

REPUBLIC OF KENYA

COUNTY ASSEMBLY OF MACHAKOS

OFFICIAL REPORT

Tuesday, 13th August, 2024

The House met at 11.07 a.m.

[The Deputy Speaker (Hon. Stephen Mwanthi) in the Chair]

PRAYERS

MESSAGES

NOMINATION OF COUNTY EXECUTIVE COMMITTEE NOMINEE FOR DEPARTMENT OF WATER IRRIGATION ENVIRONMENT AND CLIMATE CHANGE

Hon. Deputy Speaker: Hon. Members I have the following messages from H. E Hon. Wavinya Ndeti the Governor of Machakos County, pursuant to Standing Order 39. County Executive Committee nominee for the department of water irrigation environment and climate change. Hon. Members, Article 179 of the Constitution of Kenya 2010 provides that the executive authority of the County is vested in and exercised by a County Executive Committee. The County Executive Committee consists of the County Governor, the Deputy Governor and members are appointed by the County Governor with the approval of the Assembly from among persons who are not Members of the Assembly.

Section 35 of the County Governments Act 2012 provides for the procedure of appointment of County Executive Members by the Governor. Hon. Members, in this, the office of the Clerk is in receipt of a letter dated 30th July, 2024 nominating Rose Kameni Mwathi as CECM department of water, irrigation environment and climate change. Pursuant to Section 7 of the Public Appointments (County Assemblies Approval) Act 2017, the nominee is hereby committed to the Committee on Appointments for vetting and reporting within 21 days.

NOMINEE FOR THE POSITION OF SECRETARY TO THE COUNTY PUBLIC SERVICE BOARD

Hon. Members, Section 8 of the County Governments Act as amended in 2020 provides that the County Assembly shall vet and approve nominees for appointment to County public offices as may be provided for in this act or any other law.

Section 58A(7) of the same Act further, provides that the Governor shall within seven days of receipt of names forwarded under sub-section 6 nominate one person and at least three but not more than five others for appointment as Chairperson and Members of the County Public Service Board respectively and forward the names to the County Assembly for approval.

Section 6 of the Public Appointments (County Assemblies Approval) Act 2017 provides that nomination of appointment from an appointing authority shall be lodged with the Clerk of the County Assembly. Hon. Members, I am in receipt of a letter dated 30th July, 2024 from Hon.

Governor Wavinya Ndeti, forwarding Juliana Ndunge Mutisya as nominee secretary to the County Public Service Board.

Pursuant to Section 7 of the public appointments Public Appointments (County Assemblies Approval) Act 2017, the nominee is hereby committed to the Committee on Appointments for vetting and reporting within 21 days. Thank you, Hon. Members.

PAPERS LAID

BUDGET IMPLEMENTATION REPORTS OF VARIOUS DEPARTMENTS FOR 2023/2024

Hon. Deputy Speaker: On this one we have Papers from Hon. Nicholas Nzioka the Majority Leader.

Hon. Nicholas Nzioka (Machakos Central, WDM-K): Thank you, Hon. Speaker. Hon. Speaker, I wish to lay the following Papers on the Table of the Assembly today, Tuesday, 13th August, 2024.

1. Budget implementation reports for the financial year 2023/ 2024 for the following departments:
 - a) Office of the Governor
 - b) Department of public service and performance management.
 - c) Department of small and medium enterprises development.
 - d) Department of tourism and culture.

Thank you, Mr. Speaker.

(The Papers were laid on the Table)

Hon. Deputy Speaker: Thank you, Hon. Nicholas. Clerk next order! Sorry, Hon. Members, I am committing the Papers from the Office of the Governor to committee on Labour, Public Service and ICT, the other one from the Department of Public Service And Performance Management to the same Committee Labour, Public Service and ICT. The other one for small medium enterprise is committed to Trade, Economic Planning and Industrialization Committee. The fourth Paper is committed to Tourism and Culture Committee. Thank you, next order.

STATEMENT REPLY

FLOOD SITUATION IN KINANIE WARD

Hon. Deputy Speaker: Under this one, I call upon Hon. Fredrick Kitetu.

Hon. Catherine Kye (Nominated, WDM-K): Thank you, Mr. Speaker. I am holding brief for Hon. Kitetu the Chairperson, environment and natural resources. On response to a Statement sought by Hon. Francis Kavyu on what the County Government is doing on floods affected areas in Kinanie ward. I would like to request to be given more time to undertake further consultation. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you, Hon. Catherine. I think it is the second time the Committee is requesting for more time and on this one we are giving them two weeks to report back on 22nd August, 2024 with the response. Thank you. Clerk, proceed.

