

Thursday, 18th October, 2018 COUNTY ASSEMBLY OF SIAYA DEBATES

REPUBLIC OF KENYA
SIAYA COUNTY ASSEMBLY

THE HANSARD

Second County Assembly- Second session

Thursday, 18th October, 2018

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

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

PRAYER

NOTICE OF MOTION

MR. JOSEPH WAREGA, CECM FINANCE

Hon. Speaker: Yes, Member for West Asembo.

Hon. Auma: Hon. Speaker, I beg to give notice of the following Motion:

AWARE that Article 232 (2) (c) of the Constitution of Kenya dictates that a designated officer in service of the public should act in a manner that espouses responsiveness, promptness, impartiality and equity in the provision of services; **FURTHER AWARE** that a public officer entrusted with management of public funds must apply such funds prudently and responsibly pursuant to Article 201 (d) of the Constitution of Kenya;

WHEREAS the County Executive Member in charge of finance is, withal, mandated, pursuant to Section 104 of the Public Finance Management Act, 2015 to implement the county budget effectively and efficiently; **NOTING FURTHER** that the said CEC has the core role of coordinating the implementation of the County Budget in respect of Section 104 (c) of Public Finance Management Act, 2015;

CONCERNED that the CEC in charge of finance in this county has continuously and consistently carried out his duties in stark disregard to the very values and principles that he swore to uphold, holding this Assembly in contempt and with shades of disrespect; **DEEPLY CONCERNED** that the actions and inactions of Mr. Joseph Warega has caused hopelessness in vulnerable students and suppliers in this county;

This Assembly **RESOLVES** to sanction the Governor to remove Mr. Joseph Warega as the CECM in charge of finance pursuant to Section 40 of the County Government Act, No17 of 2012 on the following grounds;

1. Incompetence – Gross violation of Constitution of Kenya, 2010; Siaya County Education Bursary Fund Act, 2016; and Public Finance Management Act; 2015

a) Section 103 (3) of the Public Finance Management (PFM) Act, 2015 places CEC finance as the one officer in charge of County Treasury which is mandated with coordinating the implementation of county

Budget pursuant to Section 104(c) of the PFM Act, 2015. This Assembly allocated Kshs.75 million to be expended as bursary funds pursuant to provisions of Siaya County Education Bursary Fund Act, 2016. While the Controller of Budget had ensured that the first half of the funds was remitted to the County Treasury by January 2018, no allocation, via the County Bursary Fund Account, to the students, had been done by August 2018.

This is in total violation of Section 5 of the Siaya County Education Bursary Fund Act, 2016 which requires that all bursary awards should have been channeled to the beneficiaries by March of every year.

b) The County treasury has religiously deducted funds to pay Project Management Committees in the County amount to a total of approximately Kshs. 110 million by end of 2016/2017 FY. None of these funds have been put to correct use contrary to provisions of Section 104 (1) (c) of the PFM Act, 2015.

Non remittance of such funds to the correct account portrays lack of openness and accountability contrary to provisions of Chapter 12 of the Constitution of Kenya, 2010. This has affected the morale of and caused a lot disdain to the PMC members and subsequently the standard of works in the county.

c) Budget implementation in the County is riddled with avoidable inconsistencies especially considering that the roll-over of development funds is worryingly too high. This raises fundamental questions as to why the county treasury cannot cause the funds to be absorbed for the much needed development in the County.

Payment of contractors and providers of essential services is agonizingly difficult under the watch of Mr. Joseph Warega. He cannot therefore effectively coordinate the implementation of annual county budget as required in the provisions Section 104 of PFM Act, 2015.

2. Gross Misconduct - Undermining the Authority of the County Assembly – Gross Violation of Constitution of Kenya, 2010 and County Government Act; 2010 and County Government Act, 2012.

a) On 22nd August 2018, this house through the committee on General Oversight engaged officers of the Department of Education on the delay of disbursement of bursary funds to needy students. Members were reliably informed that the first and second tranche of the funds would be disbursed to schools before end of the same month of August. Up to and until 15th of October, 2018, no such disbursement had been completed, putting Honorable members in contempt of

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valid public expectations and more importantly causing hopelessness to the vulnerable learners in this county.

b) This Assembly through the committee of Finance, Trade, Industry and Cooperatives, have in the past and on several instances invited CECM Finance to respond to various concerns by the Members. The actions of Mr. Joseph Warega have been that of reluctance to respond prompting the committee to give several reminders.

