



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – SECOND SESSION

THE NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

WEDNESDAY, OCTOBER 17, 2018

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

The Speaker issued the following Communication -

Second Reading of the Constitution of Kenya (Amendment) (No.2) Bill (National Assembly Bill No. 5 of 2018) sponsored the Member for Kiminini, the Hon. Chrisantus Wamalwa

Honourable Members,

As you are all aware, this afternoon the House will be taking a vote on the question for the Second Reading of the Constitution of Kenya (Amendment) Bill (No. 2), National Assembly Bill No. 5 of 2018, sponsored by the Member for Kiminini, the Hon. Chrisantus Wamalwa as required by the dictates of Article 256 of the Constitution. Article 256 provides that a Bill to amend the Constitution shall be passed by the House, if it is supported by not less than two-thirds of all the Members of that House at the Second Reading. At the onset, Honourable Members, allow me to explain the procedure of voting for the Bill which should not be confused with the recent vote taken by this House in relation to the President's Reservations on the Finance Bill, 2018.

Honourable Members, indeed the procedure of considering the President Reservations is clearly set out by Article 115 of the Constitution and the National Assembly Standing Order 154. Honourable Members, without going into so much detail the provisions of Article 115 of the Constitution require the House to have a majority of the Members present and voting as provided for in Article 122 of the Constitution where the House agrees with the Reservations of the President.

A majority of the members present and voting is the simple majority which is defined as being half of the members present, so long as there is quorum present. In this case, in the least, the permissible number in support of a simple majority vote is twenty six Members, being half of the quorum of the House plus one Member, assuming that only a number equal to quorum is present and voting. It is important to note that questions for decision by the House are put in the positive as I have explained before in a number of rulings. Our default voting procedure on questions for determination by simple majority is also by voice vote as required by Standing Order 69 which as you all know is a collection of voices of

“Ayes” and “Nays”. At the first instance therefore voting on the President’s Reservations is by way of voice vote and two thirds of members need not be present, so long as there is quorum of fifty Members present in the House. This is how this House voted on 20th September 2018 during the consideration of the President Reservations on the Finance Bill, 2018.

Honourable Members, as you further know where the Members of the House seek to negate the President’s Reservations, the provisions of Article 115 require 233 Members to vote against the President’s Reservations. As you all would recall, during the consideration of the President’s Reservations this played out well in this House, but it seemed that either a sizeable number of Members did not understand the procedure, or, having known the procedure, just chose to ignore it. I have taken the liberty to explain this process so that you do not confuse it with the procedure we are about to engage in at the Second Reading of this Bill at the next step and demand a voice vote today!

Honourable Members, as provided for in the Standing Orders which I need not reiterate, voting on a division is done either by electronic voting or roll call voting and the procedures are well explained in Standing Orders 70 and 73 respectively. Honourable Members to jog your mind I am sure you recall that during the consideration of the President’s Reservations, some Members declined to take a vote either electronically or through roll call voting and hence the voice vote carried the day.

Consequently, Honourable Members, the process of voting for President’s Reservations is so distinct and different from the process of voting for Bills to amend the Constitution that the two should not even be compared. Since many Members are going to engage in electronic voting for the first time today, may I therefore explain the process of electronic voting. The Process has two steps, the first one being, confirmation of process of not less than 233 Members in the House and the second step is the actual voting, which will only take place if not less than 233 Members are present in the House after the ringing of the Division bell.

Honourable Members, to ascertain the Members present, the following will happen-

- (i) I will cause the Division Bell to be rung for 10 minutes.
- (ii) At the end of 10 minutes, the doors shall be locked and the bar drawn. *No member shall enter or leave the House after this stage.*
- (iii) I will then request all Members present in the Chamber to log out of the system.
- (iv) During this log out step, I will require Members without their cards to stand by the public servants’ benches to be recorded manually by Clerks-at-the-Table and continue staying there until the end of the voting process.
- (v) Members with their cards will have 60 seconds to log into the system.
- (vi) Members without cards will be recorded manually.
- (vii) The number of Members present shall displayed on the screens, while the number of Members recorded manually will be tallied by the Clerks-at-the-Table.
- (viii) Both the total Members present as displayed on the screens and Members recorded manually will be tallied.
- (ix) If not less than 233 Members are in the House, the House shall proceed with the Voting. If less than 233 Members, voting shall not proceed.

