

MACHAKOS COUNTY ASSEMBLY**OFFICIAL REPORT****Tuesday, 8th April, 2014**

The House met at 2.48 p.m.

*[The Speaker (Mr. Mung'ata) in the Chair]***PRAYERS****ADMINISTRATION OF OATH****SWEARING IN OF RAPHAEL MUTUKU**

Hon. Speaker: Hon. Members, on the matter on administration of oath pursuant to the Elections, General regulations 2012 entitled member nominated in Machakos County Assembly. In exercise of the powers conferred by Articles 90 and 177 of the constitution of Kenya section 34 to 37 of the Election Act 2011 and regulations 54 and 55 of the Elections, General regulations 2012, the Independent Elections and Boundaries Commission gives notice with the public and that Samson Kimanzi gazetted via gazetted notice 9794 of 2013 as a nominated member to represent Chama ha Uzalendo (CCU) in Machakos county assembly is deceased. The IEBC gives further notice that pursuant to section 37 subsection 1 of the Elections Act, the next qualifying nominee from the CCU marginalized party list is nominated to fill in the vacancy arising thereof. The name of the nominee is Raphael N. Mutuku. He is a male adult, ID number 28048717. The nature of special interest is persons with disability. The name of the nominating party is CCU and the category is marginalized. The nomination is one. Signed by A. I. Hassan, Chairperson, IEBC. Clerk, verify the identity of that person before this assembly.

(Documents of the nominee scrutinized)

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Clerk, did you clarify that the person before this assembly is the one I have described in this notice.

Mr. Raphael Mutuku: I, Raphael Mutuku, do swear that I shall always truly and diligently serve the people and the Republic of Kenya in the office of the County Assembly committee member of Machakos County; that I shall diligently discharge my duties and perform my functions in the said office, to the best of my judgment; that I shall at all times respect, uphold, preserve, protect and defend this Constitution of the Republic of Kenya; and that I shall do right to all manner of persons in accordance with the Constitution of Kenya and the laws and conventions of Parliament, that shall do justice to all. So help me God.

(Applause)

Hon. Speaker: Please be seated.

STATEMENTS

STOPPAGE OF CONSTRUCTION OF KITHIMANI PUBLIC TOILET

Hon. Nduva: Thank you Mr. Speaker and hon. members of this House. Mr. Speaker, Sir, I wish to notify this Hon. house that a public toilet that was on construction through an NGO in Kithimani ward at a public utility land has been stopped by a member of county public service board, one Mr. Phillip Nzioka purporting that the land belongs to Matungulu ranching company in which he is the secretary. The works on the toiled the toilet has since stopped waiting solution to the problem. Mr. Speaker, Sir, I wish to know from the Leader of Majority the true position of the matte. I wish to request that the matter be addressed urgently so that he donor does not move the funding to another place. Thank you Mr. Speaker, Sir.

Hon. Speaker: Thank you very much. The Leader of Majority will dispose of this straight away. I don't know whether you had notice of this statement.

Majority Leader (Hon. Mwonga): Thank you, Mr. Speaker and the honourable house. I am not in a position to answer because I had no notice of the same so Mr. Speaker. If given time, I will answer this one next week on Tuesday in the afternoon, Mr. Speaker. Thank you.

Hon. Speaker: The Speaker declines to take your request. This is a very urgent matter and I will urge that an answer be availed tomorrow in the morning so that this community does not lose this important facility. Proceed.

COMMUNICATION FROM THE CHAIR
HOUSE BUSINESS CALENDAR 2014

Hon. Speaker: Hon. Members, the first communication that I have is that hon. members is that I have today the House Business calendar 2014 is ready in draft form. I therefore forward the draft to the House Business committee for deliberations and approval and I will urge that the committee sit down with expediency unless here are any compelling matters, I propose that the committee sits at 9 a.m. in the morning tomorrow.

