

MOMBASA COUNTY ASSEMBLY**HANSARD REPORT**Tuesday, 5th July 2016

The House met at 3:31p.m.

*(Mr. Speaker (Hon. Thadius Rajwayi) in the Chair)***PRAYERS****Mr. Speaker** (Hon. Rajwayi): Hon. Members kindly have your seats.**COMMUNICATION FROM THE CHAIR**

First of all ladies and gentlemen allow me to deliver this particular communication from the Chair, it is not written it is verbal, and I want to really take this important opportunity to apologize that we were not able to commence our business by exactly 2:30p.m as there in the Standing orders. That was actually necessitated by the fact that we really had some pressing issues that we had to sort out; one as a family and two as a party because as you are all aware this particular Hon. House, some people call it one eyed Assembly, but we know that is not the case if we have more than two and for that reason therefore today it was quite unfortunate that we could not do what is required by the law but on behalf of the entire team I want to submit that particular apology. Thank you.

NOTICE OF MOTION

Well again at this juncture ladies and gentlemen you will realize that this Order number six is talking of placing a Notice of Motion and that same Notice of Motion is talking about the removal of one Hon. Thadius Rajwayi as a Speaker of this great Assembly and so by all standards to demonstrate what democracy dictates is that I cannot preside over this same matter as this same Hon. person that is standing and speaking is the one that is affected. So it would be very much in order that I allow this Hon. House to exercise its democratic right without.... We want this decision to be made without due interest and you must not be pushed to make some decisions and for that reason therefore I want to do something that is of great to we..., this is what democracy dictates and wants. For that reason there I know it is there in Standing Order number 58, paragraph three that you elect any other person to come in as a Speaker that will stand in when the Speaker is not on the seat. Again also in Article 11 section 11 of the County Government Act of 2012 asks the same; lucky enough in our case, we did it long time ago, we pre-empted the situation and we elected the Deputy Speaker and for that reason therefore I want to believe we are not going to start fighting on who is to take or occupy the position, the Deputy Speaker who is Hon. Mswabah will now come to preside over the Assembly...

(Applause)

And it is important ladies and gentlemen that I would not want to appear to be selfish in that matter, i will not come back immediately after that particular Order number six, I will allow the Deputy Speaker to finish up the entire remaining business in the Order paper....

(Applause)

Ladies and gentlemen I now beg to leave....

*(Mr. Speaker (Hon. Rajwayi) exited the Chair)**(Members stood)**(Hon. Deputy Speaker (Hon. Mswabah Rashid) in the Chair)***Deputy Speaker (Hon. Mswabah Rashid):** Members you may be seated. Yes Hon. Patrick Siminyu.

NOTICE OF MOTION**REMOVAL OF HON. THADIUS RAJWAYI AS SPEAKER OF COUNTY ASSEMBLY OF MOMBASA**

Hon. Siminyu: Mr. Speaker I want to give Notice of Motion on removal of Hon. Thadius Rajwayi as the Speaker of County Assembly of Mombasa.

(Hon. Siminyu read Notice of Motion)

Mr. Speaker Sir, I beg to give notice of the following Motion;

THAT AWARE that Hon. Thadius A. Rajwayi was elected the Hon. Speaker of the County Assembly of Mombasa to preside over the plenary and other select committee proceedings as per the Standing orders and the law.

FURTHER AWARE that Standing Order 58 and Section 11 of the County Government's Act 2012 provides for the removal of the Speaker of the County Assembly by a resolution supported by not less than 75 per cent of all Members of the County Assembly which is annexed hereby.

CONCERNED that the Hon. Rajwayi has committed various acts which are serious and gross violations of the law, the Constitution and the Standing Orders including incompetence and abuse of office in the performance of his duties as the Speaker of this August House which renders his continued stay in office untenable.

