



COUNTY GOVERNMENT OF KITUI

THE COUNTY ASSEMBLY

THIRD COUNTY ASSEMBLY – (THIRD SESSION)

VOTES AND PROCEEDINGS

WEDNESDAY 20TH NOVEMBER, 2024 AT 2.30 P.M.

Convened pursuant to Gazette Notice No.14727 dated 31st

October 2024

1. The House convened at Nine O'clock
2. The proceedings were opened with a prayer.
3. **Presiding** – the Hon. Speaker.
4. Communication From the Chair.

**COMMUNICATION AS RELATES TO THE JUDGEMENT DATED
14TH NOVEMBER, 2024 IN CIVIL APPEAL NO. 001 OF 2024 ON
CHANGE OF LEADERSHIP IN THE MAJORITY PARTY POSITIONS
OF MAJORITY PARTY LEADER AND MAJORITY PARTY WHIP.**

Honourable Members,

As you all recall, on 26th March, 2024 via my communication No. 9 of 2024 I informed this House of the High Court's ruling on the legal proceedings concerning the positions of Leader of the Majority Party and Majority Party Whip where the Court had found no merit in the

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application filed by Hon. Harrison Maluki Mawia and Hon. Boniface Mukwate Katula on 17th January 2024, upholding the PPDT ruling that restrained them from holding or acting as the Leader of the Majority Party and Majority Party Whip, respectively, pending the hearing of the appeal. Since then, Hon. Munyoki Mwinzi and Hon. Daniel Kimanzi Ngoima have been serving as the Leader of the Majority Party and the Majority Party Whip, respectively.

Honorable Members,

On 3rd September, 2024, the Deputy Majority Party Whip communicated to my office vide a letter attached with minutes pursuant to Standing Order 15(9) on the Change of leadership by members of the Majority Party.

Guided by the decision of the Honorable Tribunal issued in **PPDT E019/2023, Hon. Munyoki Mwinzi & Hon. Daniel Ngoima vs Harrison Maluki Mawia & Boniface Mukwate Katula & Ors**, which held that, the Speaker is required to act on the wishes of members of the party and not wade into the dispute.

Honorable Members,

I subsequently proceeded and issued a communication dated 4th September, 2024 in the House regarding the removal and replacement of **Hon. Munyoki Mwinzi** with **Hon. Harrison Maluki Mawia** as the Majority Party Leader and **Hon. Daniel Kimanzi Ngoima** with **Hon. Boniface Katula Mukwate** as the Majority Party Whip.

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Honorable Members,

Upon issuance of the said communication in the House, Hon. Munyoki Mwinzi and Hon. Daniel Kimanzi Ngoima went to seek a redress of the court by filing a complaint in the Political Party Dispute Tribunal Vide PPDT NBI Complaint No. E011 OF 2024.

Honorable Members,

In response to their Complaint, the advocate for Hon. Harrison Maluki Mawia and Hon. Boniface Mukwate Katula filed a Notice of Preliminary Objection dated 17th September, 2024 objecting the jurisdiction of this Tribunal to hear and determine the instant complaint and Application by dint of Section 40(2) of the Political Parties Act, 2011 on grounds that;

1. The complainants did not subject the dispute to the political party's internal dispute resolution mechanism (IDRM) outlined in Chapter 7 of the Wiper Party's Constitution.
2. The complainants' Complaint and the application are incompetent, frivolous, vexatious and an abuse of the court process as the complainants were fully aware of the outcome in PPDT E019 OF 2023 where the facts were similar to the facts in this case and this Honorable Tribunal upheld the process of removal from office of the Hon. Harrison Mawia Maluki and Hon. Boniface Mukwate in a process identical to the process followed by the members of the Wiper Party.

Honorable Members,

The preliminary Objection was upheld and the Complaint filed by

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Hon. Munyoki Mwinzi and Hon. Daniel Ngoima Kimanzi was struck out.

