

MOMBASA COUNTY ASSEMBLY**HANSARD REPORT**Tuesday, 8th November, 2016

The House met at 2.35pm.

*(Deputy Speaker (Hon. Mswabah Rashid) in the Chair)***PRAYERS**

Deputy Speaker (Hon. Mswabah Rashid): Have your seats Hon. Members, yes Hon. Duncan Onyango.

Hon. Onyango: Mr. Speaker Sir I wish to inform this Hon. House that there's no quorum.

Deputy Speaker (Hon. Mswabah Rashid): Clerk can you ascertain if there's a quorum.

(Clerk confirmed lack of quorum)

Sergeant At Arms can you ring the Quorum bell.

(Sergeant At Arms rung the quorum bell)

Members you cannot go out because the bell has rung, Hon. Nzai.

Hon. Nzai: Am going to whip the Members.

Deputy Speaker (Hon. Mswabah Rashid): Only the Whip can get out and the Whip is going...

(Sergeant At Arms rung the quorum bell)

(Consultations)

(Members entered the Chamber)

Yes Clerk.

(Clerk confirmed quorum)

Thank you very much, yes Clerk.

COMMUNICATION FROM THE CHAIR**Ruling on Mode of replies to requests for Statements**

Hon. Members I stand here before you on a ruling on mode of replies to requests for Statements'

Hon. Members of this County Assembly,

You will recall that on Thursday, 3rd November 2016 there arose a matter regarding the mode of reply to a request for statement by the Committee on Finance, Budget and Appropriations on the Status of Remittances of Gratuity for Hon. Members as to whether it was through a Report or Statement by the Committee.

The request for statement was worded as follows:

“Status of Gratuity for Members of the County Assembly

Mr. Speaker Sir, I wish to bring to the attention of this Hon. House about the status of gratuity of Members of County Assembly.

Mr. Speaker Sir, during our Team Building with County Executive at Swahili Beach Hotel in Kwale County, it was brought to our attention at the County Executive Committee Member for Finance confirmed to us that the gratuity funds for the past three years will be disbursed to the respective institution.

Mr. Speaker, I humbly request the Department concerned to bring before this Hon. House an updated statement on the disbursement of the funds in question."

From the request what was required was *"updated statement on the disbursement of the funds in question."*

According to our interim County Assembly Standing orders, the following is provided for concerning statements:

"PART X – STATEMENTS

Member's general statements

40. (1) *Notwithstanding Standing Order 27 (Hours of Meeting), the Speaker shall interrupt the business of the County Assembly every Tuesday at 6.00pm to facilitate Members to make general Statements of topical concern.*

(2) *A Member who wishes to seek leave to raise a matter under this Standing order shall, before 3.00pm on the day the statement is to be made, hand to the Speaker a written notification of the matter, but the Speaker shall refuse to allow the request unless satisfied that the matter may properly be discussed in the County Assembly.*

(3) *No Member making a Statement under this Standing order shall speak for more than three minutes, unless with permission of the Speaker.*

Statement Hour

41. (1) *Notwithstanding Standing Order 37 (Sequence of Proceedings), there shall be time, to be designated Statements hour, every Thursday, commencing not later than 3.00pm.*

(2) *During the Statements hour-*

(a) *A Member of the County Assembly Business Committee designated by the Committee for that purpose shall, every Thursday or on the last sitting day, for not more than ten minutes, present and lay on the Table, a statement informing the County Assembly of the business coming before the County Assembly in the following week;*

(b) *the Leader of the Majority Party, or the Leader of the Minority Party as the case may be, or their designees may make a statement relating to their responsibilities in the County Assembly or the activities of a Committee;*

(c) *A Member may request for a Statement from the Committee Chairperson relating to matters under the mandate of the Committee and the Speaker may either appoint a day for the Statement or direct that the Statement be issued on the same day".*

(End of Communication from the Chair)

The Request for Statement above by Hon. Mary Akinyi should have been brought under Standing order 41(2)(c) which would have been replied to by the Chairman.

However, the request contrarily specifically requests an updated statement from the Department which is not catered for under the above Standing order.

Standing Order 41(2)(c) clearly states: *"A Member may request for a Statement from the Committee Chairperson..."*

So far the practice for reply for request for Statements has been through Reports tabled and considered by the House as brought by the respective Committees to which the Hon. Speaker has directed the matters to.

From the clear reading of the Standing orders, the procedure has been breached and it is high time that corrective measures be taken to align our procedures with the law and parliamentary practices in other jurisdictions.

I therefore rule that from now henceforth all requests for Statements be handled pursuant to Interim Standing order 41(2)(c) or as amended and all Members and Table Clerks are hereby instructed to comply forthwith.

In giving replies to Statements, Chairmen of Committees have leeway to work with their Committees, consult departments, experts or any person or entity as the situation allows or demand within their mandates and available time and resources.

Where any Member is unsatisfied with any Statement issued by a Chairman of any Committee then the Hon. Speaker may issue further directions as the situation may necessitate.

