

COUNTY ASSEMBLY OF SAMBURU



THE HANSARD

Wednesday, 5th December, 2017

The Assembly met at the County Assembly chambers at 2:30 pm

The Deputy Speaker, County Assembly of Samburu, (Hon. Jonathan Lemoosa) in the Chair

PRAYER

PAPERS

SAMBURU COUNTY ANNUAL DEVELOPMENT PLAN 2018/2019

MCA Elbarta Ward, (hon. Peter Lempei): Thank you hon. Speaker, I wish to table the report of the Budget and Appropriation Committee on the Samburu County Annual Development Plan 2018/2019.

NOTICES OF MOTION

SAMBURU COUNTY ANNUAL DEVELOPMENT PLAN 2018/2019

MCA Elbarta Ward, (hon. Peter Lempei): Thank you hon. Speaker, pursuant to Standing Order No. 46 (4), the County Assembly approves the report of the Budget and Appropriation Committee on the Samburu County Annual Development Plan 2018/2019.

STATEMENTS

CONTINUED USE OF PUBLIC RESOURCES BY MISS MARY KANYAMAN EKAI DESPITE NOT BEING CEC MEMBER

MCA Lodokejek Ward, (hon. Jerias Leshoomo): Thank you hon. Speaker, response to statement No. 002/2017 sought by hon. Paul Leshimpiro concerning continued stay in office and use of public resources by Mrs. Mary Ekai Kanyaman despite her being not approved by County Assembly as a CEC member for education.

We received a statement from the County Secretary and it says, *“Your statement dated 15th November, 2017 on the above mentioned subject refers. Reference is made to the statement from MCA Ang’ata Nanyokie ward, Paul Leshimpiro through the Leader of Majority seeking to inquire into and report on the reasons for continued stay in office and use of public resources by Mrs. Mary Ekai Kanyaman despite her being not approved by County Assembly as a CEC member for education”*. In view of this, the following are the responses:

1. “On 17th November, 2017, my office noted with concern that the said former CEC is using government resources despite disapproval by the County Assembly. On the same date, I withdrew from her vehicle No. KBW 268V. *see appendix (i)*.”

2. On 8th November, 2017, she was to hand over to hon. Peter Lolmodooni, however, the handing over was rescheduled to Tuesday, 14th November 2017 where I appeared to witness the exercise but the former CEC decided to leave for Nairobi without handing over. See appendix (ii).
3. I wrote to the county payroll department to remove her from the payroll file letter ref. SCG/CS/PAYROLL VOL. 1/8 dated 3rd November, 2017. see appendix (iii).
4. Mrs. Mary Ekai deliberately decided not to hand over up to date ignoring conservatory orders issued by the court on 1st November, 2017. See appendix (iv) attached.

In conclusion, the CS calls for an intervention from the County Assembly on the oversight role and advice accordingly. Looking forward to your cooperation on this matter”.

The CS attached some documents, appendix I to IV as evidences on the subject. Thank you.

MCA Suguta Marmar Ward, (hon. Shadrack Lesoipa): Thank you hon. Speaker, I wish to make some comments on the response made by hon. Leshoomo on behalf of Leader of Majority and I have this to say, that, even though I am not a legal expert, conservatory orders given by the court, according to me are only meant to restrict or to bar probably the governor not to appoint another CEC to that office.

However, according to what hon. Leshoomo has read, that Mrs. Mary Ekai is riding on conservatory orders to make herself remain in office and even refuses to hand over. This is a House of law and order and we operate within the law and even Executive operates within the law and the specifications are very clear on the end term of every employee of the County Government and specifically the CEC.

Therefore, the County Secretary (CS) is being ignorant to refer the issue to Assembly for action taking and yet, the law is very clear. They should therefore take the law as it is and there are measures that can be taken against the one who refuses to leave the government office. The statement is half-baked and the CS should go ahead and do his work.

MCA Ang’ata Nanyokie Ward, (hon. Paul Leshimpiro): According to the statement, the CS wrote that he took the following steps. He said that on 7th November, he withdrew the vehicle from Mrs. Mary Ekai and on 8th November, she was to hand over the vehicle. There is nothing

therefore showing that the CEC withdrew the vehicle as the CEC was to hand over the following day. However, he mentioned at the and that Mrs. Mary Ekai deliberately decided not to hand over citing the conservatory orders issued by the court and according to this statement, he wrote on 17th of November. But according g to appendix No. (iv), concerning the court, the hearing was supposed to be on 9th November and therefore, the 9th of November was supposed to be the end of their understanding.

