

MOMBASA COUNTY ASSEMBLY**HANSARD REPORT**Wednesday, 13th April, 2016

The House met at 2:34p.m.

*(Deputy Speaker (Hon. Mswabah Rashid) in the Chair)***PRAYERS***(Sergeant At Arms rung quorum bell)**(Resumption of business to amend the Mombasa County Roads Bill, 2015)***BILL****COMMITTEE STAGE**

Deputy Speaker (Hon. Mswabah Rashid): Hon. Members this House will resolve into a Committee stage.

COMMITTEE OF THE WHOLE HOUSE*(Sergeant At Arms lowered the Mace from the Table)**(Deputy Speaker (Hon. Mswabah Rashid) left the Chair)***ORDER FOR COMMITTEE READ****IN THE COMMITTEE***(Deputy Speaker (Hon. Mswabah Rashid) took the Chair)*

Chairperson: Members there is a notice to amend the Mombasa County Roads Bill 2015, we are in a Committee stage.

NOTICE OF AMENDMENTS TO MOMBASA COUNTY ROADS BILL, 2015

NOTICE is hereby given to move the following amendments;

1. **THAT** the year of the Bill be changed from 2015 to 2016 hence the title of the Bill be amended to read, 'Mombasa County Roads Bill, 2016.

2. **THAT** the long title be deleted and be rephrased to read as follows;

AN ACT of the County Assembly of Mombasa to provide for the integration, construction, maintenance and management of public roads, motor ways, public transport systems and protected roads, tolling of public roads and others matters incidental to the proper management of the County road network systems.

3. **THAT** the following words in the Interpretation Clause be deleted;

"Statutory undertaker" means a person or organisation mandated by the Constitution of Kenya 2010 to carry out certain duties;

"Superannuation benefits" means pensions, gratuities and other allowances payable on resignation, retirement or death;

"Transition to Devolved Government Act" means the Transition to Devolved Government Act, 2012;

"Vacate" means to terminate the existence of the road by direct action of the court of law;

4. **THAT** the following words in the Interpretation Clause be defined as follows;

"County road" means a public road or a proposed public road within the County except a road classified as a national road;

"Development plan" means an aspect of County planning comprising of a set of documents that set out policies and proposals for the development and use of land in the Mombasa County;

"Planning authority" means the department in charge of land and physical planning;

"Service area" means an area beside or in the proximity of a public road where services and facilities for users of the road are provided;

“Structure” means an authorized building or construction, vegetation, amenity, movable or immovable that is connected to and forms part of the roads system;

“Traffic sign” means any sign, notice, signal, light or other device erected or in any way displayed by or with the consent of a relevant authority, for the purpose of regulating, restricting or prohibiting traffic and vehicles of any kind, on a road;

“Toll” means a charge, fee, payment, levy, tariff or tax payable for the use of a road;

5. **THAT** Clause 4 be deleted.

6. **THAT** Clause 5 be deleted.

7. **THAT** Clause 6 be deleted.

8. **THAT** Clause 7 be redrafted to read as follows;

“Classification of County roads

1) Where a road has been classified as a County road under any applicable law, the Executive Member shall by order classify such road as a County road.

2) The Executive Member may by order—

a) designate particular roads for particular purposes taking it into account existing numbering system;

b) Divide a particular class of roads into sub classes.

3) The Directorate shall assign a number or other identifying marks to each County road in respect of which it has responsibility.

4)

a) The Directorate shall keep a schedule and map of all public roads in respect of which it has responsibility.

b) The Directorate shall prepare the schedule and map as soon as practicable after the commencement of this act and shall take all reasonable measures to keep the schedule and map up to date.

c) The schedule and map shall be kept at the offices of the Directorate and shall be available for inspection during office hours.

d) The schedule and map may be kept otherwise than in a legible form provided that the information contained therein is capable of being reproduced in a legible form.

5) The Directorate shall, at the request of the Executive Member and in such manner as may be specified by him, carry out an inventory of all public roads, or of any class or subclass of public road, in respect of which it has responsibility.

6) The Executive Member shall upon the recommendation of the Directorate, order for the removal or demolition of any encroachment or structure on a County road.

7) Any demolition or removal pursuant to sub section (6) above shall be by notice of not less than 30 days and not more than 60 days and shall be served by—

a) Delivering it to the person encroaching on a County road;

b) Leaving it at the usual or last known place of abode of the person encroaching a County road; or

c) Sending it by registered post addressed to the person encroaching a County road at his usual or last known address.”

9. **THAT** Clause 8 be re drafted to read as follows;

“Declaration of public roads

1) The Executive Member may in consultation with the department in charge of physical planning, by order,

a) Declare any road over which a public right of way exists to be a public road, and every such road shall be deemed to be a public road and responsibility for its maintenance shall lie on the Directorate.

