

REPUBLIC OF KENYA
MACHAKOS COUNTY ASSEMBLY
OFFICIAL REPORT

Wednesday, 29th November, 2017

*The County Assembly met at thirteen minutes past four o'clock in
the County Assembly Chamber at County Hall Buildings*

ARRIVAL OF THE SENATOR OF MACHAKOS COUNTY

*[The Senator of Machakos County (Hon. Boniface Kabaka) escorted by the
Speaker of the County Assembly (Hon. (Mrs.) Mwangangi)
entered the Chamber at thirteen minutes past four o'clock accompanied by the Mace of the
Assembly]*

[The Senator of Machakos County (Hon. Boniface Kabaka) took the Chair of the County]

(The Mace was placed on the Table)

(Prayers were said by the Hon. Speaker)

CONVOCATION

CONVENING OF THE COUNTY ASSEMBLY FOR THE
SENATOR'S ADDRESS PURSUANT TO STANDING ORDER 21 OF MACHAKOS COUNTY
ASSEMBLY STANDING ORDERS

Hon. Speaker: Hon. Members, we are honoured this evening to have amongst us the presence our Senator. We welcome him and in that regard I join the County Assembly to share.....Sorry Hon. Members. In that regard, I welcome you to today's sitting.

I am indeed delighted to welcome the Senator as I had indicated and these address of the Senator is informed by this Assembly's Standing Order 21(1) and I remind you Hon. Members that that Order provides that the Speaker may in consultation with majority party and the Leader of the Minority Party allow the Senator of the County or a visiting Governor or other visiting dignitary to address the Assembly on such occasions as may be appropriate. This is an appropriate time that our Senator is here to address us.

Hon. Members, the Senator of Machakos County Hon. Sen. Boniface Kabaka expressed an interest to address this House and he is going to address this Assembly on county governance and the current political situation and he had asked to do so on 27th November, 2017 and we considered that and put his address for today. He is here now.

Hon. Members, under Article 96 of the constitution, the role of the Senate is among others is to represent the counties and serve to protect the interest of counties particularly on the principles of devolution. Towards this end, it is important that the Senator and the Assembly have frequent interactions which are aimed at achieving the objectives and principles of devolution and this will aid both institutions; that is the county government of Machakos and the Senate to serve the people of Machakos effectively.

Hon. Members, before I invite the Hon. Senator to address, allow me to make some brief remarks.

On 9th November, 2017, the Assembly adjourned its sittings to 28th November, 2017 to pave way for practising and participation of the KICOSCA/CASA games which were being hosted by the County of Machakos between 19th and 25th November, 2017. It was a big success; the county hosted those games successfully, Hon. Senator. We are proud of being from Machakos County and this Assembly participated and was able to win quite a number of medals. I congratulate the Assembly.

(Applause)

Hon. Members and Hon. Senator, let me take this opportunity to welcome you back all of you back so that we can now be able to hear the speech of the Senator. I acknowledge that as a House we have a lot of business at stake and I am aware that having come from the recess, I mean before we go for the long recess, I request you to stretch your efforts further and also to enlighten yourselves on the business and procedure of this House.

Hon. Members, I am delighted now and I take pleasure and privilege to invite you, Hon. Senator to address this Assembly of your county. Yes, Hon. Ngunga.

Hon. Ngunga: Thank you, Madam Speaker. I think, I am aware that when the Senator makes his speech, we may not be able to interrupt so I want to take this opportunity, on behalf of the members to thank him for finding time. I think this is the most able Senator we have had because this is his second time he is appearing in this House within a short span.

(Applause)

So, we want to appreciate the fact that the senator has an overall duty to play, that of oversight and if we are to protect devolution, the Senator and this Assembly must work hand in hand. So, I want to appreciate because in consultation with my office and yours, the Senator has been to do so.

So, on behalf of these members, Senator *karibu sana*, feel at home in this House and this is a House and this is where you belong. Do your duties without fear or favour. We will give you the support that is required. Thank you so much, Madam Speaker.

(Applause)

Hon. Speaker: Thank you, Hon. majority although you spoke after the Speaker has spoken but sometimes you are able to twist the law a little without bending it and we did that for the sake of the Senator and this House. Welcome, Hon. Senator.

