

**REPUBLIC OF KENYA****COUNTY ASSEMBLY OF KILIFI****SECOND ASSEMBLY –FOURTH SESSION****THE HANSARD****Wednesday, 21st October 2020**

*The House met at the County Assembly Chamber,
Malindi Town, at 2:30 p.m.*

[The Speaker (Hon. Kahindi) in the Chair]

PRAYERS**STATEMENT****INCOMPLETE CONSTRUCTION OF KAFULONI ECD CLASSROOMS**

Hon. Mumba: Thank you Mr. Speaker. I am holding brief for the Member for Sokoke Ward who is bereaved. He lost his Father and we understand how emotional it is and he cannot make it to the Assembly today, so he asked me to take this matter on his behalf.

The Speaker (Hon. Kahindi): Thank you, proceed.

Hon. Mumba: There is a Statement on Kafuloni ECD (Early Childhood Development) Classrooms through the Chairperson of Education Committee, and it reads:-

Whether the County Executive Committee Member (CECM) in charge of the Department of Education and ICT is aware that Kafuloni ECD Classrooms project started in 2015 in Sokoke Ward and is yet to be completed.

Whether the CECM is aware that the contractor abandoned the site several years back and public money was spent on the project.

If yes, why has the project completion delayed for several years and what measures is the CECM putting in place to ensure the immediate completion of the project and handing over to meet its intended purpose?

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LACK OF ECD CLASSROOMS AT RANCH PRIMARY SCHOOL

Again, allow me to read another Statement for the said Member on Ranch Primary School:-

Whether the CECM in charge of the Department of Education and ICT is aware that Early Childhood Development and Education (ECDE) is a devolved function as per Part (b) of the Fourth Schedule of the Constitution of Kenya, 2010.

Whether the CECM is aware that Ranch Primary School has no ECD classrooms since the inception of Devolution and those pupils are learning in the open.

If yes, what has the Department not allocated funds for the construction of an ECD classroom to date and when will the Department ensure the Ranch ECD pupils enjoy the fruits of Devolution? Thank you.

MOTION

ESTABLISHMENT OF THE COUNTY ATTORNEY OFFICE

Hon. (Ms.) Sidi: Thank you Mr. Speaker for this opportunity. I beg to move a Motion to the County Executive Committee Member in charge of Devolution, Public Service and Disaster Management:-

THAT, AWARE THAT , the Office of the County Attorney Act, 2020, establishes the Office of the County Attorney, County Solicitor and County Legal Counsels.

FURTHER AWARE THAT, the Act provides for the appointment of the County Attorney by the Governor with the approval of the County Assembly but the rest of the officers are to undergo a competitive recruitment process through the County Public Service Board.

NOTING WITH CONCERN THAT, Section 31 of the Act provides for transition of office and officers that existed prior to the Act coming to effect.

This honourable House, therefore, urges the County Secretary to operationalize the County Attorney Act, 2020, through the appointment of the County Attorney by the Governor and forwarding the name to the County Assembly for vetting and secondly, undertake a competitive recruitment process for the positions of the County Solicitor and County Legal Counsels as per the Act.

If you allow me Mr. Speaker, I want to give my submission before I call my Seconder. The onset of devolution brought about counties to take over functions, responsibilities and obligations that were then being done at the National level and because of that, there was a need especially for the counties to have a similar framework that equates to the one at the National level. We understand that at the National level we have an Office of the Attorney General that is established and deals with legal matters at the National level.

The same structure is not what is happening at the County level because the Constitution was not clear on how the establishment of such an Office should be done, but that notwithstanding, the wise men at the Senate and Members of National Parliament saw the need of counties to have these offices. It was through their wisdom that the establishment of the County Attorney Office was done. The County Attorney Act creates three tiers or levels of carrying out functions. We have the County Attorney, County Solicitor and we have the Office of the Legal Counsel. As it is stipulated in the Act, the two offices that is one for the County

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Solicitor and the other one for Legal Counsel are supposed to be done competitively by the County Public Service Board. The Office of the County Attorney, the Governor has to appoint a person and the Assembly will approve the name.

Here in Kilifi we are not exceptional. Most of the counties have started operationalizing this Act to mention but a few. We have Bungoma, Uasin Gishu and Mombasa Counties that have already done it. Most of these counties that have started implementing the Act already had a structure of the County Attorney.