- b) Where the Executive Member proposes to declare a road to be a public road he shall:
 - I. Satisfy that the road is of general public utility,
 - II. Satisfy that the road is not on private land, but if on private land, the owner of the private land shall be adequately compensated.
 - III. Consider the financial implications for the Directorate of the proposed declaration.
 - IV. Publish in one or more newspapers circulating in the area where the proposed road is located a notice indicating the time (Which shall be not less than one month), place and period during which a map showing such road may be inspected.
 - V. State in the notice that objections or representations may be made in writing to the Directorate in relation to such declaration before a specified date (The notice shall be not less than two weeks after the end of the period for inspection).
 - VI. Consider any objections or representations made to it under this section.
 - 2) The consideration of objections or representations and the making of an order under *Sub Section (1)* shall be a reserved function of a review Committee comprising of five Members appointed by the Executive Member.
 - 3) The review Committee established in sub section (3) above shall consist of;
 - a) An Advocate of the High Court of Kenya with not less than ten years post-admission experience;
 - b) A Valuer with not less than ten years experience;
 - c) A Land Surveyor with not less than ten years experience; and
 - d) Two representatives of the public from the area in which the land is to be declared a public road.
 - 4) The Executive Member may prescribe criteria for the declaration of roads to be public roads and the Directorate shall comply with any such prescribed criteria when exercising its functions under this section.”
10. **THAT** Clause 9 be redrafted to read as follows;
- 1) “The County shall re-classify a public road in accordance with the provisions of this Act.
 - 2) Where the Directorate proposes to re-classify a public road it shall—
 - a) Publish in one or more newspapers circulating in the area where the public road proposed to be re-classified is located a notice indicating the times at which, the period (Which shall be not less than one month) during which and the place where a map showing such public road may be inspected and stating that objections or representations may be made in writing to the Directorate in relation to such proposal before a specified date (Which shall be not less than two weeks after the end of the period for inspection), and stating that persons making such objections or representations may make a request in writing to state their case at an oral hearing conducted by a person appointed by the road Directorate for that purpose,
 - b) Affix a copy of such notice in a prominent position at each end of the public road proposed for a period not less than fourteen days,

- c) Consider any objections or representations made to it under *paragraph (a)* and not withdrawn,
 - d) If it considers it appropriate, afford an opportunity to persons making objections or representations and who so request in writing to state their case at an oral hearing conducted by a person appointed by the Directorate and consider the report and any recommendation of the person so appointed.
- 3) (a) The Directorate shall no longer be responsible for the maintenance of a County road from the date on which the order re-classifying it is made by the Directorate,
(b) The re-classification of a public road shall not affect any public right of way over such road and the Directorate shall not do anything to interfere with such right of way save as is provided for in law.
- 4) The Directorate shall as soon as may be after a public road has been re-classified publish notice of such re-classification in the newspaper or newspapers in which notice of the proposed re-classification was published under *subsection (2) (a)* and shall notify in writing any person who made written objections or representations to it in relation to such Re-classification.
- 5) A person who, without permission of the Directorate, removes, or who defaces or damages a notice erected under *subsection (2) (b)* shall be guilty of an offence and liable on conviction to a term of imprisonment not exceeding six months or to a fine not exceeding fifty thousand shillings, or to both.”

(Interruption)

(Question of consideration of amendments 1-10 proposed)

Chairperson: Members it is proposed that this House considers the amendments from number 1 to 10.

(Question put and agreed to)

(Question of amendments 1-10 to be part of the Bill proposed)

Members I propose that this House adopts the amendments number one to 10 be part of this Bill.

(Amendments 1-10 agreed to)

11. **THAT** Clause 10 be redrafted to read as follows;

“Responsibility of the Directorate for the maintenance and construction of public roads”

- 1) The maintenance and construction of all County roads shall be the function of the County Directorate.
- 2) The expenses of the Directorate in respect of its functions under subsection (1) shall be charged on the departmental financial allocation.
- 3) In the performance of its functions under this Act the Directorate shall consider the needs of all road users.
- 4)
 - a) A person or group of persons may, with the consent of the Chief Officer, carry out maintenance works on a County road.
 - b) A consent under subsection (a) may be given by the Chief Officer subject to such conditions, restrictions and requirements as it thinks fit.
 - c) Where the Chief Officer gives its consent under subsection (a) and the works have been carried out in a bona fide manner and

in accordance with every condition, restriction or requirement specified under paragraph (b)—

