

MACHAKOS COUNTY ASSEMBLY**OFFICIAL REPORT****Wednesday, 10th February, 2016**

The House met at 2.33 p.m.

*[The Speaker (Mr. Mung'ata) in the Chair]***PRAYERS****Hon. Speaker:** Thank you good afternoon. Let us proceed, clerk.**NOTICE OF MOTION****OPERATIONALIZATION OF A SECURITY COMMITTEE****Hon. Speaker:** Hon. Alex Kamitu.

Hon. Kamitu: Mr. Speaker, Sir, I want to give notice of motion that this Hon. House discusses and approves operationalization of a security committee as envisaged in section 41 of the National Police Act to address the insecurity concerns in our county. Thank you Mr. Speaker, Sir.

Hon. Speaker: Notice issued proceed.**MOTION****OPERATIONALIZATION OF A SECURITY COMMITTEE**

Hon. Kamitu: Mr. Speaker, Sir, that aware that insecurity in most major towns within Machakos County has increased tremendously with a recent incident where a bodyguard attached to a judge of Machakos High Court was shot dead by thugs while manning the Judge's residence at Miw'ani estate in Machakos town and several attempted attacks at Catholic nuns' residence at Katoloni.

Mr. Speaker, Sir, aware that security was not devolved and with many records of crime being recorded daily within the major county towns, many people have lost their lives and their beloved ones and property. Noting that section 41 of the National Police Service Act establishes county Policing Authority in every county.

Hon. Members, our core mandate as elected members is to oversight, legislate and representation of the electorate. I wish to move a motion that this Hon. House discusses and approves the operationalization of a security committee as envisaged in section 41 of the National Police Act to address the insecurity concerns in our county. Thank you Mr. Speaker,

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Sir. Mr. Speaker, Sir, I would wish and I would request you, Sir, I call upon Hon. Peter Nzioki to second the motion. Thank you Mr. Speaker, Sir.

POINT OF ORDER

Hon. Speaker: Let us take the point of order.

Hon. Kathinzi: Thank you Mr. Speaker. I am rising on a point of order that, Mr. Speaker, the mover of this motion is not giving respect to the Chair and in accordance with ethics in this House. He is not bowing when he is just criss-crossing here.

(Laughter)

Hon. Speaker: Hon. Alex Kamitu, kindly demonstrate to that member how you came to the podium.

Hon. Kamitu: I will do it practically, Mr. Speaker, unless maybe there was a bit of slip. I really did it and I am going to do it.

Hon. Speaker: Just do a repeat show him how you entered to the podium.

Hon. Kamitu: Mr. Speaker, Sir, I will start from where I was seated to show the respect and I will do it as a demonstration, Mr. Speaker, Sir.

(Hon. Kamitu bows before the Chair)

(Laughter)

Hon. Speaker: Thank you. That is how it was done, in case you are not very keen, Hon Kathinzi. The point of order is disallowed. Hon Kamitu, you did not have anybody to second your motion. Okay, proceed.

Hon. Nzioki: Thank you Mr. Speaker, I stand to second the motion. Thank you. Mr. Speaker.

Hon. Speaker: Thank you Hon. Members, the motion is now on floor for deliberation. Let us take points in support. Maybe, perhaps, before we get to hear contributions we need to give Hon. Kamitu some more time to guide us through some extracts of the law in relation to the motion.

Hon. Kamitu: Mr. Speaker, Sir, thank you I can do it even from where I am standing, Sir.

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Hon. Speaker: Yes.

Hon. Kamitu: Mr. Speaker, Sir, the the Constitution establishes two systems of government, that is the national government and the county government. The functions of each level of the government are provided for in the Fourth Schedule of the constitution. Mr. Speaker, Sir, however, where the functions of the two levels conflict, with respect to laws enacted by the respective level of government, the provisions of Article 191 of the Constitution apply which set the conditions in which national laws shall prevail over county legislation and vice versa.

Mr. Speaker, Sir, Article 6 (1) of the Constitution provide that the two levels of government, though distinct and interdependent, must conduct their relations on basis of consultation and cooperation. In this regard, therefore, a function which is exclusive for one level of government can be done by both levels of government but through consultative process. Section 41 of the National Police Service Act establishes County Policing Authority and I repeat again, County Policing Authority, in every county which shall be composed of the following:-

- a) The County Governor or the County Executive Committee Member appointed by the Governor who shall be the chairperson.
- b) County Representatives appointed by the Inspector General who comprise of the head of the National Police Service, National Intelligence Service and the Directorate Criminal Investigations at the County level.
- c) Two elected members nominated by the County Assembly.
- d) Chairperson of the County Security Committee.
- e) At least six other members appointed by the Governor who ordinarily reside within the county from among the following:-
 - i. Business sector.
 - ii. Community based organizations.
 - iii. Women.
 - iv. Person with disability.
 - v. Religious organizations.
 - vi. The youth.

