

**REPUBLIC OF KENYA**  
**MACHAKOS COUNTY ASSEMBLY**

**OFFICIAL REPORT**

**Tuesday, 12<sup>th</sup> June, 2018**

The House met at 10.11 a.m.

*[The Speaker (Hon. (Mrs.) Mwangangi) in the Chair]*

**PRAYERS**

**Hon. Speaker:** Good morning, Hon. Members. I am just looking around and wondering do we have quorum, Mr. Clerk? Mr. Clerk: Yes we do. Yes, we do alright thank you; I can also see more members are coming in we welcome you. Okay, so Hon. Members we start; is that music here? Alright, we can start the business of today. Mr. Clerk, proceed.

**STATEMENT**

BUSINESS FOR THE HOUSE FOR 12TH JUNE, 2018

**Hon. Speaker:** Hon. Members, under this order, we have business as per appendix by Hon. Maitha.

**Hon. Maitha:** Thank you, Madam Speaker, statement of business of the House. Hon. Madam Speaker, I stand under Standing Order 42(2)(a) where during the statement hour, a member of the House Business Committee designated by the committee for the purpose shall for not more than 10 minutes present and lay on the Table a statement informing the House of the business coming before the House.

Hon. Madam Speaker, the House Business Committee met on 11<sup>th</sup> June, 2018 and balloted business for the week pursuant to the provisions of Standing Order 151 as follows:- Tuesday, 12th June, 2018.

Morning at 10 a.m.

Report of committee on transport roads and public works of status of roads of Mavoko and Masinga sub-counties.

Afternoon at 2.30 p.m.

Report of environment, energy and lands and natural resources on Yatta canal by Hon. Robert Kisini chairman environment;

Motion to adjourn the sitting of the Assembly of 12th June, 2018 to allow the sectoral committees.....sorry Madam Speaker, motion to adjourn the sitting of the Assembly on 13th June, 2018 to allow the sectoral committees interrogate the

Machakos County Budget Estimates for the financial year 2018/2019 with to County Executive Committee members.  
Thank you, Hon. Madam Speaker.

**Hon. Speaker:** Thank you, Hon. Maitha. Mr. Clerk, proceed.

### MOTIONS

#### MATTER OF COUNTY IMPORTANCE ON THE STATE OF THE COUNTY ON THE OFFICE OF THE GOVERNOR

**Hon. Speaker:** Hon. Members, under this Order we have business as listed and I call upon Hon. Daniel Mbevi. Point of order? Hon. Daniel Mbevi, please rest briefly.

**Hon. Mwanthi:** Thank you, Madam Speaker. I was seeking leave for this House to adjourn that motion so that we may discuss a motion of County Importance.

**Hon. Speaker:** Under what Standing Order.

**Hon. Mwanthi:** 30(1).

**Hon. Speaker:** Mr. Clerk, can you confirm if there is a provision under that order. Hon. Stephen Nzue please proceed, I hear you.

**Hon. Mwanthi:** Thank you, Madam Speaker:

Aware that Article 182(1)(e) of the Constitution of Kenya states that the office of the County Governor shall become vacant if the holder of that office is removed from that office under this constitution;

Aware that the Court of Appeal of Kenya of 8th of June, 2018 nullified the election of the Governor, Machakos County and ordered the Independent Electoral and Boundaries Commission (IEBC) to conduct fresh elections for that seat;

Recognizing that Article 182(4) states that if a vacancy occurs in the office of the County Governor and that the Deputy Governor and if the Deputy Governor is unable to act, the Speaker of the County Assembly shall act as the County Governor;

Noting that the County Governor and the Deputy Governor are the Chief Executive and Deputy Chief Executive of the County respectively---

**Hon. Speaker:** Point of order Hon. Kamitu you have?

**Hon. Kamitu:** Yes, I have a point of order, Madam Speaker.

**Hon. Speaker:** Let us hear you. Hon. Steve Mwanthi, please rest briefly.

**Hon. Kamitu:** Madam Speaker, in regard to the statement that is being carried out here, the Governor of Machakos, it is clearly stated that the vacancy has not been declared by IEBC or any law. So, I do not know, Madam Speaker, through your guidance, I do not know what we are

discussing here because the Governor of Machakos is still in office until when the orders and there is that communication from IEBC or from any legal.....thank you, Madam Speaker.

**Hon. Speaker:** Hon. Kamitu, I am ruling you out of order. Any matter that the Assembly wishes to discuss cannot be shut out from them for discussing.

*(Applause)*

Hon. Steve Mwanthi, proceed

**Hon. Mwanthi:** Thank you, Madam Speaker.

**Hon. Speaker:** You can only out-rule him if you hear what he is saying; do not shut down a member when they are submitting.

**Hon. Kamitu:** But Madam Speaker---

**Hon. Speaker:** I am asking you to maintain order, Hon. Kamitu in this House. Proceed, Hon. Mwanthi.

**Hon. Mwanthi:** Thank you, Madam Speaker. I will repeat the last sentence.

Recognizing that Article 182(4) states that if a vacancy occurs in the office of the County Governor and that of the Deputy County Governor or if the Deputy County Governor is unable to act, the Speaker of the County Assembly shall act as County Governor;

Noting that the County Governor and the Deputy Governor are the Chief Executive and Deputy Chief Executive of the County respectively;

Aware that the County has no County Executive Committee whose appointment has been approved by the House;

Aware that County Executive Committee is tasked with exercising the Executive authority of the County, managing and coordinating functions of the County administration as well as implementing County legislation;

Acknowledging that the County is a going concern and activities should not ground to a halt due to a vacancy in the office of the Governor;

Aware of the residents of Machakos County need to know the current situation in the office of the Governor;

Aware that the Assembly is yet to be served with any papers on the state of the judgment or vacation orders by a higher court. Madam Speaker---

*(Applause)*

Pursuant to Standing Order 30(1), I wish to move the motion that the Assembly adjourns to discuss a matter of County importance on the matter of the state of the County since the office of the Governor is vacant.

Thank you, Madam Speaker.