- I. The works shall be deemed to have been carried out by the Directorate, and
 - II. The person or group (and each member thereof) who carried out the works shall be indemnified by the Directorate against all actions and claims howsoever arising in respect of the works and the carrying out of works.
- d) The Directorate may provide materials, plant, equipment and the services of its staff to a person or group carrying out works under this subsection.
- 5) The Directorate may do all such things as may arise out of or are consequential on or are necessary or expedient for the performance of its functions under this Act or otherwise in relation to public roads or are ancillary thereto.
- 6) Notwithstanding the definition of “road” in this act, nothing in this Act shall be construed as imposing on the Directorate any liability, duty or obligation to—
 - a) Construct or maintain fences or retaining walls adjoining a public road which are the responsibility of any other person and which do not form part of the road, or
 - b) Construct or maintain any bridges, tunnels, railway crossings or any other structure which by virtue of any enactment are the responsibility of a railway company or National government or other person.
- 7)
 - a) A person who, without approval of the Directorate or the consent of the Chief Officer—
 - I. Erects an illegal structure or amenity on a public road,
 - II. Defaces a public road by writing or by any other means,
 - III. Damages a public road,
 - IV. Excavates a public road,
 - V. Places or deposits any material or thing on a public road,
 - VI. Permits dung or urine from an animal owned by him or any material or thing which falls from a vehicle owned or used by him, to be left on a public road, or
 - VII. Does any other thing, such that the material, thing, dung or urine or the doing of such other thing is a hazard or potential hazard to persons using a public road or obstructs or interferes with the safe use of a public road or the maintenance of a public road,
Shall be guilty of an offence and liable on conviction to a term of imprisonment, not exceeding two years or to a fine not exceeding one million shillings, or to both.
 - b) A consent under *paragraph (a)* may be given by the Directorate subject to such conditions, restrictions or requirements as it thinks fit and any person who fails to comply with such conditions, restrictions or requirements shall be guilty of an offence.

- c) Where a person does anything in contravention of *paragraph (a)*, the Directorate may remove any defacing and repair any damage, fill in any excavation, remove any material, thing, dung or urine or remove or reduce any hazard, potential hazard, obstruction or interference and may recover from such person, as a simple contract debt in any court of Law, any costs reasonably incurred by it.”

12. THAT Clause 11 be redrafted to read as follows;

“Agreements and arrangements between National government road authorities and the County Government;

- 1) Whenever it appears to the Executive Member that arrangements should be made by two or more road authorities for the joint discharge of any of their functions relating to national or County roads the Executive Member may request the road authorities to enter into arrangements in accordance with such terms and conditions as the Executive Member may specify.
- 2) Any arrangements entered into under this subsection shall not be revoked save with the consent of the Executive Member.
- 3) The Executive Member shall carry out any agreement or arrangements to which this section relates and to which it is a party in accordance with the terms thereof.
- 4) It shall be the duty of the Executive Member which is a party to an agreement or arrangement under this Act to furnish to the Executive Committee and County Secretary a copy of such agreement or arrangement.”

13. THAT Clause 12 be deleted.

14. THAT the words “HIGHWAYS, COUNTY ROADS AND PROTECTED ROADS”

on part III title be deleted and replaced by the following words;

“PART III-ROAD USAGE AND PROTECTED ROADS”

14. THAT Clause 13 be redrafted to read as follows;

“Use of a County road shall be subject to this Act, regulations and any other applicable law.”

15. THAT the word “highway” be deleted on the head notes of Clause 15 and the words “public roads” be inserted to read as follows;

“Prohibition and restriction of access to public roads, streets and protected roads”

16. THAT Clause 15 be redrafted to read as follows;

1)

a) “Upon recommendation of the Directorate in consultation with the physical planning authority, the Executive Member may, by notice remove any protected road, or part thereof, from the protected road scheme.

b) Upon recommendation of the Directorate in consultation with the Physical Planning authority, the Executive Member may modify a protected road scheme and such modifications shall take effect from the date of such order.

2) A person shall not undertake any development of land which would permit or involve direct access to or from a public road or which would contravene the provisions of an approved protected road scheme relating to direct access to or from a protected road.

3)

a) Any person who constructs or provides or attempts to construct or provide a means of direct access to or from a public road in contravention of this Act shall be guilty of an offence.

b) Any person who contravenes subsection (2) shall be guilty of an offence.

c) Any person who constructs, provides or retains or attempts to construct, provide or retain a means of direct access which contravenes a protected road scheme approved by the Executive Member under this Act shall be guilty of an offence.”

17. THAT section 16 be redrafted to read as follows;

1) “The Directorate shall prepare an Environmental Impact Assessment (EIA) of any proposed road development and construction of a public road.

2) Where the Directorate considers that any proposed road development consisting of the construction of a proposed public road or the improvement of an existing public road is likely to have significant effects on the environment, it shall inform the Executive Member in writing and where the Executive Member concurs with the road Directorate he shall give a direction to the road Directorate.”

