

**REPUBLIC OF KENYA**  
**UASIN GISHU COUNTY ASSEMBLY**  
**THE HANSARD**

Tuesday, 23<sup>rd</sup> April, 2019

The House Met in the Assembly Chambers at 3:15 pm

*[The Speaker (Hon. David Kiplagat) in the Chair]*

**PRAYER**

**COMMUNICATION FROM THE CHAIR**

**The Speaker** (Hon. David Kiplagat): Honourable Members, welcome to today's session. I wish to welcome all of you after a short recess, during which we had a fruitful discussion during the legislative summit, and also the Easter holiday. Welcome.

INVITATION FROM TRANSPARENCY INTERNATIONAL

I have some communications to make. One is from Transparency International addressed to the Clerk. The reference is invitation to capacity-building workshop for Members of the County Assembly on integrity and supporting the formation of CANAK. I hereby read.

‘Greetings from Transparency International Kenya. Transparency International Kenya is a non –governmental organisation founded in 1999. The vision of the TI Kenya is a corruption -free Kenya. TI Kenya mission is to champion the fight against corruption and promoting integrity transparency and accountability at all levels. TI Kenya is among the founders of the Africa Parliamentarians Network Against Corruption (APNAK) and recently the County Assembly Representative Networks Against Corruption (CANAK) to promote transparency and corruption free government at county level. TI Kenya wishes to invite you as the speaker 47 Members of the County Assembly, two Senior staff, the Serjant-at-Arms and three committee clerks for capacity-building workshop which will take place on 30<sup>th</sup> April 2019 at Queens Garden Hotel, Eldoret. The agenda of the workshop will be training on leadership, integrity and oversight (the role of MCAs), legislative drafting, smart County budgeting process, the CANAK concept.

The TI Kenya also requests your office to facilitate the transport cost and allowances for the honourable Members and other officials from the County Assembly.’

So it is an invitation. The dates are very clear; it is on 30<sup>th</sup> April 2019. It will be held at Queens Garden starting from 8.00am.

## INVITATION TO BURSARY DISBURSEMENT AWARD CEREMONY

Another communication is from the County Government of Uasin Gishu, the department of Education, Culture and Youths Affairs, Social Services and Sports, office of the CEC Member, to the Speaker Uasin Gishu County Assembly. It is an invitation to the 2018/2019 bursary disbursement award ceremony. I read:

‘You are cordially invited to the above mentioned occasion which will take place on Thursday 25<sup>th</sup> April 2019 at the County headquarters, that is, Town Hall Grounds starting from 10.00am. Your presence shall be highly appreciated.’

This is from the CEC Joseph Kurgat, County Executive Member Education, Culture, Youths Affairs and Sports and Social Services.

### FIRST QUARTER REPORT OF COOPERATIVE DEVELOPMENT DEPARTMENT

Honourable Members, we have also a communication from the County Secretary on the first quarter progress report for 2018/ 2019 from the department of Co-operatives, Enterprise Development and I hereby commit the same to the committee for Co-operative and Enterprise Development for consideration.

### HIS EXCELLENCY THE GOVERNOR’S MEMORANDUM ON THE COUNTY FISCAL STRATEGY PAPER, 2019

**The Speaker** (Hon. David Kiplagat): We have also received a Memorandum from His Excellency the Governor on the County Fiscal Strategy Paper, 2019 and I hereby want to read.

By His Excellency the Governor Uasin Gishu County; Submitted to the Speaker of the County Assembly.

“Whereas a Policy Paper titled ‘The County Fiscal Strategy Paper 2019 (CFSP), was adopted with amendments by the County Assembly on the 11<sup>th</sup> April, 2019.

And Whereas the amended Policy (The County Fiscal Strategy Paper) 2019 was presented to me for action in accordance with the provisions of the County Governments Act and the Public Finance Management Act.

Now Therefore, I decline to act on the amendments to (The County Fiscal Strategy Paper) 2019, for the reasons set out hereunder.

