

COUNTY ASSEMBLY OF SAMBURU



THE HANSARD

Tuesday, 23rd February, 2016

The Assembly met at the County Assembly chambers at 2:30 p.m.

The Deputy Speaker, County Assembly of Samburu (Hon. Adamson Lanyasunya) on the chair

PRAYER

PAPERS

MCA Ndoto Ward, (hon. Raisy Letura): Thank you hon. Speaker, I wish to lay a request for approval for declaration of adjudication sections.

NOTICES OF MOTION

MCA Ndoto Ward, (hon. Raisy Letura): Pursuant to Standing Order No. 44, I wish to give a notice of motion that this House debates and approves the request for approval and consent for declaration of adjudication sections, thank you Mr. Speaker.

STATEMENTS

MCA Ndoto Ward, (hon. Raisy Letura): Thank you Mr. Speaker, the hon. Member for Nyiro ward, hon. Jonathan Lemoosa, requested for a statement on 18th, November, 2015 from the Chairperson of the sectoral Committee on Lands, Physical Planning, Housing and Urban Development concerning the leasing of Maralal Energy Company to operate in Nyiro ward.

The committee conveyed the request for the statement to the county executive member in charge of Lands, Physical planning, Housing and Urban Development and therefore, on behalf of the committee, I wish to convey the communication received from the executive committee member as follows:

Query No. one

Whether the department is aware of the issues arising between operations of Maralal Energy Company and the community residing in the land in which it operates.

- i. The response therefore is that the department of lands is aware of the issue arising from the operation of the leasing company and the area residents.
- ii. Second response is that in a meeting held last year, on 23rd of November, 2015 at Waso Rongai area, the residents highlighted their grievances with the said company saying that the majority of the community members were not fully aware of the contract between the company and Samburu County Council. They further castigated the few members of their

community who were involved in the negotiation for not only failing to negotiate on behalf of the community in a way that is beneficial, but also for not being open to them about details of the agreement.

The community also sited breach of contract on the part of the company accusing it for failing to implement most of the programs and projects which they were to undertake in line with terms of agreement which includes: construction and improvement of schools, provision of water and mobile network in negotiation with the leading service provider among others services.

The community categorically vowed that they will not allow the said company to access the site they have targeted for development of their prospective machines saying that a lease for three years was not tenable for them.

- iii. Thirdly, that the community was also categorical that the contract be terminated and that no other negotiation with the company should take place until the area is adjudicated and incorporated as a group ranch, giving the members more negotiating position.

Query No. two

Whether there was any lease that details the terms and conditions given by the former County Council Government to the Maralal Energy Company to carry its operations in Nyiro ward. The response is:

- i. There exists an agreement between the former Samburu County Council and Maralal Energy Company which was signed in the presence of council's legal officer. The agreement can be obtained from the county government's legal officer.

Mr. Speaker, having read the response conveyed to this committee by the department, we have also sat as a committee of Lands, Physical Planning, Housing and Urban Development and we found that there is a lot that needs ironing out. We have seen an agreement that was purportedly signed by members of finance committee of the former local authority, that is defunct County

Council of Samburu, and as a committee of lands, we have also seen that we need to dig deep into this particular issue, because as per the community, their grievances are very clear; that most of them were not involved.

We also intend to meet a number of persons involved in this so that we can go into the bottom of this matter. So, we have also seen the agreement and the agreement does not look quite ok and as the members of this committee we are requesting through your powers that this committee be given more time so that we bring this issue in a form of a report.

Mr. Speaker, there are a number of people who are involved in this, even some directors of the said company who are not within the country. We are trying to contact them through the legal department and they were outside the country. Therefore, this committee ought to be given more time to do investigations and bring a report to this House and if given that time, we have even given ourselves a time line of two weeks to go deeper into this issue and bring a comprehensive report and I think the other hon. Members can also import some discussions that the committee had, thank you.

