



**COUNTY GOVERNMENT OF KITUI**  
**THE COUNTY ASSEMBLY**  
**THIRD ASSEMBLY - (FIRST SESSION)**  
**COMMUNICATION FROM THE CHAIR**

*No. 24 of 2022*

**AS RELATES TO THE VETTING OF THE KITUI COUNTY EXECUTIVE**  
**COMMITTEE NOMINEES**

**Honourable Members,**

1. You will recall that on 22<sup>nd</sup> November, 2022 during the Assembly's afternoon sitting, the member for Miambani Ward, Hon. Alex Mutambu Nganga made a request for statement pursuant to Standing Order No. 41(2) and sought my considered ruling on the constitution of the Kitui County Executive Committee in line with section 42(2) of the County Governments Act.
2. Particularly, the Member invited the Speaker to pronounce himself on whether the County Assembly would be acting in breach of Section 42(2) of the County Governments Act in vetting and considering Governor's nominees to the Kitui County Executive Committee outside the statutory timelines.
3. During his submission, the Member for Miambani Ward was concerned that the Governor acted in blatant breach of the law and that in vetting the nominees, the County Assembly would be aiding the Governor in the said breach. On 23<sup>rd</sup> November, 2022, I deferred my ruling to today.
4. The Constitution of Kenya, 2010 under Article 179(1) establishes the county Executive Committee in every County Government and vests the executive authority of the county in the said County Executive Committee.
5. The County Executive Committee as established under Article 179(2) aforementioned comprises of —
  - (a) the County Governor and the Deputy County Governor; and
  - (b) Members appointed by the County Governor, with the approval of the County Assembly, from among persons who are not Members of the County Assembly.
6. In line with Article 179(2)(b), the County Governor is given the power to appoint with the approval of the County Assembly persons to the Kitui County Executive Committee. In exercise of the powers conferred to him under section 30 of the County Governments Act, 2012, H.E.

the Governor submitted the names of his nominees to the Kitui County Executive Committee through a letter referenced CGKTI/OOG/ADM/23/37 dated 4<sup>th</sup> November, 2022.

On 16<sup>th</sup> November, 2022 I made a communication notifying the House of receipt of the names and subsequently committed the said names to the Committee on Appointments for vetting in line with the provisions of the Public Appointments (County Assemblies Approval) Act.

7. In exercise of the powers conferred to the Governor under Section 30 of the County Government Act, I opine that the Governor should also be guided by Section 42(2) of the County Government Act, 2012. This section provides that the constitution of a new Executive Committee after an election under Section 42 (1) shall be finalized within twenty-one (21) days of the swearing-in of the members of the County Assembly.
8. Hon. Members, you will recall that you were sworn-in on the 21<sup>st</sup> of September, 2022 and in my reading of Section 42(2), the Kitui County Executive Committee should have been constituted on or before 12<sup>th</sup> of October, 2022.
9. Section 42 (2) of the County Governments Act in my view is couched in mandatory terms and the nomination, vetting and the constitution of the Kitui County Executive Committee should have, by dint of this provision of law been finalized by 12<sup>th</sup> October, 2022 something that did not happen and that is why we find ourselves in this unfortunate position.
10. Hon. Members, Article 185(3) of the Constitution of Kenya vests the County Government's oversight role in the County Assembly and as such, the statement by the Member for Miambani is in order although I become seized of the matter eighteen (18) days after the lapse of the statutory period within which the constitution of the County Executive Committee should have been finalized. Had the matter been brought to me earlier, I would have offered guidance accordingly.
11. Hon. Members, Article 179 of the Constitution establishes the County Executive Committee and does not envision a situation whereby a County Government operates without it. Whereas Section 42(2) County Governments Act creates procedures and timelines for constituting the Committee, strict reading of the said section in the instant circumstance would be inviting a situation whereby a County Government is required to operate without Executive Authority, which would be unconstitutional as a County Government is composed of both the County Executive and the Assembly as per Article 176 of the Constitution of Kenya, 2010.
12. Hon. Members, while I appreciate the provisions of the law and particularly the provisions of section 42(2) of the County Governments Act, the law does not provide any cause of action for the County Assembly in cases where the County Executive Committee is not constituted within the timelines set under section 42(2) of the County Governments Act.
13. Hon. Members, upon the request by the Member, through a letter dated 30<sup>th</sup> November, 2022, I sought clarification from H.E. the Governor on what had occasioned the delay in submitting the nominees. H.E. the Governor in his letter Ref/ CGKTI/OOG/ADM/23/39 dated 5<sup>th</sup> December, 2022 acknowledged the delay in submitting the names and attributed the same to the rigorous process involved in identifying the persons suitable and qualified for appointment as members



of the County Executive Committee. Some of the reasons cited by the H.E the Governor are compliance with the gender rule in line with Article 197 of the Constitution and regional balance as provided for under section 35 of the County Governments Act

