

MOMBASA COUNTY ASSEMBLY**HANSARD REPORT**Tuesday, 28th June, 2016

The House met at 2.36pm.

*(Hon. Speaker (Mr. Thadius Rajwayi) in the Chair)***PRAYERS****Hon. Speaker:** Hon. Members have your seats.**Hon. Kasangamba:** Ahsante sana Mheshimiwa Spika. Mheshimiwa Spika kulingana na tamaduni za Nyumba hii ni kwamba kiti cha kiongozi wa Walio Wengi huwa upande wa kulia Mheshimiwa Spika.

Lakini leo hii naona Mheshimiwa Mwidani amekalia kiti changu bila kuniarifu jambo lolote ama chochote. Mheshimiwa Spika naomba utuelekeze kwa sababu sijaelewa kwa nini anakalia kiti changu.

Hon. Speaker: Yes Hon. Meti.**Hon. Ebrahim Omar:** Mheshimiwa Spika nashangazwa na maneno anayoongea Mheshimiwa Abdallah Kasangamba kuuliza Kiongozi wa Walio Wengi wetu Hamisi Musa.

Kwa sababu nafikiri Mheshimiwa Spika tokea wiki ya jana kuna mawasiliano kutoka kwenye chama chetu cha ODM ya kwamba chama imekaa ikabadilisha Kiongozi wa Walio Wengi Bungeni kutoka Abdallah Kasangamba kampa Hamisi Musa Mwidani.

Mheshimiwa Spika mawasiliano hayo yalifika kwenye meza yako na mimi kama Kiranja wa Bunge hili nilichukua jukumu langu kukuletea na wewe pia ukatusomea mawasiliano hayo.

Kwa hio sioni tatizo lolote kuhusu Mheshimiwa Hamisi Musa Mwidani kuketi kwenye kiti chake kama wanachama walivyoamua mheshimiwa Spika.

Kwa hio namuomba ndugu yangu aangalie mahali popote alipo makini napo aweze kukaa ili Bunge letu liweze kuendelea na zile hoja za leo Mheshimiwa Spika.

(Applause)

Hon. Speaker: Yes Hon. Jabess Oduor.

Hon. Oduor: Bwana Spika nashangaa na matamshi ya kakangu mdogo Meti.

Nadhani moja wapo ya matatizo ambayo yanatukumba Mheshimiwa Spika bila kuogopa kusema ni kitu kinaitwa uwezo wa watu kuelewa maandishi ya mistari miwili ndani ya sheria za Bunge huwa inakua ni tabu.

Bwana Spika mimi nilikuwepo ukitoa uamuzi ndani ya Jumba hili ilisemekana *status quo* ibakie; neno *status quo* yamaanisha jinsi mambo yalivyo yabakie vile, vilevile tuingia kwenye Jumba hili Abdallah Kasangamba alikua Kiongozi wa Walio Wengi Bungeni na *status quo* ni abakie, na mwelekeo wako ulikua ni sharti fungu la kumi na tano la sheria za Bunge Bwana Spika.....

(Interruption)

Hon. Speaker: Can you allow interruption from Hon. Maimuna?

Hon. (Ms.) Maimuna Salim: Mheshimiwa Spika nimesimama mbele ya Nyumba hii nikijua wewe ni Spika wetu na tulikuchagua uko na hekima lakini nashangaa kwamba hapa palitokea *suspension* za watu wawili leo nashangaa namuona Jabess yuko ndani ya Bunge anaongea ikiwa Mheshimiwa mmoja ambaye walipata *suspension* wote hajaingizwa katika Bunge hii...

(Applause)

Kwa hivyo nilikua naomba Mheshimiwa Spika wewe ni *referee* tuangalie ni jinsi gani tutaamua hii tafadhali...

(Interruption)

Hon. (Ms.) Akinyi: Point of information!

(Hon. Speaker on his feet)

Hon. Speaker: Yes Hon. Kasangamba can you find somewhere and have a seat the Speaker is up! Now ladies and gentlemen I want to put it this way, those who are standing can you have your seats...

(Loud Consultations)

Hon Duncan, Hon. Kasangamba can you have your seats Hon.....