*(Applause)*

**Hon. Speaker:** Hon. Steve Mwanthi, do you have a member to support you. Hon. Kiteng'u can second then motion.

**Hon. Kiteng'u:** Thank you, Madam Speaker. I do second the motion by Hon. Mwathi.

*(Applause)*

**Hon. Speaker:** Hon. Members, you appreciate when a matter of this nature is brought before the House, it is always important for the members to ventilate upon it. It is not a personal property, it is the property of the people of the County of Machakos whom you represent and it is only fair that members ventilate on the matter having been brought under Standing Order 30(1) as a matter of great County importance. You can ventilate on the issue, Hon. Members. Hon. Mark Muendo

**Hon. Muendo:** Thank you, Madam Speaker. I would like to congratulate the member who has seen the importance of discussing this matter. This matter, Madam Speaker, is very important as you know the Court of Appeal has nullified the election of Governor Mutua. Therefore, at the moment we do not have a Governor in this County.

It is very important for the people of Machakos since we have been elected by the people of Machakos to tell the people the truth and nothing but the truth. Let me stand in this House today and say it is actually unfortunate for those days we have not been having a Governor and the people of Machakos are looking at us.

Our electorates are very concerned, Madam Speaker, about this issue. It is for today I invite all members to tell the people of Machakos who have elected them that we do not have a Governor and in fact, Madam Speaker, you should now be staying at the Governor's office---

*(Applause)*

You should be coming from the Governor's office when you are coming to discharge duties because you are now the Governor of Machakos. Thank you, Madam Speaker.

**Hon. Speaker:** Hon. Titus Kaloki.

**Hon. Kaloki:** Thank you, Madam Speaker. I think that this is not loud enough.

*(Hon. Kaloki pointed at the microphone)*

The motion before the House is actually inappropriate owing to the fact that yes there was a court ruling from the Court of Appeal but there are procedures that need to be followed and we do not want to use this House to impose rules or precedents which have never existed.

We know very well that the Governor is supposed to be in office until the new Governor is sworn in. Number two, the Court of Appeal is supposed to serve the IEBC with a court order detailing the events or rather what took place at the Court of Appeal. A certified copy of the proceedings and ruling and then it is at that point, the IEBC will make a ruling to declare the seat vacant.

We should also not forget the fact that the Hon. Governor has gone to the Supreme Court although we have not been served with a court order but we may not want to set a precedence which might ground or bring this County to a halt not forgetting that we are in the process of

vetting the CECs, passing also and preparing the budget for 2018/2019 and then at the moment we start introducing these kind of politics into this House---

**Hon. Speaker:** Please put your hand down.

**Hon. Kaloki:** We will be diverting or re-routing our minds from our main agenda as legislators of Machakos County Assembly. So this motion, according to me should not be discussed and if it was to be discussed and the members feel that the Speaker has a right, if the law allows, to take over, then we are also not properly constituted to discuss the same once she is seated in this House.

**Hon. Speaker:** Thank you, Hon. Titus Kaloki. What was burning you Hon. Matee. Hon. Members, please observe decorum when a member is submitting. Unless it is a point of order put your hand down no matter how much you want to say but you can proceed now.

**Hon. (Ms.) Ndeti:** Thank you, Madam Speaker. Mine was to comment on the motion, today's motion. The people of Machakos who have elected all of us do not want to continue to wait for services to be delivered as we continue to sort out the legal problems that are pertaining to the Governorship of Machakos.

I feel and I am convinced that that vacant or that room or window should not let services be delayed. So, it is very important that we look at the constitution clearly and accept that whoever is, according to the constitution, legal enough to seat in that office should be made to seat so that services can continue to be delivered. Thank you, Madam Speaker.

*(Applause)*

**Hon. Speaker:** Thank you, Hon. Helen Matee. Hon. Mueni.

**Hon. (Ms.) Mueni:** Thank you, Madam Speaker. I ask these members of this House to be sober because we are serving the people of Machakos County. Let us not be personal, let us be very careful because the people outside there are waiting for us to tell them whether we have the Governor in the office or not. By now we do not have the Governor and the Governor cannot continue asking for election when he is in the office because he is using the funds of the Machakos County.

You cannot be in the office when you are asking for the vacancy of being elected as a Governor or a President so we ask this House to be sober and say that we do not have a Governor and we go outside there and tell our people that we do not have a Governor.

You people were elected from the place you come from because you are the better person who comes from there and even if you are on the side of the Governor, tell the people we do not have a Governor and that will be the truth. Thank you, Madam Speaker.

**Hon. Speaker:** Thank you, Hon. Mueni, Hon. Museku.

**Hon. Museku:** Now, what I would like to comment on this important issue which has been brought before the House is that we did hear for in the High Court, the Court of Appeal of a ruling which had been made nullifying the election of the current Governor of Machakos Alfred Mutua. That was done by a bench of three judges and that judgement is available to everyone.

Not only did they nullify but they directed that the certificate that was given to him be withdrawn.

*(Applause)*

That judgment coming from the Court of Appeal is the only judgement; it is the only ruling we have so far of a court in as far as the issue is concerned. So, as the situation stands now, the county of Machakos does not have a Governor because the Court of Appeal has directed and clearly given directions and told IEBC to declare the position vacant and arrange for fresh elections.

So, what we are saying is this; as an Assembly and the people's watchdog, we are here to conduct oversight. We cannot be sitting here representing our people when they do not have a Governor. We cannot be here and seated here in this Hon. House and allow somebody who has been declared not as a Governor to continue sitting in that office and utilizing public funds.

*(Applause)*

The minute the Governor was declared he is not a Governor anymore, Madam Speaker, it became apparent that even the CECs and the COs and anybody who is in his government is also not there legally.

I urge this House and even the interrogations which we are going to do tomorrow, we cannot do interrogations with CECs who first of all have not been vetted and secondly whose appointing or nominating authority has been nullified by the Court of Appeal and therefore, I will even be requesting this House to ensure that we only get directors in those specific departments to come for the interrogation of the budget; no CECs, no COs to arrive here.

*(Applause)*

Directors are employees of the county and therefore we know we are going to have continuity with those directors but for the others, due to the issue of the court, we are not aware about it.

So, we should not sit here as people's representatives and just relax and say everything is okay; everything is not okay. There is a court order saying that we don't have a Governor and something has to be done.

Fortunately, the law does not leave a vacuum; the law, our constitution is very conclusive and it says clearly as the Hon. Member who was moving in the House said; in the event the Governor and the Deputy Governor are not in a position to be in the office, the Hon. Speaker of the House becomes the acting Governor.

