

Second Assembly
(No. 069)



COUNTY GOVERNMENT OF NAIROBI CITY
SECOND ASSEMBLY – (FOURTH SESSION)
NAIROBI CITY COUNTY ASSEMBLY
VOTES AND PROCEEDINGS

THURSDAY, DECEMBER 3, 2020 AT 2.30 P.M.

1. The Assembly assembled at thirty minutes past Two O'clock.
2. The Proceedings were opened with Prayer

QUORUM OF THE ASSEMBLY

The Hon. Speaker made the following communication on quorum at the commencement of the Sitting: -

“Hon. Members,

Before we proceed with business scheduled for today, I wish to draw your attention to the provisions of Standing Order 35, which provides as follows and I quote;

“35 (1) A quorum of the County Assembly or of a Committee of the whole County Assembly shall be a third of its members.

(2) If there is not a quorum present when the Chair is taken, at the time appointed for a meeting of the County Assembly, immediately after the saying of the prayer, the Speaker shall order the bell to be rung for ten minutes, and if no quorum is present at the expiration of the ten minutes, the Speaker may direct that the bell be rung for a further five minutes and if there is still no quorum present, the Speaker shall adjourn the County Assembly forthwith to the next sitting.

Hon. Members, I wish to confirm that I have ascertained that there is presence of the requisite quorum for us to commence this sitting. As you are aware, in compliance with the Ministry of Health guidelines on containment of the spread of Covid-19 virus, today's sitting is both physical and virtual. I can see Members sited in both the Speaker's and public galleries and some are in the Members lounge just to guarantee social distancing. I can also confirm that several Members have logged on the virtual platform. I encourage Members to maintain their sitting positions until conclusion of the sitting. Further, for purposes of today's sitting, all Members, present here physically and outside the chamber,

*John O. O. O.
4/12/2020*

must log into the virtual platform and ensure that your microphones remain muted.

I thank you Honorable Members.”

3. MOTION – IMPEACHMENT OF THE GOVERNOR, H.E GIDEON MBUVI SONKO

The Speaker conveyed the following communication on threshold necessary to Move the Motion: -

ASCERTAINING THE THRESHOLD NECESSARY FOR MOVING THE MOTION

“Hon. Members, Standing Order 67(5) provides that and I quote: -

“67(5)When the Order for the Motion is read, the Speaker shall refuse to allow the member to move the Motion, unless the Speaker is satisfied that the member is supported by at least a third of all Members of the County Assembly to move the Motion; provided that within the seven days’ notice, the Clerk shall cause to be prepared and deposited in his office a list of all Members of the County Assembly with an open space against each name for purposes of appending signatures, which list shall be entitled “SIGNATURES IN SUPPORT OF A MOTION FOR REMOVAL OF GOVERNOR BY IMPEACHMENT.”

Hon. Members, I wish to confirm that I am in possession of the aforementioned list dated **27th November, 2020** that was submitted to my Office by the Clerk where more than a third of Members have appended their signatures thus meeting the required threshold. Accordingly, **Hon. Members,** I will allow the Minority Leader, **Hon. Michael Ogada Okumu** to proceed and move the Motion.”

Motion Made and Question proposed: -

WHEREAS Chapter Six of the Constitution, the Leadership and Integrity Act, 2012 and the Public Officer Ethics Act provide for, primarily, the conduct of State and Public Officers, and the accountable exercise of power and responsibility assigned to State and public officers;

AND WHEREAS Article 10 as read together with Article 73 of the Constitution and Section 3 of the Leadership and Integrity Act, 2012 provides for respect for the rule of law, good governance, accountability and transparency of State officers for decisions and actions as key guiding principles of leadership;

AND WHEREAS Article 179(4) exclusively bestows on the Governor the executive authority, which executive authority is provided for under

