopes that this guidance will enable the smooth administration of mileage claims.

2. Court Order

That in the Court on this 30th day of January, 2015, before hon. Mr. Justice Lenaola, Order;

That this Matter coming up for Mention on the application dated 23rd July, 2014 before hon. Mr. Justice Lenaola AND UPON HEARING Counsel for the Petitioner, Counsel for the 1st Respondent, Counsel for the 2nd & Counsel for interested Party.

IT IS HEREBY ORDERED BY CONSENT

i) That for the Counties that have complied with the budgetary ceilings set by the Commission on Revenue Allocation; they are hereby allowed to access their funds to the extent of the said ceilings.

ii) That for the Counties that are yet to comply with the budgetary ceilings set by the Commission on Revenue Allocation, they be allowed to access up to 75% of the said ceilings.

iii) That judgment is hereby deferred to 20th February, 2015.

Given under my hand and seal of this hon. Court this 30th January, 2015, issued at Nairobi.

That is the matter on ceilings. We realize that we can now access upto 75%, that is why we will be able to get our salaries for this month and next, the matter is coming for hearing on the 20th, tomorrow.

There is another Communication from the office of the;

3. Controller of Budgets that is addressed to:

All Governors

All County Assembly Speakers,

All Clerks – County Assemblies.

And it talks about, **Guidelines for Operationalization of Ward Development Funds.**

It talks about:-

- The Establishment of Ward Development Fund
- The Approval of Ward Development Fund Bill or Regulations
- Operationalization and Administration of Ward Development Fund
- Role of the Members of County Assembly and the Residents
- Role of the County Executive
- Monitoring and Evaluation
- Auditing

That has been signed by the Controller of Budgets, Agnes Odhiambo (Mrs.). It was dated December 18th, 2014.

You will get all these copies.

We also have a Communication on:-

4. Subsistence Allowances

Salaries & Remuneration Commission has reviewed our grades and we fall under E2, E1 and D5 which will get the following according to clusters; When we are in Nairobi, Mombasa, Kisumu, Malindi, Kilifi, Lamu, Kwale and Naivasha, the Members of the County Assembly will be getting Kshs. 14,000, that is up from the former figure. Cluster 2 is Nyeri, Eldoret, Kericho, Kakamega, Kisii, Embu, Nanyuki, Nakuru, Lodwar, and Garissa, where it will be Kshs. 10,500. Cluster 3, will be Kshs, 8,400.

All these, you will get copies and any matters arising therefrom, you will get clarification from the Office of the Clerk. There is another one on,

5. Persons with Disability**Remuneration for Personal Guide for Persons with Disability.**

That is a circular dated 17th of December, 2014, and it goes;

The Salaries and Remuneration Commission has received requests with regard to payment of assistants to public officers with disabilities. The Commission is in contact with the National Council of Persons with Disability for guidance on facilitation of persons with disability in the Public Service. This is in view of the need to provide for remuneration for personal guide for persons with disability within the public sector through the establishment of a policy that will give the required guidance.

As consultation towards the establishment of a policy proceeds, the Commission during its 84th meeting held on 16th December, 2014 has adopted the position that persons with disability who are **blind** and those on **wheel chairs** who require personal assistants to perform their duties be paid Assistants Allowance at a flat rate of Kshs. 15,000 per month as part of the gross pay of the beneficiary (person with disability), as a stop gap measure. This will be done while awaiting policy on facilitation/assistance which will be communicated by the Commission in due course.

Your office is hereby requested to bring the contents of this circular to the attention of the affected employees in your organization and to ensure compliance.

Signed by, Nicodemus O. Odongo, Acting for the Commission Secretary.

I direct the Office of the Clerk to avail those copies to Members and be accessible at any time for clarification should they arise from Members. Otherwise, the other Communication I will make when we will be done, shortly before adjournment.

Next Order!

PAPERS LAID

Hon. Speaker: Yes, hon. Gare.

Hon. Gare: Thank you, Mr. Speaker. On behalf of Majority Leader., allow me to lay on the Table of the House the following Papers:-

- i) Siaya County Public Service Board Annual Report for the year 2014, pursuant to Section 59 of the County Government Act, 2012
- ii) Siaya County Public Service Board Interviewing Report of Ward Administrators
- iii) Siaya County Public Service Board's Proposed Establishment of the Office of the County Attorney, Siaya County Government.
- iv) County Government of Siaya's Quarterly Financial and Budgetary Report for the Quarter Ending 31st December, 2014.