18. THAT the words “and implementation of Roads” be deleted from Clause 17 head notes to read as follows;

“Acquisition of land”

19. THAT Clause 17 be redrafted to read as follows;

“Whenever there is a need to construct a road according to approved County integrated development plan, the Executive Member shall acquire the required land or rights in relation to land through compulsory acquisition.”

20. THAT Clause 18 be redrafted to read as follows;

1) “Any works to be done on public roads that can affect the road network system, shall not be undertaken without the consent of the Directorate.

2) The carrying out by a state authority of emergency works necessary to eliminate or reduce danger or risk to persons or property or of maintenance works shall not require consent; however it shall be necessary to inform the Directorate as soon as is practicable.”

(Question for consideration of amendments 11 to 20 proposed)

Chairperson: Members I propose the question, it is proposed that this House considers amendment number 11 to number 20.

(Question put and agreed to)
(Question for amendment 11 to 20 proposed)

Since there is no consideration, no amendment I proceed to put the question. Members I put that amendment on Clause 11 to 20 be part of this Bill...

(Amendments 11 to 20 agreed to)

21. THAT the words “highway scheme” be deleted from Clause 19 head notes and the words “or public roads schemes” be inserted to read as follows;

“Service areas or public roads schemes”

22. THAT Clause 19 be redrafted to read as follows;

1) “A public road scheme may include provision for a service area.

2) Where a public road scheme approved includes provision for a service area or a service area provided is located on a public road, the Directorate may—

I. Provide or operate in the service area facilities or services for persons and vehicles using the public road, to which the scheme relates,

II. Make an agreement with any person whereby that person, either by himself or herself or jointly with the Chief Officer in charge of transport provides or operates in the service area such facilities or services.”

23. THAT Clause 20 be redrafted to read as follows;

1) “The County may prepare a scheme for the establishment of a system of tolls in respect of the use of a public road.

2) The Chief Officer in consultation with the Directorate, may give special consideration to the question of exempting from tolls.

3) A scheme prepared under subsection (1) shall;

a) Specify the public road or proposed public road in respect of the use of which it is proposed to establish a system of tolls,

b) Indicate the classes of vehicles and road users for whose use the toll road is intended,

c) Indicate the classes of vehicles which and road users who will be charged tolls in respect of such use,

d) Include an estimate of the amounts of the tolls that it is proposed to charge in respect of the use of the toll road by such vehicles and road users,

e) Specify the manner and method of the charging of and collection of tolls,

f) Specify such other information as the road Directorate making the scheme considers appropriate or the Executive Member prescribes by regulations.

4) A scheme under subsection (1) shall be accompanied by an explanatory statement outlining the provisions of the scheme and its purpose and effect and shall include —

a) Information in relation to the general arrangements for the construction, maintenance and operation of the toll road to which the scheme relates and for the payment of the cost of such construction, maintenance and operation,

- b) Estimates of the cost of the road, capital costs and operating costs of the tolling road,
- c) Estimates of the volume and kind of traffic that will use the road and the amounts of the tolls in respect of such traffic.
- 5) The Chief Officer may amend a toll scheme adopted by him under this Act.
- 6)
 - a) The County shall, before adopting a scheme prepared under this Act, send a copy of the scheme to the appropriate road Authority and serve a notice stating—
 - I. That a scheme has been prepared, and
 - II. That representations may be made in writing to the Directorate in relation to the scheme before such date as is specified in the notice (being not less than six weeks from the date of service of the notice).
 - b) The Directorate shall consider any representations made to it pursuant to a notice under paragraph (a).”
- 24. THAT Clause 21 be redrafted to read as follows;
 - 1) “The Executive Member shall publish in one or more newspapers circulating in the area where the proposed toll road is located or is to be located a notice—
 - a) Stating that a draft toll scheme has been prepared,
 - b) Indicating the place, time and a duration of not less than thirty days for viewing of a copy of the scheme prepared, inspection of the map and any explanatory statement, and
 - c) Stating that objections to the draft toll scheme may be made in writing to the Directorate before such date as is specified in the notice (being not less than two weeks from the end of the period for inspection referred to in paragraph (b).
 - 2)
 - a) Subject to paragraph (b), the Directorate may adopt a scheme prepared by it under subsection (1), with or without modifications and, subject to subsection (3), a scheme so adopted is hereafter in this Act referred to as a “toll scheme”.
 - b) If an objection to a draft toll scheme is made to the Chief Officer and the objection is not withdrawn, the Chief Officer shall cause an oral hearing to be held into the matters to which the objection relates, by the Review Committee established under section 5(2), and shall consider the report of and any recommendation made by review Committee.
 - 3) The Chief Officer upon approval shall gazette a toll scheme and the same shall come into force on the day of such publication.”
- 25. THAT Clause 22 be redrafted to read as follows;
 - 1) “The Chief Officer may provide and maintain buildings, structures, works and apparatus as it considers necessary or expedient for or in connection with the charging and collection of tolls and the operation of toll roads.

