

COUNTY GOVERNMENT OF MAKUENI



COUNTY ASSEMBLY OF MAKUENI

SECOND ASSEMBLY – SECOND SESSION

VOTES AND PROCEEDINGS

TUESDAY, 31ST JULY, 2018 AT 2:30 P.M.

1. The Assembly assembled at thirty minutes past two O'clock.
2. The Proceedings were opened with Prayer.
3. **PRESIDING:** - The Hon. Speaker.
4. **PAPERS:**

The following papers were laid on the Table of the Assembly:-

- i. The Report of the Committee on ICT, Early Childhood Education and Vocational Training on site Visits to various ECDE Centres and CTTIs in the County.

The Chairperson, Committee on ICT, Early Childhood Education and Vocational Training.

- ii. The Report of the Auditor General on the Wote Water and Sewerage Company Ltd, for the year ended 30th June, 2017.

The Leader of the Majority Party.

(Committed to the Public Investments and Accounts Committee to interrogate and report to the Assembly within 3 Months as required by law. Report due by 31/10/2018)

5. **NOTICES OF MOTION:-**

The following Notices of Motion were given:-

- i. THAT, this Assembly adopts the Report of the Committee on ICT, Early Childhood Education and Vocational Training on site Visits to various ECDE Centres and CTTIs in the County, laid on the table of the Assembly on Tuesday 31st July, 2018.

The Chairperson, Committee on ICT, Early Childhood Education and Vocational Training.

- ii. **AWARE THAT** Article 61 (1) of the Constitution stipulates that all land in Kenya belongs to the people of Kenya collectively as a nation, as communities and as individuals and classifies land under sub article 2 as either public, community or private.

FURTHER AWARE THAT Article 63 (1) of the Constitution provides a legal basis for holding community land by communities identified on the basis of ethnicity, culture or similar community interests which land consists of among others, land that is lawfully held, managed or used by specific communities as community forests, grazing areas or shrines and ancestral lands.

AWARE THAT land reference Number No. LR 1748 measuring approximately 5048 Acres situate within Kiima Kiu/Kalanzoni and Mukaa Ward was historically occupied by native communities resident in the area who utilized the same as ancestral land, communal grazing land and traditional shrines but which land was during colonization arbitrarily taken away from the native communities and granted to Robin Woodcraft Stanley for a period of 999 years from 1st October, 1947 to 1st October, 2947 which period has since been reviewed by dint of Article 65 (2) of the Constitution to 99years and hence expires in 1st October, 2046.

CONCERNED that the lease so granted, is not about to expire and that the community whose land was taken away live in dire poverty, continue to suffer landlessness and lack of space to conduct their communal activities including grazing and worship

FURTHER CONCERNED that at the time of granting the land to Robin Woodcraft Stanley, no compensation was awarded to the native communities by either the colonial or current government of Kenya and that some unscrupulous individuals have expressed interest in the land

with the intention of further disenfranchising the community who are the original owners of the land.

NOTING THAT Article 63 sub article 5 of the Constitution confers power on parliament to enact legislation to give effect to Article 63 and that pursuant thereto parliament enacted the Community Land Act No. 27 of 2016 which defines a community under section 2 to mean a consciously distinct and organized group of users of community land who are citizens of Kenya and share any of the following attributes;

- a. Common ancestry
- b. Similar culture or unique mode of livelihood
- c. Socio economic or other similar common interest
- d. Geographical space
- e. Ecological space or
- f. Ethnicity

FURTHER NOTING THAT Kiamuka Society Limited, a registered society representing residents of Makueni County historically habitants of Kiima Kiu/Kalanzoni and Mukaa Ward of Makueni County represent interests of the residents of the two wards.

AWARE THAT Article 67 of the Constitution of Kenya 2010 establishes the National Land Commission with the function to initiate investigations on its own initiative or on a complaint into present or historical land injustices and recommend appropriate redress

AWARE that Parliament has since enacted the National Land Commission Act No. 5 of 2012 (revised 2016) to give effect to this provision and provides under section 15 thereof, what may amount to a historical injustice to include a grant which resulted to displacement from a habitual place of residence and occurred between 15th June 1895 when Kenya became a protectorate and 27th August, 2010 when the Constitution of Kenya was promulgated and has not been sufficiently resolved and subsists up to the period above.

FUTHER AWARE that parliament has also enacted the historical injustices regulations 2016 which set out the procedure and form to be used by any complainant who claims to be aggrieved by historical land injustices.

NOTING THAT a claim for historical injustice is only permissible if it was occasioned by among others, colonial occupation or other cause approved by the commission and that the native communities of Kiima Kiu/ Kalanzoni and Mukaa Ward have suffered a historical injustice within the meaning of the constitution and the National Land Commission Act.

AWARE THAT registration of the said land in the name of the current owner affects the native communities' right to property enshrined under Article 40 of the Constitution and that the County Government is by dint of Article 63(3) of the Constitution and section 6 of the Community Land Act the custodian of community land on behalf of the communities for which it is held;

FURTHER AWARE THAT section 14 of the National Land Commission Act No.5 of 2012 provides that the National Land Commission on its own motion or upon a complaint by the national or a county government, a community or an individual, review grants or dispositions of public land to establish their propriety or legality

NOW THEREFORE, this Assembly urges the County Government of Makueni (County Executive and County Assembly) to lodge on behalf of the Kiamuka Society and the native community habitant around Kiima Kiu/Kalanzoni and Mukaa Wards a complaint with the National Land Commission for;

- a. Review of grant of the Land Reference Number 1748 to Robin Woodcraft Stanley with a view to establish propriety or legality

- b. Revocation of the lease on Land Reference Number 1748 from Robin Woodcraft Stanley and reallocation of the lease to Kiamuka Society as community land for the benefit of its members and or;
- c. Stop any renewal of the lease to the current land owner, Robin Woodcraft Stanley

Hon. Joseph Muthini Muema, MCA

6. STATEMENTS PURSUANT TO STANDING ORDER 50 & 53:-

The following Statement Request was made:-

Request for a Statement (No. 55/2018) regarding the renovation of the defunct Mtito Andei County Council Chambers.

The Member for Mtito Andei Ward.

(The Chairperson, Committee on Devolution and Public Service to respond to the Statement within 14 days. Response due by Tuesday, 14/08/2018)

The following Statement Requests were responded to:-

- i. Response to a Statement (No. 54/2018) as requested by the Member for Kikumbulyu South regarding commercial sand harvesting in Ukia Ward.

The Chairperson, Committee on Water, Irrigation and Sanitation.

(Response was unsatisfactory. The Committee to present satisfactory response by Thursday, 9th August, 2018)

- ii. Response to a Statement (No. 46/2018) as requested by the Member for Mbitini Ward regarding the need to carry out survey on Public land at Kwa Kiwu and Kwouthuku Markets in Mbitini Ward.

The Chairperson, Committee on Lands and Urban Planning.

(Response was unsatisfactory. The Committee to present satisfactory on Thursday, 2nd August, 2018)

7. **ASSEMBLY ROSE:** – at nineteen minutes to four O'clock.

MEMORANDUM

The Speaker will take the Chair on
Wednesday 1st August, 2018 at 9:30 a.m.

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