



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – (FIRST SESSION)

THE NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

THURSDAY, OCTOBER 12, 2017

1. The House assembled at thirty minutes past Two O'clock
2. The Proceedings were opened with Prayer
3. **Presiding** – the Speaker
4. **MESSAGES** The Speaker conveyed the following Communication -

Approval by the Senate of the Election Laws (Amendment) Bill (National Assembly Bill No. 39 of 2017)

“Honourable Members, pursuant to the provisions of Standing Order 41, I wish to report to the House that I have received a Message from the Senate regarding the approval, by the Senate, of the Election Laws (Amendment) Bill (National Assembly Bill No. 39 of 2017). The Message reads in part, and I quote, “the Election Laws (Amendment) Bill (National Assembly Bill No. 39 of 2017)” was considered and passed by the Senate on Thursday, October 12, 2017 without amendments.”

Honourable Members, you may recall that the National Assembly had passed the said Bill on Wednesday October 11, 2017 with amendments. In this regard, I will now proceed to present the Bill to the H.E. the President for assent in accordance with the provisions of Articles 110(5) of the Constitution.

I thank you.

5. **COMMUNICATION FROM THE CHAIR**

The Speaker conveyed the following Communication -

“Honourable Members,

My office is in receipt of several communications relating to the filling of the various leadership positions by the minority coalition in this 12th Parliament. More specifically, I have received the following correspondences and minutes relating to the filling of the positions of Leader of the Minority Party, Deputy Leader of the Minority Party, Minority Whip and Deputy Minority Whip-

- (a) A letter dated 13th September 2017 from Senator Moses Wetangula notifying my office of a resolution of the NASA Coalition appointing Hon. John Mbadi as the Minority Party Leader, Hon. Ayub Savula as the Deputy Minority Party Leader, Hon. Robert Mbuias the Minority Whip and Hon. Chrisanthus Wamalwa as the Deputy Minority Whip in the National Assembly;
- (b) A letter dated 21st September 2017 from the Hon. John Mbadi notifying my office of a decision by the NASA Coalition to leave vacant the offices of the Deputy Leader of Minority, Minority Whip and Deputy Minority Whip awaiting a NASA parliamentary group meeting where the coalition will deliberate on and fill these positions. Hon. Mbadi attached a letter from the Chief Executive Officer of the NASA Coalition one Mr. Norman Magaya dated 21st September 2017 signifying the same;
- (c) A letter dated 20th September 2017 from the Registrar of Political Parties confirming the existence of a pre-election coalition agreement between the NASA Coalition parties;
- (d) Minutes of the Amani National Congress (ANC) Party held on 16th August 2017;
- (e) Minutes of the Ford-Kenya Party held on 6th September 2017;
- (f) Minutes of the Wiper Democratic Movement-Kenya Parliamentary Group meeting held on 13th September 2017.

I have isolated three issues arising out of these correspondences for which I am obliged to give directions. These issues are-

- (a) *Whether the leadership positions for the Minority in the House will be filled by individual party or a coalition of parties;*
- (b) *Who is the lawful authority to make and communicate the decision of the minority appointing its leadership?*
- (c) *Whether the provisions of Constitution, the law and the Standing Orders have been complied with by the minority coalition as regards the filing of its leadership positions*

Is the Minority a party or coalition of parties?

Honourable Members, the first issue relates as to whether the leadership positions for the minority in the House will be filled by individual party or a coalition of parties. Article 108 of the Constitution provides for the Party leadership in the House as follows-

Party leaders

108 (1) There shall be a leader of the majority party and a leader of the minority party.

(2) The leader of the majority party shall be the person who is the leader in the National Assembly of the largest party or coalition of parties.

(3) The leader of the minority party shall be the person who is the leader in the National Assembly of the second largest party or coalition of parties.

Clause (4) further goes ahead to place the Leader of the Minority Party third in the order of precedence to be observed in the National Assembly after the Speaker of the National Assembly and the Leader of the Majority Party.

Under section 10 of the Political Parties Act, two or more political parties may form a coalition before or after an election and a coalition agreement entered into before an election shall be deposited with the Registrar at least three months before that election.

My office is in receipt of a letter dated 20th September 2017 from the Registrar of Political Parties in which she confirms a pre-election coalition agreement having been deposited in her custody between the Orange Democratic Movement, the Wiper Democratic Movement-Kenya, Ford Kenya, Amani National Congress and Chama Cha Mashinani.

Accordingly, all the aforementioned parties are, subject to any post-election agreement that may be made, eligible to constitute a coalition within the meaning of Article 108(3) of the Constitution and Standing Order 20 for purposes of election of the Leader of the Minority Party, the Deputy Leader of the Minority Party, the Minority Whip and the Deputy Minority Whip.