2) Subject to the provisions of this Act, the Directorate may collect revenue in accordance with the Public Finance Management Act, 2012.”

26. THAT Clause 24 be deleted.

27. THAT Clause 25 be deleted.

28. THAT Clause 26 be deleted.

29. THAT Clause 27 be redrafted to read as follows;

1) “The amount of any toll due and payable by a person under this Part and unpaid may be recovered from the person as a simple contract debt by the road undertaking concerned in any court of competent jurisdiction.

2)

a) Notice of the charge of a toll may be served on a person by the road undertaking concerned by post:

I. At the place where the person ordinarily resides or carries on business, or

II. If an address for the service of such a notice has been provided by the person, that address, or where arrangements have been made between the person and the road undertaking by such means specified (such as electronic mail) to the place or address specified, in the arrangements.

b) In any proceedings for the recovery of a toll it shall be presumed, until the contrary is shown, that the defendant received the notice under this paragraph to which the proceedings relate and that payment of the toll has not been made.

3) The Directorate may approve cameras or other apparatus and the location of them, to be set up and operated by the road undertaking having charge of the collection of tolls on a toll road, for the purposes of:

a) Recording the date and time of a vehicle passing through the toll road and whether payment in respect of the vehicle for the use of the road has been discharged or incurred, and

b) Taking photographic images of the vehicle and its identification mark.

4) A person who is liable to pay a toll and who fails, neglects or refuses to pay the toll is guilty of an offence.

5) A person who on a toll road, fails, neglects or refuses to obey a lawful instruction or direction of a person authorised by a road undertaking to provide, operate or manage a toll road or collect or charge tolls on the road is guilty of an offence.

6) A person who by his or her actions does anything to avoid being charged or paying a toll while on a toll road is guilty of an offence.

7) A person guilty of an offence under this section is liable on conviction to a fine not exceeding fifty thousand shillings or to imprisonment for a term not exceeding six months, or to both.”

30. THAT Clause 28 be deleted.

31. THAT Clause 29 be deleted.

(Question of amendment 21 to 31 proposed)

Chairperson: Members I propose the question that this house considers amendment number 21 to number 31?

(Question put and agreed to)

Since there is no amendment to it I proceed to put the question, Members that amendment number 21 to 31 be part of this Bill

(Amendment 21 to 31 agreed to)

32. THAT Clause 30 be redrafted to read as follows;

- 1) “A person using a public road shall take reasonable care for his own safety and for that of any other person using the public road.
- 2) A person using a public road shall take all reasonable measures to avoid
 - a) Injury to himself or to any other person using the public road,
 - b) Damage to property owned or used by him or by any other person using the public road.”

33. THAT Clause 31 be redrafted to read as follows;

- 1) “The Directorate may construct or otherwise provide and maintain a cycle way.
- 2) Where the Directorate constructs or otherwise provides a cycle way it shall by order declare either—
 - a) That the cycle way is for the exclusive use of pedal cyclists, or
 - b) That the cycle way is for the exclusive use of pedal cyclists and non- motorized transportation.
- 2) Any person who uses a cycle way in contravention of an order under subsection (2) above shall be guilty of an offence and liable on conviction to imprisonment to a term not exceeding three months or to a fine not exceeding ten thousand shillings or, or to both.”

34. THAT the words “temporary dwelling” be deleted from Clause 32 head notes and the words “temporary structures” be inserted to read as follows;

“Temporary structures on County roads”

35. THAT Clause 32 be redrafted to read as follows;

- 1) “Any person who without authority or the consent of the Directorate erects, places or retains a temporary structure on any other prescribed road or prescribed class, subclass or type of road shall be guilty of an offence.
- 2) An authorised person may remove a temporary structure from a County road.

3) An authorised person may store, or procure the storage of, a temporary structure removed by him under subsection (2).

4) Where the name and address of the owner of a temporary structure removed and stored under this section can be ascertained by reasonable inquiry, the Directorate shall serve a notice upon the owner informing him of the removal and storage and of the address of the place where the temporary structure may be claimed and recovered, requiring him to claim and recover it within one month of the date of the service of the notice and informing him of the statutory consequences of his failure to do so.

5) A temporary structure removed and stored under this section may be given to a person claiming the temporary structure if he makes a declaration in writing that he is the owner of the structure or is authorised by its owner to claim it

6) The Directorate may dispose, or procure the disposal, of a temporary structure removed and stored under this section in if—

- a) The owner of the temporary structure fails to claim it and remove it from the place where it is stored within one month of the date on which a notice under *subsection (4)* was served on him, or
- b) The name and address of the owner of the temporary structure cannot be ascertained by reasonable inquiry.

7) A temporary structure shall not be disposed of under this section within forty five days of the date of its removal under this section.

