

COUNTY ASSEMBLY OF MOMBASA

OFFICIAL REPORT

Wednesday, 14th November, 2018 The House met at 2:39p.m.

(The Speaker (Hon. Aharub Ebrahim Khatri) in the Chair)

PRAYERS

The Speaker (Hon. Khatri): Hon. Members we may be seated. Yes Clerk?

STATEMENTS

REMINDER BY MEMBER OF COUNTY ASSEMBLY (MCA) FOR MWAKIRUNGE HON. (MS.)

MBURA FOR THE HOUSE TO VISIT THE WARD

Yes Hon. Feddis Mbura?

Hon. (Ms.) Mbura: Ahsante sana Mheshimiwa Spika. Natumia Kanuni za Bunge nambari 41 (c) kwa kukumbusha Bunge hili mambo ya taarifa zangu za Mwakirunge. Ni sikitiko kubwa sana mimi kama Mheshimiwa nimeleta taarifa nimeomba Kamati ya Mazingira nimeomba hata Bunge liweze kutembelea jaa la Mwakirunge lakini kila tunapopanga haiwi. Mheshimiwa Spika hali ni ngumu kwangu hivi ninavyosema nashukuru nimekuwa na wewe baada ya Bunge la asubuhi nikakuelezea kisa cha Mwakirunge kwa sababu ya sheria ambazo hazifuatwi na madereva wetu wa Kaunti. Juzi Ijumaa kuna kijana alianguka aliyedandia ile gari ya kuzoa taka akaanguka pale pale kwenye jaa na gari iliporudi nyuma ikamkanyaga na akafariki. Hilo ni jambo la kusikitisha Mheshimiwa na kuna mambo mengi sana ambayo tutakapotembea pale hakika tukirudi hasa wewe mwenyewe Mheshimiwa nakuomba ufike pale sasa hivi moshi ni kuanzia asubuhi mpaka jioni, kuanzia Januari mpaka Disemba. Sijui vizazi vya Mwakirunge vinaelekezwa wapi na lile jaa. Mimi ningeomba Bunge hili ile taarifa ambayo nimeileta kwamba tukatembee kama wana Bunge tuone yale masaibu ya wana Mwakirunge katika lile jaa, tuone zile shida watu wa Mwakirunge wanapata ili ninaposimama hapa na kuzisema uwe kwanza wewe Mheshimiwa Spika umeiona ile dump site imekaaje, umeona barabara ya Mwakirunge imekaaje, umeona shida Mwakirunge zimekaaje.

Hilo ni ombi na ni jambo la kusikitisha, taarifa nyengine pia ni ya jambo na maji, nililia toka mwanzo wa kuingia Bunge hili, nikaomba kama itawezekana tuweze kutembelewa sehemu zile ambazo hazina maji lakini hilo pia halijafanyika. Naomba kwa nguvu zako Mheshimiwa Spika hili jambo ulitilie mkazo wewe mwenyewe ukanyage Mwakirunge, Bunge hili likanyage Mwakirunge wakati ninaposimama na kuongea mjue ni masaibu gani wana Mwakirunge wanapata. Ahsante sana Mheshimiwa Spika.

The Speaker (Hon. Khatri): Thank you Hon. Feddis, the Chairperson of the Committee of Environment Hon. Shebe Athman is not around here, do we have any other Member for...

(Silence)

So she is the Vice Chair? Hon. Feddis you are the Vice Chair of that Committee?

Hon. (Ms.) Mbura: Ahsante sana mimi nikiwa Naibu Mwenyekiti lakini halijatiliwa mkazo Mheshimiwa Spika.

The Speaker (Hon. Khatri): Do we have any other Member of Environment here in the House? Hon. Leila? So Hon. Members please I think you have heard what Hon. Feddis is saying so can you make sure that your Committee sit down tomorrow morning and then in the afternoon we get the answer and what is the way forward for that.

Hon. (Ms.) Nyache: Ahsante Mheshimiwa Spika na tutaweza kufanya hivyo tukae chini Kamati na tutakuletea majibu *In Shaa Allah*.

The Speaker (Hon. Khatri): Ahsante. Yes Clerk?