*(Applause)*

Therefore, we urge that the constitution be followed to the letter and the law be followed to the letter in implementing this until we hear otherwise. Thank you, Madam Speaker.

*(Applause)*

**Hon. Speaker:** Thank you, Hon. Museku. Hon. Caleb.

**Hon. Mule:** Madam Speaker, this is a House of honour and a House of dignity. We cannot start discussing something that we have gotten from the streets; we do not have a judgement---

*(Loud consultations)*

**Hon. Speaker:** Order, Members! We need---

**Hon. Mule:** Because, Madam Speaker---

**Hon. Speaker:** Let me just let you know that a decision of the court has been publicized, it is not in the streets. Just use the proper language

*(Applause)*

Order! Put your submissions in a better way; it is not in the streets. The judgement is in your phone right now.

**Hon. Mule:** Madam Speaker, what I am saying is that the judgement, we do not have a judgement in this House unless, Madam Speaker you have a judgement that you can read for us and tell us it is clearly that the Court of Appeal has said that the seat is vacant.

*(Loud consultations)*

**Hon. Speaker:** Hon. Titus, I did not tell you to come to my aid; I am able, I am very able and I am not going to cease and I am not going to hesitate throwing a member outside through that door. Alright? I want order in this House. Hon. Caleb, proceed and as you proceed, Bw. Clerk, go and get that order if you have it in office. You bring the judgement, one of you.

**Hon. Mule:** I thought that is where we should have started; that we have the judgement because we are discussing the judgement here because we cannot sit here in this House discussing something that is really not clear in the House.

Secondly---

**Hon. Speaker:** I just want to let you know, Hon. Caleb, that for matters of public notice, you don't need to have them with you but we are going to bring that order now. The judgement will be here, let us not pretend. I am telling you to bring your submissions in a better way so that we can proceed but you cannot pretend you are not aware that there is a judgement of the Court of Appeal.

**Hon. Mule:** Madam Speaker, this is situation in Machakos is not unique---

**Hon. Speaker:** The judgement is here, Hon. Caleb; you can peruse it. I have just been given by the Clerk Assistant.

*(The judgement was handed over to Hon. Mule)*

*(Applause)*

**Hon. Mule:** Thank you, Madam Speaker. I will peruse that in good time. Again, this situation is not unique in Machakos; we have a judgement that was given on the Governor of Wajir, we have the one in Embu, we have Garissa and we have a judgement in Homa Bay. Did the Assembly sit and say the Speakers to take over from the Governors of these two Wajir and---

**Hon. Speaker:** Hon. Caleb, let us just hear a point of information. Hon. Mutiso.

**Hon. P.J. Mutiso:** I want to answer it through the Constitution of Kenya that the people of Kenya voted for in 2010; it is very clear in Article 182(4) is very clear. Let me read and it says; if a vacancy occurs in the office of a Governor and that of the Deputy Governor, or if the deputy County Governor is unable to act, the Speaker of the County Assembly shall act as the County Governor.

It is very clear in the Constitution of Kenya that we voted for in 2010. This is here and it is not me. Among other laws---

**Hon. Speaker:** Point of information is usually short and not long. You were giving a point of information, Hon. Mutiso. Hon. Caleb, you were proceeding.

**Hon. Mule:** Madam Speaker, in this system of governance, the presidential system an MCA is in office until another MCA comes in, a President is in office until another President comes in. We had Uhuru Kenyatta when the elections were nullified by Maraga and the Supreme Court; Uhuru Kenyatta stayed in office until the other elections was conducted. So, in this case, the deputy Governor is not incompetent and can also take over when that time comes.

This motion here is premature and it should not have come at this time. Thank you, Madam Speaker.

**Hon. Speaker:** Thank you, Hon. Caleb. Hon. Nziva.

**Hon. (Ms.) Nziva:** Thank you, Madam Speaker and Hon. Members present. I think the motion before us, according to my opinion is premature and because according to my understating, IEBC is not well-constituted and it is the one that is supposed to start the procedure for, may be, writing to the Speaker.

My question is; has the Speaker gotten a letter concerning the same? Another question I have to ask is because the judgement can be stayed by the IEBC and I think the judgement has been stayed because after the ruling of the High Court, the Governor went to the High Court and the judgement has been stayed and in fact---

**Hon. Speaker:** Point of information from Hon. Muendo.

**Hon. Muendo:** Let me inform the member that it is not the High Court; it is the Court of Appeal. Thank you, Madam Speaker.

*(Laughter)*

**Hon. (Ms.) Nziva:** Thank you, Madam Speaker and Hon. Mark Muendo. I said there is a procedure upon which a nullification of election of a Governor or even a President has to be



followed. My question is; has the Speaker gotten a letter concerning the same because I believe IEBC is not well-constituted. Thank you, Madam Speaker.

**Hon. Speaker:** Hon. Ndalana.

**Hon. (Ms.) Ndalana:** Thank you, Madam Speaker. I thank God this morning because we are learning more. I remember when we went for elections the last time, the Governor was in office until he was elected again and we had a Speaker in this House and he did not go the office to stay there to wait for the elections. Thank you, Madam Speaker.

**Hon. Speaker:** Hon. Members, let me inform the member myself and from a point of information. I remember, Hon. Mueni, despite her conclusion, she said that we be sober when we are discussing this matter and I want members to appreciate that it is not the Assembly is 'dying' to go and sit in the office of the Governor and read the Speaker.

It is about discussing a matter of public importance in Machakos and when a matter of this nature is coming, you notice it is not voting as such; it is ventilating. Why are you not getting this and when you wake up to talk about this matter, please be informed by the law and if you don't or are not sure about the law, take time to research because it is not good to wake up and say that when there were elections, so and so stayed in office; give the example of the President, they stayed in office and it is true but the presidency has laws that govern it. The Governors have the laws that govern them---

*(Applause)*

The motion which is here, which was given to me for ventilation has cited the constitution, Article 182; why are you not addressing yourselves on Article 182. Why are you not addressing yourselves on the specific provisions of the election laws so that you are then able to convince the public that you are representing them adequately in this House?

