

# REPUBLIC OF KENYA

## SIAYA COUNTY ASSEMBLY

### THE HANSARD

#### Second County Assembly - Second Session

Wednesday, 30th May, 2018

The House met at the County Assembly Chamber at 9.30 a.m.

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

### PRAYER

### COMMUNICATIONS FROM THE CHAIR

1. DEATH OF HON. ANDIEGO
2. VISIT BY NYAWARA GIRLS
3. RESCISSION BY COMMITTEE ON APPOINTMENTS

**Hon. Speaker:** Hon. Members, allow me to make these communications. One is on death and funeral announcement. As you are aware we have lost one of our own and before I make the announcement, I want to urge you officially to be up standing for a minute. Let us observe a moment of silence for his honor.

Thank you, get seated. Having observed a moment of silence; allow me to bring it to your attention that death and funeral announcement appeared in yesterday's Standard newspaper; the Hon. Speaker, County Assembly Service Board, MCAs and the staff of County Assembly of Siaya regret to announce the untimely demise of Hon. Joanes Andiego Odongo which occurred on 17/5/2018, after a short illness.

He was until death the Ward representative for Central Sakwa and the Majority Whip of Siaya County Assembly. Son of the late Elly Odongo Osindo and the late Pauline Auma Odongo of Bukoma Village, Port Victoria.

Husband to Milka Achieng' Andiego of Kano Kabar, Linet Adhiambo Odongo of Kanaam in Rachuonyo and Linet Achieng' Odongo of Sakwa Karabuor Nyagunda village. Beloved father to Kevin Omondi, Charlton Odhiambo, Maureen Otieno, Winnie Auma, , Vivian Atieno, Brigit. Khelly Kate, David Andiego. Elly Andiego, Fielder Andiego, Josphine Andiego, Tatiana Sulwe, Allan Andiego, Lydia Anyango and Ashlyn Cheryl. Brother to Mark Onyango, William Otieno, Abraham Odira, Geoffrey Otieno, Zacharia Odongo, Benard Owino, Benedict Owino, Michael Kaoga, the late Joseph Omondi. The late Collins Odawa Odongo, Consleta

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Anyango, Akinyi Odongo, Mammy Odongo and the late Lilian Adhiambo, Grandfather to Tasha Andiego.

A major fundraising for the funeral arrangements will be held on Wednesday, 30<sup>th</sup> May, 2018 at the Assembly ground outside the Assembly precincts from 10.00a.m. The Speaker and the entire Assembly welcomes you all. The Cortege leaves Aga Khan Hospital Mortuary Kisumu on Friday, 1<sup>st</sup> June, 2018 at 7.00a.m.

A requiem mass will be held on Friday, 1<sup>st</sup> June, 2018 at Odao Primary School in Uyawi Sub location, Nango zone from 10.00a.m. Funeral service and burial will be held on Saturday 2<sup>nd</sup> June, 2018 at his rural home in Oyamo Island, Ndeda Oyamo sub location. Psalms 34:18: The Lord is close to the broken-hearted and saves those who are crushed in spirit.

Hon. Members, we have guests who are visiting us; I want you to welcome them. I wish to recognize the presence of teachers and students from Nyawara girls' high school in Central Gem Ward who are seated in the public gallery today. They are accompanied by Mr. Silas Ochieng Omondi, Mrs. Opondo, Miss Winnie Akinyi and Mr. Opondo. On behalf of Members and on my own behalf I extend upon welcome to them and wish them a happy and fruitful visit; will they be up standing as we welcome them.

I will be allowing their representative Member for Central Gem if she is in to make a comment but before that allow me to make another communication. Request for rescinding of the recommendation from the House on the first Report on the Committee on Appointments on vetting of Nominees for Appointment in the Siaya County Executive Committee.

Hon. Members, on Tuesday, 3rd October, 2017 the House considered and adopted the Report of the Committee on Appointments on vetting of nominees for appointment to the Siaya County Executive Committee. However, I have since received a request in form of a Motion from the Hon. Sylvester Madialo, MCA- Usonga Ward for the House to rescind its position on parts of the Report. Hon. Members I am persuaded by the issues raised in the entire Motion for reconsideration noting that the decision lies with your votes.

I am properly guided that such consideration is not in breach of our StandingOrdersand doesn't alter our position earlier in regard to matters sub-judice as expressed in our Standing Orders, matters to do with resubmission of names as contained in section 10 in the County Assemblies Approval Act 2017 and the need to observe knowledge, experience and distinguished carrier in the approval of names as contained in the County Government Act section 35 (3d).

I am further persuaded by the provisions of Article 159 (2b) of the Constitution of Kenya 2010 on judicial authority and that justice shall not be delayed. Consequently, Hon. Members, pursuant to the provision of Standing Order no.54 2a; I have allowed the Hon. Sylvester Madialo to Move the Motion for rescission and reconsiderations of the recommendations in the said Report.

**PAPER****A REPORT ON STATUS OF WATER PROJECTS IMPLEMENTED IN THE FY 2016/2017**

**Hon. Bonyo:** Allow me to lay on the Table of the House a Report on status of Water projects implemented in the FY 2016/2017.

**Hon. Speaker:** Hon. Members; look at that Report, we want to consider it for next week, the secretariat is ordered to produce sufficient copies for all Members to debate next week.

**NOTICE OF MOTION****RESCISSION BY COMMITTEE ON APPOINTMENTS**

**Hon. Madialo:** Mr. Speaker, Sir; I wish to give a Notice of my intention to woo the House by way of Motion to rescind the recommendations and decision of the Committee on Appointments as contained in its Report of October last year with a view to admitting the then reviewed by the CECMs appointing authority for approval and in place thereof admitting them in body that is known to the law as the County Executive Committee.

**Hon. Speaker:** Notice sufficiently given deduce from his submission that he wants to Move it this sitting; if there is no objection then let it be registered, Next Order!

