

## COUNTY GOVERNMENT OF KISUMU



### COUNTY ASSEMBLY OF KISUMU

### **THE HANSARD**

### SECOND ASSEMBLY – FOURTH SESSION

Tuesday, 16<sup>th</sup> June, 2020

House met in the Main Chamber at 02:30 p.m.

(The Speaker (Hon. Elisha Jack Oraro) in the Chair)

### **PRAYERS**

**The Speaker** (Hon. Oraro): Mr. Clerk, kindly take us through the order of the day?

**The Speaker** (Hon. Oraro): Next order!

### **COMMUNICATION FROM THE CHAIR**

**The Speaker** (Hon. Oraro): Hon. Members, welcome to this session. We are at a period where we are working on the Budget Estimates for FY 2020/2021. I know that with the COVID-19 issues, it will be a bit difficult and tricky in undertaking Public Participation but I want to inform this House on the feedback that we have received in the first seven days running, the Budget and Appropriations Committee made an attempt to reach the public through the Local Media Houses and at the same time receive written submissions from various stakeholders.

Hon. Members, effective this week Wednesday, 17<sup>th</sup> June, 2020, we shall be having Sectoral Committee Meetings with Line Departments. I want to implore each and every Member to take his/her time to read the Budget Estimates FY 2020/2021 Reports thoroughly and make appropriate recommendations so that we are able to pass a conclusive Budget in the required time.

Hon. Members, you are all reminded by the County Commissioner and the Governor that it is important that you keep on sensitizing the public on the COVID-19 Regulations and Protocols and you as Members you equally take care by adhering to the recommended protocols issues by the Ministry of Health which includes;

- a) Continuously Washing Hands with Soap and Water. In the absence of Soap and Water use an Alcohol based Sanitizer.
- b) Putting on of Masks in Public Places, and;
- c) Keeping the Social Distance.

I would like to convey a message to the Hon. Members that, at our entrance gates, there shall be screening and you are encouraged to adhere to the requests by our gatekeepers to ensure that you are screened before you access the precincts of the Assembly. Thank you.

**The Speaker** (Hon. Oraro): Next order!

### **PAPER LAID.**

**The Speaker** (Hon. Oraro): Hon. Agolla, Chairperson Committee on Implementation and MCA, South West Kisumu.

**Hon. Agolla:** Thank you Mr. Speaker. Pursuant to the provisions of County Assembly Standing Orders No. 185. I wish to table before this House today Tuesday, 16<sup>th</sup> June, 2020 the Committee for Implementation Report on the Projects Implementation Status for the Department of Agriculture, Irrigation, Livestock and Fisheries for the FY 2019/2020. I beg to lay.

*(Hon. Agolla tables the Report before the House)*

**The Speaker** (Hon. Oraro): Hon. Members, I confirm receipt of Report on the Implementation Status of Project in the Department of Agriculture, Livestock and Fisheries for the FY 2019/2020 from the Joint Committee of Implementation and General Oversight as presented by Hon. Agolla MCA, South West Kisumu and Chairperson, Implementation Committee.

**The Speaker** (Hon. Oraro): Next order!

### **NOTICE OF MOTION.**

**The Speaker** (Hon. Oraro): Hon. Agolla, Chairperson Committee on Implementation and MCA, South West Kisumu.

**Hon. Agolla:** Thank you Mr. Speaker. Once more, pursuant to the provisions of County Assembly Standing Orders No. 45, I wish to give a Notice of Motion on the Committee for Implementation of Report on the Implementation Status of Project in the Department of Agriculture, Irrigation, Livestock and Fisheries for the FY 2019/2020. Thank you.

**The Speaker** (Hon. Oraro): What is it Hon. Khan.

**The Speaker** (Hon. Oraro): Hon. Agolla, can you please approach the Chair?

*(Hon. Speaker consults with Chairperson, Committee on Implementation)*

**The Speaker** (Hon. Oraro): Next order!

## STATEMENTS.

**The Speaker** (Hon. Oraro): Hon. Leader of Majority.

**Leader of Majority** (Hon. Onyango): Thank you Mr. Speaker. Before I give my Statement and even though you have given your communication on the expunging the Order that you had given, the Reports that have been circulated is on the Lands, Housing Physical Planning and Urban Development...

**The Speaker** (Hon. Oraro): Hon. Leader of Majority, I had already ruled on that. I already have a report from the Department of Agriculture, Livestock and Fisheries and it is the reason you saw the Vice-chairperson, Budget and Appropriations approach the Chair. He highlighted to me of the corrections and consulted the Chairperson of Implementation and I have made a pronouncement to expunge my earlier communication. So, it is a matter that has been dealt with...

**Leader of Majority** (Hon. Onyango): Okay Mr. Speaker, I get you. Mr. Speaker, my statement would be concise because you alluded to it that tomorrow we shall have Sectoral Committee Meetings on the Budget Estimates. The Executive have been invited and I would like to urge the Hon. Members to attend these meetings which are to commence in the morning and they will run until evening. So, different House Committees have been scheduled and I want to believe that appropriate communication has been forwarded to them.

Mr. Speaker, these meetings are very important and would not wish to be in a situation where the team from the Executive come very early and the Assembly is not ready. So, I just want to plead with my colleagues that please let us observe time because the meetings are scheduled to start at 08:30 a.m. So, we ensure that by 08:30 a.m. all the members are here. We shall not only be using the Assembly as the venue, other venues are being prepared so that we can cover as many Departments from the Executive as possible.

Secondly, and this goes to the Members of the Budget and Appropriations Committee that, we have programmed to hold our meetings throughout the weekend so that we can deal with this matter of the Budget Estimates as expeditiously as possible because time is not on our side. So, on Saturday and Sunday, the Budget and Appropriation Committee will be meeting here in the Assembly Precincts so that we can interrogate that Budget Estimates and that will find after we

shall have met the Line Departments from the Executive so that we shall be doing the final laps of the Estimates. So, those are my appeals to different Hon. Members concerned and let us give this a priority. Thank you.