8) The provisions of this section are without prejudice to the functions of a public authority under any other applicable law.”

36. **THAT** Clause 33 be redrafted to read as follows;

- 1) “The owner of any structure or anything introduced to a land which is situated on a public road shall take all reasonable steps to ensure that;
 - a) the structure or the use of the land thereof is not a hazard or a potential hazard to other road users.
 - b) It does not interfere or obstruct the safe use or maintenance of a public road.
- 2) Any person who contravenes subsection (1) above commits an offence and is liable on conviction to a term of imprisonment not exceeding six months or to a fine not exceeding fifty thousand shillings, or to both.
- 3) Any person not satisfied with any action taken pursuant to this section may appeal to the Review Committee established under section 5(2)
- 4) Any person not satisfied with a decision of the Review Committee may seek legal redress in a Court of Law.
- 5) Where the Directorate considers that a structure or the use of such structure, tree, shrub, hedge or other vegetation presents an immediate and serious hazard to persons using a public road it may take immediate action to reduce or remove the hazard.
- 6) Where the Directorate takes action under *subsection (5)* it may recover any reasonable costs incurred by it from the owner or occupier as a simple contract debt in any court of competent jurisdiction.
- 7) Where the Directorate has entered or proposes to enter on any land under *subsection (5)*, it shall as soon as may be served on the owner or the occupier of the land, a notice stating that it has entered or proposes to enter on the land and specifying the action that it has taken or proposes to take thereon.
- 8)

- a) Where a person takes action—
 - I. to remove, modify or carry out specified works in relation to a structure, or
 - II. to preserve, fell, cut, lop, trim or remove any tree, shrub, hedge or other vegetation to which this section relates, he shall take all reasonable measures to ensure as far as is reasonably practicable the safety of persons using a public road.
- b) A person who contravenes this subsection shall be guilty of an offence and is liable on conviction to a term of imprisonment not exceeding six months or to a fine not exceeding fifty thousand shillings, or to both.”

37. **THAT** Clause 34 be deleted.

38. **THAT** Clause 35 be deleted.

39. **THAT** Clause 36 be redrafted to read as follows;

- 1) “A person who intends to hold, organize or promote a road race shall give at least one month's notice or such other period of notice as may be prescribed by the Executive Member in writing to the Directorate and to the Kenya Police service within whose jurisdiction the road race is to be held.
- 2)
 - a) The Directorate may by notice in writing served on a person who intends to hold, organize or promote a road race or, where the name of that person cannot be ascertained by reasonable inquiry, by notice published in one or more newspapers circulating in the area in which the road race is to be held—
 - I. Prohibit the holding of the road race,
 - II. Prohibit the holding of the road race unless specified conditions, restrictions or requirements are complied with,
 - III. Impose specified conditions, restrictions or requirements in relation to the holding of the road race which must be complied with.
 - b) The conditions under *paragraph (a)* may include the giving of security or the provision of an indemnity.
- 3) Any person who contravenes *subsection (2)* shall be guilty of an offence.
- 4) The Executive Member may make regulations for the purposes of this section and such regulations may in particular make provision for—
 - a) Requirements in relation to the making and consideration of objections,
 - b) Requirements in relation to the giving of security or the provision of an indemnity.”

40. **THAT** Clause 37 be redrafted to read as follows;

- 1) “The Directorate may by order—
 - a) for the purpose of facilitating a road race under *section 25*, or any other event,
 - b) for the purpose of facilitating the carrying out of works, or
 - c) for any other purpose,

Close a public road to traffic for such specified period and subject to such specified conditions as it thinks fit.

2)

- a) A person who uses a public road in contravention of an order made under *subsection (1)* shall, unless he is authorized in writing by the Directorate to do so, be guilty of an offence.
- b) A person who obstructs or interferes with the holding of a road race or any other event or with the carrying out of works or any activity in respect of which an order under *subsection (1)* is in force shall be guilty of an offence.
- c) A person who holds, organizes or promotes a road race or other event or who carries out works or any other activity in respect of which an order under *subsection (1)* is in force and who contravenes any condition specified in that order shall be guilty of an offence.
- d) A person who without lawful authority closes a public road shall be guilty of an offence.”

(Question of amendment of number 32 to 40 proposed)

Chairperson: Members I propose a question that this House considers amendment number 32 to 40.

(Question put and agreed to)

Since there's no any amendments; i proceed to put a question that Members allow Clause 32 to 40 to be part of the Bill.