MOTION

PROHIBITION OF BARS AND NIGHTCLUBS OPERATING IN RESIDENTIAL AREAS AND EDUCATIONAL INSTITUTIONS

Yes, I now call upon Hon. Mohamed Hatimy to move the Motion as amended. Yes Hon. Mohamed. Mr. Speaker I beg to move the following Motion;

(Hon. Mohamed Hatimy moved)

WHEREAS bars and night clubs are allowed to operate in the County subject to certain conditions and restrictions;

WHEREAS the operation of these entertainment establishments emit noise pollution and have adverse influence to youths and other residents;

WHEREAS a recent High Court judgement prohibited the operations of bars and night clubs in residential areas and schools;

WHEREAS if the current state of affairs whereby these entertainments are left uncontrolled they will continue to pose a big threat to safety, tranquillity and good morals the youth and the faithful in residential areas;

Now therefore, be it resolved by the County Assembly of Mombasa that the County government of Mombasa to prohibit the operation of bars and night clubs within a radius of 300 metres in all residential areas, any institution of basic education including nursery, primary, secondary or other learning institutions and places of worship in the County;

Mr. Speaker Sir, be it further RESOLVED that the County government to close down all existing bars and night clubs operating within a radius of 300 metres in all residential areas, any institution of basic education including nursery, primary, secondary or other learning institutions and places of worship after due notice has been served.

I beg to move Mr. Speaker. Thank you.

The Speaker (Hon. Khatri): Thank you Mohamed Hatimy. Hon. Amur are you seconding the Motion?

(Hon. Murfad Amur seconded by bowing)

(Question proposed)

Thank you. Hon. Members I now propose the question that the Motion on prohibition of bars and night club operating in residential areas and educational institution by Hon. Mohamed Hatimy be considered by this House as amended?

The Speaker (Hon. Khatri): Yes Hon. Mohamed Hatimy.

Hon. Mohamed Hatimy: Ahsante Mheshimiwa Spika. Nashukuru kwa kunipatia hii nafasi, nasimama hapa kueleza Waheshimiwa wenzangu ya kuwa jambo hili ni jambo muhimu sana na nimetegemea vifungu vya Katiba Article 19,42,70,28, 31, 2,10. Mheshimiwa Spika tukiangalia Article 19 inazungumzia juu ya haki na uhuru wa kimsingi. Article 42 inazungumza kila mtu ana haki ya kuishi katika mazingira safi na salama. Article 70 utekelezaji wa haki za kimsingi, 28 hadhi ya binadamu, 31 kila mtu ana haki ya faragha, faragha yake inayohusika haki, 2 inazungumzia uhuru wa ki Katiba na 10 maadili ya kitaifa na kanuni za utawala. Mheshimiwa Spika ni makosa pombe kuuzwa kwenye shule na makaazi ya wananchi. Shule ni mahala ambapo watu huenda kusoma na ni pahala panapoletwa watoto wadogo residential area ni pahala pa watu kuishi ambapo watu wanaishi na familia zao. Mheshimiwa Spika jambo hili la kuuzwa pombe mahala ambapo hapafai kuuzwa limezungumziwa pia kwenye sheria nyengine ukiangalia vitabu vyengine, kwa hivyo naomba wenzangu tukubaliane pahala popote penye kuuzwa pombe iwe mita 300 kutokaribiana na hapo pahali. Mheshimiwa Spika kama ni shule, kama ni sehemu za makazi, kama ni pahali pa ibada iwe iko mita 300 kusudi izuie watoto kuingia kwa mambo haya ya ulevi na mambo yasiyokuwa na faida yoyote. Kwa hivyo nawaomba wenzangu kusaidia au tujisaidie kwa sababu ya umma wetu, tuhakikishe Inspectorate watakapoipata hii amri, waitekeleze kwa haraka sana kwa sababu watoto wetu wengi wanaharibika Mheshimiwa Spika, nawaomba Waheshimiwa wenzangu tulitilie nguvu jambo hili ili tuweze kuwa na mazingira mazuri kwenye maisha yetu. Ahsante sana.

The Speaker (Hon. Khatri): Thank you Hon. Hatimy. Yes Hon. Opeya. Oh he is not in, yes Hon. Wambua Junior. Yes Hon. Amur.