(Hon. Gare laid the documents on the Table)

Hon. Speaker: Allow me to direct as follows:-

That Paper No. 1, which is Siaya County Public Service Board Annual Report for the year ending 2014, be committed to the Committee on Governance and Administration. I also add, upon consultations, we have also recommended that the report that was submitted yesterday to the Committee on Delegated Legislation from the Board, be shared equally with the Committee on Governance and Administration for reasons known to the Office of Speaker and the assisting hon. Members so that they will look at the documents together and present reports to the House for debate.

2. The Siaya County Public Service Board Interviewing Report on Ward Administrators be committed to the same Committee on Governance and Public Administration for perusal and a report thereafter.

3. Siaya County Public Service Board's Proposed Establishment of the Office of the County Attorney, Siaya County Government. I direct that this proposal be committed to the Committee on Justice and Legal Affairs, which is the Committee on Delegated Legislation. And I dare add that, if you look at the manner in which it was submitted, it was signed by the Secretary to the Board, and procedurally, it should come through the C.E.C in charge of Governance. So, as the Committee will be engaging, we need to clarify that, so that for documentation, they are able to give you a forwarding letter from the C.E.C. and you will look at it and present a report as soon as possible. It has been shared by colleagues here that that office is really needed and it is even delaying initiation of Bills and Laws, and therefore you need to expedite the process.

4. There is the County Government of Siaya's Quarterly Financial and Budgetary Report for the Quarter Ending 31st December, 2014. I direct that this be committed to the Committee on Finance, Budget and Appropriation, upon which they will look at it and report back to the Assembly. Thank you.

Next Order!

STATEMENTS

Hon. Speaker: Yes, hon. Ndonji!

Hon. Ndonji: Thank you, Mr. Speaker, Sir.

AWARE THAT pursuant to the Standing Order No. 135, Article 2(a), a Bill becomes operational after the Governor's assent and the subsequent gazettment.

FURTHER AWARE THAT this August House recently passed the Finance Bill, and cognizant of the fact that the Finance Bill is the only documents that gives guidance on the revenue collection, considering the plight of traders within Siaya County and further considering the fact that a numbers of revenue collectors without proper guidance from the concerned authority have resorted to applying the new rates without proper consultations and applying wrong percentages which are inconsistent to our earlier deliberations.

CONCERNED THAT this might bar traders from indulging in businesses, I seek guidance from the C.E.C. in charge of Finance to highlight on the following:-

1. What parameters are being used by revenue collectors to collect different rates from traders?
2. What modalities have been put in place to compensate traders who may have paid in excess of the required rates as per the Finance Bill?
3. Due to delay of the assentment and Gazettement of the said Bill and the subsequent set timelines for acquisition of the single Business permits, passage of payments period attracting penalty, it will not be fair to put penalties on traders who may delay in making such payments in time.
4. What would be wrong with traders being charged what they previously paid pending the effectiveness of the said Bill?
5. I further urge the Finance C.E.C to put in place a proper legal mechanism in regards to proper revenue required to the general public through the most transparent and accountable way of communication within which the said Revenue will be regulated in the most transparent and accountable way.

Thank you, Mr. Speaker, Sir.

Hon. Speaker: Yes, hon. Deputy Speaker!

Hon. Adera: Thank you, Mr. Speaker. I rise on behalf of hon. Andiego, a Member for Central Sakwa. Mr. Speaker, I wish to request a Statement from the Executive on the declaration of Oyamo and Ndeda Adjudication Sections.

Hon. Speaker: Hon. Members, allow me to refer question by hon. Erick Ndonji to the Committee on Finance, Budget and Appropriation and question asked on behalf of hon. Joannes Andiego be referred to the Committee on Lands. May I add that that the Statement by MCA Ndonji is very urgent; therefore, the Committee should fast track an answer for the said question.

Hon. Gare: Thank you, Mr. Speaker. Allow me once more on behalf of the Majority Leader to take Members through our House Business for the coming week, i.e. from 24th to 26th February, 2015.

HOUSE BUSINESS FOR THE COMING WEEK

(24TH - 26TH FEBRUARY 2015)

S/No.	DAY/DATE/SITTING	BUSINESS OF THE ASSEMBLY
1.	Tuesday 24 th February, 2015 Afternoon Sitting	Committee of the Whole House (Siaya County Public Participation Bill, 2014)
		Tabling and Adoption of the Amended Assembly Committees Membership by Chairperson of the Committee on Selection.
2.	Wednesday 25 th February, 2015	Second Reading of the Siaya County Loans and Mortgage Fund Bill, 2015.

