



**REPUBLIC OF KENYA**  
**COUNTY ASSEMBLY OF KILIFI**  
**SECOND ASSEMBLY –THIRD SESSION**

**THE HANSARD**

**Tuesday, 2<sup>nd</sup> July 2019**

*The House met at the County Assembly Chamber,  
Malindi Town, at 9:30 a.m.*

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

**PRAYERS**

**STATEMENT**

**HEALTH HAZARDS AT BWAGAMOYO ASBESTOS DISPOSAL PLANT**

**Hon. Shaban:** Thank you Mr. Speaker, Sir. I am standing on behalf of the Chairperson for Water, Environment and Natural Resources hon. Hassan to respond to a Statement sought by hon. Carol Maku Kalume from the Department of Water, Environment, Natural Resources, Forestry and Solid Waste Management.

Mr. Speaker, Sir, allow me to read the Statement which was directed to the CEC (County Executive Committee) Member in charge of the Department of Water, Environment, Natural Resources, Forestry and Solid Waste Management through the Chairperson; Water, Environment, Natural Resources titled Bwagamoyo Asbestos disposal plant:-

Whether the County Executive Committee Member in charge of Water, Environment, Natural Resources, Forestry and Solid Waste Management is aware that the Bwagamoyo Asbestos disposal plant is still operational and that the residents are complaining of pungent smells emanating from the disposed asbestos.

Whether, the CEC is aware that the plant exposes the residents of Mwawesa Ward to health hazards since prolonged exposure to asbestos causes asbestosis and complications in the chest cavity (pleura). Whether the CEC Member with reference to a letter REF:

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CG/KLF/ECM/1/22/VOL.1/95 dated 5<sup>th</sup> May, 2018 petitioned the National Environment Tribunal for revocation of the license of the company.

If yes, what measures is the CECM taking to stop the operations of the company in the said Ward?

Mr. Speaker, Sir, I wish to respond as follows; the Department wishes to state as follows:-

One, that we are aware of the Constitutional requirement under Article 42 of the Constitution of Kenya which guarantees every citizen a right to clean and healthy environment and Article 69(1) (f) and (g) which establishes the process for Environmental Impact Assessment and obligates the state agency to eliminate processes that are delirious to the environment respectively.

Two, that whereas we appreciate the concern raised, the issues raised falls squarely under the jurisdiction of the National Environment Management Authority (NEMA), who are obligated under Section 58 of Environmental Management and Coordination Act, CAP 387, to issue Environmental Impact Assessment license for scheduled project proposal.

Three, that prior to issue of such license, thorough public consultation is required as per the regulation 17 of Environmental Impact Assessment and Audit Regulations, 2003. In order for the Authority to make an informed decision prior to issuance of such license and subject to Regulation 20(1) of Legal Notice No. 101 of 2003, the authority invites comments from lead agencies who may respond as per regulation 20(1) of Legal Notice No.101 of 2003.

Four, that since asbestosis disposal is listed as high risk project under Legal Notice No. 150 of 2016, the project was submitted to NEMA headquarters for processing and the project of such risk does not only require public input but also requires risk assessment, hydrological studies and approval from other state agencies.

Five, that it is only after meeting stringent environment requirements that the project could be licensed.

Six, that once the Environmental Impact Assessment license had been issued, the proponent applied for a license to operate waste disposal site, as per the requirements of regulation 10 of Legal Notice No. 121 of 2006, which was granted by the National Environment Management Authority. Such licenses usually come with conditions of approval which may be varied only by the authority and in consultation with the lead agency.

Seven, that it is only the licensing agency, in this case NEMA, under regulation 28 of Legal Notice No.101 of 2003 has powers to cancel, set aside or vary Environmental Impact Assessment license. This can only happen if technical advisory committee, established under Section 61 of EMCA CAP 378, advises so.

Eight, that if any person feels aggrieved by any decision of the Authority, he may appeal to National Environment Tribunal subject to Section 129 of EMCA CAP 378. If not satisfied by the decision of the tribunal, he may appeal to land and environment court.

Nine, that the Department had looked at all the approvals for the project which had been done within the required legal procedures and so far the Department has not been able to petition the license as stated in initial communication to the assembly CG/KLF/EMC/1/22/VOL/95.

Ten, that the role of the Department of Environment is to ensure compliance with statutory environmental requirements on devolved functions which it has always endeavored to do.

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**The Deputy Speaker** (Hon. Kenga): Thank you. Hon. Carol, are you satisfied with the Response given?

