

Wednesday, 24<sup>th</sup> July, 2019 COUNTY ASSEMBLY OF SIAYA DEBATES

# REPUBLIC OF KENYA

## SIAYA COUNTY ASSEMBLY

### THE HANSARD

**Second County Assembly – Third Session**

**Wednesday, 24<sup>th</sup> July, 2019**

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

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

### PRAYER

### COMMUNICATION FROM THE CHAIR

1. SIAYA MUNICIPALITY BOARD
2. PUNGUZA MZIGO
3. INTER-GOVERNMENTAL COUNTY COMMITTEE
4. PETITION – HON. MBOHA

**Hon. Speaker:** Hon. Members, I have the following communication to make. The nominees to the positions of Siaya Municipality Board. You will recall that on the 6<sup>th</sup> of December, 2018, this House adopted the report of the Committee of Lands, Physical Planning and Housing approving the Municipal Charter that elevated the status of Siaya town to Municipality in line with Section 9 of the Urban Areas and Cities Act 2011 which stipulates that;

*The County Governor may on the resolution of the County Assembly confer the status of a Municipality on a town that meets the criteria set out in Sub-section 3 by grant of a Charter in the prescribed form.*

Section 12 of the Urban Areas and Cities Act 2019 as amended provides for the structure and management of Cities and Municipality as well as the establishment of the board to administer the municipalities on behalf of the County Governments. Section 14(1&2) of the same Act elucidates the composition of members of the Municipality Board as follows; *The Board or a Board of Municipality shall consist of 9 members appointed by the County Governor with the approval of the County Assembly. Members of the Board appointed under Sub-Section (1) shall be constituted as follows;*

- a) *County Executive Member for the time being responsible for citizens in urban areas or his representatives*

---

**Disclaimer:** *The electronic version of the official Hansard report is for official purposes only. A Certified version of this report can be obtained from the Hansard Editor.*

Wednesday, 24<sup>th</sup> July, 2019 COUNTY ASSEMBLY OF SIAYA DEBATES

- b) 3 members who shall be appointed by the County Governor with the approval of the County Assembly*
- c) 4 members who shall be nominated by an association and appointed by the County Governor with the approval of the County Assembly*
- d) The Chief Officer responsible for Urban Development*
- e) The Municipal Manager appointed under Section 28 who shall be the secretary of the Board and an Ex Officio member of the Board.*

Hon. Members, it is in this regard that the Governor has forwarded a list of 7 nominees to this House vide a letter dated 18<sup>th</sup> of July, for approval as members of the Siaya Municipality Board and in line with Section 14(2) of the Urban Areas and Cities Act 2019. The letter highlights the provisions guiding the nomination of each of the nominees as follows:

1. Paul P.W. Achola
2. Michael Charles Were
3. Grace Agola
4. Caroline Achieng Oduor
5. Nancy Juma Otieno
6. Boniface Onyango Obare
7. Michael Francis Ochieng

I am committing the names with the Committee on Lands, Physical Planning and Housing for vetting and reporting to this House within 14 days on the suitability of each candidate and I urge the Committee to strictly adhere to the Constitution especially matters of integrity and all other relevant statutes regarding such processes.

Furthermore I implore on the Committee to take key cognizance on the provisions of Section 14(3, 4, 5, 7 &8) of the Urban Areas and Cities amendment Act 2019 while discharging this exercise. The House stands guided. The Committee needs to note that we will be going on recess on 8<sup>th</sup> so ensure that sufficient notice is given to the nominees and public participation is done and report before we go on the short recess.

I have communication on the draft ‘Punguza Mzigo’ the Constitutional amendment Bill 2019. On the 22<sup>nd</sup> July, 2019 this House received correspondence from the Independent Electoral and Boundaries Commission regarding the ‘Punguza Mzigo’ Constitutional Amendment Bill 2019.