Hon. Murfad Amur: Ahsante Mheshimiwa Spika. Mheshimiwa Spika kuongezea tu kwa yale yaliyo zungumzwa na Mheshimiwa aliyeleta Mswada huu ningeomba kwamba tungeomba kwamba wakati tumepitisha uamuzi huu twende tuuorodheshe rasmi katika gazeti zetu za serikali. Hii ni kwa ajili ya wenye maduka ya kuuza pombe wafahamishwe wakati tutaanza kuchukua hatua isiwe ni kitu geni kwao.

Ule uamuzi ambao tutaupitisha hapa uorodheshwe rasmi ili wafahamishwe kwamba hii *adoption* ambayo tumeipitisha leo itaanza kufanya kazi mara moja kwa hivyo tukienda kutekeleza kule chini watu wasikumbane na shida. Pili Mheshimiwa Spika tungemuomba pia Bwana Mwenyekiti ambaye ameleta Mswada huu atufanyie msaada mmoja kutupatia uamuzi ule ambao ulitoka ili sisi tuwe nao tuweze kuusambaza pale maeneo yetu ili mtu ajitayarishe akijua kwamba hii pia imetokana na uamuzi wa kesi si kwamba sisi tunahujumu watu lakini ni uamuzi ambao umetoka katika serikali kuu. Ahsante Mheshimiwa Spika.

The Speaker (Hon. Khatri): Yes Hon. Fadhili.

The Deputy Speaker (Hon. Mwalimu): Ahsante Mheshimiwa Spika. Mheshimiwa Spika nilikuwa hapo nje na ndugu yangu Mheshimiwa Opeya ambaye tulikuwa tunajadiliana kuhusu hoja hii na ndugu yangu Mheshimiwa Opeya akaniomba nizungumze kwa niaba. Nitasimama kupinga hoja hii iliyoletwa na Mheshimiwa Hatimy kwa sababu ina upungufu kidogo; Mheshimiwa Spika tunaposema maeneo ya watu wanapoishi sijui haswa ndani ya Mombasa ni sehemu gani ambayo si maeneo ya watu wanapoishi ama labda tukisema haya maduka ya kuuza pombe yaje yawekwe karibu na Bunge letu kwa sababu watu wanaishi Mombasa nzima ni maeneo ya watu wanapoishi. Vile vile kama alivyosema ndugu yangu Mheshimiwa Amur ni kwamba hii amri ya korti ingekuwa ipo mbele ya Bunge hili ingetupatia nguvu ya sisi kuweza hivyo hivyo kuunga mkono hoja hii. Lakini Mheshimiwa Spika bila ya amri ya korti ile ambayo ipo sisi tuamue kufunga baa zote ndani ya Mombasa maana tukisema zile ambazo ziko karibu na maeneo ya shule na zile ambazo ziko karibu na wamaeneo ya shule na zile ambazo ziko karibu na wamaeneo ya shule na zile ambazo ziko kar

(Interruption)

The Speaker (Hon. Khatri): Yes Hon. Amur please switch on the microphone so that Hansard can capture your words.

Hon. Amur: Mheshimiwa Speaker I want to inform the House that whether you are a Member; you are a Governor, law is law it has to be followed accordingly. Whether you are the owner of the bar, you are an MCA, you are a Member of Parliament (MP) as long as this is a law then we should follow the law Mr. Speaker. Thank you.

The Speaker (Hon. Khatri): Thank you Hon. Amur. Yes Hon. Fadhili you can continue.

The Deputy Speaker (Hon. Mwalimu): Ahsante Mheshimiwa Spika. Mheshimiwa Spika nimetangulia tu kusema kuwa hoja hii ina mapungufu na nilikuwa naendelea kuyataja mapungufu yale ni kuwa ndani ya hoja hii ni ingekuwa tumeelezewa hususan ni sehemu gani tunataka biashara hizi zinapofanyika. Vile vile Mheshimiwa Spika lile agizo ambalo limetoka katika korti letu pia lingekuwa limeambatana pamoja na hoja hii ili Waheshimiwa wengine waweze kupata ufahamu zaidi na kuweza kuchangia kwa kina zaidi kutokana na hoja hii na vile vile lau tutasema zifungwe zote tuna imani kuwa vijana wengi, kina mama, wamepata ajira zao kupita sehemu hizo, lau sasa hivi twaamua Mheshimiwa Spika tuweze kufunga hizi sehemu zote ni kuwa vijana wengine wataweza kukosa ajira.

