



February 2021

ANALYSIS OF THE GUBERNATORIAL SCENARIO IN NAIROBI CITY COUNTY

Background

The Gubernatorial Scenario in Nairobi City County is characterized by some unusual political drama, highly polarized interpretation of the constitutional and legal pathways and procedures among lawyers, legal scholars, devolution & governance experts, civil society activists and politicians. There is a lot of confusion and controversy regarding the numerous petitions and court rulings in respect to the nomination, vetting and appointment of M/s Anne Kananu Mwenda as the first un-elected Woman Deputy Governor and subsequently as the first Woman County Governor of Nairobi County.

Constitutional and Legal Provisions underpinning the Office of the County Governor and Deputy Governor

Article 180 of the Constitution of Kenya, 2010, stipulates the procedures for the Election of a County Governor and Deputy County Governor for each of the 47 County Governments, including Nairobi City County.

Article 18 stipulates the procedure for the removal of a County Governor.

Article 182 stipulates the procedures for occurrence of a Vacancy in the office of county governor.

According to Section 32(1) of the County Governments Act, 2012, the deputy governor shall take and subscribe to the oath or affirmation as set out in the Schedule of the Act before assuming office.

Section 33(1) stipulates the procedure for the removal of a county governor from office, a member of the county assembly may by notice to the speaker, supported by at least a third of all the members, move a motion for the removal of the governor under Article 181 of the Constitution.

Twists and turns in the Nomination and Appointment of Nairobi 3rd Deputy Governor Designate

Anne Kananu Mwenda was sworn in as Nairobi's Third Deputy Governor on Friday 15th January 2021 afternoon around 2PM by a High Court Judge. Her ascension to the vacant seat now means

that she is the potential Governor of Nairobi City County, taking over from Mike Sonko who was impeached in Mid December 2020. M/s Kananu was nominated by former Governor Sonko in January 2020, but her vetting and appointment had been delayed by a court case, as well as Sonko's run ins with the law and the ruling party Jubilee over multiple issues.

Her fast-tracked vetting and appointment raised legal issues as she ascends to the deputy governor's office. To some political and governance analysts, this move by the ruling party Jubilee and its allies is what came to be referred to as a last-minute play to avoid a by-election which was scheduled by IEBC for 18th of February, 2021. M/s Kananu was vetted by a 10-member committee of the county assembly.

Court Petitions against Hon. Kananu from becoming the 1st Women Deputy Governor and 1st Woman Governor of Nairobi City

Petition 1: Sonko's petition in the High Court against his impeachment

On 4th January 2021, Justice Anthony Mrima suspended the Gazette Notice which was issued by the IEBC on December 22, 2020 until Sonko's case is heard and determined. Sonko, who was impeached on December 17, 2020 after the Senate upheld a motion by the Nairobi County Assembly, had moved to court to challenge his ouster.

Petition 2: ACEC PETITION NO. 1 of 2021

The ACEC Petition No 1 of 2020 was filed on 13th January 2020 by Peter Odhiambo Agoro as the Petitioner against Anne Kananu Mwenda, Hon. Mike Mbuvi Sonko as Respondents and the County Assembly of Nairobi and Director of Public Prosecutions as Interested Parties therein.

Petition 3: Activist Okiya Omtatah's petition to the High Court

Activist Okiya Omtatah wanted the High Court of Kenya to bar the County Assembly from vetting M/s Kananu the nominee for the position of Deputy Governor.

Petition 4: Petition filed by LSK and KHRC against the swearing in of Hon. Kananu as the First Woman County Governor of Nairobi City County

The Law Society of Kenya (LSK) and the Kenya Human Rights Commission (KHRC) challenged the swearing-in of Nairobi Deputy Governor Anne Kananu Mwenda in court. This came after the hastened vetting and approval of Kananu as Deputy Governor by the Nairobi County Assembly and swearing-in, in quick succession on 15th January 2021, eliciting mixed reactions on the legality of the process.

Lessons Learned from the Nairobi Gubernatorial Scenario and Way Forward

- That Nairobi City County is a complex governance institution with a lot of vested political interests by virtue of it being the Capital of the Republic of Kenya with the largest budget compared to any of the other 46 counties.

- The lack of a deputy governor for period of three years largely contributed to the intrigues that surrounded the impeachments and numerous court cases for and against Hon. Anne Kananu Mwenda.
- Kananu's bravery, determination and resilience should be a lesson to all other women aspiring for such top political positions of responsibility. Indeed, she is a role model to be emulated by other women aspiring for gubernatorial and deputy gubernatorial seats in the 47 county governments in the Republic of Kenya.
- The constitutional and legal pathways for the nomination and election of county governors and deputy governors must be critically reviewed to eliminate uncertainties, illegalities and irregularities in the process.
- The Nairobi City Gubernatorial Scenario, series of events, power struggle and a catalogue of court petitions shall forever remain offer researchers with gaps for research and rich foundational literature on devolved system of governance, separation of power, gender equity and equality leadership and integrity, transparency, accountability, rule of law and the due process.
- The suspension of the gubernatorial by-elections and the end of term (60 days) for the acting (i.e., temporal) Governor may result into a constitutional crisis unless the current deputy governor, Hon. Anne Kananu Mwenda is cleared by the courts and allowed to assume the office of the County Governor of Nairobi City County.
- The sovereign will of the Nairobi City County voters has been put on trial by the suspension of the by-election scheduled for the 18th February 2021 by the High Court of Kenya.