



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – SECOND SESSION

THE NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

THURSDAY, AUGUST 30, 2018

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

The Speaker conveyed the following Communications –

(i) Visiting Delegates attending the Africa-UK CPA Workshop

“Honourable Members,

I wish to introduce to you delegates attending the first Africa – UK Public Accounts Committee Workshop hosted by CPA UK in collaboration with the Parliament of Kenya. The delegates, seated at the Speaker’s Row, comprise of Parliamentarians who are members of Public Accounts or equivalent committees from ten (10) countries. They are-

1. Cameroon, the Hon. Moutymbo Rosette Julienne Epse Ayayi, MP (Chairperson) and 2 other Members;
2. Ghana, the Hon. James Klutse Avedzi, MP (Chairperson) and 2 other Members;
3. Mauritius, the Hon. Marie-Aurore Marie-Joyce Perraud, MP (Chairperson) and 1 other Member;
4. Mozambique, the Hon. Esperanca Laurinda Franscisco Nhiane Bias, MP (Vice-Chairperson) and 1 other Member;
5. Namibia, the Hon. Mike Kavetora, MP (Chairperson) and 2 Other Members;
6. Nigeria, the Hon. Kingsley Chinda, MP (Chairperson) and 1 Other Member;
7. Seychelles, the Hon. Jean-Francois Ferrari, MP (Chairperson) and 1 other Member;

8. Sierra Leone, the Hon. Sengehphoh Solomon Thomas, MP (Chairperson) and 2 other Members;
9. The Gambia, the Hon. Muhamed Magassy, MP (Chairperson) and 2 other Members; and
10. United Kingdom, the Hon. Meg Hillier, MP (Chairperson).

Honourable Members, the delegations are also accompanied by Committee Clerks and officials from CPA UK. The delegates are here for a three-day workshop which will focus on regional challenges and opportunities through effective exchange of knowledge and practice, and collaboratively develop an approach for pan-Commonwealth coordination of Public Accounts Committee work. On my own behalf and that of the House, I wish to welcome them to the National Assembly and wish them fruitful engagements during the workshop.

Thank you”.

(ii) CPA Kenya/CPA UK Seminar on Parliamentary Practices and Procedure

“Honourable Members,

The Commonwealth Parliamentary Association (CPA) UK Branch has over the years, partnered with Parliaments of Member States to the Association on a wide range of capacity building programmes for legislators and staff of Parliament. Parliament of Kenya has indeed benefitted from initiatives by the CPA UK, which has carried out several capacity building programmes for Members and staff, both locally and at the seat of UK Parliament in London. Some of the programmes include the annual Westminster Seminar on Parliamentary Practice and Procedures, the Westminster Seminar for Public Accounts Committee as well as various tailored trainings for Members and staff of our Parliament. The programmes have been noted to be key in improving mastery and flair of parliamentary procedures among Members of Parliament. Indeed, several Members here, including the Leader of the Majority Party, Hon. Duale, the Leader of the Minority Party, Hon. Mbadi, and the Hon. Kimunyah, among others, have benefited from the programmes

Honourable Members, the CPA (UK), in collaboration with the National Assembly, has organized two (2) training programme for Members of Parliament on Friday, 5th and Saturday, 6th October, 2018 at a venue to be confirmed later. The programme is aimed at furthering Members’ understanding of parliamentary practices, including comparative analysis of other jurisdictions. Some of the topics to be covered include Parliamentary oversight in a Presidential System, Ethics and Integrity of Members, Decorum and Order in the House, Conduct of Parliamentary inquiries and Parliamentary control and scrutiny on delegated legislation.

Honourable Members, participants will get a rare opportunity to interact with two key facilitators, Lord David Steel, a seasoned British Liberal Democrat whose legislative career was launched in 1965 and has been a Member of the House of Lords since 1997; and Baroness Hillary Armstrong who was made a peer in July 2010, having retired from the House of Commons after twenty-three years.

Honourable Members,

The programme targets Members interested in improving their procedural flair, whether serving their first or subsequent term. In this regard, Members desirous of participating in the programme are required to register their interest with the Office of the Clerk by

Friday, September 14th 2018. Given the limited slots available, only the first sixty (60) Members to register will be considered for the training.

I thank you!”

(iii) Rescission of a decision of the House relating to the Joint Report on Alleged importation of illegal and contaminated sugar into the country

Honourable Members,

As you would recall, on Thursday 9th August, 2018 this House **rejected** the Report of the Joint Committee on Agriculture and Livestock and Trade, Industry and Cooperatives on the *Inquiry into alleged importation of illegal and contaminated sugar into the country*. Soon thereafter, there arose allegations and counter allegations that a section of Members of this August House had allegedly been influenced to vote in a particular manner on the said Report. This has since prompted some Members to seek my leave to approve a motion to rescind that decision with a view to either allowing the House to reconsider the matter or establish a select committee to undertake a fresh inquiry.

Honourable Members, for clarity, I will address the two issues separately, that is, the request to rescind the decision of the House on the relevant Report and the question of alleged bribery of Members of this House.

Honourable Members, on August 14, 2018, my office received a letter from the Member for Mathare Constituency, Hon Anthony Oluoch, certified as ‘very urgent’ on a ‘*Notice of Intention to Request Leave of the Speaker to allow for fresh Inquiry into alleged importation of illegal and contaminated sugar in the country.*’ The letter was premised on the provisions of Standing Order 49 of the National Assembly Standing Orders.

For avoidance of doubt, Honourable Members, the said Standing Order 49 states –

49. (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.

(2) Despite paragraph (1) –

(a) a Motion to rescind the decision on such a question may be moved with the permission of the Speaker;

(b) a Motion to rescind the decision on a question on a Special Motion shall not be allowed.

