



REPUBLIC OF KENYA

COUNTY ASSEMBLY OF KILIFI

SECOND ASSEMBLY – THIRD SESSION

THE HANSARD

Wednesday, 8th May 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

ELECTION PETITION APPEAL

The Speaker (Hon. Kahindi): Hon. Members, I have a communication to make. The Office of the Speaker was on the 29th April 2019 served with a certificate that was issued by the election court and that is the High Court of Kenya at Mombasa election petition appeal no. 5 of 2018. The parties involved were:

1. Mohamed Abdul Omar - Appellant
Versus
2. Kiponda Joseph Joseppe Ngumbao - 1st Respondent
3. Katana Reuben Mwamure - 2nd Respondent
4. Independent Electoral and Boundaries Commission (IEBC) - 3rd Respondent
5. Masha Sudi - 4th Respondent

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The certificate was issued against the Independent Electoral and Boundaries Commission that is located in Nairobi University Way and number two, it was also issued for implementation to the hon. Jimmy Kahindi as the Speaker of the County Assembly of Kilifi that is, myself. This certificate is issued Pursuant to Section 86(1) of the Elections Act and I will read in brief the orders as contained therein and then I will communicate what the orders mean to hon. Mohamed Abdul Omar.

Whereas the election of Mohamed Abdul Omar as a Member of the County Assembly representing Ganda Ward was challenged in Malindi Election petition no. 3 of 2017 that was between 1. Kiponda Joseph Joseppe Ngumbao 2. Katana Reuben Mwamure –VS- Independent Electoral and Boundaries Commission 2. Masha Sudi 3. Mohamed Abdul Omar and whereas as the court heard the petition and on the 6th day of March 2018, after considering the evidence and submissions, the court made the following findings:-

That, the petition succeeds and is hereby allowed.

That, the 3rd Respondent Mohamed Abdul Omar was not validly elected to the position of the Member of County Assembly (MCA) for Ganda Ward and his election is hereby declared null and void.

That, the 1st and 2nd Respondent to hold a fresh election in conformity with the Constitution, the Elections Act, 2011 and all other laws governing elections in the Republic of Kenya.

That, the 1st and 2nd Respondent jointly and severally are liable to the petitioners and accordingly to pay cost to the petitioners to be taxed by the executive officer, Malindi Law Courts, which is hereby capped at 2,000,000/= (Two million Kenyan shillings).

And whereas the said Mohamed Abdul Omar appealed to this court and which appeal was on 10th August, 2018 dismissed.

And whereas the cost for this appeal are awarded to the 1st and 2nd Respondent capped at Kshs1,000,000/= to be shared equally by the appellant on the one hand and the 3rd and 4th Respondent on the other.

And whereas the appellant appealed to the Court of Appeal Election Petition Appeal no. 11 of 2018 Mohamed Abdul Omar vs. Kiponda Joseph Joseppe Ngumbao and 3 others.

And whereas on 7th March, 2019 the Court of Appeal struck out the said appeal for want of jurisdiction with the appellant ordered to pay cost of the appeal to the 1st and 2nd Respondent.

And upon hearing a Notice of Motion application dated 10th April, 2019, and in exercise of this courts' duty conferred on it by the rule 34(10) of the Elections. (Parliamentary and County Elections) Petition Rules, 2017;

A certificate is hereby issued Pursuant to Section 86(1) of the Elections Act, 2011 certifying that Mohamed Abdul Omar was not validly elected to the position of the Member of County Assembly (MCA) for Ganda Ward and his election is hereby declared null and void.

The 1st and 2nd Respondent to hold fresh election in conformity with the Constitution, the Elections Act, 2011 and all other laws governing elections in the Republic of Kenya.

Given under my hand and the seal of this honourable court this 24th day of April, 2019. Signed by hon. Lady Justice M. Thande Mombasa, Kenya, issued on the 26th day of April 2019.

Hon. Members, upon receipt the Speaker has 21 days within which to communicate this; we will be proceeding on recess today. I also hereby wish to declare that the hon. Mohamed Abdul Omar ceases to be a Member by virtue of the certificate that was served upon me by the

election court and he ceases to be a Member of this County Assembly; all privileges withdrawn and I can only take this time to wish him the best. Henceforth, what I am required by law to do is to write this communication that I have made today to the IEBC and I am sure they will have 90 days within which to call for a fresh election.