Mr. Speaker, Sir, in appointing the persons referred in section 41 (1) (e) of the Act, the Governor, County Public Service Board, must take into account the principle of the one third gender rule provide for in Article 27(8) of the Constitution and ensure that there is geographical representation of the county.

Mr. Speaker, Sir, transparency and integrity are among the national values and principles provided for in the constitution and for this reason the names of the nominees must be forwarded to the County Security Committee for vetting who shall subsequently forward names of the nominees to the County Assembly for approval.

Mr. Speaker, Sir, a person appointed to serve in the public office must be bound by the guiding values, principle and requirement set out in section 3 of the Leadership and Integrity Act. In this regard, Mr. Speaker, Sir, sub-section (6) of section 41 of the National

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Police Service Act on the disqualification of the nominated members, should be read together with the provisions of section 3 of the Leadership and Integrity Act. The term of office of the nominated members of the County Police Authority is two years and are eligible for appointment of one further term.

Mr. Speaker, Sir, the meetings and procedures of the Authority, payment of allowance and funds of the Authority are well stated and provided for in section 42, 43 and 44 of the National Police Service Act respectively.

Among the function of the Authority include to:-

1. Develop proposals on priorities, objectives and targets for police performance in the county.
2. Monitor trends and patterns of crime in the county including those with a specific impact on women and children.
3. Promote community-policing initiatives in the county.
4. Monitor progress and achievement of set targets.
5. Provide financial oversight of the budget of the County police.
6. Provide feedback on performance of the police service at the county level county police.
7. Provide a platform through which the public participates on the all aspects to do with county policy and the national police service at county level.
8. Facilitate public participation on county policing policy.
9. Ensure policing accountability to the public.
10. Receive reports from Community Policing Forums and Committees.
11. Ensure compliance with the national policing standards.

Mr. Speaker, Sir, in addition to the function provided above the, County Policing Authority must establish structures to implement community-policing in all parts of the county as provided in section 97 of the National Police Service Act. In order to ensure cooperation and coordination, the Authority may form a joint committee with the County Inter-governmental Forum established in section 54 of the County Governments Act.

Mr. Speaker, Sir, Section 14 of the County Governments Act provides that the procedure of the county assembly and in particular the orders for proper conduct of the proceedings of the assembly shall be governed by the Standing Orders made by a respective county assembly. In this regard, therefore, in nominating the elected members of the county to the County Policing Authority, the procedure as set and provided for in the Machakos County Assembly Standing Orders, must strictly be adhered to.

Mr. Speaker, Sir, remember and if you are not aware. Mr. Speaker, Sir, our own staff and Hon. Members are often being attacked on various occasions and not to forget Prof. Nzuve, from my ward, who was attacked and killed at his home. The operationalization of this act will give us a leeway to address our security issues and also in regard to this, Mr. Speaker, Sir, I would also like to add that, in regard, to mobilization or community-policing, this is where the community, in regard to an area which grows like the big towns, it will also assist the electorate to cite areas where we need police posts or the AP post or even, where police stations, or where police stations or police posts can be added. Otherwise, thank you Mr. Speaker, Sir.

Hon. Speaker: Hon. Kamitu, maybe explain to this House, who composes? Who is supposed to constitute the county policing authority? Is it the County Government or the National Government, in your view?

Hon. Kamitu: In my view, Sir?

Hon. Speaker: And perhaps in your experience.

(Laughter)

Hon. Kamitu: Mr. Speaker, Sir, if you can note that section 41 of the National police service act establish county policing authority in every county. It is very clear section 41 of the national police service act.

Hon. Speaker: When you read that, I am reading it, section 41 (1) it only says ‘there shall be established a county policing authority.’ It does not state who shall establish it.

Hon. Kamitu: Having, Sir, that is exactly why we are seated here as a county, as an assembly we are trying, as I said, again, I repeat again, this is the time we are supposed to establish our own county policing authority under that section.

Hon. Speaker: Then Bw. Kamitu, when you go ahead to section 42 (2) it says ‘the cabinet secretary shall issue policy guidelines on the conduct of business of the authority.’ I think that, therefore, means that this should be constituted by the National Government. Maybe we can give you a while, perhaps, you consult with the chairperson of justice and legal affairs committee for guidance us tomorrow.

(Laughter)

Yes. Why can’t you allow me to finish Bw. Kamitu?

Hon. Kamitu: Mr. Speaker, Sir, you are also aware that being our Speaker, we can also, as I said, make some consultations because, as I stated, this is a very important policy and I agree with you.