LETTER FROM REGISTRAR OF POLITICAL PARTIES

Hon. Speaker: I have received a communication from the office of the registrar of political parties dated 4th April, 2014 and the letter is addressed to the Clerk of Machakos County Assembly. It is signed by the registrar of political parties. I have directed that copies be circulated to members. Serjeant at Arms, kindly circulate those copies. I read ‘the following coalition agreements were deposited with the office of the registrar of political parties under section 10 of Political Parties Act. This letter has a bearing on the ruling of today.

1. PRE-ELECTION COALITION AGREEMENTS

Coalition No.	Coalition Name	Coalition Parties
1	Jubilee Alliance	The National Alliance Party of National Unity
2	Political Parties Forum	Labour Party of Kenya Mwangaza Party Agano Party New Democrats Peoples Party of Kenya National Labour Party Agano Party
3	Jubilee Alliance	United Republican Party. The National Alliance.

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4	CORD	Wiper Democratic Party – Kenya Orange Democratic Movement FORD Kenya
5	Pambazuko	New Ford Kenya. National Vision Party. KADU Asili. Shirikisho Party of Kenya
6	Eagle	Party of Action. Kenya National Congress.
7	Amani	United Democratic Forum Party. Kenya African National Union.
8	Jubilee Alliance	The National Alliance. Conservative Party.

2. POST-ELECTION COALITION AGREEMENTS

The post-election coalitions are all composed of Jubilee and the relevant coalition that is composed of us is agreement No. 5 which comprise The National Alliance, United Republican Party and People’s Democratic Party and Chama cha Uzalendo. Hon. members, that letter is signed by Lucy K. Ndung’u and is adequately communicated.

MATTER OF LEADER OF MINORITY

Hon. Speaker: My third communication is the matter of Minority Leader of this assembly. Hon. Members, I am aware and in receipt of several correspondences regarding Minority Leadership of this House. Standing Order No. 2 defines the Leader of Minority party as the person who is the Leader in the County Assembly of the second largest party or coalition of parties. Section 2 of the Political Parties Act 2011 defines a coalition as an alliance of two or more political parties pursuing of a common goal and is governed by a written agreement and deposited with the registrar of political parties. Pursuant to Article 196 of the constitution that promotes public participation, it will only be fair and reasonable that we follow a scenario that attracts the highest representation. So, it is proper that the coalition of parties be taken as a vehicle to be used in election of a leader of minority. This being the position of the matter, the office of the Speaker received the following correspondences purporting to have been generated by some members of the coalition minority parties.

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1. I did receive an unsigned letter dated 26th March, 2014 supposedly from the Minority Whip, Hon. Alex Kamitu forwarding a document similar to a petition from Members of the Coalition of Minority Parties, purporting to collect signatures for withdrawal of their support for the current Minority Leader, Hon. Thomas Kasoa. 17 Members namely Hon. Francis Matheka, Hon. John Sila, Hon. Veronica Mbithe, Hon. Amina Mutio, Hon. Benson Kasyoka, Hon. Anne Wairimu, Hon. Festus Ndeto, Hon. Joseph Muli, Hon. Stephen Muthuka, Hon. Peninah Kaluki, Hon. Geoffrey Munyao, Hon. Nathaniel Nganga, Hon. Magdalene Ndawa, Hon. Dominic Maitha, Hon. Christine Mwendu, Hon. Brigid Kitili and Hon. Edrick Ngunzi are indicated having signed, out of a provided list of 28 members. The document also indicates that the Members who signed wished to nominate and appoint a new Minority Leader within a period not exceeding 14 days from 26th March, 2014. The members who signed this letter don't form a coalition as per communication dated 4th April 2014 from the Registrar of Political Parties. Further, the letter is not accompanied by any written minutes and was not forwarded by the Minority Whip since the purported letter from the Whip was not signed. Therefore, it is erroneous and I strike it off.

