

REPUBLIC OF KENYA

TWELFTH PARLIAMENT - SECOND SESSION

THE NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

THURSDAY, OCTOBER 11, 2018

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

4. COMMUNICATIONS FROM THE CHAIR

The Speaker conveyed the following Communications -

(i) Recognition of a visiting delegation from Parliament of Uganda

"Honourable Members,

Standing Order 225(2) (b) requires that the Speaker reports to the House any Petition other than those presented through a Member. As you have just witnessed, I have received a Petition from one Ms. Mary Georgia Onyango, a student of St. Thaddeus High School on behalf of the girl-child of Kenya.

Cognizant the International Day of the Girl-Child is celebrated today October 11, 2018, I have chosen to convey this Petition immediately while the petitioners await at the Bar of the House, which I hereby do-

Honourable Members, the Petitioners observe that the 2030 Agenda for Sustainable Development Goals (SDGs) require all partner states to commit to ensuring that no girl-child is left behind or unable to achieve her potential. Further, the petitioners note that cases of Gender-Based Violence (GBV) have been on the rise in the country and that they ordinarily take long to investigate and resolve, causing untold suffering to the victims.

Honourable Members, the Petitioners therefore pray that, amongst other legislative interventions, the National Assembly causes a review of the existing policy and legal framework, notably the Children Act, 2003 to enable the girl-child to easily identify, prevent and effectively respond to any instances of gender-based violence. The petitioners also pray that the House legislates compressively to fully actualize the enjoyment of and protection of children rights as enshrined in our Constitution, noting that the Children Act, 2003 came into force before the 2010 Constitution. Honourable Members, pursuant to the provisions of Standing Order 227, this Petition therefore stands committed to the Departmental Committee on Labour and Social Welfare for consideration. I urge the Committee to engage the Petitioners and report its findings to the House within sixty days, or even earlier.

Thank you".

(ii) Members relinquishing their Committees

"Honourable Members,

Before the House proceeds to consider business appearing as Order No. 11, allow me to inform the House that I have received notification from the Chairperson of the Committee on Selection regarding two Members wishing to relinquish their Membership in the Committee. The Members are the Hon. Jude Njomo, MP, (member for Member for Kiambu) and the Hon. (Dr.) Makali Mulu, MP (Member of Kitui Central).

Honourable Members, the two Members have cited other Parliamentary duties and responsibilities assigned to them by the House as reasons for relinquishing their positions in the Committee on Selection. For clarity, the Hon. Jude Njomo, MP is a Member of the 4th Pan African Parliament which holds its regular sittings in Midrand, South Africa, while the Hon. (Dr.) Makali Mulu, MP is the Regional Representative for the Eastern African Region in the Commonwealth Parliamentary Association (CPA). He is also a Member of the Executive Committee of the CPA.

Honourable Members, I have taken the liberty to convey this information to the House so that the absence of the two Members' from the Committee on Selection is not to be misconstrued to mean that they have since been discharged from the Committee in terms of Standing Order 176. Their slots in the Committee of Selection are therefore available for replacement by the respective Parties in accordance with our Standing Orders.

Honourable Members, I therefore take this opportunity to thank the two Hon. Members for their magnanimity and wish them well in their additional continental assignments. Thank you".

(iii) The consideration of the Constitution of Kenya (Amendment) Bill (National Assembly Bill No. 5 of 2018)

"Honourable Members,

As you would recall, last week on Wednesday, October 03, 2018 the House concluded debate on the Second Reading of the Constitution of Kenya (Amendment) Bill (No. 2), National Assembly Bill No. 5 of 2018, moved by the Member for Kiminini, the Hon. Chrisantus Wamalwa. During the debate, the mover requested the Speaker to delay putting the question for Second Reading under Standing Order 53(3) until such time when not less than 233 Members, being two-thirds of all the Members of the National Assembly, will be available as required under Article 256(1)(d) of the Constitution.

Indeed, the provisions of Article 256(1) (d) of the Constitution 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 and Third Readings. In the request, the Member seemed to vest the obligation of availing the Members required to vote, on the Speaker. Further, during the sitting, the Honourable Chrisantus Wamalwa claimed that the Speaker had already determined that the particular Bill does not require to be approved by a referendum in terms of Article 255 of the Constitution.