Whenever a final response is received by the committee, it is normally from a non-Gazetted officer. This behavior violates Section 39(2) of the County Government Act, 2012 which requires a CECM to appear before a committee of the Assembly to answer questions related to his/her responsibilities.

COMMUNICATIONS FROM THE CHAIR

LAKE REGION ECONOMIC BLOC TRADE INVESTMENT AND REMOVAL OF MEMBER OF COUNTY EXECUTIVE COMMITTEE

Hon. Speaker: Allow me to make this communication; firstly, is the matter on the Lake Region Economic Trade Investment. The invitation letter reads; invitation towards inaugural Lake Region Economic Bloc Trade Investment and Blue economic conference. The Lake Region Economic Bloc in partnership with Blue economy organizations are pleased to announce the Bloc's inaugural trade investment and Blue economic conference to be held on the 22nd to the 26th October, 2018 at IAAF stadium in Bomet County.

The event seems to showcase Trade and Investment opportunities in the LREB and its environs. It is anticipated that this premier event will bring together over 5000 participants comprising local and international investors, policy makers and the exhibitors under the theme optimizing shared resources for prosperity and the big four agenda.

The function will be graced by H.E. the President of Republic of Kenya, the Hon. Uhuru Muigai Kenyatta, H.E. the Deputy President, Hon. William Samoe Ruto and the R.H. Raila Amollo Odinga who will address the conference.

This letter therefore serves to invite you to the conference scheduled for 22nd to the 26th October, 2018 as indicated above. For more information contact the County Secretary. Having said that Hon. Members; it's our first time getting a Motion of this nature; the one for proposal to ask the Governor to relieve of duty the CECM Finance.

Allow me to take to the Standing Orders and as I do that I also want to warn very sternly the Mover of this Motion that in future your utterances be it in funerals out there should respect the dignity of this House and you should not at any given point drag the name of the office of the Speaker or membership. If you do that next time you will find yourself before the Committee on Privileges

And therefore I want to firstly urge you to withdraw the threats you issued to this House and the office of the Speaker before I proceed.

Hon. Akuno: Mr. Speaker, Sir; I withdraw.

Hon. Speaker: Thank you, I proceed that our Standing Orders no. 73; proceed for removal

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of Member of the County Executive Committee.

(1) *Before giving notice of Motion under section 40 of the County Governments Act, 2012, the Member shall deliver to the Clerk a copy of the proposed Motion in writing stating the grounds and particulars upon which the proposal is made, for requiring the Governor to dismiss a member of the County Executive Committee on ground of a gross violation of a provision of the Constitution or of any other law; where there are serious reasons for believing that a member of the County Executive Committee has committed a crime under national or international law; or for gross misconduct.*

The notice of Motion shall be signed by the Member and the Clerk shall submit the proposed Motion to the Speaker for approval.

2) *A Member who has obtained the approval of the Speaker to move a Motion under paragraph (1) shall give a three (3) day notice calling for dismissal of a member of the County Executive Committee by the Governor. The 3 days period would now not be practical because we are going on recess.*

(3) *Upon the expiry of three (3) days, after notice given, the Motion shall be placed on the Order Paper and shall be disposed of within three days.*

(4) *When the Order for the Motion is read, the Speaker shall refuse to allow the Member to move the Motion, unless the Speaker is satisfied that the Member is supported by at least one-quarter of all Members of the Assembly to move the Motion;*

Provided that within the seven days' notice, the Clerk shall cause to be prepared and deposited in his or her office a list of all Members of the Assembly with an open space against each name for purposes of appending signatures, which list shall be entitled: SIGNATURES IN SUPPORT OF A MOTION FOR REMOVAL OF Mr./Mrs./Ms----- MEMBER OF COUNTY EXECUTIVE COMMITTEE; and, further that the Mover shall provide to the Speaker, at least one hour before the sitting of the Assembly, a list signed by Members in support of the Motion.