In the letter, the Chairman of IEBC explains that the Commission received a draft Bill to amend the Constitution by popular initiative dubbed ‘Punguza Mzigo’ pursuant to Article 287 of the Constitution of Kenya fronted by the Third Way Alliance Kenya. Article 257 of the Constitution of Kenya 2010 which the initiative is premised provides as follows:

*Amendment by popular initiative.*

*1) An amendment to this Constitution maybe proposed by a popular initiative signed by atleast one million registered voters.*

*2) Popular initiative for an amendment to this Constitution may be in the form of a general suggestion or a formulated draft Bill.*

Wednesday, 24<sup>th</sup> July, 2019 COUNTY ASSEMBLY OF SIAYA DEBATES

3) *If a Popular initiative is in the form of a general suggestion, the promoters of that popular initiative shall formulate it into a draft Bill.*

4) *The promoters of a popular initiative shall deliver the draft Bill and the supporting signatures to the Independent Electoral and Boundaries Commission which shall verify that the initiative is supported by at least one million registered voters.*

5) *If the Independent Electoral and Boundaries Commission is satisfied that the initiative meets the requirements of this Article, the Commission shall submit the draft Bill to each County Assembly for consideration within three months after the date it was submitted by the Commission.*

6) *If a County Assembly approves the draft Bill within three months after the date it was submitted by the Commission, the Speaker of the County Assembly shall deliver a copy of the draft Bill jointly to the Speakers of the two Houses of Parliament, with a certificate that the County Assembly has approved it.*

After review of the ‘Punguza Mzigo’ Bill I can report to you that it is advancing an array of measures with the aim of achieving six main objectives as highlighted in the memorandum of object and reason specified in the draft Bill;

- 1) The need to strengthen the Senate and the National Assembly and to reduce the cost of running National Parliament.
- 2) Strengthen devolution and taking services to the peoples doors
- 3) Demystifying the presidency and end a culture of electoral violence associated with power of incumbency.
- 4) Reducing public wage bill and re-current expenditure.
- 5) Enforce integrity and end corruption and theft to public money.
- 6) Reduce cost of running elections and registration of voters

Hon. Members, it is line with Article 257(4) of the Constitution of Kenya that the Commission undertook a verification exercise to confirm whether atleast one million registered voters supported the initiative. The exercise as revealed by the Chairman of the Commission was found to have been supported by 1,222,541 registered voters and hence meets the requisite legal threshold.

Pursuant to Article 257(5) of the Constitution of Kenya, the Commission has therefore submitted a copy of the ‘Punguza Mzigo’ Bill to this Assembly for consideration within 3months. The Assembly will be required as per the provisions of Article 257(6) of the Constitution of Kenya to submit its decision on the draft Bill jointly to the Speakers of the National Assembly and the Senate.

I therefore commit the draft Bill to the Committee on Justice and Legal Affairs for consideration and reporting to this House within the legally defined framework but preferably within 21 days.

I further direct the Committee to strictly adhere to the provisions of Section 91 of the County Government Act read together with Standing Order no. 129(3) both which stress the

Wednesday, 24<sup>th</sup> July, 2019 COUNTY ASSEMBLY OF SIAYA DEBATES

importance of public participation in such processes. Thereafter I shall submit the decision of this House on the matter. The House stands guided.

On nomination of the County Assembly representative to the Inter-Governmental County Committee. On the 9<sup>th</sup> July, 2019, the Assembly received communication from the Inter-Governmental relations technical committee regarding the nomination of a County Assembly representative to the Inter-Governmental County Committee on identification, verification and transfer of assets and liabilities relating to devolved functions.

The committee is established pursuant to the provisions of Section 11 of the Inter-Governmental Relations Act with its functions stipulated in Section 12 of the same Act. The main intention for its establishment was to take over the residual functions of the defunct transition authority upon expiry of its term. Key among the residual functions was the identification, verification and validation of assets of the devolved units.