Honourable Members, to vote electronically, the following will happen-

- a) I will request all Members to log out of the system.
- b) I will thereafter request Members to log into the system. In this case, Members will have 60 seconds to do so.

- c) Members without their cards standing by the public servants benches shall have their votes recorded manually by Clerks-at-the-Table by stating whether there are “in favour of” or “against” or “abstains” from the Question, and continue staying there until the end the voting process.
- d) I will thereafter put the Question for the Second Reading of the Constitution of Kenya (Amendment) (No.2) Bill (National Assembly Bill No. 5 of 2018) sponsored by the Member for Kiminini, the Hon. Chrisantus Wamalwa.
- e) Members will have 60 seconds to vote.
- f) All Members shall cast their votes by pressing either the “Yes” “No” or “Abstain” buttons. No Member shall fail to vote either of the two options or record their abstention.
- g) As voting is going on, the results of the electronic vote will be displayed on the screens and shown with a “positive”(+) being “Yes”, “a negative”(-) being “No” and a “Zero” being “Abstention”.
- h) Results of electronic votes as appearing on the screens and votes recorded manually shall be tallied.
- i) I shall forthwith announce the results and guide on the next course of action, depending with the result of the vote taken.

Please be advised accordingly!

5. **PAPERS LAID**

The following Papers were laid on the Table –

- i) The National Government Budget Implementation Review Report for Financial Year 2017/2018 from the Office of the Controller of Budget;
- ii) 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:-
 - a) State Department of Infrastructure;
 - b) Kenya Leather Development Council;
 - c) Chemilil Sugar Company Limited;
 - d) Moi University;
 - e) Public Trustee of Kenya;
 - f) Kenya Airports Authority;
 - g) The Cooperative University of Kenya; and
 - h) State Department of Agriculture.
- iii) The Reports of the Auditor-General and Financial Statements of the following Institutions for the period ended 30th September, 2016 and the certificates therein:-
 - a) The National Alliance Party; and
 - b) United Republican Party.
- iv) The Reports of the Auditor-General and Financial Statements of the United Republican Party for the year ended 30th June, 2016 and the certificates therein:-
- v) 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:-
 - a) Emurua Dikirr Constituency;
 - b) Sotik Constituency;
 - c) Gilgil Constituency;

- d) Rongai Constituency; and
- e) Mbeere Constituency.

(Leader of the Majority Party)

- vi) Reports of the Departmental Committee on Health on –

- (a) Alleged Irregular Specialist Recognition of Dr. Samira Soni by the Kenya Medical Practitioners and Dentists Board; and
- (b) Kenyatta University Teaching & Referral Hospital Project.

(Chairperson, Departmental Committee on Health)

- vii) Report of the Committee on Delegated Legislation on its consideration of the Public Finance Management (Sports, Arts and Social Development Fund) Regulations, 2018 (Legal Notice No. 174 of 2018).

(Chairperson, Committee on Delegated Legislation)

- viii) Report of the Departmental Committee on Environment and Natural Resources on a Petition regarding the lifting of the ban on logging and harvesting of the mangroves in Lamu County.

(Chairperson, Departmental Committee on Environment and Natural Resources)

- ix) Reports of the Departmental Committee on Sports, Culture and Tourism on: -

- a. Delegation to the Zanzibar International Film Festival held in Stone Town Zanzibar, Tanzania on 6th – 16th July, 2018; and,
- b. Consideration of a public Petition regarding harassment and confiscation of slot and gaming machines belonging to the members of Counties Amusement and Gaming Society presented by the Member for Embakasi West, the Hon. George Theuri.