Honourable Members, Hon. Oluoch’s letter raised the following issues requiring the Speaker’s guidance:

- (a) Whether question has same meaning as Motion in terms of the Standing Orders;
- (b) Whether the window provided in Standing Order 49(2)(a) may be applied on a decision on a Report of a Committee of the House. And if yes, whether the parameters of the contents of the Report may be varied; and,
- (c) Whether the six months restriction of Standing Order 49(1) is applicable to a Petition filed by an aggrieved member of the public.

Other Honourable Members, particularly the Member for Saboti, the Hon. Caleb Luyayi Amisi; the Member for Kanduyi Constituency, the Hon. Wafula Wamunyinyi; and the Member for Homa Bay Town Constituency, the Hon. Peter Kaluma also weighed in on the matter *vide* letters addressed to my Office on 14th and 15th August 2018. The requests by the Hon. Wafula Wamunyinyi and the Hon. Kaluma are of similar import as that by the Hon. Anthony Oluoch. On his part, the Hon. Amisi sought leave to introduce

a Motion to establish a Select Committee to relook into matters relating to the sugar sector.

Honourable Members, before I proceed to guide the House, let me first explain the concept of reversal of decisions of the House. As you would expect, the concept of rescission may be traced to the practice and tradition of the Parliament of the United Kingdom, along which Kenya's Parliament was modelled. Much of these practices and traditions have been chronicled in various editions of Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament.

Erskine May contemplates three ways of reversal of decisions already made by a House of Parliament. The First is through a discharge of an order. Secondly, a decision may be reversed through a declaration of an order that proceedings be null and void. Finally, there is rescission, which is the subject of my Communication, particularly so because, of the three forms of reversal of House decisions, rescission is entrenched in the National Assembly Standing Orders and practice.

Honourable Members, it ought to be understood at the earliest opportunity that, in principle, a hallowed Chamber of Parliament was expected to take a decision on a matter, having conscientiously applied itself to the substance of the matter and consequence on a decision it makes, one way or the other. That is why, as recorded by *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament, Twenty-fourth edition on page 426, 'a question, being once made and carried in the affirmative or negative, cannot be questioned again, but must stand as a judgment of the House.'* The question that would arise would be, **if the decision once carried were to remain as a judgment and could not be questioned again, what was the wisdom behind permitting reversal?**

Erskine May points out that the flexibility of Parliament to create a window for reversing decisions already made was necessitated by the practical inconvenience of that rigid rule, especially where the House as a whole wished to change its opinion. With that rule, it proved too inhibitive for a legislative body that is confronted with the ever-changing problems of government. Hence, a rule prohibiting reconsideration of a decided question had come to be interpreted very narrowly, so as not to prevent open rescission when it is decided that that is desirable.

What is interesting to note from the United Kingdom's experience is that, even though the latitude to reverse House decision was eventually granted, it was not in form of a blank cheque. In the Parliament of the United Kingdom, exercise of the power of rescission has been restrictively invoked. Indeed, the power of rescission has been exercised only in the case of a resolution resulting from a substantive motion, **and even then sparingly.**

Honourable Members, the element of finality of actions of a House of Parliament evidenced in the Parliament of the United Kingdom is also replicated in the Congress of the United States of America. According to Mason's Manual of Legislative Procedure, a decision of the House on a substantive motion or question has an element of finality that ought not be

questioned by the same House. In essence, this self-restraint is important for the House to make progress and is only invoked as a matter of procedure and not to allow revisiting decisions on substantive motions.

Honourable Members, from my reading of Mason's Manual, I also gathered that, while appreciating the necessity to permit changing actions already taken by the House, Mason cautions that it is common practice to restrict the right to reconsider, as in

many cases, this is essential to the progress of the institution. Consequently, section 65 of the Manual provides that –

***“It is necessary that it be possible to put to an end to a debate on controversial questions; otherwise, a minority could continue to make motions concerning the matter and keep it under consideration to the exclusion of other matters and to the point that progress of the body would be seriously impeded.*”**

The practice in parliament of Australia is not far from the UK and USA in so far as rescission is provided for. However, it is a rare occurrence. Interestingly, in the rare occasions on which that power to rescind a decision of Parliament is resorted to, it is only carried if it garners the support of absolute majority of the House. It is my view, that the high threshold set for rescinding a decision of the House implies that, just like is the case in the United Kingdom and the United States of America, the Australian Parliament treats its actions with finality and would not wish to re-consider a substantive matter to which a vote was already taken. In principle, the power of rescission allows a House of Parliament to reconsider and perhaps deviate from its earlier decision on a question. However, it is worth noting that **rescission of a decision of the House is invoked only to the extent that it allows the House to proceed from a situation of uncertainty, and not to necessarily revert a matter to the House or Committee.**

Honourable Members, let me now turn my focus to the experience of Parliament of Kenya on rescission of House decisions. The practice in Kenya mirrors that of the House of Commons of the United Kingdom and the Congress of the United States to the extent that there exists a restriction on reconsideration of decisions taken by the House *“during the preceding six months in the same Session”*

Nonetheless, Standing Order 49(2)(a) provides the House with a window to review its decision with immediacy, with the exclusion of decisions made on special motions. It states –

(2) Despite paragraph (1) –

(a) a Motion to rescind the decision on such a question may be moved with the permission of the Speaker.

