



REPUBLIC OF KENYA

TWELFTH PARLIAMENT - (SECOND SESSION)

THE NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

THURSDAY, AUGUST 9, 2018 AT 2.30 P.M

1. The House assembled at thirty minutes past Two O'clock.
2. Proceedings were opened with Prayer
3. **Presiding** – the Honourable Speaker

4. COMMUNICATION FROM THE CHAIR

The Chair delivered the following communication;

GUIDING THE DEBATE ON THE REPORT OF THE INQUIRY INTO ALLEGED IMPORTATION OF ILLEGAL AND CONTAMINATED SUGAR IN THE COUNTRY

"Honourable Members,

Before we proceed with this order relating to consideration of the Report of the Joint Departmental Committees on Agriculture & Livestock and Trade, Industry & Cooperatives on the inquiry into alleged importation of *Illegal and Contaminated Sugar in the Country*, I wish to make this Communication, which is aimed at facilitating the business of the House in view of certain matters that have been raised relating to part of the contents of the Report.

Honourable Members, you will recall that on Wednesday 1st August 2018, I interrupted the business of the House to allow the Chairpersons of the Joint Committees on Agriculture & Livestock and Trade, Industry & Cooperatives to table the aforementioned Report, long after the Order on "Papers" under which the laying of reports would ordinarily take place long after it had been dispensed with. My decision was informed by the importance of the task undertaken by the two Committees, the

sensitivity of the matters that were under investigation and the public interest in the questions sought to be addressed.

Honourable Members, even though the House Business Committee had neither sat nor scheduled the matter as part of the business for consideration that afternoon as is the practice, I did instruct that the highly anticipated Report be laid on the Table of the House and the matter nevertheless be considered the following day so as to cushion against speculations associated with any inordinate delay on such a sensitive matter. My decision was also informed by the fact that this House has the responsibility of deliberating and resolving issues of concern to the people, a function conferred upon each one of you by Article 95(2) of the Constitution. Suffice it to say, the issue of the alleged presence of contraband and probably contaminated sugar in the Country is one that has been and is still of huge concern to the people of Kenya and they are looking up to this House through the two Committees to get to the bottom of it.

Honourable Members, moving on, upon the Report being laid I received representations from a host of Members including some of the Members of the Joint Committee regarding some of the recommendations contained in the report. Indeed, the following day after the report had been tabled, I received more representations from Members, including those of the House Business Committee, to defer discussions in order to afford all Members an opportunity to read the Report. Requests were also made to defer the Report so as to allow sufficient time for those wishing to propose amendments to the Report to observe the timelines set out under Standing Order 55 relating to issuance of notices of amendments. Honourable Members, as you may be aware, that Standing Order requires the proposer of an amendment to a Motion to hand the proposed amendments in writing to the Clerk of the House **at least two hours before the Order is read**.

Honourable Members, you will recall that I forthwith ordered for the reorganization of the Business that afternoon and deferred the particular order relating to the Report to the next soonest date agreed to by the House Business Committee.

Honourable Members, permit me to also bring to the attention of this House the fact that I have in the past few days received further representations from Members of the Joint Committee who have expressed concern that some of the recommendations as worded may not fully represent the spirit of the resolutions of the Committee. Conscious of the gravity of the matter, I have certainly also engaged in discourse with the two Chairpersons of the Committees with a view to establishing the actual position.

Honourable Members, before I proceed, I wish to state that I am dismayed that the questions relating to the accuracy or otherwise of certain parts, including findings, of the report were canvassed more in the media than before this House. Without belabouring the point Honourable Members, you will recall that I recently guided the House on the investigatory mandate of Committees, and I urged those Committees, and indeed its Members, to refrain from anticipating debate on a Motion of which notice has been given contrary to provisions of Standing Order 85. Of concern is the equally disappointing manner in which Members have conducted themselves in canvassing the issues in the media. No sooner had the Chairperson of the Departmental Committee on Trade and Industry tabled the report than the media reports became awash with information that some Members of the Joint Committee had disowned the contents of the report. While Honourable Members may not have had the intention to besmirch the Committee, the accusatory tone of some comments in the media reports has yielded premature and undesired reactions from the public even before the Report is debated. This was indeed conduct unbecoming of the concerned Honourable Members, as it is expected that any concerns relating to contents of a Report should be addressed through appropriate parliamentary channels more so, bearing in mind the provisions of Standing Order 85, which prohibit Members from anticipating debate.