(Applause)

The position of the Leader of Majority in the County Assembly or any Assembly is supposed to be on the right hand of the Speaker and that's the Standing order, so I doubt whether you should start fighting for that particular issue that you are fighting is it going to help us anyway? and am really asking myself this simple question why are we fighting over power? and I always say this, when you were elected from ward x whether Mjambere, Mtongwe, Ganjoni whichever one, you were elected to perform primarily three functions and those are the things we are supposed to do; basically representation, we are supposed to be legislating, we are supposed to be doing a oversight role and the Kenya today is very different from the Kenya you used to know yesterday or the day before yesterday so don't think that when you start quarrelling over small matters you are going to get elected based on those grounds.

You will not get votes because you are the chairman of a certain party or even chairman of a certain committee or even a Chief Whip, that will not get you back in this Assembly and it is important for us to know and I said it very clearly that party matters must not be brought in the House....

(Applause)

You go sort yourselves out there and bring those issues when you are now clean if you are dirty do not force us to clean you in front of public like this.

This is a public institution where in fact it is if it was my wish I would open all these walls so we can be seen the way I used to debate when I was in Polana so that people can see us.

We are Hon. Members but we are behaving horribly! I think for once ladies and gentlemen I told you here sometime last year that it is not a must that I must be the Hon. Speaker of this great

County, if am supposed to preside over things that are not respectful, I better be home and do other things than to come here and start you know...

Let me just remind you once again that you misbehave I will not hesitate with you because I know where you belong and I know where I belong, this is one government one people. Can you allow the proceedings that are there in the standing order to take effect?

COMMUNICATION FROM THE CHAIR

(Hon. Mswabah Rashid and Abdallah Kasangamba consulting on sitting arrangement)

Hon. Speaker: Yes what is it?

Hon. Mswabah Rashid: Mr. Speaker I think there is an impasse in this House and it's only you who can solve that problem.

We have got two people here; both of them claim they are the Majority leader Hamisi Mwidani and Abdallah Kasangamba so we want to hear from you, who is the Majority leader of this House...

(Applause)

We cannot come here and debate the same thing every day. tomorrow it will be the same the day after tomorrow it will be the same so we want to hear from your mouth Mr. Speaker, who is our Majority Leader in this House tell us today and we finish this problem for once and for all.

(Applause)

(Speaker on his feet)

Hon. Speaker: I want to believe we have the order paper with us so we are going to convert our order paper as it is; and first of all I have a communication. Both those Hon. Members who are standing can you all have our seats.

(Hon. Mswabah Rashid moved to the next seat paved way for Hon. Kasangamba to have first right hand seat)

(Clapping)

(Laughter)

So ladies and gentlemen before me am having two petitions and today's business is a matter that we need to consider as soon as possible and, the organization called LENGGO is a local empowerment of good governance, it was addressed to the Clerk and it was received today on the 28th day of June 2016.

'Petition to the County Assembly of Mombasa on the matter of public participation on the County budget estimates of 2016/2017 and the Mombasa County Appropriation Bill 2016 scheduled for 27th day of June 2016.

We the undersigned CSOs and members of the public; Kituo Cha Sheria, Transparency International Kenya (TI-KENYA), Haki Yetu ,Pamoja Trust, Ujamaa Center, Juhudi Support Center, Muslims For Human Rights (MUHURI), Center For Law And Research International (CLARION), Bigship CBO, Local Empowerment For Good Governance (LENGGO), KECOSCE, Coast Education Center, Kwacha Africa among others hereby petition the Clerk of Mombasa County Assembly on the above matter.

We hereby contest that public participation did not take place for the above scheduled date, we therefore cite the following contraventions of both the constitution of Kenya and County government Act and Public Finance Management Act, I think it must be of 2012 because we have different Acts there in that regard.

1. Article 33 (1) and 35 (1) of the constitution of Kenya regarding access to information held by the state whereby the Mombasa county assembly, failed to provide vital data, documents and other relevant information in good time (Mombasa County Budget Estimates and the Mombasa County Appropriation bill, 2016) to the general public.
2. Article 196 1(b) with regards to the public participation and County Assembly powers, privileges and immunities whereby, the County Assembly failed to facilitate a proper public participation process - by among other things, not furnishing the public with the documents under review in good time; by refusing, rejecting and/or failing to provide the county appropriation bill, 2016; furnishing ineligible copies of the budget estimates to the public in bad time.