Honourable Members, allow me to refresh your mind by sharing with the House, and indeed the general public, incidences where the House invoked or attempted to invoke the power to rescind its decision. In the first incidence of **14th February 2017**, the House passed a Motion to rescind its decision on agreement with the Committee of the Whole House on the Privatization (Amendment) Bill, 2016, having been sought by the Leader of the Majority Party. *The aim of this rescission was to allow recommittal of Clause 3 that had been inadvertently passed with granting the power to approve members of the Privatization Commission to the relevant Committee of the House instead of the National Assembly. Secondly the Clause made usage of the term Parliament as construed before bicameralism, hence necessitating correction of the error to specifically refer to the National Assembly as the House responsible for approving the said appointments.*

On 9th March 2016, the House rescinded the decision on rejection of appointment of Members to the Budget and Appropriations Committee after being moved by the Leader of the Majority Party. *The purpose of the rescission was to allow a fresh appointment of the Committee within six months following rejection of the motion, thereby extricating the House from a procedural limbo that would have left the budget making and budget-related oversight functions of the House unattended for about six months; and in the third incidence of **21st October 2015**, the House rescinded the House decision on*

agreement with the Committee of the Whole House on the Parliamentary Powers and Privileges Bill, 2014 to allow recommittal of clauses 34 and 37 of the Bill. *The purpose of the rescission was to disentangle the House from having inadvertently made erroneous decisions and allow it to revisit the matter.*

Further, on **31st March 2004**, the House rescinded rejection of appointment of Members to the House Business Committee. *The object of the rescission was to allow re-establishment of the Committee, without which the House would have been in limbo and without business for six months.*

Finally, **Honourable Members**, on **15th December 1999**, the House rescinded a decision through which the House had negated an amendment by the Member for Kitutu Masaba Constituency (Hon. George Anyona) to a Motion by the then Member for Lang'ata Constituency (Hon. Raila Odinga).

Hon. Anyona's amendment sought to expand the scope of Hon. Raila's Motion by inserting a provision for establishment of a Select Committee to lead and coordinate the Constitution of Kenya review process following a stalemate in appointment of Commissioners to Constitution of Kenya Review Commission (CKRC). *The aim of the rescission was to enable the House to constitute a Select Committee that would spearhead discussions on the constitution review process and unlock the then prevailing stand off that arose from the inability by the Attorney general to convene a meeting following disagreement on nomination of Members of the CKRC, which had condemned the process to abeyance.*

Honourable Members, the foregoing instances of rescinding actions of the House in the history of Parliament of Kenya suggest that rescission has been invoked on matters of procedure, particularly to allow the House to proceed unimpeded, or where it was established that the House had erroneously made a decision.

Further, I have deduced that the power to reverse an action of the House has been sparingly invoked in Parliament of Kenya, just as in the jurisdictions earlier mentioned in this Communication. For clarity, I have singled out the following observations –

- (i) that the exercise of the authority to rescind a decision of the House has only been invoked by the House to extricate itself from an imminent limbo that would otherwise obtain should the rescission not be permitted. Put otherwise, rescission has been sought as an avenue for finding a procedural resolutions or other such decision that aided the House to rescue itself from abeyance;
- (ii) that there is **no evidence of** the Speaker having granted leave for a Motion to rescind an action of the House for the **mere purpose of allowing the House to reconsider or reverse a position it already took on a question;** and
- (iii) that **no rescission has so far been sought and granted on a resolution relating to a Report of a Committee.**

Honourable Members, from the foregoing, particularly under paragraph (iii), the questions raised and request sought by the Hon. Oluoch and echoed by the Hon. Kaluma and Hon. Amisi **present a unique question on the procedure and application of Standing Order 49(2) in respect to a negated Report of a Committee.**

The closest necessity to rescind a negative decision of the House on a Report of a Committee was on 28th March 2006, just before the tabling of a Report of the Public Accounts Committee (PAC) on a Special Audit on Procurement of Passport Issuing Equipment by the Department of Immigration, Office of the Vice-President and Ministry of Home Affairs. The then Assistant Minister, Hon. Mirugi Kariuki rose on a Point of Order challenging the tabling of the Report and its admissibility thereof. Among other

grounds, for his objection, the Hon. Kariuki claimed that, pursuant to the then Standing Order 42, the Report was not properly before the House, noting that the House had previously rejected a Report of the Committee on the same matter. He averred that the House could only reconsider the Report upon an affirmative consideration of a motion to rescind the action by which the previous Report had been rejected.

Honourable Members, the Speaker was being invited to make a finding that the inquiry leading to the second Report by the PAC on a similar matter as that previously rejected was in contravention of the six-month restriction imposed under the then Standing Order 42, hence could not be proceeded with unless the decision rejecting the previous Report is rescinded.

Consequently, the Speaker was required to either –

- (a) rule that the Report was inadmissible to the extent that it contravened the then Standing Order 42; or
- (b) grant leave for the moving of a Motion to rescind the rejection of the First Report and pave way for admission of the Second Report.

From the ensuing debate, both the Members and indeed my predecessor, Speaker Francis Ole Kaparo, did admit that that was an unprecedented incidence. The Speaker did pronounce himself that that was the first time in the history of Parliament of Kenya that the House was being called upon to exercise the power to rescind its decision on a Report of a Committee.

I have reviewed the Hansard of the proceedings containing the debate of 28th March 2006 and Speaker's ruling of 30th March 2006 and established that the then Speaker observed that –

- (a) the recommendations of the Special Audit Report by the Public Accounts Committee were rejected by the House during the Third Session, on 3rd November, 2004, and not during the Fourth Session;
- (b) the rejection of the PAC Report on the Special Audit in its totality during the Third Session was, as far as I can establish, the first time this has ever happened in the history of this House. Ordinarily, such reports have been adopted either in whole or as amended;
- (c) this is the first time that the tabling of a Paper containing the report of PAC has ever been challenged in this House; and
- (d) because of the unprecedented action on the part of the House, this is also the first time the PAC has, on its own Motion, and in conjunction with the Controller and Auditor-General, revisited an issue on receipt of new evidence. This new evidence was not presented to the Committee when it was still on the issue. I may hasten to add here that the new evidence came to the attention of the Committee in a very public manner in the form of what has since been dubbed "The Githongo Dossier."

