



**Third Assembly
(N0.001)**

**Third Session
(001)**

BOMET COUNTY ASSEMBLY
THIRD ASSEMBLY – (THIRD SESSION)
VOTES AND PROCEEDINGS
TUESDAY, 13TH FEBRUARY, 2024 AT 2.30 P.M

- 1) The Assembly was assembled at Thirty Minutes past Two O'clock.
- 2) The proceedings were opened with prayer.
- 3) **PRESIDING:** - Speaker
- 4) **MEMBERS PRESENT**
 1. Hon. Cosmas Korir- Speaker
 2. Hon Leonard Rotich
 3. Hon. Monica Manyei
 4. Hon. Caren Cheronno
 5. Hon. Caroline Chelangat
 6. Hon. Felody Chepkirui
 7. Hon. Nathan Kibet
 8. Hon. Eric Kirui
 9. Hon. Rosaline Cheptoo
 10. Hon. Richard Rutoh
 11. Hon. Evaline Mibei
 12. Hon. Joseah Samoei
 13. Hon. Dennis Kiplangat
 14. Hon. Vincent Mutai
 15. Hon. Dennis Busienei
 16. Hon. Benard Langat
 17. Hon. Philip Korir
 18. Hon. Peter Ronoh
 19. Hon. Lily Cherotich
 20. Hon. Charles Langat
 21. Hon. Robert Langat
 22. Hon. Peter Mutai
 23. Hon Ernest Rotich

24. Hon. Dancel Kirui
25. Hon. Kipkirui Josphat
26. Hon. Paul Kirui
27. Hon. Benard Rotich
28. Hon. Evaline Sang
29. Hon. Victor Rop
30. Hon. Wesley Kiprotich

5. MEMBERS ABSENT

1. Hon. Anne Chepkemoi
2. Hon. Japhet Cheruiyot
3. Hon. Catherine Chepngetich
4. Hon. Stephen Changmorik
5. Hon. Peter Langat
6. Hon. Naomi Chemutai
7. Hon. Emily Cheruiyot
8. Hon. Olivia Koskei
9. Hon. Kibet Ngetich

6. COMMUNICATION FROM THE CHAIR ON THE STATEMENT RAISED BY HON.ROSALINE CHEPTOO

The Hon. Speaker gave the following ruling with regards to two statements sought on 7th December, 2023 by Hon. Rosaline Cheptoo and Hon. Vincent Mutai.

Honourable Members, you may recall that during the Afternoon Sitting of Thursday, the 7th of December, 2023, Hon. Rosaline Cheptoo the Hon. Member representing Rongena/Manaret Ward raised a statement seeking for the indulgence of the Chair on the composition of the Bomet County Assembly Service Board.

In her statement, the Hon. Member cited the provisions of section 12(3) of the County Governments Act, 2012 which provides that the

Board consists of—

The Speaker of the county assembly, as the chairperson;

A vice-chairperson elected by the Board from the members appointed under paragraph (c);

Two members of the county assembly nominated by the political parties represented in the county assembly according to their proportion of members in the county assembly; and

one man and one woman appointed by the county assembly from amongst persons who are experienced in public affairs, but are not members of the county assembly.

Hon. Members, the member's point of concern is on the provisions of section 12(3)(c) of the County Governments Act, 2012 on the two members who are supposed to be nominated by political parties represented in the county assembly according to their proportion of members in the County assembly.

Hon. Members, the Hon. Member pointed out the fact that this county assembly is composed of thirty-one (31) members of the United Democratic Alliance (UDA) Party, three (3) members of the Chama Cha Mashinani (CCM) Party and four (4) Independent Members. The Hon. Member further asserted that the members contemplated under section 12(3) (c) of the County Governments Act, 2012 are to be nominated by political parties and it therefore means that the Independent Members are excluded. She further contended therefore that the parties that are supposed to nominate the two members of the county assembly service board are UDA and CCM parties.