Section 30 of the County Governments Act, 2012, to wit he is to; (a) *provide leadership in the county's governance and development; (b) provide leadership to the county executive committee and administration based on the county policies and plans; (c) promote democracy, good governance, unity and cohesion within the county; (d) promote peace and order within the county; (e) promote the competitiveness of the county; (f) be accountable for the management and use of the county resources;*

AND WHEREAS the Assembly is cognizant of the fact that the governor is facing charges in respect to corruption allegations emanating from the award of contracts, which charges have rendered him incapable of performing his functions, whence he was recently barred from accessing his Office, leaving the County in limbo granted the vacancy that befell the Office of the Deputy Governor on 31st January, 2018 persists;

AND WHEREAS by action, inaction, omission and or commission the governor of the Nairobi City County has failed, refused and or neglected to exercise the powers and responsibilities bestowed upon the Office of the Governor in a manner that promotes trust in the Office he occupies in keeping with the high standards of professional ethics contemplated under Article 232(1)(a) of the Constitution as read together with Section 30(3) of the County Governments Act, 2012;

COGNIZANT that under Article 185 (3) as read together with Section 8 of the County Governments Act, 2012, the County Assembly is mandated to undertake oversight of the County Executive in the performance of its functions as provided for in the Constitution and other enabling laws, which functions the County Governor as the Chief Executive Officer of the County has either failed, neglected and or exhibited gross violation of the Constitution and written law;

REASONS WHEREOF under Article 181 of the Constitution as read together with Section 33 of the County Governments Act, 2012, the following grounds are provided for, for the removal of the Governor, amongst which are;

(a) gross violation of the Constitution or any other law;

(b) where there are serious reasons for believing that the county governor has committed a crime under national or international law;

(c) abuse of office or gross misconduct; or (d) physical or mental incapacity to perform the functions of office of county governor;

NOW THEREFORE, this Assembly **RESOLVES** to **REMOVE** the Hon. Mike Sonko Mbuvi Gideon Kioko alias Mbuvi Gidion Kioko Kivangulia Kivatu Nangeleesi (MBT) from the Office of the County Governor of the Nairobi City County, pursuant to Article 181(1)(a) and (c) of the

Constitution, Section 33 of the County Governments Act, 2012, and Standing Order 67 of the Nairobi City County Assembly Standing Orders, on the following grounds: -

1. GROSS VIOLATION OF THE CONSTITUTION OR ANY OTHER LAW

(Gross violation of the Constitution; The County Governments Act, 2012; The Public Procurement and Disposal Act, 2015; and the Public Finance Management Act, 2012.)

- a) The Governor of the Nairobi City County has violated Articles 201 (a), (d), (e) of the Constitution of Kenya on principles of public finance management and Section 154 of the Public Finance Management Act, 2012, the County Allocation of Revenue Act, 2015 on the use of conditional grants from the National Government, by the diversion or negligently causing to be diverted Conditional Funds, for instance in the use of the road levy and bursary funds to pay for garbage collection contractors and lawyers, contrary to Bursary fund regulations and the approved budget. While the Governor requested Kshs297 million for Bursary from the Controller of Budget, these funds were illegally used to pay garbage contractors and lawyers.
- b) The Governor of the Nairobi City County has violated Article 10, Article 201 (b) and (d) of the Constitution by failing, refusing and/or neglecting to comply with the provisions of Regulation 20 of the Public Finance Management (County Governments) Regulations, 2015, which failure, refusal and/or negligence has compromised the provision of services envisioned under Part II of the 4th Schedule to the Constitution 2010, *inter alia* most crucial provision of health services during the raging pandemic;
- c) The Governor of the Nairobi City County has violated has violated Article 187(2)(a) of the Constitution and Article 5.2 of the Deed of Transfer, by his continued willful refusal to execute the statutory warrants essential to the release of funds from the County Revenue Fund, which has grounded the provision of services of not only the county executive, but of the Nairobi Metropolitan Service (NMS) and its exercise of the transferred functions. This action violates the provisions of Article 187(2)(a) of the Constitution and Article 5.2 of the Deed of Transfer, whence the County Assembly duly adopted the Budget for the Financial Year 2020/2021 and enacted the Nairobi City County Appropriations Bill, 2020.
- d) The Governor has violated the provisions of Article 183 of the Constitution as read together with Standing Order number 193 and Section 123 of the Public Finance Management Act, 2012 by