3. Article 201 regarding the principles of public finance where the County Assembly failed to facilitate an open and accountable process in deliberating the Mombasa County Budget Estimates and the Mombasa County Appropriation Bill, 2016.
4. The County Assembly contravened section 87 of the County Government Act with regards to principles of citizen participation whereby it failed to provide in time access to information, data, documents and other information relevant to the public participation process. Moreover, the County Assembly failed to provide reasonable access to the process of formulating and implementing policies and regulations including the approval of development proposals, projects and budgets.
5. In its dispensation of duties in regard to the above subjects matter, the County Assembly of Mombasa contravened Article 131 (2) of the Public Finance Management Act 2012 which states that before the County Assembly considers the estimates of revenue and expenditure, the relevant committee of the County Assembly shall discuss and review the estimates and make recommendations to the County Assembly, the committee shall take into account the views of the County Executive Member for finance and the public on the proposed recommendations.
6. The manner in which the County Assembly organized the above stated public participation space for the public. A public participation meeting for a county with a population of approximately 1 million residents cannot be organized in only one venue. This in our view would not have provided wider consultations with the public therefore breaching their participation rights.

THEREFORE, by failing on the above, we assert that we have been robbed of our powers of self-governance and participation in making decisions affecting us and thus demeaning the principles and objects of devolution as stated in chapter 11 Article 174 of the constitution of Kenya.

Nothing that the county budget cycle ends on the 30th of June 2016, we hereby ask for a way forward within the next working day (24 hours).

Yours faithfully.

For; the undersigned'

(End of Communication)

Ladies and gentlemen for the undersigned here am having three pages I want to believe from different organizations, we have one 18 members, another one 20 members so if you allow me very fast read this so that you don't add or remove those names that are considered as signed, you will have to excuse me because we have some handwriting here that is really wanting, first one is;

1. Akullah Khamisi
2. Evans A Okal
3. Swaleh Mohamed
4. Jared Ogeto
5. Maimuna Siraji
6. Mart W Maina
7. Anne Rose
8. Rose Wakesho

The list is a bit long up to 32 but it is important I have stated a number of individuals who signed this so I want to believe nothing can be added, the first page 32 second page 18 third one 20 and the forth one is also 18.

Ladies and gentlemen this particular petition you will agree with me that the concerns that have been raised here are genuine very valid and we don't have any other option but to speed up so that we can see how best we address that particular concern but the most worrying thing is that as the Hon. Members of these Assembly I will not shy away from reminding us that we are a big letdown when it comes to involving the public on the matters of these magnitude because these is a very simple thing that we ought to have cleared since last week so it is important we consider that particular one and I want to believe Hon. Patrick Siminyu has been from the same organizations, Hon Jimmy Odari, the Speaker himself so we cannot pretend that when they raise these issues they are always sweeter when you are on the other side but when you are on this side they are now bitter we must address these particular issue.

The second one again another petition again on the same matter I want to believe that the two petitions can be considered forthwith and the issues raised are almost the same, basically about public participation so am directing that Delegated Legislation together with the

Committee of Budget and Appropriation Finance kindly make sure this particular issues raised are considered within a period of 24 hours as has been said from this particular time making this submission meaning by tomorrow we must conduct a public participation and you must involve the public in this and I want to see that one done, so you are directed to move with speed and make sure that is done.

Yes next, yes Hon. Ebrahim Omar.

Hon. Ebrahim Omar: Ahsante tena Bwana Spika. Bwana Spika mimi bado niko kwa yale mawasiliano ambayo chama ilikupa kwa sababu hapa kwa Nyumba waheshimiwa wanachanganyikiwa na pia umma umechanganyikiwa.

Kulikuwa na ule uamuzi ambao chama ilifanya kuhusiana na Kiongozi Wa Walio Wengi Bungeni.

