



COUNTY GOVERNMENT OF KITUI

THE COUNTY ASSEMBLY

SECOND COUNTY ASSEMBLY – (SECOND SESSION)

VOTES AND PROCEEDINGS

THURSDAY, 2ND AUGUST, 2018 AT 2.30 P.M.

1. The House assembled at Thirty minutes past Two O'clock.
2. The proceedings were opened with a prayer.
3. **PRESIDING** -Hon. Speaker.
4. **COMMUNICATION FROM THE CHAIR;**

The chair made the following communication;

Honourable Members,

You will recall that yesterday, on Wednesday 1st August, 2018 during the Assembly's afternoon sitting, I promised to give a ruling on various issues that arose during consideration of H.E. The Governor's Memorandum on the Kitui County Emergency Fund Bill, 2018.

In this ruling, I will address the following issues:

1. What is the voting threshold during consideration of H.E. The Governor's Memorandum;
2. Whether voting on Clause 5(1) took place or not;

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3. Whether failure to pass a Bill by two-thirds majority means that the Governor's recommendations stand;
4. Whether Hon Boniface K. Kilaa's withdrawal of the Motion on Clause 5(1) stands;

In making my ruling, I will be guided by the following, amongst others:

1. Relevant laws including the County Government Act;
2. The Kitui County Assembly Standing Orders;
3. Considered Communication by the Hon Speaker of the National Assembly given on 28th July, 2015 titled "Consideration and Scope of Presidential Reservations Pursuant to Article 115 of the Constitution- Referral of Bills to Parliament for Reconsideration." – Annex 1
4. Considered Communication by the Hon Speaker of the Machakos County Assembly given on 28th May, 2018 titled "Considered Communication from the Chair on the Machakos County Supplementary Appropriation Bill, 2018." –Annex 2
5. Communication by Hon Speaker of the Senate given on 1st October, 2015 titled "Procedure for disposal of Presidential Memoranda on the Public Audit Bill and the Public Procurement and Assets Disposal Bill."- Annex 3.

My considered opinion is as below:

1. Voting Threshold during consideration of the Memorandum

Honourable Members,

Standing Order 31(1) provides that the quorum of the House or Committee of the Whole House shall be a third of its members, that is 18 Members in our case.

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Section 24(5) of the County Government Act as read together with Standing Order 134(5) on the other hand requires that for this House to override the Governor's recommendation, a vote to that effect must be supported by at least two-thirds of

its Members. This therefore means that at the time of voting, there should be at least 36 Members present and voting in the House.

This calls for a distinction between:

- a) the threshold required to transact business in the House; and
- b) the threshold required to make a decision on certain matters as required by law.

For the purpose of transacting business, the required quorum is one-third as required by Standing Order 31(1).

For the purpose of making decisions on certain matters, majority of members present and voting will be sufficient, except where a particular statutory minimum threshold is prescribed, for instance in the case of overriding the Governor's Memorandum as required by Section 24(5) of the County Government Act.

In other words, the presence of 18 Members is sufficient quorum during consideration of the Governor's Memorandum, but for voting to override or vary the Governor's recommendations, two-thirds majority of the Members must be present in the House and vote.

In his ruling dated 28th July, 2015, Hon Justin B. Muturi on page 10 stated as follows:

"The presence of a minimum of fifty members in the House therefore suffices for purposes of considering a Presidential Memorandum, but when voting to override or vary the

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reservations, two-thirds majority of the Members must be present in the House so as to vote to override the reservation, or to vary the reservation in a manner that has the effect of not fully agreeing with the President.”

I therefore rule that for this House to vote on the Governor’s Memorandum, there should be two-thirds of the Members of the House present and voting, that is 36 Members.

2. Whether voting on Clause 5(1) actually took place

Honourable Members,

One of the major issues that was in contention yesterday was whether voting on Clause 5(1) actually took place, in conformity with the Standing Orders.

Standing Order 69 clearly provides for the procedure to be followed during roll call voting.

Standing Order 69(3) requires that the Speaker (Chair of Committee of Whole House) to put the question again, and direct the Clerk to call out the names of Members in alphabetical order in the presence of tellers.

Under Standing Order 69(2), each Members’ name is called out, rises in his or her place and declares assent or dissent to the question by stating “I vote Yes” or “I vote No” or “I Abstain” or uses sign language.

Further, Standing Order 69(3) requires that after the Clerk has read the last name in the Division list, the tellers present the results to the Speaker (Chair

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of Committee of Whole House) who then announces the result of the vote to the County Assembly.

It came to my attention that:

- i) The question was not put as required by the Standing Orders;
- ii) Each Member did not vote individually and state they vote yes or no or they abstain; and
- iii) No results were announced.

Based on the above, I therefore rule that no voting on Clause 5(1) took place and direct that the House Business Committee to schedule when the Governor's Memorandum will be considered to conclusion.