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	Morning Sitting	
3.	Wednesday 25 th February, 2015 Afternoon Sitting	Report by Committee on Agriculture, Livestock and Fisheries on the level of Agricultural preparation by the County.
4.	Thursday 26 th February, 2015 Afternoon Sitting	Tabling and Discussion of the Siaya County Ward Development Fund Bill, 2015 by Chairperson of Committee on Delegated Legislation, Justice and Legal Affairs.

Thank you, Mr. Speaker.

Hon. Speaker: Thank you. Hon. Members, these are the plans for next week. The people who can make them happen are the same Members, so if it falls under your docket, kindly ensure that we have business next week.

Next Order!

BILL

(SIAYA COUNTY PUBLIC PARTICIPATION BILL, 2014)

(Second Reading)

Hon. Speaker: Hon. Booker!

Hon. Minami: Thank you, Mr. Speaker. On behalf of the Committee on Justice and Delegated Legislation, we were supposed to Table the Siaya County Public Participation Bill, 2014 for the second reading in the House.

But Mr. Speaker, the Committee could not lay the Bill today for the second reading because it underwent public participation and the views of the public have been compiled and it's when the Committee wants to go and make sure that the views of the public are in conformity with the statutes in place. So, as a Committee we are requesting that we be given more time, let's say for one week, so that we compile the Bill and we bring it to the Assembly for the Second Reading.

Thank you, Mr. Speaker.

Hon. Speaker: Hon. Members, the Committee did consult the Office of the Speaker with the reasons they are not able to present their report today. However, I want to add that, if you look at our next week's schedule, a lot of these reports will be expected to come from the said Committee, I therefore direct the Office of the Clerk to liaise with that Committee to ensure that they get time and venue to complete these pending businesses that they have. There is that Bill pending, there is the one on Mortgage, one on County Ward Development Fund, there is also that one for the creation of the Office of the Attorney. I would want that you give them the necessary support so that next week where possible, they be done with these and bring them to the Assembly for debate.

(Hon. Onduru stood up in his place)

Hon. Speaker: Yes!

Hon. Onduru: Mr. Speaker, Sir, I'm just enquiring on some of the business which were pending last Session. Some were Statements while some were reports. Right now we have started another business but they are not here. I wanted to find out because I had a Statement on functions devolved on Health and we also had some reports on Health which were ready and time would not allow us to present them.

Hon. Speaker: That is a good concern. Allow the Chair to direct that all those pending items from our previous Session, the Office of the Clerk to liaise with the people who asked those questions and the people who did the reports, so that by Tuesday we have all those things looked at in the House Business Committee so that they are allocated time next week. There will be no excuse; by next week we want all the pending businesses to come to this House for consideration. That is the directive!

Before we go to the Next Order, allow me to make the Communication I'd indicated that I will make.

**COMMUNICATION ON MEMORANDUM OF REFFERAL OF THE
SIAYA COUNTY ASSEMBLY SERVICE BOARD BILL, NO. 3 OF 2014**

Members, I wish to make Communication on the Memorandum of referral of the Siaya County Assembly Service Board Bill No. 3 of 2014. The said Bill has been returned by the Governor for reconsideration by the Assembly citing reservations on Section 28 of the said Bill which establishes a County Assembly Fund.

In his Memorandum, the Governor wrote, and I quote "That I am unable to assent to the Bill as passed by the Assembly and therefore refer it back for reconsideration pursuant to the requirements of Section 24 (2) and (3) of the County Governments Act 2012."

Ladies and gentlemen, you will note that Pursuant to Section 24 of the County Governments Act, 2012;

2) The Governor **shall within fourteen days after receipt of a Bill:** -

(a) Assent to the Bill; or

(b) Refer the Bill back to the County Assembly with a Memorandum outlining reasons for referral.

3) If the Governor refers a Bill back to the County Assembly, the County Assembly may, following an appropriate procedure under this Section: -

(a) Amend the Bill taking into account the issues raised by the Governor, or

(b) Pass the Bill without amendments.

4) If a County Assembly amend the Bill taking into consideration the issues raised by the Governor, the Speaker shall within fourteen days submit the Bill to the Governor for assent.

5) If a County Assembly passes the Bill a second time, without amendment, or with amendments which do not accommodate the Governor's concerns by a vote supported by two-thirds of

Members of the County Assembly, the Speaker shall within seven days re-submit the Bill to the Governor and the Governor shall within seven days assent to the Bill.

