

## COUNTY GOVERNMENT OF LAMU



## THE COUNTY ASSEMBLY OF LAMU

### THE HANSARD

**Tuesday, 19<sup>th</sup> November, 2024**

*The Assembly met at the  
Main Chambers, at 2:30 p.m.*

**[Deputy Speaker (Hon. Azhar Ali Mbarak) in the Chair]**

### PRAYERS

**[The Speaker (Honorable Azhar Ali Mbarak)]:** Next Order.

**Clerk-at-the-Table:** Communication from the Chair.

### COMMUNICATION FROM THE CHAIR

**The Speaker (Honorable Azhar Ali Mbarak):** Honorable Members, allow me to make the following communication by His Excellency Governor Issa Abdallah Timamy;

**“RESUBMISSION OF NOMINATION OF MR. JAMES G. GICHU FOR THE POSITION OF DEPUTY GOVERNOR.**

I write concerning the County Assembly's decision of 30th October 2024, regarding the nomination of Mr. James G. Gichu as Deputy Governor.

I hereby formally resubmit his name for consideration and this resubmission is made with reference to specific legal provisions and procedural requirements that were not fully addressed in the Assembly's decision.

1. To begin with, Section 32d (3) of the County Government Act (Cap 265 of the Laws of Kenya) mandates that the County Assembly considers a nomination for approval and thereafter resolve whether to approve the motion. Furthermore, Section 32d (4) stipulates that a motion for the approval for appointment of a Deputy Governor shall be supported by a majority of the members of a county assembly. During the session of 30th October 2024, the County Assembly vote resulted in a tie, with nine members voting for and nine members against the nomination. This outcome, while preventing the motion from carrying, does not equate to a formal rejection of the nomination, as no majority decision was reached.

2. With respect, the Clerk, wrongfully relied on Art. 122(2)(a) of the CoK 2010 for the "rejection". The correct reliance should have been placed on Art. 122(2)(b):

"(b) in the case of a tie, the question is lost."

Art. 122(2)(b) is what properly governs the subject of that session of 30th October 2024. Contextually, then, when the vote ended in a tie, the question was lost. In other words, there was no valid question anymore as to lead to a rejection or even an approval. There was no definitive determination, whatsoever, of that question which was put to the members. For the record, no single side of the aisle gained "Majority Votes" in support of or in opposition of the Motion. Put differently, there wasn't "a majority of the members of the County Assembly. present and voting on either side", in accordance with the provisions of Section 20 of the CGA 2012. It follows therefore that the proposed appointment was neither rejected nor approved. Rejection or Approval, under the law, must be expressed through a majority of members voting either way. The law could not have intended a decision as important as that of the nomination of a Deputy Governor to be arrived at by mere conjecture or supposition. Moreover, the phrase "the question is lost" cannot, by any shred of

reasonableness, be synonymous with "the appointment is lost" Respectfully, to deduce so is to introduce incongruity of gigantic proportions.

3. Additionally, Section 8 of the Public Appointments (County Assemblies Approval) Act (Cap. 265B) outlines that the County Assembly must evaluate a nomination based on specific criteria, including the procedure used for shortlisting, any constitutional or statutory requirements, and the nominee's qualifications and suitability. However, no reasons were provided by the Assembly in support of its decision, which does not satisfy these statutory requirements and therefore, the Assembly's approval process did not meet the threshold necessary of its upholding.

4. Furthermore, Section 10(2) of the of the Public Appointments (County Assemblies Approval) Act allows for the resubmission of a previously non-approved candidate's name if the initial reasons for non-approval no longer apply or have ceased to exist. Since the Assembly has not provided any substantiated reasons in this case, no legal impediment exists to prevent the resubmission of Mr. James G. Gichu's name for consideration.

5. Finally, I wish to also bring to attention that the mover of the motion, who was the Leader of Majority in the County Assembly, proceeded to vote against the motion. This situation is unusual, as the mover of a motion typically supports the initiative they present. Such a vote from the Leader of Majority raises questions on procedural propriety and necessitates further clarification, as this unexpected action may have influenced the outcome of the vote.

In view of the foregoing, I hereby formally resubmit the name of Mr. James G. Gichu for the position of Deputy Governor of Lamu County.

I trust that the County Assembly will consider this nomination in adherence to the relevant statutory and constitutional provisions and provide any legally sound reasons, should the Assembly deem non-approval necessary."

**Honorable members**, I wish to address the concerns raised regarding the resubmission of the nominee's name by the Governor, H.E. Honorable Issa Timamy. This response follows extensive consultations with the House Leader and the House Business Committee, in addition to a thorough review of the issues outlined in the letter dated November 12, 2024 from section 1-5 is as follows;

**Section 1: Reference to the County Government (Amendment) Act, 2020, Section 32(d)**

The County Government Amendment Act, 2020, Section 32(d), delineates specific guidelines for the replacement of the Deputy Governor, which includes the nomination process. It has been noted that these established procedures were not followed by the appointing authority. Nevertheless, the proceedings of the session held on October 30, 2024, conformed to the procedural requirements as mandated by the Constitution, relevant Acts of Parliament, and the County Assembly Standing Orders.

**Section 2: Citation of Article 122A to Article 122B**

Article 122 of the Constitution states:

- (1) Except as otherwise specified in this Constitution, any question proposed for decision in either House of Parliament shall be determined by a majority of the members present and voting.
- (2) On a question proposed for decision in either House:
  - (a) The Speaker has no vote; and
  - (b) In the case of a tie, the question is lost.
- (3) A member shall not vote on any question in which the member has a pecuniary interest.

