

SAMBURU COUNTY ASSEMBLY



THE HANSARD

Tuesday, 16th July, 2019

The County Assembly met at the County Assembly chambers at 2.30 pm

The Speaker, Samburu County Assembly (Mr. Solomon Lempere) in the chair

PRAYER

MESSAGES

The Speaker, (Mr. Solomon Lempere): Hon. Members, I have a message from His Excellency the Governor, Moses Lenookulal. This Message came to this House on 12th July, 2019 and I wish to read it.

Dear sir, Referenced is appointees for Maralal Municipal Board for County Assembly approval. Following the successful completion of the selection process, I am pleased to forward herewith names of candidates nominated for the Maralal Municipal Board for the necessary approval by the County Assembly in accordance with section 11 (2) (b) (c) of the Urban Areas and Cities Amendment Acts, 2019 as read with section 14 of the Urban Areas and Cities Act, 2011 and the Maralal Municipal Chapter, 2018.

- 1) Alex F. Lesecketeti
- 2) Regina M. Mwatha
- 3) Simon Kinyanjui
- 4) Raphael Leshalote
- 5) Selina Akiru
- 6) Charles Leseela
- 7) Marpel Lolkereri

Please receive the list and kindly expedite the approval to enable us to finalize the establishment of the long overdue Maralal Municipal Board.

Hon. Members, I wish to state that the County Government of Samburu did not receive the conditional grant from the World Bank for the financial year that ended on 30th June, 2019 because of lack of the Municipal Board. Maralal Municipality lost close to over one hundred million Kenya shillings after the County's failure to meet the required conditions given; one being the Municipal Board.

Now that it is before this House and as we start this financial year, we really do not want to miss out on the benefits that come with having a Board that is going to manage the funds given to Maralal Municipality. As a result, I would urge Members of this House to expedite the process and have this list be considered by the Assembly and I commit it to the Committee of Appointments together with the Committee on Lands, Physical Planning and Urban Developments so that we see how best we are going to go about the approval. It goes without saying that Hon. Kiragu who is the MCA for the ward is part of the vetting process and also the Specially Elected Members from Maralal Municipality. I give those directions so that we get to go about the approval process of considering the nominees presented before this House.

We really do not want the Assembly to be blamed in any of the processes that we are supposed to be engaged in, thank you.

(Point of Order by Hon. Peter Lempei)

MCA Elbarta Ward, (Hon. Peter Lempei): I have a point of order.

The Speaker, (Mr. Solomon Lempere): There was no debate for a point of order.

MCA Elbarta Ward, (Hon. Peter Lempei): Well, I do not know what it would be Mr. Speaker, because it will pass me but I know also that I cannot raise it when it is the Speaker who has communicated but it is just that I do not know where my expression will fit in in the event that I will not raise it now.

The Speaker, (Mr. Solomon Lempere): I will give you time at a later stage to point out your concerns.

MCA Elbarta Ward, (Hon. Peter Lempei): Much obliged Mr. Speaker.

The Speaker, (Mr. Solomon Lempere): Is the list already attracting attention? We will create some session or the Majority Leader can.

MCA Elbarta Ward, (Hon. Peter Lempei): Mine is not about the list Mr. Speaker. It is about certain legal and legitimate things that I wanted to point out consequent to that communication.

The Speaker, (Mr. Solomon Lempere): Because this is a message, I have given the message as it is. We will have a forum to deliberate on whatever legal issues that come up. This is a message that is communicated as it is and there are no points of orders that can be entertained at this stage. We can have a deliberation as the Members of this House at a later stage.

PAPERS

The Majority Leader, (Hon. Christopher Lentukunye): Thank you Mr. Speaker. I beg to lay on the following paper on the table of the County Assembly of Samburu today Tuesday 16th July, 2019 that is the Fourth Report of Committee on Appointment on the vetting of the nominees for the County Public Service Board, thank you Mr. Speaker.

NOTICES OF MOTION

The Majority Leader, (Hon. Christopher Lentukunye): Thank you Mr. Speaker once again Honourable Speaker. I beg to give a notice of the following Motion; That Pursuant to the County Assembly Standing Orders number 47 (1), this House debates and approves the Committee on Appointment's report on the vetting of the nominees for the County Public Service Board, thank you Honourable Speaker.

The Speaker, (Mr. Solomon Lempere): Hon. Members I know we don't have any questions or statements but pursuant to Standing Order number 1, I wish to use my discretion to give Members a chance who had burning issues when I just read the Message to give their preliminaries. Hon. Lempei.

MCA Elbarta Ward, (Hon. Peter Lempei): Hon. Speaker, I rise on Standing Order number 87... *(Interjected by Mr. Speaker)*

The Speaker, (Mr. Solomon Lempere): Hon. Member, do not read it as a point of order because there is no points of order but just give a general statement.