I have talked to hon. Abdulrahim and he knows that I am doing this today and even if he didn't know I am duty bound because failure to communicate that makes me in contempt of court. I have no obligation to do the same. He is in high spirits and my prayer is that, the County Assembly of Kilifi will stand together with him in this difficult moment especially Members of the Party, to ensure that he does not only come back but he comes back with our resounding support.

This is usually the saddest moment that I normally go through. The last time I had to do the same thing to hon. Mwathethe but fortunately he managed to come back. I also know for sure that God will find favour in him and he will be able to join us once again in this County Assembly. Thank you very much. Let us move to the next order.

The Speaker (Hon. Kahindi): Statement sought by hon. Caroline Maku Kalume from the County Executive Committee Member in charge of the Department of Water, Environment, Natural Resources, Forestry and Solid Waste Management through the Chairperson of Water, Environment and Natural Resources Committee. Yes hon. Carol.

STATEMENTS

BWAGAMOYO ASBESTOS DISPOSAL PLANT

Hon. (Ms.) Carol: Thank you very much Mr. Speaker. I would like to present a Statement to the County Executive Committee Member in charge of the Department of Water, Environment, Natural Resources, Forestry and Solid Waste Management through the Chairperson of Water, Environment and Natural Resources Committee, in regards to the Bwagamoyo asbestos disposal plant.

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

WHETHER, the County Executive Committee Member (CECM) is aware that, the plant exposes the resident at Mwawesa Ward to health hazards since prolonged exposure to asbestos cause asbestosis and complications in the chest cavity (Pleura)

WHETHER, the County Executive Committee Member (CECM) with reference to a letter REF:CG/KLF/ECM/1/22/VOL.1/95 dated 5th May, 2018, petitioned at the National Environment Tribunal for revocation of the license of the company. Signed by hon. Carol Kalume. Thank you.

If yes, what measures is the County Executive Committee Member taking to stop the operations of the company in the said ward?

The Speaker (Hon. Kahindi): The next Statement is yours hon. Carol.

PERENNIAL WATER SHORTAGE IN RABAI SUB-COUNTY

Hon. Carol: The next Statement Mr. Speaker Sir, is directed to the County Executive Committee Member in charge of the Department of Water, Environment, Natural Resources, Forestry and Solid Waste Management through the Chairperson of Water, Environment and Natural Resources Committee on perennial water shortage in Rabai Sub-County.

WHETHER the CEC Member in charge of Water, Environment, Natural Resources, Forestry and Solid Waste Management is aware that Article 43 (1) (d) provides that every person has the right to clean and safe water in adequate quantities.

WHETHER the CEC Member is aware that there has been perennial water shortage in Rabai Sub-County for the past seven years and residents are forced to travel for long distances looking for the commodity.

WHETHER the CEC Member is aware that Rabai Sub-County is not directly connected to Mzima Water Pipeline, neither is it connected to Mariakani-Kibaokiche water pipeline nor Baricho- Kamberibe pipeline and/or Kamkunji dam as an alternative water source.

If yes, what measures has the CEC Member taken to ensure that the problem is addressed and also ensure that the Sub-County is connected to other alternative sources of water? Thank you, Mr. Speaker.

MARIAKANI SUB-COUNTY HOSPITAL

Hon. Pascal: Thank you Mr. Speaker for giving me an opportunity to also present before this House a Statement directed to the Chairperson, Health Services Committee and the Statement reads;

WHETHER the CEC Member in charge of the Department of Health Services is aware that Mariakani Sub-County hospital has only four beds in the emergency section.

WHETHER the CECM is also aware that Mariakani Sub-County maternity wing has only two examination beds used as delivery beds and 14 beds in the ward which are not sufficient for the hospital thus leading to patients sharing beds.

WHETHER the CECM is further aware that the Mariakani Sub-County maternity wing project stalled two years ago.

If yes, what measures is the CECM undertaking to ensure the emergency section is fully equipped to address the raising cases of casualties being a Sub-County referral hospital located along the Nairobi- Mombasa Highway?

Number two; what measures is the CECM undertaking to ensure that the stalled maternity wing project is completed to ease the congestion of the hospital which exposes vulnerable patients and newborn babies to risks of infections? Thank you very much.

The Speaker (Hon. Kahindi): Thank you, the Chairperson, Lands Committee (hon. Dele).