- I. *Article 1 of the Constitution* delegates sovereign power to the National and County Governments through the National Assembly and the County Assemblies respectively and every citizen or entity is expected to abide;
- II. The legislative authority of a County is vested in the County Assembly. Article 185 of the Constitution further allows the County Assemblies to exercise supervisory role over county governments but only with strict adherence to the separation of powers. *Section 8 of the County Governments Act* further stipulates the specific roles;
- III. *The County Treasury* as established by *Section 103 of the Public Finance Management Act* (the Act) has the role of preparing a County Fiscal Strategy Paper. The paper created within the meaning of *Section 117* of the Act must adhere to the national objectives as captured in the Budget Policy statement coupled with the application of fiscal responsibility principles as demanded by *Section 107 of the Act*;

- IV. The fiscal responsibility principles as highlighted in the CFSP are geared towards County development goals as captured in the CIDP and National Economic Policy that is the Big Four Agenda. An increment in roads over and above the County Treasury projected ceiling shall defeat the provisions of the *Public Finance Management Act*;
- V. The Public Finance Management Act purpose is to provide for the effective management of public finances by the National and County governments; the oversight responsibility of parliament and County Assemblies; the different responsibilities of government entities and other bodies, and for connected purposes. Adherence to the provisions therein shall give meaning to the Act;
- VI. *Article 190 (2) as read with Article 191 (2) (a)* state that Counties shall operate financial management system that conforms to the requirements prescribed by national legislation and if any legislation enacted by counties are inconsistent with the national legislation on national economic policies, then the County law shall be null and void *ab-initio*;
- VII. The power of the County Assembly to approve or amend the CFSP is well founded in the *Public Finance Management Act*, which Act cannot be read in isolation of other provisions within it. Therefore, any amendments should only be an extent that is not inconsistent with the law;
- VIII. The amendments in relation to ward equalization fund are not justified as there is no national legislation to support it. A County law would fail if there is no national legislation. National economic policy and legislations must start from a national level. Once the ward equalization fund is enacted it can be implemented. Legislations must be enacted to give full effect to the Constitutional provisions;
- IX. The inconsistency of County laws, CFSP and budget in light of the prevailing laws shall invite consequences from the Controller of Budget, the Auditor General and the Commission for Revenue Allocation to the detriment of the public;
- X. *Article 258 of the Constitution* provides that it shall be construed and interpreted in a manner that promotes its purposes, values and principles, advances the rule of law, human rights and fundamental freedoms in the Bill of Rights and that contributes to good governance.

Based on the above reasons thereof, it is not possible to effect the proposed changes in the County Fiscal Strategy Paper 2019 as per the request.”

Dated 18<sup>th</sup> day of April 2019 and signed by His Excellency Hon. Jackson Kiplagat Arap Mandago, EGH, Governor Uasin Gishu County.

Leader!

**Hon. Lowoi:** Thank you very much, Mr. Speaker Sir. I rise on a point of order. This House is a House of rules and procedures. We all swore to stand and abide by the Constitution of this Country 2010, the County Governments Act and the Public Finance Management Act and all the Acts approved and which are in use in this Country.

Mr. Speaker Sir, is it in order for his Excellency the Governor to send memorandum on a Motion especially on that Motion that we approved report on the committee on budget on CFSP? The standing order only gives us guidelines on how a memorandum on a Bill comes back to this House but I am just asking this, Mr. Speaker Sir, is it in order for a Memorandum to be raised on a Motion on a report? Thank you.

**The Speaker** (Hon. David Kiplagat): Thank you, Leader of Government Business. Given that this is a weighty matter we can allow three other Members to contribute on the same so that we can make a ruling from the Chair.

Honourable Hillary!

**Hon. Rono:** Thank you so much, Mr. Speaker, for giving me this opportunity. What the honourable Member or the Leader of Majority has just said is actually of great concern. According to the Standing Orders of this assembly and also the laws, there are no memoranda for policies. The only thing that we expect his Excellency the Governor to return to this County Assembly as a memorandum are only Bills. I do not understand why this happened. Currently in the Senate there is a Bill of County Attorney and that is where we are lacking in the County government of Uasin Gishu. The County Attorney of this County government is actually not advising the County executive well. This is not possible and as a County Assembly where laws are made, we are supposed to follow these laws. I support the Leader of Majority and I am saying that, that is not admissible in this County Assembly and let the executive be informed that the due process must be followed and that memorandum in this County Assembly is null and void.

Thank you.

*(Applause)*

**The Speaker** (Hon. David Kiplagat): Thank you very much, honourable Hillary. Honourable Jonathan.

**Hon. Ngetich:** Thank you, Mr. Speaker Sir. I want to support what the Leader of Majority pointed out that it is not in order. I also support that it is not in order for the purported memorandum to be committed to any committee in this House because the County Governments Act stipulates and states the Bills the Governor is supposed to write memorandum in case of one or two Bills. That case includes Finance Bill, it includes the Appropriation Bill. It also includes the budget, but when it comes to policies there is no express provision in the Constitution, in the County Governments Act or in the PFM Act 2012, that gives room to the executive arm of the government to write memoranda.

