



COUNTY GOVERNMENT OF KITUI
THE COUNTY ASSEMBLY
THIRD ASSEMBLY - (FIRST SESSION)
VOTES AND PROCEEDINGS

WEDNESDAY 7TH DECEMBER, 2022 AT 2.30 P.M

1. The Assembly convened at Thirty Minutes Past Two O'clock.
2. The proceedings were opened with a prayer.
3. **PRESIDING** – Honourable Speaker on the Chair.

4. **COMMUNICATION FROM THE CHAIR**

The Honourable Speaker Made the following Communications;

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

Honourable Members,

1. You will recall that on 22nd 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

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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 23rd 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 4th November, 2022.

On 16th 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.

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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 21st of September, 2022 and in my reading of Section 42(2), the Kitui County Executive Committee should have been constituted on or before 12th 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 12th 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 became 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

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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 30th 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 5th 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.

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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 16th 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

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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 22nd November, 2022 and as such, the nominees' consideration should be finalized on or before 4th April, 2023 in line with our current Calendar of Business.
23. Hon. Members, despite the fact that the County Assembly has until 4th 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.

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5. Statements;

- i. Schedule of Committee sittings and Plenary for the week ending on Friday 23rd December, 2022. *(Designated Member of the County Assembly Business Committee)*

6. MOTION ON PENDING BILLS – MEMBER OF COUNTY ASSEMBLY, KISASI WARD

AWARE THAT, the law prioritizes the settlement of eligible pending bills and claims. Specifically, regulation 41 (2) of the Public Finance Management (County Government) Regulations, 2015, provides that debt service payment shall be a first charge in the County revenue fund.

FURTHER AWARE THAT; the provision of essential services in Kitui County are adversely affected because the County is overburdened with pending bills totalling to two billion, four hundred and forty-five million **(Kshs. 2.445 Billion)** as outlined in the Governors inaugural speech delivered in this Assembly on 11th October, 2022 and that the delay is hurting investor confidence and that the County risks losing reliable suppliers.

NOTING THAT; H.E. the Governor, in his inaugural speech on 25th August, 2022 expressed his resolve to deal with pending bills within the first 100 days of his administration by forming a technical review team to verify them and recommend modalities for payment of the same.

FURTHER NOTING THAT, in his address during the official opening of the Third County Assembly of Kitui, H.E the Governor reiterated his resolve to ensure that the pending bills are conclusively dealt with by budgeting for their settlement in the first supplementary budget

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of the current financial year for consideration by the County Assembly.

FURTHER COMMENDING the Governor for his timely and thoughtful approach in addressing the pending bills;

COGNISANT THAT, the Governor went ahead to constitute and Gazette a committee on verification of pending bills.

APPRECIATING THAT, the committee has been holding meetings for the last two months and has made progress in the verification exercise.

THEREFORE, THIS HOUSE RESOLVES AS FOLLOWS;

1. That the County Executive Committee Member for County Treasury forwards the Report on the pending bills to this Assembly within seven (7) days of its completion.
2. That the Assembly constitutes a working committee comprising of thirteen (13) members drawn from each sectoral committee to undertake physical verification of the projects at the Ward level for purposes of confirming their authenticity.
3. That the report of the working Committee be tabled in the House within thirty (30) days after its constitution.

(Hon. Nicholas Mutemi – M.C.A.)

(Resumption of business interrupted during the morning sitting of 7th December, 2022 with the leave of the Speaker)

AMENDMENT PROPOSED;

Made and Question proposed

THAT, pursuant to the provisions of standing order number 51 (1), the motion on pending bills, be amended by deleting the resolutions No. 2 and 3 and replacing with the following: -

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2. After receipt of the report, the Hon. Speaker to direct on the necessity and composition of a working Committee to validate the existence and integrity of the projects to be paid.
3. That further the Hon. Speaker directs on the timelines for the Working Committee to present a validation report to the County Assembly.

Hon. Joseph Ngwele – (M.C.A)

Debate arising;

Question on the amendment put and **Agreed to.**

Question on the amended motion proposed;

Debate arising;

Question put and **Agreed to.**

7. MOTION ON ALTERATION OF THE COUNTY ASSEMBLY ANNUAL CALENDAR FOR THE FIRST SESSION (2022)

(Leader of the Majority Party)

Motion Made and Question Proposed;

THAT, pursuant to the provisions of Standing Order No. 24 (2), this Assembly hereby resolves to alter its Annual Calendar for the First Session (2022) by altering the December recess to begin on Wednesday 21st December, 2022 and resume its sittings on Tuesday 28th February, 2023 at 9.00 A.M.

IMPORTANTLY, this will allow the Assembly to finalize on the pending business including approval of persons nominated for appointment as County Executive Committee Member (CECMs).

Hon. Harrison Maluki – (M.C.A)

Debate arising;

Question Put and **Agreed to.**

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8. PROCEDURAL MOTION ON ADJOURNMENT OF THE ASSEMBLY

(Leader of the Majority Party)

Motion Made and Question Proposed;

THAT, pursuant to the provisions of Standing Order No. 25 (3), this Assembly do now adjourn its sittings with effect from today the 7th December, 2022 to allow members of the County Assembly to attend committees training and resume its sittings on Tuesday 20th December, 2022 at 9.00 A.M.

Hon. Harrison Maluki - **(M.C.A)**

Debate arising;

With no Question Put; Pursuant to Standing order No 25 (3), the Hon. Speaker adjourned the House.

9. ADJOURNMENT - And the time being Four Minutes to Five O'clock, the Honourable Speaker adjourned the Assembly.

10. ASSEMBLY ROSE - Four Minutes to Five O'clock,

MEMORANDUM

The Honourable Speaker will take the chair on

Tuesday, 20th December, 2022 at 9.00 a.M.

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