Here in Kilifi County we do have a structure and if I may recall, the first time we encountered the Office of the County Attorney was in 2018 during the budgeting process and we saw an element of the Office of the County Attorney and that's when questions started rising. After that, we had the first advert for the Office of the County Legal Counsel that was the Office that was created by then which meant therefore as Kilifi we did not have the Office of the County Attorney and Office of the County Solicitor.

That notwithstanding, we have an Act that needs to be operationalized by appointing the County Attorney and also doing a competitive process for the County Solicitor because we already have a County Legal Counsel. Section 31 says when this Act comes into effect, the Office and the office holders that were there prior should remain. So what we are lacking in Kilifi County right now is the County Attorney and the County Solicitor.

Another thing that we need to note as a County, we have spent a lot of money in matters of out-sourcing Legal Counsel but with inception and operationalization of this Act, we will be saving a lot of money. We currently have 10 Departments and in all those Departments, the minimum amount that we have set aside and the Chairperson for the budget can confirm, it is not less than Kshs 30 million for legal matters for each and every Department.

Mr. Speaker, Kshs 30 million by 10 Departments, that is Kshs 300 million and if we operationalize this County Attorney Act, Kshs 300 million that means the County Attorney will be paid a salary of a level of CECM, so a basic salary is Kshs 300, 000 per month and we have allocated more than Kshs 30 million for legal services, then that means we will be able to pay the County Attorney for 10 years. Now you understand how much we are spending in terms of out-sourcing legal services to carry out the functions of Kilifi County. Meanwhile, if we operationalise this Act, we will be saving a lot in terms of hiring legal services because already we shall be having a fully functional Department that will be carrying out our legal matters.

Another thing that we need to note as Members is that the Office of the County Attorney at county level is equivalent to the Office of the Attorney General, so this is a very strict office in matters of how it is going to operate.

One of the requirements of a person qualifying for a County Attorney is that he or she should have been an advocate and served for more than five years as equivalent to Chief Justice in the high court. This is an office that is going to see Kilifi operations are in a good manner because remember we have entered into contracts with people who we have seen losing money and an example is the Rain Drops Company. So, this process of legislation will have an office that will be dealt with. With those few remarks I call hon. Member for Kakuyuni Ward hon. Nixon Mramba to second. Thank you.

(Hon. Mramba seconded)

(Question proposed)

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Hon. Mramba: Thank you Mr. Speaker. I fully support the Motion as brought forward by hon. (Ms.) Sidi and whatever she has said is true to the best of my knowledge. Mr. Speaker, I think we need your guidance because as we debate this Motion, currently the County Government is swearing in Madam Bibi Fondo as the County Attorney without following the due process. They are doing it basing their argument on an advisory from Munyao Muthama and Kashindi Advocates. I wish to Table this document or advisory for your perusal.

(Hon. Mramba laid the document on the Table)

In that advisory, the lawyer is saying something which I would like Members to listen to. "That, transition and assumption of office by the County Attorney, County Solicitor and County Legal Counsel; The County Attorney Act, 2020, envisages two ways by which the Office of the County Attorney, County Solicitor and County Legal Counsels are to be filled. One of the ways is as identified earlier through appointment of a qualified person by the Governor and approval by the County assembly. It is only through competitive recruitment in the case of County Solicitor and Legal Counsel."

Now, if we go to transition, it says, "Upon the coming into effect of this Act, Members of staff employed by the County Executive to perform the functions of the office under this Act shall:- a) Be deemed to be Members of staff of the office in their respective capacities. That means therefore, before this Act was brought, we had a Department in Kilifi County after it was passed by the Senators and National Assembly, the officers in that office shall move on in their respective capacities." So if you were a legal officer, you will move in as legal officer and not something else.

This is an advisory; the only advisory that can be respected is only from a competent court of law. Even the advisories from the court of laws are being challenged in court. Its three weeks ago when the Chief Justice advised the President to dissolve Parliament; it is now challenged in a court of law. In a country like Kenya where we have more than 5,000 lawyers, every lawyer can have his or her opinion on this matter. It is only the court that can interpret and advice us. Therefore if the County Government is basing the argument on this advisory, then I think that swearing in going on now is null and void.

Mr. Speaker, as much as we respect the Governor, the law must be followed to the letter. I therefore request you that we call the County Secretary, the Chairperson of the County Public Service Board and Madam Bibi Fondo to come to this Assembly to appear before the Committee on General Oversight to tell us what exactly transpired until they are now swearing in the wrong person. I beg to support.