Ventilation on a matter before the House outside the domain of the debating Chamber goes against the long-held view that Parliament is an August House.

Indeed, on 9th July, 1971, the then Hon. Speaker Mati, ruled that it was improper to carry on a debate in the Newspapers on a matter that is active in the House.

I quote, "Hon. Members, my attention have been drawn to a report in one newspaper, the *Daily Nation*, where it is reported that one Hon. Member made a statement on the Trade Disputes (Amendment) Bill to the Press. I would like to remind hon. Members that this is completely out of order. It is not done once a matter is before this House, it is debated here and we do not carry on the debate in newspapers of Bills or Motions, which are presented to this House. I hope the Hon. Member did not intend to offend these rules. It is improper for any Hon. Member to carry on a debate in the Papers on something that is going on here in the House."

Again on 15th July, 1971, he ruled that, "It is all right to make general statements perhaps, when an organization does not agree with something; but when you go as far as giving the details on the things which you either said here or could have said here, then, that is going too far and it makes the work of the House almost useless."

Honourable Members, it is paramount to remind ourselves of our constitutional duties and obligations as Members of Parliament as conferred by the Constitution and more importantly on the duty we owe to our people: That is to provide clarity where there is confusion; to provide direction where there is none; to provide reassurance where there is anxiety; to provide peace where there is dispute; and to give hope where there is despair. This, Honourable Members, should be our marking scheme, our guiding principle and the light that guides how we execute our duties even in our respective Committees.

Honourable Members, having said that, allow me now to interrogate the following two questions that have arisen concerning the Report before this House-

- (1) *First, what is the authenticity of the Report before this House?*
- (2) *Secondly, did the Committees miss any procedural steps in compiling the final Report?*

Honourable Members, in order to address the first question on the authenticity of the Report before this House, allow me to state that I am guided by the provisions of Standing Order 199 which provides as follows **Reports of Select Committees**.

- 199** (1) *The report of a Select Committee shall be prepared and kept in the same form as the Votes and Proceedings of a Committee of the whole House and in such other form as may be prescribed in the Committee manual.*

(2) *The report of a Select Committee having been adopted by a majority of the members, shall be signed by the Chairperson on behalf of the Committee.*

(3) *A Select Committee shall adopt its report in a meeting attended by a majority of its members.*

Honourable Members, in light of the foregoing, as your Speaker, I am now compelled to answer the following questions, which sets out the procedural parameters of authenticating a Committee Report-

- (i) *Is the Report properly before this House? **The answer is yes, having been properly laid by the Joint Chairperson, last week;***
- (ii) *Are there votes and proceedings of the Report in form of minutes appended? **The answer is yes;***
- (iii) *Has the Report been adopted by a majority of the Members? **The minutes attest that the answer is yes;***
- (iv) *Has the Report been signed by the Chairperson of the Committee? **Page No. 62 of the Report indicated that the answer is also yes;***
- (v) *Was the Report adopted in a meeting attended by a majority of its members? **The minutes of the 24th Sitting of the Joint Committee held on 1st August 2018 and in which 28 Members were present attest that the answer is also in the affirmative.***

In this regard, **Honourable Members** and in accordance with the provisions of Standing Order 199, the Report before this House is therefore authentic as it complies with the requirements of the Standing Orders.

Honourable Members, moving on to the last question on whether the Joint Committee overlooked or missed any steps in arriving at the final Report, I am further guided by the provisions of Standing Order 199(5) and (6) which provides that-

(4) *A report having been adopted by a majority of members, a minority or dissenting report may be appended to the report by the members of the Committee.*

(5) *A report of a select committee including any minority report together with the minutes of the proceedings of the committee shall be laid by the Chairperson of the Committee within fourteen days of conclusion of its proceedings.*

Honourable Members pursuant to the provisions of Standing Order 199(5) and (6) and considering the representations I have received from various members of the Joint Committee, I am persuaded that the Joint Committee may have missed an important step while considering and preparing a final report on this matter: That is, the opportunity to also have a divergent views or a minority report recorded as contemplated under Standing Order 199(5) and (6), if the conduct of some of the Members following the tabling of the Report is anything to go by.