If you are not sure of the legal provisions, just say you are not sure but make sure you don't submit matters that will end up embarrassing you on the corridors of the House.

*(Applause)*

We are guided by the law, throughout. Hon. Ndalana, you can proceed. I have not asked you Hon. Member, please hold your peace. Hon. Ndalana.

**Hon. (Ms.) Ndalana:** Madam Speaker, thank you but I am talking what was there that time and you were here Madam Speaker to advise me where I am going wrong and where I am going right, Madam Speaker. Thank you, Madam Speaker.

**Hon. Speaker:** There is difference between elections after a term ends and when vacancy arises from a nullification of the election. We are now on the second scenario and we are just ventilating. If you noted, I am doing it differently today I am going back to this side. Hon. Mulatya.

**Hon. Mulatya:** Thank you, Madam Speaker. Madam Speaker, I think it is very clear from Hon. Member from Ekalakala that we are discussing something of county importance.

Madam Speaker, when the Governor is now not in office we have people collecting revenue, there is some danger that this revenue may not be banked or follows the normal process.

Madam Speaker, we are aware that there some ward administrators who are being...it has been advertised that they are going to be hired; this is something of county importance and we have the County Public Service Board of which this Hon. House is aware was in a mess.

So, Madam Speaker, when we sit back here and start defending the Governor to stay in the office, I think we are messing our county.

*(Applause)*

Madam Speaker, it is---

**Hon. Speaker:** Point of information, Hon. Mulatya. Hon. Angela.

**Hon. (Ms.) Munyasya:** Thank you, Madam Speaker. I would like to inform our Majority Whip that it is not the Governor; it is the former Governor of Machakos county.

*(Applause)*

**Hon. Speaker:** Hon. Multaya, please proceed.

**Hon. Mulatya:** Thank you for that point of information well received. So, Madam Speaker, when we are talking about issues of county importance, it is very irrelevant from the Minority side to start defending the former Governor when he has been sent packing so it is very wise for us to see the way forward so that, at least our revenue, it is made sure it goes to the bank the way it supposed to be done.

Also, so that there can be a leader who will oversee or direct the County Public Service Board when they are hiring these people. Thank you, Madam Speaker.

**Hon. Speaker:** Hon. Kiteng'u.

**Hon. Kiteng'u:** Thank you, Madam Speaker. I am the Deputy Majority Leader. Madam Speaker, it is very clear that the Court of Appeal nullified the Machakos county governorship seat and requested the IEBC to conduct fresh election; it is very clear. Madam Speaker, I would like to request this Hon. House, as Hon. Mueni said; we need to sober up and discuss this matter because it is of importance to Machakos people.

Madam Speaker, I come from Kivaa ward where the electorates or the people of Kivaa are requesting that since we were elected on 8<sup>th</sup> August, 2017, they have seen a lot being done in Makueni, a lot being done in Kitui County but in Machakos, they have not seen anything and now it is eight months down the line.

*(Applause)*

It is the high time now we put our interest to the people who elected us. If the governorship seat in Machakos was nullified, let us follow the law and have the right conclusion because it is clear we do not have the Governor and as we await for whatever that has not been communicated to us, or to the public or to the Supreme Court, Madam Speaker, I would request

we honour the Court of Appeal and see the way forward how we can be able to proceed and try to build Machakos.

For example, Madam Speaker, we passed the Supplementary Budget and we allocated Ksh. 80 Million for bursary. Up to now, no communication on the Ksh. 80 Million for the bursary and the people of Machakos are asking us the elected members, ‘*Mheshimiwa*, where is the bursary? *Mheshimiwa* when can we be able to get this’ but now since this has been nullified, Madam Speaker---

**Hon. Speaker:** I am not going to allow that point of order, Hon. Kamitu. Just wait, I will come back to you.

**Hon. Kiteng’u:** Madam Speaker, thank you for that protection.

**Hon. Speaker:** Nobody is out to fight you, though.

*(Applause)*

**Hon. Kiteng’u:** Thank you, Madam Speaker. I was on the point of Supplementary Budget on bursaries. Even now, Madam Speaker, due to the current rains, our roads have been in pathetic situation and all tractors, all the graders are stalled. Although when we call we hear that there is a procedure to have this money but I am 100 per cent sure the money has been released and the Executive has the money.

I am asking what the way forward, Madam Speaker, is. Hon. Members, I again request you, let us sober up. Our interest is the people of Machakos who elected us and if we go ahead and protect what is not right, we will be doing it wrongly. In fact, we had an oath before we took our seats. Let us respect our people, let us respect the people of Machakos and the oath we took so that we can serve the people of Machakos fairly. Thank you, Madam Speaker.

**Hon. Speaker:** Thank you, Hon. Kiteng’u. Hon. Kamitu.

**Hon. Kamitu:** Thank you. I am not comfortable with this one, Madam Speaker.

*(Hon. Kamitu referred to the gooseneck microphone)*

**Hon. Speaker:** Was it changed and why?

*(Loud consultations)*

They are short ones; we will address that.

**Hon. Kamitu:** Thank you very much. Madam Speaker, I am the Leader of Minority in this House and Madam Speaker, a senior citizen in this Assembly and for that matter, Madam Speaker, it is very true that as Hon. Members, we should approach issues with sober minds and really we should do that and through your guidance, Madam Speaker, my question will be very simple because the procedure is that we all agree that there was a nullification of the Governor’s seat in a judgement in the Court of Appeal.

Madam Speaker, do we have a letter that the Office of the Governor has become vacant, because that should be the case in question for us to continue with this motion because to me, Madam Speaker, the motion is premature. For one, Madam Speaker---

**Hon. (Ms.) Mueni:** Point of order.

**Hon. Speaker:** Hon. Mueni, I will not allow the point of information. Let the Hon. Member finalize.

**Hon. Kamitu:** Madam Speaker, procedurally and that one you know that upon nullification, the IEBC was supposed to be given an order from the Court of Appeal; that has not been done because if it was done, then the IEBC would have written a writ to this Hon. House, talking about the seat of the Governor being vacant and to this event, up to now there is no letter because if there was any letter, Madam Speaker, through your guidance and through your leadership, you would have even communicated that letter in the Assembly during your Communication and it is in this regard that if there is any vacant seat, it is supposed to be declared by the IEBC and a gazette to that effect done, Madam Speaker.

