

**MOMBASA COUNTY MEMBER****HANSARD REPORT**Wednesday, 14<sup>th</sup> June, 2017

The House met at 9:45a.m.

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

**Deputy Speaker** (Hon. Mswabah Rashid): Members you may sit, yes Leader of Majority?

**Leader of Majority** (Hon. Mwidani): Thank you Mr. Speaker, I stand under Standing Order number 28; I would request you give an adjournment of two hours. Mr. Speaker you know we are heading to the *sine die* session and we have some two very important documents which are not ready so I request that this House be adjourned for two hours and then we come and complete the matters for today. Mr. Speaker I request for that adjournment.

**Deputy Speaker** (Hon. Mswabah Rashid): Okay thank you Hon. Leader of Majority. Members it has been proposed that this House should leave for two hours and then come back, as many as are of that opinion.

*(Question put and agreed to)*

So this House shall take leave for two hours then come back.

*(Sergeant At Arms lowered the Mace from the Table)*

The House rose for a temporary adjournment at 9:48a.m.

*(Deputy Speaker (Hon. Mswabah Rashid) exited the chambers)***RESUMPTION OF PLENARY**

The House met at 11.45a.m.

*(Sergeant At Arms raised the Mace on the Table)**(Deputy Speaker (Hon. Mswabah Rashid) in the Chair)***PRAYERS**

**Deputy Speaker** (Hon. Mswabah Rashid): Members you may sit down. Yes Clerk.

**MOTION**

Hon. Hatimy.

**Hon. Mohamed Hatimy**: Thank you Mr. Speaker. Mr. Speaker I request the Bills to be read for the Second time and thereafter we proceed to the Committee of the Whole House Mr. Speaker.

**Deputy Speaker** (Hon. Mswabah Rashid): Hon. Hatimy we have got three Bills, you have to move three Motions so that we don't go back to business number 8.

**Hon. Mohamed Hatimy**: Thank you Mr. Speaker, we do have the first Bill, Tax waiver Bill, and then we have Education amendment and Liquor licensing Mr. Speaker. Thank you, I propose we go over three of them.

**Deputy Speaker** (Hon. Mswabah Rashid): Yes Hon. Saad Faraj.

**Hon. Faraj**: Mr. Speaker I raise to second all the three Bills.

**Deputy Speaker** (Hon. Mswabah Rashid): Members I put the question as many as of the opinion that the Mombasa County Tax Waiver and variations Bill, 2015, be read for the Second time and the Mombasa County Liquor licensing Amendment Act, and Mombasa County Education Amendment Bill be read for the Second time.

*(Question put and agreed to)*

Yes Clerk.

**MOMBASA COUNTY TAX WAIVER AND VARIATION BILL, 2015****SECOND READING**

**Clerk:** Mr. Speaker Sir, This is the Second reading of The Mombasa County Tax Waiver and Variation Bill, 2015. A Bill for AN ACT of the County Assembly of Mombasa to regulate the waiver and variation of taxes pursuant to Article 210 of the constitution of Kenya, 2010 and Section 159 of the Public Finance Management Act, 2012; and for connected purposes;

**Deputy Speaker** (Hon. Mswabah Rashid): Thank you very much, Hon. Members, the Bill after being read for the Second time the House should dissolve itself and convert into the Committee of the Whole House, Thank you.

**COMMITTEE OF THE WHOLE HOUSE**

*(Sergeant At Arms lowered the Mace from the Table)*

*(Deputy Speaker (Hon. Mswabah Rashid) exited the Chair)*

**ORDER OF COMMITTEE READ****IN THE COMMITTEE**

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

**Chairperson:** You may sit down, yes Clerk.

**Clerk:** Mr. Speaker Sir this is for the Mombasa County Tax Waiver and Variation Bill, 2015;

**PART I - PRELIMINARY**

1. This Act may be cited as the Mombasa County Tax Waiver and Variation Act, 2015
2. This Act shall come into operation upon publication in the *gazette*.
3. In this Act, unless the context so otherwise requires

"Assembly" means the County Assembly of Mombasa;

"Executive Committee Member" means the executive Committee Member responsible for finance;

"Tax" includes any revenue or licensing fee payable by any person to the County Government whether it has become due or not.

"Tax waiver" includes the forbearance of tax collection, partial or full remission, spreading out a payment in respect of tax already accrued and any variation of the amount due or interest or penalty due on any amount owing to the County Government

4. The object of this Act is to—

- (a) Give further effect to Article 210 of the constitution as regards tax waivers and administration thereof;
- (b) To ensure transparency in the administration of taxes and other revenue in particular in the waivers thereof;
- (c) To provide for the procedure applicable to and requirements for tax waivers.