MCA Elbarta Ward, (Hon. Peter Lempei): Thank you Hon. Speaker, I just wanted to point out on the accuracy of the information and that becomes my rallying point. Mr. Speaker I know it will not be a debate per say but I have looked at it as this is a House of rules and we are supposed to be fed by accurate information.

The inaccuracy that I find in that Communication, is the Section of the law that had been pointed out in regard to the relevant law that is relied upon to appoint the Board. The law that is being relied on is Section 11 (2) (b) and (c) of the Urban Cities Amendment Act, 2019.

What is before us is a substantive Board yet this House disapproved the initial Municipality and it also disapproved the Charter in 2018. I do not remember any other Charter brought to this House for approval and so if relying on those sections of the law is what has driven the Executive to bring up the same then we are beginning on a wrong premise and on the wrong foot. Those relevant sub-sections quoted goes to the substantive Municipality. What we have is the special Municipality which was created with the discretion and powers given to the Governor. So to relay on sections of the law which he has no power on is starting on the wrong foot and it is an illegality.

Also to relay on a Charter that was not approved by this House in 2018 which was actually rejected is beginning on a wrong foot. I think it will be illegal for us to have the names presented to us irregularly relying on a wrong law and also a Charter that is non-existent.

The Speaker, (Mr. Solomon Lempere): Hon. Kiragu, I will give directions after all the deliberations

MCA Maralal Ward, (Hon. Fred Kiragu): Thank you Hon. Speaker, I am seeking direction from you about Municipality which was not brought here but was gazetted as a special

Municipality and I think when it goes to the Kenya Gazette as a special Municipality notwithstanding the provisions of the quoted Act. Mr. Speaker.

Mr. Speaker the residents of Maralal Ward are in need of establishment of a Municipality as soon as yesterday because it is going to benefit residents so much in value of properties, businesses and even attracting investors. What I was requesting your advice on Mr. Speaker is if the Municipality requirement is 9 Members and also what has been presented to us are 7 Members. I was also seeking your indulgence if may be you can advise the appointing authority not to give us piece-meal so that we have the Board established once and with all Members on board.

I also note Mr. Speaker that the Muslim community is quite a population within the Municipality and with the names brought forth I think the Board should be inclusive so that every community that resides within the Municipality is taken care of. Mr. Speaker you can also advise that a Muslim is included in the list thank you Mr. Speaker

MCA Loosuk Ward, (Hon. Adamson Lanyasunya): Thank you Hon. Speaker, in my opinion I think we are jumping the gun. This is a Communication from the Office of His Excellency the Governor and the House procedure is that the Message should be communicated and when its delegated to the Committee on Appointment, I think the Committee will be able to bring a report and they will be able to discuss according to their mandate and bring the report to the Assembly. At that particular time it's when Members will be able to give their own views.

They will also be able to present if there are any gaps regarding to the laws or not. I think what we are doing now is the process of the House and Members are assuming the report has been tabled and we are discussing it vaguely Hon. Speaker.

MCA Nachola Ward, (Hon. Lawrence Lorunyei): I said this is a House of rules whereby we got our own guidelines. We know that anything coming to this House should pass through Business Committee to make sure that it is written or it has followed the guidelines and then it is approved by the Speaker.

As it is said by Hon. Lempei we did not pass that Charter that is being referred to in the Message read and I do not know what we are discussing. As I said earlier this House is a House of routine and due process must be followed so that we can discuss something that is legal.

The Speaker, (Mr. Solomon Lempere): Hon. Dube, let us not get to the substance of the discussion. I said that am using my discretion to just hear what is burning.

Specially Elected MCA, (Hon. O. Dube): Asante Sana Mweshimiwa Spika na kitu ya kwanza ni kwamba mambo ya Municipality ni mzuri kwa Community inayoishi town. Nashukuru kwamba walemavu wamewakilishwa lakini sijaona Community ya Waisalmu na tumekuwa tumesahaulika kwa miaka mingi.

Tukianza kwa Mawaziri wa Kaunti hakuna hata mmoja, kwa CO's hakuna mwakilishi wa waislamu, Public Service Board hakuna Mwislamu. Mheshimiwa Spika, Mheshimiwa Kiragu anacheka. Mweheshimiwa spika, kama kamati peke yake inasahaulika. Kuna waislamu wengi ambao wanaishi town, naomba kwa heshima kwamba kuwe na waislamu katika kamati ya Municipality.