**The Speaker** (Hon. Oraro): Thank you Hon. Members. I believe that you understood what the Leader of Majority said. Let us take that matter seriously and I would like to urge the House Committee Chairpersons and to the Clerk ensure that the Committee Clerks communicates to the Hon. Members to that we have appropriate quorum. This will be the only opportunity that you have to address the concerns that have emanated from the public and you as a representative of your ward to these Sectoral Committees.

So, as these activities commence tomorrow, ensure that you bring your submissions and concerns as appropriate. Hon. Members, it is Statement Hour?

**The Speaker** (Hon. Oraro): Yes Hon. Ogendo, MCA, Nyalenda “A” and Deputy Leader of Majority.

**Deputy Leader of Majority** (Hon. Ogendo): Thank you Mr. Speaker. Before I request for my Statement, I would wish to seek your indulgence that I have two Statements to make. I will commence with the first one; and on my second Statement, I implore you to invoke your powers citing Standing Orders No. 1 to give permission to the House to deliberate because it is a Statement touching on weighty issues?

**The Speaker** (Hon. Oraro): Hon. Member, I can only invoke the referred Standing Orders once I get to hear the Statement.

**Deputy Leader of Majority** (Hon. Ogendo): That is fair enough. Please let me proceed with my first Statements.

Mr. Speaker Sir and Honourable Members, Pursuant to the provision of section 163 and 164 of the Public Finance Management Act of 2012, I would wish to make to seek the following statement from the Chairperson, General Oversight Committee to investigate and inquire on the following and report back to this House;

Aware that, the County Assembly has for years been appropriating millions of shillings towards the Project Management Committee Fund for the payment of PMCs. It has come to the attention of the House that there has been misappropriation of public funds; I wish to request that pursuant to the provision of Article 35 read together with Article 195 (b) of the Constitution of Kenya 2010 this House be furnished with the following;

- a) This House be furnished with Bank Statements of Accounts and a Summary of Fund appropriation from the Contingency Account of Projects management Committee commencing 01<sup>st</sup> September 2019 to 31<sup>st</sup> December, 2019?

- b) This information be submitted to the Honourable House within (7) seven days from date of this dispatch?
- c) To furnish the County Assembly with Quarterly and Annual Reports for the above FY in line with the provisions of section 166 and 167 of the Public Finance Management Act 2012;
- d) That, failure to comply with clause (a) and (b) within the stated periods, this will lead to this House issuing immediate SUMMONS to the following County Executive Committee Members in line with Article 195 of the Constitution of Kenya 2010;
  - i) County Executive Committee Member for Finance and Economic Planning;
  - ii) County Executive Committee Member for Roads, Transport and Public Works;

Thank you.

**The Speaker** (Hon. Oraro): Hon. Deputy Leader of Majority, before you seek for your next Statement, as I listened carefully, that Statement came to my office and I approved it and I believe that it should be consolidated or co-joined with the one which is being tackled by the Committee of Ward Development. I believe that they requested for time and I met a number of Chief Officers probably yesterday.

Hon. Members, I want to direct that the Statement sought by Hon. Deputy Leader of Majority, be consolidated with what the Committee of Ward Development is doing. They pledged to report back next week and this goes with the request made on the Statement of 7 (seven) days. So, the Chairperson, Ward Development, Vice-chairperson or Member? The Clerk, please ensure that the Statement reaches the Committee of Ward Development.

**Deputy Leader of Majority** (Hon. Ogendo): Thank you Mr. Speaker. I have no objection to that. Mr. Speaker my second Statement goes like this:

Mr. Speaker Sir and Honourable Members, Pursuant to the provision of Standing orders No. 41 read together with Standing Order No. 191 (2), I rise to seek from the Chairperson of the Committee Implementation on the following; the Chair should inquire, investigate into and report back to this House on;

Mr. Speaker and Hon. Members, aware that the County Assembly in its sitting of Thursday, 30<sup>th</sup> July, 2019 passed a resolution to Impeach Mr. Nerry Achar as the CEC Member for Finance and Economic Planning in line with the provisions of section 40 of the County Government Act, 2012 on the following;

- (a) *Incompetence;*
- (b) *Abuse of office;*

(c) *Gross misconduct;*

(f) *Gross violation of the Constitution or any other law.*

Mr. Speaker and Hon. Members, the provision of section 31 (b) of the County Government Act 2012 stipulates that a Governor shall DISMISS not TRANSFER a County Executive Committee Member, if required by the resolution of the County Assembly as provided for under this Act. Further, the provision of section 40 (2) stipulated that;

*“ A member of the county assembly, supported by at least one-third of all the members of the county assembly, may propose a motion requiring the governor to DISMISS a county executive committee member on any of the grounds set out in subsection (1) ”.*

The County Assembly ensured that all the legal avenues were exhausted and complied with when undertaking this exercise.

Section 40 (6) (a) and (b) of the County Government Act, 2012 gives EXPLICIT guidelines on impeachment of a County Executive Committee Member. This statute stipulates that;

*(6) If a resolution under subsection (5)(b) is supported by a majority of the members of the county assembly—*

*(a) the speaker of the county assembly shall promptly deliver the resolution to the governor; and*

*(b) the governor shall dismiss the county executive committee member.*

These resolutions that was communicated to the Governor in line with the provisions of section 40 (1) of the County Government Act, 2012. It is against this backdrop that we have witnessed the blatant breach of the law whereby County Assembly Resolutions passed in this House are ignored and not complied with.

Mr. Speaker and Hon. Members, this House found Mr. Nerry Achar to be unsuitable to hold public office and therefore as the originator of this statement hereby makes the following prayers if this matter is not resolved;

- a) This House does NOT and SHALL NOT recognize Mr. Nerry Achar as an Executive Committee Member or hold any capacity in the County Government of Kisumu as per the Resolutions of the Assembly of 30<sup>th</sup> July, 2019;
- b) This House to HALT discussion of the Proposed Kisumu County Budget Estimates FY 2020/2021 until such a time that Mr. Nerry Achar is DISMISSED as the County Executive Committee Member as approved by the House;
- c) That, if this House goes ahead and passes the Proposed Kisumu County Budget Estimates FY 2020/2021, this House would have been deemed to have RESCINDED its earlier decision of Impeachment of the said CEC Member;

- d) If this House goes ahead and discusses the Proposed Kisumu County Budget Estimates FY 2020/2021 while Mr. Achar still hold office, it will be deemed to have sanctified Mr. Nerry Achar illegal presence in the Office;

Mr. Speaker and Hon. Members, this House did not pass a resolution to Impeach Mr. Nerry Achar as the CEC Member for Finance and Economic Planning but also in its entirety and not to hold any position in the County as CEC Member. We must have fidelity to the law and adhere to it and it is unconstitutional and utmost disrespectful to this House to see a Public officer duly Impeached by this Honourable House and still continue to serve in the same capacity which this House keeps check on.

