



THE COUNTYASSEMBLY OF NYERI

FIRST ASSEMBLY – FOURTH SESSION

**THE LEGAL AFFAIRS, URBAN AREAS AND SECURITY COMMITTEE
REPORT ON THE STATEMENT BY HON. KIBIRA NGUNYI DATED 5TH MAY,
2016 ON THE SUITABILITY OR OTHERWISE OF THE ACTING COUNTY
SECRETARY**

JUNE, 2016

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1.0 Preface

Mr. Speaker Sir, the County Assembly of Nyeri, Legal Affairs, Urban Areas and Security Committee is constituted pursuant to Standing Order no. 190.

On Thursday 5th May, 2016, during the afternoon sitting of the Assembly, Hon. Kibira Ngunyi (MCA, Kirimukuyu Ward), pursuant to Standing Order number 41(2)(c) of the County Assembly of Nyeri Standing Orders, requested for a statement from the Chairperson of the Committee on Legal Affairs, Urban Areas and Security on the suitability or otherwise of the current Acting County Secretary of the County Government of Nyeri. The Honourable Member sought a response on the following:-

- (i) Noting the provisions of Section 44(2) and 64 of the County Governments Act 2012, is the acting County Secretary qualified to hold that position?
- (ii) Noting that the Office of the County Secretary is a very crucial office in the County Government and therefore requires an officer who can take full control of his/her responsibilities rather than someone in acting capacity, when will a County Secretary be appointed?

On the same day, the Hon. Speaker committed the statement to the Legal Affairs, Urban Areas and Security Committee to consider the issues raised therein and report to the Assembly within ten days. On the evening of the same day, the Committee convened a meeting at the County Assembly lobby room where they discussed the way forward and how they would handle the issue before them. In accordance with Article 47 of the Constitution of Kenya, 2010 and taking into consideration the principles of natural justice, the Committee resolved to invite the Acting County Secretary on Thursday 12th May, 2016 to shed light on the issues under consideration by the Committee and to provide any documents she may be in possession with to prove her suitability as a

County Secretary. On Friday 6th May, 2016, the Committee sent the Acting County Secretary an invitation letter informing her of the impending decision, giving her notice of the matters that the Committee will be taking into account when considering the issues raised in the statement and also inviting her to the committee meeting to be heard.

Pursuant to Standing Order no. 170 of the County Assembly of Nyeri Standing orders, which gives the Committees power to summon witnesses, receive evidence and to request for and receive papers and documents from the Government and the public, the Committee resolved to invite the Chairperson and Secretary to the Nyeri County Public Service Board on Thursday 12th May, 2016 to offer an advisory opinion on the matter. Further, the Committee also sought an advisory opinion from the Nyeri County Attorney. The said invitation letters were also sent on Friday 6th May, 2016.

On Wednesday, the 11th day of May, 2016, the Committee held a preparatory meeting where they looked at the various provisions of the Constitution of Kenya 2010, County Governments Act 2012, the Public Service Commission Regulations and the Fair Administrative Act, 2015. Further, the Committee prepared a questionnaire which would guide the Committee during an enquiry with the invitees on 12th May 2016.

1.1 Mandate of the Committee.

Mr. Speaker Sir, the Committee is mandated to investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned departments; investigate and inquire into all matters relating to the assigned departments as they may deem necessary, and as may be referred to them by the County Assembly and make reports and recommendations to the County Assembly as often as possible, including recommendation of proposed legislation amongst others.

1.2 Committee Membership

Mr. Speaker Sir, the following are the Committee Members;

| | |
|------------------------------|------------------|
| 1. Hon. Jesse Mwangi Kamuri | Chairperson |
| 2. Hon. Zipporah W. Njithi | Vice Chairperson |
| 3. Hon. Paul Wachira Waruru | Member |
| 4. Hon. Hudson Gicheru Chege | Member |
| 5. Hon. Joel Gichuru Maina | Member |
| 6. Hon. Nancy W. Gachichio | Member |
| 7. Hon. Antony M. Kanyiri | Member |

1.3 Acknowledgement

Mr. Speaker Sir, the Committee wishes to acknowledge the following:-

- The Hon. Speaker and the Clerk of the County Assembly for facilitating the Committee.
- The Members of the Committee and the Secretariat for working tirelessly towards development of the report.
- The Nyeri County Public Service Board for honouring the invitation to appear before the Committee.
- It is therefore my pleasant duty and privilege, on behalf of the Legal Affairs, Urban Areas and Security Committee to table this report in response to the statement by Hon. Kibira Ngunyi dated 5th May, 2016.

Signature:

Date.....