As reported by the Commission vide its letter, it has completed the identification, verification and transfer of assets and liabilities of all the defunct local authorities and to this effect each of the 47 County Governments have a register of assets and liabilities complete with liquidation, options developed in consultation with key stakeholders.

The view to comprehensively undertake this exercise, the Committee in consultation with other stakeholders has established vide a gazette notice no. 5711 of 21<sup>st</sup> June 2019, an institutional structure to facilitate the process of identification, verification and transfer of assets and liabilities. Within this nascent structure, there exists a committee to be known as the Intergovernmental County Committee whose functions prescribed under Section 6 of the Gazette notice as follows:

- a. Identify and verify the assets and liabilities of the National Government relating to devolved functions
- b. Identify, record and secure all relevant documentation in relation to the assets and liabilities of the National Government relating to devolved functions
- c. Prepare a register of the assets and liabilities of the National Government relating to devolved functions
- d. Submit periodic reports to the Inter-Agency Technical Committee, or as maybe required
- e. Submit the final register on assets and liabilities to the Inter-Agency technical Committee for their consideration
- f. Perform any other function necessary for the execution of its mandate or as may be assigned by the Inter-Agency Technical Committee and
- g. Prepare an inventory of assets and liabilities whose status is in dispute.

The membership of this Committee is drawn from various departments within the County Government as highlighted in Section 5 of the Gazette notice and of great relevance to the House is Section 5(2) (c) which requires a representative of the County Assembly within the Committee and expressly states;

*A representative of the County Assembly appointed by the County Speaker. In fulfilling this provision, I have today nominated the Hon. Francis Otiato – MCA East Yimbo Ward, to*

Wednesday, 24<sup>th</sup> July, 2019 COUNTY ASSEMBLY OF SIAYA DEBATES

represent this Assembly in the Intergovernmental County Committee by virtue of his heading the Justice and Legal Affairs Committee.

On my own behalf and that of the House, I wish the Member the best of luck while discharging his duties in the new position.

*(Applause)*

I further call on all of us to give him all the necessary support that he may require. Because it is a matter of also transition, you will be consulting the seniors here, Hon. Oriaro, the Hon. Mayor that are here to help you.

Finally, you will recall that I reported to this House the receipt of petition from voters of South East Alego calling on this House to find Hon. Joseph Mboha liable for vacation of office under Article 194(1) of the Constitution of Kenya.

The petition stood committed to the Committee on Powers and Privileges as prescribed under our Standing Orders. The Committee commenced the processing of the petition, met the petitioners with view to listen to them and gave their submissions.

Hon. Members, in the course of processing the petition, the County Assembly received a Court Order barring the Committee from expediting the process for the petition until the matter is heard and determined by the High Court of Siaya. Standing Order no. 94 of the County Assembly on matters *subjudice* provide that no Member shall refer to any particular matter which is *subjudice*.

To this effect therefore the Committee and its Members cannot continue with the processing of the petition until the matter is heard and determined by the high court. Some petitioners have been calling and asking the House where this matter stands.

I therefore direct that the Clerk of the County Assembly to officially communicate to the petitioners on the developments with regard to their petition. In addition, the petitioners are advised to take up if they wish their concerns with the court on any matter that may be of concern to them as we wait for determination of the matter.

## STATEMENT CABINET RESHUFFLE

**Majority Whip** (Hon. Olasi): Last week I confirmed when I visited one of the departments in Siaya that H.E. the Governor did some reshuffle in the Cabinet.

I wanted direction if not information from your Chair; is it in order or not for us to be at least notified to know exactly because to me it's strange to walk to an office to get new occupant and it is known that it was either a reshuffle or transfer to another department but we as Assemblers know very little about it.

**Hon. Speaker:** I have asked the secretariat to check with registry if there is any official communication to that regard.

---

**Disclaimer:** The electronic version of the official Hansard report is for official purposes only. A Certified version of this report can be obtained from the Hansard Editor.