Mheshimiwa Spika kama alivyoongea Mheshimiwa Mswabah kwamba kuna watu wawili wanakorogana kuhusu yupi ni Kiongozi wa Walio Wengi Bungeni kati yao wakati chama kishatoa mwelekeo na yale mawasiliano ambayo nilikupa niko nayo hapa *copy* labda nikupe tena *copy* kama hii uangalie vizuri kuwa chama ni imeamua aje kuwa ni yupi Kiongozi wa Walio Wengi Bungeni ama ni yupi Kiongozi Wa Walio Wengi Bungeni wake na wewe Mheshimiwa Spika kama *referee* wetu naomba uheshimu uamuzi wetu wa chama na ututangazie sasa hivi kama inawezekana ili tujue katika Bunge hili ili tujue Kiongozi wa Walio Wengi Bungeni ni yupi.

Kwa sababu tunajua kesho tunaenda *public participation* lazima tuwe na Kiongozi wetu wa Walio wengi tujadili naye tupange ni njia gani tunaweza tumia kwa *public participation* hio ili tuwape watu wa Mombasa ripoti nzuri kulingana na bajeti yetu Mheshimiwa Spika.

Kwa hivyo naomba kupitia kiti chako utupe jibu na jina la Kiongozi wa Walio Wengi Bungeni wa Mombasa ni nani na mimi ningependa nikupe hii *copy* Mheshimiwa Spika uangalie uamuzi wetu wachama cha ODM na mimi kama Kiranja wa Bunge nimechukua jukumu langu la kukuletea barua hii kama nilifuata zile *orders* ulizonipa kwamba tutengeneze kamati ya *Ad hoc* ili itupe jibu Kiongozi wa Walio Wengi Bungeni ni yupi nae ni Hamisi Musa Mwidani kama ulivyomtuma kwenye ile kamati, na pia vile vile kulingana na Kiongozi wa Chama na sisi

wenyewe wanachama katika uamuzi wa pamoja tuliamua Kiongozi wa Walio Wengi Bungeni ni nani.

Kwa hivyo Mheshimiwa Spika ripoti ndio hii hapa naomba tafadhali kupitia kiti chako ulifungue macho Bunge hili ili tujue mbivu na mbichi kuhusu ni yupi Kiongozi wa Walio Wengi Bungeni wa Mombasa na naomba kama yawezekana nimpe Karani wa Bunge tena...

(Hon. Omar Ebrahim laid paper)

Hon. Speaker: I just want you to listen to this; I'm going to read based on the issue that has been raised by Hon. Ebrahim Omar, the same issue had been raised by Hon. Mswabah who is the Deputy Speaker and its good that you are asking that question when the Chair himself gave a directive last week that we need to stop the habit of wrangles and I want you to listen.

When I woke up this morning at around 4:37 am in the morning I decided to go to social media to see what is happening there in the outside world, I read something and that thing touched me and I want to read it to you so that you can also share the same sentiments with me and see whether we are on the right track or in a fake one, this letter is a shared one and it is written urgent letter to my brother Kenya in appeal.

(Hon. Speaker read an extract of letter)

Hi Bro, My name is Rwanda. Your small bro, this letter is a bit long, anyway how are you? Hope you are good, just like Me. Bro, its long since we talked but this letter is urgent! You have to do what I say.

Bro, in April 1994, the worst happened to me after the death of my president, Juvenal Habyarimana, who was a Tutsi, my people went totally crazy! You see, Tutsi and Hutu were the major tribes that I had. Now, the Hutu were smaller than the Tutsi and the Tutsi had held on to power for so long! In April, 1994 madness began!

After fierce campaign propaganda by the angry Hutus, who wanted power too, I watched as the Hutu bought 581,000 machetes (Panga's) from China. I helplessly watched as the Hutu also bought rocket launchers, mortar bombs, grenades and ammunition worth £18M from Egypt.

My heart was beating. My soul was scared. I watched, with sadness and fear, the media spreading false propaganda, lies and innuendo to the public, I even watched the Church preaching hatred, ethnicity and war. I couldn't believe this was happening. The stage was set for War. My children were getting prepared for the worst, hate leaflets were being spread. The Hutu were getting armed, the Tutsi were getting scared.

And one sad morning, it happened! I heard children screaming! I saw women crying! I had men wailing, my heart almost stopped, within a 100 day, my children turned into animals! They butchered each other! Slaughtered each other, ambushed each other I watched as 1,000 Tutsi children were burnt alive in a Polish Catholic Church, I watched as 2,500 Tutsi men were bombed to death while hiding in a tiny, crowded Church!