**Hon. Speaker:** At this point I want to ask the MCA representing Central Gem to welcome students and teachers.

**Hon. Abigael:** Thank you, Hon. Speaker, Sir; and the entire Hon. House. I wish to welcome the teaching fraternity and the students of Nyawara Girls, more so the history department. Welcome and God bless you as you work hard in school, Thank you, Mr. Speaker, Sir; for allowing these students to attend our session.

**MOTION****RESCISSION BY COMMITTEE ON APPOINTMENTS**

**Hon. Madialo:** I stand to Move the Motion:  
THAT this House does rescind in the interim in its decision to reject the names of the following nominees as earlier advised by the Committee on Appointments in their first Report in the House dated 3<sup>rd</sup> October, 2017:

Dr. Nicholas Kut Ochogo, Joseph Onyango Ogutu, Dr. Elizabeth Achieng Odhiambo, Adrian Ouma, Dorothy Akinyi Owino, Dismas Omondi, George Amenity Oyeho, Rubiik Misore and Jaoko Oburu Odinga on the basis of failure to reach the requirement of section 35 (3d) of the County Government Act 2012 and the final judicial interpretation on the mentioned contentious sections the appointing authority does assign the nominees of his preferred choice from the list not defined to their assigned dockets duties according to the law

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but strictly noting the limitations of stipulated size of the County Executive Committee as law established. Mr. Speaker, Sir; I will request the Hon. Okoth Olasi to second.

**Hon. Speaker:** You should have finished first then asked him to second. Proceed!

**Hon. Madialo:** On the 3<sup>rd</sup> of October, 2017...

**Hon. Olasi:** Point of Order, Mr. Speaker, Sir!

**Hon. Speaker:** Yes, Hon. Olasi.

**Hon. Olasi:** Mr. Speaker, Sir; I would prefer to remind my senior of this Assembly that I am Samuel Onyango Olasi and not Okoth Olasi as the way he is trying to portray.

**Hon. Madialo:** Mr. Speaker, I withdraw the name Okoth, I keep calling him that because we share the name. I do know we share it though officially he says he is Onyango.

**Hon. Olasi:** Mr. Speaker...

**Hon. Speaker:** Order! Why did Hon. Olasi rush to speak when he was not invited to speak?

*(Laughter)*

**Hon. Speaker:** You also don't know yourself?

**Hon. Olasi:** Point of Order! Some of these things we can say common sense dictates and Hon. Madialo was looking at me. He was trying to intimidate me, even if I don't accept the name I just had to second but I still second. Thank you very much.

**Hon. Speaker:** Proceed, Hon. Madialo!

**Hon. Madialo:** Permit me to say, brother Samuel, I am sorry. The Motion reads; **Aware** that this honorable House, on 18<sup>th</sup> September, 2017, first received proposals from the Governor to vet and approve nominated persons to various dockets as County Executive Committee Members (CECMs).

**Further aware** that the Assembly's Appointments Committee, in its wisdom and guided by relevant sections of the Constitution of Kenya, 2010, County Government Act, no 17 of 2012, and Public Appointments (County Assemblies Approval) Act, of 2017; duly vetted the nominees and gave a report to the House which was debated and unanimously passed;

**Noting** that during the vetting and approval process, the Appointments Committee judiciously consulted Section 35 (3d) of the County Government Act of 2012 which requires that the persons nominated for positions of CECM *should have knowledge, experience and a distinguished career of not less than five years in the field relevant to the portfolio of the department to which the person is being appointed;* amongst other statutory requirements;

**Further** noting that the Appointments Committee, in circumstances where the appointing Authority resubmitted names of the nominees who had been previously rejected, was guided by provisions of Section 10 (2) of the Public Appointments (County Assemblies Approval) Act, of 2017 which states thus; *A nominating authority shall not resubmit the name of a candidate whose nomination has been rejected by the County Assembly unless the circumstances relied on*

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*for the rejection of the appointment of the candidate did not exist or ceased to exist at the time of rejecting the nomination of the candidate.*

**Concerned** that an impasse has arisen between the Executive and the County Assembly on the interpretation and application of Section 35 (3d) of the County Government Act, 2012 and Section 10 (1&2) of the Public Appointments (County Assemblies Approval) Act, of 2017 to the extent that while the Assembly holds the position that these sections are mandatory for determination of suitability for nomination and appointment of County Executive Committee Members, the Executive is of the view that these sections are not binding in the nomination process.

**Recognizing** that where there are different views on interpretation and application of sections of statutes, the Judiciary has the constitutional role in interpretation and dispute resolution pursuant to Article 159 of the Constitution of Kenya, 2010, which pronounces the authority of the Judiciary in alternative mechanisms of dispute resolution.

**Further aware** that on 16<sup>th</sup> February, 2018 at the High Court of Kisumu, Lady Justice Cherere issued conservatory orders barring the Executive from re-submitting the names of rejected nominees pending determination of a petition lodged by Ms. Brenda Achieng Ongalo, Isaac Okinyi and James Anyiko on 8<sup>th</sup> February, 2018, and noting that the petition touched on constitutional powers of a state organ in the respect of a County Government where substantial legal issues were raised, hence referring the matter to the Honorable Chief Justice for further direction;

**Noting further** that, this House on 28<sup>th</sup> March, 2018 got a subsequent advisory, in form of communication, from the Hon Speaker in reference to Standing Orders No 94, on the sub-judice clause preventing the House from debating on the matter of nominations of CECMs.

**Concerned** that the Governor, in various private and public forums have persistently voiced his position that service delivery levels in the County have fallen below par on the excuse that the County Assembly has not approved the full cabinet; and further that the Governor has more than once resubmitted the names of the same persons to the same portfolios originally declined by the County Assembly, in disregard to Section 10(2) of the Public Appointments (County Assemblies Approval) Act, 2017.