Honourable Members, on account of the aforementioned observations, the then Speaker proceeded to rule that, on the necessity to rescind the decision of the House on the First Report of PAC, that *"the Report of the Special Audit was resolved in the negative on 3rd November, 2004 and not during the Fifth Session. The Fifth Session is now. This is a new Session. Clearly, the hon. Assistant Minister did not consider the provisions of Standing Order No.42 when he raised his objection. In light of the provisions of Standing Order No. 42, that argument fails."*

Consequently, the Speaker **did not grant leave to rescind the previous decision**, as the said decision had been carried in a different session. Therefore, Standing Order 42 did not bind its re-introduction to the House.

Honourable Members, the question one would ask is; what action did the Speaker take thereafter? The argument for rescission having failed, the Speaker did observe that the PAC had embarked on a fresh inquiry, notwithstanding the rejection of its earlier Report on the basis of emergence of new evidence in the public domain contained in the “*Githongo Dossier.*” He went ahead and ruled that –

“... new evidence emerged in public domain in the said "Githongo Dossier" and the Committee somehow seized the opportunity and sought to receive and did receive the new evidence. ... It is for this greater public interest ... that I am inclined to admit this Report for consideration by this House.”

Clearly, the Speaker allowed tabling and subsequent consideration of the Report for reconsideration by the House on the basis of new evidence and not to merely accord the House a second chance to review its decision on a Report with similar contents.

Honourable Members, let me now relate the analogies I have drawn to the questions raised by the Hon. Anthony Oluoch, MP with regard to the application of Standing Order 49 and wish to provide the following guidance –

- (1) On the first question as to whether the usage of the terms *question* and *Motion* as used in Standing Order 49(1) and (2) has same meaning in the terms of the Standing Orders. Indeed, the two are used interchangeably. The understanding is that, any substantive matter before a House of Parliament is considered through a Motion, which is then decided by way of a question at the conclusion of deliberations. Therefore, the usage of the term *Question* in Standing Order 49(1) is implicit of a *Motion*;
- (2) As to whether the window to rescind a decision of the House on a Motion under Standing Order 49(2) is applicable to a decision on a Report of a Committee of the House, the answer is in the **negative**. I have taken this position on the strength of the arguments that –
 - (i) the review of incidences of rescission of House decisions demonstrate that the power to rescind has been construed as an action meant to facilitate the House to remove itself from situation of uncertainty and not as a window to reconsider the action taken. It is more of a question of procedure than reversal of an action or change of mind;
 - (ii) according to section 481(1) of Mason’s Manual of Legislative Procedure, “*a legislative body can rescind an action previously taken as long as no vested interests have arisen from the original action.*” I am persuaded that the accusations and counter accusations of alleged external influence that may be attributed to the rejection of the Report in question are suggestive that there may have been vested interests then, and that there is no certainty of those interests having fizzled out. I am therefore afraid that the requests to rescind the decision of the House of August 9, 2018 on the relevant Report are devoid of evidence that there is new evidence, which may alter the substance of the rejected Report and therefore increase the prospect of the House taking a different decision; and
 - (iii) in the terms of Erskine May’s Treatise on The Law, Privileges, Proceedings and Usage of Parliament, Twenty-fourth Edition, 2011, the power of rescission cannot be exercised merely to override a vote of the House, such as a negative vote. Proposing a negatived question a second time for the decision of the House, would be contrary to the established practice of Parliament.

Honourable Members, when a rejected Question has to be reconsidered, sufficient variation would have to be made, not only from the form but also from the substance of

the rejected question, so as to make the second question a new question. None of the claims submitted to my Office by the Members who sought leave to rescind the decision in question suggested the possibility of new evidence that would alter the substance of the negated Report and qualify it for reconsideration in a new form. Having found no basis to grant leave to rescind the said decision, the argument of whether the parameters of a rejected Question may be varied after being rescinded does not arise.

Honourable Members, as I mentioned earlier, the Member for Saboti Constituency had also placed a request to establish a Select Committee to inquire into the spent matter of alleged importation of contaminated sugar. The question one would ask is; *what would the proposed Select Committee alter in terms of substance of the rejected Report that would move the House to vote differently?* As I indicated earlier, I have no information as to whether there has emerged new evidence that, if considered by a Committee of this House, would vary the substance of the earlier Report.

(3) Regarding the third question on whether the gag imposed under Standing Order 49(1) debars a member of the public from submitting a Petition to the House, praying that the House reconsiders a Report that it had previously negated in the preceding six months, the answer is yes, although secondarily. Even though the right to Petition Parliament as granted under Article 119 of the Constitution is inalienable, the admissibility of Public Petitions and consideration thereof is bound by the procedure and practice developed pursuant to Article 124 of the Constitution. Hence, a Public Petition of the nature contemplated by the Hon. Oluoch may not be referred to a Committee(s) of the House on the basis of the restraint imposed by Standing Order 49(1).

Honourable Members, as I conclude on this matter, I must emphasize it is a principle of law, which is also applicable to Parliament in the carrying out its *quasi-judicial* function, that once a House rejects a Report of a Committee, that decision effectively renders the relevant Committee(s) *functus officio* upon the Report being rejected by the House. **Consequently, it would be an exercise in futility attempt to re-introduce the same matter, be it through the same Committee, a Select Committee or by way of a Public Petition, as long the parameters remain similar to those of the rejected Report.**

Honourable Members, one would wonder, what options does the House have in light of the prevailing circumstances? You will recall that I did refer to a precedent that was set in the 9th Parliament, when the Public Accounts Committee, upon learning of emergence of fresh evidence contained in the famous ‘*Githongo Dossier*’ a matter it had investigated and a Report thereof rejected by the House, the Committee commenced a fresh inquiry *suo moto*. In light of this precedent, my guidance does not preclude the relevant Committee or any Member of this House from attempting to move the House to revisit the matter of the alleged importation of illegal and contaminated sugar into the country, as long as that attempt is made in strict compliance with Standing Order 49(1). I hasten to state that in this case, the provisions in paragraph (2) of the said Standing Order do not arise. This settles the first issue on whether the decision of the House on the Report on Alleged importation of illegal and contaminated sugar into the country.