14. Hon. Members, it is further worth noting that at the lapse of 21 days after the swearing -in of the members of the County Assembly section 42(2) of the County Governments Act in my view stopped operating and immediately upon submission of the names, the Public Appointments (County Assemblies Approval) Act became operative and the latter Act should henceforth guide this House until the exercise is concluded.
15. Hon. Members, as a County Assembly, we are constitutionally charged with overseeing the County Executive and providing the necessary checks and balances to ensure service delivery to the people of Kitui. The two arms of County Government should thus work together towards this end.
16. Hon. Members, Article 73(2)(a) of the Constitution provides for selection on the basis of personal integrity, competence and suitability. As a way of overseeing the County Executive, the Assembly should vet the nominees to ensure compliance with this Article and other provisions of the law.
17. Hon. Members, one of the objects of devolution under Article 174 is to promote economic development and bringing service closer to the people of Kitui whereas Article 183 as read with section 36 of the County Governments Act requires the County Executive Committee to ensure service delivery.
18. Hon. Members, it is my considered view that Section 42(2) of the County Governments Act as read with section 9 of the Public Appointments (County Assembly Approvals) Act gives the County Assembly and the County Executive the collective responsibility of constituting the County Executive Committee.
19. Each of the two arms of the County Government is charged with independent responsibilities in the constitution of the County Executive Committee and in my considered view it would not be practical to have the Committee constituted within the timelines provided under section 42(2) of the County Governments Act and therefore there was no breach on the part of the Governor owing to the impracticability of the timelines provided.
20. Hon. Members, as you will recall, this House was notified of the nomination of persons to the Kitui County Executive Committee on 16<sup>th</sup> November, 2022 upon which the nominees stood committed to the Committee on Appointments.
21. Hon. Members, by dint of section 9 of the County Assembly (Public Appointments Approvals) Act, the vetting process should be concluded within 21 sitting days from the date of the first sitting of the Committee. Standing Order number 2 of the Kitui County Assembly Standing Orders define a sitting day as any day when the county Assembly sits.



22. Hon. Members, the Committee on Appointment held its first sitting on 22<sup>nd</sup> November, 2022 and as such, the nominees' consideration should be finalized on or before 4<sup>th</sup> April, 2023 in line with our current Calendar of Business.
23. Hon. Members, despite the fact that the County Assembly has until 4<sup>th</sup> April, 2023 to conclude this exercise, we are alive to the need to have services delivered to the people of Kitui and as the chair of the Appointments Committee I undertake on behalf of my committee to expedite the vetting process to allow its conclusion by this House.
24. Hon. Members, in conclusion, I appreciate Hon. Alex Mutambu Nganga for being proactive in terms of developing and enhancing the work of this House and acknowledge that there is a need to harmonize the provisions of section 42(2) of the County Governments Act and section 9 of the Public Appointments (County Assemblies Approvals) Act in order to provide better guidance on the constitution of the County Executive Committee.
25. Hon. Members, in conclusion it is my considered opinion that the Governor did not breach section 42(2) of the CGA as the same become inoperative immediately upon the lapse of the 21 days after the swearing- in of the members of the County Assembly upon which the Public Appointments (County Assemblies Approvals) Act become applicable.
26. Hon. Members, in the interest of the people of Kitui County I urge this Honorable House to be guided by Article 185 as read with Section 8 and 9 of the County Governments Act in ensuring that we partner with the Executive for efficient service delivery to the great people of Kitui.

This House is thus guided.



**HON. KEVIN KINENGO KATISYA**  
**SPEAKER OF THE COUNTY ASSEMBLY OF KITUI**  
**7<sup>TH</sup> DECEMBER, 2022**