Honourable Members, as you are aware, the Bill by Honourable Wamalwa seeks to amend the Constitution to change the election date from second Tuesday in August in every fifth year to Monday in December of every fifth year. During debate on the Bill, some Members expressed concern that the Bill requires approval by a referendum as changing the election date from August to December would in effect also touch on the term of office of President in terms of extending the term of that office. Article 256 of the Constitution prescribes the procedure for considering Bills to amend the Constitution by parliamentary initiative. In particular, Article 256(5) of the Constitution provides that if a Bill to amend the Constitution proposes an amendment relating to a matter specified in Article 255(1) of the Constitution, the President shall, before assenting to the Bill, request the Independent Electoral and Boundaries Commission to conduct, within ninety days, a national referendum for approval of the Bill. In this regard, from a plain reading of Article 256(5) of the Constitution, it is clear that the responsibility of determining whether a Bill to amend the Constitution requires approval by referendum or not, does not lie with the Speaker of the National Assembly, or indeed this House. The role of the Houses of Parliament is to exercise their legislative authority in terms of passing a Bill to amend the Constitution and once passed in both Houses and forwarded to the President for assent, it is upon the Presidency, to determine whether such a Bill relates to matters under Article 255.

Honourable Members, therefore, contrary to the claim by the Member for Kiminini, neither the Speaker nor the Office of the Clerk have the powers to determine whether a Bill requires approval by a referendum or not, as this falls within the jurisdiction and powers of the President in terms of Article 256(5)(a) of the Constitution. To interpret the provisions otherwise would be contrary to the provisions of Article 256 of the Constitution, is analogous and tantamount to putting the hat of the President on the person of Speaker.

Honourable Members, in view of the above and following the request by the Hon. Chris Wamalwa to delay putting the question for Second Reading, I wish to guide as follows-

- (i) <u>THAT</u>, the obligation to ensure that any Bill obtains the requisite voting threshold lies squarely with the mover of the Bill. Additionally, the Honourable Member needs to be conscious of the dictates of Standing Order 141 on lapsing of Bills that may be occasioned by inordinate delay in putting of the question for second reading. In this regard, I wish to notify the Member and the House that the question for Second Reading of that particular Bill shall be put on Wednesday, October 17, 2018 during the afternoon sitting;
- (ii) <u>THAT</u>, it is expected that the Member for Kiminini, who is also the Minority Party Deputy Whip, will lobby all Members to be present and to participate in electronic or roll-call voting on that day. Should 233 Members vote in support of the motion for Second Reading of the Bill, the House business Committee will thereafter schedule the Bill for consideration in Committee of the Whole House and Third Reading, which will be undertaken at later sittings; and,
- (iii) <u>THAT</u>, should the motion for second reading of the Bill fail to obtain the required numbers in support and the results of the vote satisfies the requirements of Standing Order 62(2), I will avail a further and last opportunity for the vote to take place at a later sitting.

It is worth noting that, a last voting opportunity ought to take place within five sitting days from the day of the initial vote. Thank you".

5. STRANGERS AT THE BAR OF THE HOUSE: ADMITTED PURSUANT TO STANDING ORDER 25A(B)

Three female *strangers*, being two minors in school uniform and one adult approached the Chamber and stood at the Bar of the House, in the company of the Serjeant-at-Arms;

The attention of the Speaker having been drawn to the presence of *strangers* at the Bar of the House, the Speaker directed the Serjeant-at-Arms to immediately draw the Bar of the House;

And the Bar having been drawn;

The Speaker granted leave to the representative of the *strangers* to introduces themselves and make known their motive;

And thereupon, Ms. Mary Georgiah Onyango, a seventeen-year old form three student from St.Thaddeus High School in Nairobi County submitted to the House that, alongside eight colleagues from eight other secondary schools in the County had visited the National Assembly as ambassadors of the girl-child. She expressed gratitude to the Honourable Speaker for granting them that rare and unprecedented opportunity to appear at the Bar of the National Assembly and make submissions on matters affecting the girl-child. She requested the Speaker to accept and present a Petition to the House on behalf of the girl-child.