Mr. Speaker, having listened keenly to what you read, you will realise that it pertains to what we approved in this House. That is the CFSP. According to the law which is the Public Finance Management Act 2012, together with its regulation of 2015, it is very clear and express that the executive arm of the county government will give proposals on the CFSP and the Assembly will discuss and approve and all that has been approved by this House shall be followed; it shall be considered by the executive arm of the county government. Therefore the best option that could have been better because budgeting and CFSP is a consultative and negotiated document that could have been a better approach for that. For now it is water under the bridge because the policy has been approved. For it to be admitted to this House again it might require that it is introduced after six months. At this point I believe that the executive arm of the county government will follow what was approved in this House.

Thank you, Mr. Speaker.

**The Speaker** (Hon. David Kiplagat): Thank you very much, honourable Jonathan. Honourable Korir.

**Hon. Korir, K:** Thank you, Mr. Speaker. I also want to support what the Majority Leader has said. I was keenly listening to the memorandum of his Excellency the governor and heard that he is rejecting the proposal of this motion that we passed in this assembly that we requested. I want to say that I do not think we requested to have 60% or 40%; we discussed it as an

assembly and passed it as a motion. We followed the due process because that is the law and regulation of this House. We did not beg for anything; we only wanted to follow the law and ensure that the 40% goes to the wards. Why should he say that he has declined to our request? Thank you.

**The Speaker** (Hon. David Kiplagat): Thank you very much, honourable Korir. Honourable Muya.

**Hon. Muya:** Thank you very much, Mr. Speaker. From the onset, I want to thank my Almighty God for the care he has taken upon my life since we went for the recess and I have come back re-energized and focused on what we are doing.

Mr. Speaker, I rise to support what the Leader of Majority has observed. I equally observed the same when you were reading the memorandum from his Excellency the governor. It rung in my mind that, as one of the speakers has just said, what we are lacking is somebody with legal background to advise the executive on what is in the law and what is not within the law. That lies specifically in the office of the County Attorney. This is not one of those we are calling love letters because it has come once again from the executive and is a high time that they be informed of what they are supposed to write in a memorandum because they are acceptable on bills and what they are supposed to follow.

As a deputy chair of Budget and Appropriation, I want to state here that budget-making process is a negotiated process which, from the onset, the executive and the County Assembly are encouraged to move together. Indeed our able chair of Budget and Appropriation did request from the CEO of the county for the same but it has not come to pass to date. We have gone to an extent of trying to see the views of common mwananchi, the residents of Uasin Gishu which we captured when we went to the ground for public participation on the same.

It is surprising that it is as if the executive wants to go against the will of the people and therefore as an Assembly that is mandated to guard the people of Uasin Gishu, the county Fiscal Strategy Paper being one of the tools that is very important in the budget making process and once passed by the Assembly, the law says that the CEC in charge of Finance and Economic Planning will not have an alternative but to follow in the budget-making process.

Mr. Speaker, the issue of coming up with a memorandum on a document that has been legally passed by this House can only be reviewed after six months as per the Law. We do discourage this by encouraging them to negotiate and be in touch with the Committee in charge which is the Budget and Appropriation committee. Therefore, I think that this is time-barred and two it is not legally captured anywhere in the Law that we are supposed to admit such a memorandum because we did not request but we just legislated on what needs to be done.

I totally support 101 percent the observations of the Leader of Majority who happens to be the Leader of Government Business. Thank you.

**The Speaker** (Hon. David Kiplagat): Thank you very much, Hon. Muya. Hon. Whip.

**Hon. Singoei:** Thank you, Hon. Speaker, for the opportunity you have granted me also to say something in regard to the memorandum that was sent to the House by H.E Governor. Ordinarily we would ignore that memorandum under normal circumstances and nothing would happen but the author of the memorandum is the Governor of Uasin Gishu. What that means is that the Governor is not intending to implement what was passed in this House regarding the budget estimates and that is why I want to agree with the Leader of Majority for

questioning the legality of that memorandum. I think if there was a time that our Governor should fire somebody is this time; he should fire his legal advisors because they have failed him terribly.