Mimi nimeomba aliyeleta hoja hii arudi aipangilie vizuri na atuonyeshe ni sehemu ziwe zitakuwa zinafanya na vile vile ikiwa ule uamuzi wa korti utakuwa utaambatana na huu itakuwa haina budi kuunga mkono kwa sababu tunatakia mazuri vijana wetu, watu wetu.

Kwa hivyo Mheshimiwa Spika naomba aliyeleta hoja aweze kurudi nyuma aipangilie na panapo majaliwa tunaweza kuunga mkono lakini kwa sasa hivi tutasimama kuipinga.

The Speaker (Hon. Khatri): Thank you Hon. Fadhili. Yes Hon. Ibrahim Omondi.

Hon. Omondi: Thank you Mr. Speaker for the opportunity that you have just given unto me. I stand here to propose...agree with the person who brought this Motion that indeed it is the right time for us to prohibit these kind of vices. I want to support my points by the following; it is true that bars and night clubs are becoming a monster in our society as far as morals, safety and tranquillity are concerned and I think this particular House will go in history having implemented the prohibition of operation of these particular night clubs and bars around the residential area. Mr. Speaker sir it is just two weeks when I was approached by some members of the Ward where I was elected and they were seriously complaining about the nuisance which is being caused by these night clubs; they had tried to exhaust all the avenues which had to make them stop this but they were not able and therefore they came for my assistance and I think that this Motion has really come at the right time and that is why I will use this time to enforce even more that these night clubs and bars we need to stop them with immediate effect. Mr. Speaker sir what we can talk about is the distance because the distance between these night clubs and the residential areas we find that most of these night clubs that we have in Mombasa were not planned in the residential areas and this means that maybe if we implement the Motion we might end up doing away with almost 90 per cent of all the night clubs and therefore my request was maybe we look at the distance but this one is something that has to be done. I therefore support this particular motion, thank you Mr. Speaker sir.

(The Speaker (Hon. Khatri) left the Chair)

(The Deputy Speaker (Hon. Mwalimu) in the Chair)

The Deputy Speaker (Hon. Mwalimu): Yes Hon. Maimuna?

Hon. (Ms.) Maimuna Salim: Mheshimiwa Spika nashukuru kwa kuweza kunipatia fursa hii ya kuweza kuchangia Mswada ulioletwa na Mwenyekiti wetu Mheshimiwa Hatimy na pia nitamshukuru kwa sababu anajua ya kwamba haya maduka ya kuuza pombe yameharibu watoto wengi sana...

(Interruption)

Ambazo ziko mtaani na tunajua mahali ambapo pana ulevi wowote ama starehe yeyote ni haraka sana watoto kuigiza na kufuatia mambo mabaya. Kwa hivyo mimi nafurahi kwa sababu nilikuwa nangojea kwa hamu na ghamu ili ziweze kuondolewa mitaani; twasema ziondolewe, maduka ya pombe kuna mahali maalum yametengewa si biashara inaweza kufanyika mitaani kama vile inafanyika na tunajua saa hii kuna likizo ndefu watoto waliofanya mtihani wa kidato cha nne na darasa la nane na tuna imani ya kwamba zikiendelea zitatupotezea vizazi vingi katika hizo starehe. Hivyo basi mimi naunga mkono na ikipita watu wa *Inspectorate* na watu ambao wahusika waingie na waweze kutoa hayo maduka ya kuuza pombe ambayo yako mitaani kwa sababu kwetu ni madhara makubwa. Ahsante sana Mheshimiwa Spika.

The Deputy Speaker (Hon. Mwalimu): Thank you Hon. Maimuna. Yes Hon. Mwamwiri? Yes proceed.