I watched sadly as around 250,000 girls were mercilessly raped and beaten to death, I watched as 400,000 Tutsi men lost their manhood after it was cut in public by the Hutu, I watched as 2,000 women were thrown into a pit of fire like dead houseflies, I watched endless rivers of blood flow in my streets, I watched children crying, children mourning their parents, children being slaughtered with machetes, I watched as USA President, Bill Clinton and the U.N peace keepers ignored me letting me destroy myself!

I knew that was the end of me. It was sad! Painful! Unbelievable! For 100 days, my children did the worst! It was blood, tears, sorrow, pain, death and agony. Finally, I had lost a million people in just 100 days when the madness stopped. I knelt down and thanked God!

They were fighting for a politician! Fighting for a tribe! Fighting for power! But what did they gain? Nothing! Absolutely nothing! Until today, I have never recovered from the madness! I have so many scars, so much pain!

Dear brother, I see your people are holding elections in the coming days. I see you guys are getting ready! I see two major tribes the Luo and Kikuyu that have the major presidential candidates.

Take my word whatever happens, whoever wins, whoever loses, whether they rig or not whether the loser accepts the results or not, whatever they tell you whether they incite you or not. Whatever grudges you may have toward the winning tribe or candidate I ask you in the name of

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God please, do not do what my people did, do not burn the church, do not rape a woman, do not slaughter a child, do not use a panga, take it from brother if you dare do that I will never forgive you and you will never be the same again.

I would never wish that any country goes through what I did! Never! Kenya you are bigger than any tribe or any politician. Kenya have a fun and peaceful election. Love, Rwanda.

(Hon. Speaker ended reading the extract of the letter)

Ladies and gentlemen, I have decided to read that particular message that has been shared to us, I know you have it yourself.

I just want to tell you one thing, let us not fight for power, I want to ask each one that we must not generate it from here, we are one thing and I am asking myself why are you generating it? Why are you starting it? It's very simple to me as far as these particular issues are concerned and immediately when I made a ruling last week it was a very fine clear ruling and what happened because you agreed never listened and you decided to start, phone calls have been made from different counties to the candidates and now to the whole world which is contrary to a directive that was given by this particular important seat when I read it ladies and gentlemen.

I received the letter that was forwarded to me by the Chief Whip of this same Hon. House, I read it out and the letter is still here with me and the only name that is carried here as the Leader of Majority in the House is Hon. Hamisi Musa Mwidani which I mentioned....

(Applause)

A question that I asked myself, what happened there after? Now because you don't believe in yourself do not make people believe in you if you cannot trust yourself. If a communication has been done, that particular communication stands as it is made.....

(Applause)

And if you make your own problems as a party and I repeated this, I will never be used to make a decision for a party that I said and am going to desist and even right now I am not going

to start telling you who is going to be your next Leader of Majority tomorrow, that is not my mandate as the Speaker

(Applause)

It is very simple that any communication that we must get we read it as it is.

All the operations that you will want to do as a party that is within your party structure and I want you to respect this Assembly and if you don't respect the Assembly, this is where people elected I will invite all people who are outside to come and see how you are misbehaving in this Hon. House because to me you are not elected alone, no single vote elected you many got elected even those people that you defeated are now depending on you as a father, and as a leader you must provide leadership and that not all the time when you stand, you stand on removing so and so, each and every time you stand you stand on doing something on another person am waiting to see those people who are going to stand out and start appreciating that the things that we approve and pass at CIDP this is the much that we have achieved, this is the much that is remaining.

We cannot turn on each other, we cannot turn on our own brothers and we must stop misery we are all equal.

We have developed the attitude of making others more important than others in this Assembly and we have made others to be like semi laws in the way we operate and that must stop and am just pleading with you, can you think beyond what you are doing, just think beyond the box and make sure that you do whatever is required of you, that is my humble request to you and if you are defeated to do that, I think we have a better way and I will advice you very soon that this is the direction that we can take as a government and for that matter I am not going to entertain any other business apart from what is in the order paper.