The Senator (Hon. Kabaka): Good afternoon, Hon. Members. At times, you very serious and when you look serious this House won't be serious. I can see Hon. King'ang'i there very serious. Even yesterday, when the President of the republic was being sworn in, I saw the CJ put on a smile. So, it is good to smile and you put some life.

If God has given you time to breathe, thank God because you don't know how tomorrow will be. So let us celebrate life. Ho. Speaker, once again let me thank you for finding it nice to call me once again to address this House, I almost said court; as a lawyer we are used to honourable courts.

Again, I would like to thank the Hon. Ngunga, he is a friend and at times we met elsewhere at Maanzoni and he raised pertinent issues which are bedeviling the county at large and specifically the county assembly. Matters which I am going to address are touching and I think His Excellency, the Governor of Machakos had better watch out because the way things are---

(Applause)

I am not going to spare anyone. Whatever it takes, the spirit of devolution has to be upheld. It cannot be frustrate by anyone, not even the President of the Republic can do that. This is my speech. At least I was able to find time, today I was supposed to be at the Senate at 2.30 p.m. and today I am fighting my petition at High Court No. 3. In fact, I had to be scooped from the court now. The matters are proceeding and at the same time, I am supposed to be at the Senate; so you can see how busy I am today. So, I thank God that at least I have time to talk to my people here. Asante.

Madam Speaker, today I join the county Assembly to share my thoughts and experiences as we journey together in the path of politics, development and devolution in our country Kenya.

In my first address to this Hon. House on 7th September, 2017, I did mention that the role of a county senator and that of the county Assembly is complementary to a high degree. It is on this basis that I find it fitting to share our minds as we sojourn together in this period of five years, God willing.

Madam Speaker, the constitution of Kenya 2010, ushered in devolution. The establishment of the senate and the county Governments as highlighted in Articles 93(1) and 176(1) of the constitution respectively, ensured that power and national resources are shared equitably among Kenyans and that the citizens right to self-determination is respected.

Madam Speaker, as you have mentioned in your speech his afternoon, Article 96(1) of the constitution defines the role or mandate of the Senate and therefore the role of the Senator. It states that 'the Senate represents the counties and serves to protect the interests of the counties and their governments.'"

Article 96(3) states that 'the senate determines the allocation of National Revenue among counties, as provided in the Article 217 and exercises oversight over national revenue allocated to the county governments.'

Madam Speaker, noting that county governments consist of the county executive and the county assemblies, each arm must be allowed to perform their roles unhindered and every effort must be put to ensure each arm functions to its best without unnecessary frustrations.

(Applause)

Finances are critical to the functioning of each arm and therefore it is imperative that funds allocated to each arm and approved by the county Assembly are disbursed timely to enable proper functioning.

(Applause)

Madam Speaker, county assemblies cannot effectively perform their roles unless its members are well informed and trained. To achieve the above, the county Assembly service board must ensure that members of the Assembly and the staff are properly trained and motivated. Based on this therefore, Madam Speaker, the national treasury must ensure that funds allocated to the county Assembly are disbursed to the last coin and accounted for.

(Applause)

As the elected Senator of Machakos, I firmly state that the 2017/2018 Machakos county government budget must be implemented to the letter. The Assembly should not be denied its rightful share of the budget as it is not subordinate to any other arm of the government, least of all the Governor of Machakos.

It is worth noting that once a budget is approved by the county Assembly and an Appropriation Act enacted there is no other county authority that can alter the budget other than the Assembly itself through a supplementary appropriation bill.

Madam Speaker, it is regrettable that some individuals may think or assume to have powers to gag or arm twist the Assembly by denying the Assembly the financial resources. It so much requires to function as independent entity of the county government. Such attempts shall not stand the test of time as the power of the Assembly is directly delegated by the citizens to its democratically elected representatives as enshrined in Article 1 of the constitution of Kenya 2010.

Madam Speaker, having studied the PFM Act keenly, I observe that there is a lacuna in the sense that monies meant for the county government Assembly are not expressly send to the Assembly but must pass through the county revenue fund and form the revenue fund, the CEC finance disburses the share of the assembly. It is at this point that there is a tug of war between the executive and the assembly, more so in Machakos.