Mr. Speaker and Hon. Members, I therefore request your Office to urgently and immediately task the relevant House Committee to invoke the provisions of Standing Order No. 191 (2) and the Constitution of Kenya 2010 and institute investigation with a view to ensure that Assembly Resolutions are complied with regards to the removal of Mr. Nerry Achar from Office. Thank you.

**The Speaker** (Hon. Oraro): Thank you. Just assume your seat Hon. Kanga. The statement that is raised by Hon. Jacktone Ogendo is of topical concern and by my indulgence; I want to allow debate on it as per his request. I will therefore welcome comments on it.

**The Speaker** (Hon. Oraro): I noticed Hon. Seth Kanga.

**Hon. Kanga:** Thank you Mr. Speaker for this chance. The matter brought by Hon. Ogendo is within the confines of the law and at the same time it violates the tradition of the parliament. The reason for this is that the Hon. Ojwang Ogendo is the Deputy Leader of Majority who is the custodian of government matters in this House. As the custodian of government business, he is seen to be questioning the same government he serves by seeking indulgence of the House to stop the discussion of the budget in the department headed by one Mr. Nerry Achar. That alone jeopardizes the government business that he leads. I believe that you will make a ruling Mr. Speaker because he questions the government that he represents in terms of business in this House.

Also in reference to Standing Order No. 87 parts 1, 2, 3 and (a) (b) (c) and (d), it will be upon you to give a ruling on whether we are within the confines of the law in this matter. Mr. Speaker, the House did their work as indicated in the County Government act on the dismissal of CECs and the matter was conclude and communicated to the Governor accordingly. I believe that Mr. Nerry Achar went to court, which had some rulings made and in turn communicated to the office of the Speaker, the Clerk on whatever the ruling entailed. However, as an Assembly, we have not been briefed on any ruling of whether the court went ahead to reverse the decision of this House

to take Mr. Nerry Achar home. We aren't certain whether or not he sought for an appeal being that it was an industrial court.

Mr. Speaker, Standing Order No. 87 talks about matters sub-judice and as an MCA for Market Milimani ward, I am not certain of the matter of Mr. Nerry Achar being in court or not. We were just told that the court reaffirmed the decisions made by this Assembly yet we have not seen the ruling. Rumors have it that Mr. Nerry Achar appealed his case in the Court of Appeal but those are mere speculations without facts. Therefore it will be upon you Mr. Speaker to confirm to us if this is true because our Standing Orders clearly warn against discussion of matters before the court.

**The Speaker (Hon. Oraro):** I had noticed Hon. Paul Okiri, MCA Kisumu West and Chairperson of Finance Co-operatives and Marketing committee.

**Hon. Okiri:** Thank you very much Mr. Speaker, and I rise to support this motion for the following reasons.

1. As a Member of ODM, which is the largest political party in the County Assembly and the matter has been brought by the deputy leader of government business in this House; I will somehow go against my party leader in that the person I am supposed to follow has brought an issue which I object. It is true that Hon. Ogendo is the deputy majority leader, who serves and gives leakages between the Assembly and the Executive. This matter in itself comes down from the Executive to the Assembly therefore obliging the Assembly to act for the Executive to implement. How are we supposed to act? We only act...

**The Speaker (Hon. Oraro):** Yes Leader of Majority.

**The Leader of Majority (Hon. Onyango):** Mr. Speaker, the Senior Member is misleading the House because he is simply on a wild goose chase. This issue is not a government business and the Hon. Deputy majority leader is within his powers to bring up the matter which may not necessarily be a government business in this House and I want to confirm that neither the ODM party nor the government is involved in a matter that the Hon. Member raised.

**The Speaker (Hon. Oraro):** Hon. Leader of majority if I heard Hon. Okiri well, he said that it was an assumption, and I believe the Hon. Deputy majority leader is listening and taking notes. I will give Hon. Deputy majority leader time to respond whether that matter is from the Executive or the party.

**The Leader of Majority (Hon. Onyango):** With due respect to you Hon. Speaker, the matter as weighty as this one cannot be left to assumptions and we must raise statements that can be backed by facts.

**The Speaker** (Hon. Oraro): Hon. Senior Member Okiri you have been informed so you can continue.

**Hon. Okiri:** Thank you Hon. Speaker and I want to assure this House that there is no day the leader of majority will come into this House then I go against the wishes of my boss. I will never go against what the leader of Majority is leading into this House under whichever rule. However, if he now wants me to go against his wishes then I will be obliged to take a different direction.

2. The Leader of Majority mentioned the aspect of being Honourable Members, and we impeached Mr. Nerry Achar in this House not only as the CEC Finance but also from any Executive position. It is in the Hansard as this House made it clear that we will not deal with anything from the Executive if Mr. Nerry Achar is still serving the government. Today, the Leader of Majority is giving us more input on that. The Chairperson of Committee of Budget and appropriation who moved the same motion of impeachment is coming up with a budget that needs to be passed but before that the said CEC needs to be out of office. Must I engage in the passing of the budget yet the Leader of Majority has said no it being my boss?
3. The legacy we are going to leave in this House Mr. Speaker...

**The Speaker** (Hon. Oraro): Yes Hon. Seth Kanga.

**Hon. Kanga:** Mr. Speaker, the Hon. Paul Okiri is misleading the House because the Hon. Leader of Majority has reaffirmed to us in this House that the Hon. Ojwang Ogendo has brought this matter in his capacity as a Member of Nyalenda A, which is within his rights. However, Hon. Paul Okiri continuously says that this matter has been brought by the Leader of Majority. I request you Mr. Speaker to guide this House accordingly in order for us to respond soberly.