The Speaker (Hon. Kahindi): Hon. Members, if I can give direction to the Motion, it is seeking the County Secretary to operationalize the County Attorney Act of 2020. Once that is adopted, has it been operationalized and if it has, has it been operationalized in the way it is supposed to be? So our discussion today will be to approve whether or not the County Secretary and his team has operationalized the Act. Personally my Office has not been informed. There is no official communication to the Office of the Speaker that there is any swearing-in going on.

Two, the document that you have Tabled hon. Mramba is just a mere piece of paper as far as I am concerned. It does not hold any legal value because anybody can seek any legal opinion from any court in this country. If there is any swearing-in, I am not aware because my Office has not been informed and if the purported swearing in is going on based on this document from a law firm, then I would say that this is not admissible in this Assembly because it is an opinion

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from an advocate, the same way an opinion would have come. So that is not the subject of discussion today.

The subject for discussion is a hon. Member has tabled a Motion to ask the County Secretary to operationalize the County Attorney Act, 2020. If that Motion is adopted, let the operationalization proceed. However, if it is deemed that the operationalization of that law was not done properly and if it is confirmed that it was not done properly, the avenues are there to call upon the Members to appear before the Committee on General Oversight. So we will focus our discussion on the Motion.

The Office of the Speaker is not formally aware of any swearing-in going on so I do not want it to be a discussion. Let us handle the matter as presented. If the Members of this House adopt this Motion it should immediately be operationalized, fine; if it comes to our attention formally that swearing in is happening, happened, or is going to happen then Members with due respect to the Standing Orders we have, we will use the avenues we have to call and question the people you have suggested that need to be questioned.

The Leader of Majority (Hon. Mwathethe): Mr. Speaker, I also stand in support of this Motion because laws are there for us to follow but I think my fellow Member was putting the cart before the horse. We do not have official communication that the process of swearing-in is going on. Mr. Speaker, in fact you have spoken for me. We need to adopt the Motion to compel the CS (County Secretary) to operationalize the Act thereafter if it is done wrongly, because it is required that the appointee be brought to the House for subsequent approval. If anything shoddy happens that she will be sworn in before being brought to the House, then that will be another thing. Ours as I stand in, I am in full support that the CS ...

(Hon. Mwathethe spoke off record)

....operationalizing the Act and Mr. Speaker, there is no shame in following the law. This Motion is only seeking the CS to do what he is supposed to do and I am in support of that. Thank you.

Hon. Pascal: Thank you Mr. Speaker for giving me this opportunity. I stand to support the Motion before this House. We are almost eight years after devolution and the organs of the government must function fully for services to be observed across the board. For services to be observed, the organs must be fully filled and operationalized so that every organ can be able to perform its function.

Therefore, I support that the County Secretary moves with the prayer of this Motion that the Office of the Attorney should be operationalized. I stand in support of this Motion and I call upon hon. Members to support the Motion so that it can see the light of the day. Thank you very much Mr. Speaker.

Hon. Matsaki: Asante Mweshimiwa Spika. Mimi kwanza nataka nichukue nafasi hii kumshukuru Mweshimiwa Saumu kwa kuleta hii Hoja hapa Bungeni. Kusema kweli, ni muhimu vile alitaka vifanyike, *County Secretary* achukue nafasi yake aweze kuangalia zile sheria vile zinavyosema na aweze kutekeleza kadri ya uwezo wake. Mimi hata sioni sababu ya kuongea mengi. Nimesimama kunga mkono mia kwa mia Hoja hii. Asante Mweshimiwa Spika.

Hon. Mwarandu: Thank you Mr. Speaker for giving me this opportunity. Mr. Speaker, I rise to support this Motion before us. You will understand we were both sworn in here to protect and uphold the law. So any person who was sworn in has an obligation or statutory duty to

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protect and to uphold the law; the County Executive that is led by the Governor himself is not exempted on protecting the law.

Mr. Speaker, we are talking about operationalization of the Act, but it is not operationalization that we should talk about, is it procedural; that is what we should talk about. When you look at Section 5 (1) of the County Attorney Act, 2020 it says that the County Attorney shall be appointed by the Governor and approved by the County Assembly. That has not been done Mr. Speaker. They are operationalizing but the approval of the County Attorney by this Assembly has not been done and that is an illegality.