Thereupon, the Speaker directed the Serjeant-at-Arms to receive the Petition and hand it over to the Clerks-at-the-Table;

And the Clerk of the National Assembly having received the Petition;

The Clerk of the National Assembly, upon satisfying himself pursuant to Standing Order 220(2), straight away handed over the Petition to the Speaker;

Thereupon, the Speaker conveyed the Petition to the House pursuant to Standing Order 225(2) (b);

6. PETITIONS

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. As you have just witnessed, I have received a Petition from one Ms. Mary Georgia Onyango, a student of St. Thaddeus High School on behalf of the girl-child of Kenya. Honourable Members, cognizant the International Day of the Girl-Child is celebrated today October 11, 2018, I have chosen to convey this Petition immediately while the petitioners await at the Bar of the House, which I hereby do-

Honourable Members, The Petitioners observe that the 2030 Agenda for Sustainable Development Goals (SDGs) require all partner states to commit to ensuring that no girl-child is left behind or unable to achieve her potential. Further, the petitioners note that cases of Gender-Based Violence (GBV) have been on the rise in the country and that they ordinarily take long to investigate and resolve, causing untold suffering to the victims.

Honourable Members, The Petitioners therefore pray that, amongst other legislative interventions, the National Assembly causes a review of the existing policy and legal framework, notably the Children Act, 2003 to enable the girl-child to easily identify, prevent and effectively respond to any instances of gender-based violence. The petitioners also pray that the House legislates compressively to fully actualize the enjoyment of and protection of children rights as enshrined in our Constitution, noting that the Children Act, 2003 came into force before the 2010 Constitution.

Honourable Members, Pursuant to the provisions of Standing Order 227, this Petition therefore stands committed to the Departmental Committee on Labour and Social Welfare for consideration. I urge the Committee to engage the Petitioners and report its findings to the House within sixty days, or even earlier. I thank you".

Thereupon, the Speaker discharged the strangers and ordered that the Bars of the House be opened for resumption of interrupted House business.

7. RECOGNITION OF SPECIFIC STUDENTS

"Honourable Members,

Following the Petition by the ambassador of the Girl-child that I have just conveyed to this House, may I now recognize the following people who are seated in Speaker's gallery.

They are Mr. Samuel Musyoka, County Director plan international, accompanied by the following

- a) Mercy Chege
- b) Patrick Ngenga
- c) Purity Mbugua
- d) Martin Mwaura
- e) Juliet Ratemo
- f) Allan Musumba
- g) Dorcas Odhiambo
- h) Rama M'mbetsa
- i) Ann Njuguna and
- i) Joseph Mbugua

On my own behalf and that of the House, I wish to welcome them to the National Assembly to observe and learn from the proceedings of House. I thank you".

8. PAPERS LAID

The following Papers were laid on the Table -

- (i) 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) Wundanyi Constituency;
 - b) Kapenguria Constituency;
 - c) Kwanza Constituency;
 - d) Kacheliba Constituency;
 - e) Kesses Constituency;
 - f) Tigania West Constituency;
 - g) Turkana Central Constituency;
 - h) Kaloleni Constituency;
 - i) Changamwe Constituency;
 - j) Turbo Constituency;
 - k) Soy Constituency;
 - 1) Lamu West Constituency;
 - m) Mbooni Constituency;
 - n) Kathiani Constituency; and
 - o) Mavoko Constituency.

(The Leader of the Majority Party)

(ii) Report of the Departmental Committee on Agriculture and Livestock on its consideration of the Warehouse Receipts Bill, 2017 (Senate Bill No.10 of 2017)

(Chairperson, Departmental Committee on Agriculture and Livestock)

9. NOTICE OF MOTION - ADJOURNMENT ON DEFINITE MATTER OF URGENT NATIONAL IMPORTANCE TO DISCUSS INCESSANT ROAD ACCIDENTS IN THE COUNTRY

Pursuant to the provisions of Standing Order 33, the Member for Busia County (Hon. Florence Mutua) claimed to give notice of Motion for leave of adjournment of the House pursuant to Standing Order 33, as follows –

"Mr. Speaker, I want to thank you for according the house an adjournment of the House for the purposes of discussing the worrying increased cases of road accidents in the country.