2. I again received an unsigned letter dated 1st April, 2014 supposedly from the Minority Whip forwarding unsigned minutes of what is supposedly Jubilee Coalition Partners' minutes of a meeting purported to have been held on 31st March, 2014 at Green Garden Hotel, attended by seven members namely Hon. Amina Mutio, Hon. Benson Kasyoka, Hon. Anne Wairimu, Hon. Francis Matheka, Hon. Edrick Ngunzi, Hon. Geoffrey Munyao and Hon. Magdalene Ndawa. The letter was not properly forwarded by the Minority Whip since he denied preparation of the same. The members, namely Hon. Geoffrey Munyao, Hon. Magdalene Ndawa and Hon. Edrick Ngunzi belong to Agano Party, New Democrats Party and Republican Congress Party respectively, which parties are not in a coalition with Jubilee. For that reason alone, the meeting was not properly convened. Further, the attached minutes don't constitute a process of election and only purport to appoint Hon. Matheka in the place of Hon. Kasoa. Standing Order No. 16 contemplates an election not an appointment. The minutes are also not signed and therefore they cannot be used to support a resolution and accordingly, that communication is struck off.

3. My office also received an unsigned letter from the Minority Whip dated 1st April, 2014 forwarding a document similar to a petition signed by four members of the CCU Party, namely Hon. Francis Matheka, Hon. John Sila, Hon. Veronica Mbithe and Hon. Amina Mutio purporting to withdraw their support for the Minority Leader. The forwarding letter is not signed by the Minority Whip and there are no minutes in support of what transpired. It is therefore equally struck off.
4. I also received an unsigned letter from the Chief Whip, Minority Party dated 1st April, 2014 forwarding unsigned minutes supposedly for a meeting of the Minority Coalition held on 27th March, 2014 at 67 Airport Hotel, signed by 11 members namely Hon. Francis Matheka (CCU), Hon. Amina Mutio (CCU), Hon. Benson Kasyoka (TNA), Hon. Anne Wairimu (TNA), Hon. Festus Ndeto (PICK), Hon. Joseph Muli (TIP), Hon. Stephen Muthuka (PICK), Hon. Geoffrey Munyao (Agano Party), Hon. Magdalene Ndawa (New Democrats), Hon. Dominic Maitha (ODM) and Hon. Brigid Kitili (PICK) out of a provided list of 14 Members present. Interestingly, members of CORD Coalition and others that are not part of any coalition were also indicated to have attended the meeting. It should have been expected that such a meeting would have been strictly a meeting of the Jubilee Coalition (Minority Coalition). In addition, the minutes too were not signed, neither was the forwarding letter by the Minority Whip. This too cannot be used to support a resolution and accordingly, that communication is struck off.
5. Further, I received a memorandum dated 31st March, 2014 signed by four members of CCU confirming their strong support for the Minority Leader and dissociating themselves from the created documents supposedly generated by the Minority Whip. The memorandum signed by Hon. John Sila, Hon. Veronica Mbithe, Hon. Alex Kamitu and Hon. Thomas Kasoa was not forwarded by the Minority Whip although it was also signed by him. Further, it is not supported by any minutes showing how the resolution was reached to clarify and ascertain Hon. Thomas Kasoa as the Leader of Minority in Machakos County Assembly. That communication is equally dismissed.
6. Another memorandum dated 31st March, 2014 and signed by five members of the Democratic Party of Kenya (DPK) confirming their strong support for the Minority Leader was also brought to my attention. The members who signed include Hon. Winston Kanui,

Hon. Joseph Itumo, Hon. Renson Muthiani, Hon. Bibiana Nduku and Hon. Peninah Kaluki. The communication by DPK was not forwarded by the Minority Whip as required under Standing Order No. 16. Similarly, no minutes have been attached in support of their resolution and consequently, their communication is rejected.

7. I also received a letter dated 1st April, 2014 from the National Party of Kenya confirming its strong support for the Minority Leader. Again, the party is not part of the Jubilee coalition. The letter is appreciated, but it is irrelevant.
8. In addition, I received a letter dated 29th March, 2014 from Chama Cha Uzalendo confirming its strong support for the Minority Leader and distancing itself from any other coalition arrangements at the National or County level apart from the one with the Jubilee Coalition. The letter is appreciated as it spells out the accurate position that the Jubilee Coalition comprises of TNA, URP and CCU amongst other Parties and offers good direction to us. Again it is improperly before the Chair and again I strike it off.
9. A letter from the Hon. Christine Mutune, a member of ODM, dated 31st March, 2014 dissociating herself from the created documents supposedly generated by the Minority Whip was also received and again is irrelevant.