MCA Nyiro Ward, (hon. Jonathan Lemoosa): Thank you ho. Speaker, I am listening carefully to the chair and I wish to give my insight of the interest that I have as the representative of the community. I was invited and I was privileged to sit with the committee as they were deliberating on this matter early this morning and as the representative of the people and as an interested party, I agree with the steps that the committee is taking because this is a very heavy matter that needs a lot of attention and investigation and interrogation as the chair has said.

Actually, in order to have a true picture of what actually happened on the process, I also agree with the chair that a little bit time is required in order to meet all these parties because this issue happened outside the knowledge of this county; it was undertaken under the reign of the former County Council.

It is the feeling of these people of Nyiro that this Maralal Energy Company be done away with and I am happy that the CEC, the chair and the committee are going towards that direction. Therefore, I am contented that the process that is taking place will yield fruits, thank you.

MCA Elbarta Ward, (hon. Romano Leakono): Thank you hon. Speaker, I also congratulate the chair for bringing such a report to the House (*Applause*). However, there are a few things here that personally I thought needs some clarity. The report is more of a story than a report that ought to have been brought to this House by the committee, I feel that:

- ✚ The committee should have been able to say categorically if this lease was legal, that is, if the County Council of Samburu at that time had a legal mandate to give out this lease.
- ✚ Secondly, what is the right of the people of this area as per that time to this lease?

These two questions are not coming out right and I think these questions need to be answered before we come to the wishes of the community. In law we do not wish things; we say what is possible and what is not possible.

Therefore, even if we give this committee time to go and interview people, yes, they can have that time, but, if it was lawful, then they cannot push it away. If it was illegal then they can categorically say this lease was given out illegally or the people who gave it out did not have the mandate. And if they had the mandate, then what was the mandate of the people of this area by that time? Knowing that this is a trust land until it was leased. So some questions are not being answered, the real questions are not being answered by the committee as per this report as they are not shedding some light on the legality of the agreement. That question is a key question, that is, what were the rights of the people of this area by that time knowing that this was a trust land?

I therefore think that the committee should go back and do its work well even before going to meet these people because this is what the law requires and it is not coming out clearly, thank you.

The Deputy Speaker, (hon. Adamson Lanyasunya): Thank you hon. Leakono, I think the mandate of the committee is to answer the statement as was asked and the questions here are whether the department of lands is aware and they said they are aware and they gave the answer to an extent of the meeting of 23rd November and the second question is whether there was a lease agreement and they have confirmed that there was a lease agreement signed before the legal officer of the defunct local authority. Therefore the committee did the work as asked. So

what we need to deliberate on is any future direction in terms of the proposal (*Applause*) because the committee does not constitute a panel of legal experts (*Applause*), hon. Leakono.

MCA Elbarta Ward, (hon. Romano Leakono): Thank you hon. Speaker, I must say through your guidance that the committee did a commendable job as per the questions. But it also raises some more questions that knowing all these, the intention of asking these questions should be revisited by the hon. Member. Yes, it is true that the committee did what was asked; but what was asked is not used for the people of the said area. There was a lease, we agree, and they were aware, now I think the hon. Member for Nyiro with all due respect needs to bring more questions to the committee, thank you.

MCA Nyiro Ward, (hon. Lemoosa): Thank you hon. Speaker, this is not an issue where we play politics; it is a legal process and I have said earlier on that I was privileged to have been invited to sit with the committee on land when they were deliberating on this issue. I am contented because it is a matter of legality and the committee and the chair has stated clearly that, of course they are interrogating the lease and the members of the defunct County Council who were engaged on this particular lease. I was there in Waso Rongai and a few members from my area were involved in public participation during that time then and the committee is on the right track to unearth the legality or the binding process of this particular lease.

Let us just give it time because I have faith that what will come out from the process will solve the problem of the people of Nyiro ward legally rather than beating about the bush which might even give away some of their rights but for the moment, have faith that what is going on will give an answer for our request, thank you.