MOTION**APPROVAL OF REPORT ON CONSIDERATION OF MACHAKOS
COUNTY PUBLIC MARKETS AND STALLS REGULATIONS, 2023**

Hon. Deputy Speaker: On this one we have Hon. Kavyu, Chairperson, Delegated County Legislation Committee.

Hon. Francis Kavyu (Kinanie, M CCP): Hon. Speaker, Pursuant to Standing Order 189B, I wish to move the Motion that this Assembly adopts the Report of Delegated County Legislation Committee on consideration of Machakos County Public Markets and Stalls Regulations, 2023 tabled in the Assembly on 9th July, 2024.

Hon. Deputy Speaker: Secunder.

Hon. Francis Kavyu (Kinanie, M CCP): I call Hon. Francis Kitaka to second.

Hon. Francis Kitaka (Ndalani, WDM-K) seconded.

Hon. Deputy Speaker: Thank you, both Hon. Francis.

(Question proposed)

Before I invite the Members to debate, let me call the mover to take the House through the highlights of the report. Hon. Kavyu.

Hon Francis Kavyu (Kinanie, M CCP): Thank you, Hon. Speaker. With your permission I will just highlight on the observations that were made by the Committee and also highlight on the recommendations that were given because I believe the report was shared and Members will also have an opportunity to go through the entire report at their own time.

I will proceed to committee observations on page 7. Following comprehensive scrutiny Machakos County Public Markets and Stalls Regulations, 2023, the Committee made the following observations:

Statutory Timelines

That the regulations were published in the Gazette vide Legal Notice No. 3 of 2016 and submitted to the Clerk of the County Assembly on 31st October, 2023 hence within the Statutory Instruments Act under Section 11(1) of the Statutory Instrument Act 2013.

Conferring with the Regulation making-Authority

Section 16 of the Statutory Instrument Act, 2013 requires the Committee to confer with the regulation-making authority before making its decision while Section 13(q) of the Act requires the Committee while scrutinizing any set of regulations to consider any other matter that the Committee deems fit and proper to examine. At its consultative meeting with the County Executive Committee Member, on 30th May, 2024 the Committee highlighted the following issues:

- a. The committee observed that defined terms under Regulation 2 are repetition of the content in the parent Act and that the definitions lack reference to the Principal Act thus making it defective in drafting as relates to Section 13(h) of the Statutory Instruments Act.
- b. The Committee observed that the roles assigned to the market committees under Regulation 4 are beyond the powers donated under the Act. The said role belongs to other duty bearers in the Act. Delegation of such powers contravenes Section 13(a) and (i) of the Statutory Instruments Act
- c. Composition of market committee as outlined under Regulation 5 is not backed by the required clarity. The regulation does not specify the person mandated to nominate members under sub-regulation (a) and (b) (i) and (ii) thus making it defective in drafting as relates to Section 13(h) of the Statutory Instruments Act.
- d. Sub-regulation 8(3) is beyond the powers donated under the parent Act thus violating provisions of Section 13(a) and (i) of the Statutory Instruments Act. The powers given to the Chairperson is not in accordance with the provisions of the Act and appears to make unusual or unexpected use of the powers conferred by the Act pursuant to which it is made.
- e. Sub-regulation 10(c) is not clear as it provides the County Government being responsible for facilitating of the committee meetings and the custodian being the department of Trade thus making it defective in drafting as relates to Section 13(h) of the Statutory Instruments Act.
- f. Sub-regulation 11(1) and (2) gives specific timelines for elections and does not anticipate resignation of members. Sub-regulation 11(6) is also not clear on who will submit the list of nominees to the Department of Trade seven days before election. On the other side, Sub- regulation (7) goes against the spirit of the Act that, the CECM responsible for matters relating to public market and stalls in consultation with the department in charge of Devolution shall designate the officer to plan, organize, supervise, announce and declare the winner. All these provisions under Regulation 11 contravenes Section 13(a)(i) and (h) of the Statutory Instruments Act and are not in accordance with the provisions of the Act pursuant to which they are made. They also appear to make some unusual or unexpected use of the powers conferred by the Act pursuant to which they are made.
- g. The provision under Regulation 12 is not in accordance with provisions of the Constitution and infringes on fundamental rights and freedoms of the public. Members cited Regulation 12 as unconstitutional for purporting to discriminate and limit a person on their freedom to express or associate themselves as they deem fit thus contravening Section 13(a) and (b) of the Statutory Instruments Act, 2013 as well as Article 1 of the Constitution of Kenya.
- h. Regulation 13 as relates to the principles of allocation criteria was termed as ambiguous for it does not assign specific roles to specific people for its implementation. Sub-regulation 13 (10) is beyond the powers donated under the Parent Act. Similarly, sub-regulation 13(8) and (11) goes beyond the powers donated under the Parent Act as the County Executive Committee Member responsible for markets and stalls has been seized of the responsibilities under the

Act thus contravening Section 13(a) and (h) as the provisions are not in accordance with the provisions in the Act pursuant to which they are made.