Upon receipt of the above documents, the Office of the Clerk, wrote to the Minority Whip, Hon. Alex Kamitu requesting him to confirm whether he was the author of the said unsigned letters and minutes. On 2nd April, 2014, the Minority Whip in his reply denied knowledge of the said documents and disowned them.

Under communication from the Registrar of Political Parties dated 4th April, 2014, upon our request of 3rd April, 2014, coalitions in the Kenyan scenario are comprised of the following; as contained in the first communication that I read. All the parties named in that initial communication office of the Registrar of Political Parties clearly indicate that they are the ones that had deposited coalition agreements with the office of the Registrar of Political Parties as at 4th April, 2014.

Now with the knowledge that the second largest coalition in the County Assembly is the Jubilee Coalition which composed of The National Alliance (TNA) and Chama Cha Uzalendo

(CCU), then members of the Coalition as of now are Hon. Benson Kasyoka (TNA), Hon. Anne Wairimu (TNA), Hon. Francis Matheka (CCU), Hon. Alex Kamitu (CCU), Hon. Thomas Kasoa (CCU), Hon. John Sila (CCU), Hon. Veronica Mbithe (CCU) and Hon. Amina Mutio (CCU).

But what we gather from the preceding letters, is a confusing scenario as the communications are self-conflicting.

After thorough scrutiny of all the correspondences, I have made the following observations: -

1. Removal of Minority Leader

Standing Order No. 16 delves into details of the minority leadership.

(1) It states that The Minority Party or coalition of parties in the County Assembly shall elect a member of the County Assembly belonging to the party or coalition of parties to be the Leader of the Minority.

(2) In electing members under paragraph (1), the minority party or coalition of parties in the County Assembly shall take into account any existing coalition agreement entered into pursuant to the Political Parties Act.

(3) A member elected under paragraph (2) may be removed by a majority of votes of all members of the minority party or coalition of parties in the Assembly.

(4) The removal of a member from office under paragraph (3) shall not take effect until a member is elected in the manner provided for under paragraph (1).

(5) The whip of the minority party or coalition of parties in the County Assembly shall forthwith, upon decision being made under this Standing Order, communicate to the Speaker, in writing, the decision together with the minutes of the meeting at which the decision was made.

Pursuant to Standing Order No. 16 (4), the removal of Minority Leader shall not take effect until a Member is elected in the manner provided for under paragraph (1).

These provisions clearly contemplate a very thorough due process. It does not contemplate a casual process. It does not contemplate vendetta or malice. It contemplates objectivity and a strong sense of direction since it touches on a leader, then it contemplates a leadership process. Appropriate advice should therefore be sought and followed. This provision does not therefore give an option of nominating and appointing as reflected in the said documents. An election is the only option.

2. Authenticity of some of the Documents

Since many Members that were purported to have generated the documents or claimed to have attended the meetings have disowned the documents then the authenticity of the documents is in serious doubt.

3. Convening official meetings, the subsequent minutes and onward official communication

- a. The documents purported to convey information that there existed meetings that were convened by the Coalition of Minority Parties. Upon scrutiny of the documents, there was no indication of notice of such meetings together with the agenda. Conventionally, such meetings that were expected to discuss a very significant matter should have given (adequate) notice to all the Members, clearly specifying the agenda. Since it is purely a party matter, then members of other Coalitions or Parties are not expected to attend. In line with the spirit and letter of Standing Order 163, a formal meeting shall be held at such place, date and time as shall be determined by the Chairperson or on a petition made by a significant number of the members and chaired by the Chairperson. The Chairperson of a meeting comprising the Coalition of Minority Parties is usually the Minority Leader. It can only take place in his absence if he sanctions the meeting to proceed and delegates someone to be responsible in his stead. Any other meeting called by members and chaired by someone not given mandate conventionally can only qualify to seem to be like an attempted coup. I therefore rule that any form of caucus or congregation of members does not constitute a formal meeting. A formal meeting must be properly and formally convened in the normally recognized usual manner and usual channels. In this case there is no proof to this fact.