(4) In reckoning the number of members of a House of Parliament for any purpose of voting in that House, the speaker of that House the Speaker shall not be counted as a member.

Part (a) Denies the Speaker the right vote to break the tie.

Part (b) Breaks a tie as the motion is lost.

Part (3) Refers to pecuniary interest.

Pecuniary interest is defined as financial interest a matter that could result in financial gains or losses. And this does not apply to the leader of majority voting.

Part (4) again emphasizes that at any given time, the speaker shouldn't be accounted as a member of the assembly.

### **Section: 10 of the Public Appointments Act.**

This section stipulates:

#### **Rejection of nomination.**

Where the nomination of a candidate is rejected by a County Assembly, the appointing authority may submit to the County Assembly the name of another candidate, and the procedure for approval specified in this Act shall apply accordingly.

My interpretation of Article 122(b) of the Constitution is as follows;

The motion is deemed lost depending on its phrasing. Should the motion be articulated to approve the nomination, its defeat indicates that the approval has failed. This reflects the formulation of the motion as it has been drafted, and I quote:

“THAT, Pursuant to the provisions of the Constitution of Kenya 2010, Section 32(d) of the County Government Act, 2012 (as amended) and the County Assemblies

Standing Orders, this County Assembly approves the nomination for appointment of Mr. James Gichichio as the Deputy Governor.”

If a motion originates from the committee and the members of the committee express their intent to reject the nomination, the motion is deemed lost. In this context, this implies that the rejection motion fails, resulting in the approval of the nominee. However, this is not applicable in the current situation. In that regard, on 30th October 2024, the motion is lost means the nomination motion was lost.

Standing Order 46: Certain Motions not to be moved

- 1) No motion may be moved which is the same in substance as any question which has been resolved (either in the affirmative or in the negative) during the preceding six months in the same session.

In view of the foregoing and pursuant to the Standing Order No. 1 of the County Assembly Standing Orders, I hereby make a ruling of presenting the Motion of Approval to the Whole House for the Members present to decide on the renomination of Mr. James G. Gichu as Deputy Governor.

**[Speaker (Honorable Azhar Ali Mbarak)]:** Next Order.

**Clerk-at-the-Table:** Motion.

## MOTION

*APPROVAL OF THE NOMINATION FOR APPOINTMENT OF MR. JAMES  
GICHICHIO GICHU AS THE DEPUTY GOVERNOR*

**MCA Bwana Mohamed Mbwana (Majority Leader):** Thank you Mr Speaker Sir.

**Mr Speaker Sir,** I beg to move the following motion to the floor of the House;

“THAT, Pursuant to the provisions of the Constitution of Kenya 2010, Section 32(d) of the County Government Act, 2012 (as amended) and the County Assemblies Standing Orders, this County Assembly approves the nomination for appointment of Mr. James Gichichio as the Deputy Governor.”

*(Motion Seconded)*

**Speaker (Honorable Azhar Ali Mbarak):** Esteemed members, I trust you are familiar with the procedure. We will proceed directly to the voting process, as per the proposal established in our previous session. During this session, we will adopt a method whereby the names of members will be called individually, and each member will cast their vote verbally.

**MCA Suleiman Mohamed Farah(witu):** I suggest we adopt the oral voting.

**Speaker (Honorable Azhar Ali Mbarak):** Are all the members in favour of that? Ok let us proceed. What is your point of order, Honorable Atwaa?

**MCA Atwaa Mohamed Salim (Shela):** I kindly request for the reintroduction of the motion concerning the amendments. The mover of the motion incorrectly cited section 32(d) of the County Assembly Standing Orders, rather than section 32(d) of the County Government Act of 2012. I wish to prevent any potential confusion or inconvenience in the future, particularly with regard to the official recording by hansard. Otherwise, Mr. Speaker, we may inadvertently be advancing a motion that conflicts with the laws governing this House.

**Speaker (Honorable Azhar Ali Mbarak):** Thank you, Honorable Atwaa. I do not perceive any issues with the citation, as the wording is exceedingly clear.

**(Question put and agreed upon)**

**Speaker (Honorable Azhar Ali Mbarak):** I would like to formally propose that Honorable Hope Wanjiku to be the agent representing those who will vote "Yes," and Honorable Deko Barisa as the agent for those who will vote "No." Should there

be no member wishing to suggest an alternative method for voting, I am prepared to present the question and proceed with the tallying of votes in the form of "ayes" and "nays." Those who vote 'Yes' are in favour of the motion and those that would vote 'No' are against the motion.

**Voting on The Motion of Nomination of Mr. James G. Gichu.**

YES	NO	ABSENT
Aisha Ali Abdulrahman	Amina Hassan Mbwana	Ahmed Omar Hamid
Francis N. Gakonga	Atwaa Salim Mohamed	Beatrice W. Munge
Hope Wanjiku Mwaura	Barisa Deko Bana	John Mburu Gitonga
James Njaaga Kariuki	Mbwana M. Mbwana	Mercy W. Nyambura
	Fahd Dini Adnan	Paul Kimani Njuguna
	Husni Alawy	Rebecca W. Wainaina
	Mohamed A. Abubakar	
	Shekhuna A. Shekhuna	
	Suleiman M. Farah	

I want the results of the tally with agents appending their signatures.

**ADJOURNMENT**

**[The Speaker (Hon. Azhar Ali Mbarak)]:** Honorable Members, there being no other business, the Assembly stands adjourned until tomorrow, Wednesday at 10:30 a.m.

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*The Assembly rose at 4:15 p.m.*