*(Question proposed)*

**Chairperson:** Members I propose that part one Preliminary section 1, 2, 3 and 4 be part of the Bill. Members I now put the question as many as of the opinion that part one; that is preliminary, section 1, 2, 3 and 4 be part of the Bill.

*(Question put and agreed to)*

Yes Hon. Hatimy.

**Hon. Mohamed Hatimy:** Mr. Speaker I propose to delete 2015 of the Act number 1 short title to read 2017 instead of 2015, even the title to read 2017 instead of 2015.

**Chairperson:** Okay Members it has been proposed that Part 1 Section 1 to be amended and to read; *This Act may be cited as the Mombasa County Tax Waiver and Variation Act, 2017.*

*(Question put)*

I now put the question as many as are of the opinion that Part 1 Section 1 should read as follows; *This Act may be cited as the Mombasa County Tax Waiver and Variation Act, 2017.*

*(Question put and agreed to)*

Yes Clerk.

**Clerk:** Mr. Speaker Sir.

## **PART II –ADMINISTRATION OF TAX WAIVERS AND VARIATION**

4. No tax maybe waived or varied except in the manner provided for in this Act, any applicable national legislation or any other Act of the Assembly.
- 5.(1) The executive Committee Member may, where he or she deems it appropriate, and with concurrence in writing, of the Governor, waive or vary the payment of any tax, fees or other payment due to the County government.
- (2) The power of the executive Committee Member to waive or vary tax shall be exercisable, in respect of every transaction, with the written approval of the Governor, but in any case, in the following circumstances—
  - (a) where the waiver or variation is for purpose of encouraging defaulting tax payers to pay such amount as may enable the County government recover part of the amount owing from the defaulting payer;
  - (b) Where, in the opinion of the County executive Committee Member, there exist such compelling circumstances that make it equitable, expedient and in the interest of the financial advantage to the County that the waiver or variation be made;
  - (c) For any other public interest reason, in consultation with the Governor.
6. (1) Where the executive Committee Member intends to waive or vary any tax, he or she shall publish such intention in the gazette not less than fourteen days before the intended date of the waiver or variation.
- (2) The notice referred to in sub-section (1) shall indicate the reason for the intended waiver or variation and shall invite comments from the public on the intended waiver or variation.
7. Every waiver and variation shall be reported to the Assembly and published in the Gazette not more than fourteen days after it is granted.
8. Pursuant to article 210 of the constitution, the executive Committee Member shall in respect of every waiver or variation of tax—
  - (a) Maintain a public record of each waiver or variation together with the reason for it;
  - (b) Report
9. The executive Committee Member shall not waive or vary tax or fees or authorise the exclusion of a State Officer or public officer from payment of tax or fees by reason of the office held by the State Officer or public officer or the nature of the work of the State Officer or Public Officer.

*(Question proposed)*

**Chairperson:** Members I propose a question; it has been proposed part two; that is the administration of tax waivers and variation section 4, 5, 6, 7, 8 and 9 be part of the Bill, Members I continue to put the question as many as that of the opinion that part two of that is administration of tax waiver and variation section 4, 5, 6, 7, 8 and 9 be part of the Bill.

*(Question put and agreed to)*

**Clerk: PART III — MISCELLANEOUS**

10. (1) The executive Committee Member may, with the approval of the Governor, make regulations for the better carrying out of the provisions of this Act.

(2) Without prejudice to provide for the procedure in accordance with Sub section (1), the regulations may provide for—

- a) The procedure of application for tax waivers and variations;
- b) Where any payment of tax is due, the time within which waivers may be applied for;
- c) The requirement with respect to documentation that may be required with the application for tax waivers or variations.

**Chairperson:** Members I propose a question; it has been proposed part three that is Miscellaneous section 10 (1) and (2) be part of this Bill, I proceed to put a question as many as that of the opinion that part three; that is Miscellaneous section 10 (1) and (2) be part of this Bill, as many as of that opinion.

*(Question put and agreed to)*

Members I think we have come to the end of the Committee of the Whole House, Hon. Hatimy, do you, Members I think we shall convert back to the plenary.

*(Silence)*

**PLENARY RESUMED**

*(Sergeant At Arms raised the Mace on the Table)*

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

**Deputy Speaker (Hon. Mswabah Rashid):** Members you may sit down, yes Hon. Hatimy can you report the progress.

**Hon. Mohamed Hatimy:** Thank you Mr. Speaker on behalf of the County Assembly I do agree that the Bill was passed with amendments and the Bill be read the Third time.

**Deputy Speaker (Hon. Mswabah Rashid):** Do you wish the Bill to be read for the Third time today?

*(Hon. Mohamed Hatimy bowed)*

..Okay, Members it has been proposed that this Bill, the Mombasa County Tax waiver and variation Bill, 2017, to be read a Third time.