Hon. Jesse Mwangi Kamuri,

Chairperson, Legal Affairs, Urban Areas and Security Committee

2.0 Introduction

On Thursday 5th May, 2016, during the afternoon sitting of the Assembly, Hon. Kibira Ngunyi (MCA, Kirimukuyu Ward), pursuant to Standing Order number 41(2) (c) of the County Assembly of Nyeri Standing Orders, requested for a statement from the Chairperson of the Committee on Legal Affairs, Urban Areas and Security on the suitability or otherwise of the current Acting County Secretary of the County Government of Nyeri.

The Member was concerned how the position of the County Secretary had been filled by an officer in acting capacity for several months and no steps had been taken by the appointing authority to appoint a county secretary. He cited section 64 which provides that for one to hold such office in acting capacity one must possess the prescribed qualifications.

The Member also noted that the office of County Secretary is a very crucial office and hence should be occupied by a qualified and competent person. The Member further stated the various responsibilities of the office which include; Head of Public Service, technical advisor to the County Executive Committee and coordinator of County Government activities. He concluded that in his opinion the office must be occupied by a person who is not only qualified but in full control. He sought a response on two issues; first, whether the Acting County Secretary is qualified to hold that position? Secondly, when a County Secretary would be appointed?

Consequently, the Hon. Speaker committed the statement to the Legal Affairs, Urban Areas and Security Committee to consider the issues raised therein and report within ten days. On the evening of the same day, the Committee convened a meeting at the County Assembly lobby room where they discussed the way forward and how they would handle the issue before them. The minutes of the proceedings are as here below.

In accordance with Article 47 of the Constitution of Kenya, 2010 and taking into consideration the principles of natural justice, the Committee resolved to invite the Acting County Secretary on Thursday 12th May, 2016 to shed light on the issues under consideration by the Committee and to provide any documents she may be in possession with to prove her suitability as a County Secretary. On Friday 6th May, 2016, the Committee sent the Acting County Secretary an invitation letter informing her of the impending decision, giving her notice of the matters that the Committee will be taking into account when considering the issues raised in the statement and also inviting her to the committee meeting to be heard.

Pursuant to Standing Order no. 170 of the County Assembly of Nyeri Standing orders, which gives the Committees power to summon witnesses, receive evidence and to request for and receive papers and documents from the Government and the public, the Committee resolved to invite the Chairperson and Secretary to the Nyeri County Public Service Board on Thursday 12th May, 2016 to offer an advisory opinion on the matter. Further, the Committee also sought an advisory opinion from the Nyeri County Attorney. The said invitation letters were also sent on Friday 6th May, 2016.

On Wednesday, the 11th day of May, 2016, the Committee held a preparatory meeting where they looked at the various provisions of the Constitution of Kenya 2010, County Governments Act 2012, the Public Service Commission Regulations and the Fair Administrative Act, 2015.

The Committee referred to Section 44. (1) and (2) of the County Governments Act, 2012 which states as follows;

(1) *“there is established for each county the office of the county secretary who shall be secretary to the county executive committee.*

(2) The county secretary—

(a) shall be competitively sourced from amongst persons who are university graduates with at least ten years experience in administration and management;

(b) shall be nominated from persons competitively sourced under paragraph (a) by the governor and, with the approval of the county assembly, appointed by the governor;”

(ii) Section 64.(1) (2),(5)which provides

(1)A person shall not be appointed to hold a public office in an acting capacity unless the person satisfies all the prescribed qualifications for holding that public office

(2)Acting appointments shall be made only by the lawful appointing authority and for a specified period.

(5) If it comes to the attention of the County Public Service Board that a public officer has purportedly made an acting appointment, delegation or deployment as the case may be, contrary to the provisions of this section, the County Public Service Board shall take the necessary corrective action.

(iii) Section 59 on functions and powers of County Public Service Board.

Further, the Committee prepared a questionnaire which would guide the Committee during an enquiry with the invitees on 12th May 2016.

2.1 Correspondences from the invitees

2.1.1 Correspondence from the Acting County Secretary

On Wednesday 11th May 2016, the Committee received a response to their letter dated 6th May, 2016 from the Acting County Secretary ref: CGN/CS/CAN/II/40. In the letter, the Acting County Secretary responded as follows:-

- That she had previously submitted to the Assembly documents pertaining her qualifications in the year 2014 during her vetting exercise as Chief Officer Public Administration, Information and Communication and therefore did not see the need to resubmit the documents as requested.
- That she is currently pursuing a Masters Degree in Public Policy and Administration at Kenyatta University.
- *In respect to experience in administration and management, that she has held administrative and leadership position since primary school as a prefect, high school as a school captain and upon her completion of her high school education, managed Magutu Pharmacy in Karatina.*
- That in respect to the County Government, she has held positions of responsibility as follows:-
 - Chairperson tender committee
 - Chairperson Alcohol Enforcement Committee
 - Chairperson Alcohol Licensing
 - Sub- County Administrator
 - Chief Officer- Public Administration, Information and Communication
 - Acting County Secretary
- That she is currently a Board of Management Member at Warazo Jet Secondary School and Munyu Secondary School at Kabaru Ward.
- That she is fully qualified, suitable and competent to hold the Office of the County Secretary.