- b. Since the meetings purport to make decisions of serious magnitude not only on removal of the Leader of Minority but also touching on Members of the Assembly Service Board and hence attempting to shake the management of the Assembly, it is therefore expected that such meetings cannot be handled in such a casual manner as reflected in the documents. It is the expectation of the office of the Speaker that due care, due considerations and appropriate advice is sought prior to undertaking such decisions failure to which, the Assembly will be entertaining malicious maneuvers, personal vendetta and instabilities. Why would members convene meetings and discuss agendas about removal of a leader who is not present in the meeting? This is not only contrary to the rules of natural justice where a person should not be crucified without fair hearing, but also contrary to Article 50 of the Constitution.

4. FINALLY, I RULE AS FOLLOWS: -

- a. Firstly, the documents given to my office are not authentic.
- b. Secondly, on the issue of removal of the Leader of Minority, members should adhere to the process provided under Standing Order 16. It is upon the coalition to follow due process in election of their leaders as and when they see fit and forward a communication that is within the Standing Orders of the Assembly and I'll be obliged to give the communication. What I have before me now cannot amount to a proper communication. All the communications then before me are wholesomely dismissed.
- c. Thirdly, note that the Speaker doesn't have the jurisdiction to participate in or regulate the election of the Leader of Minority. In the correspondences, there are communications that purport to support and others that purport to dismiss the Leader of Minority. Under normal circumstances, the role of the Speaker is only to receive communication but in a scenario like this, there is reason to delve into the matter and offer direction on the same. Coalition parties are governed by coalition agreements and a coalition agreement provides for a dispute resolution mechanism that can be resolved through the Political Parties Dispute Tribunal established under sec. 35 of the Political Parties Act, 2011. In the event that there is a dispute in the current coalition, parties should exhaust that process because the assembly does not have jurisdiction over party disputes.

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Hon. Members, with humility, I cannot complete this exercise without mentioning the events of 1st April, 2014 when Hon. Members stormed my office and demanded a decision to be made unprocedurally by the Speaker, despite pleas to give the Speaker time. Some of them vowed to stay on until I give a decision. I was personally terrorized for a period of about five hours.

Within that meeting, some members issued threats and by innuendo suggested the removal of the Speaker in the event of a contrary opinion. Their conduct is deeply regretted.

To add insult to injury, the said members proceeded to address the press on matters that had not been officially communicated by the Speaker. They should be taken to have usurped my role. These members did this within the precincts of the Assembly and I fully disagree with their conduct.

I am fully aware of the provisions of Standing Orders Nos. 103, 104, 105 and 106 which consist of elaborate disciplinary procedures. Those who addressed the Press on matters that were not completely deliberated upon are guilty of gross disorderly character and ought to suffer suspension as per the Standing Orders. I shall however restrain myself. Nevertheless, I shall not hesitate to employ the full effect of the Standing Orders in future.

Hon. Members, remember that County Assemblies in Kenya are at their inception stages, their leadership and management are also at their early stages of development. Just as is normal for anything new, challenges are bound to happen, but it may be advisable that actions and undertakings are carried out with a lot of caution. Otherwise, Assemblies will plunge to shaky waters making them unstable institutions. As your Speaker, I advise that we nurture our leaders, especially at this inception stages, lest we fall to the hands of the enemies of devolution who do not wish to see stable institutions in Counties.

Finally, I direct then that the coalition partners as described by the registrar of Political Parties as at 4th April, 2014 recollect, retreat and convene and bring minority Leader. That is not the duty of the Speaker.

(Applause)

ADJOURNMENT

Hon. Speaker: Any other matter? Thank you very much and have a good afternoon.

The House rose at 3.20 p.m.