undermining the authority of the County Assembly, whence the Governor has refused and or failed to implement resolutions of the County Assembly or forward a report detailing his inability to do so in line with Article 183 of the Constitution as read together with Standing Order number 193, with respect to County public debt and debt management under the provisions of Section 123 of the Public Finance Management Act, 2012. Failure of which the County has been unable to control and manage County Public debt. The result is unmitigated accrual of debt which has ballooned the County's overall debt to unmanageable levels, rising from Kshs56 billion when he assumed office in 2017 to Kshs Sh76.794 billion as at 31st December 2019 hence further violating the provisions of Article 201 of the Constitution.

- e) The Governor has violated *Article 227(1)* of the Constitution on procurement of goods and services as read together with provisions of the Public Procurement and Disposal Act, 2015 by flouting the principles of public finance management in as far as public procurement of goods and services is concerned, where the Public Procurement Regulatory Authority (PPRA) faulted the procurement process for the construction of the Dandora Stadium. The authority flagged irregularities in the awarding of the tender, alteration of contract specifications, suspected irregular payments and forgery of documents. Despite technical evaluators questioning the quality of work, the PPRA indicted the county government for paying Sh196.87 million to the contractor.
- f) The Governor violated Section 35(4) and Section 45(1) of the County Governments Act, 2012 as read together with Section 104 and Section 148 of the PFMA whence between 2018 and early 2019, and contrary to the law, the Office of the County Executive Committee Member for Finance and that of the Chief Officer for Finance were held by the same person, one Ms. Winfred Gathagu, which situation occasioned confusion and inefficiencies at the County Treasury, hence failing to promote good governance, and compromising the doctrine of transparency and accountability within the County Government.
- g) The Governor has violated the provisions of Section 104 of the PFMA on the *Responsibilities and Powers of a County Treasury*, whence through inaction, action, omissions and commissions he continues to preside over a broken Public Finance Management System, whence the County Treasury remains ineffective. Despite various resolutions of the County Assembly urging the Governor to improve efficiencies by decentralizing the finance function to sectors as required by the provisions of Section 148 of the Public

Finance Management Act, 2012, the County continues to operate in contravention of the law.

- h) The Governor has violated the provisions of Article 5.5 of the Deed of Transfer of Functions, by his refusal to hand over the necessary documentation to enable Kenya Revenue Authority (KRA) to undertake optimal revenue collection under the Transferred functions. For instance, by the end of June 2020, the County had collected just about Kshs. 8.4 billion, against a projected revenue target of Kshs 17.05 billion, which was partly due to failure by the County Government to facilitate the KRA to hit its optimal potential as the revenue collection agent appointed pursuant to the Deed of Transfer of functions.
- i) The Governor grossly violated Article 201 of the Constitution on the prudent use of financial resources and Section 159 of the Public Finance Management Act, 2012 as read together with Section 7 of the Nairobi City County Tax Waivers Administration Act, 2013 by unilaterally and arbitrarily issuing waivers in total disregard of the law. The Governor was aware that the law provides that waivers should be granted by the CECM for Finance.
- j) The Governor has violated the provisions of *Articles 201(d)* of the Constitution on principles that guide all aspects of public finance in the Republic, and *227(1)* on Procurement of public goods and services, and the provisions of the Public Procurement and Disposal Act, 2015 by willfully interfering in the award of the tender for the construction of the Dandora Stadium as established by the PPRB, leading to loss of public funds in overseeing payments despite concerns by technical officers;
- k) The Governor has violated the provisions of *Articles 201* of the Constitution and the Public Finance Management Act, 2012 on principles that guide all aspects of prudent use of public finance where either intentionally or negligently he presided over massive loss and theft of County public funds in the three years he has been office, as evidenced by the Auditor General's Report of 2018/2019, which raised the red flag over city's stalled Sh204.2 million projects, as well as failure by the county government to meet its revenue targets.
- l) The Governor has violated the provisions of Article 5 of the Deed of Transfer of functions by sabotaging the transfer of functions. The Governor is yet to provide NMS with crucial information necessary in aiding the carrying out of the transferred functions. For instance, failure to facilitate NMS with data on ongoing projects, pending bills and staff payroll details on transferred functions has