Permit me, **Honourable Members** to remind this House of the Communication I issued on 30th July 2014 (*On the Place of Minority Reports and Admissibility of Committee Report on the Removal of IEBC Commissioners*). Due to the importance of the matter at hand, I will quote a number of the findings in that Communication. The House was guided thus-

“There is a universally accepted principle of democracy that “the majority shall have their way, but the minority shall also have their say”. This principle does not decree that the majority ought to emasculate the voices of the minority, nor does it give the minority a blanket cheque to say anything under the sun. To the contrary, this principle encourages the majority in any group to recognize and take into account the views of the minority in that group..... In parliamentary parlance, the application of this principle is not new.....The Chairperson rules on relevance. The indication of a minority report is a mechanism to allow the House to be acquainted with the completeness of the issues about which there has been disagreement, before the House can make a resolution...

Hon. Members, the reading of these rules (Standing Order 199(5 and (6)) indicate that, as an advance of our previous practice, those with minority views have been accorded the higher privilege as they are allowed to have their views recorded substantially, and not just a mere mention and, in a rare occasion, have a dissenting report appended to the main report. This is in keeping with the spirit of our new Constitution to protect the rights of both the majority and the minority. However, should a committee not reach consensus, this does not imply that there should be two reports of a committee or a separate report compiled by the minority. The rule of thumb is that there can only be one report of a committee. That is the report that has been supported by the majority of the membership of the committee, which may contain, as part of it, a minority report.”

Honourable Members, It is my considered view that some Members of the Joint Committee who had a contrary view to that held by the majority, lost an opportunity to prepare a minority report that would have, in my view, also enriched debate in the

House by informing the House on the substance of the divergent views that may have been held by them.

It lowers the dignity of the House when we fail to observe our own rules on anticipation of debate and taking it outside the House, and more importantly by not utilizing avenues available to express our divergent views.

Honourable Members, having disposed of the questions of **authenticity** of the Report and the probability of the **missed steps**, allow me now to inform the House that, pursuant to the provisions of Standing Order 55, the Office of the Clerk did receive proposed amendments to the Report from three Hon. Members. These are the Majority Party Whip, Hon. Benjamin Washiali; the Member for Homa Bay, Hon. Gladys Wanga, and nominated Member, Hon. Geoffrey Osotsi. As you may have noticed by now, those amendments are published in the Order Paper for this sitting, save for those proposed by the Majority Party Whip, failed to meet the standard test of **admissible amendments**. For the information of the House, the Majority Party Whip was proposing to introduce **new** annexatures and recommendations, whose basis was **new evidence** that he was proposing to introduce in the Report, by amending the *Observations* part of the Report. You will all agree with me that, allowing such would have been procedurally untenable. Should the Member have intended to have that evidence considered, he should have tabled it either in the House when the matter was canvassed, or in the Joint Committee during the evidence taking. Introducing new evidence at this penultimate stage will definitely present legal and procedural absurdity to the ordinary process of evidence taking as we know it!

Honourable Members, I indeed found myself in a very awkward position that requires me to adjudicate on the content of a Report whose conceptualization, evidence taking, and drafting I did not participate. In summary therefore, I rule as follows–

- (i) **THAT, pursuant to the provisions Standing Order 199 the Report before this House is authentic as it meets the requirements of the Standing Orders; and,**

(ii) THAT, pursuant to the provisions Standing Order 199, the Members of the Joint Committee who may have had dissenting opinion from the majority of Members who adopted the Report ought to have considered recording, as part of the Report, their dissenting views, but in absence of such record in the Report, the House should proceed to consider the Report as tabled in the House.

The House is guided accordingly.

I thank you!

5. PAPERS LAID

The following papers were laid on the table of the House;

A). The Leader of the Majority Party:

- 1) The Report of the Auditor-General on the Financial Statements of the Kenya School of Government for the year ended 30th June, 2017 and the certificate therein.

B). The Leader of Delegation to the 4th Commonwealth Parliamentary Association Youth Meeting (Hon. (Dr.) Makali Mulu, MP):

- 1) Report of the Delegation from the Youth Parliament of Kenya to the 4th Commonwealth Parliamentary Meeting held in Kampala, Uganda from 14th to 19th April, 2018.