**Concerned further** that the appointing authority has gone ahead to indiscriminately re-assign duties to the approved nominees in the dockets where they do not have knowledge and experience contrary to the requirements of the law;

This House resolves that, for the sake of sprucing up service delivery levels as claimed by the appointing authority, to rescind in the interim, the decision to reject the names of the following nominees as was earlier advised by the Committee on Appointments in their first report to the House, dated 3<sup>rd</sup> October, 2017;

1. Dr. Nicholas Kut Ochogo
2. Joseph Odhiambo Ogutu
3. Dr. Elizabeth Achieng Odhiambo
4. Adrian Ouma

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5. George Rubiik Misore
6. Dorothy Akinyi Owino
7. Dismas Odhiambo Wakla
8. George Amenity Oyeho
9. Jaoko Oburu Odinga

on the basis of failure to meet the requirement of Section 35 (3d) of the County Government Act, 2012; pending judicial interpretation of the mentioned contentious sections and assign the nominees of his preferred choice from the list(not prior hereto assigned dockets), duties according to the law, strictly noting the limitations of stipulated size of the County Executive Committee as law established.

Mr. Speaker, the Motion is self-speaking but allow me to add the following. It is common knowledge, every pedestrian along Ahindi Garden Road know that there is a claim that service delivery cannot be achieved in Siaya County because the Executive is not fully constituted, that is the Executive Committee Membership in the County. Persistently, the same names have been returned to this Assembly for consideration.

There is a sticking point between the Assembly and the Executive whether the Assembly appreciates the importance of Section 35(3d) in the County Government Act better than the Executive or whether the Executive appreciates Section better than the Assembly to the extent minds are not able to meet and this failure of meeting of minds has been submitted to the body that is entitled and mandated to decide when there is no meeting of mind. We are staring at a scenario where we might have to wait for interpretation and advisory from the court for another two years.

I invite my brothers and sisters in this House to deem it wise that we loosen our position to the extent that we stand with our interpretation on 35d and at the same time appreciate the bodies to which these persons are being admitted is the body know as County Executive Committee which the law stipulates one would join if that person has a degree and is of integrity.

Qualification and knowledge are specific to dockets. That is why I move this House to request my brothers and sisters to admit these persons and recommend them for appoint to the body known as County Executive Committee but do not tell the Governor which docket to take them to.

There are many reasons but one of the most motivating reasons why I have a feeling and I wish to persuade my brothers and sisters to join me in that feeling is; this Assembly advised that these 10 persons be reshuffled, be given different dockets and be brought back for consideration. However, the appointing authority went ahead and picked those names, reshuffled some and left others.

This report was considered before the court order was served upon us. That is why I am asking the Hon. Members, ladies and gentlemen that we throw our minds back to October, 2017 because at that time there was no court dispute as of suitability of these persons. We are not going to address our minds on whether the dockets are according to experience, education and career.

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Allow me to say this; to invite ourselves to a warning to ourselves but I remember and we can go to Hansard, while on the Floor of this House I asked, and will ask again, those who are in the Budget Committee know that we have had a very serious difficulty in people living with disability and the youths. If you look at the entire budget there is nothing that touches on people living with disability and the youth.

That is not an argument for today, I want to urge my sisters and brothers to take care of those interest groups that in the next nominations of the Executive portfolios, in whichever level, kindly let us as we address our minds, as we look at interpretations and communications of the Chair of this House, look at it not only with a political lens but also with this other fact, if such persons are not in the Executive table, how will their interest bit be captured in the table where decisions are being made?

That is why parliament and the Kenyans in their wisdom in the Constitution 2010 said we allowed the President and the Governor to just choose. That is why it is said; bring people who have challenges to be sitting where approvals are done. For this one, what I am requesting my brothers and sisters to do is this, these will be CECMs and we are not the first County to work with them.

That has been said several times. The people going to work with them are the people appointing them and so approve them and allow the person going to work with them assign them duties in the in tray. Once the advisory comes back if it is in favour of interpretations as held by the House, the Committee on Appointments and the Speaker of this House then we shall revisit our decisions.

Our Standing Orders have enabled this Motion to come because a Motion whether defeated or passed or rested or ignored, after 6 months may be revived and reconsidered. I am requesting that we reconsider our decision of 3<sup>rd</sup> October, 2017 and we rescind our decision refusing to admit these ladies and gentlemen to the appointment of the office of the CECM and in place thereof admit them, allow the appointing authority to appoint them and admit them but without going beyond the size that is allowed by the law- for Siaya County it is one third of the Wards which is 10. I rest my submissions.

*(Question proposed)*

**Hon. Speaker:** Yes, Hon. Oriaro.

**Hon. Oriaro:** Thank you, Mr. Speaker, Sir, for according me this opportunity. On behalf of the Central Alego people whom I represent because we don't have Member from Central Sakwa on whose behalf he would have spoken, I want to concur with the Mover of the Motion and say that language is very important. It is not about persuasion as the underlying word.

I am convinced that the Motion at hand is actually close to humanity. I am still conscious of the decisions that led this House to ubiquitously adopt the then Motion that advised the

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Governor then accordingly a matter that has been misconstrued because of pure ignorance on matters political and matters governmental.

It was a properly registered decision in the high most heavens. It was a stunning decision and I am still by it because when we took oath of office one of the things was we defend the Constitution and the laws and also secondary laws coming in by international conventions et al

Currently in Kenya and of course I am an element of constitutionalism and constitutionality. We are in a state of entropy in terms of law and that is why the Right Hon. Prime Minister is talking about amendments to the laws.

When we talk of devolved dispensation it is all about the delivery of the democratic lanes and I am not taking it lightly as a representative honorary elected and bodily sound when it is said that we are not after service delivery. If my operative and mechanic words or be it the Motion at hand is grammatically enriched and on adjectival grounds and is also enriched the operative word here is fusing up development. Who does not want that?