greatly derailed the performance of these functions to the detriment of the public good.

2. ABUSE OF OFFICE

- a. The Governor has abused his office by Violating Article 75 of the Constitution as read together with Section 11 and 13 of the Leadership and Integrity Act, 2012, on the conduct of State officers, where the Governor has persistently intimidated, harassed and molested officers of the County Executive, including blackmailing his County Executive Committee Members and Chief Officers with one-year contracts, whose renewal he has undertaken arbitrarily, leaving the Officers jittery about their employment and creating a climate of fear, uncertainty and despondence. For instance, in May 2019, the Governor failed to renew the contracts of all twenty-three (23) Chief Officers, instead directing they hand over to Directors, greatly affecting the continuity of service delivery and accountability in the County.
- b. The Governor has abused his office by violating Article 75 of the Constitution as read together with Section 16 of the Leadership and Integrity Act, 2012 by unlawfully using public funds to pay for his daughter's travel to New York, USA, to allegedly attend the County First Lady's Conference, held during the 62nd Session of the Commission on the Status of Women 2018.

3. GROSS MISCONDUCT

- a. The Governor has violated Article 73 of the Constitution by failing to promote public confidence in the integrity in the office of the governor following his being charged before the Anti-corruption court, thus prejudicing and or compromising the social contract and trust bestowed upon him by the people of Nairobi by virtue of Article 1 of the Constitution. As a consequence, therefor, the governor has been barred from accessing his office vide a Court order and thus incapable of performing his functions under Section 30 of the County Governments Act, 2012.
- b. The Governor has violated Article 73 of the Constitution and Section 8 and 11 on the Leadership and Integrity Act, 2012 on public trust and professionalism, where he is on record admitting that he was intoxicated and thus not in the right frame of mind when he signed the Deed of Transfer for the transfer of certain functions of the county to the national government in February, 2020. In his own words, "*Hawa watu wa State House waliniconfuse na pombe kwanza by the time I was meeting the*

President for the signing I was just seeing zigzag.” This allegation of impropriety on the part of State House imputes improper motive on the Office of the President, and brings disrepute, ridicule, hatred and contempt to the Office of the President and of the Governor.

- c. The Governor has violated Article 73 of the Constitution and the Leadership and Integrity Act, 2012 on the *responsibilities of leadership*, by failing to professionally perform his Constitutionally sanctioned duties owing to his constant absence from office, even before he was formally restrained by the Courts from accessing his Office due to corruption charges, whence the Governor remained constantly unreachable in person or on his phone for inordinately longer periods of time, to the huge detriment of the performance of the functions of the County Executive. Indeed, the governor purported to execute the functions of the County government from his home in Mua hills, Machakos County.
- d. The Governor has violated *Article 75(1)(c)* of the Constitution as read together with Section 11 of the Leadership and Integrity Act, 2012 in respect of conduct of State Officers by drawing a salary and hefty allowances and enjoying the privileges of the Office he holds, while failing to diligently report to work and being perennially absent, even before he was formally restrained by the Courts from accessing his Office due to corruption charges.
- e. The Governor has violated Section 8 of the Leadership and Integrity Act, 2012 on *Public Trust*, where he has constantly used his position to abuse public trust in the County Government, by exercising the powers of his Office in a manner detrimental to prudent public service delivery, by persistent use of divisive and unbecoming language which undermines the Office he holds and the County administration;
- f. The Governor has violated *Articles 73 and 75* of the Constitution on conduct of State Officers that is demeaning to the offices they hold and Section 11 of the Leadership and Integrity Act, 2012 by persistently and willfully using, publicizing and publishing abusive and unbecoming words and language, as evidenced by his social media posts and numerous rants, in which he has hurled abuses and conducted himself in a manner that undermines and demeans the Office of the Governor.