Hon. Members from the member's arithmetic, she asserts that the thirty four (34) members belonging to both UDA and CCM parties are therefore supposed to nominate the two members according to their proportion of members in the county assembly.

Hon. Members, the Hon. Member further calculated that UDA Party is supposed to nominate 1.8 members while CCM is supposed to nominate 0.18 members. The Hon. Member then finally concluded that arising from her calculations above, it therefore means that UDA party is supposed to nominate both members of the board as it were during the second assembly.

Hon. Members this county assembly is guided by practices, usages, forms, precedents, customs, procedures and traditions of the Parliament of Kenya and legislative assemblies from other jurisdictions as provided for under Standing order 1(2) of the County Assembly standing Orders. Hon. Members, it is noteworthy that this is not a novel issue and the same had arisen during the second assembly where the then Speaker Hon. David Shadrack Rotich was called upon to give directions to the County assembly on the composition of the board. I have perused through the precedent set by my predecessor and it is important that I apprise you with the facts that were obtaining in that circumstance.

Hon. Members, Hon. David Shadrack Rotich was called upon to give direction on how the composition of the then Bomet County Assembly Service Board was to be correctly calculated as required under section 12(3)(c) of the County Government's Act, 2012 for the ascertainment of each party's quota of the two seats reserved for the members of the County Assembly so that the proportional representation seats could be correctly allocated. The Hon. Speaker in determining the matter stated, "In my view, an interpretation of this particular proviso in its ordinary meaning means that the basis of proportion applicable is arrived at mathematically; where the numerical strength is on the basis of one party representation weighed against the other party's and thereafter apportioned between the two slots reserved for political parties."

The word "proportion" is defined by the oxford living dictionary as "the relationship of one thing to another in terms of quantity, size, or number ratio."

The Speaker further stated, "The current assembly comprises a total of thirty-two (32) members elected and nominated under the Jubilee party ticket and four (4) members elected and nominated under the Chama Cha Mashinani (CCM) Party ticket. Statistically, thus, the ratio of Jubilee members to CCM members is 8:1. Consequently a mathematical sharing of two slots on the ratio of 8:1 would result in Jubilee party being entitled to 1.8 of the 2 while CCM would be entitled to 0.2."

The Hon. Speaker then relied on the High Court decision in the case of National Gender & Equality Commission & another V Judicial Service Commission & 2 others [2017] eKLR where in paragraph 33 of the judgment, the High Court emphasized the need to round off or round down decimals when it comes to human beings. The Speaker then rounded off the number 1.8 to two and rounded down 0.2 to zero. The Hon. Speaker then concluded that arising from that proportion, the Jubilee Party members were then required to appoint the two required members to the County Assembly Service Board.

Hon. Members, it is a fact that there are thirtyone (31) members of UDA Party and three (3) members of CCM Party in this county assembly. It is also clear that a reading of section 12(3)(c) of the County Governments Act, 2012 excludes independent members from nominating members to serve in the board in that it refers to political parties. Therefore, in applying the above set precedent to the present scenario, it is clear that the ratio of UDA Party members to CCM Party members is 10:1. Consequently a mathematical sharing of two slots on the ratio of 10:1 would result in UDA party being entitled to 1.8 of the 2 while CCM would be entitled to 0.18. Hon. Members using the formula set by the High Court in the case of National Gender & Equality Commission & another V Judicial Service Commission & 2 others [2017] eKLR where the Court emphasized the need to round off or round down decimals when it comes to human beings, I would then arrive at the conclusion that the UDA Party is supposed to nominate two members to serve in the board while the CCM Party is expected to nominate none. I therefore agree with Hon. Roseline Cheptoo to that extent. However, Hon. Members, the circumstances that obtained during the second assembly are different from those that are obtaining now in the third assembly. Hon. Members, prior to the nomination of members envisaged under section 12(3)(c) of the County Governments Act, 2012 to serve in the county assembly service board, the UDA Party members entered into a working agreement with each independent member of this county assembly and deposited the agreement with the Speaker's office.