Mr. Speaker,I stand to pass my condolences to the families that lost their loved ones in the bus accident that happened yesterday very early in the morning along Muhoroni-Londiani, Yesterday was supposed to be a good holiday but Kenyans woke up to sad news of a bus that had crushed and killed 55 people. The scanty information we have is that 49 people died on the spot. More scanty information trickling in is that the bus didn't have a license for night travel, that the bus drivers age is 72 year which may still be a contributing factor one way or another and further the bus was not insured. And many questions and a lot of anger marked Moi Day. When Hon Michuki was alive, God rest his soul in peace, and was given the transport docket, immediately we saw sanity and order. Immediately after his death, to date the sector in shambles. Of interest until this time, apart from a lame message of condolence no substantial statement has come from the CS, Inspector General or the NTSA Boss. In other countries where lives matter, someone should have

taken responsibility and stepped aside. But all we are hearing are blame games.

We all know that most of the accidents are avoidable and are mostly caused by over-speeding, impunity and general non-compliance of road safety rules by most drivers, lax and unbothered police officers who are out there for other intentions apart from Kenyans safety, lax NTSA officers who knew the bus is not licensed and informed Kenyans after the accident. It is sad Mr. Speaker that the official statistics indicate that an estimate of 2,345 people have lost their lives to date as a result of road carnages in various parts of the country

Mr. Speaker, arising out of Road accidents many people are disabled, orphaned, widowed and requiring constant assistance. Most lose their jobs because they can't manage their normal jobs and many also never get compensated. A good example is the current accident was the bus insured? If not who will stand in for the families? Two weeks ago we buried in Budalang'i two brothers who died in a similar road accident, today nothing has been done. Who will compensate our people?

Mr. Speaker, last week I put a question to the CS Transport on why the regulations on 2008 with regards to commercial vehicles mandated to have 2 drivers on long distance was not adhered to, we are waiting. The more reason we need to have back the parliamentary system so that matters touching on Kenyans issues can be handled faster. We as Leaders, we must stand up and fight for our people by ensuring the set rules are adhered to.

I recently saw the President very angry on issues maize cartels, we call on the Executive to have double anger on road carnage and have heads roll asap. Kenyans are waiting.

Thank you Hon Members and Mr. Speaker"

And there being the requisite number of Members in support of the claim;

The Speaker nominated half past Five O'clock as the time for debate on the Motion under Standing Order 33.

10. QUESTIONS

The following Questions were made to various Ministries-

- (i) Question No.19/2018 by the Member for Likoni (Hon. MishiMboko, M.P.) regarding acquisition of a new ferry at Likoni Channel.
 - Question to be responded to in the Departmental Committee on Transport, Public Works and Housing for consideration;
- (ii) Question No.26/2018 by the Member for Suna West (Hon. Peter Masara) recruitment into the Kenya Defence Forces.

Question to be responded to in the Departmental Committee on Defence and Foreign Relations for consideration;

Question No.37/2018 by the Member for Lamu County Hon. Ruweida Mohamed, M.P.) regarding operations, management and regulations of taxis at the airports in the country;

Question deferred to another day.

(iii) Question No.38/2018 by the Member for Turkana North (Hon. Christopher Nakuleu, M.P.) regarding drilling of boreholes in Naduat, Lochor-Apus, Elelea, Kaloyara and Koyasa areas of Turkana West;

Question dropped.

(iv) Question No.39/2018 by the Member for Samburu West (Hon. NaisulaLesuuda, M.P.) regarding the number of NYS graduates recruited in various disciplined forces since 2017;

Question deferred to another day.