NOTING the following grounds for the removal of Hon. Rajwayi as the Speaker of the County Assembly as follows;

A. ABUSE OF OFFICE

1. The Hon. Rajwayi as Speaker of the County Assembly of Mombasa, allowed and presided over a sitting of this August House on Wednesday 11th May, 2016 in the absence of the officially designated Mace and allowed the use of a wooden bed stand as an improvised Mace without notifying Members contrary to parliamentary practices and traditions in Kenya and the Commonwealth of nations.

2. Hon. Thadius A. Rajwayi as Speaker of the County Assembly of Mombasa ignored a communication from the Chief Whip of the Majority party vide his letter dated 16th June 2016 which communicated the sole parliamentary party's position on the membership to Committees which was pursuant to Standing orders 154(1) and 157(1) and purporting to uphold the list passed through the defective Motion as evidenced by the minutes of an informal non binding *Kamukunji* meeting he presided over on Monday 13th June, 2016.

3. The Hon. Thadius A. Rajwayi as Speaker of the County Assembly of Mombasa on Tuesday 10th May, 2016 and through written communication suspended some Members from County Assembly sitting indefinitely without citing specific grounds and Standing Orders which he had invoked to suspend them and therefore was acting outside the law.

4. The Hon. Thadius A. Rajwayi as Speaker of the County Assembly of Mombasa in suspending Members indefinitely pending investigations and availing of a report by the

Powers Privileges and Welfare Committee was acting outside the powers given to him. Under Standing Order 104 and 107 Under Standing Order 104 Members should have been suspended from the County Assembly's sitting for the remainder of the day's sitting since it was the first occasion.

5. The Hon. Thadius A. Rajwayi as the Speaker of the County Assembly of Mombasa has from time to time and in the specific instances cited herein breached the provision of Standing Order 1 which states as follows :

'(1) In all cases where matters are not expressly provided for by these Standing orders of the County Assembly any procedural question shall be decided by the Speaker.

(2) The decisions made in paragraph (1) shall be based on the Constitution of Kenya statute law and the usage s forms precedents, customs, procedures and traditions of the County Assemblies of Kenya...

(Interruption)

Hon. Oduor: Point of order Mr. Speaker!

Deputy Speaker (Hon. Mswabah Rashid): What is it Hon. Jabess?

(Loud consultation)

Mr. Jabess this is a Notice of Motion and it will have specific time for debate....

(Interruption)

(Loud consultations on the floor of the House)

....and we cannot allow that, just a minute let him finish reading first.

Hon. Oduor: But there is a court order!

(Jeering)

Deputy Speaker (Hon. Mswabah Rashid): Yes Mheshimiwa Siminyu?

(Hon. Siminyu resumed reading the Notice of Motion)

Hon. Siminyu: ...and other jurisdictions in the extent that these are applicable to Kenya. The Hon. Thadius A. Rajwayi even in cases where matters have been expressly provided for has ruled otherwise in clear and brazen contravention of the Standing orders.

6. The Hon. Thadius A. Rajwayi as a Speaker of the County Assembly of Mombasa allowed a Motion to be passed on 11th May 2016 purporting to amend the list of the County Assembly Committees as moved by the then Leader of Majority, Hon. Abdalla M. Kasagamba. The Motion purported to re-constitute the House committees with Members different from the list previously approved on 31st March, 2016 by the County Assembly Party in consultation with the Committee on Selection. In the 31st March, 2016 list a letter was transmitted from the local Orange Democratic Movement (ODM) branch nominating Members to the Committees while the purported approved list of 11th May 2016 had no blessings from the party or a letter to that effect. The Motion on amendment of the County Assembly Committees moved by the then Leader of Majority, Hon. Abdalla M. Kasagamba on 11th May, 2016 was in breach of Standing Order

54(1) as it was not seconded by any Member hence it was null and void since the said Standing Order made consulting the party compulsory.

7. The Motion on amendment of the County Assembly Committee moved by the then Leader of Majority Hon. Abdalla M. Kasangamba on 11th May, 2016 was in breach of Standing Order 44(2) as it was not in writing and not signed. The Hon. Thadius A. Rajwayi Speaker negligently did not exercise his prerogative under Standing Order 44(3) to reject the Motion.