- That anyone who thinks otherwise to provide reasons in writing to her.
- That the request for statement by the Honourable Members seems to imply unclear motive.
- That she will not be available to appear before the Committee on 12th May, 2016 at 10:00a.m due to prior unavoidable Government commitment.

On perusing the letter from the Acting County Secretary, the Committee wrote a letter to the Clerk of the Assembly requesting to be provided with the curriculum vitae and any other testimonials of the Acting County Secretary submitted to his office during the undertaking of her vetting exercise in the post of Chief Officer, Public Administration, Information and Communication.

The Clerk of the County Assembly on the same day provided the Committee with the requested documents that were in his possession.

The documents entailed the following:-

- (i) The Curriculum Vitae of Alice (Aisha) Njamiu Wachira
- (ii) A questionnaire pursuant to the Nyeri County Public Appointments Approval Act, 2014 duly filled.

The Committee did not obtain any copies of her testimonials so as to ascertain her academic qualifications.

2.1.2 Correspondence from the County Public Service Board

On Thursday 12th May, 2016, the Committee received a response from the Nyeri County Public Service Board ref: NCG/NCPSB/1(a)631 dated 11th May, 2016. In their letter, they stated as follows:-

- That the matters raised in the statement and the letter forwarded to them in respect to this issue falls outside the provisions of Section 59 of the County Governments Act, 2012.

On Thursday 12th May, 2016, the Committee also received a response from the Nyeri County Attorney ref: CGN/CS/Legal/16/34C where it stated that she did not have the *Locus Standi* to issue an advisory on the matter.

2.2 Meetings of 12th May, 2016

The Committee had scheduled for two meetings on this day. One with the Acting County Secretary at 10:00a.m and the other with the Members of the County Public Service Board at 11:30 a.m. Both meetings took place as follows:-

2.2.1 Meeting held at 10:00 am

The Chairperson started the meeting by welcoming the members of the press from Nation Media and Standard Group. He then proceeded to brief the Members of the press that the Acting County Secretary had responded to their letter of invitation citing that she would not be available to attend the meeting due to prior commitments.

From the letter, the Committee noted that the Acting County Secretary had no intentions of appearing before the Committee on the matter. It was also noted that ample notice had been issued to the Acting County Secretary and that she had waived her right to be heard. From the foregoing, and considering that the Committee had been given 10 days to consider the matter and report to the Assembly, the Committee resolved to proceed to make a consideration before them. They started by scrutinizing the documents forwarded to them by the Clerk.

The Committee perused the Curriculum Vitae of M/s Alice Njamiu Wachira and noted the following;

| No | Institution | Position | period | Duration | Administrative/ management |
|-----------|---------------------------|---|----------------------------------|---------------------|---------------------------------------|
| 1 | Oxfam GB | Intern | April – Sept, 2001 | 6 months | n/a |
| 2 | Moramati Foundation | Volunteer | Jan,2003 – Dec, 2006 | 4 years | n/a |
| 3 | Scholarmatch Network | Project Manager | June 2003 – Dec 2006 | 3 ½ years | No proof provided |
| 4 | Kenya Private Alliance | Programme Manager | Jan 2007 – Nov 2008 | 1 year 11 months | No proof provided |
| 5 | National Government | District Officer/ Assistant County Commissioner | March 2010 – march 2014 | 4 years | administrative |
| 6 | County Government | Sub County Administrator/ Acting Chief Officer | March 2014 – Nov 2014 | 9 months | administrative |
| 7 | County Government | Chief Officer | Nov, 2014 – Nov, 2015 | 1 year | administrative |
| 8 | County Government | Acting County Secretary | Nov, 2015 – to date | 6 months | administrative |

The Committee observed that during the period between June, 2003 and December, 2006 the Acting County Secretary held two positions concurrently that is; Project Manager Scholarmatch Network and Volunteer, Moramati Foundation. Since she failed to attend the meeting on 12th May, 2016, the Committee could not ascertain how she managed the 2 positions concurrently.