It is worthy to note that Hon. Munyoki Mwinzi and Hon. Daniel Ngoima Kimanzi filed the Complaint in the Tribunal well knowing that there is a pending appeal in the High Court of Kenya in Kitui against the decision of this Tribunal in PPDT E019 of 2023 which was determined in their favour.

Honorable members,

I wish to bring to the attention of this Honorable House that, **Civil Appeal No. 001 of 2024** between Hon. Harrison Maluki Mawia and Hon. Boniface Mukwate Katula as appellants and Hon. Munyoki Mwinzi and Hon. Daniel Ngoima Kimanzi as the Respondents and the Wiper Democratic Movement and the County Assembly of Kitui as interested Parties was heard and judgement was issued on 14th November, 2024 in favour of Hon. Harrison Maluki Mawia and Hon. Boniface Mukwate Katula.

Honorable Members,

In said judgement, court found that the Political Parties Dispute Tribunal lacked the requisite Jurisdiction to entertain a dispute falling outside the dispute stipulated under Section 40(1) & (2) of the Political Parties Act and that, it acted in excess of their jurisdiction.

Section 40(1) & (2) of the Political Parties Act which provides that, the Tribunal shall determine;

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- a) Disputes between the Members of a political party;
- b) Disputes between a member of a political party and the political party;
- c) Disputes between political parties;
- d) Disputes between an independent candidate and a political party;
- e) Disputes between coalition partners;
- f) Appeals from decisions of the Registrar under this Act; and
- g) Disputes arising out of party nominations.

(2) Notwithstanding subsection (1), the Tribunal shall not hear or determine a dispute under paragraphs (a)(b)(c) (e) or (f) unless a party to the dispute adduces evidence of an attempt to subject the dispute to the internal political party dispute mechanism.

The court further found that, the issues of quorum or business of the County Assembly and adherence to its Standing Orders is a no go zone to the Political Parties Dispute Tribunal.

Honorable Members,

The Court therefore found merit in the prayer by the appellants in this matter that is Hon. Harrison Maluki Maliwa and Hon. Boniface Mukwate Katula to set aside the judgement of the Political Parties Tribunal Dispute PPDT E019 OF 2023.

While issuing the judgement, the Court took cognizant of the fact that the substratum of the appeal was the replacement of Hon. Harrison Maluki Mawia and Boniface Mukwate Katula in the contested house leadership which is now water under the bridge

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and is overtaken by events of the subsequent elections that removed Hon. Munyoki Mwinzi and Hon. Daniel Ngoima Kimanzi and replaced them with Hon. Harrison Maluki Mawia and Hon. Boniface Mukwate Katula.

Honorable Members,

Lastly, I congratulate Hon. Harrison Maluki Mawia and Hon. Boniface Mukwate Katula for their affirmation by the High Court of Kenya in Kitui and wish them well in the dispatch of their roles as the Majority Party Leader and Majority Party Whip respectively and assure them of my full support. My Office shall remain open for any consultations or assistance they may require as I strive to promote party democracy in election of party leadership positions.

Thank you.

5. Statements -The following statements were laid before the table of the House pursuant to the provisions of Standing Order 41(2)(c);
- i. Schedule of Plenary Business for the week ending on 29th November, 2024. (*Designated Member of the County Assembly Business Committee*).
 - ii. Statement request to the Chairperson, Committee on Lands, Infrastructure and Urban Development on land ownership and titling in Kitui County. (*Hon. Hussein Mwandia, M.C.A.- Ikutha Ward*).
 - iii. Statement request to the Chairperson, Committee on Justice and Legal Affairs on reports regarding operations of the Office of the County Attorney (*Hon. Cornelius Ngumbau Muthami, M.C.A. Mui Ward*).

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iv. Statement request to the Chairperson, Committee on Trade, Industry, ICT and Cooperatives on the alleged theft/vandalism of Kitui County Textile Centre (KICOTEC) Machines/ Equipment (*Hon. Mary Mwende Mutune-Nominated M.C.A.*).