Decision making and Mode of Communication of the Decision by the Minority

Honourable Members, the second issue relates to who is the lawful authority to make and communicate the decision of the minority in appointing its House leadership. Article 108 of the Constitution does not provide for the manner of election or removal of the Leader of the Minority Party. This is however provided for in Standing Order 20 which provides as follows-

Leader of the Minority Party and Deputy Leader of the Minority Party

20. (1) *The Minority party or coalition of parties in the National Assembly shall elect—*
- (a) *a member of the National Assembly belonging to the party or coalition of parties to be the Leader of the Minority Party;*
 - (b) *a member of the National Assembly belonging to the party or coalition of parties to be the Deputy Leader of the Minority Party.*
- (2) *In electing members under paragraph (1), the minority party or coalition of parties in the National Assembly shall take into account—*
- (a) *any existing coalition agreement entered into pursuant to the Political Parties Act;*
 - (b) *the need for gender balance.*
- (3) *A member elected under paragraph (2) may be removed by a majority of votes of all members of the minority party or coalition of parties in the National Assembly.*
- (4) *The whip of the minority party or coalition of parties in the National Assembly shall forthwith, upon a decision being made under this Standing Order, communicate to the Speaker, in writing the decision together with the minutes of the meeting at which the decision was made.*

Honourable Members, under paragraph 3 of the Third Schedule to the Political Parties Act, a coalition agreement amongst other things shall state the criteria or formula for sharing of positions in the coalition structure, roles and responsibilities within the coalition *and the decision making structure, rules and procedures of the coalition*. Article 7 of the coalition agreement forwarded to my office by the Registrar of Political Parties in her letter under reference stipulates the decision-making organ of the minority coalition to be its Summit. Indeed, Members are aware that matters relating to political parties and coalitions thereof are governed by the Political Parties Act which has its own mechanisms for dispute resolution in relation to any disputes that may arise under the Act. I will therefore refrain from commenting on matters that fall under the purview of that Act and restrict myself to the requirements of the Standing Orders of the House.

It is however, true to conclude that our Standing Orders as read together with the Political Parties Act contemplate a decision appointing the minority leadership in the House to be

made by the decision-making organ of the coalition of parties forming the minority coalition and further that the decision made be conveyed to my office ***in writing by the whip of the minority party or coalition of parties who is also obliged to attach the minutes of the meeting at which the decision was made.***

Has the minority coalition complied with the Constitution, the law and the Standing Orders in appointing its leadership?

Honourable Members, the third issue relates as to whether the provisions of Constitution, the law and the Standing Orders have been complied with by the minority coalition as regards the filing of its leadership positions of Leader of Minority Party, Deputy Leader of Minority Party, Minority Whip and Deputy Minority Whip

Standing Order 20(4) requires the whip of the minority party or coalition of parties in the National Assembly to forthwith, upon a decision being made on the Leader of the Minority Party and the Deputy Minority Leader, ***communicate to the Speaker, in writing the decision together with the minutes of the meeting at which the decision was made.***

My office received a letter dated 13th September 2013 from Senator Moses Wetangula notifying my office of a resolution of the NASA Coalition appointing Hon. John Mbadi as the Minority Leader, Hon. Ayub Savula as the Deputy Minority Leader, Hon. Robert Mbui, as the Minority Whip and Hon. Chrisanthus Wamalwa as the Deputy Minority Whip. In terms of compliance with the requirements of Standing Orders 20(4), there were no minutes attached to this communication and secondly it is obvious that Senator Wetangula cannot be the Minority Whip to a House to which he does not belong.

My office subsequently received a letter dated 21st September 2017 from Hon. John Mbadi, MP notifying of a decision by the NASA coalition to leave the offices of the Deputy Leader of Minority, Minority Whip and Deputy Minority Whip vacant awaiting a NASA parliamentary group meeting where the coalition will deliberate on and fill these positions. Hon. Mbadi attached a letter from the Chief Executive Officer of the NASA coalition Mr. Norman Magaya dated 21st September 2017 signifying the same. In terms of compliance of Standing Order 20(4), there were also no minutes attached to this correspondence.

On a different note however, these two letters from Hon. Mbadi and Mr. Magaya by implication confirmed that the NASA Coalition had indeed made the resolution communicated to my office by Senator Wetangula on 13th September 2017. More specifically, Mr. Magaya indicated in his letter that "By dint of this letter....I request that you write to both the Speaker of the National Assembly and Senate ***and ask them to stand over the earlier communication in respect of the other house leadership positions***"

Although this statement, especially coming from the Chief Executive Officer of the NASA Secretariat can be inferred as a confirmation of the authority for Senator Wetangula's letter, the statement still falls short of the threshold of Standing Order 20(4) which requires communication by the Whip and attachment of the minutes of the meeting.