(Vice-Chairperson, Departmental Committee on Sports, Culture and Tourism)

6. NOTICES OF MOTION

The following Notices were given –

- (i) THAT, this House adopts the Report of the Committee on Delegated Legislation on its consideration of the Public Finance Management (Sports, Arts and Social Development Fund), Regulations, 2018 (Legal Notice No. 174 of 2018), laid on the Table of the House on Wednesday, October 17, 2018, and pursuant to the provisions of Section 15(1) of the Statutory Instruments Act, 2013 and Standing Order 210 (4)(b) *annuls in entirety* the said Regulations.

(Chairperson, Committee on Delegated Legislation)

- (ii) THAT, this House adopts the Report of the Committee on Health on Kenyatta University Teaching & Referral Hospital Project, laid on the Table of the House on Wednesday, October 17, 2018.

(Chairperson, Departmental Committee on Health)

- (iii) THAT, this House adopts the Report of the Departmental Committee on Health on alleged irregular specialist recognition of Dr. Samira Soni by the Kenya Medical Practitioners and Dentists Board, laid on the Table of the House on Wednesday, October 17, 2018.

(Chairperson, Departmental Committee on Health)

- (iv) THAT, this House notes the Report of the Departmental Committee on Sports, Culture and Tourism on the Committee's Delegation to the Zanzibar International Film Festival held at Stone Town Zanzibar, United Republic of Tanzania on 6th – 16th July, 2018, laid on the Table of the House on Wednesday, October 17, 2018.

(Vice-Chairperson, Departmental Committee on Sports, Culture and Tourism)

7. **QUESTIONS**

The following Questions were made to various Ministries–

- (i) Question 064/2018 by the Nominated Member (Hon. Dennitah Ghati) regarding status of the Sports Policy with regard to persons living with disabilities. Question referred to the Departmental Committee on Sports, Culture and Tourism.
- (ii) Question 065/2018 by the Member for West Mugirango (Hon. Vincent Mogaka) regarding compliance to the requirements of the Public Procurement and Disposal Act in respect to contractors who fail to honour contractual agreements. Question referred to the Departmental Committee on Transport, Public Works and Housing.
- (iii) Question 069/2018 by the Member for Murang'a County (Hon. Sabina Chege) regarding the implementation status report of the Last Mile electricity connectivity programme in Murang'a County. Question referred to the Departmental Committee on Energy.
- (iv) Question 070/2018 by the Member for Murang'a County (Hon. Sabina Chege) regarding compensation to the family of the late Stephen Kabii from Kigumo Constituency, who lost his life during the OTC bus terminus blast in 2011. Question referred to the Departmental Committee on Administration and National Security.

8. **THE COUNTY BOUNDARIES BILL (SENATE BILL NO. 6 OF 2017)**

(Chairperson, Departmental Committee on Justice and Legal Affairs)

Order for First Reading read;

Bill read a First Time and referred to the relevant Committee pursuant to Standing Order 143(2).

9. **THE OFFICE OF THE COUNTY ATTORNEY BILL (SENATE BILL NO.3 OF 2018)**

(Chairperson, Departmental Committee on Justice and Legal Affairs)

Order for First Reading read;

Bill read a First Time and referred to the relevant Committee pursuant to Standing Order 143(2).

10. **MOTION - REPORT OF THE COMMITTEE OF THE WHOLE HOUSE ON THE COUNTY GOVERNMENTS RETIREMENT SCHEME BILL (NATIONAL ASSEMBLY BILL NO.10 OF 2018)**

Motion made and Question proposed –

THAT, this House do agree with the Report of the Committee of the whole House on its consideration of the Country Governments Retirement Scheme Bill (National Assembly Bill No.10 of 2018)

(The Leader of the Majority Party)

Question put and agreed to.