The Deputy Speaker, (hon. Lanyasunya): I think the committee has done its best to give the facts on the statement in terms of the statement response as it was asked and the way forward as I rule is:

- ✓ Land matters are very sensitive and our county government is still new; we had the former defunct local authority with many leases signed and as you also remember the meeting and the training we had in Samburu lodge the department is on the process of reviewing the leases in the county.
- ✓ Secondly, we need participatory approach in terms of the committee on lands of the county assembly, the department officials and the county lands board so I propose that the committee will carry on its mandate to include what the department is doing and review all those documents in a way that is appropriate. It is also very clear in chapter six in terms of land and also in terms of citizen participation says everything that the government is does in the new constitution dispensation; there should be civic education and it is also very clear in terms of land categories, what constitute community land, public land and so on.

Therefore, the committee will continue doing its work so that we do not rash and do things that will result to conflict, thank you. I therefore give that committee mandate to respond what they will have collected, so they can take one full month. This will allow them to include all other stake holders as it is also a legal process, hon. Lemoosa, (*Silence*) ok, if the committee finds it earlier, they can present it to the House; that is also part of ruling, thank you.

MOTION

Chief Whip, (Hon. Benjamin Leitore): Thank you hon. Speaker, I beg to move the following motion, that, pursuant to the provisions of the interim Standing Order No. 185 (ii), this assembly approves the appointment of the following members to the County Assembly Committee on Appointment for the remainder of the county assembly term:

1. Hon. Steve Ltumbesi Lelegwe – Chair
2. Hon. Fabian Lolosoli – Member
3. Hon. Romano Leakono – Member
4. Hon. Shadrack Lesoipa – Member
5. Hon. Linda Naserian – Member

6. Hon. Sophia Leajore – Member

I call upon hon. Lemoosa to second.

(Hon. Lemoosa bows)

The Deputy Speaker, (hon. Lanyasunya): Thank you hon. Members, I propose the question that pursuant to the provisions of the interim Standing Order No. 185 (ii), this assembly approves the appointment of the following members to the County Assembly Committee on Appointment for the remainder of the county assembly term:

1. Hon. Steve Ltumbesi Lelegwe, (the speaker) – chair
2. Hon. Fabian Lolosoli (majority leader) – member
3. Hon. Romano Leakono (minority leader) – member
4. Hon. Shadrack Lesoipa – member
5. Hon. Linda Naserian – member
6. Hon. Sophia Leajore – member

It is your time hon. Members to contribute before I put the question, hon. Leakono

MCA Elbarta Ward, (hon. Leakono): I am just seeking your indulgence, the list which some of us have ends with the No. 9 by Sophia Leajore, so it is like we are not reading from the same page.

The Deputy Speaker, (hon. Lanyasunya): It is just a typing error, and I think it ends with No. 6, hon. Sophia Leajore – MCA, I now put the question, *(Interruption)*...hon. Lemoosa.

MCA Nyiro Ward, (hon. Lemoosa): Thank you hon. Speaker, I do want to congratulate the select committee, the House Business Committee which has arrived to this particular figure in order to comply with our Standing Orders and I wish to congratulate all the members who were selected for that particular job. They are equal to the job and the task and we have faith in them, thank you hon. Speaker. *(Applause)*

(The question was put and agreed to)

MOTION

The Deputy Speaker, (hon. Adamson Lanyasunya): Order hon. Members. *(Speaker reacts to loud consultations from members)*

Chief Whip, (hon. Benjamin Leitore): Thank you Mr. Speaker. I beg to move the following motion that pursuant to the provisions of Interim Standing Order number 186 (4), this assembly approves the appointment of the following members to the County Assembly's Public Investments and Accounts Committee for the remainder of the County Assembly's term:

1. Hon. Raisy Letura – Member
2. Hon. Irene Leshore – Member
3. Hon. Elly Loldepe – Member
4. Hon. Shadrack Lesoipa – Member
5. Hon. Ltipilisa Lekupe – Member
6. Hon. Peninah Lemarle – Member
7. Hon. Benjamin Leitore – Member

I call upon hon. Ltipilisa to second.