8. Hon. Thadius A. Rajwayi as Speaker breached Standing Order No.50(1) and (2) when he straightforward put the question in the same terms as moved when a defective Motion on amendment of the County Assembly Committees was moved by the then Leader of Majority, Hon. Abdalla M. Kasagamba on 11th May, 2016.

9. The defective Motion on amendment of the County Assembly Committees passed on 11th May, 2016 in proceedings presided over by Hon. Thadius A. Rajwayi as Speaker where in some Committee Members were purportedly replaced by other Members contrary to the list of 31st March, 2016 was in breach of Standing Order 157. The said Standing Order provides that it is the County Assembly Party that nominates a Member to a Select Committee to give a notice in writing to the Speaker that a Member be discharged from a Select Committee.

10. The defective Motion on amendment of the County Assembly Committees of 11th May 2016 passed in proceedings presided over by Thadius A. Rajwayi then the Speaker where in some Committee Members were purportedly replaced by other Members contrary to the list of 31st March, 2016 was in breach of.....

(Interruption)

(Hon. Oduor passed over a paper to Hon. Siminyu)

Deputy Speaker (Hon. Mswabah Rashid): Hon. Jabess you are not in order, anything coming to the County Assembly must pass through the Clerk so if you have anything you take it to the Clerk then he will bring it, so you are out of order in that....

(Applause)

Hon. Siminyu: Thank you Mr. Speaker for protecting me.

(Hon. Siminyu resumed reading the Notice of Motion)

Standing Order no.174, the said Order provides for the due procedure to be followed if majority of the Members of a Committee have no confidence in the Chairperson or Vice Chairperson of a Committee to elect/ replace him/ her.

11. The defective Motion on amendment of the County Assembly Committees of 11th May 2016 passed in proceedings presided over by Hon. Thadius A. Rajwayi as Speaker some Committee Members were purportedly replaced by other Members contrary to the list of 31st March 2016 was in breach of Standing Order 154 which requires that nomination of Members of Select Committees is to be done by the County Assembly party in consultation with the Committee on Selection.

12. The defective Motion on the amendment of the County Assembly Committees of the 11th May be passed on in proceedings presided over by the Hon. Thadius A. Rajwayi as Speaker

where by some Committee Members were purportedly replaced by other Members contrary to the list of 31st March, 2016 which was in breach of Standing Order 187 which requires that the County Budget and Appropriation Committee constituted by the County Assembly immediately following the general election shall serve for a period of three calendar years shall serve for the remainder of the County Assembly term.

13. The defective Motion on the amendment of the County Assembly Committee of the 11th May, 2016 presided over by Thadius A. Rajwayi as Speaker where in some Committee Members were purportedly replaced by other Members contrary to the list of 31st March, 2016 was in breach of Standing Order 46 which requires that no Motion may be moved which is the same in substance as any question which has been resolved (either in the affirmative or negative) during the preceding six months in the same session. A Motion regarding the change of Members of the House Committee had been already moved and agreed upon by the House on 31st March 2016.

14. The Hon. Thadius A. Rajwayi as Speaker relayed misleading information to the Clerk of the County Assembly that the purported change of Members of the House Committees on 11th May, 2016 was approved on 10th May, 2016 yet no such business was transacted in the House on 10th May, 2016.

B. GROSS MISCONDUCT

1. The Hon. Thadius A. Rajwayi as Speaker, acting contrary to Standing Order 15 presided over proceedings in the County Assembly touching on the issue of nomination of Leader of Majority when the issue was an internal political party issue which should not have been debated in the House.

2. The Hon. Thadius A. Rajwayi as Speaker unreasonably and unlawfully failed to recognize the Leader of Minority and declared her seat vacant while knowingly that he had no powers to do so since the amended Standing Order 16 provides that where there is no minority party in the County Assembly, the leader of minority party shall be deemed to be the Chairman of the Public Investment Committee.