Hon. Members, it is important to look at the contents and terms of the working agreement which the parties to the agreement entered into. In the working agreement the parties thereto which are the UDA Party members and each independent member agreed as follows:

THAT whenever they are called upon to vote on any matter before the county assembly, the parties herein shall vote as one common front;

THAT the members of the respective parties shall be nominated to serve in different committees of the county assembly as if they belong to one party.

THAT the parties to this agreement shall participate equally in the nomination of members to serve in the County Assembly Service Board;

THAT the parties to this agreement are free to caucus and forge a common front in furtherance of their interests;”

Hon. Members, the parties to the agreement further agreed that: “a) This Working Agreement binds the Parties and the respective individual party members.

No Party may claim to exercise any authority except as authorized under this Agreement.

The validity or legality of this Agreement may not be subject to challenge by any Party or their respective individual party members before any organ of the two parties to the agreement.

AMENDMENT / VARIATION

This Agreement may be amended and / or varied in writing through a Deed of Variation and / or a Schedule to this Agreement, provided that such Deed of Variation and / or Schedule is approved and / or signed by all members of the two parties to this agreement.

DISPUTE RESOLUTION

Disputes between Member Parties arising out of the interpretation and/ or application of this Agreement shall be resolved amicably through direct negotiations.”

Hon. Members, it is clear from the above cited terms of the working agreement that the parties thereto intended to be bound by the terms of the agreement. The parties consciously entered into the agreement and went ahead and executed the terms of the agreement through nomination of members to serve in the different committees of this county assembly and the County Assembly Service Board. Hon. Members, it is also apparent from the agreement that in case parties intend to amend or vary the terms of the agreement, then they would do so in writing through a Deed of Variation and / or a Schedule to the Agreement, provided that such Deed of Variation and / or Schedule is approved and / or signed by all members of the two parties to the agreement.

Hon. Members, as far as I'm concerned, the office of the Speaker hasn't received any written Deed of variation and/or Schedule to the agreement approved and /or signed by all members of the two parties to the agreement. In the absence of such, the non-partisan office of the Speaker is expected to assume and rightfully so, that the parties to the agreement haven't had any intentions to vary the terms of the agreement and are therefore bound by the terms as they subsist in the agreement.

I would also expect parties to utilize the dispute resolution mechanism contained in the agreement in case of any misunderstanding between them.

This county assembly is hereby accordingly guided.

7. COMMUNICATION FROM THE CHAIR ON THE STATEMENT RAISED BY HON.VINCENT MUTAI

Honourable Members, you may also recall that during the Afternoon Sitting of Thursday, the 7th of December, 2023, Hon. Vincent Mutai the Hon. Member representing the minority group in this County assembly raised a statement seeking the direction of the Speaker on the leadership of the County Public Investment and Accounts Committee as established under Standing Order 198(1) of the our County Assembly Standing Orders.

The Hon. Member enumerated the roles of the committee as provided for in Standing Order 198(2) of the County Assembly Standing Orders as being responsible for :-

- (a) The examination of the accounts showing the appropriations of the sum voted by the County Assembly to meet the public expenditure and of such other accounts laid before the County Assembly as the Committee may think fit.
- (b) The examination of the reports, accounts and workings of the county public investments;

(c) The examination, in the context of the autonomy and efficiency of the county public investments, whether the affairs of the county public investments, are being managed in accordance with sound financial or business principles and prudent commercial practices.

Hon. Members, the Hon. Member then observed that arising from the roles of the committee as enumerated above, it is evident that the committee is a watchdog committee. He also observed that the committee is supposed to scrutinize the expenditure of public funds and provide Parliamentary oversight function which is critical in enforcing improved financial accountability, combating fraud and corruption and promoting good governance in the public sector. He then further observed that this would increase confidence of the voters that their tax monies are being used responsibly which, in turn, increases public confidence in the credibility of government institutions.