**The Speaker** (Hon. Oraro): Hon. Senior Member Paul Okiri, I had already informed you about the point of information the Leader of Majority directed to your statement. The matter has reached the House and it has been presented by Hon. Jackton Ogendo in his capacity as a Member of Kisumu County Assembly representing Nyalenda A ward. I need the attachment so that can make an informed direction. That is why by the request of the statement presenter; I agreed to get comments from the Members. I therefore want to listen to each one and request you to limit your time as there are so many people have shown interest in the matter yet the statement hour is only given an hour. Senior Member you have one minute to wind up.

**Hon. Okiri:** Mr. Speaker I will go with your ruling that you will give the Leader of Majority to respond whether it is personal or not. Nevertheless I still insist that it is an Executive matter.

**The Speaker** (Hon. Oraro): Hon. Paul Okiri I have given my direction to that so kindly wind up your submissions.

**Hon. Okiri:** Mr. Speaker it is known countrywide and especial this Assembly of Kisumu that we are toothless wherever we go, and proof to that assumption could have been debunked from what we are discussing now. Why is it that when the House approved Mr. Nerry Achar as the CEC it was accepted but his dismissal from office by the very House is becoming a contention? The last time we were vetting a CEC Member in this House, name withheld, a fellow Member said that it is a tradition. That statement has been stuck on my mind because it is seen as a tradition of doing as instructed. This is the reason why when the issue of Mr. Nerry Achar comes up, we are toothless to effect his dismissal. Otherwise thank you for the time.

**The Speaker (Hon. Oraro):** I had noticed Hon. Vitalis Otura. What is it Hon. Erick Agolla?

**Hon. Agolla:** Mr. Speaker before I contribute, which I will request for an opportunity to do the same, I want to put across the Standing Order No. 86 and 89 as the Hon. Okiri is misleading the House. From the records of the House, the Senior Member said that he does not intend to go against the party's direction. In his last however, statement he is contradicting himself by trying to disagree with a Member who said that she has to vote as directed. The Hon. Member should therefore come clearly if he is supporting the party or not.

**The Speaker (Hon. Oraro):** Hon. Senior Member, the Member who has just spoken is concerned about your use of certain words which he feels are inappropriate that the processes done are not as per the Assembly's procedures.

**Hon. Okiri:** Thank you Mr. Speaker. Mr. Speaker, I think Hon. Agolla was not keenly listening to me and by the time I started my speech, he was busy answering calls from his constituents about the long rains.

Mr. Speaker, what I said is that I support my party and will never go against it. If the Leader of Majority has presented an issue, I will help him support because he is my boss when it comes to party leadership. Do not even forget that he is also the party chairman and youth coordinator for Kisumu County. Thank you.

**The Speaker (Hon. Oraro):** I do not want to open that matter for debate in that direction. I want to get comments from which I will be able to give a direction. I had noticed Hon. Vitalis Otura. Hon. Vitalis, kindly limit your time because I can see many Members wish to contribute. Be precise

**Hon. Otura:** Thank you Mr. Speaker. Mr. Speaker, this afternoon should be one of the finest days in our history for one simple reason: our able Deputy Leader of Majority has presented a Statement on a topical concern that has also proved this Assembly to be incompetent by so passing votes of *Nays* and *Ayes* and fail to abide by them.

Mr. Speaker, I think this matter is properly brought before this House. I want to congratulate Hon. Ogendo, the Deputy Leader of Majority for having the vision and trying to implement what

is expected of this House. Mr. Speaker, it is true that one Mr. Nerry Achar is in office to date. In his Statement Mr. Speaker, he cited some Sections of the law and one which is most important is a Section which states that once impeached, a person should not sit in any other office.

Going by the resolutions read in this House by Hon. Steve Owiti, that came out clearly. I do not want to get into the nitty gritty of what other Members said. Yes, we are in government and I am a Member of Orange Democratic Movement (ODM), a ruling party in this County. however, must we say Yes to mean No and No to mean Yes? When it is a Yes, it is so and when it is a No it is a No.

Mr. Speaker, this is a weighty matter and we had just passed a budget. One Hon. Steve Owiti is challenged and if it is so then we are all challenged. We would not wish to see Hon. Owiti read a budget of a department headed by one Mr. Achar whom he himself read from the resolutions of the House that Nerry should not be in office of the County Government of Kisumu.

Mr. Speaker, people fear but I think it is not good to fear. If it is a weakness on the part of our bale Speaker Hon. Oraro then we should point it as so. And, if it is the Governor then we say so as well. If it is a matter of law then we cite the relevant sections of law, which, to me is satisfactory as read by Hon. Jacktone Ogendo, the Deputy Leader of Majority.

Mr. Speaker, we know politics play a part in most of the things we do. However, on this particular one, I think it should be a matter of law. Let us follow the rule of law as cited by Hon. Ogendo. Let us do the right thing to benefit Kisumu County. Thank you, Mr. Speaker.

**The Speaker** (Hon. Oraro): Honourable Members, it is Statement hour. I only gave limited time. So, I allow a minute each and please be very specific. I will give Honourable Leader of Majority, then Hon. Pete, then Hon. Khan, Hon. Agolla, and Hon. George in that order. A minute each then I give a direction.

**Leader of Majority** (Hon. Onyango): Mr. Speaker, first, I want to say that members of this House should always pay very keen attention to facts and details. Let us avoid being, masters of demagoguery. When we want to be demagogues, then the facts that underpin our discussions will easily elude us.

Mr. Speaker, if you listen carefully to what my good friend the Hon. Seth Kanga from Market Milimani said, I have to say that I have got tremendous respect for him because he is always very keen on facts and details. First, he did mention that this matter is sub judice and such a matter should not even be discussed in the first place because it prejudices and injurious to the person who has taken a matter to court.