Hon. Speaker: I agree.

Hon. Kamitu: So also we need some consultation on this because I think this is a very important policy, that if established, it is going to serve the members of the electorate, and as I said, I have been a policeman for 35 years and it is on this regard and it is on this strength, that I am asking this Hon. House and under those Acts because as you said Mr. Speaker, Sir, we must go by the law and if the law really agrees that we can form and we can have our own act to

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establish and to manage our own policies in regard to those, I have no objection because this is where also where we are going to draw our regulations pertaining to the problems or to the crime pertaining to our county because Mr. Speaker, Sir, you are aware, maybe, some of the crimes that are committed in Machakos County, are not the same crime committed in Nyanza.

So it is on that strength, on that that I stand here to request this Hon. House and through also your guidance, that we go ahead and establish this policing authority. It is very important to us, Mr. Speaker, Sir. Thank you.

Hon. Speaker: I have heard you. That is why I was saying that maybe, we need to consult a little further. We find that perhaps we do not have the authority ourselves. We can send a message to the Senate to the Speaker of the Senate to see whether they can develop the motion further.

Hon. Kamitu: Agreed Mr. Speaker, Sir.

Hon. Speaker: Maybe before we need to hear from the chairperson, justice and legal affairs committee. A minute for the chairperson.

Hon. Itumo: Thank you Mr. Speaker, this afternoon. It is a very important motion. Mr. Speaker we are going to do more consultation with the Chief Whip, Minority team, Hon. Alex Kateti Kamitu---

(Laughter)

Mr. Speaker, he happens to be my neighbor holding the big town, that is Tala Town and I representing Kangundo Town, Mr. Speaker, whereby even in this particular policy, where we are bringing the motion, we do more consultation because due to our security, Mr. Speaker, we need small firearms, Mr. Speaker. So because of our protection, Mr. Speaker, you will be very much shocked to hear of nowadays whereby we have a lot of insecurity, Mr. Speaker, and I do not want to lose one of the Hon. Members, Mr. Speaker. Thank you. Mr. Speaker.

Hon. Speaker: Chairperson, we wanted you to offer direction on this motion.

Hon. Itumo: Yes, the direction is that, we are going to do more consultation with the Hon. Member, Mr. Speaker.

Hon. Speaker: Thank you let us hear Hon. Dominic.

Hon. Maitha: Mr. Speaker, as I have always said, I think we have just concluded a retreat from Mombasa two weeks ago or three weeks ago and the presenter, Mr. Werunga took us through very important sessions and said clearly that it is important for Hon. Members to do thorough research before they table any contents before the floor of this House because actually

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it either demeans the house or makes the house look like an irrelevant house. Mr. Speaker, the subject matter at hand, is out of discussion in this house. It is null by itself. It is inconsequential in which manner;

Firstly, security is not a devolved function. Game shot! We cannot discuss a matter that is not devolved. We have the so called county security committee that is chaired by the county commanders who are appointed through the national legislation. So whatever we are speaking, Mr. Speaker, and it trickles down to the DC, that is the sub-county commissioner, the deputy sub-county commissioner, the DOs and the chiefs, all of them. They are the people who are in charge of community and actually it has even trickled further down to the so called Nyumba Kumi initiative. Mr. Speaker, the County Government does not have anything to do with security.

Actually, I will even say, Mr. Speaker, by the virtue of the County Government of Machakos investing heavily on security vehicles, it was an improper move because that is not a devolved function, Mr. Speaker. Issues of insecurity are everywhere and if there was need and I think, Mr. Speaker, you guided the Hon. Member that is the minister, Cabinet Secretary, is the one who is supposed to give the guidelines. So until and unless that time, when the cabinet secretary gives the guidelines, it is like discussing a matter that is before the court. So the entire motion is null by itself. We should not even discuss it. So let the Hon. Member understand that whatever we are discussing is not a function that is devolved.

Mr. Speaker, I would also tend to be guided as well. When you commit this motion, which relevant sectoral committee is it going to be committed to because as it is in reference with the National Assembly? There is a security committee in charge of that. As per our Standing Orders and the county government act, there is nowhere where security exists. So how can we discuss a matter which is not even devolved? So I would think the Hon. Member, the best thing he can do is to petition the National Assembly security committee so that it can be handled from the National level but as at the county level position, I think we are discussing a motion that is not even worth to be discussed in this House. It is supposed to be discussed at the higher house. Thank you. Mr. Speaker. I do not support the motion.

Hon. Speaker: Thank you. Let us hear the mover. The motion is not yet up for debate. We only raised---

Hon. Kamitu: Yes Mr. Speaker, Sir, I would wish to tell my Hon. Member for Muthwani that if he can read the constitution, Article 6 (1) of the constitution provides that the two, and listen in, provides that the two levels of government, though distinct and independent, may conduct that relation in basis of consultation and cooperation and it is on this regard therefore a function which is exclusive for one level of government can be done by both levels of government but through consultative process. It is very clear that is also the law.