6. MOTION ON ADOPTION OF THE REPORT BY THE JOINT COMMITTEE ON ADMINISTRATION AND COORDINATION OF COUNTY AFFAIRS & JUSTICE AND LEGAL AFFAIRS ON THE REVIEW OF COMMUNITY LEVEL INFRASTRUCTURE DEVELOPMENT PROGRAMME FRAMEWORK (CLIDP)

(Chairperson, Joint Committee on Administration and Coordination of County Affairs & Justice and Legal Affairs)

Motion Made and Question proposed;

THAT, pursuant to the provisions of Standing Order No. 179 (6) and 190(5), this Assembly hereby adopts the report by the Joint Committee on Administration and Coordination of County Affairs & Justice and Legal Affairs on the Review of Community Level Infrastructure Development Programme Framework (CLIDP), laid on the Table of the County Assembly on Tuesday, 19th November, 2024.

(Hon. Peter Kitonyo Mwanza – M.C.A.)

Debate Arising

Question Put and **Agreed to**

7.*. MOTION ON ADOPTION OF THE REPORT BY THE COMMITTEE ON AGRICULTURE, WATER AND IRRIGATION ON THE INSPECTION EXERCISE ON BOREHOLES DRILLED ACROSS KITUI COUNTY IN

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THE FINANCIAL YEAR 2023/2024, KITWASCO AND KIMWASCO PIPELINES, THEIR MAIN WATER SOURCES AND TREATMENT ZONES CONDUCTED FROM 12TH - 16TH AUGUST, 2024.

(Chairperson, Committee on Agriculture, Water and Irrigation)

Motion Made and Question proposed;

THAT, pursuant to the provisions of Standing Order No. 179 (6) and 190(5), this Assembly hereby adopts the report by the Committee on Agriculture Water and Irrigation on the inspection exercise on boreholes drilled across Kitui County in the Financial Year 2023/2024, KITWASCO and KIMWASCO pipelines, their main water sources and treatment zones conducted from 12th - 16th August, 2024, laid on the Table of the County Assembly on Tuesday 19th November, 2024.

(Hon. Anthony Musyimi Musyoka- M.C.A.)

Debate Arising;

(Debate disrupted to allow the Leader of the Majority Party move a Motion on Extension of Hours of Sitting.)

8.*. MOTION ON EXETENSION OF HOURS OF MEETING - Leader of Majority Party.

Motion Made and Question Proposed

THAT, pursuant to the provisions of Standing Order No. 27 (3) (a), this Assembly hereby resolves to extend its sitting hours beyond 6.30 p.m. to allow the Members adequate time to transact the business as contained in the Order Paper.

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

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Debate arising

Question Put and **Agreed to.**

(Continuation of Debate)

Question Put and **Agreed to.**

9.* MOTION OF COUNTY IMPORTANCE ON COMPLETION OF KWA SIKU- MBONDONI ROAD BROUGHT UNDER URGENT NOTICE (STANDING ORDER NO. 30 (1))

Motion made and Question proposed;

AWARE THAT the Kenya Vision 2030 is the long-term development blueprint for the country motivated by a collective aspiration for a better society by the year 2030. The aim of Kenya Vision 2030 is to create a globally competitive and prosperous country with a high quality of life by 2030. It aims to transform Kenya into a newly-industrializing, middle income country providing a high quality of life to all its citizens in a clean and secure environment.

FURTHER AWARE THAT among the projects enlisted with a view of achieving the desired developments in Kenya Vision 2030 blueprint was the road joining Lamu Port, Southern Sudan and Ethiopia where the road from Kibwezi- Mbondoni lies.

COGNISANT THAT the Kibwezi- Mbondoni road as part of the Northern corridor was launched in December 2016 connecting Kibwezi, Mutomo, Kitui Kabati, Migwani and Mbondoni towns a total distance of 202 Km, whose completion date was initially set at May, 2022.

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CONCERNED that the contract was awarded to Synohydro Corporation of China which undertook the construction from Kibwezi up to Kwa Siku town upon which the contractor abandoned the works leading to a stalling of the project.