We must agree we are elements of Constitution that is constitutionality the decision we made is upright and when we navigate about it is only circumstantial it is about a move to the capturing of the general will and the Governor and his team including even our legislators (MP's) have been out to see to it that the general will is elevated or maybe made to lean on their side but it is us who are wrong yet it is clear and on various occasions I have even confronted the ODM Chairman and even the most learned in matters of law, Otiende Amollo.

They are the people who pass these laws, ours is to implement. So if the laws we will be having, are on topsy-turvy grounds to ridicule towards the delivery of democratic rules, we also want to warn them, that this is time for them to come up with genuine laws.

**Hon. Speaker:** Hon. Shirley, do you have a point of order?

**Hon. Oyuago:** Yes, point of order, Mr. Speaker. The Honorable Member is using terminologies that we are not even sure whether they exist in any dictionary. I would request the Member to go outside and dress officially then come back with a dictionary to confirm the terms that he is using on the floor.

*(Laughter)*

**Hon. Speaker:** Hon. Shirley, on your point of order regarding the language, I am not sure if our Standing Orders say that all the languages used must be used by us, as long as they are English, Kiswahili or Sign Language, but you carry with you a dictionary instead.

*(Laughter)*

Hon. Oriaro, if you are not properly dressed will you go and dress properly then you come back. Yes, Hon. Otiato.

**Hon. Otiato:** Thank you, Mr. Speaker. Like Hon. Oriaro has just put it, the wordings are clear and it's a sacrifice, or rather I would say, as one of the Members once said, I will do this



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mechanically. Actually we are breaking our laws, and in the wording, we are saying, we are taking this step in the interim, awaiting a court decision, but the House, and our County must learn that the Assembly is not doing this under any intimidation.

We are so clear on our minds that from the initial stages, when this particular matter was to be brought in this House, (I think it is so good that we are allowed to debate on it after six months.) there was public money spent, on interviewing these particular characters by means of presenting them here, and it was a professional human resource organization which was used.

It was to my surprise that maybe this belief, that the professional organization which was used was not adequate. I am privy to the fact that one of the professors for Agriculture from Yimbo East was a Member, and part of the people who were being interviewed for the CECM, Agriculture. It was my surprise that the professor of Agriculture was beaten, by a teacher of Literature in that particular docket of Agriculture.

Yes, we might not go back, but any other person would realize that possibly these people were to perform a very special function other than the policy, and because even after the rejection of this list by this Assembly, it is being brought continuously, and somebody actually rightly go there on the notes and say we cannot perform because the Assembly has refused to give us the CECMs, who are the policy personnel.

The people responsible for development and appropriation of County funds are actually the accounting officers that we had had who are the Chief Officers, and that is why I am not surprised that when we are talking about the NYS scandal today, the CS who is a policy person, Bwana Kariuki is in the office, but the PS is already in Court.

It is clear that when we will be dealing with matters of misappropriation of funds, no CECM will be questioned when it comes to actual misappropriation of funds.

So the argument that Siaya cannot move because they do not have CECMs and yet they have over ten COs, is appalling, and because our names are bandied around, everybody is going outside there, failing to deliver to the people because of some particular names, out of about four hundred thousand Members of this County, that we cannot get any other nine, outside the nine that were rejected, we will do what is gainful, and wait as from tomorrow, to see the development that we have never seen.

I beg on my own, and in support of the Members of Yimbo East, and as their representative, that my fellow Members, we might not be very good and I know in some other quarters we are called standard Three drop outs, who actually got the votes because we talked very well to the women selling *omenas* and *mbogas* in the village.

**Hon. Speaker:** Yes, Hon. Adala!

**Hon. Adala:** Thank you, Mr. Speaker, Sir, all I know is that the County of Siaya doesn't have anybody who is wise. Therefore, is it in order for Hon. Otiato to insinuate that some of us are not okay in terms of wits?

**Hon. Speaker:** I don't know, Hon. Adala seems to be our HR, he has all your files. He seems to know everything.

(Laughter)

But all the same, Hon. Otiato, I didn't remember catching you saying that we are illiterate, can you substantiate?

**Hon. Otiato:** I was just referring to what other people are saying outside there but I strongly believe that in the House we have very competent colleagues and I am always proud of the County Assembly of Siaya.

You can take it to any other level and I can challenge any other human being on earth that you better challenge any other Assembly but not Siaya County Assembly when it comes to matters of credentials. I am aware this is the only Assembly where we have got the Doctors, Lawyers, Engineers, military personnel and many other professions.

(Laughter)

This House is a fully equipped House unless otherwise or unless somebody is not a part of us, hence can make such allegations.

I beg to proceed by saying that my mind remains clear from the directive of learned Lady Justice Cheren who happened to be my magistrate when I was her prosecutor in Naivasha. This is a good decision which is a constitutional issue that we have to wait for direction from the High court/Chief Justice, but, as an Assembly we should move with speed to counter this decision. And I know people will be talking, people will bring a lot of interpretation as to why this decision has been made.

We made a decision and took a position that somebody must be appointed in the line of qualification. Yes, after passing the list of the few that we are having the other Members were removed from offices before election or appointment to those particular offices and people were appointed in the substantive positions with or without qualifications relevant to those positions. If that has happened we are aware of most likely scenario, and I thank the Mover on this particular position that yes, we are doing this, we are giving the Governor who is the appointing authority the opportunity that from this list he gets his best.

If he appoints someone to office from another profession like previously; a situation where an HR who is History teacher or maybe teacher in Literature is better than a professor in Agriculture in the department of Agriculture! That is the reason and that's where we want to take Siaya. That is the development we want to grow as we are here. I beg to support the Motion.

**Hon. Speaker:** Yes, let's give Hon. Erick, Member for Sigomre as we give Hon. Oriaro time to go across his dictionary and we will get back to him when he is ready with his submissions.