PAPER

There was a business that was interrupted even though it did not come before the communication; Hon. Priscilla you were to give the report on this you were the one who was interrupted between you and Chief Whip you let me understand.

Hon. (Mrs.) Prischillah Mumba: Thank you Mr. Speaker but I have my Chief Whip in the House I think I will respect according to our party structure so that he can deliver the message.

Hon. Speaker: I doubt whether this is a party matter but it is ok maybe that's your own arrangement.

Hon. Ebrahim Omar: Thank you again Mr. Speaker I do also believe the order in the paper was to get a report concerning the matter of Leader of Minority but Hon. Speaker the party... am still consulting under the issue..

(Interruption)

Hon. Speaker: I am reminding you there is no party and you people be honest with yourselves there is nothing to do with the party here, there is no party called Minority in this House...

(Laughter)

Hon. Ebrahim Omar: As to what the party was consulting about is that they have still chosen Hon. Maimuna to continue as the Minority leader

Hon. Speaker: I can see the intervention here...

Hon. Mwabashiri: Ahsante Mheshimiwa Spika. Mheshimiwa Spika katika wiki iliyopita uamuzi ulikua uko wazi na mimi naona ni swala la kujichanganya kwa sababu uliwapa kina mama *privilege* wakae wachague.

Kwa hivyo masuala ya Kiranja wa Bunge yanachanganya; hata kama ni kwa chama, hapa hakuna mambo ya chama mambo ya chama tuliyazungumza yakamalizika yaliyobakia ulitoa uamuzi Mheshimiwa Spika na uamuzi wiki iliyopita kuwa *caucus* wakae na Mheshimiwa Prischilla alikuwa.

Uliwapa siku mbili wakashindwa wakasema waongezewe hadi leo Jumanne, kwa hiyo Mheshimiwa Spika leo ni Jumanne Mheshimiwa Prischillah asimame aseme kama wanawake wametoa jina gani, wameshindwa basi kina baba wachukue hiyo hatua kutoka hapo. Ahsante.

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Hon. Speaker: Yes Hon. Murfad.

Hon. Amur: Mr. Speaker Sir with all due respect you are wise and you have just read for us the things that you saw and to avoid such things be a wise man.

Mr. Speaker I want to say this, when communication is made to your office it is through that communication we believe and stand.

When Hon. Ndanda was removed, he was removed through the communication of the parties and the Members and it was when Hon. Ndanda was removed as the Chief Whip, again when Hon. Mwabashiri was removed it was through the direction of the Members and the endorsement of the party again.

Mr. Speaker for the Minority leader to be removed without the consensus of the majority and the party is not correct Mr. Speaker.

(Applause)

I beg your direction Mr. Speaker.

Hon. Speaker: Now this issue we have moved ten steps ahead and we are going 20 backwards; one you are the same people who moved the motion here, nobody moved a motion.

I doubt whether somebody from Kilifi or Kwale came to this House you are the same Hon. Members who decided to actually bring a Motion seconded and overwhelmingly passed that Motion and now the directive from the Chair was very clear that if you now want and I stopped you from electing a new person that is going to act as the Leader of Minority because I consider two things; one that position is a preserve for the Hon. ladies in the House, secondly, that particular position was created through a Motion where we have a Chair person and we have the deputy Chair person so that provisions can you make good use of them.

And in fact I can even remember you said that in the next possible sitting which is today if the Hon. Ladies do not elect or present a Member you will present yourself the Leader of Minority...

(Laughter)

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And today I wonder what kind of tune that you are bringing on board, I am not going to subject this to debate.

You know I stopped it the other time and even now I am going to stop it, you are not going to elect yourself here; you either go and leave me a name whether you get me any name now am not going to be strict if you get me any name I will get that name and read it, that this is the position of that particular decision that you people are going to make, let me just assure you that that particular business you won't do it here and if you have not done it now I am giving you another directive can you all resume your seats am not going to give you any opportunity to do what you want to do you Hon. Members am giving you not later than Thursday this week to sort out your mess but don't sort it here just do it outside and make sure that you bring a smooth decision.

(Applause)

ADJOURNMENT

Ladies and gentlemen this House stands adjourned until tomorrow Wednesday in the morning exactly 9.00 am.

The House rose at 3:23pm.