FURTHER CONCERNED that the Kibwezi Mbondoni road holds the key to unlocking the economic potential for the three Ukambani counties and beyond as well as providing an easy link to Tana River and boosting tourism, mineral exploitation and transportation of agricultural produce while connecting the region to the Port of Mombasa.

AWARE THAT, one of the functions of the National Government under the First Schedule Part I paragraph 18(b) and 19 of the Constitution is transport, particularly the construction and operation of national trunk roads and national public works; further under section 4 of the Kenya Roads Act, the Kenya National Highways Authority (KENHA) is responsible for the management, development, rehabilitation and maintenance of national roads;

DETERMINED to ensure the Kitui citizenry and in particular the people of Kwa Siku, Migwani, Musuani are not adversely affected by the current deplorable state of the incomplete road between Kwa Siku and Mbondoni towns;

This Assembly hereby recommends that:

The National Government through KENHA should fast track completion of Kwa Siku- Mbondoni Road which will play a key role in the social and economic development and provision of proximate,

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easily accessible services in Mwingi West Sub County

1. and its Wards that is Migwani, Nguutani, Kyome Thaana and Kiomo Kyethani Wards.

(Hon. Harrison Maluki Mawia - M.C.A Migwani Ward)

Debate Arising;

Question put and **Agreed to.**

10. MOTION FOR ENHANCED REPRESENTATION, EMPLOYMENT OPPORTUNITIES, CULTURAL RECOGNITION, AND DEVELOPMENT AFFIRMATIVE ACTION FOR MARGINALIZED/MINORITY COMMUNITIES IN KITUI COUNTY (M.C.A. Tharaka Ward)

Motion made and Question proposed;

ACKNOWLEDGING the necessity for inclusivity and the protection of marginalized communities across Kenya, and particularly within Kitui county, I hereby present this motion for consideration. This motion emphasizes the need for affirmative action to guarantee representation, employment, cultural recognition, and development opportunities for marginalized communities such as the Tharaka and Arab/Swahili communities and other underserved regions who continue to face discrimination, exclusion, and limited access to opportunities.

COGNIZANT that Section 97 of the County Governments Act mandates county governments to observe the principles of protection of marginalized and minority groups, shielding them from discrimination and any form of distinction, while guaranteeing them

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equality in economic, educational, social, religious, political, and cultural participation.

AWARE that Article 204 of the Constitution establishes the equalization fund to provide basic services including water, roads, health facilities and electricity to marginalised areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation.

FURTHER AWARE that Section 68A of the County Governments Act provides that each County Public Service Board shall promote equal opportunity in the county public service and shall take measures to ensure that diversity is maintained in the county public service.

Further, it shall not be unfair discrimination to implement affirmative action measures to ensure this is achieved.

CONCERNED that despite Section 65 (1)(e) of the County Governments Act, which requires that at least 30% of entry-level positions in the county government be filled by candidates from non-dominant ethnic groups, Kitui County has persistently overlooked qualified candidates from the two marginalized communities, failing to comply with the law and disregarding suitable candidates from these groups.

FURTHER CONCERNED that, as highlighted in the report by the County Assembly Committee on Labour and Social Welfare in response to a statement request regarding the lack of inclusivity for minority and marginalized communities within Kitui County's public

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service, only 5% of employees under the County Assembly Services Board (CASB) and a mere 10% of employees under the County Public Service Board (CPSB) are from non-dominant ethnic communities.

NOTING that despite the provisions of Article 21(3) and 204 of the Constitution and Section 97 of the County Governments Act, marginalized areas, such as Tharaka ward, are hardly ever prioritized in development agendas. Affirmative action has not been implemented to ensure that these regions receive preferential treatment in government funding and fair allocations in development projects especially in healthcare, water and roads infrastructure and education and access to essential services.

FURTHER NOTING that the cultural heritage of the Tharaka and Arab/Swahili communities is neither acknowledged nor celebrated in Kitui County's social events despite Section 97 (f) of the County Governments Act directing county governments to observe the principles of promotion of diversity and intercultural education. There has been no effort to incorporate their traditions and practices, missing an opportunity to foster inclusion, pride, and respect for their cultural identities.