Hon. Athman Mwamwiri: Ahsante Mheshimiwa Spika kwa nafasi hii. Nasimama kuunga mkono hoja hii; nukuu ya hoja hii, mdhamini wa hoja hii ametuelekeza kipengele cha tatu ya kwamba kesi kama hii iliwahi kufika Mahakama Kuu na Mahakama ikaidhinisha ya kwamba shughuli ya vilabu na mabaa zisiwe karibu na miji na taasisi kwa minajili ya maadili. Mheshimiwa mwongozo huu wa Mahakama ulitoka katika ibara ya 70 ya Katiba yetu ya Kenya ambapo imetupatia nafasi ya swala hili kuendeshwa mahakamani na kutoa hukumu ya kupinga vilabu na mabaa kuwa katika sehemu za miji na taasisi. Vile vile Mheshimiwa tukiangalia ibara ya 42(a) inasema kila mwananchi ana haki ya makaazi masafi ya kiafya na salama kimazingira, kwa hivyo Mheshimiwa kwetu sisi kama watunzi sheria za gatuzi iwapo tutaachia mazingira haya yasipatikane kwa watoto wetu itakuwa hatupendi haki kama Waheshimiwa na tutakuwa na maswali ya kujibu kwa vizazi vijavyo na hali kadhalika kesho mbele ya Mwenyezi Mungu.

Katika ibara 69 Mheshimiwa Spika inasema kwamba, the state shall katika sheria shall inalazimisha ikiwemo hii yetu serikali gatuzi eliminate processes and activities that are likely to endanger the environment kuondoa mazingira yote tata ambayo yapo yapo katika hatari ya kudumisha ama kudhuru mazingira yetu tunayoishi. Kwa hali hiyo Mheshimiwa Spika sisi tuna jukumu la kuhakikisha tunaondoa mazingira yote ambayo ni hatari kwa makaazi yetu sisi na hali kadhalika kulinda mustakbar kwa vizazi vijavyo. Mheshimiwa Spika ukija katika Fourth Schedule sehemu ya pili katika majukumu ya serikali gatuzi unakuta pia katika sehemu ya tatu tumepewa nafasi ya kuthibiti control of air pollution, noise pollution na public nuisance na kadhalika. Tuna jukumu la kuthibiti lakini leo Mheshimiwa Spika unakuta tunaita hizi milango wanauza wines ambayo wine mtu haruhusiwi kunywa katika mlango ama biashara ile anunue akanywie mbele lakini leo unakuta panapouzwa wines kama serikali gatuzi tumetelekeza kiasi ya kwamba wameweka viti watu wananunua na wanalewa pale pale na unakuta mlango wenyewe uko katika nyumba ya makaazi, huo mlango uko mbele kunauzwa wines watu wanakunywa na vyumba vinavyofwata watu wanaishi kama wapangaji na kadhalika.

Mheshimiwa Spika mazingira haya yana watoto na lazima sisi tulinde vizazi vijavyo kwa hali hii tunawaweka kwenye mazingira gani? Mheshimiwa Spika Kaunti ya Mombasa haina shida na nafasi na hatukatazi hawa watu kufanya shughuli zao na watoe shughuli zao katika miji tunayokaa katika miji iliyo na mataasisi waende wakajenge huko Florida waende wajenge huko Nyali baharini, huko ambako watu wanaenda kurusha roho na kujivinjari lakini watuondolee ghadhabu katika miji, watuondolee ghadhabu. Katika maeneo ya mashule unakuta wanafunzi wakitoka darasani kitu cha kwanza wanakutana na walevi na tunajua watu wanapokuwa wako katika ushawishi wa ulevi tabia jinsi zilivyo wengine wanakojoa katika viambaza vya shule. Mtu amelewa; ni mama ni mwanamme na hawa wamama wanavyokojoa kama wamelewa wana design yao Mheshimiwa tunaonyesha picha gani kwa watoto wetu...

(Interruption)

The Deputy Speaker (Hon. Mwalimu): There is a point of order.

Hon. (Ms.) Ngare: Thank you Mr. Speaker for noticing my distress call. I want to ask the Hon. Member referring to ladies that when they are drunk you know what they do; it is vice versa how they do it, maybe he would want to practically explain what he knows but it is demeaning to women to refer to women as these *wa mamas*! You know what they do when they get drunk, I beg that the Hon. Member withdraw that, when an act is taking place it is two consenting voices.

The Deputy Speaker (Hon. Mwalimu): Okay thank you Hon Milka. Hon Mwamwiri withdraw the statement.