(Clause 32 to 40 agreed to)

41. **THAT** Clause 38 be re-drafted to read as follows;

- 1) “The Directorate may construct and maintain drains in, on, under, through or to any land for the purpose of draining water from, or preventing water flowing onto a public road,
- 2) Before entering on any land to perform a function under *subsection (1)*, the Directorate shall—
 - a) at least one month before the date upon which it proposes to enter on the land, serve a notice on the owner or occupier of the land—
 - I. stating that it proposes to enter on the land,
 - II. specifying the function that it proposes to perform thereon,
 - III. stating that objections or representations may be made in writing to the Directorate in relation to the proposed performance of the function before a specified date which shall be not less than two weeks from the date of service of the notice, and
 - IV. informing him of his right to restoration of his property,
 - b) Consider any objections or representations made to it under *paragraph (a)*.
- 3)
 - a) Where as a result of flooding, landslide, subsidence or other emergency there is an immediate and serious hazard to persons

- using a public road or serious damage has been, is being or will be caused to a public road, the Directorate may take immediate action to remove or reduce the hazard or prevent or reduce the damage or any further damage.
- b) In the exercise of its functions under *paragraph (a)*, the Directorate may enter on any land and carry out any works or do anything which it considers necessary for the purposes of *paragraph (a)*.
- 4) The owner or occupier of any land adjacent to a public road shall take all reasonable steps to ensure that water, soil or other material is prevented from flowing or falling onto a public road from his land.
- 5) The Directorate may serve a notice in writing on the owner or occupier of any land adjacent to a public road requiring him to carry out specified works or take specified measures to prevent water, soil or other material from flowing or falling onto a public road from his land.
- 6)
- a) A person on whom a notice under *subsection (5)* has been served may, within fourteen days from the date of service, appeal against the notice to Review Committee established in this Act on any one or more of the following grounds—
- I. that he is not the owner or occupier of the land,
- II. that water, soil or other material was not and is not flowing or falling onto a public road from his land,
- III. that compliance with the requirements of the notice would involve unreasonable expense,
- IV. that the notice specified an unreasonably short time for complying with its requirements or any of them.
- b) Notice of the appeal shall be given to the Review Committee through the Chief Officer.
- 7) An owner or occupier who fails to comply with a notice under this section shall be guilty of an offence and liable on conviction to a term of imprisonment not exceeding six months or to a fine not exceeding fifty thousand shillings, or to both.
- 8) Where an owner or occupier fails to comply with a notice under this section, the Directorate may take the action specified in the notice or such other action prescribed by law.
- 9) Where the Directorate takes action under this section, it may recover any reasonable costs incurred by it from the owner or occupier as a simple contract debt in any court of competent jurisdiction.
- 10)
- a) A person who, without the consent of the Directorate—
- I. within 5 metres of a public road measured from its nearest edge, scours, deepens, widens or fills in any existing drain or excavates any new drain,
- II. interferes with, or carries out any works which interfere with, a bridge, culvert, retaining wall, embankment or other structure providing lateral or other support for a public road, shall be guilty of an offence and liable on conviction to a

term of imprisonment not exceeding six months or to a fine not exceeding fifty thousand shillings, or to both.

- b) A consent under *paragraph (a)* may be given by the road Directorate subject to such conditions, restrictions or requirements as it thinks fit and any person who fails to comply with such conditions, restrictions or requirements shall be guilty of an offence.

c)

I. Where the Directorate considers that the carrying out, with or without its consent, of an activity referred to in *paragraph (a)* has damaged, is damaging or will damage a public road, it may serve a notice in writing on the person carrying out such activity or on the owner or occupier of the land on which such activity is being carried out requiring that the activity cease forthwith and a person who fails to comply with a notice served on him shall be guilty of an offence.

II. The Directorate may repair any damage and take measures to prevent or reduce any damage relating to an activity under *paragraph (a)* and may, where it has not given its consent under that paragraph, recover from the person carrying out the activity or the owner or occupier of the land, as a simple contract debt in any court of competent jurisdiction, any costs reasonably incurred by it.

- 11) Where the Directorate proposes to enter or has entered any land under, it shall as soon as may be served on the owner or occupier of the land, a notice stating that it proposes to enter or has entered on the land and specifying the action that it proposes to take or has taken thereon.”

42. **THAT** Clause 39 be redrafted to read as follows;

- 1) “Any authorized person shall be entitled to enter at all reasonable times subject to producing his authority in writing or identification and inspect any land for the purposes of this Act.
- 2) An authorized person shall be entitled in the performance of his functions under this section to take with him on to land such persons and equipment as he considers necessary to assist him and to carry out such surveys, investigations, excavations, borings or tests, to take samples or to do any other thing which he considers necessary for the purposes referred to in *subsection (1)*.
- 3) Where an authorized person is denied entry to land in the exercise of his functions under this section the Executive member, or the Chief Officer, as the case may be, may apply to the Court for a warrant authorizing such entry.”