Honourable Members, the matters herein are not new to the House. Indeed, Considered Rulings have previously been sought, and issued, regarding leadership in political parties. To jog your memory a little bit, in November, 1993, the Chair was invited to guide the House on a matter regarding the issue of the Official Opposition Party in the House. Then, two opposition parties, namely FORD - K and FORD - A, each had 30 Members in the House (*the requirement for a party to be declared official opposition*). However, the Chair never got the opportunity to give guidance as one of the Members of FORD-A defected to the then ruling

party, KANU. Similarly, in 2006, the Chair was again called upon to rule on the position of Official Leader of Opposition. On Wednesday, 29th November, 2006, the Member for Eldoret North Constituency, Hon. William Ruto, had risen on a point of order and sought guidance from the Chair to rule on some issues, including the position of the Leader of the Official Opposition in an apparent reference to purported changes in the leadership of the Official Opposition party, KANU.

In his ruling, the Chair noted that party proceedings are foreign to the House unless properly and formally introduced through established mechanisms. Without taking you back, the Chair noted that “.... **registration of political party officials... is extraneous, foreign and inconsequential to the conduct of Parliamentary business or proceedings in this House. The constitutional responsibilities of conducting, managing, regulating and guiding Parliamentary business lies nowhere else on earth, but on the shoulders of the Chair.**”

The Chair then ruled that “to give the guidance sought by the hon. Member, I hereby order and rule that the Leader of the Official Opposition party remains the Hon. Uhuru Kenyatta, MP, the Official Opposition Chief Whip remains the Hon. Justin Muturi and the Shadow Cabinet remains as submitted by the Leader of the Official Opposition, vide his letter dated 11th June, 2003, as he had not received any notification that the KANU Parliamentary Caucus has met and made any changes in their leadership.

Honourable Members, in light of the foregoing, I am constrained to make the following observations-

Firstly, the communications I have received from the Minority coalition relating to the filling of its leadership positions have all fallen short of fulfilling the requirements of Standing Order 20(4) in terms of who should communicate and how the communication ought to be done.

Secondly, the perceived appointment of Hon. John Mbadi as the Minority Leader is premised on the letter dated 21st September 2017 from the Chief Executive Officer of the NASA Secretariat.

Thirdly, as the Speaker of the House, I am bound to apply the rules of the House without fear or favour especially in cases where the Standing Orders have expressly provided for the matter in question. Standing Order 1 only gives me discretion to decide on procedural questions not expressly provided for by the Standing Orders. In the instant case, Standing Order 20 has expressly provided for the matter in question and my duty as your Speaker is to uphold the rules of the House.

In view of the foregoing, I am unable to act on the correspondences from parties forming the NASA Coalition and I call upon the Coalition to consider the matter and submit the necessary names in strict fulfillment of the laid down procedures including those governing the Coalition. This ought to be concluded by the time the House resumes from the short recess, that is, November 7, 2017.

I thank you”.

6. PAPERS LAID

The following Papers were laid on the Table –

- (i) Report on the Implementation and Monitoring of Provisions on Local Content in the Petroleum Extraction and Production Industry in Kenya by the Ministry of Energy and Petroleum for the year 2016.
- (ii) Report on the Assessment of the Management of Green Schools and Commercial Tree Growing Programme by the Ministry of Environment, Natural Resources and Regional Development Authorities for the year 2017.
- (iii) Reports of the Auditor-General on the Financial Statements in respect of the following Institutions for the year ended 30th June, 2016 and the certificates therein:-
 - a) National Council for Population and Development;
 - b) Western Kenya Rice Mills Limited;
 - c) Kenya Industrial Research and Development Institute;
 - d) Kenya School of Law;
 - e) Ministry of Industrialisation and Enterprise Development;
 - f) Mwea Rice Mills Limited;
 - g) Kenya Industrial Estates;
 - h) Kenya National Highways Authority;
 - i) Bomas of Kenya; and
 - j) Laikipia University.
- (iv) The Reports of the Auditor-General on the Financial Statements in respect of the following Constituencies for the year ended 30th June, 2016 and the certificates therein:-
 - a) OlKalou Constituency;
 - b) Kisauni Constituency;
 - c) LungaLunga Constituency;
 - d) ChukaGambangómbe Constituency;
 - e) Ganze Constituency;
 - f) Githunguri Constituency; and
 - g) Kabete Constituency.

(The Leader of the Majority Party)

7. **NOTICE OF MOTION**

The following Notice was given –

THAT, this House adopts Sessional Paper No.7 of 2016 on the Mining and Minerals Policy from the Ministry of Mining, laid on the Table of the House on Wednesday, October 11, 2017

(The Leader of the Majority Party)

8. **STATEMENT PURSUANT TO STANDING ORDER 44(2)(a)**

Pursuant to the provision of Standing Order 44(2)(a), the Leader of the Majority Party issued a Statement regarding the Business of the House for the week commencing Tuesday, November 7, 2017.