All the same, one person has no ability to continue saying she must enjoy all the privileges entitled to a CEC and the Assembly disapproved her. Therefore, as per what hon. Lesoipa has said, the conservatory court order is only restraining the governor from appointing another CEC but it doesn't mean the former should continue to enjoy all the privileges entitled to a CEC. So, this statement has some contradictions and the CS has to take an action accordingly.

MCA Elbarta Ward, (hon. Peter Lempei): Thank you hon. Speaker, the hon. Member for Loosuk knows times when I am perplexed. This is one of such moments.

MCA Loosuk Ward, (hon. Adamson Lanyasunya): Point of order

The Deputy Speaker, (hon. Jonathan Lemoosa): What is the point of order hon. Member for Loosuk ward?

MCA Loosuk Ward, (hon. Adamson Lanyasunya): Is it in order for hon. Lempei to mention me even though I have not commented on the statement? Can he clarify what he is saying knowing that this is not a house of jokes?

The Deputy Speaker, (hon. Jonathan Lemoosa): Hon. Member for Elbarta ward, kindly withdraw and apologize.

MCA Elbarta Ward, (hon. Peter Lempei): I am not sure whether being perplexed is offensive but anyway I withdraw. Moving forward swiftly, why I am perplexed is because of a response that this House received this afternoon which was sought by hon. Member for Ang'ata Nanyokie ward seeking explanation why somebody who is no longer on service continues to enjoy public resources to do a private function. This is a former CEC who was disapproved by this House, she is not in office, does not step to that office but says the court has instructed the executive not to withdraw anything from her and therefore will proceed on to use the state resources to go to a

hotel, a bar, the roads and to other towns as we have been told and these are the Samburu County resource which you are not part of that government. So, the CS is telling us that we are almost ignorant of the law. This county has a legal department which is supposed to advise the executive on any legalities and what the court says when it pronounces itself on specific issues. One of the issues that the court pronounced is that the CEC is in court and we have all read the pleadings. It does not require the legal department to interpret that she did not pay to be given privileges like continued use of government resources. A court does not give you orders on what you did not seek. She did not in the first place request to continue enjoying these resources. There were two orders that were issued: order not to replace her as the process continues which was given to the assembly and the executive. To introduce other matters and misuse resources cannot be allowed or admitted in this House as an explanation sufficient to continue using government resources.

If the CS does not understand the law, there is a legal department that he would refer to in his report on the advice that he sought. You don't just sit in isolation and get an interpretation from someone who is not working. Our conviction is that someone has to bear responsibility for the misuse of resources even after a hon. Member of the House raises the issue but the person still continues to be paid illegally without working. We will need an explanation as to why those resources continue to be used blatantly, illegally and with impunity.

It has become the tradition of the executive when this House asks for an explanation, is either they ignore and give reasons as to why they cannot respond. The hon. Member for Waso sought a statement on creation of illegal positions without regard to the budget but the statement has not been brought to date. Secondly, the hon. Member for Ang'ata Nanyukie has asked for a substantive statement that touches on the misuse of funds. But the ball is tossed back to us to provide a solution since we are the one playing an oversight role. I am not sure the CS understands English. An oversight role is to see what you should be doing. The assembly does not implement and the executive takes orders. Why would the CS write to this House and tell us to help him enforce the laws on a former CEC who is not in service to bring her on board? This is not supposed to be a statement but the CS should be summoned to the House to make an explanation on how the House should be helping him implement his roles. If then he would be in contempt that is when the House will help him to interpret the law. I think that was a shoddy job.

Specially Elected MCA, (hon. Antonella Lobura): Thank you Mr. Speaker. This House knows that the former CEC, Mrs. Mary Kanyaman, got an injunction not to be replaced but to continue enjoying the resources is not right. There are rules and regulations that govern her and the office should continue. The former CEC should hand over to the current one so that the ministry duties go on as required. Thank you.