I have keenly read the treasury circular No. 14 of 9th September, 2015 from the national treasury that authorized the assemblies to open their own accounts but notes that without a clear boundary and a route to directly disburse money to the assembly, the executive will always be tempted to treat the Assembly as a department and not as an independent entity.

(Applause)

I will therefore petition the Senate tomorrow, if His Excellency, the Governor of Machakos will not have disbursed the money between now and tomorrow in the afternoon, then I will petition the Senate to debate this lacuna and more so the Machakos matters specifically and establish a law that ensures assemblies enjoy their full independence on matters of finance by having direct receipts from national treasury.

(Applause)

That debate or that petition is not limited to summoning the Governor of Machakos to show cause. Hon. Members, the County Governments Act section 8 (1) states, 'the county Assembly shall;

- (a) Vet and approve nominees for appointment to county public offices as may be provided for in this Act or any other law.

I laud you for having taken your role seriously and urge you to ensure that you perform the said role without any business or malice. There should not be any duress or undue influence from any other quarter.

As members, you have a duty to the citizens of Machakos to ensure that those you approve to various public offices are persons of integrity and impeccable professional standing as required by the constitution and other statutes of the country.

I also urge Governor Dr. Alfred Mutua to ensure that the persons he nominates for approval are men and women of substance that meets the provision of the chapter six of the constitution and are qualified in accordance to section 35(1)(2),(3) and (4) of the County Governments Act.

It is notable that time has passed since the first batch of nominees were vetted and rejected by the county assembly. It is my hope that the Governor will nominate others in time to allow the house debate the nominees and have them approved for smooth running of the county government.

(Applause)

It is however unacceptable that some people may think that rushing to courts to have decisions of the county assemblies set aside in a bid to finding a short cut to public offices. The Assembly must stand firm and I repeat and it should go on record as having been the best Assembly in this century---

(Applause)

.....and execute its mandate without fear or favor as it is protected by the law.

Madam Speaker, let me now turn to the issue of the peoples' assembly. The constitution of Kenya 2010 in Article 1 states 'all sovereign power belongs to the people of Kenya and shall be exercised only in accordance with this constitution.' Article 1(2) states that the people may exercise their sovereign power either directly or through their democratically elected representatives.

Madam Speaker, the Articles highlights the power of the elected representatives of the people in articulating issues of the citizens that concern them. This power makes parliaments powerful institutions for they speak and act on behalf of the principal who is the citizen.

However, in recent times, and even in the Senate, we have witnessed parliamentary dictatorships where the elected representatives take upon themselves to be lords over the very citizens who elected them. We have had cases where the 'tyranny of numbers' have ensured that the majority say is disregarded with impunity.

Madam Speaker, cases where parliamentary numbers don't consider the voice of the minority have led to the very citizen who delegates his/her power to feel abused and the minority representatives to feel left out in the major decision-making. It is therefore proper to say that when

a delegated power is abused the principal may choose to withdraw the power or the principal to choose to exercise that power directly.

As is the case across the country, I urge the Assembly to pass the peoples' Assembly so that the ordinary citizens of this great county could have their voice heard over and above what this Hon. House is doing.

Hon. Members, I promise to work so closely with you in the spirit of consultation and perform my duties diligently to ensure that this great county of Machakos is truly in the map of the well performing counties. I will in particular work with the Assembly to ensure that the executive delivers on its mandate to the citizens of Machakos.

(Applause)

We have no contract with the people and we have no choice but to deliver. Any individual or institution trying to give a raw deal to the peoples' representatives will be resisted with all means available.

Thank you Hon. Speaker for allocating me time to address the assembly, thank you Hon. Members of the Assembly and thank you Mr. Clerk and your dedicated team of staff for a great job well done. God bless Machakos County Assembly, God bless our dear country Kenya. Thank you.

(Applause)

Hon. Speaker: Thank you very much, Hon. Senator. At this point, this House will adjourn to Tuesday, 5th December, 2017 at 10.00 a.m.

The House rose at 4.35 p.m.