Wednesday, 24<sup>th</sup> July, 2019 COUNTY ASSEMBLY OF SIAYA DEBATES

**Hon. Wandera:** if the regions are not indicated then how are we going to vet them? They may be coming from one family and we don't know. It would be better if the names were accompanied by the areas of origin.

**Hon. Speaker:** The matter is within the Committee but also read the law and you will realize perhaps they are supposed to be residents of the municipality but as I told you those are concerns that should be picked by the Committee then look at the relevant laws and suitability of the candidates and report to us.

Do we have pending Statements that will need to be addressed before the two weeks are over? Hon. Otiato; I know you had sought some direction on a number of issues; on the issue of transfer or reassignment of CECM duties and two the issue that is the legality of the same and also the matter what do we do in view of the court ruling. I have not made communication; I will be doing that before we break for the recess but meanwhile, yes, Hon. Otiato.

**Hon. Otiato:** I still hope that your good office will act expeditiously on that particular matter. Yesterday as we were discussing, there arose another matter of the PMCs that we are dealing with a very delicate situation.

I don't know how far the Finance Committee went with their findings and possibly because we are in a state where we are still dealing with fraudsters in our Wards managing activities of our projects as at now and we know that the little information we have that some of these Ward Administrators were found to have stolen public money.

As much we are still waiting the direction because I hear that the other side because the other side they are also doing their own audit while the Assembly did their own investigations and walked around and talked to some of these people actually some were able to confirm that they never received any money.

We are going for a recess and we sought a new budget next week; today when we pass this we expect in the next two weeks the budget process will be on. How do you save us or what is the fate of us dealing with these particular fraudsters? Why haven't they been suspended to pave way for further investigations.

**Hon. Oriaro:** On that matter, I also want that it should be addressed with speed. On the issue of project management Committee money; I also plead that it be addressed with speed and more so for Central Alego.

I am still waiting to hear the money for Central Alego Ward was taken because in for the 30 Wards only Central Alego is yet to know the fate of its money. I don't know the circumstances which had informed stoppage for release for Central Alego and elsewhere it was released with the purported eminent looting.

**Hon. Audi:** There is a Statement that I gave and even yesterday I requested at least we get the response before the short recess that we will be going for since it is a matter that should be treated with a lot of urgency. It's a project that was paid to a contractor and it wasn't done and already it's not captured in the roll overs. It's a project of fy-2018/19.

**Hon. Speaker:** Was it under roads?

Wednesday, 24<sup>th</sup> July, 2019 COUNTY ASSEMBLY OF SIAYA DEBATES

**Hon. Wandera:** .... Where does the Kshs. 67,000 go? It's not reflected anywhere in the distribution of that money and again also it takes a long time before the allowance is given to the PMCs. I remember the recent one was given for as far as back as 2015. Where does this money go because when we allocate the money it is really there and once the project is done the PMC money should be ready for distribution.

There is a lot of concern about that one and especially the recent one where a lot of money was looted by the then Ward Administrator. For emphasis something should be done about it; if it is brought about by Hon. Otiato let it be so that we debate upon it. Finally, yesterday when I stood I branded a stranger in the House but today I'm not a stranger in the House, thank you.

**Hon. Odhiambo:** I also wish to remind the Chair for Roads Committee that I also had some Statement last week but before we go for recess I will kindly request that by next week let me get the Report back so that I know where we are going to.

**Hon. Siguru:** I also rise over the same matter about the PMCs allowances because there is a policy guide line that stipulated properly that whenever a PMC Committee is conveyed they are entitled to some allowance that would cover for their transport and maybe lunch but of late it has become a tendency of the contractors that the moment they are on the ground you will find that they would purport that the amount they give out as allowance is just something out of good will; it's never anchored on any provision that they should be providing this.

In fact, you will find some contractors narrow it down up to Kshs. 200; I have even been fighting them on the ground because they are taking our people for granted. You know taking up your time so that you follow up a project from the initial stage to the end is not easy and therefore we should also clearly know where the missing link is because our people should never just be taken for granted.