Hon. Members, the Hon. Member then embarked on a comparative study of practices in other legislative assemblies including the Parliament of Kenya and other County assemblies. In his study, he noted that the National Assembly provided in its standing orders that the Chairperson of the Public Accounts Committee is elected from among members of the committee belonging to parties not forming the government. He specifically quoted Standing Order 205(3) of the National Assembly Standing Orders which provides that “The Public Accounts Committee shall consist of a Chairperson elected from among members of the Committee belonging to parties not forming the national government and not more than fourteen other Members.” He then further noted that it is from this backdrop that the Chairperson of the National Assembly’s Public Accounts Committee is one Hon. (CPA) John Mbadi a nominated member of the Orange Democratic Movement Party (ODM), a minority party in the current National Assembly.

Hon. Members, the Hon. Vincent Mutai further quoted the provisions of Standing Order 205(4) of the National Assembly Standing Orders which provides that, “In the membership of the Public Accounts Committee, parties other than parliamentary parties forming the national government shall have a majority of one.” He then observed that this was intended to have the membership of the Committee to be as much as possible composed of parliamentary parties not forming the government so as to provide proper, efficient and effective oversight free from influence from the ruling government.

Hon. Members, the Hon. Member also referred to the provisions of the Senate Standing Orders which provides in Standing Order 193(3) that in the membership of the County Public Accounts Committee, the party or parties not forming government shall have a majority of one. He then observed that it is from this background that the Chairperson of the Senate’s Public Accounts Committee is one Senator Kajwang Moses Otieno a member of the ODM Party.

Hon. Members, in his further comparative study of practices in other county assemblies notably Nairobi and Narok County assemblies, the Hon. Member found out that in Nairobi County Assembly, the Chairperson of the Public Investment and Accounts Committee is one Hon. Mwaura Chege a Member of United Democratic Alliance (UDA) Party which is a Minority Party in Nairobi County

Assembly while in Narok County Assembly, the Chairperson of the Committee is one Hon. Kutingala a member of Jubilee Party which is a minority party in Narok County Assembly.

Hon. Members I do agree with the Hon. Member that this County assembly is guided by practices, usages, forms, precedents, customs, procedures and traditions of the Parliament of Kenya and legislative assemblies from other jurisdictions as provided for under Standing order 1(2) of the County Assembly standing Orders. I also take note that the Speaker has been empowered under Standing Order 1(1) of the County assembly Standing Orders to decide on procedural questions that are not expressly provided for in the Standing orders.

Hon. Members before I apply my mind on the question that I have been invited to give direction on, let me take you back to the statutory provision that establishes the County assembly committees and their rules of procedure. Section 14(1) of the County Governments Act, 2012 provides “A county assembly—

- (a) may make standing orders consistent with the Constitution and this Act regulating the procedure of the county assembly including, in particular, orders for the proper conduct of proceedings; and
- (b) Subject to standing orders made under paragraph (a), may establish committees in such manner and for such general or special purposes as it considers fit, and regulate the procedure of any committee so established.

Hon. Members, committees are extensions of the County assembly and they transact business on behalf of the County assembly. The committees of this county assembly including the composition and terms of tenure are expressly provided for in Part XXI of the Standing Orders and Section 15 of the County Assemblies Powers and Privileges Act No. 6 of 2017 which establishes the committee of Powers and Privileges.

Hon. Members in order to effectively give direction on the matter that I have been invited to provide guidance on, there are two issues that must be considered:

- (1) Whether the Speaker has powers to interfere with the composition and leadership of committees which are expressly provided for in the Standing Orders.
- (2) Whether committee leadership and composition is a procedural or substantive issue.