We are aware Mr. Speaker, that indeed Nerry Achar was impeached by the Assembly. After he had been impeached, he went to court and the court ruled against him. Thereafter, Mr. Speaker, he appealed and a notice of appeal was served in this House. Mr. Speaker, to the extent - - -

**The Speaker** (Hon. Oraro): Honourable Leader of Majority, Hon. Agolla is on a point of order. Let us give him time.

**Hon. Agolla:** On a point of order. Mr. Speaker, with due respect to my beloved Honourable Leader of Majority and pursuant to Standing Orders No. 87 (4) and (5), Mr. Speaker, the Honourable Majority Leader should not purport and explain to this House that the matter is sub judice without proving by provisions of facts and providing Members with copies because that is what is in the Standing Orders. Thank you

**The Speaker** (Hon. Oraro): Hon. Sally put off your microphone first. Proceed Hon. Agolla

**Hon. Agolla:** Mr. Speaker, Standing Orders No. 87 (4) reads that a Member alleging that a matter be sub judicial shall provide evidence to show that paragraph two and area applicable. I want to urge the Leader of Majority to contribute without insisting that this matter is before the court.

**The Speaker** (Hon. Oraro): Yes, Honourable Majority Leader.

**Leader of Majority** (Hon. Onyango): Mr. Speaker, this matter just came up this afternoon and it was not predetermined. Therefore, I could not have come with the evidence that is necessary. However, I want to say without any fear of contradiction that the Assembly has been properly served. Mr. Speaker, if you rule that such evidence needs to be produced before this House then I will do so in my capacity as the Majority Leader. There is absolutely no contradiction there that the matter is sub judicial and therefore it ought not to be discussed. However, if there is need to provide evidence Mr. Speaker then that I can do.

Mr. Speaker, I just want to conclude by saying I may not agree with the conduct of Nerry Achar but, Mr. Speaker, even if I do not agree with him, due process must be followed. Precedences abound all over. You remember the case of the Governor of Embu that was impeached by the Embu Assembly but the courts stayed that impeachment order until it reached a point when the courts acquitted him.

During the time that the courts gave stay orders against impeachment, the Governor continue to serve. The matter was ultimately determined in a competent court and the Governor completed his term and was re-elected. Therefore, Mr. Speaker, this is not whether or not agree with it. It is about procedures and what is provided for in law, and in our Standing Orders. There is no way we can circumvent the law. If the law says it is right, it is right.

Mr. Speaker, I want to say that this matter cannot proceed beyond this level. If there is doubt whether this matter is actively before the court, then give me time; I shall provide the evidence. Thank you.

**The Speaker** (Hon. Oraro): I promised Hon. Benny Pete

**Hon. Pete:** Thank you Mr. Speaker. The Honourable Leader of Majority, you have referred to fellow Members as demagogues and it is on record. Fellow Members, Nerry Achar was impeached last year as Finance Minister.

**The Speaker** (Hon. Oraro): Hon. Oiko, you have made a statement indicting that the leader of Majority referred to Members using a name which is not parliamentary.

**Hon. Pete:** Refer to the Hansard

**The Speaker** (Hon. Oraro): Honourable Leader of Majority, before I allow Hon. Pete to proceed, what he has mentioned that came from you is unparliamentary and if it is so then you need to withdraw and apologize to Members.

**Leader of Majority** (Hon. Onyango): Mr. Speaker, probably, Hon. Oiko needs to understand that demagoguery is not derogatory in any way. Allow me to read it for him. As I read, I want you to connect it with the contributions of Hon. Paul Okiri. Demagoguery is a political activity or practice that seek support by appealing to the desires and prejudices of ordinary people rather than by using rational argument. Therefore, there is nothing derogatory there absolutely. I hope you are informed. Thank you

**The Speaker** (Hon. Oraro): Whom do you want to inform Hon. Vitalis?

**Hon. Otura:** On a point of information. Mr. Speaker, in the same Google that the Leader of Majority has cited, I think it is as clear as he reads it. Therefore, if Hon. Pete talked of the Majority Leader referring to us as demagogues, then he is not wrong. It is very clear that political statements can be made and if they make sense then we are not demagogues.

I think the interpretation is clear and he can re-read it. The word demagogue in itself may be not be derogatory but as used in his context could paint us as people who are not enlightened. Mr. Speaker, I appeal to the Leader of Majority to come clear on this.

**The Speaker** (Hon. Oraro): Honourable Leader of Majority, I gave you tike to withdraw because the statement could not have been derogatory but it is not friendly to the Members owing to the fact that you say that Members seek support by appealing to the desires rater than using rational argument.

**The Leader of Majority** (Hon. Onyango): Mr. Speaker, if you may allow me, you know in a House of debate, it is only the facts that wins the day. If you understood the contribution of Hon. Paul Okiri; he was saying, the Majority Leader has said this and therefore I must follow irrespective of whether they are facts or not. That is demagoguery Mr. Speaker because you are whipping emotions or desires.

Mr. Speaker, you and me are very good debaters and you understand Mr. Speaker that there is absolutely nothing derogatory there. That is what I was saying Mr. Speaker. Thank you.

**The Speaker** (Hon. Oraro): Hon. Oiko Pete, kindly summarize.

**Hon. Pete:** Fellow Members, Waziri Nerry Achar was impeached as Finance Minister. Consequently, the Governor transferred him to Energy docket. What was the interpretation of this? Was our impeachment to carry the day or not? Did the manager make a good move or not? We can make reference to other counties. In Nakuru County, for example, when a Minister was to be impeached, the Governor transferred him to another docket before the impeachment. The same happened to Baringo. In our case, the transfer was done after the impeachment. Was it a political game? We need to address that.

He has been in office up to now. When this matter comes up, it becomes an eye opener to us. What have we been doing all along? When we refer to Order No. 87 that does not allow matters in court to be discussed in the Assembly; from parliamentary practices, Members of parliament have been discussing matters in court.

Standing Orders No. 95 gives us the power of the High Court. Now what we need to address is this: should we accept Waziri Achar as Energy Minister or not? These are the issues we should address as Members of the Kisumu County Assembly. Is this going to derail our budget process? Or that the budget lie with the Chief Officer? If we had taken our impeachment on Nerry Achar as a mere formality, then we go ahead. That the court upheld the impeachment of Nerry Achar is something we should be proud of that we did the right thing.

If there is evidence that he appealed, let the same be tabled so that he can continue being in office. In the absence of that, let us go by the court ruling. The court upheld our verdict and he should cease to be a Minister in this County. Thank you.