Specially Elected MCA, (hon. Stephane Lanyasunya): Thank you Mr. Speaker Sir. I would like to thank the Member for Ang'ata Nanyekie for the statement. It is clear that we are all guided by our three roles which are clearly brought about by the separation of powers and we can only relate through consultations and co-operation. When someone tries to run away from responsibilities without a clear explanation then the House is not ready to be a rubber stamp.

Samburu is scrambling for meagre resources and when a former CEC tries to use the court's conservatory laws to get what she wants at will because two salaries are being paid in one office while our children don't have classrooms or enough ECD teachers. This is impunity. What can we explain to our constituents when someone is paid for work not done? When the court gave the conservatory order, it did not say she should be paid every month for work not done. When there are loopholes that people use, then this hon. House should not be party to it.

We know that the judiciary are supposed to give laws that are friendly to everyone which are supposed to safeguard the interest of all but not create complications. What I see here are complications and not solving any problem. Thank you.

MCA Maralal ward, (hon. Fred Kiragu): Thank you Mr. Speaker Sir. The CS could be playing in cohorts with the former CEC or the CS is intending to underrate the intelligence of this hon. House. What this House did was within its mandate to either approve or disapprove a CEC. Taking this House to court was lack of knowledge on the part of the CEC because when the CS says that our role is to oversight and advice him, is for officers who are working. This is a CEC who should have stopped working the day the House disapproved her and she should not be in a government office.

On the standards of education that we have in the county, we cannot afford to have a disapproved CEC to hold a department at ransom. Failing to hand over government properties when one has

ceased to execute duties is criminal. Instead of the CS seeking assistance from the House, he should have gone to the police which is the right authority to protect our properties.

The statement that was brought before the House, fails very early even before it is read. The best that we can do now is for the CS to act, abdicate or appoint another officer to execute the decisions of this House. Anything can be done in that office including misuse of the funds and properties so that the successor doesn't find them in the office. I wish to advise the Leader of Majority and the Speaker to take appropriate steps to have the office handed over. Thank you.

MCA Loosuk ward, (hon. Adamson Lanyasunya): Thank you hon. Speaker. When I go through the statement and the response from the CS, it has attachments from the High Court which has given conservatory orders until the parties cases are heard on 15th January, 2018. My understanding of the Kenyan law is that it requires any matter before it cannot be discussed as it would be a contempt of court. Unless there is a clause within our Standing Order that supports the court order. Thank you.

(Call for a point of order)

The Deputy Speaker, (hon. Jonathan Lemoosa): What is the point of order hon. Member for Suguta?

MCA Suguta Marmar ward, (hon. Shadrack Lesoipa): Thank you Mr. Speaker. Is the member in order to mislead the House that conservatory orders not to employ another CEC in the department also includes the handing over of properties in an office that you are not working in? I think we are within the law in requesting the hon. Lady not to use government resources as we wait the courts to determine her fate.

MCA Elbarta ward, (hon. Peter Lempei): Mr. Speaker, I rise on a point of order similar to what the Hon. Member for Suguta has raised. I am glad that the Hon. Member has said his little knowledge of law; this is because we have sub judice in law, which is not discussing matters before court. This is not absolute because what has not been sought is subject to discussion by a legislative House like this one. We are not discussing a matter before court because it is sub judicial, we only mean that you cannot use the rule of sub judice to hide. This also means that if the vehicle kills someone cannot be discussed just because it is sub judicial. We should not

extend the law to territories that it does not get. It is not sub judicial to say that the CEC was not given orders until someone point those orders to us that were issued by the court and it must be certified by the registrar of High Court. That is not sub judicial.

MCA Maralal Ward, (Hon. Fred Kiragu): Thank you very much Mr. Speaker. I think that the dispute is in the Health department. She should hand over Education. Education is not in dispute. The only problem is that she has not yet handed over the Education department. She should hand over the Education department and go to her place of convenience and wait for the dispute at the Health department to be sorted out.

Specially Elected MCA, (Hon. Zamzam Ismail): Thank you Mr. Speaker Sir. This hon. House rejected the nomination of Mary Ekai. This is the highest House in our land. I find it as an intimidation of the highest order for Mrs. Mary Ekai to hold any office. Nobody is above the law. The sitting CEC should take legal action. Mary was rejected on the floor of this House. She is not a State Officer any more. It is an intimidation to this House and the County Government when she is still using public resources. Thank you Mr. Speaker Sir.