(Hon. Ltipilisa bows in seconding the motion)

The Deputy Speaker, (hon. Adamson Lanyasunya): Hon. Members, I now propose a question that pursuant to the provisions of Interim Standing Order number 186 (4), this assembly approves the appointment of the following members to the County Assembly's County Public Investments and Accounts Committee for the remainder of the county assembly's term:

1. Hon. Raisy Letura
2. Hon. Irene Leshore
3. Hon. Elly Loldepe
4. Hon. Shadrack Lesoipa
5. Hon. Ltipilisa Lekupe

6. Hon. Peninah Lemarle

7. Hon. Benjamin Leitore

MCA Elbarta ward, (hon. Romano Leakono): Thank you hon. Speaker, as we said before, we have an issue with the membership of this committee as no opposition member is in this committee which, traditionally, is a docket for the opposition members of any parliament. It is this committee which acts as a watchdog for the expenditure by the county government. Therefore, it does not meet the normal practice of county assemblies. This assembly being a replica of the national assembly, all the members should have come from the opposition and if the members of the opposition are few, we can borrow some members who are known to be, somehow, anti-government.

Secondly, this committee, including the chair, is supposed to have only 5 members. So, I tend to have a different opinion on this.

Special Elected MCA, (hon. Linda Naserian): Thank you Mr. Speaker, I want to join hon. Members in supporting the motion. I also want to appreciate the fact that the concerns that were raised in the last sitting on the leadership of the committee have been put into consideration. It will now be the responsibility of the members of the committee to choose their own leaders. I also want to appreciate the fact that there are female members of this house that have been included in the membership of the committee. However, it is not always a must that only two female members should be in the committee. Two thirds does not mean two thirds of women but we can also be the majority members in a committee.

I would also wish to inform the hon. Member, the Minority Leader, that in the laws guiding the operations of this house; it is not written anywhere that the opposition should be the members of this committee. I urge the hon. Members to approve the membership of this committee so that the oversight role of this house would not be compromised any more. Let us remember that it is not only this committee that should play the oversight role. It is the responsibility of every member of this house in helping the said committee. Thank you.

(Call for a point of information from hon. Leakono)

The Deputy Speaker, (hon. Adamson Lanyasunya): What is the point of information hon. Leakono?

MCA Elbarta ward, (hon. Romano Leakono): I would like to inform the hon. House that if this committee is constituted under Standing Order number 186 (4), then it cannot operate by turning a blind eye on sub-section (3) which says: *The PAC shall consist of a chairperson and not more than 4 other members.* So, if we are going to follow the Standing Order 186 (4) on PIC/PAC, then we cannot keep away sub-section (3). I still say that despite the members being from the ruling coalition, then the membership still needs to be four members plus the chair to make it five. You cannot isolate a sub-section for your own interests. Thank you.

(Call for a point of order)

The Deputy Speaker, (hon. Adamson Lanyasunya): What is the point of order hon. Leitore?

Chief Whip, (hon. Benjamin Leitore): Mr. Speaker, I am standing on a point of order number 87 that requires members of this house to give accurate information. Is it in order for hon. Leakono to continue misleading this house that it is the members of the opposition that are required to be members of the committee? Can he point at any Standing Order that says so?

The Deputy Speaker, (hon. Adamson Lanyasunya): That was overtaken by events hon. Chief Whip; we are supposed to contribute on sub-section (3). Hon. Lesoipa.

MCA Suguta Marmar ward, (hon. Shadrack Lesoipa): Thank you Speaker. I stand to support the hon. Member who moved the motion that the committee to remain as moved. I disagree with the hon. Leakono on the traditions of this house. I remember when constituting these committees, there was an agreement that every member of this house be given a slot in chairing a committee. Our nominated members came when we had already constituted the committees. The agreement of the house, whether you are from the opposition or government, is that every member was given a chance... *(Interrupted by a call for a point of order)*

The Deputy Speaker, (hon. Adamson Lanyasunya): What is the point of order hon. Leakono?