4. CRIMES UNDER NATIONAL LAW

- a. There are serious reasons to belief that the Governor has committed crimes under National law, specifically the Anti-corruption and Economic Crimes Act, which crimes he has been charged for in the Anti-Corruption Court.

(Hon. Michael Ogada, MCA – Minority Leader)

Debate ensued;

The Speaker conveyed the following Communication inviting H.E the Governor to appear before the Assembly: -

APPEARANCE OF THE GOVERNOR

“Hon. Members, before I call the Mover to reply, Article 47 of the Constitution of Kenya, 2010 on fair administrative action provides that: - *“every person has the right to administrative action that is expeditious, efficient, lawful, reasonable and procedurally fair.”* Further, Standing Order 72 guarantees any person the Assembly intends to remove from office a right to be heard by appearing before the relevant Committee or Assembly for purposes of responding to the allegations raised. Such person is entitled to legal representation.

Hon. Members, in view of the above provisions of the law, my office vide a letter **Ref. NCCA/SPK/11/2020 (3)** dated **26th November, 2020** invited H.E the Governor to appear virtually before this Assembly today 3rd December, 2020 during this afternoon sitting in order to respond to the allegations raised against him. Consequently, I can confirm that a link was sent to the Governor so that he can be able to join the Session.

Hon. Members, in this regard, can the Sergeant-at-Arms confirm whether the Governor is present and if so the ICT team to allow H.E. the Governor to proceed and make his representations.”

Mover Replied;

Before the Assembly proceeded to an Electronic voting pursuant to the provisions of Standing Order 75, the Speaker issued the following directions: -

“Hon. Members, having come to the conclusion of debate it is now time for the Assembly to take a decision on this Motion.

In this regard, **Hon. Members**, before I put the question on this matter, I wish to guide the Assembly on the voting process as follows:

Hon. Members, Standing Order 74 provides that unless otherwise provided under the Constitution, or any other written law, a question arising in the County Assembly shall be decided by a majority of the members in the County Assembly, present and voting.

Further, **Hon. Members**, whenever the law requires that a fixed number of Members is necessary to support the moving of, or to decide any question on a Motion, for the convenience of the Assembly, the Chair need to first ascertain presence of the requisite quorum before proceeding to put the question. In this case, Section 33 of the County Governments Act, 2012 requires that a Motion for removal of the Governor from Office must be supported by **two thirds** of the Members. Consequently, I can confirm that we have the required **two thirds** quorum to proceed with the vote.

Hon. Members, on the voting process, Standing Order 75 provides that unless the Speaker, for the convenience of the County Assembly otherwise directs, voting on a division in the County Assembly shall be by electronic voting.

Consequently, **Hon. Members**, we shall proceed with electronic voting. However, in the current circumstances, where we have Members who are physically present and others following proceedings virtually, the voting process shall be through the **virtual platform**.

Hon. Members, the provisions of Standing Order 75 on electronic voting shall be applied with necessary modifications to suit the current circumstances. Allow me **Hon. Members** to emphasize on the following provisions of the aforementioned Standing Order:-

"75 (2) When the Speaker directs that an electronic voting to be taken, the Division Bell shall be rung for not more than ten minutes and the County Assembly shall proceed to a vote at the expiry of the ten minutes, or such further time as the Speaker may, for the convenience of the County Assembly, direct.

(3) During electronic voting, Members shall cast their votes by pressing either the "Yes," "No" or "Abstain" button.