In considering the first question whether the Speaker has powers to interfere with the composition of committees which are expressly provided for in the Standing orders, it is important to know the process through which these committees are established. Standing Order 166(1) provides, “Unless otherwise provided by any written law or these Standing Orders, the Committee on Selection shall, in consultation with County Assembly parties, nominate Members who shall serve on a select Committee.” It is therefore imperative that the county assembly committees are established pursuant to a written law and the county assembly standing orders as adopted and approved by the county assembly.

As for the leadership of the County assembly committees, Standing Order 171(1) of the County assembly Standing Orders provides,

“Subject to paragraph (2) of Standing Order 166 (Nomination of Members of Select Committees), unless otherwise provided under any written law, these Standing Orders or by resolution of the County Assembly-

- (a) a select Committee shall, upon appointment, elect its chairperson and vice-chairperson from amongst its members;

It is evident from the aforementioned Standing Order 171(1)(a) that the Leadership of a county assembly committee unless otherwise expressly provided for or by a resolution of the county assembly is left to be decided by the members of the committee. The role of the Speaker in this context is therefore to ensure that spirit and letter of the law and Standing orders are kept.

In considering the second question whether committee leadership and composition is a procedural or substantive issue, it is important to note that the Speaker’s power under Standing Order 1(1) is only limited to procedural questions that are not expressly provided for in the Standing Orders. Hon. Members, the question of committee composition and leadership is not a procedural issue; it is a substantive issue. It is therefore my considered opinion that the Speaker’s hands on this matter are tied. However, as the Speaker, I’m expected to give guidance and direction on issues brought forth by the members. Hon. Members from the comparative study and examples given by Hon. Vincent Mutai on practices of Parliament and other legislative assemblies, it is apparent from the examples given specifically that of Parliament of Kenya that the composition and leadership of PIC/PAC committee is expressly provided for in their respective Standing Orders. I have not had the privilege of studying the standing orders of Nairobi and Narok County assemblies but from the practice in Senate and the National Assembly, it is clear that the said legislative assemblies clearly provided for the composition of their PAC/PIC committees in their respective standing orders.

Hon. Members, it is therefore my direction that if the members of this county assembly are desirous of changing the composition and leadership of PAC/PIC committee, then it is within their mandate to amend the standing orders in the manner provided for and effect the changes as they so wish. It is also important to note that using Standing Order 186 of the County assembly Standing orders, the current composition of the PAC/PIC can still effect changes in the leadership of the committee without necessarily amending the standing orders.

This county assembly is hereby accordingly guided.

8. PAPERS LAID

The following papers were laid on the table of the County Assembly

Hon. Paul Kirui, Leader of the majority Party laid the following papers on the table of the County Assembly-

- i) The Model Intergovernmental Conditional Allocations Transfer Agreements. The paper was committed to the Committee on Finance, ICT and Economic Planning)
- ii) Submissions of nominees for the recruitment and Selection Panel for members of the County Public Service Board. The paper was referred to the Committee on Appointments
- iii) Consolidated Reports and Financial statement.
- iv) The Report of the Committee on Trade, Tourism and Cooperatives on the vetting of Chief Officer Nominee for the department of Cooperatives (Benard Koros Kiplangat).

9. QUESTIONS AND STATEMENTS

Hon.Victor Rop sought the following statement-

I rise to seek a comprehensive statement from the Chairperson Committee on Environment, Energy, Water and Natural Resources concerning a water drilling machine that was procured by the County Government of Bomet.

In the statement, the Chairperson should indicate:

- (1)The whereabouts of the drilling machine;
- (2)The supplier of the machine;
- (3)The contract price of the machine;
- (4)The financial year during which the machine was procured; and;
- (5)The amount that has been already paid to the supplier;

The Statement was committed to the committee on Energy, Environment, Water and Natural Resources to issue a response within 30 days.

10. ADJOURNMENT

The Assembly was adjourned to Wednesday, 14th February, 2024 at 9.30 a.m.

11. ASSEMBLY ROSE - at 1552 Hours.