**The Speaker** (Hon. Oraro): Hon. Aslam Khan. A minute please

**Hon. Khan:** Thank you. Mine will be very brief. We highly rely on the provisions of Standing Orders on Statements of facts. The facts of impeaching Nerry Achar have been provided by this House. Now, as the Leader of Majority has said, this Assembly was served and Hon. Agolla has cited tabling of evidence. The issue is whether the Leader of Majority works as the administrator of this Assembly and hence was served by the court or is it the responsibility of the Majority Leader in his capacity as such to be served on behalf of the Assembly.

What I want to raise is what the Clerk of the Assembly has done to forestall this appeal if it is so. From where I stand, I know that the issue is not prejudicial because there is no evidence to support the same. Nerry Achar went to court and his appeal was dismissed. As you may be aware Mr. Speaker, sub judice applies only when we have facts.

**The Speaker** (Hon. Oraro): Honourable Erick Agolla

**Hon. Agolla:** Mr. Speaker, I do not have much to say but only two points to put across. First, I want to say that this County has County Attorney, and the Assembly has legal advisors. Mr. Speaker, I want to say that before we talk of stopping the budget from the department headed by Nerry Achar, we must arise to the fact that the budget is not for Nerry Achar but for the County Government and her constituents. Therefore, we cannot stop the budget process because of one Nerry Achar.

Secondly, Mr. Speaker, I want to ask your Chair to furnish this House with the counts under which the said Nerry Achar was impeached. These counts and the status of whether this matter is before a court of law will advise this House to a direction whereby, we will know our position as an Assembly. Maybe the counts under which Nerry Achar was impeached is different from those we are talking about. We must be very keen and examine the counts under which Nerry Achar was impeached.

I rest my case I expect that we do further research from the County Attorney, from the legal advisors in the Assembly and from the Assembly records under which the Honourable Leader of Majority has confirmed that this Assembly was served with a court order.

**Speaker** (Hon. Oraro): Hon. George Ogutu.

**Hon. Ogutu:** Thank you Mr. Speaker for giving me this opportunity. Mine will be very brief. First, we are all aware that Mr. Achar was impeached in this House and it is in record. As usual, and we are aware that County Assemblies and Parliaments are run by traditions. The counts with which Mr. Achar was impeached are very clear. It is also clear that any state officer who is impeached must vacate office. What has been brought in this Assembly has really put this House in an awkward position because we have been reduced to an Assembly that can just pass the budget and then anything that we do tangibly cannot be implemented by the executive. Mr. Achar is not the appointing authority and that we know very well. We know that he went to court and the court made its ruling. The court sent him home. Now the Leader of Majority is telling us that he has been served with the appeal documents and he has those papers. We know that in this Assembly there are specific people to be served and if in case the Assembly was served that you Mr. Speaker should be in a position to tell, not the Leader of Majority...

**Speaker** (Hon. Oraro): Just a minute Hon. Ogutu. What is it Leader of Majority?

**Leader of Majority** (Hon. Onyango): Mr. Speaker, I arise on Standing Order No.89. I don't know if the Hon. Member is listening to himself. I did not at any given time say that I was served. I said that I am aware the Assembly was served. You don't expect me as the Leader of Majority to be so naïve that I don't know what is going in the government. I am aware. That is why I said very categorically that the Assembly was served. And there is no contradiction on

that. I did not say I was served. So Mr. Speaker, I want to indulge the Hon. Member to withdraw that bit. Thank you.

**Speaker** (Hon. Oraro): Hon. Ogutu, withdraw and proceed.

**Hon. Ogutu:** Mr. Speaker, I think the record is very clear. The Leader of Majority said he has the evidence that Mr. Achar appealed. If that is what he wants, I can withdraw but the point is home. As I conclude, I have heard Hon. Seth Kanga say that I am in the opposition. I am not in the Opposition. If I were then I would have been the one who would have brought this motion to the Assembly. This motion was brought by ODM and I am not a member of ODM. This issue was brought as a matter of county importance. If it is true that Mr. Achar appealed, let those papers be brought into this Assembly. Thank you.

**Speaker** (Hon. Oraro): Hon. Gard Olima that is the last member that I allowed to talk because the Statement hour is almost over. So if you can do it in 30 seconds.

**Hon. Olima:** Thank you Mr. Speaker. The Statement brought by Hon. Ogendo is a worthy course to this House. You have seen the way even Members of this House have been attending the sessions. At some point we were left to believe that we are now making stories in this House. Everything discussed and passed is not implemented by the executive. If we are to redeem the image of this House, then we have to stick to what we have passed as a resolution in this House. We did impeach Mr. Achar through the legal procedures. For somebody to bring matters of the party here is very unfortunate. We must stand our ground. The party has not told us to lie low as things are done the wrong way. Today we have 5 CECs who have been chased away by the Governor. None of us has raised questions why that happened. Some of them do not have as heavy allegations as those leveled against Mr. Achar. He is the only CEC that has been impeached.

**Speaker** (Hon. Oraro): Mr. Olima your point has been taken. Wait for the microphone Hon. Seth Kanga.

**Hon. Kanga:** Mr. Speaker, the Hon. Gard Olima is not properly dressed.

**Speaker** (Hon. Oraro): Hon. Gard Olima, Sergeant at Arms will help you to dress properly then you come back. Hon. Philemon Ojuok, I said I was picking the last Member because we are out of the Statement hour and I want to give a direction. I give you strictly 30 seconds.

**Hon. Ojuok:** Thank you Hon. Speaker for giving me this opportunity. Indeed a lot of pressure is on Members of the County Assembly. Our people rely on the people they elected – the MCAs and the Governor. That is why the people are right to demand answers from us. It is important that if there is any resolution made in this House, we must see to it that the resolutions are implemented. It reminds me that during that time we resolved on the issue of centralization. Up

to now it has not been implemented. As you make your decision, it is important that you ensure the House exercises the powers the Constitution bestows on it. Thank you.

**Speaker** (Hon. Oraro): Thank you Members. As I said earlier, this is a matter of topical concern. That is why I decided to get your views on it. I have listened carefully, but before I give direction, I want to give Hon. Jacktone Ogendo time. A number of issues have been raised, as to whether you are bringing this matter in your personal capacity or as a government. Another thing coming up is that the matter is *sub judice*, under Standing Order No. 87. Did you do your research to find out if the matter is in court or not? I give you exactly two minutes.