*(4) At the **expiry of ninety seconds** or as soon as the result of the voting appears on the indicator board, the Speaker or the Chairperson, as the case may be, shall announce the results of the division forthwith.*

(5) A Member who is not able to cast his or her vote due to any reason considered sufficient by the Speaker, may before the result of the division is announced and after obtaining the permission of the Speaker, have his or

her vote recorded verbally by stating whether he or she is in favour of or against the Question

(7) Any Member present in the County Assembly but who shall not have voted at the expiry of ninety seconds or after the announcing of the results, whichever is earlier, shall forfeit the right to vote and shall be deemed to have abstained from voting.”

In the same breath, the Chair wishes to draw your attention to the amendments on the Standing Orders which the Assembly adopted on **2nd June, 2020** regarding virtual sittings. Specifically, the Assembly adopted that and I quote: -

“231 D Use of Technology: -

(1). The Speaker may, taking into account the gazetted precincts of the Assembly, prescribe appropriate information and communications technology platforms for the conduct of virtual proceedings under this part.

(2). The platform described under paragraph (1) shall;

(d) where the Assembly is wholly precluded from conducting a physical sitting, **incorporate a system that allows Members to vote.**

(3) The voting system incorporated under paragraph (2) (d) shall be simple, accurate, verifiable, secure, accountable, transparent and facilitate the prompt declaration of results of each vote taken.”

With the forgoing, **Hon. Members**, upon expert advice, the Chair has chosen the **customized zoom application** as the platform that shall be used. In arriving at this decision, the Chair is satisfied that the application is simple, accurate, verifiable, secure, secrete, accountable, transparent and has the ability to facilitate prompt declaration of results.

Indeed, **Hon. Members**, once voting shall be declared, you will be prompted on your various electronic devices to make your choice by clicking on either **YES** (in support of the Motion) or **NO** (against the Motion). Once, every member will have completed voting, the results shall appear on your devices and on the screens for those in the Chamber. It is mandatory that all Members who wish to vote, including those currently in the chamber, to login through the zoom platform using your official email addresses and gazetted names.

Hon. Members, I also wish to remind you of the provisions of Standing Order 81 on decorum during division which provides: -

81(1) A Member shall not be obliged to vote in a division, but those present and not voting shall either-

- a) in the case of electronic voting, press the “**Abstain**” button; or
- b) in the case of roll call voting, record their abstention with the clerk.

(2). It shall be disorderly conduct for a Member to fail to record his or her abstention in a division.

(4) During division, members shall maintain order in the County Assembly and shall be in their designated seats and must remain seated until the result is announced.”

The Speaker directed that electronic voting be taken pursuant to Standing Order 75) and that the Division Bell be rung for ten minutes;

The Speaker Put the Question and directed the ICT team prompts the question to allow Members to vote and Members were to make their choice by clicking on either YES (in support of the Motion) or NO (against the Motion) in their respective devices.

Following the Electronic Voting, **Question agreed to.**

The Results of the Electronic Voting were as follows:

AYES	NOES	ABSTAIN
88	2	0

4. MOTION – ADJOURNMENT OF THE ASSEMBLY IN ACCORDANCE WITH THE CALENDAR OF THE COUNTY ASSEMBLY

Motion Made and Question Proposed; -

THAT, pursuant to the provisions of Standing Orders 28 and 29 (3), this Assembly adjourns until **Tuesday, 9th February, 2021**, in accordance with the Calendar of the County Assembly (Regular Sessions).

(Hon. Abdi I. Hassan, MCA – Majority Leader)

Debate ensued;
Mover Replied;

There being no other business and the time being twenty minutes to Six O'clock, the Speaker adjourned the Assembly without Question put pursuant to the Standing Orders.

5. ASSEMBLY ROSE- at Twenty minutes to Six O'clock.

MEMORANDUM

The Speaker will take the Chair on
Tuesday, February 9th, 2021