C). The Chairperson, Parliamentary Broadcasting & Library Committee (Hon. Joash Nyamoko Nyamache, MP, North Mugirango):

- 1) Reports of the Joint Delegation of the Committee on Parliamentary Broadcasting and Library and the Departmental Committee on Communication, Information and Innovation on:-
 - (a)The Global System Mobile Association World Congress held in Barcelona, Spain on 26th February to 1st March 2018;
 - (b)The 2nd Artificial Intelligence for Good Global Summit held at ITU Headquarters in Geneva, Switzerland on 15th to 17th May 2018; and
 - (c)The Visit to the National Broadcasters Show held in Las Vegas, Nevada on 7th to 12th April 2018.

6. NOTICES OF MOTION

The following Notice of Motion was given:-

PROVISION OF SPECIALIZED TRAINING FOR FISTULA SURGEONS AND SUBSIDIZING COSTS FOR FISTULA SURGERY

"THAT, aware that Article 43 of the Constitution provides that every person has the right to the highest attainable standard of health, which includes the right to health care services, including reproductive health care; **further aware that** Obstetric or Vesical Vaginal Fistula (VVF) is a devastating condition that affects women and girls across the country and which has seen many of the patients victimized, abandoned and ostracized by their communities; **deeply concerned that** it is estimated that more than 2 million women and girls live with Obstetric Fistula, and that 4 out of every 1,000 deliveries in Kenya result in fistula which results in between 50,000 to 100,000 new fistula cases every year; **alarmed that** according to available reports, though Obstetric Fistula is treatable with proper medical attention, only 7.5 percent of patients with fistula are able to access medical care for the condition mainly due to the related costs and lack of suitably trained surgeons; this House **urges** the Government to provide specialized training for Fistula Surgeons and subsidizes costs for fistula surgery in all health facilities in order to make treatment accessible and affordable."

(Hon. Janet Nangabo Wanyama)

7. STATEMENTS

Pursuant to the provisions of Standing Order 44(2) the Majority Whip on behalf of the Leader of the Majority Party issued a Statement regarding business of the House for the week commencing Tuesday, August 21, 2018.

8. MOTION - REPORT ON THE INQUIRY INTO ALLEGED IMPORTATION OF ILLEGAL AND CONTAMINATED SUGAR INTO THE COUNTRY

Motion made and Question proposed –

THAT, this House adopts the Report of the Joint sittings of the Departmental Committees on Agriculture & Livestock and Trade, Industry & Cooperatives on the *Inquiry into Alleged Importation of Contaminated Sugar into the Country*, laid on the Table of the House on Wednesday, August 01, 2018.

(Hon. Kanini Kega, Co-Chairperson, Joint Departmental Committees on Agriculture & Livestock and Trade, Industry & Cooperatives)

Amendment Motion by Hon. Gladys Wanga made and Question proposed -

THAT, the Motion be amended by inserting the following words immediately after the figure "2018"-

"Subject to insertion of the following new recommendations-

- a.) That recommendation No. 5.5 on page 60 of the Report be deleted and substituted with the following new recommendation-

5.5 the Cabinet Secretary for the National Treasury should be held responsible for the excess importation of sugar into the country and consequent tax evasion based on the Gazette Notice No. 4536, Gazette Notice No. 9801, Gazette Notice No. 9802 and Gazette Notice No. 10149.

- b.) That recommendation No. 5.6 on page 60 of the Report be deleted and substituted with the following new recommendation-

5.6 the then Cabinet Secretary for Agriculture, Livestock and Fisheries should be held responsible for recommending waiver of duty for the fourteen (14) companies which imported sugar under Gazette Notice No.9802.

- c.) That recommendation No. 5.11 on page 61 of the Report be deleted and substituted with the following new recommendation-

5.11 the then Cabinet Secretary, Ministry of Trade, Industry and Co-operatives under whose docket KEBS falls to should be held responsible for failure to undertake adequate market surveillance to guarantee the safety and quality of sugar in the country.

- d.) That recommendation No. 5.16 on page 62 be amended by inserting the following new sub-paragraph (c)-

(c)that the owners of the sugar whose samples were tested and found to contain traces of Mercury with references; Moi Base, Eastleigh Ref: F/MISC/267/17-18 and Webuye West, Bungoma Ref: F/MISC/270/17-18, including owners of Diamond Wholesalers and Paleah Stores mentioned in paragraph 5.15 be held responsible.

- e) That a new recommendation 5.17 be inserted on page 62 as follows-

That the Ministry of Health, assisted by the relevant government agencies, should conduct random tests on sugar that is currently on the shelves across the country and report back to Parliament on its suitability for human consumption within six months.