The contractors have gotten a leeway of not giving these people Kshs. 1,000 because its stipulated that they should be given per sitting so regardless of how many meetings whether they are minimum of three but then they should be given the thousand shillings, thank you.

**Hon. Otiato:** Mr. Chair I know; when I read through the regulations of that policy document I think this particular Kshs. 1000 should always be paid on a requisition by the Ward administrators monthly depending on the number of meetings and actually of great concern maybe arising from what the Hon. Member has just been saying is whether do we allow this money to be paid by the contractors and then they make a requisition as the contractors.

The other thing is if it is 5% which is coming to around Kshs. 100,000 and Members are about 6 because the other employees are of the Government like County Administrator and the rest but then from Kshs. 100,000 collected for PMC what will go in terms of the pockets of the Members of the Community will be less than Kshs. 20,000; where is the Kshs. 80,000?

You realize all these monies have never been there then finally being that this is money generated and is being created into some other accounts; do we treat this as a fund of its own? If it was a fund which is being collected from the contractors based on any law then it would be

Wednesday, 24<sup>th</sup> July, 2019 COUNTY ASSEMBLY OF SIAYA DEBATES

subjected to audit by itself and presented to PIC/PAC Committee just like now we are taking a case of bursaries.

**Hon. Siguru:** Thank you, Chair; just very quickly, I think there is also an issue here that at least we need to change the face of how the PMC monies are accessed through the payment authority because for now we find that it is within the mandate of the administrator to access the money solely and in fact this is what contributed to the Ward Administrators in questions who misappropriated the money after they accessed them.

I think we need to get a way of coming up with a guide line that would also include at least one Member from the office of the MCA so that in the event that the money is accessed, the office of the MCA knows that this money is now in excess and also on the issue of PMC allowances what I missed without mentioning was that the contractors and the PMCs should never be entitled to any allowance as they monitor their job; they should only wait for 5% after the work is over ally done. So I think this are the grey areas that will overly need clarification.

**Hon. Speaker:** Hon. Shirley, you had a Statement?

**Hon. Oyuago:** Mr. Speaker we have the people who inspect the work that is the public work officers, who are also paid with the same money. On Statement request Chair, I also sought a Statement request on the engines that were bought by the department of fisheries, and I have not gotten any response, so I am requesting the Chairperson Agriculture and fisheries to bring the response before we go for recess.

**Hon. Speaker:** May I respond on a few issues. Firstly is on the issue of appointments. Hon. Majority Leader rightfully observed that there had been a reshuffle and a communication has come. I will just read the way it is presented from the office of the Governor. Actually we have not even been addressed, we have just been copied. So the first letter is addressed to Dr. Elizabeth A. Odhiambo, CECM Tourism, Culture, ICT, Sports and Arts.

Pursuant to the powers bestowed in me under Section 31 of the County Government Act, I hereby transfer you to the Docket of Agriculture, Food security, Food security, Irrigation, Livestock and Fisheries, in the same capacity with immediate effect.

You are required to handover to Mr. Charles Oduor Ogada who is the incoming CECM of Tourism Culture, ICT, Sports, and Arts, all that appertains to the functions assigned to that docket. Please note that your performance in the previous docket will be taken into consideration to inform your appraisal and future contract as stipulated in your performance contract in the Financial Year 2018/2019.

By a copy of this letter, the Deputy Governor and the County Secretary are directed to supervise the taking over exercise to ensure smooth transition. Signed by H.E The Governor, Cornel Rasanga Amoth.

The second letter is addressed to Bernard Odak Mboha; you realize we have just been copied. The CECM Public Works, Roads, and Infrastructure. The County Executive Committee reshuffle, Pursuant to the powers bestowed on me, by Section 31 of the County Government Act, I hereby transfer you to the docket of Enterprise and the docket of Industrial Development, in the same capacity with immediate effect, and you are required to handover to Jaoko Oburu who is

Wednesday, 24<sup>th</sup> July, 2019 COUNTY ASSEMBLY OF SIAYA DEBATES

the incoming CECM Public Works and Infrastructure all that pertains to the functions assigned to that docket.