(5) *Any signature appended to the list as provided under paragraph (4) shall not be withdrawn.*

(6) *When the Motion has been passed by at least one-third of all Members of the County Assembly, the Assembly shall, within seven (7) days, appoint a special Committee comprising a third of the Members to investigate the matter; and shall, within ten (10) days, report to the Assembly whether it finds the allegations against the member of the County Executive Committee to be substantiated.*

(7) *Member of the County Executive Committee has the right to appear and be represented before the select Committee during its investigations.*

(8) *No further proceedings shall be taken on the matter if the select Committee finds the allegations unsubstantiated.*

(9) *If the select Committee reports that it finds the allegations substantiated, the Assembly shall afford the member of the County Executive Committee an opportunity to be heard and vote whether to approve the resolution requiring him or her to be dismissed.*

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(10) If a resolution requiring the Governor to dismiss a member of the County Executive Committee is supported by a majority of the Members of the Assembly, the Speaker shall promptly deliver the resolution to the Governor and the member shall be considered dismissed.

In our prevailing circumstances, I therefore direct that the mover to comply with those provisions and as soon as practicable you will on notice give or communicate to my office when the Motion should be proceeded with. In the meantime, I said these matters are very pertinent; there is a matter under (1a) which talks about the bursary.

I direct that the Education Committee moves with speed to allocate the facts behind the perception of the petition as to whether this was the correct allocated amount, whether these monies came or not and whether these monies has been misappropriated or not and report to the Assembly by 7th of November, as soon as we open and that will help the Assembly make its decision or the Committee.

There is the other one on the Project Management Committee, I further direct that the Finance Committee moves with speed to ascertain the facts around this section of the petition as to whether indeed there was this allocation for Project Management Committees and the use thereof of that money and report to the Assembly by the 7th of November, 2018 when we resume.

The Budget Committee under (c), there is a claim on roll overs and inconsistent allocations. May the Budget Committee ascertain facts around that provision and report back! On 2 which is gross misconduct, undermining the authority of the County Assembly, gross violation of the Constitution, I call upon or I direct this to be considered by the Privileges Committee and establish whether or not indeed the witness has been invited by our various Committees and he has declined.

Whether summons have been issued and recommend sanctions which are very clear in the Powers and Privileges Act, that stands directed as so. Next order!

MOTION

ADJOURNMENT PURSUANT TO STANDING ORDER NO 25(3)

Hon. Oor: Mr. Speaker, Sir, I rise pursuant to the Assembly Standing Order No. 25. It stipulates that on a day when the County Assembly is scheduled to adjourn to a day other than the next normal sitting in accordance with the County Assembly Calendar. The leader of Majority Party or the Leader of Minority Party or another Member of the County Assembly Business Committee shall move a Motion of Adjournment which shall be debated for not more than 3 hours after which the County Assembly shall adjourn without question put.

Through your office, all the Hon. Members have been invited to ----

Hon. Olasi: Point of order, Mr. Speaker!

Hon. Speaker: Yes, Hon. Majority Whip!

Hon. Olasi: Thank you, Mr. Speaker. We had two Motions here, the report of the Procedure and Rules Committee and for the adjournment.

Hon. Speaker: Yes

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Hon. Olasi: I think after adjournment, we should not have any other Motion? Isn't it?

Hon. Speaker: You are right. Thank you, for the reminder. That was Order no. 8 and not no. 9. Yes, Hon. Omwende!

AMENDMENTS OF THE STANDING ORDERS

Hon. Omwende: Thank you, Mr. Speaker. I was alert by the time I was to give a Motion but you did not catch my eye.

Hon. Speaker: Are you implying that the Speaker was not alert?

Hon. Omwende: Yes

(Laughter)

Thank you, Mr. Speaker. I am aware that we have already laid the report, I am also aware that we have already given a Notice of Motion. But after a long discussion with my Committee Members on Procedure and Rules Committee, I kindly request that if you allow us we can withdraw this report so as to beef it up.

Our Standing Orders on amendments states that amendment is not something that is done now and then, it is a one off time and therefore, as a Committee we see it right that you allow us to withdraw the report. Thank you.

Hon. Speaker: For the good of the House, permission granted, just make sure that as soon as we convene from our short recess you Table the Report.

Yes, Majority Leader.

MOTION

ADJOURNMENT

Hon. Oor: Thank you, Mr. Speaker Sir. I rise pursuant to Standing Order 25(3) which stipulates that;

On a day when the Assembly is scheduled to adjourn to a day other than the next normal sitting day in accordance with the Assembly calendar, the Leader of the Majority Party or the Leader of the Minority Party or another Member of the House Rules and Business Committee shall move a Motion of adjournment which shall be debated for not more than two hours after which the House shall adjourn without question put.

Hon. Speaker: Order! Hon. Oor. Hon. Washington

Hon. Booker: Thank you, Mr. Speaker, Sir. I am a bit confused by this Order paper because the Order paper says it is 23(3) while the Majority leader says it is 25(3). So could you give direction?