Hon. Athman Mwamwiri: Mheshimiwa Spika nukuu yangu ilikuwa kwa nidhamu kwa mama zangu ya kwamba wanapokuwa katika mazingira ya kilevi...

(Interruption)

The Deputy Speaker (Hon. Mwalimu): Just withdraw the statement and proceed.

Hon. Athman Mwamwiri: Ipi haswa?

The Deputy Speaker (Hon. Mwalimu): The one you said about ladies.

Hon. Athman Mwamwiri: Sawa naiondoa hiyo taarifa, sio hawa wamama hao huko sio hawa hao huko walevi sio hawa walioko katika Bunge hili sijataja jinsia. Nilindie muda wangu.

The Deputy Speaker (Hon. Mwalimu): Ok proceed.

Hon. Athman Mwamwiri: Mheshimiwa Spika tunajenga vizazi vijavyo katika mazingira tata na kama hatutachukua hatua ya kuruhusu maswala haya yakiendelea katika miji yetu tutakuwa hatujatendea haki vijana wale. Leo Mheshimiwa Spika mtoto wa darasa la nne ashajua matumizi ya mihadarati chini ya vileo kwa sababu ni mazingira yako ya kawaida, na kutokana na hali hizi za walevi ama sehemu za vilevi kuwa karibu na taasisi tumewaona wadogo zetu wa kike darasa la nne la tano wametungwa mimba na wahusika wakubwa ni walevi. Mheshimiwa Spika ili kuweka mazingira salama na pia kupeana fursa kwa vijana wetu kuweza kusoma pasi na bugdha basi ni kupitisha hoja hii na kuamrisha hawa wanao endesha biashara zao hizi kwa sababu wanalipa ushuru kwa serikali gatuzi yetu hatuna shida nao lakini wasipeleke sehemu ambazo zitapeana usalama kwa watoto wetu angaa hali halisi ya watoto wa kike wanavyoharibiwa na kutungishwa mimba mapema mapema na walevi iweze kutupungukia na kuwa gatuzi ambalo litasifika kwa vizazi bora na viwango vya juu vya kielimu. Kwa hayo mengi naunga mkono hoja hii, ahsante.

The Deputy Speaker (Hon. Mwalimu): Now I call upon the mover of the Motion to respond.

Hon. Mohamed Hatimy: Mheshimiwa Spika leo nimeona maajabu ndani ya hii Nyumba kuona kuna taratibu unaweza kumzungumzia mtu; ni jambo ambalo hatujalisikia wala hatujaliona, kusema wazungumza kwa niaba ya mtu fulani. Mheshimiwa Spika nataka kusema mwanzo pia hakuna mtu yoyote alie declare interest juu ya jambo hili, kama Mheshimiwa Mwamwiri ametangulia kuzungumza juu ya Article 42 ambayo Katiba inampa kila mtu haki ya a clean and healthy environment. Pia ukiangalia Article 31 ambayo inasema selling liquor in the residential area further violates the residents right to privacy guaranteed under Article 31. Kwa hivyo Mheshimiwa Spika nafikiri Katiba imezungumzia mambo mengi juu ya jambo kama hili na ukiangalia sheria ya serikali kuu pia inazungumzia jambo hili kuwa sio ruhusa vileo kuuzwa kwenye sehemu ambayo kuna pahala pa kuishi ama shule ama ibada. Hivyo basi sisi tuko hapa kuwapatia Inspectorate wapate kutekeleza hii sheria ili tuweze kuendelea nayo Mheshimiwa. Kwa hivyo naomba Waheshimiwa waunge mkono huu Mswada ili hatutaki kwenda kumtia mtu hasara wala kumvunjia mtu lakini twataka sheria tu ifuatiliwe. Kwa hayo machache ahsante sana.

(Applause)

The Deputy Speaker (Hon. Mwalimu): Thank you Hon. Members. Hon. Hatimy thank you for responding on your Motion, even though the Article 31 you quoted you need to peruse more and get the actual Article that you wanted to refer to. So Hon. Members I now stand to put a question on the Motion on Prohibition of bars and night clubs operating in residential areas and educational institutions be passed in this Honourable House.

(Question put and agreed to) (Applause)

Yes Clerk.

ADJOURNMENT

The House stands adjourned until the 15th November, 2018 at 2:30p.m.

The House rose at 3:20p.m.