Sisi hatutaki mambo ya kabila gani, ata kama anaitwa Adan Lanyasunya sisi tunakubali jina tu, kwa sababu wanaweza kutetea. Naomba kwamba isikuwe kwamba sisi waislamu tuko mwisho kwasababu hii haitakuwa inanonyesha picha nzuri, asante.

The Speaker, (Hon. Solomon Lempere): Hon. Members, I wish to give directions because you have raised some weight legal issues probably discussions some of which I may not have control over, I do not nominate so I think some of the messages should be communicated to the nominating authority.

I wish to state that yes indeed this House rejected the Municipality of Maralal in around 2017 together with the charter that was given and I just want to read the section which brought into picture what we are discussing today. Urban Areas and Cities Act 2012 section 9 (1) *the County*

Governor may on resolution of the County Assembly confer the status of a municipality on a town that meets a criteria set out in subsection 3 by grant of charter in the prescribed form.

The conferment and grant of the charter is one thing, the only thing you need to do after conferring, you make it legal through a charter. Section 9(2) says that *The procedure set out under section 8 (1) to (4) shall apply with necessary modifications.*

The normal procedures of application for conferment has so many technicalities that has Surveyors, Kenya Institute of Planners, Architectural Association of Kenya, Law Society and other various things that need to be done before the conferment. The procedure as it is in the city status.

Section 9 (3) A town is eligible for the conferment of municipal status under this Act if the town satisfies the following criteria—

(a) Has a population of at least two hundred and fifty thousand residents according to the final gazetted results of the last population census carried out by an institution authorized under any written law,

(b) Has an integrated development plan in accordance with this Act;

(c) Has demonstrable revenue collection or revenue collection potential;

(d) Has demonstrable capacity to generate sufficient revenue to sustain its operations.

(e) Has the capacity to effectively and efficiently deliver essential services to its residents as provided in the First Schedule;

(f) Has institutionalized active participation by its residents in the management of its affairs;

(g) Has sufficient space for expansion;

(h) Has infrastructural facilities, including but not limited to street lighting, markets and fire stations; and

(i) Has a capacity for functional and effective waste disposal.

When the whole issue of Municipality was tabled here it was rejected by this Assembly together with the charter. Section 9 says that conferment of Municipality status has exemptions and it is in section 9 (4) *notwithstanding the provisions of subsection 1*, the one that needs the approval of the Assembly, *the County Governor shall confer the status of a special Municipality to the headquarters of the County even where it does not meet the threshold under subsection 3 (a).*

Under the result of section 9(4), the Governor conferred a special Municipality to Maralal town and the conferment goes with a charter which did not get an approval of this House. As far as the list is right before us and as by the provisions I read, the nominees are rightly before us because there was exemption of each and every headquarter in this Country.

I wish to go to the second issue raised by Hon. Kiragu, on the number of the nominees. There is an amendment to the Act of 2019. Section 11 of the Urban Areas and Cities Act 2019, section 14 of the principle Act is repealed and replaced with the following new section:

Section 14 (1), A board of a municipality shall consist of nine members appointed by the Governor with an approval of the County Assembly.

(2) The members of the board appointed under section 1 shall be constituted as follow;

(a) County Executive Committee Member being responsible of cities and urban areas or his representative.

(b) Three members who shall be appointed by the Governor with an approval of the County Assembly.

(c) Four members who shall be nominated by associations and appointed by the Governor with an 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.

Section 11 (3) the four members of the board of the municipality specified under section (2) shall be nominated by:

(a) An umbrella body representing professional associations in the area.

(b) An association representing private sector in the area.

(c) A cluster representing registered associations of the informal sector in the area; and

(d) A cluster representing registered neighbourhood associations in the area.

Those are the representatives are I think the three first nominees.

(4) The County Governor shall while appointing the members of the board ensure gender equity, representation of persons with disability, youth and marginalized group.

(5) The County Governor shall while considering the nominated members identified by the organizations specified under subsection (2), enquire the organization to produce-

(a) Signed minutes as evidence of an accountable process of nomination.

(b) Evidence of compliance with statutory obligations; and

(c) Vetting form to establish that the nominee has complied with the prescribed criteria for appointment as a member of the board.

The qualification is set therein below. The chairperson will need a degree, and a member shall have a diploma. As far as the question raised by Hon. Kiragu, the nine memberships is as a result of the CEC (Chief Executive Committee Member) and the Chief Officer (CO) being part of the board so I think we are clear on that.

As an issue of nominating who and religion, I wish to state that that is beyond the Speaker of this House, I am just a recipient of the letter. Otherwise, thank you so much Hon. Members.

Hon. Members, the time being twenty-eight minutes to four O'clock and there being no other business this Assembly now adjourns until Wednesday morning July 17th, 2019 at 9:00 Am.