3. Whether failure to pass a Bill by two- thirds majority means that the Governor's recommendations stand

Hon Members,

Another pertinent issue that will arise in the course of consideration of the Governor's Memorandum is whether failure to garner the two- thirds majority means that the Governor's recommendations have become part of the Bill.

In making my ruling on this, I wish to rely on Hon Ethuro's communication dated 1st October, 2015, on the provisions of Article 115 of the Constitution on the President's reservations on a Bill.

He stated as follows:

"There are, however, two questions that arise from this:

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First, what would be the fate of the President's reservations where the Senate does not obtain the 24 delegations (majority vote) required to accept the President's reservations? Secondly, what would be the fate of the President's reservations where the Senate does not obtain the 31 delegations (two-thirds) required to reject the President's reservations?

In either case, is it possible to deem an acceptance or a rejection by the Senate by dint of failing to obtain the requisite numbers? The answer is in the negative.

Article 115 of the Constitution would appear to require that the Senate must pronounce itself on the President's reservations by either accepting or rejecting the reservations. There is no room for deeming of either an acceptance or a rejection. A specific resolution must be made by the Senate. Consequently, the only action that would take the agenda forward is either an

acceptance or a rejection of the President's reservations by the requisite numbers. It would appear that any other action that does not result in an outright acceptance or rejection of the President's reservations, would put the Bill in a constitutional purgatory requiring some new action that will reignite and bring the legislative process to a close. In this regard, the following may occur: (1) Since it is evident from the rendition of Article 115 of the Constitution that the legislative process on any Bill only comes to an end when there is an agreement between the legislature and

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the Executive; having found none, this may provide the occasion for further consultations between the Legislature and the Executive on the President's reservations. Such consultations may result in a resubmission of the Motion at an appropriate time in accordance with the Standing Orders."

It is not in dispute that it is in the best interest of Kitui County residents to have a Fund that caters for any emergencies, and for this to happen, the leadership of the County must rise to the occasion and put the interests of the electorates first.

I therefore rule that in case of any stalemate that may occur regarding this Bill, the two arms of the County Government of Kitui will be at liberty to negotiate, consult and come to a mutual agreement.

4. Withdrawal of the Motion by the Chairperson of Budget and Appropriations Committee

Honourable Members,

Pursuant to the provisions of Standing Order 55, Hon Boniface K. Kilaa, the Chairperson of the Budget and Appropriations Committee, also claimed to have

withdrawn his motion and his seconder, Hon Phillip M. Nguli, further withdrew his secondment of the Motion.

Standing Order 55 clearly states that a Motion whose question has been proposed cannot be withdrawn without the leave of the County Assembly.

The Honourable Chairperson did not move substantive Motion to withdraw his motion and this House did not give leave to withdraw the Motion.

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As such, the Motion still stands until the House resolves that the Motion be withdrawn or makes any other appropriate decision.

The summary of my ruling is therefore as follows:

- i) **THAT**, any amendments that do not fully accommodate the Governor's concerns require a two- thirds majority of Members to be present and voting;
- ii) **THAT**, no voting on Clause 5(1) took place in conformity with Standing Order 69 and the House Business will schedule when H.E. The Governor's Memorandum will be considered;
- iii) **THAT**, failure to pass a Bill by two- thirds majority does not means that the Governor's recommendations stand and in case of any stalemate, the two arms of the County Government of Kitui are at liberty to negotiate and come up with an amicable solution;
- iv) **THAT**, Hon Boniface K. Kilaa's Motion still stands until the House makes a final decision on the matter.

The House is hereby accordingly guided.

I thank you.

4. STATEMENT

The following statement was given pursuant to the provision of Standing Order No. 36;

- i. *Schedule of committee sittings and plenary business for the week ending on 10th August, 2018.*

(Hon. David Thuve – M.C.A)

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5. MOTION ON ADOPTION OF THE REPORT BY THE COMMITTEE ON FINANCE AND PLANNING ON THE CONSIDERATION OF KITUI COUNTY INTEGRATED DEVELOPMENT PLAN (CIDP 2018 - 2022)

(Chairperson, committee on Finance and Planning)

THAT, Pursuant to the provisions of Article 220(2) of the Constitution, Section 108 of the Public Finance Management Act, 2012 and Standing Order No.179 (6), this Assembly hereby adopts the report by the Committee on Finance and Planning on Consideration of the Kitui County Integrated Development Plan (2018 - 2022), laid on the table of the Assembly on Tuesday 31st July, 2018.

(Hon. Jehoshaphat Nzamba James)

Resumption of Business interrupted on Wednesday, August 1, 2018 during afternoon sitting resumed;

Question proposed;

Debate arising;

Debate deferred to next week on Tuesday, 7th August, 2018 in the afternoon sitting.

6. ADJOURNMENT

And the time being Ten minutes to Five O'clock, the Honorable Speaker adjourned the House.

7. ASSEMBLY ROSE- Ten minutes to Five O'clock

MEMORANDUM

The Honorable Speaker will take the chair on the Tuesday, 7th August, 2018 at 2.30 P.M

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