Therefore, the purported swearing in which has been mentioned by the hon. Member for Kakuyuni and you gave direction that it is in an illegality because there is an Act that stipulates that any government function to do with swearing in must be published in the Kenya Gazette Notice, and that has never been done. Therefore Mr. Speaker, I support this Motion fully. Thank you, Mr. Speaker.

Hon. Chengo: Thank you, Mr. Speaker. I also rise in support of this Motion. I applaud the Mover for finding it wise to bring this Motion in good time as the Act was passed this year that is why it is called Office of the County Attorney Act, 2020.

Indeed I want to agree with my colleagues that whatever is before us is legal and we have never had such an office before as the Act was never there before. The Act now provides for these offices. I think now this is the prime time for the offices to be created. As per my knowledge, we have never had a County Attorney for it now to be assumed that they can take that office because they have been in existence. Just like hon. Humphrey Mwarandu has put it, there are qualifications of any person who is to be appointed as the County Attorney and the same has to be scrutinized by this House before any approval.

As a House, we are still waiting for that person who will be qualified and having been appointed by the Governor for us to come and scrutinize before getting the approval of this House. It says under Section 5 that the County Attorney has to be an advocate of the High Court and must have served for at least five good years. These are some of the guidelines that will guide this House when that time comes.

Mr. Speaker, it is in good time and in good faith that we pass this Motion so that the operationalization can be conducted in a manner provided for in this Act and any law in this country and even outside this country. Thank you, Mr. Speaker.

Hon. Mwayaa: Asante Mweshimiwa Spika kwa kunipa nafasi hii niweze kuunga mkono Mswada ulioletwa na Mweshimiwa Saumu.

Baada ya sheria kupita ya 2020 kusema kuwe na ofisi ya *County Attorney* iko umuhimu katika Gatuzi letu la Kilifi liweze kuunda hiyo ofisi sheria ziweze kufuatwa ili kwamba jina lipendekezwe na Gavana na liweze kuletwa katika Bunge hili ili tuweze kupitisha na ofisi ile iweze kuhudumia watu wa Kilifi. Itakuwa ni kinyume ikiwa sheria hii ishapita vijana wako ambao wana nguvu na wanaweza kufanya kazi hiyo kisha halafu tusiweze kupata mtu huyo.

Ikiwa itawezekana tupate jina kwa haraka kwa Gavana liletwe katika Bunge hili tuweze kupitisha na pia kufanya hivyo itakuwa pia ni kuongeza ajira kwa watu wetu wa Kilifi ambao ni wasomi. Asante na naunga mkono.

Hon.(Ms.) Maneno: Asante sana Bwana Spika kwa nafasi hii. Pia mimi nasimama kuunga mkono Hoja ambayo imeletwa katika Bunge letu la kubuniwa kwa ofisi ya *County Attorney*.

Bwana Spika, tunasema sheria ni msumeno, na ofisi hii kubuniwa itasaidia zaidi katika Kaunti yetu ya Kilifi kwa sababu katika kipengele cha Saba cha sheria hiyo, mwanasheria huyu

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mkuu wa Kaunti ana majukumu makubwa sana ya Kaunti. Yeye ndiye atakuwa anapeana muongozo wa kisheria kwa Kaunti, anatakikana akae kwa mikutano ya *cabinet*, anatakikanana awakilishe Kaunti katika Korti wakati kutapokuwa na kesi, anatakikana aweze kupitia sheria ambazo zimepitishwa na Bunge ili aweze kuzifanyia marekebisho ili ziweze kuboreshwa zaidi. Kuna fununu kwamba mwanasheria huyu ameapishwa tayari bila kufuatilia sheria. Je, itakuwa sawa mwanasheria huyu akiketi katika mikutano ya *cabinet* bila kupitishwa na Bunge hili? Bwana Spika, naunga mkono ofisi hii iweze kubuniwa na Kilifi yetu iweze kuendelea mbele. Asante.

Hon. Reuben: Thank you Mr. Speaker for giving me this opportunity to air my views regarding this Motion. First and foremost, I want to warmly congratulate hon. Saumu Sidi Julius for this prudent Motion she has tabled in this House. The law is very clear as envisaged in the Mover's Motion and even the earlier speakers as they contributed to this Motion.

Mr. Speaker, we are out of time and it is high time we compel the County CS to expedite to operationalize this Act. As much we respect one another and honour one another, it is mandatory that this honour must be guided by the law.