**Hon. E. Odawa:** Thank you, Mr. Speaker, Sir. If I remember well when I first joined this honorable House I took oath, fidelity to the Constitution and to represent people effectively. The people of Sigomre are known to speak their minds when need arises; a time like now. First things

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first, I want to thank the Mover of the Motion for stressing the “word Interim period.” Why gazetting this on interim? We need to ask ourselves such questions;

1. Have we been intimidated to make these decisions?
2. Is this honorable House giving in to political pressure?
3. Is this honorable House giving in to external pressure?
4. Is this honorable House by accepting by interim basis compromising the dignity, integrity and Independence of this Hon. House?

What will be the people outside here perceive of us? As people who say No today and Yes tomorrow?

Will we be eradicating or failing our electorates for standing up for what’s true, what’s right and what’s just simply because of our political oppression. These are weighty matters that this House needs to contain. What is the precedence that we are creating here?

We are supposed to be or perceived to be independent of the Executive maneuvers outside this Assembly. So what position are we trying to create here, are we being cowed? Siaya is a County with professionals and I have no problem with professionalism of the nominees, my problem was with the slot in of the nominees which we stated very clearly.

Another question we need to ask ourselves; are we getting ourselves into some political trickery or some monkey treat from the Executive? Members of this Hon. House; are we giving in to political expediency at the expense of service delivery, competence, suitability, honor and dignity of this House? There are things that we cannot compromise and should never ever compromise.

The pupil games that have been played by the Executive; buying time and using theatrics to arm-twist to abide by the decisions; we have only abided by them on an interim basis. I hope that indeed he is going to be reminded about this; we need to ask, is the Executive supposed to interpret the Constitution for us? Or are we supposed to interpret the Constitution on our own? Mark your role of this House is supposed to check the excesses of the Executive. If we dance to their tune, then I want to remind you we will be failing our obligations as Members of this Assembly.

We must adhere strictly to the Constitution, what’s going to happen next time much as we have started our interim basis; I want to caution our Members that we have to be very keen on what we are doing from today and going onwards such that we should not entertain this kind of trickery because we are not even done one year yet in this Assembly and we have four more years to go, what’s going to happen?

I accept and appreciate the Mover of this Motion but reservedly and I want that to be recorded. Reservedly with a heavy heart, I am taking it in because it is a matter that should be done on interim basis and at this juncture I would like to request and call upon the Executive to respect the Members of this Hon. House.

Members of this Hon. House are not people to be addressed in funerals and public barazas. If the Member of the Executive has issues with this House, he can call in and we can have a meeting both formal and informal so that we can address matters pertaining to Siaya not

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in Markets and funerals. Time has come for this House to stand up for what it is or what it should be, I rest my case.

**Hon. Speaker:** Hon. Oriaro had not finished his submission. Proceed!

**Hon. Oriaro:** Thank you, Mr. Speaker, Sir; for having given me another chance. One, I am sorry I have a sore throat. I said that I am convinced that reconsidering our Motion; a Motion that I am still convinced and nobody can challenge that and even heaven cannot challenge.

That was right, legally right, constitutionally right and even morally right; we are doing it believably that matters of impunity will come to an end. Just the other day a Motion of Public Accounts Committee was resolved by this House where we talked of recovering over Kshs. 19,300,000, where the Executive had surrendered to people who are known outside in the name of selling land, The County lost over Kshs. 19 Million.

I was also the Chair of Implementation of the first August House where we even resolved that money which was looted from the said Agribusiness fund be recovered and why I am saying that is we had CECMs for Agriculture, Finance and even the issue of selling land, we had CECM on education.

Mr. Governor should know and everybody including the former Prime Minister that I fear nothing because the Prime Minister is a component of good governance that's why he is fighting for good laws. If those were stolen was it the MCAs? No, the MCAs are called upon to do thorough vetting. A constitutional persuasion and indeed a moral persuasion because the people can't come to push us here; ours was and is to do what is right so if we have given the Governor chance to have his people on interim basis, if that is the matter, then issues of looting, stealing public money...

**Hon. Odinga:** Point of order!

**Hon. Speaker:** Yes, Hon...

**Hon. Odinga:** What does Hon. Oriaro mean when he says he fears nothing when mentioning the Prime Minister?

**Hon. Oriaro:** Mr. Speaker, Sir, that is English.

*(Laughter)*

Unfortunately, even a Member of the Senate---

**Hon. Speaker:** Hon. Oriaro, just simplify that English.

**Hon. Oriaro:** We can only fear God; Hon. Oriaro can only fear God, not the mortals. We know the consequences that may imply, I don't fear anybody, maybe the public.

**Hon. Speaker:** Proceed!

**Hon. Oriaro:** I need not to be a representative on tithers ---. I am saying

*(Laughter)*

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I am saying this in conclusion. Now that we are going to have CECMs to bridge the gap of --- service delivery, let there be no chances of stealing public money. Let there be good infrastructure, let Agriculture develop, let the ECDE centres develop, because the excuse is that we do not have the right people. Let it not be that they steal and when we make noise, our MPs who make law above say we are obstacles of the path of the Governor to deliver. That is what I am saying, I do not need to apologize to anyone.

Lastly, because our MPs have been in the chorus that we are not doing our work better, they even tell us that we are not educated. The law as it is, the same qualifications of MCAs are the same as Members of National Assembly! They have a chance to amend laws so that those of us who are not educated don't see the light of the day.

In National Government the law is clear, that is why we have a cabinet secretary of Sports who never went beyond standard Eight and he is a Minister and our MPs are the ones who passed that! Because that is what the law says. But when it comes to County, they ensured that if you want to be a CECM, you must be qualified in that field.

Let them revise that law so that even in County Governments we can also have anybody who is not educated because that is what the law says. But playing with us because somebody is an MP, a Senator, we are above that. If it is the people who elected us, Oriaro is above that.

*(Applause)*

It is the Senator who should see that services are delivered to the people. On the issue of Siaya, I have not heard my good friend, Hon. Orenge and he is the Senator. Those who are at subsidiary level are the ones who have been making choruses, maybe in the name of getting contracts.