**Hon. (Ms.) Carol:** Thank you Mr. Speaker, Sir. The Response given by the CEC Member for Environment is partly satisfactory because to date the residents of Bwagamoyo Mwawesa Ward are still not happy with the project being in the midst of their village. As we all know, Bwagamoyo is a densely populated village and there is a dump site called Mwakirunge where disposal of the poisonous substance could be done, but I wonder why the Department of Environment is shifting goals and saying that this is the sole responsibility of NEMA. If I can recall, the Officers of the Department went to the site and they were not convinced and also not happy with the project being in the midst of the village. We all know that asbestos is a poisonous substance that can affect livestock, and the health of my people in Mwawesa.

Mr. Speaker, Sir, since the CEC Member has shifted goals and said the only option is to go through a tribunal, I request the Department of Trade to revoke the business license of the person disposing the poisonous substance in the middle of our people. These are residents who brought us to the Office; they are the ones we are representing and it will be very unfortunate if the same County Government will not stand by them and give them the support they need. I stand to revoke the project in Bwagamoyo village because this can affect my people in terms of health and livestock issues. Thank you, Mr. Speaker.

**The Deputy Speaker** (Hon. Kenga): Thank you. The Member for Mwanamwinga.

**Hon. Pascal:** Thank you first for giving me this opportunity to stand and support the people of Mwawesa and more so the Member representing that ward. The fundamental role of the County Government is to take care of the plight of its citizens. Listening to what the Member was putting across and looking at the Response which has been brought before this House, I think there is a lot to be done by the County Government to ensure that it takes care of its people. I do not think public participation was done on this project because the same people who could have contributed on the same during the implementation could not be today having some complaints. Therefore, we need to go by the proposal of having a tribunal, and then we give powers to the Committee to go down and probably take the views of the people and bring back findings to this honourable House.

Mr. Speaker, a whole CEC Member cannot start shifting goals and say this is a responsibility of the National Government yet we have a stake in the plight of our citizens. We cannot stand here as leaders, looking at people and animals suffering and then we say this is not our mandate. I think we have a stake and we have to take action against that and if we move in that direction, we will be better placed and go into good records as good protectors of the Law. I do not think it is fair for the CEC Member for tell us this. Let him give us the steps that they are likely to take as a Government so that we can bring this to a stop.

The other time it was about Athi-River and we discussed and they went ahead to take note of the issues affecting the common *wananchi*. If these people want to stay there, then they have to address the health hazards that are actually eating into people's mind. I stand to support so that an amicable solution can be found. Thank you very much.

**The Deputy Speaker** (Hon. Kenga): Thank you. The Member for Sokoke.

**Hon. Thaura:** Asante mheshimiwa Spika kwa kunitunuku muda huu. Tumesikiza kwa pamoja majibu aliyotoa Bw. Waziri na ni wazi kwamba haya si majibu ambayo yanaweza kutosheleza kulingana na matarajio aliyokuwa nayo mheshimiwa. Nikizungumza kama Mwenyekiti wa Afya nafikiri ni jukumu la Serikali kuhakikisha ya kwamba wananchi wake

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wako katika hali nzuri ya afya na ikiwa maswala muhimu na afya yanaweza kupuziliwa mbali, basi moja kwa moja tutakuwa tunakosa yale malengo ambayo tuko nayo kama serikali. Sisi kama waheshimiwa tutasimama kwa niaba ya wananchi na ikiwezekana, Waziri achukue jukumu kwa haraka kwa sababu sisi kama Bunge hatutakubali kuona wananchi wetu wanaishi katika mazingira ambayo ni tatanishi. Kwa hivyo, tutasimama pamoja na Mheshimiwa wa Mwawesa kuhakikisha watu wanapata haki yao. Asante mheshimiwa Spika.

**The Deputy Speaker** (Hon. Kenga): Member for Jilore.

**Hon. Chiriba:** Thank you Mr. Speaker for giving me this opportunity. I stand in support with the sentiments of the Members who have earlier given their submissions. I have gone through the Response given by the CEC and I want to thank him for putting down the legal issues and the compliance of the certificate given to this company. What matters is not having the right licenses to run a programme, what matters as we see this thing is affecting people and livestock. You will agree with me that not all have access to tap water that has gone through purification; some take water from boreholes and rivers which could be contaminated with the poisonous substances.