Mr. Speaker, as the Mover of the Motion has been speaking, looking at the amount of money that is appropriated in the Department that we have in our County, it is a lot of money if we have an amount not less than Kshs 30 million appropriated and budgeted in every Department; that is a lump sum. Looking at the engagement that the County has been having in terms of legal matters, there is need to have the operationalization of the County Attorney. With those few remarks, Mr. Speaker, I support the Motion.

Hon. Mwambire: Asante Mweshimiwa Spika kwa nafasi hii. Kwanza naunga mkono mweshimiwa Sidi kwa kuleta Hoja hii mbele ya Bunge. Kwanza kabisa, naunga mkono kwa kweli kaunti yetu inahitaji Hoja hii iweze kupita ili ofisi hii ya Jaji ambaye atawakilisha Jimbo letu la Kilifi aweze kupatikana kwa sababu wananchi wengi...

(Hon. Ndago stood on a Point of Order)

Hon. Ndago: Mr. Speaker, I would like to know if the hon. Member is in Order to say 'County Judge.'

The Speaker (Hon. Kahindi): Definitely it is not a County Judge Hon. Mwambire.

Hon. Mwambire: Asante kwa kunirekebisha ni Mwana Sheria mkuu wa jimbo la Kilifi. Ningependa kuunga mkono Hoja hii ya kuweza kuwa na mwanasheria mkuu wa jimbo la Kilifi kwa sababu kumeweza kuwa na kesi nyingi katika Idara zetu kumi za Kilifi.

Kwa mfano, zile kazi ambazo zilikuwa zifanyike mwaka wa 2015, labda kuna kizuizi kisheria hakuna mtekelezaji wa sheria ambaye ameweza kupitishwa na Bunge. Kwa hivyo, naunga mkono kubunishwa kwa ofisi ya mwanasheria mkuu wa Jimbo la Kilifi. Naamini kwamba baada ya kupitisha hii nafasi itakapotangazwa, basi hata Manuspaa zetu zitaweza kufanya kazi vizuri na kupata mapato mengi kwa Kaunti yetu.

Kuna mambo mengi hasa tukiangazia katika sehemu zile ambazo ziko kule mashambani. Kuna haja ya ofisi hii kupeana mashauri watu wengi ambao wametapeliwa. Hivi majuzi, korti letu la Malindi liliweza kutoa barua ya kwamba wananchi wanajua kwamba watu wengi wanataka mashauri ya kisheria na kwa hivyo ofisi hii pia itasadia kuweza kutoa mashauri na waweze kusaidiwa. Asante sana Mweshimiwa Spika.

The Speaker (Hon. Kahindi): Hon. Pascal, I will allow you to read your two Statements which were on the 11.00 a.m. Order Paper.

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STATEMENTS

IMPASSABLE MWABAYANYUNDO-MWANAMINGA-HADEMU ROAD

Hon. Pascal: Once again, I thank you Mr. Speaker for giving me an opportunity to seek two Statements directed to the CECM (County Executive Committee Member) in charge of Roads, Transport and Public Works through the Chairperson of the Committee on Roads, Transport and Public Works. The Statements reads:-

Whether the County Executive Committee Member (CECM) in charge of Roads, Transport and Public Works Department is aware that Mwabayanyundo-Mwanamwinga-Hademu Road is impassible hence grounding transport activities in the area.

If yes, what immediate measures is the CECM taking to ensure that the road is rehabilitated for the benefit of the people of Kayafungo and Mwanamwinga in Kaloleni Sub-county. Thank you, Mr. Speaker.

LACK OF STAFF HOUSES AT KITHENGWANI DISPENSARY IN MWANAMWINGA WARD

The second Statement is directed to the CECM in charge of Health Services, through the Chairperson; Committee on Health Services:-

Whether the County Executive Committee Member (CECM) in charge of Health Services is aware that Kithengwani Dispensary which is almost complete and ready to serve the people of Mwanamwinga Ward has no staff house and the nearest trading centre where accommodation can be available is almost 10 kilometres away.

If yes, what immediate measures is the CECM taking to ensure that staff quarters are constructed to accommodate the staff who shall be deployed at the facility once it is operationalized? Thank you Mr. Speaker Sir.

The Speaker (Hon. Kahindi): Thank you. Let us move to the next Order of Business.

ADJOURNMENT

The Speaker (Hon. Kahindi): Hon. Members, in the absence of any other Business in the Order Paper, this House stands adjourned. Thank you.

The House rose at 3:00 p.m.

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