



REPUBLIC OF KENYA
COUNTY ASSEMBLY OF KILIFI
SECOND ASSEMBLY –THIRD SESSION
THE HANSARD

Wednesday, 21st August 2019

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

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

PRAYERS

COMMUNICATION FROM THE CHAIR

SENSITIZATION FORUM ON NEW LAND LAWS AND REGULATIONS

The Speaker (Hon. Kahindi): Hon. Members, there is an invitation by the Institute of Surveyors of Kenya which has requested that all Members of the County Assembly on the 22nd to attend a sensitization forum on new land laws and regulations at Mnarani Club starting at 8:30 in the morning up to 4:00 p.m. I thought I should make this communication but of course the Clerk will forward the Communication to your respective phone numbers. Thank you.

PAPER LAID

STATUS REPORT OF FIRE STATIONS IN KILIFI COUNTY

Hon. (Ms.) Maneno: On behalf of the Chairperson of Roads, Transport and Public Works, I wish to lay on the Table of this House a Report of the Roads, Transport and Public Works Committee on the status of fire stations in Kilifi County.

(Hon. Ms Maneno laid the Report on the Table)

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NOTICE OF MOTION

ADOPTION OF THE REPORT ON THE STATUS OF FIRE STATIONS IN KILIFI COUNTY

Hon. (Ms) Maneno: Thank you Mr. Speaker, Sir. Pursuant to Standing Order No. 45 (1), I wish to give a Notice of Motion that this House adopts the Report of the Roads, Transport and Public Works on the status of fire stations in Kilifi County laid on the Table of this House on the 21st day of August, 2019. Thank you.

MOTION

ADOPTION OF THE REPORT ON THE STATUS OF FIRE STATIONS IN KILIFI COUNTY

Hon. Jana: Mr. Speaker, Sir, I wish to move the Motion:-

THAT, this House adopts the Report of the Select Committee on Delegated County Legislation on the Kilifi County Micro-Finance (Mbegu) Fund Regulations, 2018 laid on the Table of this House on 13th August, 2019.

The Kilifi County Micro-Finance (Mbegu) Fund Regulations 2018 were made pursuant to the provision of Section 23 of the Kilifi County Micro-Finance Mbegu Fund Act of 2015. However, the regulations were not published contrary to Section 22 of the Statutory Instrument Act, 2013. The aim of the publication is to make the regulations as a public document to give the regulation its commencement date if such a date is not special as provided in Section 23 of the Statutory Instrument Act, 2013. The reason I say that the regulations are not published is because the regulations were not issued with a Kenya Gazette supplementary number.

Again, the Kilifi County Micro-Finance Mbegu Fund Regulations, 2018 were not accompanied by an explanatory memorandum as provided in Section 11 (2) of the Statutory Instrument Act, 2013. The passing of this regulation will ensure the effective implementation of the Kilifi County Micro-Finance Mbegu Fund Act, 2015 as amended in 2018.

However, the regulations making authority did not abide by the set down laws in making the regulation and the Committee guided by Section 15 of the Statutory Instrument Act, 2013 decided to revoke the regulation. It is my humble request to this honourable House to adopt this Report so that the regulation making authority can speed up the making of new regulations to ensure that the Kilifi County Micro-Finance Mbegu Fund Act, 2015 as amended in 2018 is effectively implemented. I call upon hon. Kiraga to second.

(Hon. Kiraga seconded)

(Question proposed)

Hon. Kiraga: Thank you so much Mr. Speaker. Before I even give my remarks on the same, may I take this opportunity to sincerely thank the Committee under the leadership of hon. Jana for the job well done. You will realize that after a Bill has been approved by the County Assembly and the same is assented to by the Governor, it automatically becomes an Act. An Act also needs some regulations so looking at the Mbegu Fund Act, it lacks regulations of the same.

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Let me refer this House to the minutes by the Committee and these minutes were taken on 11th March 2019 at the County Assembly conference room; minute number 5. When the CEC was put to task by the Committee to explain why there were no regulations on the same, allow me to read part of the response by the CEC. He highlighted that the document was forwarded to the County Assembly by the Office of the County Secretary and he needed time to familiarize with the document.