The hon. CEC was looking into the advantages of having a healthy environment and not if the company has the right licenses as portrayed in the Response. I also want to agree with the Member for Mwanamwinga, having heard sentiment number four, the CEC states clear that; "Four, that since asbestosis disposal is listed as high risk project under Legal Notice No. 150 of 2016, the project was submitted to NEMA headquarters for processing and the project of such risk does not only require public input but also requires risk assessment, hydrological studies and approval from other state agencies." I believe when the hon. Member raised the concern, the CEC was to be on the fore front to initiate measures of looking into how much the disposal put the life of our people at risk.

It is also my prayer that the Committee be mandated to go and as enshrined in the law, the Committee involve experts to get experts input into approving whether these people have got a safe environment.

**The Deputy Speaker** (Hon. Kenga): Member for Ruruma.

**Hon. Jana:** Asante sana Bw. Spika kwa kunipa hii nafasi. Naungana na wenzangu kupinga hali hii kwa sababu bibi wa kwanza anatoka Bwagamoyo na hivi ninavyoongea hata kubeba chombo cha maji cha lita tano hawezi ya hali ilivyo Bwagamoyo. Kwa hayo majibu ya waziri yanaidhuru na ikiendelea hivyo, nitakosa bibi mimi. Naungana na mheshimiwa wa Mwawesa kwamba kitu hicho kitolewe mara moja.

**The Deputy Speaker** (Hon. Kenga): Hon. (Ms.) Ngari.

**Hon. (Ms.) Ngari:** Asante sana Mheshimiwa Spika kwa hii nafasi. Kulingana na majibu ya waziri ni kwamba amekwepa majukumu yake. Inaonekana hana ufahamu na mambo ya mazingira. Hakujiibu kulingana na swala la mheshimiwa Carol bali ni kama alikuwa anampa mwelekeo atafute njia ambazo anaweza pata suluhisho. Hatujaridhishwa na hayo majibu kwa hivyo, waziri bado ana jukumu la kufanya atupatie mwelekeo.

**The Deputy Speaker** (Hon. Kenga): Thank you for your contribution. Member for Jaribuni.

**Hon. Maitha:** Thank you Mr. Speaker for giving me this opportunity. As a Member of this Committee, I am not pleased by the Response. The Minister has always been jumping from one point to the other. Jaribuni is one of the areas with quarry investors; we have been asking questions and he is always shifting answers. We met the Minister with his team and he

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complained that the investors in Jaribuni are not doing mining but quarrying. Let's go back to Bwagamoyo. There, the Company is processing asbestos which causes a disease through inhaling; if you inhale asbestos fibers, the short term illness is difficulty in breathing, chest pains, coughing and the long term is lung cancer. We cannot wait until our people are affected. I call upon the Minister and the Committee Chairperson; in fact if it is possible we summon the Minister and look for a way forward before reacting to the outcome of this problem. Asbestos is one of the dangerous chemicals and it affects us through inhaling. I join the hon. Member for Mwawesa in rejecting this Response.

**The Deputy Speaker** (Hon. Kenga): Thank you the Member for Jaribuni. We have always been told we have two doctors in the House. One is absent and the other one has just made his contributions. The Member for Marafa.

**Hon. Karisa:** Mheshimiwa Spika, naunga mkono wenzangu. Naona majibu ya waziri analengana na vile karatasi zimeandikwa, maandishi yako juu chini, hii ni ishara ya kwamba alikuwa anajibu kama analazimishwa ama vipi. Sijui kama waheshimiwa mnaona. Hii ni ishara kwamba alipokuwa anajibu hakuwa ameweka akili zake kuona kwamba anaweza tatua hili tatizo. Kwa hivyo, mimi naona mambo mengi hapa ambayo yanahitaji utaalumu wa kisheria na naona tuko na *Legal Advisor* katika gatuzi letu lakini inaonekana yeye naye amelegea. Hafanyi kazi yake maana labda angekuwa anaweza kushauri vizuri mambo kama haya labda pengine sheria ingepatikana na hii *issue* ingemalizika. Kwa hivyo, mimi naona yeye naye akijibu itakuwa tu juu chini hivi. Kwa hivyo, mimi naona naunga mkono mheshimiwa wa Mwawesa kama alivyoongea, kuna umuhimu Waziri achukue hatua mwafaka, la sivyo basi aje hapa atueleze vizuri ni shida gani ambayo inatatiza. Asante mheshimiwa Spika.

**The Deputy Speaker** (Hon. Kenga): Hon. Kazungu Mbura.

**Hon. Mbura:** Thank you, Mr. Speaker for giving me this chance also to contribute towards this Response that was from the CEC for Environment. It is partially answered as the *mheshimiwa* has said and I wonder why the hon. Minister for Environment is shifting goals despite knowing very well the devolved functions of his Department.