Hon. Speaker, we have passed so many Motions in this House and we have never received a memorandum from the Governor that he was not going to implement them. It is only today that we have received a letter from him telling the County Assembly that he was not willing to implement. I remember very well that as Members of the County Assembly we sought audience with His Excellency with the aim of discussing the CFSP before it was even formulated but it did not happen. We had requested for discussion before going to public participation. It is not a question that we did something wrong. When that document was received it said 'we are seeking the approval of the Assembly with or without amendments.' Now when we amend something it becomes illegal. How? How? Because it is written with or without amendments. So, for the Governor to say that he is not willing or accepting it then it is not a failure from our side but from his Executive Members, more so the Executive Member in charge of Finance failure to negotiate with the Committee and also other departments to negotiate what needs to be done.

I want to say that for many years now the Executive has not taken care of the public because every time they take a document to the public it is brought back the way it was. We do not see the minutes and it is only this Assembly that comes back with minutes on what the public are saying. I think it is a wake-up call that if they are not going to heed what the public wants, then we will because we are the representatives of the people.

Hon. Speaker, I want to request that as an Assembly we also write an advice and not a resolution because we already passed one; just an advice to them about what this letter means. That is my advice. Thank you.

**The Speaker** (Hon. David Kiplagat): For gender sensitivity, Hon. Sara.

**Hon. Malel:** Thank you, Hon. Speaker, for giving me this opportunity. I want to support what the Leader of Government stood in this House to question the legality of the so-called memorandum before this House. When I came into this House, I was sent by over 80, 000 residents of Kimumu ward who I represent in this House and when I come here to represent them, I must carry their interests at heart to legislate and do anything on behalf of electorates who sent me to represent them in this House. The Paper in question in this House today, which is the Governor's memorandum, has gone through the legal process to be arrived at. This Honourable House has pronounced itself in regard to that document; your good office facilitated us and the entire management of this County Assembly - the staff to go back to the public to establish whether what the executive brought to us was what exactly the public demanded during the first public participation when the document was taken to the ground.

I could have been a happy Hon. Member today standing here if the Governor's memorandum was accompanied by the minutes which the electorates pronounced themselves during public participation. We went through your office and you facilitated us to go back with the document to the public to ascertain whether what was in the document was right but we found that what the electorate gave during the public participation done by the executive had not been captured. It is the duty of any Hon. Member in this House to represent millions of Kenyans living in this county that we have left at home and we came to this August House to legislate on their behalf. We carried their aspirations and made sure that their expectations have been captured here and it will be injustice to the people who represent if we do not carry their interests at heart as all leaders in office because they have been given the mandate by the people to represent them.

Hon. Speaker, I join the Majority Leader in saying that the memorandum before this House today does not meet the threshold because we followed the due process and we expect nothing short of what this County Assembly passed. We have to set the precedent so that in future Laws in this County must be followed to the letter.

**The Speaker** (Hon. David Kiplagat): Thank you very much, Hon. Sarah.

Honourable Members of this august House, in terms of the Memorandum of the Governor; he has raised very weighty matters that need to be considered and the office of the Speaker through the advice from our legal department, we shall be able to respond on the Memorandum appropriately.

*(Applause)*

Otherwise looking at the subject matter on a Memorandum, if you look at the County Governments Act, that is the only place that talks about a Governor's Memorandum and I hereby want to read it;

*The County Governments Act, Section 24; Assenting to a Bill*

- (1) The Speaker shall, within fourteen days, forward a Bill passed by the county assembly to the governor.*
- (2) The Governor shall within fourteen days after receipt of a Bill—*
  - (a) assent to the Bill; or*
  - (b) refer the bill back to the county assembly with a memorandum outlining reasons for the referral.*

So it is very clear that the only instance where the Governor's memorandum is entertained is when it comes to Bills. Once a Motion has been passed, it is final and it can only be re-introduced; and I want to bring to the attention of Members the Standing Order No. 46 (1) *No Motion may be moved which is the same in substance as any question which has been resolved (either in the affirmative or in the negative) during the proceedings six months in the same session.*

So, it is very clear that the CFSP was adopted by this House through a Motion and any other re-introduction is time bound. Therefore, what I want to assure the Members is that the office of the Speaker together with the legal department will draft appropriate response on the Governor's Memorandum.

Thank you very much.