DEEPLY TROUBLED that, despite a constitutional framework ensuring the promotion, participation, and representation of marginalized communities, and the existence of multiple legislative provisions, and programs targeting the welfare of marginalized groups, these two communities within Kitui County continue to suffer from systemic discrimination, exclusion, and lack of access to

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essential_opportunities for development. These ongoing disparities hinder the growth of these communities, perpetuating cycles of poverty, marginalization, and social exclusion.

CONSCIOUS that by approving this motion, we demonstrate a commitment to creating a more equitable, inclusive, and culturally respectful county.

THEREFORE, this assembly hereby resolves that;

1. The Kitui County public service should swiftly prepare and implement a public service employment equity plan in line with the provisions of Section 68C of the County Governments Act. This employment equity plan is essential in eliminating ethnic imbalance and supporting the implementation of the 30% rule envisaged in section 65 of the County Governments Act.
The employment equity plan shall set out the positive policies and practices which shall be instituted in the hiring and retention of under-represented persons belonging to marginalized communities.
2. The Kitui County Government shall promptly recognize and officially gazette the Tharaka and Swahili/Arab communities as minority or marginalized groups within Kitui County, ensuring they receive appropriate attention and support.
The County Public Service Board must speedily adhere to the provisions of section 59 (1)(d) and (3) of the County Governments Act which directs it to prepare regular reports for submission to the County Assembly containing the details of

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persons appointed including gender, persons with disabilities, persons from the minority and marginalized communities.

3. The County Public Service Board (CPSB) shall, in every December, deliver a report to the County Assembly on the extent to which the values and principles referred to in Article 10 (inclusivity and protection of the marginalised) and Article 232 of the Constitution (equal opportunities for employment for all ethnic groups) are complied with in the county public service. In addition, the CPSB shall publish the said report in the county gazette not later than seven days after the report has been delivered to the County Assembly. This is in adherence to section 59(5) of the County Governments Act.
4. In addition to the national Equalization Fund established under Article 204 of the Constitution, the Kitui County Government should create its own dedicated Equalization Fund to specifically address and support development programs in marginalized regions. Establishing this fund would allow the county to allocate a specific budget for these areas, enabling investments in targeted infrastructure, essential social services, and economic development projects. This targeted approach aims to uplift underserved communities, narrowing development disparities and helping them reach a standard comparable to other regions in Kitui County. Furthermore, a county-managed Equalization Fund would support consistent, long-term planning, allowing the government to effectively address the distinct needs of these communities and promote balanced, inclusive regional growth.

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5. Each county government administration shall appoint at least one County Executive Committee member or chief officer from the Tharaka and Swahili/Arab communities. Furthermore, senior leadership positions within the county must include representatives from both of these communities.
6. The county Ministry of Culture, Gender, Youth, ICT, Sports and Social Services should undertake deliberate measures to promote the social heritage and cultural values of marginalized communities in order to promote their cultural identity and foster inclusivity. This may include cultural displays in county-sponsored social events, support for cultural preservation projects, and funding for community-led cultural initiatives.
7. The County Assembly Committee on Labour and Social welfare, in collaboration with relevant stakeholders, should establish a mechanism for oversight to ensure that Kitui County complies with existing legislative frameworks on employment/human resource planning, that protect marginalized communities, and, where necessary, provide intervention to rectify non-compliance.

Hon. Godfrey Muthengi Ndagara – (M.C.A.)

Debate Arising;

Question Put and **Agreed to.**

11. ADJOURNMENT

And the time being Twenty Minutes past Nine o'clock, the Honorable speaker adjourned the house.

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12. ASSEMBLY ROSE -

Twenty Minutes past Nine o'clock.

MEMORANDUM

*The Honorable Speaker will take the chair on
Tuesday, 26th November, 2024 at 9:00 a.m*

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