Debate arising;

Question on the Amendment put and negatived;

Twenty one (21) Members stood in their places seeking that a Roll Call Division be undertaken, falling short of the threshold of thirty (30) Members stipulated under Standing Order 72(1)(b).

Amendment Motion by Hon. Godfrey Osotsi made and Question proposed -

THAT, the Motion be amended by inserting the following words after the figure "2018"

"Subject to insertion of the following new recommendations after recommendation 5.16 on page 62 of the Report-

- 5.17 That, in view of observation No. 4.19 of the Report regarding *excess sugar in supply*, within twenty one (21) days, the inter-ministerial Multi-Agency Taskforce on Sugar undertakes a thorough and comprehensive audit of the sugar imported into the country between May, 2017 and August 2018 to determine-
- (i) the exact quantities and quality of the sugar imported during the said period ; and,
 - (ii) the amount of excess sugar so imported against the projected demand.
- 5.18 That, the Ministry of Agriculture, having conducted the audit specified in recommendation 5.17, immediately puts in place and enforces a temporary embargo (ban) on any further importation of sugar until any safe sugar found to be excess is consumed;
- 5.19 That, within Sixty days(60), the Cabinet Secretary for Agriculture submits a report to the National Assembly on the findings of the audit under recommendation 5.17 and a confirmation of the implementation of recommendation 5.18;
- 5.20 That, in view of the submission by the Ministry of Agriculture as contained in paragraphs 2.18 and 2.19 of the Report regarding absence of regulations to streamline the sugar sector, within thirty (30) days, the Cabinet Secretary for Agriculture ensures that the said sugar regulations are concluded and *Gazetted* in accordance with the Statutory Instruments Act; and,
- 5.21 That, the Cabinet Secretaries for Agriculture and the National Treasury ensure that any future importation of sugar that enjoys any duty benefit including duty free arrangement is restricted to allowing direct importation only by-
- (i) state corporations dealing with sugar; or,
 - (ii) any other company for which the Government of Kenya has a shareholding.

Debate arising;

Question on the Amendment put and negatived;

Ten (10) Members stood in their places seeking that a Roll Call Division be undertaken, falling short of the threshold of thirty (30) Members stipulated under Standing Order 72(1)(b).

Debate upon Motion as Originally-stated commenced;

Hon. (Dr.) Robert Pukose rose on a point of order under Standing Order 95 seeking to have the Mover reply to the Motion;
Honourable Speaker acceded to the request;

Question that the Mover be Called Upon to Reply put and agreed to;

Mover replied;

Question on Motion put and negatived;

9. THE SACCO SOCIETIES (AMENDMENT) BILL (NATIONAL ASSEMBLY BILL NO. 1 OF 2018)

Order Deferred.

10. THE URBAN AREAS AND CITIES (AMENDMENT) BILL (SENATE BILL NO. 4 OF 2017)

Order Deferred.

11. THE COUNTY GOVERNMENTS (AMENDMENT) BILL (SENATE BILL NO. 11 OF 2017)

Order Deferred.

12. THE FINANCE BILL (NATIONAL ASSEMBLY BILL NO. 20 OF 2018)

Order Deferred.

13. THE WAREHOUSE RECEIPT SYSTEM BILL (SENATE BILL NO. 10 OF 2017)

Order Deferred.

14. MOTION - REPORT OF THE 49TH SESSION OF THE ACP PARLIAMENTARY ASSEMBLY AND INTER-SESSIONAL MEETINGS

Order Deferred.

15. MOTION - REPORT OF 138TH ASSEMBLY OF THE INTER-PARLIAMENTARY UNION (IPU) AND RELATED MEETINGS

Order Deferred.

16. MOTION - REPORT OF THE COMMITTEE ON MEMBERS' SERVICES AND FACILITIES ON A BENCHMARKING VISIT TO THE PARLIAMENT OF THE UNITED KINGDOM AND NORTHERN IRELAND

Order Deferred.

17. MOTION- REPORT ON IMPROVEMENT OF SERVICES AND FACILITIES

Order Deferred.

And the time being eight minutes to Six O'clock the Honourable Speaker interrupted the proceedings and adjourned the House without Question put pursuant to the Standing Orders.

18. HOUSE ROSE - at eight minutes to Six O'clock.

MEMORANDUM

The Speaker will take the Chair on
Tuesday, August 14, 2018 at 2.30 p.m.