**Hon. Ogendo:** Thank you Mr. Speaker. I want to state clearly and I want to go on record that I Hon. Jacktone Ogendo, holding the position of deputy Leader of Majority, I am not against the government, neither against my political party ODM. I brought the matter in my personal capacity as a representative of Nyalenda A ward. I love this government. That is why I am helping the Governor Prof Peter Anyang' Nyong'o to run his government smoothly without thieves. On what the Leader of Majority is alluding to that this matter is in court. When I was making this Statement I asked you to form a team to investigate. I am assuring you that once the investigation is done, you will confirm that this matter had already dispensed with by the court; yet one thief by the name Nerry Achar is still holding a public office in Kisumu County as a CEC which should not be. Thank you Mr. Speaker.

**Speaker** (Hon. Oraro): Hon. Seth Kanga I want to give direction. Whom do you want to inform?

**Hon. Kanga:** Mr. Speaker, going by the submissions of Hon. Ogendo who is the deputy Leader of Majority, he is telling that that the governor is not conscious enough and is not sensitive to the decisions or rulings of this House because the Governor has allowed Hon. Achar to continuously serve in his government and sit in his cabinet where policies are made. Rather than facing Mr. Achar, this House should face the Governor. Instead of going round, this motion is targeting the governor because he has allowed Mr. Achar to serve in his government while the matter was concluded in court.

**Speaker** (Hon. Oraro): I want to give direction. I want to make reference to the County Government Act 2012 Section 40 (6) (a) and (b) which relates to the process of impeachment and I read: *“If a decision under Section 5 (b) that is impeachment of an executive is supported by majority of members of the County Assembly then the Speaker of the County Assembly shall promptly deliver the decision to the Governor and the Governor shall dismiss the executive committee member”*.

That communication was made and I can confirm that there was communication again from the executive on Mr. Achar having gone to court where our lawyers as an Assembly were involved and the court ruled against him. We are yet to get any communication from the executive on the status of his appeal as at today. I want to draw ourselves to Standing Order No. 87 on matters sub

judice or secret, that was also mentioned by Hon. Kanga. Paragraph 5. *“No Member shall refer to a matter that is sub judice or which by operation of any law is secret”*.

I believe that matter is not secret and I will out of order the usage of that Standing Order. Part 2 says ; *“A matter shall be considered to be sub judice when it refers to active criminal or civil proceedings and the discussion of such matter that is likely to prejudice its fair determination”*. I want to accept the usage of that Standing Order as presented by Hon. Seth Kanga.

Part 3: *“In determining whether a criminal or civil proceeding is active, the following shall apply; (a) Criminal proceedings shall be deemed to active when a charge has been made or a summon to appear has been issued; (b) Criminal proceedings shall be deemed to be inactive when they are concluded by a verdict, a sentence or discontinued; (c) Civil proceedings shall be deemed to active when arrangements for hearing such as setting down a case for trial has been made until the proceedings are ended are ended by judgment or discontinued; (d) Appellate proceedings whether criminal or civil shall be deemed to be active from the time when they are commenced by application by the leave to appeal or by a notice of appeal until the proceedings are ended by judgment or discontinued.”*

A Member alleging that a matter is sub judice shall provide evidence to show that paragraphs 2 and 3 are applicable. Going by that, the Hon. Leader of Majority and the Hon. Seth Kanga have used those particular Standing Orders and they are within their rights as per the guidance of the Standing Orders to state that the matter is before a court of law. What remains is the provision of evidence.

As it is our duty to ensure the resolutions are implemented as per provisions of Standing Order No. 82 and the Standing Committee of Implementation. For us to move ahead with the Statement of Hon. Jacktone Ogendo, it is only in order that we find the true position of the matter as regards the appeal of Mr. Achar in consideration to Standing Order No. 87 (4) which requires that such evidence be provided. In that regard, I want to appeal to Members that that issue cannot stop the proceedings of the Budget, but I want to direct that the following people be part of an ad hoc committee that will look into the matter and report by 2<sup>nd</sup> July, 2020:

1. Hon. Kanga
2. Hon. Ogendo
3. Hon. Pete
4. Hon. Steve Owiti
5. Hon. Gard Olima
6. Hon. Beatrice Pamela
7. Hon. Maurine Otiang'
8. Hon. Roy Samo
9. Hon. Jennifer Obonyo
10. Seth Okumu

11. Johnson Guya

That is 11 Member committee; look into the matter and advise us as appropriate on 2<sup>nd</sup> of July 2020. The statement hour is over so if there is anybody with another statement kindly submit it in the next session by the indulgence of the House.

**The Speaker** (Hon. Oraro): Next Order!

MOTION

COMMITTEE FOR IMPLEMENTATION REPORT ON THE PROJECTS  
IMPLEMENTATION STATUS AT THE DEPARTMENT OF LANDS, HOUSING,  
PHYSICAL PLANNING AND DEVELOPMENT FOR FY 2019/2020

BY HON. ERICK AGOLLA

**The Speaker** (Hon. Oraro): Yes Hon. Agolla.

**Hon. Agolla:** Thank you Mr. Speaker. I beg to move a motion.

**REPORT COMMITTEE FOR IMPLEMENTATION REPORT ON  
THE PROJECTS IMPLEMENTATION STATUS AT THE  
DEPARTMENT OF LANDS, HOUSING, PHYSICAL PLANNING  
AND DEVELOPMENT FOR FY 2019/2020**

I therefore wish to ask Hon. Otura to second.

**The Speaker** (Hon. Oraro): Yes Hon. Otura.

**Hon. Otura:** I second.

**The Speaker** (Hon. Oraro): Now that the report on the status of projects at the department of Lands, Housing, Physical Planning and Development for FY 2019/2020 has been presented to be proposed by Hon. Agolla and seconded by Hon. Otura; I want to propose a question that the report is open for debate. Hon. Otura.