MCA Elbarta ward, (hon. Romano Leakono): Is it in order for the hon. Member to mislead the house that we had an agreement? Can he table the agreement so that we can go by it because we don't go by rumours in this house? Thank you.

The Deputy Speaker, (hon. Adamson Lanyasunya): Continue hon. Lesoipa but base your contributions on the laws that govern the house.

MCA Suguta Marmar ward, (hon. Shadrack Lesoipa): Thank you Speaker. The issue of being in opposition or government is a non-issue. If the rules of the Standing Orders set for five members, I can agree with the leadership of the chair and the members they can sit down and provide the five members.

Chief Whip, (hon. Benjamin Leitore): Mr. Speaker, in adherence to the Standing Order 186, in constituting this committee, we had considered the diversity of our county. This is a big county with a few Members of the County Assembly and that is why we had considered having the seven members which is not as per the Standing Orders... (*Interrupted by a call for a point of order*). Please protect me so that I finish my contribution.

The Deputy Speaker, (hon. Adamson Lanyasunya): Continue hon. Leitore.

Chief Whip, (hon. Benjamin Leitore): Mr. Speaker, the members of our assembly in comparison to other assemblies are few. This committee was constituted before the nomination of the lady members of this house. We, initially, had five men members of the committee but when the lady members were nominated, we incorporated our two lady members within the committee giving one of them the vice chair's position. That is what brought the idea of having the seven members of the committee. Because of the big task ahead of them, we believe, as the leadership of this house, the membership is adequate. I request the house to approve the names as tabled.

MCA Elbarta ward, (hon. Romano Leakono): Thank you hon. Speaker. Truth be said that even though it was discussed in a *kangaroo court*, but the Standing Orders says, in number 186 (3), that it is four members plus the chair. This house is guided by rules and not the way we think and wish. Before we amend the Standing Orders, we must follow the rules as they are today. The

moment we leave this house to be the house of wishing and thinking we cannot go anywhere because, it will not be a hon. House any more. As a precedent, we should follow the rules where they are clear. I don't see any other way where we can ignore sub-section (3) yet we purport to be guided by the principle of equity and equality. Thank you.

MCA Nyiro ward, (hon. Jonathan Lemoosa): Thank you Speaker, listening carefully to the hon. Member over the PIC/PAC in accordance to section 186, I wish to put my argument heavily on what the Whip has said. Because of the heavy task ahead of this committee, there is a need to have one or two members above the normal just as... *(Interrupted by a call for a point of order)*

MCA Elbarta ward, (hon. Romano Leakono): It is interesting that a hon. Member can stand in this house and try to break a law. Does the hon. Member want to say that we disregard the law?

MCA Nyiro ward, (hon. Jonathan Lemoosa): I wish you could have a little bit of patience to listen. I wish to take the members to Standing Order 187 on Committee on Budget and Appropriation. What I see being proposed, on the Budget and Appropriation Committee, is seven members. The law says that we need a chair and not more than eight members to make it 9 members... *(Interrupted by the Speaker)*

The Deputy Speaker, (hon. Adamson Lanyasunya): Hon. Lemoosa, which Standing Order?

MCA Nyiro ward, (hon. Jonathan Lemoosa): Number 187 of the Standing Order on County Budget and Appropriation Committee... *(Interrupted by the Speaker)*

The Deputy Speaker, (hon. Adamson Lanyasunya): Hon. Lemoosa, we are in PIC/PAC.

MCA Nyiro ward, (hon. Jonathan Lemoosa): I want to relate these laws.

The Deputy Speaker, (hon. Adamson Lanyasunya): Those are two different laws hon. Lemoosa and you are out of order.

MCA Nyiro ward, (hon. Jonathan Lemoosa): Am I having a wrong Standing Order?