Hon. Speaker: Yes, you are right. I think there is a typo it should be 25(3) and not 23(3). If you read 23 it talks of;

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The Speaker shall preside at any sitting of the House but in absence of the Speaker, a Member elected by the House for that purpose pursuant to Article 178(2) of the Constitution, shall preside.

So you are right, Hon. Booker, Majority stick to 25(3).

Hon. Oor: Thank you, Mr. Speaker Sir, through your office all the Hon. Members have been invited to attend inaugural Lake Region Economic Bloc Trade Investment and Blue Economic conference to be held in Bomet town, Bomet County from 22nd to 26th, October 2018. The events theme is optimism share resource for prosperity under the big four agenda. The said function will be graced by the President Hon. Uhuru Kenyatta, the Deputy president Hon. William Ruto and the Right Hon. Raila Odinga.

I wish to remind the House that, that is the same week in which the Assembly was to adjourn for a short recess according to the calendar of the Assembly. In this regard and pursuant to Standing Order 253, therefore I wish to Move that this Hon. House adjourn today Thursday, 18th October, 2018 and resume its sitting on Tuesday, 6th November, 2018 at 2.30 p.m. Thank you.

Hon. Speaker: Yes, Hon. Olasi.

Hon. Olasi: Thank you, Mr. Speaker Sir. I just didn't carry my Standing Orders with me. How I wish somebody would furnish me with a provision that can revoke this adjournment. Before us is a Motion that was Tabled which is very clear and you have admitted that the points put before us by Hon. Akuno are really weighty if we mean well for our County.

When we talk about bursary, PMCs money, all of us and again when you talk of gross misconduct, I don't want to use the word impeachment but if sending someone home is the thing that can pave way and make Siaya County a better County and develop. How I wish this adjournment would have been adjourned Motion would have been revoked if there is an article that can support it. Thank you.

Hon. Speaker: Hon. Whip, we are not adjourning Committee activities, we are adjourning plenary work and you heard in my direction that Committees should continue doing their work, okay!

Yes, Hon. Omwende.

Hon. Omwende: Thank you, Mr. Speaker Sir, for also giving me an opportunity also to say something. In our Assembly, I believe and trust there is a lot that is expected of us. While Majority was reading about the adjournment, it is key that we know that the main reason for the adjournment is because of the Economic Bloc.

I think Economic Bloc is an Executive issue although we also have a part to play, but if you compare notes and rank, we have a lot to do. There are issues that are coming that we need to give first priority and for that reason I am not in support. Thank you.

Hon. Speaker: Hon. Members, let me guide this House. Let me give Hon. Shirley a chance first.

Hon. Oyuago: Thank you, Mr. Speaker, Sir. I don't know what some of the Hon. Members understand by the term oversight. It is just recently that we passed Kshs. 100 million in this thing called Lake Region Economic Bloc and our role is to play an oversight role whether it

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is an Executive project or a Ward development project. We cannot just let Kshs. 100 or Kshs. 200 million go like that without attending the Lake Region Economic Bloc. I support the Motion fully. Thank you.

Hon. Speaker: Yes, Hon. Maurice Aringo.

Hon. Aringo: Thank you, Mr. Speaker, Sir. I feel strongly that the Majority Leader's reason for adjournment is justified. It is important that we attend this meeting in Bomet. There is no way we can run two activities at the same time. I therefore say that as stakeholders in the forum we have to go to Bomet and adjourn our Sittings. Thank you.

Hon. Speaker: Yes, Hon. Winnie.

Hon. Otieno: Thank you, Mr. Speaker, Sir. In my understanding of this Motion, I thought that the Majority Leader categorically said that the recess was on the Assembly Calendar, if I heard it well, so with or without Bomet our Calendar was saying we have to adjourn. Thank you.

Hon. Speaker: Yes, Hon. Whip.

Hon. Olasi: Thank you, Mr. Speaker, Sir. We understand what this Lake Region Economic Bloc is and...

Hon. Oyuago: Point of Order!

Hon. Speaker: Yes, Hon. Shirley

Hon. Oyuago: Thank you, Mr. Speaker, Sir, is a Member allowed to speak twice on the same Motion? Whether he is a Whip or a 'Majority what', is he allowed to speak twice on the same Motion?

Hon. Booker: Point of Order!