The Committee further noted that the Acting County Secretary did not submit any documents to prove that she has indeed possessed the required years of experience as stipulated under Section 44 of the County Governments Act, 2012. In particular the Committee was concerned that they could not trace the whereabouts of Scholarmatch Network where the Acting County Secretary claims to have held a management position.

At this point, the Committee adjourned to 11:30 a.m.

2.2.2 Meeting held at 11:30 am

The Vice Chairperson and the Secretary to the County Public Service Board attended the meeting. The Vice Chair person indicated that the Chairperson could not make it to the meeting since she was on leave. He therefore indicated that he was representing the board as the Acting Chairperson.

The Chairperson introduced the Members of the Committee and welcomed the representatives of the CPSB to introduce themselves. The Chairperson referred to their letter of 11th May, 2016 where they cited that the issue under deliberation was not within their jurisdiction under Section 59. They added that only the Governor had the powers to appoint or dismiss the County Secretary. The Vice Chairperson stated that the public officers that fall under their purview are the Chief Officers and below.

The Committee brought to the attention of the CPSB Members the provisions of Article 260 of the Constitution of Kenya, 2010, where it expressly provides for state offices under the County Government which includes; Member of a

County Assembly, Governor or Deputy Governor of a County or other member of the Executive Committee of a County Government. Public service is defined as *“the collectivity of all individuals other than state officers performing a function within a state organ.”* It was the Committee’s opinion that the Office of the County Secretary is not a state office but a public office. **Section 59(4)(b) and (g)** of the County Governments Act 2012 and **Article 232(1)(g)** of the Constitution of Kenya, 2010. **Section 59(4)(b)** states that *“in the performance of its functions under subsection 1(e), the County Public Service Board shall have powers to recommend to the County Government effective measures to promote the values and principles”*

(g) “recommend to the relevant lawful authority any necessary action in view of the violation of the values and principles by any person or public body”

Article 232(1) (g) states that *“the values and principles of public service include (g) subject to paragraphs (h) and (i), fair competition and merit as the basis of appointments and promotions.”*

The Committee explained to the Members of the CPSB that the function of the Governor to appoint and dismiss a County Secretary is not disputable, but by virtue of the provisions of Section 59(4) (g), they have the powers to give recommendations to the lawful authority any necessary action to be taken or corrected.

Further, the Committee cited Article 176 of the Constitution of Kenya 2010 which provides that the County Government consists of a County Assembly and a County Executive. Therefore in respect to Section 59(4) (b), the powers to issue recommendations is not limited to appointments under their purview but includes all appointments made by the County Government.

Therefore, it was the Committee’s opinion that the advisory role given to the CPSB by the law does not limit them to Chief Officers and other public officers below this cadre. The Committee added that the intention of the

aforementioned provisions was to ensure there are checks and balances exist whenever any lawful authority contravenes the said provisions.

The Committee further reminded the CPSB they are an independent body, being a body corporate established by the Section 57 of the County Governments Act and therefore should discharge their functions without any external interference.

In respect to Section 64(5) of the County Governments Act which states that “if it comes to the attention of the County Public Service Board that a public officer has purportedly made an acting appointment, delegation or deployment as the case may be, contrary to the provisions of this section, the County Public Service Board shall take the necessary corrective action.”, the County Public Service Board insisted that the only officers that fall under their purview are Chief Officers and officers below that cadre. Therefore they stated that they are not in a position to advice the appointing authority on any matter regarding a County Secretary.

However, they concurred that in respect to the Values and Principles of Public Service, being a cross cutting issue, that they had a mandate to give recommendations to any person.

3.0 Observations

- 1) The Committee on reviewing the provisions of Section 44(2)(a) of the County Governments Act 2012 which provides that a County Secretary “shall be competitively sourced from amongst persons who are university graduates with at least ten years’ experience in administration and management” observed that the experience in administration and management referred to above, only applies to the experience obtained after attainment of a University degree. *In this regard, the Committee noted that administrative and leadership position that the Acting County Secretary held since primary school as a prefect, high school as a captain*

and management of Magutu Pharmacy in Karatina does not meet the threshold of the experience referred to in Section 44(2) (a) of the Act.

- 2) The Committee noted that **Section 64(2)** provides that “*acting appointments shall be made only by the lawful appointing authority and for a specified period.*”The Committee observed that it was uncertain whether the acting appointment in question was for a specified period as provided for under section 64(2) since no information was provided by the Acting County Secretary to confirm the same. In the Committee’s opinion, the lack of a specific timeframe for the acting period could be seen as attempts to circumvent the provisions of Section 44(2)(b) of the County Governments Act 2012 which requires a person appointed as a County Secretary to be vetted by the County Assembly.
- 3) The Committee observed that the Acting County Secretary was not competitively sourced as provided for under section 44(2)(b) of the County Governments Act, 2012.
- 4) The Committee observed that the County Public Service Board did not take any corrective action as required by section 64 (5) read together with section 59. The Board should be impartial and deliver its mandate independently without interference by any external forces.