One of the devolved functions of the Environment touches on air pollution and the other one on water pollution and the asbestos normally causes pollution through air and water. So, he has the mandate to take serious action on this. One thing that is really also amazing me is response number eight; it says that if any person is aggrieved by any decision he may appeal to the National Environment Tribunal Service.

What is assumed is for the Government to give support to *mwananchi*. It's the Government to take this action to assist the poor *mwananchi* on such a subject. How can the local *mwananchi* go and lodge an appeal at their expense? So, it is the *Waziri* to stand with the *mwananchi* and take such a legal action. This could now assist or will have an impact to the problem. Thank you. I stand to support the complaints from Mwawesa people.

**The Deputy Speaker** (Hon. Kenga): Thank you. Hon. Kombe Mwarandu.

**Hon. Mwarandu:** Thank you Mr. Speaker for this opportunity. I want to concur with the Members of this House. Mr. Speaker, if we start characterizing this Response from the CEC Member, it is not only partially answered but not answered at all because the CEC Member is only giving us the laws concerning environmental management but not the measures that the County Government has put in place to fight what is on the ground.

Mr. Speaker, the County Government has an obligation to protect its people as it has been said by the hon. Member for Mwanamwinga. Not only that, Mr. Speaker, but when the doctor

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was outlining the diseases that are caused by asbestos, actually asbestos can cause 17 diseases but the most worrying disease is that it can cause ovarian cancer for women and it can also cause testicular cancer for men. The Bible says that God sent man in this world to fill the world and if we can see some businessmen killing the word of God, then I think that is hoggish Mr. Speaker. So, I fully support my sister. Thank you, Mr. Speaker.

**The Deputy Speaker** (Hon. Kenga): Thank you. The Member for Bamba.

**Hon. Mwambire:** Asante sana Bw. Spika kwa kunipatia nafasi hii. Mimi pia nasimama kuunga mkono mheshimiwa Carol wa Mwawesa kwa sababu mheshimiwa Waziri wetu wa Maji na Mazingira amejaribu kukwepa suluhisho la tatizo hili. Katika yale maandishi yote ambayo ameandika yameonyesha umahiri na ufahamu wa sheria lakini la ajabu ni kwamba hakuweza kupeana njia kwa mheshimiwa ambayo watu wa Bwagamoyo wanaweza kusaidika. Kwa kweli, watu wa Bwagamoyo maisha yao yamekuwa hatarini na yanaendelea kuwa hatarini na wengine tayari wako katika hatari kama vile mheshimiwa Jana Tsuma Jana alivyosema.

Itakua si vizuri kama Wabunge ambao tulichaguliwa kuwakilisha wananchi tuweze kuwachilia hapo kwa sababu nakumbuka pale karibu na Bamburi Mtamboni kulikua na mtambo ambao ulikua unahusika kutengeneza hizi *asbestos* na kwa sababu kule Bamburi kunaishi watu wenye uwezo tuliona kwamba kile kituo kilichokua kinajulikana kwa jina Simba Rites kiliweza kufungwa. Lakini kwa sababu kituo hiki kiko katika maeneo ambayo watu wengi ni wanyonge ndio tumeona ya kwamba wameendelea kudhulumwa na kudhulumika.

Basi kwa mujibu wa majibu ambayo Waziri amejibu hapa ni kwamba anaelewa vifungu vyote vya sheria ambavyo vinatakikana kufatwa na kwa sababu katika Bunge hili tuko na Kamati ambayo inasimamia mambo ya Mazingira, naona jambo hili linahitaji kufuatwa kisiasa ya kwamba ile Kamati husika iweze kuweka mshindo mzito katika kuona kwamba usimamizi wa taka hizi ambazo zinahitajika kusimamiwa kikamilifu zithibitiwe kikamilifu ili kulinda maisha ya mtu wa Kilifi, mtu wa Bwagamoyo.

Kwa hivyo, mheshimiwa Spika, mimi nashukuru kwa kunipatia nafasi hii kupeana changizo zangu na nasimama kuunga mkono mheshimiwa wa Mwawesa. Mimi pia niko katika msimamo wa kuona kwamba kampuni hii ama shirika hili linatenda haki kwa wananchi. Hatukatai wafanyi biashara katika Kilifi Kaunti lakini tunataka wafanye biashara katika mazingira ambayo yanatakikana ili kuhakikisha ya kwamba wakaazi wa Kilifi wanakaa katika njia ya usalama. Asante sana mheshimiwa Spika.