9. **PROCEDURAL MOTION – REDUCTION OF PUBLICATION PERIOD OF A BILL**

Motion made and Question proposed -

THAT, pursuant to the provisions of Standing Order 120, this House resolves to reduce the publication period of the Supplementary Appropriation (No.3) Bill (National Assembly Bill No. 42 of 2017) from seven (7) days to one (1) day.

(The Leader of the Majority Party)

Question put and agreed to.

10. **THE SUPPLEMENTARY APPROPRIATION (NO. 3) BILL (NATIONAL ASSEMBLY BILL NO. 42 OF 2017)**

(Chairperson, *Ad-Hoc* Committee on the Supplementary Estimates)

Order for First Reading read;

Bill read a First Time and ordered to be read a Second Time **today.**

11. **MOTION – MANDATORY PAYMENTS TO FARMERS FOR CANE DELIVERED**

Motion made and Question proposed -

THAT, aware that apathy in sugarcane farming due to unfavourable weather patterns and poor payment programmes by sugar millers to farmers has resulted in a worrying drop in cane production and thus drop in sugar production; noting that millers have for years frustrated farmers through delays in payment for cane delivered; concerned that these late payments have caused sugar farmers untold suffering and frustrations and made them incur huge losses resulting from interests on loans advanced to them during cane farming to purchase fertilizers and other farm inputs; cognizant of the fact that as a result of these delayed payments, many of the farmers have remained poor and in debt, this House urges the cane millers to provide for the mandatory payment to cane farmers within fourteen days (14) days upon delivery.

(Hon. Julius K. Melly)

Debate on the Motion having been concluded on Wednesday, October 11, 2017 (Afternoon Sitting);

Question put and agreed to.

12. **THE SUPPLEMENTARY APPROPRIATION (No. 3) BILL (NATIONAL ASSEMBLY BILL NO. 42 OF 2017)**

Order for Second Reading read;

Motion made and Question proposed –

THAT, the Supplementary Appropriation (No. 3) Bill (National Assembly Bill No. 42 of 2017) be now read a Second Time

(The Leader of the Majority Party)

Debate arising;

Rising in his place on a Point of Order, the Member for Endebes (Dr. Robert Pukose) claimed to move that Mover be called upon to reply;

And the Speaker acceding to the claim;

Question put and agreed to.

Thereupon the Mover replied;

Question put and agreed to.

Bill read a Second Time and committed to the Committee of the whole House **today;**

Thereupon the House resolved into Committee.

13. **COMMITTEE OF THE WHOLE HOUSE**

Order for Committee read;

IN THE COMMITTEE

The Deputy Speaker in the Committee

The Supplementary Appropriation (No. 3) Bill (National Assembly Bill No. 42 of 2017)

Clauses 2, 3, 4 & 5 - agreed to

First & Second Schedule - agreed to
(subject to correction of typographical errors under Vote D1081, D1011 and R1081)

Title - agreed to

Clause 1 - agreed to

Bill to be reported without amendments.

14. **HOUSE RESUMED** - the Fourth Chairperson in the Chair

The Supplementary Appropriation (No. 3) Bill (National Assembly Bill No. 42 of 2017)

Bill reported without amendments;

Motion made and Question proposed –

THAT, the House does agree with the Committee in the said report

(The Leader of the Majority Party)

Question put and agreed to;

Motion made and Question proposed –

THAT, the Supplementary Appropriation (No. 3) Bill (National Assembly Bill No. 42 of 2017) be now read a Third Time

(The Leader of the Majority Party)

Question put and agreed to;

Bill read a Third Time and **passed.**

15. **MOTION – ADOPTION OF SESSIONAL PAPER NO.5 OF 2016 ON THE NATIONAL CLIMATE CHANGE FRAMEWORK POLICY**

Order deferred to another day.

16. **MOTION – ADOPTION OF SESSIONAL PAPER NO.6 OF 2016 ON THE NATIONAL URBAN DEVELOPMENT POLICY**

Order deferred to another day.

17. **MOTION – ADJOURNMENT OF THE HOUSE IN ACCORDANCE WITH THE CALENDAR OF THE ASSEMBLY (REGULAR SESSIONS)**

Motion made –

THAT, pursuant to the provisions of Standing Order 28 on the Calendar of the Assembly (Regular Sessions), this House adjourns until Tuesday, November 07, 2017 at 2.30 p.m.

(The Leader of the Majority Party)

Debate arising;

And the time being Seven O'clock, the Fourth Chairperson interrupted the proceedings and adjourned the House without Question put pursuant to the Standing Orders.

18. **HOUSE ROSE** - at Seven O'clock

M E M O R A N D U M

The Speaker will take the Chair on
Tuesday, November 07 2017 at 2.30 p.m.