Please note that your performance in the previous docket will be taken into consideration to inform your appraisal and future contract as stipulated in your performance contract in the Financial Year 2018/2019.

By a copy of this letter, the Deputy Governor and the County Secretary are directed to supervise and witness the handing over and the taking over exercise to ensure smooth transition. Signed by H.E The Governor, Cornel Rasanga Amoth.

Jaoko Oburu, pursuant to the Powers bestowed upon me by section 31 of the County Government Act, I hereby transfer you to the docket of Public Works, Roads and Infrastructure. In the same capacity with immediate effect, you are required to hand over to Mr. Bernard Mboha who is the CECM for Enterprise and Industrial Development.

Another one addressed to Adrian Ouma that' I transfer you to the Docket of Lands, Physical Planning and Housing and Urban Development in the same capacity and you are required to handover to Mr. Rubik who is the incoming CECM Water, Environment and Natural Resources in the same capacity.

Another one is addressed to Mr. Dismas Wakla who was formerly the CECM in charge of Lands, Physical Planning and Housing and Urban Development and has been transferred to Docket of Governance and Administration in the same capacity and is required to hand over to Mr. Adrian Ouma who is now the incoming CECM for Lands, Physical Planning and Housing, and Urban Development.

Another letter is addressed to Charles Oduor Ogada, who was a CECM in charge of Agriculture, Livestock and Fisheries and now has been transferred to the Docket of Tourism, Culture, ICT, Sports and Arts. One addressed to Mr. Rubik who was the then CECM in charge of Governance and Administration and is now being transferred to the Department of Water, Environment and Natural Resources. So I think this has to be communicated to all these Committees, a message be drafted by the secretariat and sent to all Members of the County Assembly.

Matters regarding the legality and the position of the House in relation to the ruling I will give way forward.

Finally on the issues of PMCs which has really featured prominently this Afternoon, I direct that the secretariat of the Finance Committee in liaison with the Committee of the General Oversight to communicate to the concerned officers on the Executive side, so that on Tuesday next week, they come to the Assembly for interrogation and the Finance Committee to take lead by giving us a lead on how far they have gone.

Secondly, I direct all Chairpersons who has pending Statements that have not been responded to, to ensure that is done, latest next week.

Thirdly, the secretariat of the Committee of the General Oversight, to ensure that all CECs and Cos are slotted for interaction with the Committee of the General Oversight, between 6<sup>th</sup> to 7<sup>th</sup>, to engage among other things ;

Wednesday, 24<sup>th</sup> July, 2019 COUNTY ASSEMBLY OF SIAYA DEBATES

On review of implementation of the previous year's Budget, that is for 2018/2019.

To share with us plan on implementation of 2019/2020 Budget

The challenges and how to address these challenges.

In other words, I expect that by 6<sup>th</sup> we will have a schedule on how many CECs are coming, and they will start by giving us the progress they made in the previous Financial Year and the plans they have in the next Financial Year and then we will engage them. That will happen on 6<sup>th</sup> so that when we break for one month, at least we will have met them and had a discussion.

I think going forward; we now want to make it a monthly thing that every month, we engage. We will look at our Standing Orders so that every month or every quarter, the entire House engages with the CECMs. That is the way to go.

Having passed the Appropriation Bill, I still call upon you individually and at Committee level to engage meaningfully with the secretariat of the Budget and Appropriations Committee. Whatever will be keyed in will be the exact that will be approved by this House. Next Order!

**MOTION**

ADJOURNMENT

Hon. Members, there being no other Business, will you be upstanding for adjournment?

Hon. Members, there being no other Business, this House adjourns until tomorrow, Thursday the 25<sup>th</sup> of July 2019 at 2.30 pm in the Chamber.

The House rose at 3.15p.m.