That one has not been done, Madam Speaker, so procedurally, Madam Speaker, with a lot of honour, the Governor is in office until writs are issued and the seat declared vacant. So, at this juncture, Madam Speaker, to guide us, we should move to other motions; other business of the House because these letters have not been served in this House. I rest my case, Madam Speaker. Thank you.

**Hon. Speaker:** Thank you, Hon. Kamitu. Hon. Maitha.

**Hon. Maitha:** Thank you, Madam Speaker. I want to concur with Hon. Kamitu because if a case is finished by one court and the person appeals to another court and possibly he asks for a stay order---

**Hon. Member:** Point of information.

**Hon. Maitha:** I do not want to be informed.

*(Applause)*

**Hon. Speaker:** Hon. Maitha, please resume your seat briefly.

**Hon. Maitha:** But Madam Speaker, if someone does want to be informed---

**Hon. Speaker:** Please resume your seat briefly. It is not for your benefit that you want or you don't want. It is the property of this Assembly; the debate at the floor is a property of this House so it is not for you to choose whether you want to be informed or whether you don't want to be informed. Hon. Members we are asking that you be orderly. Hon. Maitha you don't say possibly or maybe or probably; you should say that there is a stay.

Let me just advice on what normally happens when a court issues an order or a judgment. The party that is not satisfied with the judgement asks for a stay. Stay means you stop that order, or goes on appeal. If you go for appeal without a stay, the order still has effect so a judgement of the court remains immediately it is pronounced.

It has force, but it can be interfered with in two ways: by staying it or by it being vacated or removed by judgement of a higher court, so if there is such a scenario, it is good to just admit and say there is a stay or there is a judgement in appeal that has vacated this judgment so that you don't say possibly.

Remember, the public out there is listening to you and they will not want to listen to you when you are saying maybe, possibly, probably. Talk from a point of information and I think that was the information that was being given to you but you were saying you don't want. You will take it now. Just be informed in that manner, Hon. Maitha.

**Hon Maitha:** Madam Speaker, I know you have a bright future in Machakos because you are able, you are a very good Speaker. You can even be a Governor of this county---

*(Applause)*

But let you name be not be---

**Hon. Speaker:** Hon. Maitha, the character of the Speaker is not on debate and it is never done this way and there is no motion on the Table to discuss the character of the Speaker and if it was to be, I would not be chairing because it will be my person. So, please steer away from that point you are taking.

**Hon. Maitha:** Thank you, Madam Speaker.

*(Laughter)*

I want to say that yes, the Court of Appeal nullified the election of the Governor but the IEBC has not gazetted his removal. He has not been de-gazetted from being the Governor of Machakos up to now.

*(Applause)*

Therefore, it would be in order for these Hon. Members to wait a little while to see whether that nullification of holding office will be de-gazetted; will be de-gazetted, and then we can start from there. Therefore, I think it is premature to debate this thing now. Thank you, Madam Speaker.

**Hon. Speaker:** Thank you very much, Hon. Maitha. Hon. Kalumu.

**Hon. Kalumu:** Thank you, Madam Speaker. I would like to thank the Member for Ekalakala for bringing this important issue to be discussed by the House because it affects the livelihood of Machakos people. I would like to say the importance of broadcasting or reading a judgement is to make it known to the people who have importance with it.

For example, we are saying that some of our Members are saying that they are not aware whether the judgement was made, but it was broadcast to the whole nation and everyone knows that the governorship of Machakos was nullified.

Article 182(1)(e) says that the Office of the Governor will be vacant when the Governor is removed under the Constitution of Kenya. The same Article 182(6) says that the Governor... let me consult... "A person who assumes the office of County Governor under this Article shall

unless otherwise removed from office under this Constitution, hold office until a newly elected County Governor assumes office following the next election held under Article 180(1).”

This otherwise, which is being mentioned here, is the nullification of the Governor of Machakos County, so for now, let us be sober and tell our people, as it stands now, basing on the judgement from the High Court, that Machakos County for now doesn't have a Governor and if there is any law which says otherwise about whoever can take that office, let it take effect as of now. Thank you, Madam Speaker.

**Hon. Speaker:** Thank you, Hon. Kalumu. Hon. Mwikali.

**Hon. (Ms.) Mwikali:** Thank you, Madam Speaker. I am nominated by Wiper Party. Madam Speaker, I wish to thank the Member for Ekalakala, Hon. Stephen Mwanthi, for bringing such a matter in the House because indeed, it is a matter of county importance. Last week, in the Court of Appeal, the whole world watched as the court nullified the election of the Governor of Machakos County.

It would be very wrong to imagine that the people of Machakos are not concerned about what happened in the Court of Appeal. Now, when we are discussing this, it is very sad to see Members here forgetting that the Assembly is a very very independent body that is able to discuss and proceed and there would never be a vacuum because the law does not leave any vacuum in any office.

The 2010 Constitution is very clear that in case there is a vacancy in the Office of the Governor, now, there is a vacancy in the Office of the Governor, it was nullified, and until His Excellency, the former Governor of Machakos, brings notice of admissibility---

*(Laughter)*

Madam Speaker, you know this language came with the ship from... until he can prove that his case has been admitted in the Supreme Court, he stands nullified.

Therefore, we are discussing this motion rightly, it is rightly before this House and I request Madam Speaker, the Members to be sober enough, to know that we don't have a Governor in Machakos until there is Supreme Court's communication that his case has been admitted in that Court, therefore we accept and we move on knowing that we don't have a Governor in Machakos and the Speaker will now take over until we elect a new Governor in Machakos County. Thank you, Madam Speaker.

**Hon. Mulatya:** Point of order, Mr. Speaker.

**Hon. Speaker:** She has finished, Hon. Mulatya. Hon. Mwikali has finished her submissions. We will have two comments from here before I decide on the way forward. Hon. Kisila.

**Hon. Kisila:** Thank you, Madam Speaker, for catching my eye. I think it is a right of every Member to bring any motion here and there is nothing absolutely wrong with what motion has come. What we need to do as Members is to continue ventilating with the right approach and guided by the Constitution which we all swore to defend. When we came here, we swore to defend the Constitution of this country and whatever we will do and Madam Speaker also has been telling us this; we should be guided by the Constitution, not our emotions.