Further, the Committee observed that the County Public Service Board was not properly constituted in accordance with Section 58 of the County Governments Act, 2012. The Board currently has no Chairperson. The Committee noted that the office of the Chairperson is expressly established by Section 58(1)(a) of the County Governments Act, 2012, who should be nominated by the Governor and approved by the County Assembly.

- 5) The Committee, in accordance with the principles of natural justice invited the Acting County Secretary to a committee meeting on 12th May, 2016 so that she can have a fair opportunity to be heard and also to submit the relevant documents to prove her suitability to the position. Therefore, the Committee observed that the failure to appear before the Committee resulted to the Acting County Secretary waiving her right to be heard.
- 6) The Committee further observed that the letter dated 11th May, 2016 by the Acting County Secretary was not in good faith and lacked professionalism. Of concern to the Committee was the failure of the Acting County Secretary to provide the documents the Committee had requested for, citing that she had earlier during her vetting exercise as a Chief Officer sometime in 2014, provided the said documents. The reason why the Committee requested for the said documents was because during her vetting exercise, she only submitted her curriculum vitae and a questionnaire filled pursuant to the Nyeri County Public Appointments Approval Act, 2014. No copies of testimonials were provided and therefore the Committee could not ascertain her academic qualifications and experience in administration and management. The Committee needed to ascertain that indeed the Acting County Secretary worked in the institutions she had stated and therefore needed any supporting documents to prove the same or contacts of referees in these institutions.
- 7) The Committee addressed itself to the institutions that the Acting County Secretary claimed to have worked for with special attention to Scholarmatch Network. The Committee ascertained that Scholarmatch Network is a brief case company, registration number 87623 with two Directors Moshe Mutua Kihu and Angela Wanjiru Mutua. The Acting County Secretary claims to have worked in this institution between June, 2003 to December, 2006. The Committee observed that the Company

was registered in the year 2009. Therefore the Committee did not consider the experience the County Secretary claimed to have attained in Scholarmatch Network.

- 8) The Committee did not concur with the response of the County Attorney that she had no *locus standi* in regard to the matter in question. One of the functions of a County Attorney is to advise the County Government on all matters relating to the Constitution, National Legislations, County Legislations, international law, human rights, consumer protection and legal aid.
- 9) The Committee established that the Acting County Secretary had 6 years 3 months experience in administration and management. The Committee therefore unanimously found that the acting County Secretary did not meet the threshold provided by the law to qualify as a County Secretary and is hence unsuitable to hold the office of County Secretary.

4.0 Recommendations

From the foregoing, the Committee made the following recommendations:-

1. That having found the Acting County Secretary unsuitable to hold the said position, that Alice Njamiu Wachira should vacate the office forthwith and competitive sourcing be commenced by the lawful appointing authority immediately.
2. That pending the competitive sourcing of a qualified County Secretary, a qualified and competent person be appointed to act in the office of County Secretary for a period not exceeding three months.
3. That a qualified person be lawfully and urgently appointed by the lawful authority to the position of County Secretary within three months.

4. That all acting appointments must comply with Section 64(2) of the County Governments Act, 2012 i.e an acting appointment must be made only by a lawful authority and must be for a specified period.
5. In respect to the response of M/s Alice Njamiu Wachira in letter [Ref: CGN/CS/CAN/II/40] and her failure to honour the Assembly's invitation; further noting that one of the principles of Public Service is high standards of professional ethics, that M/s Alice Njamiu Wachira be cited for mockery and disrespect to the Assembly.
6. That the County Public Service Board should appraise itself with the law and embrace their advisory role provided under Section 59 of the County Governments Act, 2012 and discharge their mandate independently, effectively and efficiently.
7. That the County Assembly Public Administration and Communication Committee do investigate the matter concerning the constitution of the County Public Service board.
8. That the current County Attorney be appraised afresh for suitability for holding the office of County Attorney.
9. That the County Assembly Public Accounts Committee do investigate whether there has been any illegal sums of money paid to M/s Alice Wachira as acting allowances and ensure the necessary corrective action is taken.

5.0 Conclusion

That the County Assembly do now adopt the report together with the recommendations therein

Sign **Date**.....

Hon. Jesse Mwangi Kamuri, **Chairperson, Legal Affairs, Urban Areas and Security Committee**