*(Applause)*

I beg to support; I support.

**Hon. Speaker:** Yes, Hon. Adala! Hon. Members, we should not be repetitive. If Hon. Oriaro has spoken your point, you don't have to deliver it. He may have captured the will of most us.

**Hon. Adala:** Thank you, Mr. Speaker. If there is anybody out there who doubts the intellect of Siaya County in line of the fact that it is, sometime last week it was being rumored that MCAs have no understanding of the English language. I think Hon. Oriaro has really showed us who we are.

*(Applause)*

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I rise to support the Motion as moved. Laws are made for man but not man made for laws. Right way back in September, some of us stood in this House and our conviction was that knowledge and experience are things that you can learn.

**Hon. E.Odawa:** Point of order, Mr. Speaker!

**Hon. Speaker:** Yes, Hon. Odawa!

**Hon. E. Odawa:** It is wrong for Hon. Adala to insinuate that experience is learnt. Experience is experience and knowledge is knowledge.

**Hon. Speaker:** Hon. Adala, the point of order is, you are out of order to refer to a matter which the House had made a decision on. Just make your contributions based on the Motion that we have. Proceed!

**Hon. Adala:** Mr. Speaker, like I was saying, laws are definitely made for man to the extent that the people of Siaya are feeling the heat. To the extent that we are being made to understand that services cannot reach me in Uwaya village, to the extent that we are being made to understand that the learners of Siaya cannot access fees because the cabinet is half done. The laws are made to serve the interest of man.

I want to say that reading the report as laid by my senior, and he says that on 16<sup>th</sup> February, Justice ---, wheels of justice in Kenya, we know how it operates; it may not be as fast as we want it to be. We may sit here waiting for the verdict of that court.

You and I seated here, are not aware when that will be done. It could be done in the final year of our term and that shall be late. It is my considered opinion that whereas we are looking at the best interest of the people of Siaya, we also need to look at regions where we come from.

As we sit, we have a list of six officers who had been passed and approved and are now working. The 6 represent 4 regions of Siaya County. It is one year since we came here, Rarieda and Gem to this date are still not having a representative in the name of a CECM.

In the last dispensation, we really suffered in Ugenya, we were there without a representative in the Executive. I know the pain it feels when you go back as a Member of the Assembly and the people of Gem or Rarieda are asking you, where is our share? So, if this will help us unlock some of these things, then I don't think it is a wrong thing to do.

Having said that, the Hon. Members are human beings who can only act based on their conscious. We cannot act based on being cajoled by anyone. I want to state that in as much as we are going to pass this Motion, it is because our conscious is very clear and nobody has pushed us into submission. When we acted, we acted in the best interest of Siaya County.

Finally, this is not a battle of ---. It is not about who was having what stand and who is having which stand. It is not about who has lost what because there was nothing to be won but the rules of law to be followed. It is only a fool who doesn't change his mind and to the best of my knowledge there are no fools within the County Assembly of Siaya. There comes a time when we need the Wisdom of Solomon and the strength of Samson to unlock and that time is now. Thank you.

**Hon. Speaker:** Member for West Yimbo, Hon. Willis!

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**Hon. Ochieng:** Asante sana, bwana mwenyekiti kwa kunipatia nafasi hii ili niunge mswada huu mkono. Jinsi unavyo jua ya kwamba, sisi kama waakilishaji wa wanainchi, kazi yetu kuu ni kuhakikisha ya kwamba wanainchi wetu wamepata huduma mahali popote walipo.

Jinsi wenzangu wameshaongea, wakanena vizuri sana, kila siku Gavana akitembea kwenye mazishi, kwenye sherehe tofauti tofauti husema ya kwamba sisi kama Kaunti Assembly hatujampatia waziri wakutosha wakufanya kazi nao. Hata leo nikiongea, mwezi uliopita, wanainchi wangu walibebwa na mafuriko

*(Applause)*

Nilipopoleka malalamishi kwa Gavana mpaka sasa hivi hakuna usaidizi watu wetu washapata. Kama kupatia Gavana waziri kumi ndio inaweza fanya hizo vitu zitendeke naunga huu mswada mkono ili bwana Gavana apewe waziri anao taka kufanya nao kazi na kazi iendelee katika kaunti yetu.

Tunavyoongea watu wetu hawajapata karo ya bursary kama kupitisha mswada huu unaeza fanya watu wetu wapate bursary basi acha iwe unajua vizuri mimi kama mwenyekiti wa Kilimo katika kaunti hii wananchi walilia sana kwamba hawakupata mbolea hawakupata mbegu na hata wakulima hawakulimiwa jinsi walivyotarajia. Kama kupitisha hawa waziri yatafanya haya yafanyike naunga. Basi tuwapitishie!

Naomba Waheshimiwa wenzangu ya kwamba penye tumefika tunafinywa sana juu wananchi wanatulilia na sisi unajua kwamba tulipokua tukiomba kura tulikua tumeahidi wanachi vitu tulikua tuwa tendee. Tuliwaahidi mabarabara, bursary, mashule na hayapo kwa sababu wanasema kwamba hatuna Waziri.

Jinsi naona hii nyumba pia wengi wao washaunga mkono. Wameunga kwa kiingereza na saa mimi pia nimeunga kwa Kiswahili. Hakuna kilicho baki, imebakia ni kwamba Gavana apewe mawaziri na kazi iendelee Siaya County. Asante sana Mungu awabariki.

**Hon. Speaker:** Yes, Hon. for North Ugenya.

**Hon. Opanga:** Thank you, Mr. Speaker, Sir. I support the Motion. The Committee on appointments while doing their work on 10<sup>th</sup> October gave us a Report and they used the laws that were guiding them to do the work. This issue has become a matter that every person within Siaya even outside talks about the same issue.

As the representative of North Ugenya, I stand to support this Motion because if the four CECMs missing are the reason we don't get service delivery; I support but I want it to go on record as the Mover has put it clearly this is not an act of cowardice, it is an act of good will then our people of Siaya move ahead and develop Siaya.