**Hon. Otura:** Thank you Mr. Speaker. I want to take the opportunity to thank Hon. Agolla. Mr. Speaker this is something which has been lacking in this House and moreso in the said committee of Implementation. I would also like to congratulate Hon. Agolla and his team for coming up with this report because of the implementation status which actually in my ward where the land in which Ramula Health centre is situated was paid to a tune of Kshs. 450,000.00 and it is complete. However on behalf of my colleague Hon. Ogendo, there is a concern on reporting specifically on matters of the ward.

Mr. Speaker if you check page 7 there is buying of land for construction of community hall at Dago. It is a great concern to the area representative that this is not yet done though it is reported as complete and that now warrants further findings from the committee to ascertain the truth because Hon. Ogendo represents Nyalenda A ward and he is alluding to the fact that this is not done. On the same page; there is purchase of land for markets at Kowino market which is written as being in Manyatta B ward. That is also erroneously reported since it is in Nyalenda A and not Manyatta B. The market is in existence and no land was bought to that effect.

Finally, page 8 on the purchase of land for the construction of KISIP road in Nyalenda A at a cost of Kshs. 14,500,890.00; this is also reported as complete but there are more answers required because that amount is too high. According to the area representative, the land was purchased but at a lesser cost. Otherwise I and Hon. Ogendo are in support of this report with reservations on the few concerns. Thank you.

**The Speaker** (Hon. Oraro): Yes Hon. Philemon Ojuok.

Hon. Philemon Ojuok: Thank you Hon. Speaker. I wish to thank the Implementation and General Oversight committee for the work done and the report submitted to the Assembly. I would like to appeal and say that there is no development that can happen without land and there is need as we embark on this particular budget of FY 2020/2021 that more allocations are given to the department to be able to secure land. Even as we were going around, we got to realize that there are a number of markets and a number of Government institutions that we thought the County Government had already acquired them. You will get to realize that a number of them have not been acquired. They should be able to map up these things and be able to give a report in terms of number of those plots that are yet to be acquired by the Government.

It is also important that we ensure giving titles and marking our roads in the entire County because you get to realize even as you try to develop roads there are disagreements all over since there are misunderstandings that people don't know which part is a road and which part forms their plots. There is need for the department of Lands to be given more money to be able to ensure that Government land remains as it is as well as private land. Every party should also be aware on the same. As I tried to embark on some development projects, you get to realize that when you do around 4 projects then you will come to one that you cannot continue with because of land dispute. Thank you.

**The Speaker** (Hon. Oraro): Yes Hon. Pete.

**The Leader of Minority** (Hon. Pete): Thank you Mr. Speaker. Pursuant to the provisions of Standing Orders No. 50 (b) I would like to ask the indulgence of the House that we adjourn the motion because of the mood and because the Members need to go and prepare for the sectoral committees that are set to begin tomorrow with the Executive since we are now on the budget cycle and we want to ensure that we finish our budget in a record time so that before the end of

this month, the budget is appropriated. I would also like to ask that we adjourn the Assembly up to Tuesday 23<sup>rd</sup> June 2020 to enable Members to interrogate the budget at the committee level because generally the plenary works through the committees. When the committees Members are not given enough time to prepare for the issue to be brought to the plenary, we may find ourselves not adequately prepared. I ask Hon. Pamela Odhiambo to second.

**Hon. Pamela Odhiambo:** Thank you Mr. Speaker I second that we adjourn until Tuesday 23<sup>rd</sup> June 2020 for budget interrogation on the departments. Thank you.

**The Speaker** (Hon. Oraro): Hon. Members pursuant to the provisions of Standing Orders No. 50 (b) the Leader of Minority has moved a motion when the debate on the report on the status of projects at the department of Lands, Housing, Physical Planning and Development for FY 2019/2020 is ongoing and citing that the motion for the debate and the House is adjourned until 23<sup>rd</sup> June 2020, ably seconded by Hon. Pamela Odhiambo and I want to propose a question that the motion is open for debate. Yes Hon. Otura.

**Hon. Otura:** Thank you Mr. Speaker. I earlier thought that Hon. Pete was interrupting the debate that was ongoing. I concur with him that we both adjourn the motion and the House to pave way for speedy process of our budget to enable us deliver to the House in a record time. Mr. Speaker I think this is also of concern because from tomorrow we are going to have serious engagements which of course I as the Chairperson of Agriculture, Livestock and Fisheries will have the first engagement. I will surely get enough time to prepare so that we engage the lined department tomorrow. I support that we adjourn.

**The Speaker** (Hon. Oraro): Yes Hon. Agolla.

**Hon. Agolla:** Mr. Speaker allow me to call the mover to reply.

**The Speaker** (Hon. Oraro): Hon. Pete.

**The Leader of Minority** (Hon. Pete): Since it seems like the whole House is in agreement that we adjourn the House, there is no need to elaborate. I would like to appreciate their decision that we adjourn and go prepare to interrogate the budget for the Executive. Thank you.

**The Speaker** (Hon. Oraro): Hon. Members as you are aware our Standing Orders allows for moving a motion on adjournment during debate and even temporary adjournment that come and want to rely on the same Standing Orders and appeal to Members that tomorrow as the interrogation of the sectoral budgets starts, kindly be punctual. Kindly appeal to the Members who are not here physically and were not able to be with us online that the sectoral committees starts tomorrow. I believe that the schedule shall be shared online. Take your time to read the budget to understand and interrogate it as much as possible. You are aware that the County is going through a lot one is the Covid-19 pandemic which will directly or indirectly affect the source of revenue. You are aware that there have been heavy rains that have affected the

implementation of the projects in the FY 2019/2020 budget and therefore need to consider them in the next budget. You are also aware of the concerns from the different electorates in terms of prioritizing the projects that you want to be implemented. Similarly, take your time and look at the KARA 2020 and what has been provided in the budget. The controller of budget recommendations in terms of ceilings in line with personnel emoluments, O&M, recurrent or development; in general, let us look at the budget so that at the end of the week we have a people budget that can be implemented and that we do so within time.

Pursuant to the provisions of our Standing Orders, when a motion for adjournment has been moved then question is never put.

#### ADJOURNMENT

**The Speaker** (Hon. Oraro): Therefore the House stands adjourned to Tuesday 23<sup>rd</sup> June 2020 at 2.30 p.m.

*House rose at 4.45 p.m.*