Honourable Members, I will now proceed to the second issue, which relates to the claims and counter claims of alleged bribery that have been awash in both print and electronic media in the aftermath of the rejection, by this House, of the Report on importation of alleged illegal and contaminated sugar into the country. As you may recall, on 31st August 2017, you took an oath or affirmation of Office to, among other

things, “faithfully and conscientiously discharge the duties of a Member of Parliament. In so doing, you are constantly invited to make decisions on matters of varied nature during the entire term of your Membership to this House. Indeed, as part of the Prayer for this House states, *you have been called to the performance of important trusts in this Republic.*

I have been persuaded to reaffirm these solemn words in the National Assembly prayer because, as a hallowed Chamber, your decisions would be looked at with disfavour if you act in a manner that causes the public to believe that you have betrayed their trust in you.

Honourable Members, I must emphasize, in no uncertain terms, that the oversight function of this House as carried out through Committees elevates it to a status akin to that of a High Court. The exercise of this unique *quasi-judicial* function is expected to strictly adhere to and apply the principles of natural justice and fair hearing, and that every process or action taken by the House or its Committees must be seen by all to be above board taking into account the fact that decisions of this House bear the element of finality. I therefore implore, you in the wisdom of the Late Justice Robert Houghwout Jackson, a former Associate Justice of the Supreme Court of the United States of America, that we must act with integrity that borders infallibility. As Justice Jackson rightly observe, –

“We are not final because we are infallible, but we are infallible only because we are final.”

Honourable Members, in the wake of alleged bribery by a section of Members of this House, I did direct that the National Assembly Committee of Powers and Privileges investigates the claims and Reports its findings, including any recommendations it may deem fit, to this House. Other than media reports, a number of Members of this House have publicly alluded to having witnessed incidences of bribery of their peers, before the House took a vote on the Report in question. In this regard, a number of Members are or may be required to appear before the Committee of powers and privileges as whistleblowers to assist the Committee to get to the bottom of those grave allegations of bribery in the House.

Among the Members who will be of interest to the Committee in its inquiry into this matter are the Member for Kimilili Constituency, the Hon. Capt. Rtd. Didmus Wekesa Barasa, and the Member for Muhoroni Constituency, the Hon. Onyango K’oyoo. I have singled out the two Members because they are Members of the Committee of Powers and Privileges that forms the jury that will hear and determine claims of bribery. As a principle of law, you cannot wear the hat of a judge on a matter in which you are appearing in the hat of a witness.

Honourable Members, I have also received complaints and alibis from a number of Members against some media houses for vilified publication of their names as having allegedly partaken of the bribes to vote in one way or the other on the Report on Alleged importation of illegal and contaminated sugar into the country and yet they were not in attendance when the matter was decided. I have referred their complaints to the Committee of Powers and Privileges for review.

Finally, Honourable Members, in summary therefore it is my considered ruling that-
(i) as your Speaker, I will NOT allow any motion asking the House to rescind its decision of Thursday 9th August, 2018 on the Report of the Joint Committee on Agriculture and Livestock and Trade, Industry and Cooperatives on the

Inquiry into Alleged Importation of Illegal and Contaminated Sugar into the Country, as doing so will offend the provisions of Standing Order 49 since the discretion of the Speaker to grant leave on such motions does not extend to a Report of a Committee which has been adopted or rejected by way of a conscious vote;

- (ii) **the Member for Kimilili Constituency, the Hon. (Capt. Rtd.) Didmus Wekesa Barasa, and the Member for Muhoroni Constituency, the Hon. Onyango K'oyoo, who are members of the Committee of Powers and Privileges of the National Assembly and who are reported to have made allegations of bribery will have to recuse themselves from the sittings of the Committee until the Committee has concluded the inquiry on the allegations of possible bribery, since they will be invited by the Committee to adduce evidence; and,**
- (iii) **I encourage Members to refrain from making utterances or canvassing inaccurate information and hearsay on the matter in the media. Instead, those desirous of commenting on the subject may wish to approach the Committee of Powers and Privileges and volunteer any information in their possession that would be beneficial to the Committee as it investigates the allegations of bribery by Members of this August House. Consequently, a meeting of the Committee of Powers and Privileges is convened on Wednesday, August 5, 2018.**

The House is accordingly guided.”

“Honourable Members,

I wish to bring to the attention of the House that my office has been petitioned by vide a letter dated 22nd August 2018 from the firm of Mogeni & Company Advocates on behalf of their client M/s. Kenafric Industries Limited in relation to a resolution by this House with regard to the Report of the Departmental Committee on Agriculture, Livestock and Cooperatives on *‘The Crisis Facing the Sugar Industry in Kenya’* adopted in the 11th Parliament. In their letter, M/s Mogeni and Company note that the Petitioners, M/s. Kenafric Limited was adversely mentioned in the Report which recommended the cancellation of their import licenses. The firm of Advocates further notes that during the hearings held by the Departmental Committee on Agriculture, Livestock and Cooperatives, their client was not afforded an opportunity to be heard despite their attempts to be so heard before the preparation and tabling of the Report of the Committee and that, consequent to the tabling and adoption of the Report, the Sugar Directorate of the Agriculture and Food Authority has since delayed the processing of their import permit.