There are two options here, Madam Speaker. The first option is, obviously it is true in the public domain that the Court of Appeal nullified the elections. That is a fact. Now, what we need to understand is what is the procedure after that; constitutionally, not behind, using backdoor.

Now, there are two things. If the Governor does not appeal to the Supreme Court, the procedure is that the IEBC will declare the seat vacant and will write to the Speaker of this Assembly. The Speaker will then declare the seat vacant. That is the constitutional procedure and the people who designed this constitution actually had in mind all these issues.

If the Governor appeals to the higher court, which is the Supreme Court, the procedure is, his case has to be admitted, admissible, and that is the word, in the Supreme Court. That is the word, my sister. If it is admitted in the Supreme Court, he will have a stay and he will remain the Governor until the Supreme Court makes a ruling.

Now, the decision of the Supreme Court is final. We have two options here: the Supreme Court might decide the Governor stays; the Supreme Court might decide we have a fresh election. Once the Supreme Court does that, it will instruct IEBC to write to our Hon. Speaker to declare the seat vacant. The motion, although it is a motion which we cannot say is a bad motion, it is---

**Hon. Muthoka:** Point of information.

**Hon. Speaker:** Hon. Muthoka, what is the information? Hon. Kisila, briefly resume your seat.

**Hon. Muthoka:** I want to inform the Hon. Member, my brother, up to now, we don't have a stay from the Supreme Court. The order by the Court of Appeal stands up to now.

**Hon. Speaker:** Hon. Kisila, please proceed.

**Hon. Kisila:** You are actually wrong; the Governor has 14 days. Please understand people who are making laws don't just make laws. Every one of us has a right in this new Constitution. Even the people we represent, please understand, as much as we are pointing fingers, realize that even the *wananchi* have a right. The Governor has 14 days to appeal. During that 14 days' window, we cannot discuss---

**Hon. Speaker:** Hon. Kisila.

**Hon. Kisila:** I want to finish.

**Hon. Speaker:** Hon. Kisila, what law provides for the 14 days?

*(Laughter)*

**Hon. Kisila:** Madam Speaker, if you have a copy of the ruling, I can...Madam Speaker, please allow me to finish.

**Hon. Speaker:** I will have Hon. Kisila to proceed to conclude his submissions but please as you submit, when you cite a particular thing that must be done, kindly cite the law or if it is a basis; what basis.

**Hon. Kisila:** Madam Speaker, if you look at the judgement; I think Bw. Caleb has sneaked out with it---

*(Laughter)*

All appeal matters have 14 days and it is in ....let me finish please, Madam Speaker.

**Hon. Speaker:** Hon. Kisila, you want to be given another set of the judgement?

**Hon. Kisila:** Yes again.

**Hon. Speaker:** Please, assist the Member.

*(The judgement was handed over to Hon. Kisila)*

*(Laughter)*

**Hon. Kisila:** Thank you very much, Madam Speaker. Let me tell you, Hon. Members, please allow me to follow my thought process, without many consultations and points of orders--

**Hon. Speaker:** If any Member is distracting you, let me know so that I can deal with them.

*(Laughter)*

**Hon. Speaker:** Order! Let the Hon. Member finish his submissions.

**Hon. Kisila:** Madam Speaker, we are going to wait until, let us follow the constitution which you have been telling us to defend and all of us are guided by the Constitution. Yesterday, we had CECs vetting process, we are following the Constitution; let us be fair to everyone including the Governor. The Governor has to appeal, if the appeal is thrown out, if it is not admitted in Supreme Court and then there is a procedure in the Constitution which is followed.

Madam Speaker, my last point is, we are all friends and I will give Members an example; one time we were in standard five and we started celebrating when one of our headmasters was transferred; little did we know that actually it was a rumour. I was leading the delegation of those who were celebrating.

I can tell you the truth, I was leading in caning. Let us be sober in the approach and Madam Speaker, I am also appealing to you to give us some protection. Since yesterday, some of us have been threatened---

*(Laughter)*

**Hon. Speaker:** Hon. Kisila, the Speaker is speaking to you. I can only protect you within this House; I haven't seen any threats to you so far. Proceed.



**Hon. Kisila:** I am finishing, Madam Speaker. We have been very fair to each other. Even if you end up being on the throne, please remember your friends on this side.

*(Laughter)*

But do not in any way start using languages which can be abuse of power because God can also hear you. So, what we want to say is, this is ventilation; let us follow the Constitution, the Governor is in office legally and until the Speaker receives a letter from IEBC, that is the only time our Speaker can be able to give us direction. But thank you, Madam Speaker for allowing us to ventilate; this has been an issue which has been in the domain. *Asante sana*, Madam Speaker.

**Hon. Speaker:** Thank you very much, Hon. Kisila. Hon. Ndawa, very briefly.

**Hon. Ndawa:** Thank you, Madam Speaker. I cannot say the motion is not placed where it is supposed to be placed because when the ruling was made, the electorates are also in dilemma and they are asking what the current position is. It is their right to know what the situation is. That one we are in agreement. Number two, Madam Speaker, nobody is in doubt or no one is saying that the judgement was not made; it was made in the daylight, everybody heard, those who have TVs watched and we cannot say it was not communicated because knowledge is everything.

The only issue that I would request, Madam Speaker, it is good we cross the bridge when we come to it. Election is a process; we start down from the registration, voting, if one is not satisfied going to court up to the last court which is Supreme. So, Madam Speaker, I believe whatever is happening is part of the process on election.

So, I am kindly requesting this Hon. House, just like other Members have requested, let us be sober. At the end of the day, we will have an answer and whoever will be the Governor of Machakos will be the Governor for the whole county, not for one side.

*(Applause)*

So it is good that we know that before we came to this House, we never knew each other and one day, we will be out of this House and we will still need each other. So, kindly let us be sober.

The other issue, Madam Speaker, when the ruling was made, I am very sure in the ruling the Judge made it very clear that IEBC was ordered to do something and whatever it was ordered to do; up to now it has not done, so that is why I am requesting this Hon. House to wait and cross the bridge when we come to it.

Let us wait for the IEBC Chairman to declare that there is no Governor in Machakos, then from there, communication will be made and I am sure we shall be addressed in this House and I am very sure Madam Speaker, if that is done, you will communicate to us; in the Order Paper we will see communication and you will communicate the same.