MOTION

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REPORT OF THE SECTORAL COMMITTEE ON LANDS, PHYSICAL PLANNING AND URBAN DEVELOPMENT
ON VETTING OF NOMINEES FOR POSITION OF MEMBERS OF THE BOARD FOR MALINDI AND KILIFI
MUNICIPALITIES

Hon. Dele: Thank you hon. Speaker. That this House adopts the Report of the Sectoral Committee on Lands, Physical Planning and Urban Development on vetting of nominees for position of members of the board for Malindi and Kilifi municipalities laid on the Table of this House on Tuesday 7th May 2019.

On behalf of the Members of the sectoral committee on Lands, Physical Planning and Urban Development and pursuant to the provisions of Standing Order number 43, it is my pleasure and duty to present the committee's Report on vetting of nominees to the positions of municipality boards members for Kilifi and Malindi municipalities.

The sectoral committee on Lands, Physical Planning and Urban Development was constituted following the successful second revision of the County Assembly of Kilifi Standing Orders on 18th July 2017.

The committee comprises of the following Members;-

1. Hon. Edward Kazungu Dele, the Chairperson who is I.
2. Hon. Abdhulhaman Omar who is the vice Chairperson and whose message we have just received from the Speaker.
3. Hon. Peter Ziro
4. Hon. Cantona Mae Mwadana
5. Hon. Winfred Mwangome
6. Hon. Nuzla Abushaib
7. Hon. Daniel Kitsao
8. Hon. Victor Gogo
9. Hon. Frank Kimosho

Standing Order number 144 of the County Assembly of Kilifi Standing Orders states that there shall be committees to be known as sectoral committees comprising 9 members who shall be nominated by the County Assembly Business Committee in consultation with the County Assembly parties at ...

The Speaker (Hon. Kahindi): Yes hon. Kiraga, what is your Point of Order?

Hon. Kiraga: Thank you Mr. Speaker. I believe that every Member here has this copy of the Report. I feel he is going to take a lot of time reading the whole Report. Just give us a brief of what you did.

The Speaker (Hon. Kahindi): Let me give direction on the same. Ideally you should take us through but are you in a position to just present us with the findings and summarize it. I am seeing like 30 plus pages. And it seems Members have read through; they just want you to convince them.

Hon. Dele: Thank you Mr. Speaker but I don't think that was a Point of Order...

The Speaker (Hon. Kahindi): It was supposed to be a Point of Information but now I am giving direction. The County Assembly is already alive to the fact that the Membership is known; we don't have to acknowledge my office because after all it is part of my job to facilitate you to do your job so kindly just go for the unknown. That is what you found, who these people are and what you found in them.

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Hon. Dele: Okay thank you. We are going to page 5. Mr. Speaker may I take this opportunity to thank all the Members of the committee for their input and valuable contributions during the deliberations and inquires from the nominees that guided them in making its final recommendations. The committee wishes to sincerely thank the office of the Speaker and the Clerk of the County Assembly for the logistical support accorded to it during its exercise.

The necessary support extended to it assisted in the execution of its mandate. The committee wishes to record its appreciation for the service rendered by the staff of the County Assembly attached to the committees and the efforts made the work of the committee and the production of this Report. It is therefore my pleasant duty pursuant to Standing Order number 43 (4) to present a Report on the committee on Lands and Physical Planning.

Hon. Speaker, if I go by what you have just guided, hon. Members, we as a committee are guided by the provisions of the regulations and rules of this land. The nominees were vetted in accordance with Public Appointments Act, 2017, the Urban Areas and Cities Act, 2011 and the County Assembly Standing Orders using the following criteria among others. So, one was academic qualifications, employment record, professional affiliation, potential conflict of interest, and knowledge of the relevant subject, overall suitability for the position, tax compliance and integrity.

If we look at the Malindi Municipality then the first candidate was Kennedy Fujo Garama and if I go by what hon. Kiraga was saying, then let us go to page 1 we will find candidate number two we have Sumaya Assad Hassan you will read I do not need to read. Again in on page 13 we have Aliasgar Shabbir Kassamji you can also read for yourself. Hon. Members allow me to point out that when you are reading you need to note that, what guided us as a committee was academic qualifications, employment record, professional affiliations, potential conflict of interest, knowledge of the relevant subject, and overall suitability for the position, tax compliance and integrity. So as you go from one candidate to the other kindly put that in mind so that you can be in agreement with our resolution as a Committee. On page 18 we have Patricia Luvuno Chonga.