Honourable Members, as you are aware, Standing Order 209 establishes the Committee on Implementation which it mandates to scrutinize the resolutions of the House and examine whether or not they have been implemented and the extent to which legislation passed by the House has been operationalized. Indeed, and in the discharge of its mandate, the Committee on Implementation did invite the Sugar Directorate to update the House on the status of the implementation of the resolutions made in the last Parliament with regard to the crisis in the sugar sector. It is in the implementation of a resolution of this House that the Sugar Directorate has delayed the processing of import permits for companies adversely mentioned in the Report complained of.

Honourable Members, since the receipt of the letter, I have scrutinized the text of the Report tabled and adopted by the House and do confirm that the Minutes attached to the Report show that Kenafric Limited, who is the Petitioner in this matter, sought audience before the Committee, in writing, to respond to allegations made by the Kenya Sugar Board prior to the conclusion of the writing and tabling of the Report. The minutes record that, and I quote -

- “ii. *The Committee deliberated on the issue and resolved that it was not in [a] position to hear more witnesses since the report was long overdue;*
- iii. *If the complainant feels aggrieved, it could seek recourse after the report is tabled in the House.*”

Owing to the delay in processing of their import permit, the Petitioner is presently in Court to seek legal redress arising from their alleged condemnation by the House without having been given an opportunity to present their case.

Honourable Members, the ongoing court case notwithstanding, I am of the considered view that turning a blind eye to the issues raised in the letter would not serve the best interests of the House. As a House of procedure guided by the Constitution and our Standing Orders, we cannot be seen as establishing a precedent of or condoning the condemning of persons without affording them an opportunity to be heard. The right to a fair hearing, as one of the twin principles of Natural Justice is entrenched in Article 50 of the Constitution which precludes individuals from being penalized by decisions affecting their rights or legitimate expectations unless they have been given prior notice of the case, a fair opportunity to answer it, and the opportunity to present their own case.

In addition to this, Article 47 of the Constitution provides for the right to fair administrative action, which is expeditious, efficient, lawful, reasonable, and procedurally fair. Indeed, this House enacted the Fair Administrative Action Act of 2015 to operationalize Article 47 in order to further guide the conduct of administrative actions and other proceedings adversely affecting the rights of individuals.

Affording persons the right to present their case is in line with guiding principles of parliamentary practice as noted in the updated version of the Benchmarks for Democratic Legislatures issued by the Commonwealth Parliamentary Association of which Members of this House are members. As a safeguard against the abuse of the freedom of speech granted to the Legislature, Benchmark 1.4.4 states, and I quote “*The Legislature shall have mechanisms for persons to respond to adverse references made to them in the course of the Legislature’s proceedings.*”

Honourable Members, in conducting hearings, preparing and tabling its Report and recommendations, the Departmental Committee on Agriculture, Livestock and Cooperatives was under an obligation **to apply and be seen to have applied** a standard, methodical, open and fair process (*emphasis*). It is only in applying such a process that the decisions of this House may stand the test of whichever challenge is made outside Parliament. Any compromise of such a process exposes the House to ridicule and reduces the confidence of the public in the procedures of the House and its role as a forum for the deliberation and resolution of issues of concern to the people. The House cannot on one hand pass the Fair Administrative Action Act, 2015 and on the other blatantly flout the basic requirement of according adversely mentioned persons the fundamental right to be heard.

Honourable Members, noting the glaring omission highlighted by the Petitioner and indeed on admission of the Committee itself that the Petitioner was not afforded an opportunity to rebut the allegations, it therefore behoves this House to revisit its resolution made when adopting the Report by the Departmental Committee on Agriculture, Livestock and Cooperatives. This will necessarily entail affording the Petitioner, M/s. Kenafric Industries Limited a chance to present its case for consideration by the House.

As the concern raised does not constitute new evidence, there exists no justification to reopen and reconsider the entire subject matter of the Report. The appropriate Committee therefore to undertake this exercise is the Committee on Implementation currently seized of the implementation of the resolutions made from the Report to act as an appellate forum for the Petitioners to present their prayers. Indeed, such forum will examine the claims made by the Petitioners and also safeguard the authority of the House on matters for which it has inquired into and arrived at a resolution, before any other authority steps in.

Honourable Members, I am fully cognizant of the provisions of Standing Order 89 on matters *subjudice* or secret. It is, however, my considered opinion that reference to this matter by the Committee on Implementation shall not in any way prejudice the fair determination of the ongoing Court proceedings. Both the House and the aggrieved party would be best served by the urgent rectification of this glaring omission. For the avoidance of doubt as to the nature of the exercise to be undertaken by the Committee on Implementation, I direct that the Committee is to limit itself to-

- (i) only receiving submissions from the Petitioner, M/s, Kenafric Industries Limited on the resolution made by the House from the recommendation contained at paragraph 108 of page 50 of the Report;
- (ii) considering the submissions from the Petitioner; and,
- (iii) reporting its findings to the House within thirty (30) days.

I need not add that the Committee must observe the rules of natural justice in this exercise. In the meantime, the implementation of the resolution on this matter stands **suspended** until such a time as the House makes a further resolution informed by the report of the Committee on Implementation.

The House is so guided.”

5. **PETITIONS**

- (i) The Speaker conveyed the following Petition –

“Honourable Members, Standing Order 225(2)(b) requires that the Speaker reports to the House any Petition other than those presented through a Member. I therefore wish to convey to the House that my office has received a Petition from a Mr. Dan Okemwa of P.O. Box 8271-00200, Nairobi regarding one Mr. Don Bosco Gichana Ooga.

Honourable Members, the petitioner alleges that Don Bosco Gichana Ooga was illegally arrested by Kenya authorities in March 2013 at the Namanga border,

transferred to Tanzanian authorities under unclear circumstances and has been in detention in a remand prison in Dar-es-Salaam, Tanzania for five (5) years without trial since his arrest. The petitioner further states that there has been an abuse of the legal process and court orders relating to Don Bosco Gichana, which has led to his prolonged stay in prison.

