

**REPUBLIC OF KENYA**



**COUNTY ASSEMBLY OF SIAYA**

**SECOND ASSEMBLY  
(SECOND SESSION)**

**COMMUNICATION FROM THE CHAIR  
ON THE LEGAL STATUS OF ACTING CHIEF OFFICERS**

**Honorable Members,** you will recall that on Wednesday, 9<sup>th</sup> May, 2018 during the Morning Sitting of this Honorable House, the Member representing West Asembo Ward – Hon. Ambrose Akuno sponsored a Motion on the appointment of Chief Officers in the County Government of Siaya. Prior to this Motion, the Member, (Hon. Ambrose Akuno) had sought knowledge on the legality of having officers who have never been vetted and approved to undertake the duties and responsibilities of County Chief Officers in the County Executive Departments.

In addition, Hon members, my attention has been drawn to a plethora of communications that have been done to Assembly Committees by individuals alleging to be Acting Chief Officers for various departments yet an examination of the records of this House reveal that these individuals have never been vetted and approved to undertake duties and responsibilities of Chief Officers.

**Honorable Members,** the law is clear and overly descriptive on the appointment of persons into the positions of Chief Officers. Section 45 (1) of the County Governments Act, 2012 on appointment of County Chief Officers provides that;

**45. (1) The governor shall—**

**(a) nominate; qualified and experienced county chief officers from among persons competitively sourced and recommended by the County Public Service Board; and**

**(b) with the; approval of the county assembly, appoint county chief officers.**

***Subsection (5) further provides that; The governor may re-assign a county chief officer.***

Section 64 (1) of the same Act provides that no unqualified person may be appointed in acting capacity and it goes further to state that;

***64. (1) A person shall not be appointed to hold a public office in an acting capacity unless the person satisfies all the prescribed qualifications for holding that public office.***

**Honorable Members**, to give further emphasis on this matter, Section 4 of the Public Appointment (County Assemblies Approval) Act, No. 5 of 2017 stipulates that;

***(4) An appointment under the constitution or any other law for which the approval of a county assembly is required shall not be made unless the appointment is approved by the relevant County assembly in accordance with this act.***

In a thumbnail, Honorable Members, the law espouses that for the appointment of County Chief Officers, competitive sourcing and nomination by the Governor for vetting and consequent approval by the County Assembly cannot be wished away.

**Honorable Members**, it must be earnestly noted that the concept of parliamentary vetting and approval has been hailed as one of the key revolutionary aspects of the Constitution of Kenya, 2010. At the African Legal Experts Convention in Tanzania in 2013, it was declared that the idea of vetting and approval widens democracy by allowing the public to participate in the appointment of persons who will serve them. It was also viewed as a measure to mitigate corruption and abuse of office.

**Honorable Members**; despite the fact that Section 45 of the County Governments Act, 2012 bestows on the Governor the power to appoint Chief Officers, this appointment **MUST** be approved by this County Assembly, short of which, that appointment is invalid, illegal and irregular.

To this regard therefore, it my considered ruling that the appointment of Chief Officers in acting capacity without due regard to the provisions of Sections 45 and 64(1) of the County Governments Act, 2012 read together with the Public Appointments (County Assemblies Approval) Act, 2017 is irregular and hence illegal.

**Honorable Members**, I therefore direct that this House, together with its Committees **SHALL NOT** recognize individuals appointed as acting Chief Officers without competitive sourcing, nomination and approval by this House.

I further direct that all communications from departments without substantive Chief Officers be signed by the respective CEC Members and all House Committees to cease official dealings with officers irregularly appointed as acting Chief Officers.

In addition, Honorable Members, the appointing authority is advised to promptly advertise for the position of Chief Officers for departments where there are none, nominate qualified individuals and forward the names to this House for vetting and approval.

Considering that this is a matter open to interpretation, I direct that an advisory be sought by this House on whether or not the Governor can appoint County Chief Officers in acting capacity from outside the approved list of persons by the County Assembly.

The House stands guided!

**THE HON. GEORGE OKODE,  
SPEAKER  
THE COUNTY ASSEMBLY OF SIAYA  
Tuesday, 13<sup>th</sup> November, 2018**