If you come to page 25 we have the recommendations of the committee on Malindi Municipality. I am glad hon. Kiraga has helped me. Candidate number one is Kennedy Fujo and we have our recommendations there as a committee, we have Sumayya Assad Hassan recommendations as well.

The Speaker (Hon. Kahindi): Let me advice that, kindly read for the record what is found in your recommendations in summary on whether you approved or disapproved the nominee.

Hon. Dele: We approved Mr. Kennedy Fujo Garama, Sumayya Assad Hassan, Aliasgar Shabbir Kassamjee to be board members of Malindi Municipality. You will find only three members are for the Malindi Municipality board reason being that we had only three position which we had not passed the previous time.

In Kilifi Municipality, the first candidate was Getrudah Sidi Kirenge she is a lawyer by profession, she did very well and we did approve her as a board member of Kilifi Municipality. Patricia Luvuno Chongo comes from Tezo Ward; she was very competent and we approved her as a board member for Kilifi Municipality. Kindly note that we did approve with the guidance that I have just read on page nine, You can always refer to that; everything is well stipulated there. As a committee we approved Zainabu Salim after she qualified and the report is with us.

The Speaker (Hon. Kahindi): Yes hon. Kiraga what is your Point of Order?

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Hon. Kiraga: Mr. Speaker, the Chairperson is talking of the committee having approved and if you look at the Report the recommendations are that they are seeking the County Assembly to approve. Not that they as a committee have approved; you are seeking an approval from the assembly.

Hon. Dele: Thank you very much hon. Speaker, I think we normally have...

The Speaker (Hon. Kahindi): Just read your recommendations. I think it is much better that way because they are clearly stipulated.

Hon. Dele: The last one was Julius Henry Ngombo, at the end of the vetting process, the committee made the recommendation: - having considered the suitability, capacity and integrity of the nominee and pursuant to the Public Appointments (County Assemblies) Approval Act of 2017 and the Urban Areas and Cities Act, 2011, the committee recommends that the County Assembly of Kilifi approves the nomination and subsequent appointment of Mr. Julius Henry Ngombo as a board member of the Kilifi Municipality.

So, these are basically our recommendations which are well written and I think it is upon you hon. Members to approve them. As the hon. Kiraga has stated, we as the committee members are seeking approval from you to absorb the following individuals in the different municipalities. Thank you hon. Speaker.

The Speaker (Hon. Kahindi): Anybody to second your Motion?

Hon. Dele: Yes, hon. Peter Ziro will second.

(Hon. Ziro seconded)

(Question proposed)

Hon. Ziro: Thank you Mr. Speaker for according me this chance to ejaculate my concerns in regards to this Motion. First of all I want to thank the Almighty God for giving me this chance to contribute to this Motion. I would also want to thank your office for giving us the freedom of speech, freedom of association and mingling to go and ...

The Speaker (Hon. Kahindi): Yes hon. Kiraga, you have a Point of Order.

Hon. Kiraga: Thank you so much Mr. Speaker. I think as we are in this House, this is a House of honour and we are entitled to use parliamentary language. I feel that the words the Member is using are unparliamentary and unless he tells us otherwise he should withdraw those words. We have never heard of such words in this House.

Hon. Ziro: Mr. Speaker, I think this is just a simple English word and English words have different meanings. He was a school teacher; I do not know which college he went to but allow me to help him out. If he does not know the meaning of that word, it means to release vigorously.

(Laughter)

(Loud consultations)

The Speaker (Hon. Kahindi): Order! Order! Order! Hon. Ziro, I conquer with you that, that word is an English word. Other than the other meaning, it also means to say something quickly or suddenly and I want to believe that, that is the meaning you intended because the

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other meaning we do not want to talk about it here. It might seem to be unparliamentary but it is English. The second meaning simply means to say something quickly and suddenly and I want to believe that, that is the route you are taking otherwise the other meaning we are not interested honourable member. So, kindly proceed.

Hon. Ziro: Thank you Mr. Speaker. I know he was saying that to confuse me so that, I do not say whatever I wanted to say but I am happy because God is with me. I want to stand in support of the Motion; the approval of these people is very important because as we are talking, the Malindi Municipality has already received over 600 million from SUEDP and that is the Sustainable Urban Economic Development Programme which is a British programme that is coming to Malindi. Before the end of this week we are supposed to do some inspection so that we can be awarded this money and do our things in Malindi.