The petitioner therefore prays that the National Assembly summons the Cabinet Secretary for Foreign Affairs to provide information on whether diplomatic protection has been offered to Don Bosco Gichana and state any action taken to safeguard his human rights, and ensure he receives justice.

Honourable Members, pursuant to the provisions of Standing Order 227, this petition therefore stands committed to the Departmental Committee on Defence and Foreign Relations for consideration. The Committee is requested to consider the Petition and report its findings to the House and the petitioner within sixty days in accordance with Standing Order 227(2).

I thank you.”

- (ii) The Member for Nandi Hills (Hon. Charles Keter) presented a petition on behalf of dismissed and blacklisted employees of Eastern Produce Kenya (EPK) Estates in Nandi Hills Constituency regarding dismissal and blacklisting of employees of Eastern Produce Kenya (EPK).
- (iii) The Member for South Imenti (Hon. Kathuri Murungi) presented a Petition on behalf of Kenyan Citizens regarding implementation of Anti-Doping Laws in Kenya; and
- (iv) The Member for Sigowet/Soin Constituency (Hon. Koros Kipsengerwet) presented a Petition on behalf of persons residing in the Mau Forest Complex and its environs on Governments’ evictions of residents in Mau Complex Forest and its environs.

Petitions referred to the relevant Departmental Committees pursuant to Standing Order 227(1).

6. PAPERS

The Leader of the Majority laid the following Papers on the Table of the House –

- (a) Protocol to eliminate illicit trade in tobacco products and the accompanying memorandum;
- (b) The Reports of the Auditor-General and Financial Statements in respect of the following institutions for the year ended 30th June 2017 and the Certificates therein:
 - (i) Kenya Utalii College;
 - (ii) Eldoret National Polytechnic.
- (c) The Reports of the Auditor-General and Financial Statements in respect of the following Constituencies for the year ended 30th June 2017 and the Certificates therein:
 - (i) Bura Constituency;
 - (ii) Kiminini Constituency;
 - (iii) Magarini Constituency;

- (iv) Galole Constituency;
- (v) Mosop Constituency;
- (vi) Cherengany Constituency; and
- (vii) Kilifi North Constituency.

(d) The Reports of the Auditor-General and Financial Statements in respect of Kenya National Shipping Line Limited for the year ended 30th June 2016 and the Certificates therein.

7. NOTICE OF MOTION

The following Notice of Motion was given –

THAT, this House adopts the Report of the Departmental Committee on Environment and Natural Resources on an inquiry into complaints of environmental pollution by London Distillers Kenya Limited, laid on the Table of the House on Wednesday, August 29, 2018.

(Vice Chairperson, Departmental Committee on Environment and Natural Resources)

8. STATEMENTS

The following Statements were made pursuant to the provision of Standing Order 43 –

- (i) Statement by the Chairperson, African Network Parliamentarians Network Against Corruption (APNAC) Kenya (Hon. Shakeel Shabbir) in condemnation of alleged bribery of Members in relation to the consideration of the Report of the Joint Committee on Agriculture and Livestock and Trade and Cooperatives on alleged importation of illegal and contaminated sugar into the country.
- (ii) Statement by the Chairperson, Select Committee on National Governments Constituencies Development Fund (Hon. Maoka Maore) on the allocation to the National Governments Constituencies Development Fund for the Financial Year 2018/2019.

9. MOTION- ALTERATION OF THE CALENDAR OF THE HOUSE

Motion made and question proposed -

THAT, pursuant to the provisions of Standing Order 28(4), this House resolves to further alter its Calendar for the Second Session (2018) as adopted on February 14, 2018 and amended on March 01, 2018 and June 28, 2018 respectively by proceeding to a recess from **Thursday, August 30, 2018** at the rise of the House and resuming its regular sittings on **Tuesday, October 02, 2018**.

(The Leader of the Majority Party)

There being no debate arising;

Question put and agreed to.

10. COMMITTEE OF THE WHOLE HOUSE

Order for Committee read;

IN THE COMMITTEE

The Deputy Speaker in the Chair

The Division of Revenue (Amendment) Bill (Senate Bill No.14 of 2018)

(Chairperson, Budget & Appropriations Committee)

Clause 2 - agreed to.

Title - agreed to.

Clause 1 - agreed to.

Bill to be reported without amendments;

11. HOUSE RESUMED - the Fourth Chairperson in the Chair

The Division of Revenue (Amendment) Bill (Senate Bill No.14 of 2018)

(Chairperson, Budget & Appropriations Committee)

Bill reported without amendments;

Motion made and Question proposed –

THAT, the House do agree with the Committee in its report.

(Chairperson, Budget & Appropriations Committee)

Question put and agreed to;

Motion made and Question proposed –

THAT, the Division of Revenue (Amendment) Bill (Senate Bill No.14 of 2018) be now read a Third Time.

(Chairperson, Budget & Appropriations Committee)

Question put and agreed to;

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

12. MOTION- REPORT ON THE TAX PROCEDURES (TAX AGENTS) REGULATIONS, 2018

Motion made and Question proposed –

THAT, this House adopts the Report of the Committee on Delegated Legislation on The Tax Procedures (Tax Agents) Regulations, 2018 laid on the Table of the House on Thursday, August 23, 2018 and pursuant to the provisions of section 15(1) of the Statutory Instruments Act and Standing Order 210 (4) (b) **annuls in entirety** the said Regulations.

(Chairperson, Committee on Delegated Legislation)

Debate arising;

Mover replied;

Question put and agreed to.