*(Applause)*

## **NOTICES OF MOTION**

### **ADJOURNMENT MOTION**

**The Speaker:** Leader of Government Business!

**Hon. Lowoi:** Thank you very much, Mr. Speaker Sir:

Pursuant to Standing order No. 25(3) and its adopted calendar this Honourable House do adjourn its sittings for one day, on Wednesday 24<sup>th</sup> April 2019 in order to allow Honourable Members to attend the Public Participation for two Bills that is due on Wednesday; The Uasin Gishu County Disaster Management Bill, Bill No.5 of 2018 and Uasin Gishu County Equitable Development Bill, Bill No. 10 of 2019.

Thank you.

**The Speaker** (Hon. David Kiplagat): Thank you very much. The Notice of Motion has been given and is properly now in the House.

**The Speaker** (Hon. David Kiplagat): I want to make a ruling on Motion No. 8. I want to defer for purposes of other business pending before us and it will be rescheduled by the House Business Committee within this week. So, Motion No. 8 is hereby referred to the House Business Committee for rescheduling.

Leader of Government business!

## MOTION

### ADJOURNMENT MOTION

**Hon. Lowoi:** Thank you very much, Mr. Speaker Sir. I wish to move the following Motion:

Pursuant to Standing order No. 25(3) and its adopted calendar this Honourable House do adjourn its sittings for one day, on Wednesday 24<sup>th</sup> April 2019 in order to allow Honourable Members to attend the Public Participation for two Bills that is due on Wednesday; first Bill is the Uasin Gishu County Disaster Management Bill, Bill No.5 of 2018 and the second Bill is the Uasin Gishu County Equitable Development Bill, Bill No. 10 of 2019.

Mr. Speaker Sir, these two Bills are very important and these two Bills need the input of the Members of this House to go and guide the public on how we should carry and deliberate on these two Bills.

Mr. Speaker Sir, this House requires a quorum to run but because tomorrow we are all going to our various Wards to go and listen to the public and also tell them what is contained in these Bills, that tells us that we cannot have a quorum to run this House tomorrow. In this regard, we are asking for an adjournment tomorrow so that it can give us time to attend, to sit with our people, listen to them, talk to them and also get their views concerning the two Bills so that when we come back on Thursday at least we will have collected their views and from there it will facilitate the committee of Budget and Appropriation in making their reports on the Equitable Development Bill and also the Committee on Environment, Water and Natural Resources to make report also on the Disaster Management Bill.

Mr. Speaker Sir, I am asking the Members to support this adjournment because we all know that tomorrow will be a busy day for all of us. I move this Motion and I call upon Honourable Joel Rugut to second.

*[The Speaker (Hon. David Kiplagat) left the Chair]*

*[The Deputy Speaker (Hon. Hosea Korir) in the Chair]*

**The Deputy Speaker:** Honourable Member for Kipsomba!

**Hon. Rugut:** Thank you, Mr. Speaker. I second.

**The Deputy Speaker:** Thank you. Honourable Members, a Motion has been moved and seconded and therefore I propose a question.

*(Question proposed)*

**The Deputy Speaker:** Ensuing debate, Honourable Members. Honourable Member for Cheptiret/Kipchamo Ward!

**Hon. Tenai:** Thank you, Mr. Speaker Sir, for allowing me to support the Motion moved by the Leader of Majority. Article 196 of the Constitution gives power to the County Assemblies to facilitate public participation and involvement in the legislation and any other business of the Assembly.

Mr. Speaker Sir, one of the businesses of the Assembly that we are intending to do is to enact a legislation that guides on equitable development Bill. This Bill's origin is the County Assembly. The Disaster Management Bill's origin is also the County Assembly.

Mr. Speaker Sir, I find it prudent that this House should actually adjourn for purposes of making sure that the two Bills are discussed through the normal process of public participation because gone are the days when resources are not spread as intended by the Constitution. This Bill on equitable distribution of resources will actually assist all the Wards to have equal development.

Number two, Mr. Speaker Sir, on the Bill of disaster management, recently we had a lot of issues to do with shortage of water and it was becoming a disaster in each every village. Mr. Speaker, I find it also very important that this Bill should be subjected to public participation for purposes of us having mitigating solutions when such disaster occur.

I do support the Motion.

**The Deputy Speaker:** There being no other contribution over the same, Honourable Members, the House stands adjourned until Thursday at 2:30 pm.

The House rose at 4:00 pm