*(Question put and agreed to)*

...Yes Clerk.

**MOMBASA COUNTY TAX WAIVER AND VARIATION BILL, 2017**

**THIRD READING**

**Clerk:** Mr. Speaker Sir this is the Third reading of the Mombasa County Tax waiver and variation Bill, 2017. A Bill for an Act of the County Assembly of Mombasa to regulate the waiver and variation of taxes pursuant to article 210 of the Constitution of Kenya, 2010 and section 159 of the Public Finance Management Act, 2012 and for connected purposes;

**Deputy Speaker (Hon. Mswabah Rashid):** Thank you very much, yes Clerk can we go to business number 10.

**THE MOMBASA COUNTY LIQUOR LICENCING (AMENDMENT) BILL, 2017**

**SECOND READING**

**Clerk:** Mr. Speaker Sir this is the Second reading of the Mombasa County Liquor licensing (Amendment) Bill, 2017. A Bill for An Act of the County Assembly of Mombasa to amend the Mombasa County liquor licensing Act, 2014 and for connected purposes.

**Deputy Speaker (Hon. Mswabah Rashid):** Thank you very much Clerk, the Bill having been read for a Second time is now committed to the Committee of the Whole County Assembly.

**COMMITTEE OF THE WHOLE HOUSE**

*Sergeant at Arms lowered the Mace from the Table  
(Deputy Speaker (Hon. Mswabah Rashid) exited the Chair)*

**ORDER OF COMMITTEE READ  
IN THE COMMITTEE**

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

**Chairperson** (Mr. Mswabah): Members you may sit down, yes Clerk.

**Clerk:** Thank you Mr. Speaker, allow me to go through the amendments of Mombasa County liquor licensing Bill 2017, Short title and commencement

1. This Act may be cited as the Mombasa County Liquor licensing (Amendments) Act 2017 and shall come into operation upon publication in the Gazette;

2 Section 2 of the Mombasa County Liquor Licensing Act, 2014 in this Act referred to as the, "Principle Act" is amended by inserting the following new definition in its proper alphabetical sequences-

"Chief Officer" means the County Chief Officer for the time being responsible for matters relating to alcohol control;

3. Section 4 (2) of the principle Act is amended by inserting the following new paragraph immediately after paragraph (a);

(aa) "A Chief Officer";

4. Section 19 (2) of the principle Act is amended by-

(a) Inserting the following new paragraph after paragraph (a);

(aa) A representative of national authority for the campaign against alcohol and drug abuse

(b) Deleting the phrase 'culture and tourism' in paragraph (b) and substituting therefore the phrase 'Alcohol Control';

5. Section 21 of the principle Act is amended by inserting the following new paragraph after paragraph (c);

(ca) Conducting public education and awareness on alcohol

6. Section 24 of the principle Act is amended by deleting the words 'medical officer of health' in section 24(3) (d) (iii) and substituting therefore the words 'Public Health Officer'.

7. The principle Act is amended by inserting the following new section immediately after section 38-

'38A. Any person who sells alcohol to a minor or entices a person below the age of eighteen years to take alcohol is guilty of an offence.

*(Question proposed)*

**Chairperson** (Mr. Mswabah): Thank you very much, Members I shall now propose a question it has been proposed that the short title and commencement shall read that this Act may be cited as The Mombasa County Liquor Licensing (Amendment) Act, 2017 and shall come into operation upon publication in the Gazette and I now put a question that the short title should read this Act may be cited as The Mombasa County Liquor Licensing (Amendment) Act, 2017 and shall come into operation upon publication in the Gazette.

*(Question put and agreed to)*

Members I shall now propose again amendment in section 2, amendment in section 4, amendment in section 19, amendment in section 21, amendment in section 31 a, amendment in section 24, that in section 1, 2, 3, 4, 5, 6 and 7 should read as amended; as many as of the opinion that, I now put the question Members as many as of the opinion that section 2, 3, 4, 5, 6 and 7 should read as amended.

*(Question put and agreed to)*

Thank you very much. Members, the Committee of Whole House dissolves to plenary.

**PLENARY RESUMED**

*(Sergeant At Arms raised the Mace on the Table)*



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

**Deputy Speaker** (Hon. Mswabah Rashid): Members you may sit down. Yes Hon. Hatimy.

**Hon. Mohamed Hatimy:** Thank you Mr. Speaker I report back to the House that the amendment Bill has been passed and there was no objection thank you and I beg to move.

**Deputy Speaker** (Hon. Mswabah Rashid): So do you need them to be read for the Third time now or in the afternoon.

**Hon. Mohamed Hatimy:** Now.

**Deputy Speaker** (Hon. Mswabah Rashid): Members as many as are of the opinion that the amendment Bill should be read for a Third time.