- (v) Question No.40/2018 by Nominated Member (Hon. David Sankok, M.P.) regarding National Safety Net Programme (NSNP); Question deferred.
- (vi) Question No.41/2018 by the Member for Mumias East (Hon. Benjamin Washiali, M.P.) regarding gazettement of sugar sector regulations;
 - Question to be responded to in the Departmental Committee on Agriculture and Livestock for consideration.
- (vii) Question No.42/2018 by the Member for Saboti (Hon. Caleb Amisi, M.P.) regarding implementation and operationalization of the Social Assistance Act (2013);
 - Question to be responded to in the Departmental Labour and Social Welfare for consideration;
- (viii) Question No.43/2018 by the Member for Gem (Hon. Elisha Ochieng) regarding the number of persons what have benefited from the Older Persons Cash Transfer (OPCT) programme Fund in Gem constituency;

Question deferred to another day.

11. STATEMENT PURSUANT TO STANDING ORDER 44(2)(a)

Pursuant to the provisions of Standing Order 44(2)(a), the Leader of the Majority Party issued a Statement regarding the Business of the House for the week commencing Tuesday, October 16, 2018.

12. NOTICE OF MOTION FOR LEAVE OF ADJOURNMENT OF THE HOUSE PURSUANT TO STANDING ORDER 33

And the Notice having garnered requisite support pursuant to Standing Order 33(3), the Speaker nominated half past Five O'clock as the time for debate on the Motion.

13. <u>MOTION - REPORT OF THE SIXTH ORDINARY SESSION OF THEFOURTH PAN-</u> AFRICAN PARLIAMENT

Motion having been made and Question proposed -

THAT, this House <u>notes</u> the report of the Sixth Ordinary Session of the Fourth Pan-African Parliament, held in Gallagher Convention Centre, Midrand, South Africa from 7th to 18th May, 2018, laid on the Table of the House on Tuesday, July 31, 2018.

(Member of the Pan-African Parliament – 09.10.2018)

Debate on the Motion having been concluded on Tuesday, October 9, 2018;

Question put and agreed to.

14. MOTION - REPORT ON AN INQUIRY INTO COMPLAINTS OF ENVIRONMENTAL POLLUTION BY LONDON DISTILLERS KENYA LIMITED

Motion having been made and Question proposed -

THAT, this House <u>adopts</u> the Report of the Departmental Committee on Environment & 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 subject to deletion of the word "tabling" appearing in recommendation 1 paragraph (i); recommendation 2 paragraphs (i) and (vi) and recommendation 6 paragraphs (i) and (ii), and substituting therefor the words "adoption by the House".

(Chairperson, Departmental Committee on Environment & Natural Resources – 09.10.2018)

Debate interrupted on Tuesday, October 9, 2018 resumed;

Rising in his place on a Point of Order pursuant to Standing Order 95,the Leader of the Majority Party claimed that "the Mover be now called upon to reply";

And the Speaker acceding to the claim;

Question put and agreed to;

Thereupon, Mover replied;

Question put and agreed to.

15. MOTION - REPORT OF THE COMMITTEE ON IMPLEMENTATION ON HOUSE RESOLUTION

Motion made and Question proposed -

THAT, this House <u>adopts</u> the Report of the Committee on Implementation in respect of Petition by Kenafric Industries Limited on the Implementation of the Recommendation in Paragraph 108 of the Report by the Departmental Committee on Agriculture, Livestock and Cooperatives on the *Crisis Facing the Sugar Industry in Kenya* as adopted by the House on 24th February, 2016 and-

- (i) **reconsiders** its resolution made on the 24th February 2016, which was arrived at following inaccurate information contained in recommendation 108 (page 50) of the said report of the Departmental Committee on Agriculture, Livestock and Cooperatives; and
- (ii) <u>resolves to expunge</u> the name "<u>Kenafric Industries Limited</u>" from its resolution of the 24th February 2016, as contained in recommendation 108 (page 50) of the said Report.

(Chairperson, Select Committee on Implementation)

Mover replied;

Putting of the Question deferred.