After passing this, our next course of representing the good people will be getting the best we want service delivery to our people. I support.

**Hon. Speaker:** Yes, Hon. Olasi of West Uyoma.

**Hon. Olasi:** Thank you, Mr. Speaker, Sir. I seconded this Motion and I want to support it this way. Not because I come from Rarieda but I am being guided by what a Hon. Member of

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this House has said that the people of Rarieda and people of Gem have not gotten their share. To me that is wrong and a big blow because we belong to that clan, they should get the right people to serve the people of Siaya. I wonder where they come from.

Another Hon. Member who was also last time happy in this House for the fact that the two CECMs were from his Ward that was his happiest moment in this corridor can now stand today telling us that he will support...

**Hon. Speaker:** In the interest of time just take a short time

**Hon. Olasi:** I said I would take the shortest time. Our Standing Order allows us to recall the Motion within 6 months so we still have time. If a Motion is allowed so be it and let the services be delivered to the people of Siaya. Thank you.

**Hon. Otiato:** Point of Order!

I would like a clarification. I just heard a complaint from a Member that I celebrated or otherwise. You know what was happening, was an issue of section 3(d) that we are debating today, and this is the compromise that we are making.

**Hon. Speaker:** Hon. Otiato, let that matter rest. You know where it was heading, that is why I cut you short. Proceed, Hon. Olasi, and make your point very brief. Hon. Shirley? Only four more contributors please then we wind up this debate.

**Hon. Oyuago:** Thank you, Mr. Speaker. I want to make this very clear. You know, we are not revoking the decision that was made by this Honorable House. Many regions have not got a share from the list of CECMs that we have, and I believe that we are doing this because everybody considers the Assembly as a stumbling block on matters of development.

We don't want to screw up developments or even service delivery. That is why we are revoking a decision that was candidly made by this Honorable House. I support.

**Hon. Speaker:** Hon. Omwende?

**Hon. Omwende:** Thank you, Mr. Speaker. I also want to be brief. This is a Motion on its own. You remember the August House, we didn't even have an opportunity, and if it was there, it was rare, because a Motion that can be called back after six months, this is rare. First I want to support, but I remember, I have been mingling with other Counties, especially when we were having a summit with these other Counties in Nairobi; we really compared notes with other Counties also.

Siaya is well known if you compare with other Counties in terms of Legislation. Recently we were having a meeting with stakeholders especially meeting with women, Youth, PWDs, and the Chair who is moving this Motion can recall we were having a heated debate especially on the issues of disability and youth.

While am in support, I am very keen this time, especially when we are going to appoint the COs for this department. If PWD is not represented, I will not allow and I will not sit back and watch. Right now I may allow for the betterment of this County, but next time, I will not allow this to happen again. Thank you.

**Hon. Speaker:** Yes, Hon. Madialo.



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**Hon. Madialo:** Mr. Speaker, Hon. Nick Ocholla who is my brother is dressed like he is in a disco. There are no socks, there is no coat, and could he withdraw from the Chamber and go and dress properly.

*(Laughter)*

**Hon. Ocholla:** Mr. Speaker, Sir, I am dressed in a tie, and because of health reasons I cannot put on a coat.

*(Members talked out of order)*

**Hon. Speaker:** Hon. Nick Ocholla, we all know you have been away; you must have missed our dressing pattern. Kindly go out and dress like any other Member. Yes, Hon. Aringo.

**Hon. Aringo:** Thank you, Mr. Speaker. I was a chief for 25 years and the experience I gained was to read the mood of my audience. I want to say that the House as I can see is for the Motion.

I can't remember anywhere that you were summoned on how to go about the Motion. I believe strongly that the Appointment Committee did its function as per the Constitution and the County Government Act.

I have been thinking and asking myself one question: was the process flawed? And I realized that what the Committee did was as per the Constitution. The whole process was politicized to an extent that it has really made our work very difficult.

Recently back at my area, they planted banana trees on the road leading to my home simply because we have refused the list of the Governor's nominees. We trust and respect you Mr. Speaker, and I believe that the decision we are going to make today is the decision which will make the County move forward.

I therefore say that if it is our passing of this report that will make the road to my home then be it! If it is our passing of this list that will avail the hospital staff, so be it! If our passing of this list will revamp our Agricultural sector then I will urge the House to pass the list. I therefore once again say that I want to pass it as brought before the House.

**Hon. Speaker:** Yes, Hon. Nick Ochola has gotten treatment, remember he was unwell.

*(Laughter)*

**Hon. Ochola:** Thank you, Mr. Speaker, Sir. I briefly consulted my doctors and they allowed me to continue with my normal chores. I want to be brief and I will not take more than one or two minutes.

First of all let me take this opportunity with profound gratitude and honor to thank the Mover of this Motion for finding the courage to follow the Law and bring it back to us in the Assembly as stipulated by our Standing Orders which I would have also urged the Mover to have

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included the Standing Orders which allow the Motion to come back, but we all know what kind of Standing Order it is.

Much of what I would have said has been contributed by fellow colleagues and I am not going to repeat. But, I want to point out that this list was brought to this House on the 3<sup>rd</sup> August, 2017 and we had a protracted trouble understanding or interpreting section 1(d) as we were stuck on whether we were talking of knowledge or education. The profound wisdom that the Mover has used and the fact that this misunderstanding, the impasse, has been taken for judicial interpretation is the best wisdom so far that this House has got.

So it is the duty of the court to tell whether I was right then because I stood the position during the contribution that there is a big different between knowledge and education. So that the contradicting stand that the History teacher from --- that is professor in Agriculture was favored was dropped in favor of the History teacher. I took the position that probably the History teacher had knowledge but not education. But, that is now with the court and we are going to get the interpretation. Thank you, the Mover for that wisdom.