*(Question put and agreed to)*

Yes Clerk.

**THE MOMBASA COUNTY LIQUOR LICENCING (AMENDMENT) BILL, 2017**  
**THIRD READING**

**Clerk:** Mr. Speaker Sir this is the Third reading for The Mombasa County Liquor Licensing (Amendment) Bill, 2017

**Deputy Speaker** (Hon. Mswabah Rashid): Okay thank you, yes Clerk can you go to business number 11.

**THE MOMBASA COUNTY EDUCATION DEVELOPMENT (AMENDMENT) BILL, 2017**  
**SECOND READING**

**Clerk:** Mr. Speaker Sir this is the Second reading for The Mombasa County Education Development (Amendment) Bill, 2017. A Bill for an Act of the County Assembly of Mombasa to amend the Mombasa County Education Development Act, 2014 to provide for a Corporation and a Fund; and for connected purpose;

**Deputy Speaker** (Hon. Mswabah Rashid): Members a Bill having been read for a Second time it's committed to the Committee of the Whole House Committee.

**COMMITTEE OF THE WHOLE HOUSE**

*(Sergeant At Arms lowered the Mace from the Table)*

*(Deputy Speaker (Hon. Mswabah Rashid) exited the Chair)*

**ORDER OF COMMITTEE READ**  
**IN THE COMMITTEE**

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

**Chairperson:** Members you may have a seat.

*(Consultations)*

Yes Clerk can you continue.

**Clerk:** Thank you Mr. Speaker. Mr. Speaker Sir let me read the amendment first, is the short title and commencement 1. This Act may be cited as the Mombasa County Education Development (Amendment) Act, 2017 and shall come into operation upon publication....

*(Interruption)*

**Chairperson:** Yes Hon. Hatimy.

**Hon. Mohamed Hatimy:** Mr. Speaker this is an amended Bill, I propose that this Bill that first the short title be amended, and section number 2 the long title to be amended, the amendment for section 3 to be amended, number 4 to insert a new section (2a), number 5 to be amended, number 6 to be amended, 7, 8, 9, 10, 11, 12 to be amended and to insert a new section to read 11 (a), 14, 11 (b) to read 11(c), 16, 11 (d), 17 to read 11 (e), 18 to read 11(f), 19, 20, 21, 22 to be amended, 23, 24 be amended, 23 to be amended, section 16 to be inserted

16 (a), 24 be amended, 25 be amended, 26, 27 and 28 be amended, 29 insert a new section to read 20 (a), 30, 31, 32, 33 be amended 34 to read section 55 (a). Mr. Speaker since Members have been scrutinising this Bill I believe that we can reach a consensus to pass as it is. Thank you Mr. Speaker since it is an amendment Bill.

**Chairperson:** Thank you very much.

**Hon. Faraj:** I think Mr. Speaker the proposal that has been made by Hon. Member, Hon. Hatimy I stand to second that proposal which has been made by the Hon. Member and I think it's the best way forward.

**Chairperson:** Thank you, Members as many as of that opinion.

*(Question put and agreed to)*

Okay Members I will proceed to propose a question, it has been proposed that section part 1, section 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, and 34 to be read as amended. Members I proceed to put the question as many of the opinion that the short title which is section 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 to read as amended.

*(Question put and agreed to)*

Members I think the Committee of the Whole is dissolved and we go back to the Plenary.

### **PLENARY RESUMED**

*(Sergeant At Arms raised the Mace to the Table)*

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

**Deputy Speaker** (Hon. Mswabah Rashid): Members you may sit down. Yes Chairman, Hon. Hatimy.

**Hon. Mohamed Hatimy:** Thank you Mr. Speaker. Mr. Speaker I request that being that Bill be read a Third time, thereafter I think the Bill be read for a Third time.

**Deputy Speaker** (Hon. Mswabah Rashid): Yes as many of the opinion that the Bill be read now for a Third time.

*(Question put and agreed to)*

...yes Clerk can you read the Bill for a Third time.

### **THE MOMBASA COUNTY EDUCATION DEVELOPMENT (AMENDMENT) BILL, 2017**

#### **THIRD READING**

**Clerk:** Mr. Speaker Sir, this is the Third reading of the Mombasa County Education Development (Amendment) Bill, 2017. A Bill for an Act of County Assembly of Mombasa to amend the Mombasa County Education Development Act 2014 to provide for a Corporation and a Fund and for connected purposes;

**Deputy Speaker** (Hon. Mswabah Rashid): Thank you very much Members the Bill has passed now. Yes Clerk can we go to business number 12.

### **ADJOURNMENT**

Members this House is adjourned until in the afternoon.

The House rose at 12:31p.m.