Motion made and Question proposed –

THAT, the County Governments Retirement Scheme Bill (National Assembly Bill No.10 of 2018) be now read a Third Time

(The Leader of the Majority Party)

Question put and agreed to;

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

11. **MOTION-REPORT OF THE ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY**

Motion made and Question proposed -

THAT, this House notes the Report of the Departmental Committee on Lands delegation to the 2018 Annual World Conference on Land and Poverty held in Washington DC, United States of America from 19 to 23 March, 2018, laid on Table of the House on Thursday, June 07, 2018

(Leader of the Delegation & Vice-Chairperson, Departmental Committee on Lands – 17.10.2018)

Debate on the Motion having been concluded on Tuesday, October 17, 2018;

Question put and agreed to.

12. **THE CONSTITUTION OF KENYA (AMENDMENT) (NO.2) BILL (NATIONAL ASSEMBLY BILL NO.5 OF 2018)**

Motion made and Question proposed –

THAT, the Constitution of Kenya (Amendment) (No.2) Bill (National Assembly Bill 5 of 2018) be now read a Second Time.

(The Hon. Chrisantus Wamalwa – 3.10.2018)

Thereupon, the House proceeded to a Division pursuant to Standing Order 72(2) as a Bill to amend the Constitution shall be passed in the House, in both its Second and Third Readings, if it is supported by not less than two-thirds of all Members of the House as provided for by the provisions of Article 256 of the Constitution;

And the Speaker having directed the Division Bell to be rung for ten minutes to ascertain whether there was the prerequisite number of two-thirds of all Members to enable the House proceed to an electronic vote;

At the end of ten minutes; and the doors having been locked and the bar drawn;

And the Speaker having ordered all Members present in the Chamber to remove and the insert their voting cards into the electronic system in order for the electronic system to record the number of Members present in the Chamber; Members present without their cards having been recorded manually by the Clerks-at-the-Table; and both the number of Members recorded electronically and number of Members recorded manually having being tallied;

There being a total of 187 Members ascertained to be present; 172 recorded electronically and 15 recorded manually;

And the House having **not** attained the two-thirds (233) of all Members of the House required to proceed to an electronic vote in support of the Motion for Second Reading of the Bill pursuant to the provisions of Article 256(1)(d) of the Constitution, the Bill was lost at Second Reading.

13. **THE SUPPLEMENTARY APPROPRIATION (NO.2) BILL (NATIONAL ASSEMBLY BILL NO.5 OF 2018)**

Order for Second Reading read;

Motion made and Question proposed –

THAT, the Supplementary Appropriation (No.2) Bill (National Assembly Bill No.5 of 2018) be now read a Second Time

(Chairperson, Budget and Appropriations Committee)

Debate arising;

(Change of Chair from the Speaker to the Third Chairperson)

Debate arising;

(Change of Chair from the Speaker to the Third Chairperson of Committees)

Rising on a point of Order under Standing Order 95, the Member for South Imenti (Hon. Kathuri Murungi) claimed to move that "the Mover be now called upon to reply";

And the Third Chairperson acceding to the claim;

Question put and agreed to;

Thereupon, Mover replied;

Putting of the Question deferred to another sitting day.

14. **MOTION - REPORT ON THE AUDITED FINANCIAL STATEMENTS FOR THE NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT FUND FOR CONSTITUENCIES IN NAIROBI CITY COUNTY**

Motion made and Question proposed –

THAT, this House adopts the Second Report of the Special Funds Accounts Committee on Audited Financial Statements for the National Government Constituencies Development Fund for Constituencies in Nairobi City County for the Financial Years 2013/14, 2014/15 and 2015/16, laid on the Table of the House on Wednesday, October 03, 2018.

(Chairperson, Special Funds Accounts Committee – 16.10.2018)

Debate interrupted on Tuesday, October 16, 2018 resumed;

(Change of Chair from the Third to the Fourth Chairperson)

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.

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

MEMORANDUM

The Speaker will take the Chair on
Thursday, October 18, 2018 at 2.30 p.m.