6) **Very Important**, If the Governor does not assent to a Bill or refer it back within a period referred to under this Section, **the Bill shall be taken to have been assented to on the expiry of that period.**

Regarding the day of submission to the Governor, I am informed by the Assembly secretariat that the County Assembly Service Bill, 2014, together with County Public Appointments Bill, 2014, County Revenue Administration Bill, 2014, County Trade License Bill, 2014, were submitted on **the 14th of September, 2014**. Later, upon oral request, for reasons better known to the registry of the Executive, second batch of the said Bills were sent on 27th November, 2014. Ideally, we should have expected an assent or a referral within 14 days after the receipt of the Bill by the Governor. Instead, the Memorandum dated 23rd December, 2014 was received by the Assembly Clerk on the 12th January, 2015, way beyond the 14 days period provided for under the law.

Going by the aforementioned, I strongly feel **restrained by Section 24 (6) of the County Government Act, 2012** which states that; ***“If the Governor does not assent to a Bill or refer it back within a period referred to under this Section, the Bill shall be taken to have been assented to on the expiry of that period”***. I therefore decline to recommit the Bill to the house for reconsideration.

(Applause)

I am further barred by the provisions of the Standing Order No. 135 (6) which stipulates that ***“If the Governor does not assent to a Bill or refer it back within a period referred to under this Section, the Bill shall be taken to have been assented to on the expiry of that period.”*** As we speak, the Bill according to this hon. Assembly is technically a law and I therefore direct the Clerk to expedite a formal gazette process.

(Applause)

I further advice that anybody feeling aggrieved by any provisions of this law to consider the due process of amendments as stipulated under the law and the Standing Orders of the County Assembly. Section 15 (1) of the County Government Act, **Provides that a person has a right to petition a County Assembly to consider any matter within its authority, including enacting, amending or repealing any of its legislation.**

On whether or not the said Section 28 of the Bill is a serious violation of the law or *ultra vires*, reference can be made to the Parliamentary Service Act, 2012 Section 18, (to which this Bill is anchored) on establishment of National Assembly Fund which states; -

- 1) There is established a Fund to be known as the National Assembly Fund
- 2) There shall be paid into the Fund: -
 - (a) Such moneys as may, from time to time, be provided by Parliament

- (b) Such moneys as may be borrowed by the commission on such terms and for such purposes as the commission, in consultation with Minister for the time being responsible for Finance, may determine;
- (c) Any moneys accruing to or received by the Commission from other source.
- 3) There shall be paid out of the Fund all payments in respect of any expenses incurred in pursuant of the provisions of this Act
- 4) The Commission may, with the approval of the National Assembly signified by resolution, establish such other Funds as it may deem necessary.

In addition, the objects and purpose of the Fund established under the County Assembly Service Bill or the Parliamentary Service Bill are aimed at managing benefits provided by Salaries and Remuneration Commission in the parliamentary institutions e.g. the Car and Mortgage loans etc. and not any other **imaginary public Funds outside this scope**.

Finally, ladies and gentlemen, I wish to reiterate that this Assembly will endeavor to adhere to statutory timelines in execution of its functions. The Executive arm of the County Government is hereby forewarned that non-observance of timelines will not be tolerated in our future dealings; be it on reporting or law making. The time frames set out under any written law governing our operations, will have to be respected at all times. Thank you.

Next Order!

ADJOURNMENT

Hon. Gare: Thank you, Mr. Speaker. Now that we have exhausted everything that we had in our Order Paper, I wish to move a Motion that this House stands adjourned until Tuesday, next week on 24th in the afternoon at 2.30pm and I will request hon. Muhulah to second.

Hon. Muhulah: Unfortunately, Hon. Speaker, I do not want to second because I don't abide by that Motion, so I refuse to second.

(Laughter)

Hon. Gare: Thank you, Mr. Speaker, Sir, it's unfortunate that hon. Muhulah cannot second, but I want to request hon. Deputy Speaker to second.

Hon. Adera: I grab that opportunity and second, I second.

(Laughter)

(Question proposed)

Hon. Muhulah: Hon. Speaker, I deliberately refused to second the proposal of the hon. Whip because;

1. It's too early in the afternoon to adjourn
2. I think this should have been a very good opportunity Mr. Speaker, if once again; I seek the leave under Standing Order No. 31, that we discuss the issue of disaster preparedness of the Siaya County. I do ask the hon. Agoko to second.

(Laughter)

Hon. Speaker: You have opposed the Motion, let's proceed with contributions. The Motion on Adjournment, let's deal with that Motion first then we come to yours. Right?

Hon. Muhulah: Yes.

Hon. Speaker: We want to first deal with the Motion by hon. Gare, if it is defeated, then we come back to yours, because we can't have the two running at the same time.

(Question put and agreed to)

(Applause)

(Laughter)

The House rose at 3.15pm