As we sat as a committee, we were considering the suitability of the candidates, their capacity in terms if they are given the position how they are going to deliver their services to the common *mwananchi*. We also looked at the integrity; if at all people have been able to be convicted in court and we realized that these people were fit. We also considered the law that Section 45 of the County Governments Act of 2012 and also we considered the Standing Orders of our County Assembly that is Section 43 Sub-Section 4 and we realized we have actually seen them to qualify in all these areas and therefore we had no any other obligation other than to approve them in these positions and bring them to this House so that we seek their final approval from the House. Therefore, I stand to convince my fellow Members so that we can all support this Motion and pass it so that we can have these people work in these respective positions. Thank you, Mr. Speaker.

The Speaker (Hon. Kahindi): Thank you so much hon. Peter Ziro. Hon. Stanley (Kenga).

Hon. Kenga: Thank you Mr. Speaker. Allow me to make my contributions and I am in support of the Motion as moved by the Chairperson. Guided by the Urban Areas and Cities Act if we go to Article 13 Sub-Section 3 that “the executive committee shall while appointing members of the board ensure gender equity, representation of persons with disability, youth and the marginalized groups in the community”

I was looking at names of people as presented by the chair and I’m glad that on the issues of gender this has been taken into consideration, but this is not the only issue that has been considered by the committee. My attention is drawn to one nominee by the name Zainab Salim who I was looking at her academic qualifications and the Report is very clear that she holds a Diploma in Art and Craft and a certificate in Child Counseling. Why I am attracted to this is the fact that as much as we are advocating in matters education, we should also be live to the fact that we have people who are capable of delivering even though their academic qualifications may not be that much.

Therefore, I want to acknowledge and appreciate what the committee has looked at and given consideration to this person and out of the relevant knowledge it is very clear that the nominee demonstrated extensive knowledge, the mandate and the responsibilities of the office of the board member of the municipality and therefore I am glad and I really appreciate that they have gone ahead to give an opportunity to this person who I want to believe will be able to deliver and perform to the expectations of the people of Kilifi. I beg to support and urge my fellow hon. Members to support too. Thank you.

The Speaker (Hon. Kahindi): Thank you. Hon. Kiraga.

Hon. Kiraga: Thank you so much Mr. Speaker. May I give my special thanks to the committee headed by hon. Kazungu Dele for the job well done. I stand to support this Report. Thank you.

(Question, that the mover be now called upon to reply, put and agreed to)

Hon. Dele: Thank you Mr. Speaker. First may I take this opportunity to congratulate the hon. Members who have contributed very positively to this Motion and as I make my submissions, I have few sentiments to make here. Why do we need to have the board in the first place? We need to have the boards in operation because we want to develop our cities and towns. We need to approve the members so that we can have the board rolling; the reason is because Malindi lost its glory some years back; Malindi was well known worldwide.

If you had a chance to travel abroad sometimes back and you were asked where you came from, if you said Kenya they would ask Malindi because they knew Malindi. But that was then; we no longer have Malindi of that time. Now the dream is coming true. We need to bring Malindi back. We as leaders have been having that dream and now it is a dream come true. The SUEDEP has selected Malindi to benefit 600 million for a face lift. What does that tell us as leaders? Malindi is getting its former glory back.

If we do approve the Members here today and have the board rolling then I am quite sure within some months the money will start being utilised and Malindi will get a new face. The hon. CECM for Lands sent two Members to South Africa for a benchmarking that we can copy and have a tourism attraction corridor and are now back and the engineers are ready to get started. So it is upon us to approve the Members and have the Board ready then we start beautifying Malindi like doing the drainage system like for now we have the rain season and we know how the roundabout looks like after two to three days here in Malindi. It can be really horrible.

Since we have the money in place, we had one condition which was to have the body in place and now we shall have the body in place after we approve these Members here today. You shall be remembered as the leaders who brought the glory of Malindi back. Thank you very much for those who supported.

(Question put and agreed to)

ADJOURNMENT

The Speaker (Hon. Kahindi): Hon. Members, in the absence of any other business on the Order Paper, I wish to adjourn this House pursuant to Standing Order 25(3) of our Standing Orders for the third session of the first part. The House will first resume on Friday 7th of June 2019. Since that will not be a sitting day, then we shall resume the Monday after that. Thank you very much. God bless you.

The House rose at 3:10 p.m.