16. MOTION- APPOINTMENT OF MEMBERS TO VARIOUS COMMITTEES

Motion made and Question proposed;

THAT, pursuant to the provisions of the Standing Order 175, and further to the resolution of the House of December 14, 2017 on appointment of Members to respective Committees; **this House** furtherapproves the following **additional** appointments to the Committees specified hereunder:-

- (i) The Hon. Gideon Sitelu Konchella, MP be appointed to the Departmental Committee on Trade Industry and Cooperatives to replace the Hon. KathuriMurungi, MP;
- (ii) The Hon. Christopher Omulele, MP and Hon. Edith Nyenze, MP be appointed to the Departmental Committee on Finance and National Planning to replace the Honourables Alfred SambuWekesa, MP and David Mboni Mwalika, MP, respectively;
- (iii) The Hon. Alfred Sambu Wekesa, MP be appointed to the Select Committee on Constitutional Implementation and Oversight to replace the Hon. Tom Joseph Kajwang', MP;
- (iv) The Hon. Charles Kamuren, MP be appointed to the Departmental Committee on Sports, Tourism and Culture and the Committee on Broadcasting and Library take the slots of the Majority Party and to replace the Hon. Lilian Tomitom, MP, respectively;
- (v) The Hon. Silvanus OsoroOnyiego, MP be appointed to the Departmental Committee on Agriculture and Livestock to take up the remaining slot for the Minority Party;
- (vi) The Hon. Peter Kaluma, MP be appointed to the Departmental Committee on Administration and National Security to replace the Hon. Justus GesitoMugali, MP;

- (vii) The Hon. Gladys Wanga, MP and the Hon. Justus GesitoMugali, MP be appointed to the Public Investments Committee to replace the Hon. Gideon Mulyungi, MP and Hon. Nicholas Tindi Mwale, MP, respectively;
- (viii) The Hon. SakwaBunyasi, MP be appointed the Budget and Appropriation Committee to replace the Hon. Christopher Wangaya Aseka, MP;
- (ix) The Hon. Nicholas Tindi Mwale, MP and the Hon. Gideon Mulyungi, MP be appointed to the Committee on Delegated Legislation to replace the Hon. Charles Gimose, MP and Hon. AbdulswamadShariff Nassir, MP, respectively;
- (x) The Hon. John Walter Owino, MP be appointed to the Select Committee on Members' Services and Facilities to replace the Hon. Catherine Wambilianga, MP;
- (xi) The Hon. James LuswetiMukwe, MP be appointed to the Committee on National Cohesion and Equal Opportunity to replace the Hon. Mohammed Ali Lokiru, MP;
- (xii) The Hon. Tom Joseph Kajwang', MP be appointed to the Public Accounts Committee to replace the Hon. John SakwaBunyasi, MP;
- (xiii) The Hon. Asha Mohamed Hussein, MP be appointed to the Departmental Committee on Defence and Foreign Relations to replace the Hon. Silvanus OsoroOnyiego, MP;
- (xiv) The Hon. Jeremiah EkamaisLomorukai, MP be appointed to the Departmental Committee on Trade, Industry and Cooperatives to replace the Hon. Ferdinand Wanyonyi, MP; and
- (xv) The Hon. Ferdinand Wanyonyi, MP be appointed to the Select Committee on National Government-Constituencies Development Fund to replace the Hon. James LuswetiMukwe, MP.

(Chairperson, Committee on Selection)

Rising in his place on a Point of Order pursuant to Standing Order 35, the Member for Nambale Constituency (Hon. Sakwa Bunyasi) claimed that there was no quorum present in the House;

And the Speaker having ascertained the claim, thereupon ordered that the Quorum Bell be rung for ten Minutes;

And quorum having been attained before expiration of ten minutes;

Thereupon, the interrupted business resumed.

Mover replied;

Question put and agreed to.

17. NOTICE OF MOTION - ADJOURNMENT ON DEFINITE MATTER OF URGENT NATIONAL IMPORTANCE TO DISCUSS INCESSANT ROAD ACCIDENTS IN THE COUNTRY

Motion made and Question proposed -

(839)

THAT, the House do now adjourn;

(Hon. Florence Mutua)

Debate arising;

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

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

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

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

MEMORANDUM

The Speaker will take the Chair on Tuesday, October 16, 2018 at 2.30 p.m.

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