13. PROCEDURAL MOTION- EXTENSION OF SITTING TIME

Motion made and question proposed -

THAT, pursuant to the provisions of Standing Order No. 30(3) (a), this House resolves to extend its Sitting today Thursday, 30th August 2018 until the conclusion of business appearing as Order No.11.

(The Majority Party Whip)

There being no debate arising;

Question put and agreed to.

14. SPECIAL MOTION – APPROVAL OF NOMINEES FOR APPOINTMENT AS CHAIRPERSON AND MEMBERS OF THE SALARIES AND REMUNERATION COMMISSION

Motion made and Question proposed –

THAT, taking into consideration the findings of the Departmental Committee on Finance and National Planning in their Report on the *Vetting of the Nominees for Approval as Chairperson and Members of the Salaries & Remuneration Commission*, laid on the Table of the House on Wednesday, August 29, 2018, and pursuant to the provisions of Article 250(2)(b) and section 7(11) of the Salaries and Remuneration Commission Act, this House-

a) approves the appointment of the following to the Salaries & Remuneration Commission

- | | | | |
|--------|-----------------------------|---|--|
| (i) | Ms. Lyn Cherop Mengich | - | Chairperson; |
| (ii) | Dr. Leah Mumbua Munyao | - | nominated by the Teachers Service Commission; |
| (iii) | Ms. Halima Abdille Mohammed | - | nominated by the Parliamentary Service Commission; |
| (iv) | Mr. John Kennedy Monyoncho | - | nominated by the Defence Council; |
| (v) | Dr. Amani Yuda Komora | - | nominated by the umbrella body representing Employers; |
| (vi) | CPA Sophie Moturi | - | nominated by a Joint forum of professional Bodies; |
| (vii) | Ms. Margaret Sawe | - | nominated by the Senate on behalf of the County Governments; and |
| (viii) | Hon. Dalmas Otieno Onyango | - | nominated by the Public Service Commission. |

b) rejects the appointment of Ms. Nelly Peris Ashubwe, a nominee of the umbrella body representing Trade Unions to the Salaries & Remuneration Commission.

(Chairperson, Departmental Committee on Finance & National Planning)

Debate arising;

[Change of Chair from Fourth Chairperson to the Honourable Speaker]

Rising on a Point order, Member for Funyula, requested the speaker to guide the House on the constitutionality of the motion in respect of a nominee by the Parliamentary

Service commission on her qualifications as set out in the constitution and enabling law.

Acceding to the request and noting the contribution of other Members, the Speaker ruled that the nominee is not qualified to be nominated by the SRC as stipulated by the SRC act and the Constitution, therefore be expunged from the motion.

Debate arising

Amendment Proposed

Rising on a point of order, the Member for Nandi Hills, (Hon. Alfred Keter) proposed an amendment to the motion. THAT, the Motion be amended by –

(i) “Inserting paragraph (viii) immediately after paragraph (vii) –

(viii) Ms. Nelly Peris Ashubwe, a nominee of the umbrella body representing Trade Unions to the Salaries & Remuneration Commission”

(ii) Deleting paragraph (b).”

Motion of the amendment made, question proposed and agreed to

[Procedural Motion by the Majority Whip on Extension of Time made, Quotation put and agreed to]

Debate resumed on Motion as amended

THAT, taking into consideration the findings of the Departmental Committee on Finance and National Planning in their Report on the *Vetting of the Nominees for Approval as Chairperson and Members of the Salaries & Remuneration Commission*, laid on the Table of the House on Wednesday, August 29, 2018, and pursuant to the provisions of Article 250(2)(b) and section 7(11) of the Salaries and Remuneration Commission Act, this House **approves** the appointment of the following to the Salaries & Remuneration Commission –

- | | | | |
|--------|----------------------------|---|--|
| (i) | Ms. Lyn Cherop Mengich | - | Chairperson; |
| (ii) | Dr. Leah Mumbua Munyao | - | nominated by the Teachers Service Commission; |
| (iii) | Mr. John Kennedy Monyoncho | - | nominated by the Defence Council; |
| (iv) | Dr. Amani Yuda Komora | - | nominated by the umbrella body representing Employers; |
| (v) | CPA Sophie Moturi | - | nominated by a Joint forum of professional Bodies; |
| (vi) | Ms. Margaret Sawe | - | nominated by the Senate on behalf of the County Governments; |
| (vii) | Hon. Dalmas Otieno Onyango | - | nominated by the Public Service Commission; and |
| (viii) | Ms. Nelly Peris Ashubwe | - | nominated by the umbrella body representing Trade Unions. |

Rising on Standing order 95, Member for Muranga County(Hon. Sabina Chege) that the mover be called to reply. Acceding to the request, the Speaker put the question that the Mover be called to reply, and agreed to

Mover replied;

1. Ms. Lyn Cherop Mengich - Chairperson;
Question put and agreed to.
2. Dr. Leah Mumbua Munyao - nominated by the Teachers Service
Commission;
Question put and agreed to.
3. Mr. John Kennedy Monyoncho - nominated by the Defence Council;
Question put and agreed to.
4. Dr. Amani Yuda Komora - nominated by the umbrella body
representing Employers;
Question put and agreed to.
5. CPA Sophie Moturi - nominated by a Joint forum of
professional Bodies;
Question put and agreed to.
6. Ms. Margaret Sawe - nominated by the Senate on behalf
of the County Governments;
Question put and agreed to.
7. Hon. Dalmas Otieno Onyango - nominated by the Public Service
Commission; and
Question put and agreed to.
8. Ms. Nelly Peris Ashubwe - nominated by the umbrella body
representing Trade Unions.
Question put and agreed to.

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

15. HOUSE ROSE - at twenty five minutes past Seven O'clock

MEMORANDUM

The Speaker will take the Chair on
Tuesday, October 02, 2018 at 2.30 p.m.

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