**The Deputy Speaker** (Hon. Kenga): Thank you very much hon. Members for your contributions. The Member who is representing the Chairperson, what do you have to say given that Members are unanimously against the Response; they are not pleased with the Response by the CEC Member. Are you in a position may be to address some of the concerns given?

**Hon. Shaban:** Thank you Mr. Speaker, Sir. I think the CEC was able to give the direction that this issue maybe is beyond him and that like I want to quote the paragraph that; "if any person feels aggrieved by decision of the authority, he may appeal to National Environmental Tribunal subject to Section 129 (m) cap 387. Mr. Speaker, Sir, there is a time that we had a problem at Athi River Mining (ARM). At that time, I was working with Human Rights Agenda and by that time the CEC was also in charge.

Mr. Speaker, Sir, I want to say that the community itself took an initiative including myself as a community member from that area, Kambe Ribe, we went to see the Director of NEMA Geoffrey Wahungu and then after that we went to the National Assembly and met with the Committee on Environment which we petitioned the Committee of the National Assembly to

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come to the ground and I am happy that the NEMA Director sent a representative and also the National Assembly Committee on Environment came to ARM to see if these things were true and after that, Mr. Speaker, Sir we got very good direction.

Mr. Speaker, Sir, I also urge if it is possible to be told the company which is running this project because I am fully aware that this company which is operating this project, the Director comes from Mwawesa. So, if incase the Director of that company comes from Mwawesa, that means that he does not have the feelings of the people of Mwawesa. So, Mr. Speaker, Sir, I say that...

*(Hon. Carol stood on a Point of Order)*

**The Deputy Speaker** (Hon. Kenga): There is an intervention from the Member for Mwawesa. Kindly take your sit.

**Hon. (Ms.) Carol:** Thank you very much Mr. Speaker. I am standing on a Point of Order. I would like the hon. Member to submit to us evidence that one of the Directors comes from Mwawesa because here we do not deal with hearsay. Can he just present before us any document to show to us that one of the Directors comes from Mwawesa?

**The Deputy Speaker** (Hon. Kenga): Thank you. If for any given reason you are able to tell us that the information you are giving is factual, then you can proceed as long as you are able to bring evidence before the Assembly but if for any reason what you are saying is hearsay, then please kindly withdraw and then we proceed.

**Hon. Shaban:** I kindly withdraw and I proceed.

**The Deputy Speaker** (Hon. Kenga): Thank you.

**Hon. Shaban:** Mr. Speaker, Sir, what I want to say is that this House and the Committee on Water and Environment, if we can have a site visit to Bwagamoyo together with the CEC and the Chief Officer in charge of Environment and also the NEMA official if they can be included so that together we can have an amicable solution. Thank you, Mr. Speaker.

**The Deputy Speaker** (Hon. Kenga): Thank you hon. Members for your contributions regarding the Response from the CEC Member in charge of Water, Environment, Forestry and Natural Resources and Solid Waste Management.

Hon. Members, the Constitution of Kenya, 2010 guarantees its citizens the right to the highest attainable standard of Health and when the people of this great County of Kilifi are exposed to health hazards, their health is at stake, then as a County Government we cannot go silent on such issues.

I would have expected in the Response that the CEC Member to have already started engaging NEMA if he at all felt that NEMA had the responsibility to provide the solution to this problem. Therefore, given that all Members are not pleased with the Response that has been given, I now direct the Chairperson, I understand is not present but I can see a number of Members of the Committee who are present in this Assembly, that for a period of 14 days, the Committee on Water, Environment, Forestry, Natural Resources and Solid Waste Management to carry out investigations on the issue that was raised by the Member for Mwawesa and I expect that a Response is given and a Report is given before this Assembly within a period of 14 days.

In carrying out the investigation, there is an issue that has been raised by the Member for Jilore on the ability of the Committee to proceed with investigation may be with the assistance of the experts they can again engage the Office of the Clerk for advice on the same and we make

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sure that you have a very conducive environment in carrying out the investigation. Kindly make sure that you visit the Bwagamoyo asbestos disposal plant, engage the residents of Mwawesa Ward and the CECM in charge of Water, Environment, Forestry, Natural Resources and Solid Waste Management. We expect a Report before the Assembly within a period of 14 days. Thank you.

### **ADJOURNMENT**

**The Deputy Speaker** (Hon. Kenga): There being no other Business on the Order Paper, this House stands adjourned until today at 2:30 p.m. Thank you.

**The House rose at 10:15 a.m.**

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