C. GROSS NEGLIGENCE

1. The Hon. Thadius Rajwayi as Chairman of the County Assembly Service Board failed to ensure prudent use of public money and compliance with procurement procedures leading to inflated pricing of quotations and tenders occasioning loss of public funds in many situations including the following instances:

(a) Procurement of vehicle stickers at inflated price worth Kshs.1,905,500/= vide LPO No.21615662 by Komenya Agencies.

(b) Procurement of 2 gowns at inflated prices for the Speaker at Kshs. 800,000/= vide LPO No. 2254665 by Whirwind Agencies Limited.

(c) Procurement for a non-existent website Kshs. 470,000/= vide imprest no.2176393 given to Trizer Mwanyika.

(d) Procurement of 250 vehicle stickers at Kshs.1,850,000/=at inflated prices vide LPO No.2298112 given to Afzal Deliveries Enterprises. The stock was rejected by the procurement office but through his instructions the same was received by his office on 18th December 2015.

(e) Procurement of 10 Kaspersky antivirus software items at inflated prices each at Kshs. 25,500, Kshs.24, 500/= sorry. The average market price for Kaspersky anti-virus software for single user is Kshs.1500.

(f) Procurement of 2 and 6 robes for the Speaker and Clerk's respectively; split into two different supplies. Though the items were the same and procured on the same date they were split to avoid procurement procedures. This is contrary to Section 30 of the Public Procurement and Disposal Act 2005 which prohibit entities from structuring procurement as two or more procurements for the purposes of avoiding procurement procedure.

(g) Cancellation of medical insurance contract on 26th June, 2015 occasioning the County Assembly a liability of Kshs.4,8941,571.

(h) On 12th August, 2014 vide imprest no. 2176287 issued to Kevin Oduor a Personal Assistant to Hon. Thadius Rajwayi received Kshs. 200,000 for breakfast and lunch for MCA's for non-existent meeting/fictitious purpose.

(i) Vide imprest no.2176386 dates 20th January, 2015 issued to Hon. Thadius Rajwayi amounting to Kshs.60.400 purportedly to attend a County Assembly Forum meeting in Nairobi. The supporting documentation was through a letter by his Personal Assistant, Kevin Oduor dated 13th January 2014. The County Assembly Clerk approved the request on 20th January 2014. At the same time he signed in the County Assembly plenary attendance register as having attended plenary sittings on the respective dates.

(j) Vide imprest no.2242011 dated 27th January 2015 amounting to Kshs.43,600 payable to Hon. Thadius Rajwayi purportedly to attend a County Assembly Forum meeting in Eastlands Hotel, Nairobi. In this case and on diverse dates through the years, Hon. Thadius .A. Rajwayi purportedly attended the County Assembly forum meetings in Nairobi while at the same time he signed attendance register as having been present at County Assembly plenary meetings.

(k) Failure to provide leadership and advise Members appropriately by when he organized a trip to South Africa Gauteng Provincial Legislature occasioning the payment of a total of Kshs. 5 million to a few Members. The trip did not take place. Hon. Thadius Rajwayi was one of the beneficiaries.

I therefore urge this County Assembly to RESOLVE that;

1. That pursuant to Standing Order 58(3) and Section 11(3) of the County Government Act 2012 the Hon. Thadius A Rajwayi shall not preside over the sitting of Tuesday 5th July, 2016 and the Deputy Speaker shall preside instead.
2. This County Assembly of Mombasa hereby and with immediate effect removes from office Hon. Thadius Rajwayi as Speaker of the County Assembly of Mombasa on the foregoing stated grounds.

Mr. Speaker thank you. I beg to give notice.

Deputy Speaker (Hon. Mswabah Rashid): Thank you Hon. Siminyu, pursuant to Standing order 58(4) that this is a Notice of Motion...

58(4) before the debate and voting on a Motion under paragraph (3) The Speaker shall be accorded an opportunity to respond to the allegations on the floor of the Assembly.