MCA Loosuk Ward, (Hon. Adamson Lanyasunya): Thank you hon. Speaker. I am not defending Mary Ekai. I am only following the law. One of the Speakers said that they need a certified copy stamped by the registrar. I saw that it was stamped. If anyone can quote any law that surpasses what is in the court then I do not have a problem. As a House, we should wait until the court clears the case which is on 15th. That is what I am saying and if hon. Lempei has...

(Point of order by Hon. Peter Lempei)

MCA Elbarta Ward, (Hon. Peter Lempei): Mr. Speaker all I ask is for the hon. Member to read to us loudly the Section of the conservatory order that bars the County from withdrawing privileges and resources that were there. If there are such orders given by the court they should be read loudly to the House. The public is in the public domain then that will be a subject of interpretation by our legal department.

The Deputy Speaker, (Hon. Jonathan Lemoosa): Hon. Members, I now allow the hon. Member for Loosuk ward to read his reference in accordance with the CS letter and the High Court. Please go ahead.

MCA Loosuk Ward, (Hon. Adamson Lanyasunya): In this Court ruling, I saw a conservatory number five which is an order prohibiting the second respondent from its vetting committee agents and respondents from receiving, vetting, discussing, replacing or in any way purporting to act to the detriment of the said Mary Kanyaman Ekai including removing her from office in terms of Section 9 of the Public Appointments (County Assemblies Act number 5 of 2017 pending the hearing and determination of this case). I think it is very clear. If the Assembly is to be arrested on contempt of court then I will be running away. Thank you.

The Deputy Speaker, (Hon. Jonathan Lemoosa): Hon. Members, I now direct the House to the following:

1. As the CS confirms that this matter is in court, and as the conservatory order provides, let us stop discussing this matter until the court makes its ruling on the 7th January 2018.
2. Hon. Members, I want to direct this question once again to the Majority Leader to seek more information from the CS.
3. This House shall reflect this matter and as the Majority Leader seeks further clarification from the CS, he will avail his findings and both House reflections on the Thursday the 7th December 2017 at 2:30 pm.

PROCEDURAL MOTION TO ALTER THE CALENDER

MCA Elbarta Ward, (Hon. Peter Lempei): Much obliged Mr. Speaker on your ruling. Pursuant to the provisions of Standing Order number 29 (4) on the calendar of the Assembly, this Assembly resolves to alter this calendar and extend its adjournment date from today Tuesday December 5th 2017 to Thursday December 14th 2017 at 2:30, thank you Mr. Speaker. I ask hon. Leshimpiro to second this Motion.

(Hon. Leshimpiro bows in seconding)

The Deputy Speaker, (Hon. Jonathan Lemoosa): Hon. Members, I now propose a question that Pursuant to the provisions of Standing Order number 29 (4) on the calendar of the Assembly, this Assembly resolves to alter this calendar and extend its adjournment date from today which is Tuesday December 5th 2017 to Thursday December 14th 2017 at 2:30 pm.

MCA Elbarta Ward, (Hon. Peter Lempei): Thank you Mr. Speaker. We are seeking this adjournment to extend this House to 14th is because we have businesses that we have to conduct which are of serious public interest. Within the calendar provided by our Standing Orders we are within the law as to confirm that this adjournment is legal. We have reasons such as budget and vetting public officers to give services to our people. We only ask slightly more than a week to conduct businesses of public interest. I beseech the Members to join in extending the life of our House for us to serve our people expeditiously, thank you Mr. Speaker.

The Deputy Speaker, (Hon. Jonathan Lemoosa): Reading from the mood of the House that Members are comfortable, I now put a question that pursuant to the provisions of Standing Order number 29 (4) on the calendar of the Assembly, this Assembly resolves to alter this calendar and extend its adjournment date from today which is Tuesday December 5th 2017 to Thursday December 14th 2017 at 2:30 pm.

(Question put and passed)

Hon. Members, the time being 15 minutes to four o'clock and there being no any other business, this Assembly now adjourns until Wednesday 6th December 2017 at 9:30 am. Thank you.