Since you have not communicated the same, it is good that you ruled that we are not voting, we are only ventilating and that is good and healthy, so let us not say there is no Governor since there is that window. Once the ruling has been made, let us wait, we exhaust the final step of election process.

The other issue, Madam Speaker, I believe the Governor will only exit office when another one is sworn in and as of now, there is no lacuna in the Office of the Governor,

Machakos County. That should be known. It has been confirmed by even Hon. Kithimani who cited Article 180 of the Constitution and he has confirmed that whenever another Governor is brought in when the other one gets out of that office.

So, Madam Speaker, to rest my case, I would request, kindly let us love each other; let us do our work without malice. Kindly, Hon. Members, whether Governor Mutua is in office, it will be for Machakos County. The other person who might come, will be for Machakos County. So, whoever will come will be for the whole county, so let us wait until that time. There is a saying in Kikamba which says, “you cannot quicken the night by squeezing or binding yourself.” So kindly, let us not do that way. Thank you, Madam Speaker.

**Hon. Mulatya:** Point of order on amendment, Madam Speaker.

**Hon. Speaker:** Hon. Mulatya, please hold the point of order with you because we are closing this matter. Remember it is just about ventilation so that the people you represent also know that you are aware of what is happening out there and it is important. So, we can have just closing remarks kindly. Hon. Angela and Hon. Grace; in that order.

**Hon. (Ms.) Munyasya:** Thank you, Madam Speaker. I stand to abide by the Constitution as we are always guided and the ruling of the Court of Appeal supersedes any other ruling or any anticipated ruling. As at now, we have the ruling of the Court of Appeal; we cannot say that until the IEBC acts, then the Court of Appeal ruling will be applied. The Court of Appeal ruling stands and we cannot also stand by hearsay by saying the Governor said he is going to the Supreme Court.

As at now we can only call that hearsay; he has not gone to the Supreme Court, we have not heard any communication that he has gone to the Supreme Court, so what stands and what binds us as at now is the ruling of the Court of Appeal and that is what we should go by. I stand to advocate that we stand by the ruling of the Court of Appeal and not anticipate a ruling that we don't know about. Thank you, Madam Speaker.

**Hon. (Ms.) Mutwiwa:** Thank you, Madam Speaker. Wow, the motion and I will support it strongly by saying this: it was in Machakos Law Courts where the same case was and our able Governor was declared a winner and we were all happy. Now it is again the same case which was at the Court of Appeal where Governor Mutua's election was nullified.

I would request the Hon. Members of this House to calm down; there is nothing wrong, we are just trying to ventilate, see the way forward and we cannot sit and pretend that nothing is happening. It has happened that Governor Mutua's election has been nullified and that says Mutua now is not a Governor of Machakos County---

*(Applause)*

The same Governor will be at the *debe* (ballot); former Governor will be at the *debe* with whoever will be again at the *debe*---

**Hon. Speaker:** Hon. Grace, a moment for a point of order from Hon. Kamitu.

**Hon. Kamitu:** Thank you very much, Madam Speaker. Hon. Grace, is one of the ladies that I respect in this House, Madam Speaker---

**Hon. Speaker:** You mean to say that you don't respect the other ladies?

*(Laughter)*

**Hon. Kamitu:** I respect---

**Hon. Speaker:** One of the ladies?

**Hon. Kamitu:** Yes, she is among the ladies that I respect in this House.

**Hon. Speaker:** So, who are the others you don't respect?

**Hon. Kamitu:** All of them, Madam Speaker

*(Laughter)*

Thank you, Madam Speaker for your concern. On a very sincere note, I respect them but she understands what I say when I say that she is one among the ladies I respect in this House.

On my Point Of Order, Madam Speaker, is that the case in question, because it is also important we take the right direction in the point of order. I am only reminding her that in the ruling which you have here, it is correct that the election of Machakos County Governor was nullified, but there is nowhere it is stated that the Office of the Governor in the ruling fell vacant.

It is until and when, Madam Speaker, and the case in question would be, if there is any ruling that was made in the Court of Appeal that the seat of the Governor fell vacant during the judgement. Thank you, Madam Speaker. And that is my point of order.

**Hon. Speaker:** Hon. Grace, we agreed we are just ventilating; the judgement is there for all to read.

**Hon. (Ms.) Mutwiwa:** Thank you *Syitau*---

*(Laughter)*

**Hon. Speaker:** Hon. Grace what is that language you have used? You said something that the Chair does not understand.

**Hon. (Ms.) Mutwiwa:** Thank you; Hon. Kamitu, we are just ventilating, no one is serious and if you can look at the mood---

**Hon. Speaker:** Point of Order from Hon. Mark Muendo.

**Hon. Muendo:** Thank you, Madam Speaker. Hon. Member Grace, we are very serious; this House cannot waste time discussing something which is not serious and it is very important to our people. Thank you, Madam Speaker.

**Hon. Speaker:** Hon. Mark Muendo, I think Hon. Grace meant it is not a fight. We are not fighting; I think that is what she meant. Proceed, Hon. Grace.

**Hon. (Ms.) Mutwiwa:** Thank you, Madam Speaker for clarifying what I meant. I meant this; we are not fighting and what we are doing we are just airing our feelings of what is happening in Machakos County and we cannot just sit and pretend that we didn't hear how the case was ruled. So, my Hon. Members from the other side, I request you to cross over and join us to say Machakos County does not have a Governor as at now. Thank you, Madam Speaker.

*(Applause)*

**Hon. Speaker:** Thank you, Hon. Members and I believe you have ventilated enough and it is in the spirit of representation that you are representing and as Hon. Grace said, you are not fighting. So, what I will do, this is a matter that is technical; it raises legal issues. I will take it upon myself; I will communicate on this matter as soon as possible to the House. For the time being, Hon. Members, that ventilation is closed; let us proceed to the other business that is on the Order Paper.

**Hon. Mulatya:** Point of order, Madam Speaker.

**Hon. Speaker:** I have ruled, Hon. Mulatya. There will be no point of order after the Speaker rules.

#### OCCUPATION OF SEAT OF MAJORITY LEADER

**Hon. Speaker:** Order number eight is a motion; we have a motion listed here and it is by the Hon. Daniel Mbevi. Point of order Hon. Mulatya?

