



# REPUBLIC OF KENYA

## NYANDARUA COUNTY ASSEMBLY

### OFFICE OF THE SPEAKER

#### COMMUNICATION FROM THE CHAIR ON THE APPROVAL OF MR. JAMES NDUNG'U MUREU AS THE CHAIRPERSON OF THE NYANDARUA COUNTY TRADE DEVELOPMENT AND INVESTMENT AUTHORITY

**Honorable Members,**

You recall that during the sitting of Wednesday the 21<sup>st</sup> of February 2024, at 2:30p.m, the Assembly was seized with a motion seeking its agreement with the recommendations of the Report of the Committee on Tourism, Cooperatives Development, Trade and Industrialization, on the Suitability of the nominees for appointment to the positions of Chairperson and members of the Nyandarua County Trade Development and Investment Authority Board.

You further recall that arising from the said motion on the report and owing to a requirement for a distinctive resolution of the assembly on each of the nominees, the assembly agreed with all other recommendations of the Committee as contained in the report, except recommendation number four (4), which had essentially urged the assembly to disapprove the appointment of one Mr. James Ndungu Mureu as the Chairperson of the Nyandarua County Trade Development and Investment Authority.

Immediately after the motion, I did undertake to give further guidance on the nominee for the chairperson of the Authority following and in light of the assembly's disagreement with the Committee's recommendation on disapproval.

**Honourable members,** this is a matter whose crux is the Public Appointments (County Assemblies Approval) Act No. 5 of 2017; being the Act of parliament providing for procedures for the approval of public appointments by county assemblies.

Section 9 of the Act requires the report of an assembly's committee conducting an approval hearing to include in its report, a recommendation as to whether or not a nominee should be approved for appointment to public office.



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Section 10 states that where a candidate is rejected by the county assembly, the appointing authority shall submit to the County Assembly, the name of another candidate.

Section 11 states that the Clerk shall notify the appointing authority of the decision of the County Assembly within fourteen days of the decision; and that the appointing authority, shall upon the approval of the nominees for appointment by the County Assembly and subject to the applicable written law, appoint the nominee within a period of seven days from the date of the notification of the decision of the Assembly.

**Honourable members**, I now turn to the effect of the assembly's disapproval of the Report of the Committee on Tourism, Cooperatives Development, Trade and Industrialization, on the Suitability of Mr. James Ndungu Mureu for appointment as the Chairperson of the Nyandarua County Trade Development and Investment Authority.

In a ruling on a similar issue, delivered by the Speaker of National Assembly on 21<sup>st</sup> of December, 2011; being a ruling on the defeat of a motion by the departmental committee on Justice and Legal Affairs Rejecting the Proposed Nominees to the Positions of Chairpersons and Members of the Ethics and Anti-Corruption Commission, Hon. Kenneth Marende ruled thus-

*"... The jurisprudence on the process of approvals of office holders by the National Assembly prior to their appointments by the Executive is still evolving. However it shall be much assisted by interpretations that promote the spirits and intendment of the Constitution ...having considered all the relevant circumstances, I come to the considered position ...that in the context of approval of nominees for appointment to any office, the rejection of Report of a Committee of the House ,whatever its proposals, leaves nothing before the House , in respect of which without further action, progress can be made either to appoint or not appoint the nominees. It is imperative to observe...that the 'nominee stands'. This means that the nominee still remains before the House. This brings to the second part aspect... [which is] ... that 'approval' as contemplated by the Constitution or statute is an affirmative and unequivocal approval by the House, and cannot be derived or deduced from the rejection of a*

*Committee's Report. In the circumstances such as are in issue, by the rejection of a Committee's Report, the House is put in the position in which it was before the Committee's Report; namely that there are nominees before the House, who have neither been approved by the House or rejected by it and it becomes incumbent on the owner of the business or otherwise as the Government may determine, to move a motion for the approval by the House of nominees. Such a motion is a different motion from the defeated motion in so far as it does not seek the adoption of a Committee Report already defeated. It is a motion independent of the defeated motion."*

Honourable members, a similar position as the above was also taken Hon. Justice B.N. Muturi the Speaker of the National Assembly in his ruling on Wednesday April 22, 2020 in his ruling on the implication of rejection by the House on a special motion proposing rejection of nominees for appointment to the Teachers Service Commission wherein he stated:

*'... I am not about to deviate from that precedent set by my predecessor. In fact, I agree with him that an approval of the appointment as contemplated by the Constitution and statutes is an affirmative and unequivocal approval of the House and cannot be deduced from the rejection of a committee report. In such circumstances, the onus is on the relevant Committee or any other member of this House to give notice of a motion to that effect, phrased in positive terms. Hon. Members, I wish to inform the House that I have already received and approved a Notice of Motion from the leader of Majority party Hon. Aden Duale, asking the House to approve the appointment of Mr. Mbage Njuguna Ng'ang'a and Ms. Leila Abdi Ali as the members of the TSC. Should that motion be carried, then the decision of the House will be construed unequivocally. Similarly, should the positive motion be negative by the House, the decision of the House will have been, again, made unequivocally..."*

Honourable members, article 1 of our Standings Orders provides in all cases which are not provided for and subject to the Constitution and other written laws, the Speaker shall decide having regards to Orders of the Assembly, the usages, forms,

precedents , customs , procedures and traditions of the Assembly and the National Parliament and legislative assemblies from other jurisdictions in view of the constitutional principles , the practices in other parliaments in so far as the same be applicable to the Assembly.

The issue before this Assembly is similar to the aforementioned incidents in the National Assembly whereupon it has been determined that the rejection of a committee's report to disapprove a nominee for public appointment does not by itself, amount to unequivocal approval of the nominee by parliament. I have no compelling reasons for me to depart from this finding or decision. This Assembly is therefore yet to make an unequivocal decision regarding the approval of the nomination for appointment of Mr. James Ndungu Mureu as the Chairperson of the Nyandarua County Trade Development and Investment Authority.

I therefore in the circumstance and guided by authoritative rulings of the Speakers of the National Assembly on the issue, hereby direct the leader of the majority party or any other member to move an independent motion for the approval of the Mr. James Ndungu Mureu as the Chairperson of the Nyandarua County Trade Development and Investment Authority for the Assembly to make an unequivocal decision thereon which shall be communicated by the Clerk to the appointing authority pursuant to section 11 of the Public Appointments (County Assemblies Approval) Act No. 5 of 2017.

I so direct.

DATED THIS 27<sup>TH</sup> FEBRUARY 2024

HON. STEPHEN WACHIRA WAIGANJO  
SPEAKER OF THE COUNTY ASSEMBLY