I therefore hereby direct the Chairman of the Committee on Finance, Budget and Appropriations to issue a Statement on the matter of status of gratuity remittances for Hon. Members.

Thank you very much.

(Applause)

Yes Clerk.

STATEMENTS

STATUS OF REMITTANCES OF GRATUITY FOR HON. MEMBERS

Yes Hon. Mohamed Hatimy.

Hon. Mohamed Hatimy: Thank you Mr. Speaker.

(Hon. Mohamed Hatimy read the Statement)

- 1.1 Mr. Speaker Sir, I am pleased to present to this August House a Statement on the status of remittances of gratuity for Hon. Members. This matter arose from a request for statement by Hon. Mary Akinyi on 4th October 2016.
- 1.2 Gratuity is a monetary gift from an employer to an employee especially for services rendered. The Employment Act provides for its definition and also for instances when it should be given.
- 1.3 Gratuity is a lump sum amount that an employer pays an employee if he or she retires or resigns from employment. An employee does not contribute any portion of her salary towards this amount. Gratuity is only paid out at the time of retirement or resignation, and in the event of death or being rendered disabled because of an accident or illness.
- 1.4 However, it is important to note that gratuity is given at the discretion of the employer, especially in cases where the employer has registered with a pension scheme and is contributing on behalf of the employees or the employer pays out service pay at the end of the contract.

- 1.5 Your employer pays out gratuity at the completion of a contract. There is nothing wrong with this. The employer is not in breach of the Employment Act because the employer expects the employee to perform work, which takes time to complete, and if the employee leaves midway then it means the employer has to employ someone else to complete the job. If the employer is to do this it means the organisation will lose out every time an employee leaves without completing the project.
- 1.6 It should be noted that it is the duty and responsibility of the County government to pay gratuity at the end of the contract term and not through any scheme or monthly remittances to a provident fund. Channelling these funds through LAPFUND was merely a favour and private arrangement with Members.
- 1.7 *Gratuity Law and Practice in Kenya* states:

“Gratuity is a lump sum amount that an employee (on contract) when he retires or resigns from the organization. An employee does not contribute any portion of his salary towards this amount. The rationale for gratuity is to encourage employees to offer longer service to the employer and to ease the termination of contract of employment by offering the sum of gratuity as consideration.

Gratuity is not provided for as a condition of employment but it has developed as a good practice in employment and employees have come to expect it from their employers.

Gratuity is unusually paid in the following circumstances:

- (i) When employee retires*
- (ii) When the employee resigns*
- (iii) In event of death of the employee*
- (iv) In event of disablement i.e because of accident or illness.”*

- 1.8 *The Kenyan Worker and the Law* states:

(Interruption)

Mr. Speaker Sir there's loud consultation...

Deputy Speaker (Hon. Mswabah Rashid): Hon. Members maintain silence in the House and listen to Hon. Hatimy's statement

“Deduction from Wages:

Other than the statutory deductions, an employer is generally not allowed to make any deductions from an employee's wages. However there are several exceptions:

- a) If the worker is absent from work without leave, the employer can deduct wages equal to the amount of time the worker did not work.*
- b) An employer may deduct any contributions by a worker to his or her retirement or provident fund.*
- c) An employer may deduct any contributions by a worker to his or her retirement or provident fund.*
- d) If the worker damages/loses goods or money at the work place, the employer may deduct the value of the lost goods or money from the worker's wages.*
- e) Salary advances or loans can be deducted from a worker's wages."*

- 1.9 With respect to remittances to the LAPFUND to which Members have arrangements for their payment of gratuity, the County Treasury and County Assembly have remitted Kshs. 19,066,660.89 in three installments as follows:

- a) Kshs. 10,011,894.14
- b) Kshs. 6,458,315.13
- c) Kshs. 2,596,451.62.

- 1.10 The Kenya Gazette Supplement No. CXV No. 33 Notice No. 2885 of 1st March 2013 states inter alia as follows:

I do have a copy from the Kenya Gazette.

"Retirement Benefits: A County State officer shall serve on contract and be paid a service gratuity at the end of the five year term at the rate of 31% annual basic pay for every year served."

- 1.11 Mr. Speaker According to letters of appointment issued to every MCA, the terms and conditions stipulated include the following Mr. Speaker:

I do have a letter which was signed by all of us Mr. Speaker that state that;

"Retirement benefits will be a service gratuity at the end of the term at the rate of 31% of the annual basic pay for every year served."

- 1.12 Mr. Speaker Sir, all pending remittances will be paid once the Mombasa County Supplementary Budget 2016 has been passed and improvement of the cash flow situation in the County. What I would like to assure Members is that the County government will fulfil its responsibility of ensuring Members are paid their gratuity by remitting all outstanding gratuity arrears in due course.

Thank you Mr. Speaker Sir.

(Applause)

Deputy Speaker (Hon. Mswabah Rashid): Yes Clerk.

ADJOURNMENT

Thank you Members there being no other business this House stands adjourned until tomorrow morning at 9:00am.

The House rose at 2:59 pm