Secondly, this is a matter beyond cure, now we are legislating because we are in the House, but first and fore most we are politicians! That is what the Law says. So sometimes we mix politics with legislative issues and interpretations of Law will sometimes come at loggerheads. So I think it's --- if allowed to give the executive the entire list as was brought which is not being hindered by any court order.

Go and consider, make their choice and somebody somewhere we will now see that toilets in Siaya are not full. Am not going to forget the fact that by passing this list we are going to stand with our heads up that we can disagree in interpretation of Law but we can also sit down and retreat like in any other battle and say we are now giving the Law as it ought to be not as it is and now we pass this list so that we clear ourselves from the baggage that probably one Hon. Nick Ochola from North Gem was supporting then because probably he is a sister or a brother to the Governor or something close to that.

It is because we are a section who stood their ground as by interpretation and another section stood their ground and now we are reaching a middle point where we are going to get the right interpretation of who was right then, whether the Assembly knew their rights then by rejecting or we were not right by rejecting the list. We are going to be given direction.

As at now it will be hazardous moment because one thing we must not forget is that this is also politics and regional representation must also be given when these appointments are done. I am in fear to say that as members from Gem sub-county we have felt that we really have been "favored" because two of our supposed nominees were out rightly rejected and some members had two appointed from one Ward.

*(Laughter and applause)*

So it will be my happiest moment that when I go back to my Ward I will say that now we are also having members from Gem sub-county who are also forming part of the Siaya County.

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This will be my happiest moment. So I will congratulate this House and congratulate the Mover and I hope that as the mood of the House was read that this list is going to be passed and then we move ahead and think of other things that we can do as a House, thank you.

**Hon. Speaker:** Yes, Hon. Oyuago.

**Hon. Oyuago:** Thank you, Mr. Speaker, Sir. Mine is very brief, in Luo tradition it is believed that women or ladies wherever they get married or wherever they are they must bring peace whenever there are controversies or tensions.

You know this issue has brought a lot of tension in Siaya County and I must say that at least today am very grateful because as a Luo lady who is expected to bring peace whenever there is controversies, tensions and no peace, you know!

I really know how to handle the issue because it has brought a lot of tension between our husbands, sons and ordinary Siaya citizens, therefore, I am very happy today and I must congratulate all the Hon. Members who are going to pass this list as a Luo lady. I support!

**Hon. Speaker:** Hon. Members, there being no any other contributions, may I call the Mover to reply and as the Mover replies, I just want to clarify to the Hon. Nick that the entire contribution by Hon. Otiato was not to the effect that degree as your knowledge and experience and distinguished career is said had a degree. He had contributed to the fact that the person who was unsuccessful was practising Agriculture and not that he had a degree in Agriculture only.

Secondly, on your request to be guided by Standing Orders, you will have a look at Standing Orders No. 54 which talks about a Motion to be seen, decision may be moved with the permission of the Speaker.

Yes, Mover!

**Hon. Madialo:** Thank you, Mr. Speaker, Sir, on that verification of the Standing Order. Listening to Hon. Otiato, I want to add that we are not within the bracket of people who get intimidated and this is not as result of intimidation.

Whether the professor in Agriculture and the teacher in Literature were qualified and had experience and knowledge, that is what is before the court because the Assembly through the Appointments Committee determined that that teacher didn't have the experience and was not distinguished in his career, but that is before the court and I don't want to dwell on it.

Hon. Otiato is quite concerned whether we are educated or not in the eyes of the public but listening to his own English I don't know if he convinces himself that he is well educated. To me I think that is not worth commenting or replying to that's parochial. The Hon. Vincent Odawa is right on point. Was it political expediency, are we being arm twisted by the executive? We would have been arm twisted long time ago but we were not.

My plea to the House was as Hon. Adala captures it quite clearly that the wheels of justice are so slow that we might end up waiting for three years for the advisory to come. The advisory is valuable today it will be valuable at that time because it will direct all the Assemblies in Kenya on how Assemblies elsewhere will be dealing with such scenarios.

What our chance was in October we all know! I want to state this; that Members there is a point to it. But really I don't know whether it makes sense to anybody to suggest that ten

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people determine the delivery of service of a County of 1.2 million people. That if the ten are only eight or nine then service cannot be delivered.

There is a point we missed as a House and it is being missed by the Executive also, the Law says a maximum of one third which means you can have five CECMs and run a Government for five years. The Law does not say you must have Wakla or you must have around ten. What happens and God forbid if two of them died, do we stop the service delivery until the two are appointed? Mr. Speaker, Sir: let us demystify this argument; in fact we have given more than Nine to pick from.

Lastly, forgive me if I offend anybody; at that time we were saying follow the law, at that time the Speaker was saying follow the law and regional balancing is part of the law. We can't say that at that time you have knowledge and therefore we can bend but now when regional balancing comes, follow the law. No, that is self-contradiction; when we say follow the law you follow the law.

A few Members have noticed that people living with disabilities were not considered in the previous list which is a legal requirement but for now let us spur up development and let us be clear we are not revoking our earlier recommendations of 3<sup>rd</sup> October, 2017. We are rescinding just a part of that Report to enable the Governor pick his CECMs and fill out the vacancies he has declared his mind to exist in the County Executive Committee from amongst persons that he preferred at that time but in the interim.

Once the advisory comes, ladies and gentlemen we are rescinding that one; it means when the advisory comes and it is in contradiction to our actions today we shall follow the advisory and we shall reign in. Mr. Speaker, Sir; with those many words I beg these ladies and gentlemen to support the Motion.

*(Question put and agreed to)*

**MOTION**

ADJOURNMENT

**Hon. Speaker:** Hon. Members, there being no other Business, will you be upstanding for adjournment!

*(Hon. Members rose on their feet)*

**Hon. Speaker:** Hon. Members, there being no other Business, this House adjourns until today the 30<sup>th</sup> of May, 2018 at 2.30 p.m. at the Chamber.

The House rose at 11.55 a.m.

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