The Deputy Speaker, (hon. Adamson Lanyasunya): Read 186.

MCA Nyiro ward, (hon. Jonathan Lemoosa): I am reading 186 in relation to 187.

The Deputy Speaker, (hon. Adamson Lanyasunya): Not in relation. Just read the establishment of County Investment and Accounts Committee.

MCA Nyiro ward, (hon. Jonathan Lemoosa): With all due respect, I want to relate it with 187 that gives a membership of nine and (*Interrupted by the Speaker*)

The Deputy Speaker, (hon. Adamson Lanyasunya): You are out of order hon. Lemoosa. Hon. Members, according to Standing Order number 50 sub-section (3), I defer putting of the question on the motion. The committee should meet and follow the Standing Orders and I will put the question tomorrow afternoon at 2.30 pm. Hon. Leitore.

Chief Whip, (hon. Benjamin Leitore): Mr. Speaker, I stand to move a motion that pursuant to the provisions of Interim Standing Order number 187 (4), this assembly approves the appointment of the following members to the County Assembly's Budget and Appropriation Committee for the remainder of the county assembly term:

1. Hon. Jonathan Lemoosa – Member
2. Hon. Benjamin Leitore – Member
3. Hon. Adamson Lanyasunya – Member
4. Hon. Lazaro Letiktik – Member
5. Hon. Pius Lobuk – Member
6. Hon. Sarah Lekisaat – Member
7. Hon. Modester Lalaikipiani – Member

I call upon hon. Lesoipa to second.

(Hon. Lesoipa bows in seconding the motion)

The Deputy Speaker, (hon. Adamson Lanyasunya): Thank you hon. Members. I now propose the question that pursuant to the provisions of Interim Standing Order number 187 (4), this assembly approves the appointment of the following members to the County Assembly's Budget and Appropriation Committee for the remainder of the county assembly term:

1. Hon. Jonathan Lemoosa
2. Hon. Benjamin Leitore
3. Hon. Adamson Lanyasunya
4. Hon. Lazaro Letitik
5. Hon. Pius Lobuk
6. Hon. Sarah Lekisaat
7. Hon. Modester Lalaikipiani

MCA Ndoto ward, (hon. Raisy Letura): Thank you Mr. Speaker, I wish to support the motion as moved by the hon. Chief Whip. I wish to say that we are at a very crucial stage as a county and the county residents are relying on some crucial committees like the Budget Committee so that the impending supplementary budget can be approved. The right time to pass this committee is not even today but it should have been yesterday.

We are aware of the public participation that is going around and we recognize the crucial role played by the Budget Committee. I wish to commend the Selection Committee for considering the members who are there because they have never failed this house and the county residents. It is important that they are back to do the work that they have been doing. We have passed several budgets; we have done our CIPROP and Fiscal Strategy Papers because of the able leadership of the able member for Nyiro ward. I wish to commend the mover and I agree that this committee should be in place. Thank you.

MCA Nyiro ward, (hon. Jonathan Lemoosa): Speaker Sir, in accordance to section 187 (4), it states that the committee should have a membership of not more than 8 and a chair but this committee is way below the expected number. So, could we kindly consider... .. *(Interrupted by a call for a point of information)*

MCA Ndoto ward, (hon. Raisy Letura): Thank you Mr. Speaker, the hon. Member for Nyiro ward was my English teacher but it is clearly stated in the Standing order 187 (2), that the committee shall consist of a chairperson and not more than 8 other members. It is not a crime to

have seven members. We have been given a ceiling of eight but we can go as low as five. I think we should not crucify the Standing Orders on that because it is very explicit. Thank you.

The Deputy Speaker, (hon. Adamson Lanyasunya): I now put the question.

(Question put and motion adopted)

Hon. Members, the time being 15 past 4 o'clock and there being no other business, this assembly stands adjourned until Wednesday, 24th February, 2015, at 9.30 am.