**Hon. Mulatya:** Thank you, Madam Speaker. Pursuant to Standing Order 30(1), any Member may at any time rise in his/her place and seek leave to move the adjournment of the House for the purpose of discussing a definite matter of urgent County importance.

Madam Speaker, this Assembly is for this County; we have a Member in this House who went to court and guided by Standing Order 15(4) the removal of a Member from office under paragraph (3) shall not take effect until a Member is elected in a manner provided under the paragraph (1) in his or her place.

The Whip of the largest party or coalition of parties in the Assembly shall forthwith, upon a decision being made under this Standing Order, communicate to the Speaker in writing, the decision together with minutes of the meeting at which the decision was made.

Madam Speaker, we have a Member in this House who is calling himself the Majority Leader of this House who took the Assembly to the court. Madam Speaker, this Member clearly took this Hon. House to court and the Member, in public, declared that he doesn't now belong to this coalition; he belongs to the Minority.

*(Loud consultations)*

Madam Speaker, we wish to discuss this matter because it is really affecting the proceedings of this House and we don't want that Member to sit on that seat; otherwise all these Members, and I am talking on the Chief Whip platform right now; if that Member seats here again, we are going to manhandle him outside. Thank you, Madam Speaker.

*(Applause)*

**Hon. Speaker:** Order, Members. Today you are so full of energy. Hon. Members, let me just guide you properly; the adjournment, if I read it, Hon. Mulatya is seeking an adjournment of the business of this House to discuss a matter of County importance or is it Assembly importance?

**Hon. Mulatya:** Yes, Madam Speaker.

**Hon. Speaker:** Because if I read; let me just read the Standing Order. The Standing Order says that 'any Member may at any time rise in his/place and seek leave to move the adjournment of the House for the purpose of discussing a definite matter of urgent County importance.' That is what you are premising yourself on?

**Hon. Mulatya:** Yes. Madam Speaker.

**Hon. Speaker:** Hon. Whip, did you give notice to the Speaker of that particular matter; the matter that we have just concluded, I was given a motion in the morning. Did you give a notice of the matter you are now raising to the Speaker?

**Hon. Mulatya:** Madam Speaker, I have been calling a point of order on amendment. I wanted to amend that through the Standing Order and that issue is so pressing in this House from the Majority of this House---

*(Loud consultations)*

**Hon. Speaker:** Hon. House, I will not be informed by you. Alright, I am the one to inform you, Hon. Members. You are not informing the Chair because the Chair is on her feet.

Hon. Members, I just want to understand Hon. Whip that you wanted to amend the just concluded matter of the nullification of the election of the Governor for Machakos County to include a matter of the Majority leadership in this House?

**Hon. Mulatya:** Yes. Madam Speaker.

**Hon. Speaker:** That would not be proper, Hon. Whip. My guidance to you is that it will not be proper. Hon. Members and Hon. House, you have been talking about you following the law, following procedures, following your Standing Orders. If you want to deal with that matter, please bring it appropriately and I may also ask for confirmation; is that matter of the Majority House leadership the same matter that is in court? I want to understand, Hon. Whip.

**Hon. Mulatya:** Madam Speaker, if you---

**Hon. Speaker:** Please rise up when you are addressing the Speaker.

**Hon. Mulatya:** If you may give me time to explain something to you, Madam Speaker. I am the Whip of these Hon. Members and all information, any action within them, I am always aware. I know there could be chaos in this House if this Hon. Member continues sitting here; that

is why I am trying to bring this issue, we discuss it then you give direction that this Hon. Member should not sit here as the Majority Leader of this House.

**Hon. Speaker:** Hon. Whip, I asked whether that is the matter that is in court.

**Hon. Mulatya:** It is the same matter and also the same matter which was in public.

**Hon. Speaker:** Thank you. Hon. Members, let me communicate to you something; Hon. Mulatya, please resume your seat. I have been informed from the Clerk's office that this matter was in court on 11th June, 2018 and if it has not been communicated to the House, the court ordered the following; that it will give judgment on the case on the 17th July, 2018 and the advocates for the Assembly pointed out to the court that there is a lot of disquiet in the House because of the House Majority leadership and was asking for stay, vacation of the orders that were given.

So, what the court did say is it is not going to lift the orders because it has to preserve the subject matter but if the Assembly is not satisfied or if there is chaos, the Assembly should go back to court as soon as possible. That is what the court directed yesterday.

However, Hon. Whip, if you feel that you can pursue that matter in another way other than in the court, please be guided accordingly and bring your motion under Standing Order 30(3) the soonest possible and the Speaker will address it and remember that the matter is in court. Hon. Mulatya, you want to respond after the Speaker has ruled? Go ahead if you want to. You are at liberty.

**Hon. Mulatya:** Okay, Madam Speaker. My request was, if it is possible to revisit---

*(Loud consultations)*

*(Several Hon. Members walked out)*

**Hon. Speaker:** Order Members, who directed you to give bye byes to people?

*(Laughter)*

**Hon. Mulatya:** I was asking Madam Speaker your guidance if we can revisit the ruling date to a nearer date?

**Hon. Speaker:** Alright. The court said the Assembly is at liberty, is at freedom to file any application to the court. So, it is for you to approach the lawyers for the Assembly to do the necessary. Clerk, do we have quorum?

*(Loud consultations)*

I know Hon. Mbevi, it is your motion which is supposed to be on the Table; we are confirming whether we have quorum in the House. I asked a question whether we have quorum and I am waiting for an answer from the Clerk.

Hon. Maitha, I am being told we have 17 Members; can we transact even a point of order? We are going to proceed as per Standing Orders. Serjeant at Arms, please ring the bell for quorum.

*(Quorum bell was rung)*

Hon. Members, the bell has rung for quorum at a point when we noted that the House did not have quorum and I am informed by the Clerk, still we do not have quorum. The period that I had given is 10 minutes, I do not see the point of ringing again for another five minutes.

### **ADJOURNMENT**

**Hon. Speaker:** On that basis the House will stand adjourned for lack of quorum and the sitting of the House is to resume at 2.30 p.m. on 12<sup>th</sup> June, 2018, that is today.

The House rose at 11.47 a.m.