And again Mr. Speaker, Sir, in addition to that, I remember in Mombasa and we are not arguing, it was very thorough and our lecturer told us, through inter-governmental, we can form, we can consult and come up with policies that are favorable to our counties. There is no hard

Standing Orders for that regard. So it is on this regard and it is on this strength that I stand here to bring this motion. Thank you Mr. Speaker, Sir.

Hon. Speaker: Thank you let us hear Hon. Rachel at the back.

Hon. (Ms.) R. Nduku: Thank you Mr. Speaker, for this opportunity. I want to oppose this motion in this House with two reasons that when we are out in workshops, we are told that before we bring motions in the House, it is good for a member to do good lobbying so that when we come here, we can know what we are going to discuss here. We have taken two to three hours with Hon. Kamitu outside there and I wished if he could have brought the motion he was to bring in the House, probably we could have discussed outside there and lobby and know what we can speak out here.

The other thing, Mr. Speaker, is that when Hon. Member from Tala is speaking of consultative, I think each member in this House in his ward, we have sub locations, we have locations, and we have chiefs and so forth. We have village elders and what we do in our ward level we consult them because we know security belongs to National Government. So I want to talk to my Hon. Member, Hon. Kamitu because he knows he has been there and he knows that security is not a devolved function in counties, I do not think it is the right motion to discuss in this house at this time. Thank you. Mr. Speaker.

(Applause)

Hon. Speaker: Let us hear Hon. Kitheka.

Hon. Kitheka: Thank you Mr. Speaker. Yesterday, as I was coming from Nairobi, I read a saying in the vehicle I was in which said 'don't follow me, I am also lost.' So I think---

(Laughter)

By following what is being given here, we are following a lost member. So, Mr. Speaker, when we start guessing on issues in this Assembly, we might get lost completely because first and foremost, how can we a Hon. House like Machakos County Assembly, come to adopt and make suggestions from the National Police Act, to make our own rules from there. Mr. Speaker, I think we are getting lost at a very high rate, so I kindly request, because we know very well even we made a mistake as a county to first invest in security in Machakos which, for now, has become a misuse to the residents of Machakos.

Mr. Speaker, I wish you can know the way the vehicles for security are being used in this town every single night by the police and by the officers from the county. So Mr. Speaker, if we can go ahead and establish legislation, to that magnitude, it is adding an insult to an injury because I do not see even the avenue into which this document managed to come into this Assembly. Might it have bypassed your office, Mr. Speaker, as a learned friend of which I might not be on---

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(Laughter)

Might it have bypassed your office, because I do not see it landing into this House, if it is to this magnitude because the documents which are being referred are documents outside this Assembly? I think everything will be put in order because this document cannot be referred to ant committee and the person you are trying to consult, the chairman for justice and legal affairs committee is as lost as we are. So, Mr. Speaker, please guide this House before we get lost in the wilderness. Thank you.

(Applause)

Hon. Speaker: Maybe to avert further debate on this matter, Hon, Kamitu, I am sure you need time to consult find better ways of ventilating your agenda. How would you wish to treat your matter today? *(Addressing a Hon. Member)* You are out of order.

Let us hear the mover.

Hon. Kamitu: Mr. Speaker, Sir, I m not even going to say, as per the mood of the House, the sentiments that have been brought here by the members, I sincerely say, fine, let us do some further consultation so that we may come up although---

(Applause)

My observations were, if the same law that I was reading, if it could be produced to members so that they may go also have the section that I had referred here, they will see the importance of this policing authority that I had moved in this house. So Mr. Speaker, Sir, it is not out of ignorance that Hon. Members, sometimes do not read the books or whatever, and it is on this strength and on this request that I say, we may do some consultation and before we do this consultation, I will kindly ask the office of the Clerk to go and produce the laws I was reading because the sections are there.

They are well provided for so that when we meet next time, at least they would have enlightened the members as to what I was trying, not even trying what I was trying to move, something that would be of benefit to this county. Otherwise that is my position, Sir. Otherwise, I need your guidance on this. Thank you Mr. Speaker, Sir.

Hon. Speaker: Hon. Members, I will direct that this matter be mentioned, next Tuesday. There are some extracts I will need to look at and then will determine whether to entertain or dismiss the motion by Hon. Kamitu.

(Applause)

That business is concluded, Hon. Nzoka, Next

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ADJOURNMENT

Hon. Speaker: If there is no other business, Hon. Members, then the house adjourns.

The house rose at 3.06 p.m.