You see, this is a document which was being handled by the Department and we all know the responsibility of the County Secretary. He is a bridge between the Executive and the County Assembly as far as communication is concerned. How then can the County Secretary forward a document to this County Assembly without even the mother Department having looked at it in detail? I want to believe that these are some of the loopholes we are seeing with some of these County Executive Committee Members. We have heard from the Chairperson that the Act lacks for example point number one, that is minute five; that the Kilifi County Micro-Finance Fund Regulations 2018 were not published as they lacked serial numbers contrary to Section 22 (1) of the Statutory Instruments Act, 2013. We are getting information that it is like the business of this county is not taken seriously. How can a whole Department forget to publish a document and more so also forget to put serial numbers to such a document?

We know that this is an Act that should also pass through the Legal Department so I don't know what happened until this document found its way into the County assembly without even going through the top brass of the Department and more so the legal fraternity of the County Executive.

I highly support the adoption of this Report. If you look at the recommendation of the Committee, the final recommendation that in accordance with Section 15 of the Statutory Instrument Act, 2013, the Committee recommends that the Kilifi County Micro-Finance Mbegu Fund Regulations, 2018 be revoked. I stand here to support this recommendation and more so I support the adoption of this Report so that regulations of the same which measure the Act itself can be brought into this House and be approved. With those few remarks, I say thank you and I support the adoption of this Report. Thank you.

COMMUNICATION FROM THE CHAIR

SYSTEM FAILURE

The Speaker (Hon. Kahindi): Hon. Members, I am informed we have a technical hitch with the front row, so if you have anything to say, please move back to the second row. You can hear the hissing sound from the Speaker's microphone but they are working on it up there.

Hon. Kadenge: Thank you Mr. Speaker...

(The Speaker spoke off-record)

Thank you, Mr. Speaker. Being a Member of the Delegated Committee led by hon. Jana Tsuma Jana, I am in support of this Report to be revoked because after...

The Speaker (Hon. Kahindi): What are you saying hon. Member?

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Hon. Kadenge: The regulations to be revoked. This is after having a thorough scrutiny we realized that the regulations were not even published and for such an important document to come to the Assembly without going through the proper channels like the Kenya Gazette....

The Speaker (Hon. Kahindi): Let me get this straight. You mean you received regulations from the Executive that were not published?

Hon. Kadenge: Yes!

The Speaker (Hon. Kahindi): Then you don't have regulations. You have nothing to discuss. I am not supposed to be saying it but if at all you can confirm that you received regulations that were not published then you did not receive regulations. You received a document which does not even warrant these discussions...

(The Speaker spoke off-record)

Hon. Kadenge: Then with your guidance, I think if we are in agreement with the Whole House then we revoke this one and we ...

The Speaker (Hon. Kahindi): They are not published, seriously? I am speaking as an advocate; they cannot be called regulations and I want to give an example. For instance, if the Governor fails to assent to a Bill, that does not stop it from becoming law. All you need is the signature of the Speaker...

(The Speaker spoke off-record)

If it is not published, then those are not regulations.

Hon. Kadenge: Yes, during our discussions we had our legal team from the Assembly.

The Speaker (Hon. Kahindi): Then you do not have regulations.

Hon. Kadenge: Okay, thank you.

(Question put and agreed to)

COMMUNICATION FROM THE CHAIR

PUBLICATION AS A REQUIREMENT IN LAW

The Speaker (Hon. Kahindi): Chairperson, were you told why that happened? Do they know they have a responsibility to publish? But so far you have no information whether they have been published? Now that needs to be done before the matter is brought to this House. My office will personally follow up. I will call the Legal Director here to make sure that that is done. There is no business of this House sitting here this afternoon debating a Report which they should have looked at the regulations themselves.

Publication is a requirement by law. If it is not, then you have no regulations. You only have a document which cannot even be relied on in any court of law. It is very logical. We don't want to subject the House to a debate which will definitely lead to the same outcome. They are as invalid as they still are if they have not been published and until they have been published, they should not even be forwarded to this Chamber because we will be going through a document which in law is invalid.

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The Office of the Speaker will follow that up. Publishing is a process which can even be undertaken by ourselves here and if they fail to do it then we shall do it and then we will go back to look at the regulations once more. If they are either consistent or not, that will be a subject of discussion of another day. Chairman, are we together?

Hon. Jana: Yes.

ADJOURNMENT

The Speaker (Hon. Kahindi): Thank you very much. In the absence of any other business on the Order Paper, I move to adjourn the House until next week. Thank you very much.

The House rose at 2:54 p.m.

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