Hon. Speaker: Yes, Hon. Booker.

Hon. Booker: Thank you, Mr. Speaker, Sir, allow me to correct the Hon. Member. We don't have 'Majority what', we have Majority Leader and the Hon. Member must have respect when addressing the Majority Whip! I don't like the way she is talking!

Hon. Speaker: Yes, Hon. Olasi

Hon. Olasi: Thank you, Mr. Speaker, Sir. I always say that at times you need to be very economical with your words. The Standing Order dictates that I can speak more than once when on a Motion. I was standing on a point of order. On a point of order, I am not wrong. I think the Hon. Member you need to consult.

Hon. Speaker: Hon. Member, address through the Chair.

Hon. Olasi: Thank you, Mr. Speaker, Sir. I was of the point that you know how important the regional economic bloc is and I don't dispute the fact that already there is a Budget for this. I also agree that the Calendar is demanding that we go for a recess.

I was not looking at the economic bloc as a minute conference before us but because the economic bloc will not go up to 6th November I was asking whether there is a provision that we can revoke that Calendar even for two weeks then we see the sense or pump the sense that it is not the Plenary work that should continue but the committees work will go on.

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I am not supporting. The fact that we can be away up to 6th of November while we have this week, I was requesting that if there is a provision that we cannot meet up to 6th of November because schools are coming to be closed...

Hon. Speaker: Hon. Olasi, take your seat. There is provision for that. Every time there is a recess and there is a matter of great importance, the Majority Leader will consult the Office of the Speaker and a Special Sitting is arranged.

Hon. Speaker: Yes, Hon. Lorna

Hon. Adida: Thank you, Mr. Speaker, Sir. I will support the Motion by the Hon. Majority Leader. It is true the County is going through very pertinent issues more so the bursary considering the situation of our children.

It is also important to realize that the Lake Region Economic Bloc is very important to the County being that Siaya is the one that is holding the education pillar. Just recently we passed the Kshs. 100 million and there was a lot of doubt among members on how this money was going to be spent so I think it is very prudent that Members attend the conference at the same time come back and follow the issues the County. Thank you.

Hon. Omwende: Point of Order!

Hon. Speaker: Yes, Hon. Omwende.

Hon. Omwende: Thank you, Mr. Speaker, Sir, is it right for this Hon. Member to confuse this House? She is talking about bursary and what the Majority Leader says about the adjournment. There is a lot of confusion I don't know which is which.

Hon. Speaker: You are feeling confused, Hon. Member?

Hon. Omwende: When did the Majority Leader talk about the issue of bursary in the adjournment?

Hon. Speaker: She is just contributing and not confusing anybody. Are you confusing us, Hon. Lorna?

Hon. Adida: Thank you, Mr. Speaker, Sir. I was just appreciating the fact we have pertinent issues with regards to the bursary that is affecting the students of our county but at the same time the regional economic bloc is also very important for the County.

Hon. Speaker: Hon. Omwende, are you still confused?

Hon. Omwende: She has confused me more!

Hon. Speaker: That is why you need to research because you are confused

(Laughter)

Yes, Hon. Winga.

Hon. Winga: Thank you, Mr. Speaker, Sir, I stand to support the Motion. Considering the temperature of Siaya in general if we take these two weeks when we come back the temperature will have gone down.

(Laughter)

Hon. Speaker: Yes, Hon. Juma.

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Hon. Juma: Thank you, Mr. Speaker, Sir, when a Hon. Member talks about the temperatures I don't understand maybe she can substantiate more about the temperatures she is talking of.

Hon. Winga: What I mean by temperatures concerning the Motion that has just been tabled, there has been a rise in temperatures...

Hon. Speaker: Hon. Members, we passed our Calendar, we have given ourselves timelines. Committees have been given the go ahead to continue meeting and therefore as has been set the Standing Order 25(3) reads,

“On a day when the Assembly is intending to adjourn other than the normal sitting day in accordance with the normal Assembly Sitting Calendar, the Leader of Majority Party or the Leader of Minority Party or another member of the House Rules and Business Committee shall Move a Motion of adjournment which shall be debated for not more than two hours after which the House shall adjourn without Question put.”

Therefore there being no any other Business may you be upstanding for adjournment

(Members rose)

There being no any other Business, pursuant to Standing Order 25(3), this House adjourns until Tuesday, 6th November, 2018 at 2.30 p.m.

The House rose at 3.13 p.m.