- i. Regulation 14 was said to be not clear on who will maintain the database under sub-regulation 14(l) and also not clear on who will perform the role provided in sub-regulation (i). It was further observed that Sub-regulation 14(j) goes beyond the powers donated under the Parent Act thus in contravention with Section 13(a) and (h) since the provisions are not in accordance with the Act pursuant to which they are made and similarly calls for elucidation.
- j. Regulation 15 contravenes Section 13(h) of the Statutory Instruments Act since it is not clear on who shall perform the assigned roles relating to the market facility.
- k. It was observed that Regulation 16 goes beyond the powers donated under the Parent Act under sub-regulation 16(2) and (5) thus violating Section 13(a) for it is not in accordance with the Act pursuant to which the same is made.
- l. Regulation 17 as relates to the storage facilities creates a gap on who will ensure that the storage facilities as under listed therein are done depending on its category thus in contravention of Section 13(h) of the Act.
- m. On the issue of parking as provided under Regulation 18, the committee said it is ambiguous and lacks the precision for implementation thus contravening Section 13(h), of the Act.

COMMITTEE RECOMENDATIONS

Having examined the Machakos County Public Markets and Stalls Regulations, 2023 in accordance with the Constitution of Kenya, the Interpretations and General Provisions Act (Cap 2), the Machakos County Public Markets and Stalls Act, 2016 and the Statutory Instruments Act (No. 23 of 2013), the Committee recommends that the House annuls in entirety the Machakos County Public Markets and Stalls Regulations, 2023 for non-compliance with the relevant statutes and to give the Department of Trade an opportunity to align the Regulations with the Constitution, the Machakos County Public Markets and Stalls Act, 2016 and other relevant statutes.

Hon. Speaker, it is therefore my privilege, on behalf of Delegated County Legislation committee to table this report for consideration and adoption. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you, Hon. Kavyu. I now invite Members to debate the motion.

Hon. Francis Kitaka (Ndalani, WDM-K): Thank you, Mr. Speaker. I sit in the committee and I rise to support the report that after consultation and looking through the report, we found that there were anomalies in breach of the existing legislation. I hereby urge Hon. Members that we look critically because when we are making Regulations, we are making them so that they can serve in accordance with the existing Acts and laws. I support.

Hon. Deputy Speaker: Thank you, Hon. Francis. Hon. Majority Leader.

Hon. Nicholas Nzioka (Machakos Central, WDM-K): Thank you, Hon. Speaker. I want to congratulate the committee for looking into details on the Regulations and what has come out is that the Regulations are in breach of the parent Act and the constitution. Us being a House of

rules and procedure, I beg that we do not fall short of doing what is necessary in law and that the Regulations are not within the law. That is good enough for the committee to consider that the departments re-do the work again. So I rise to support the report. Thank you.

Hon. Deputy Speaker: Thank you, Hon. Majority Leader. Silence means we can proceed and call Hon. Francis Kavyu to come and reply.

Hon. Francis Kavyu (Kinanie, M CCP): Thank you, Mr. Speaker. I wish to thank the House for adopting the report and to give a highlight that the department is already in the progress of reviewing and ensuring that they are in full compliance with the Constitution and the parent Acts so that when that is done, we will bring the report and as a committee, our responsibility is to ensure that any Regulation brought forward to this House is fully compliant and make for the future.

Today we are in this House and whatever document we are going to adopt or approve it is a document for posterity. It is not a document for the Second Assembly and therefore we continue as a committee to reiterate our commitment to ensure that we provide guidance and work in synergy with the Executive to ensure that we get the best for the people of Machakos County. Thank you, Mr. Speaker.

Hon. Deputy Speaker: Thank you, Hon. Francis.

(Question put and agreed to)

ADJOURNMENT

Hon. Deputy Speaker: The House adjourns to Tuesday, 13th August, 2024 at 2.30 p.m.

The House rose at 11.37 a.m.