So we have to give the Speaker an ample time to study all the allegations to form his defense so therefore this Motion Hon. Patrick Siminyu you bring it on Tuesday afternoon. Thank you.

(Applause)

STATEMENT

(Hon. Oduor stood)

I have already sealed this so if there is anything you will debate it on Tuesday...

(Loud Consultations)

MOTION

Leader of Minority, Maimuna Salim.

Hon. Faraj: Mr. Speaker on behalf of Madam Maimuna the Minority Leader of the County Assembly of Mombasa I would like to take this opportunity to read on her behalf the Procedural Motion on adjournment. Mr. Speaker.

(Hon. Faraj moved the Procedural Motion on adjournment)

Pursuant to Standing Order number 25(3) and section 49(b) I beg to move the following Motion;

THAT AWARE THAT the Holy month of Ramadhan is coming to end and thus there will be Idd ul Fitr celebrations which are likely to commence either today evening or tomorrow depending on sighting of the moon;

THAT in Order to accommodate all the Muslims in the Idd celebrations including those who may have commenced their fasting a day before others, I urge this Assembly to resolve that:

I therefore urge this County Assembly to RESOLVE that;

The Assembly adjourns its normal sittings today for celebrations of Idd ul Fitr and resume its normal sittings on Tuesday the 12th of July, 2016.

I beg to move. I want to take this opportunity to ask Hon. Abdallah Ahmed Kasangamba to second this Motion, thank you so much Mr. Speaker.

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

Hon. Kasangamba: Hon. Speaker I second the Motion.

(Applause)

(Question proposed)

Deputy Speaker (Hon. Mswabah Rashid): Members then I should propose a question that this House should adjourn for Eid celebrations....

(Question put and agreed to)

Yes Hon. Fadhili Makarani. The floor is open for debate on the Motion.

Hon. Mwalimu: Bwana Spika mimi nashukuru Kiongozi wa Walio Wachache aliyeleta hoja hii, akiungwa mkono na Mheshimiwa Abdallah Kasangamba ili tuweze kupata wakati wa sikukuu...

(Loud consultation)

Deputy Speaker (Hon. Mswabah Rashid): Yes Hon. Mwabashiri what is it?

Hon. Mwabashiri: Ahsante Bwana Spika kwa kunipa fursa hii. Mheshimiwa Spika nimesimama kumuunga mkono Mheshimiwa Fadhili....

(Applause)

Mheshimiwa Spika aliyetoa Mswada huu Mheshimiwa amesema labda mwezi utaonekana leo tushauona tayari hatuangalii mwezi. Kwa hivyo ni muhimu Mheshimiwa Spika Bunge hili tuliahirishe ili tuanze kusherehekea Eid. Jambo lengine Mheshimiwa Spika sijui kwa Kiti chako maanake jana tulikubaliana, maanake wiki iliyopita tulipitisha ule Mswada wa maridhiano na katika mkutano wa *House Business* jana naona iliwekwa hio kuanzia jumapili twende tukae kwa *retreat* sasa sijui itaingiliana vipi na hii, naomba muongozo wako.

(Applause)

Deputy Speaker (Hon. Mswabah Rashid): Yes Hon. Hatimy?

Hon. Mohamed Hatimy: Naomba...*(Inaudible)*

Deputy Speaker (Hon. Mswabah Rashid): I did not hear you Hon. Hatimy.

Hon. Mohamed Hatimy: Naomba kupitia kiti kusema kuwa Kanuni za Bunge nambari 54, 1 uulize swali ili tumalize jambo hili Mheshimiwa Spika.

ADJOURNMENT

Deputy Speaker (Hon. Mswabah Rashid): Hon. Kasangamba we have already decided, but Members I think this Motion cannot be put to a question; we debate it and then... so if you have finished to debate it then we adjourn the House. This House stands adjourned until Tuesday next week, thank you.

The House rose at 4:10p.m.