43. **THAT** Clause 40 be redrafted to read as follows;

“Whenever the Executive Member is satisfied in relation to a notice required to be served under this Act that:

- a) reasonable grounds exist for dispensing with the service of the notice, and
- b) the dispensing with the service of the notice will not cause injury or damage to any person, he may dispense with the

service of the notice and every such dispensation shall have effect according to the terms thereof.”

- 44. **THAT** Clause 41 be deleted.
- 45. **THAT** Clause 42 be deleted.
- 46. **THAT** Clause 43 be deleted.
- 47. **THAT** Clause 44 be redrafted to read as follows;

“Monies accruing to the Directorate under this Act shall be applied in accordance with Public Finance Management Act, 2012.”

- 48. **THAT** Clause 45 be redrafted to read as follows;

“Where the Directorate will become entitled to dispose or procure the disposal of anything removed from a public road under this Act, the Directorate shall do so in accordance with the Public Procurement and Disposal Act, 2005 and any other applicable law.”

- 49. **THAT** Clause 46 be deleted.
- 50. **THAT** a new Clause 46 be inserted to read as follows;

“General Penalty

Any person contravening any provision of this Act, for which no other punishment is given is liable on conviction to a fine not exceeding one hundred thousand shillings or imprisonment for a term not exceeding one year, or to both.”

- 51. **THAT** a new Clause 47 be inserted to read as follows;

“Regulations

The Executive Member may make regulations prescribing any matter which is referred to in this Act as prescribed or to be prescribed or in relation to any matters referred to in this Act as the subject of regulations or for the purpose of giving full effect to this Act.”

(Question of amendments 41 to 51 proposed)

Chairperson: Hon. Members I propose that this House considers amendments 41 to 51

(Question put and agreed to)

I proceed to put the question, yes Hon. Hatimy...

Hon. Mohamed Hatimy: I want to amend number 48 Clause 45 Mr. Chair, now that we don't have the Public Procurement and Disposal Act, 2005 so we amend the Act to read the Public Procurement and Disposal Act, 2013 sorry 2016; we do have a new Public Procurement Act I think it is 2015 or 2016 so we delete the 2005.

(Question of amendment of 48 Clause 45 proposed)

Then Members I proceed to put the question that amendment 41 to 51 to be part of this Bill.

(Question put and agreed to)

(Applause)

Members I think the Committee of the Whole House is now over and we resume back to the Assembly sitting.

(Sergeant At Arms raised the Mace on the Table)

PLENARY RESUMED

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

Deputy Speaker (Hon. Mswabah Rashid): Members you may sit down. Members you think it is now time for Hon. Amir Thoya to report to this House what transpired in the Committee of the Whole House. Yes Hon. Amir Thoya.

Hon. Thoya: Ahsante sana Mheshimiwa Spika; kwanza nataka kushukuru Mwenyekiti wa Nyumba hii, pili ni kuwashukuru waheshimiwa wote ambao waliweza kupitia marekebisho haya. Mheshimiwa Spika sheria hii iliweza kupitishwa katika Bunge letu na ikaweza kupelekwa kwa Mheshimiwa Gavana Hassan Joho ili ikaweze kutiwa sahihi na iwe sheria kamili. Mheshimiwa Spika nataka kumshukuru Mheshimiwa Gavana kwa sababu kabla ya kutia saina sheria hii aliweza kufanya mashauriano yeye mwenyewe binafsi pamoja na Waziri na akaona iko haja ya dharura ya baadhi ya vipengee kuweza kurekebishwa kabla ya sheria hii iweze kusainiwa kuwa sheria na baadhi ya vipengee vipya vimeweza kuwekwa na baadhi ya vipengee vyengine vimeweza kurekebishwa na vyengine vimeweza kufutuliwa kabisa. Lengo na dhumuni ni kufanya sheria hii iweze kuwa ya manufaa kwa wakaazi wa Kaunti ya Mombasa yule ambaye anatumia barabara zetu. Kwa hio Mheshimiwa Spika zaidi ningeweza kuomba waheshimiwa wa Bunge hili tuweze kupitisha ili iwe sheria ya barabara za Kaunti yetu ili mapendekezo yote wenye Gavana alipendekeza kwa sheria hii na baada ya kurekebishwa yaweze kupitishwa na Nyumba hii ili iweze kuwa sheria na iweze kuwa sheria kamili. Kwa hio ombi langu kubwa ningomba waheshimiwa ni kuhakikisha mapendekezo haya ili iweze kuwa sheria kamili ya Mombasa Kaunti. Ahsante sana Mheshimiwa Spika.

(Question proposed)

Deputy Speaker (Hon. Mswabah Rashid): Thank you Hon. Amir Thoya for that Motion so i think i should move forward and put a question in this House, Members that the County Assembly do agree with the Committee on the said report.

(Question put and agreed to)

(Applause)

ADJOURNMENT

This House stands adjourned until tomorrow in the afternoon.

The House rose at 3:40p.m.