



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – THIRD SESSION

THE NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

TUESDAY, FEBRUARY 12, 2019

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 Communication –

“Honourable Members,

I wish to take this opportunity to welcome you all to this August House as we commence the Third Session of the Twelfth Parliament. It is my hope that you had a happy and restful recess and that you are now fully rejuvenated and ready for the heavy legislative agenda that lies ahead this Session.

Honourable Members, as we commence the Session, I wish to bring to the attention of the House that, going by our practices and the Standing Orders, certain business that was not concluded at the end last Session has now lapsed. This includes Bills published in the First Session (2017) but whose Second Reading had not been concluded at the end of the last Session of this Parliament, save for a Bill to amend the Constitution or a Bill originating from the Senate. The same applies to all Motions, all Petitions *that have not exceeded the sixty days consideration limit* and all Questions. To this end, any Committee or individual Member who wishes to re-introduce such business is advised do so following the usual procedure. In addition, respective Committees are requested to write to the individual Petitioners indicating the status of the lapsed Petitions.

Honourable Members, I wish to also draw the attention of the House to the fact that the term of Sessional Committees has come to an end and therefore they will be reconstituted afresh. These include the Committee of Powers and Privileges and Committee on Members' Services and Facilities. The Committee on Selection is thus required to expedite the process of nominating Members to serve in the said Committees.

Honourable Members, as you are aware, the process of installation of the paperless solution in the National Assembly Chamber which has been ongoing has since been concluded and is now ready to be rolled out. The process is aimed at, among other things, enabling the House to fully embrace the *e-Parliament* initiative. The said installation will ease access to parliamentary papers, documents and journals such as Order Papers, the Standing Orders, the Constitution, Committee Reports, Bills and Acts of Parliament by enabling access of the same in electronic form.

Honourable Members, to ensure that all Members are familiar and conversant with the use of the paperless system, short briefing sessions have been organized for all Members. The said briefing will take place commencing today Tuesday, 12th February, 2019 after the rise of the House and will go on for the next two weeks, every day from 9.00 am to close of business when the House is not sitting. You are therefore notified to attend these crucial sessions. In addition, there are ongoing minor alterations and refurbishments of the Members' lounges in the Main Building which will inevitably disrupt some services around the Members' restaurants and lounges. However, alternative arrangements have been made in the adjacent spaces. Your co-operation is therefore requested during this time.

Thank you”.

5. **MESSAGE FROM THE PRESIDENT**

The Speaker conveyed the following Message –

Bills assented to and referral by H.E. the President of the Health Laws (Amendment) Bill, 2018

“Honourable Members,

You may recall that, during the second Session of this Parliament, there were Sixty Two (62) published Bills under consideration at various stages in the National Assembly, fifteen (15) of which originated in the Senate. By the end of that Session, sixteen (16) of those Bills had been passed and Assented to into law, therefore becoming part of the laws of Kenya while eleven (11) were referred to the Senate for consideration. Of the Bills enacted into law, Five (5) were Assented to by H.E. the President on the 31st of December, 2018, following their passage by the House during the last few weeks of the Session. In particular, the following are the Bills that were Assented to on that day-

- (i) The Building Surveyors Bill, 2017;
- (ii) The Sacco Societies (Amendment) Bill, 2018;
- (iii) The Capital Markets (Amendment) Bill, 2018;
- (iv) The National Youth Service Bill, 2018; and,
- (v) The Statute Law (Miscellaneous Amendments) Bill, 2018 (*which eventually amended 54 pieces of statutes from the 63 contained in the original Bill*).

It is also worth reporting that, as at the end of the last Session, there were one hundred and forty five (145) draft Bills proposed by different Members that were undergoing prepublication scrutiny before various Committees. I do urge the Budget & Appropriations Committee and the respective Departmental Committees to prioritize consideration of these so draft Bills so as pave way for publication. I have deliberately provided these statistics, Honourable Members, so as to clarify certain misleading information that has

been circulated elsewhere regarding legislative business transacted by the House during the last session.

Honourable Members, Among the Bills that I presented for Assent on December 31, 2018 was the Health Laws (Amendment) Bill, 2018. However, in exercise of the powers under Article 115(1)(b) of the Constitution, H.E. the President, by way of a Memorandum dated January 9, 2019, referred the said Bill back to the National Assembly for reconsideration. This Bill, which was passed by the House on November 7, 2018, is proposing to make various amendments to thirteen (13) statutes relating to the health sector. In his Memorandum, H.E. the President has expressed reservations on various provisions relating to the following five statutes as passed by the House-

- (i) Under the provisions relating to the Pharmacy and Poisons Act (Cap. 244), H.E. the President has made reservations on-
 - a) section 2 on the definition of the terms “pharmaceutical device, pharmaceutical equipment, pharmaceutical product, and good manufacturing practice”;
 - b) section 3 on the establishment of the Pharmacy and Poisons Board;
 - c) new Section 3B on the functions of the Pharmacy and Poisons Board; and,
 - d) section 24 on deletion of the word "a pharmacist" and the substitution with the phrase “pharmaceutical practice”.
- (ii) Under the provisions relating to the Medical Practitioners and Dentists Act (Cap. 253), H.E. the President has expressed reservations on new section 4B relating to the powers of the newly established Kenya Medical and Dental Council.
- (iii) Under the provisions relating to the Nurses Act (Cap. 257), H.E. the President has made reservations on-
 - a) section 4 on membership of the Nursing Council of Kenya;
 - b) section 9 on the functions and annual report of the Nursing Council of Kenya; and,
 - c) section 11 on determination of remuneration and allowances by the Nursing Council of Kenya .
- (iv) Under the provisions relating to the Counsellors and Psychologists Act (No. 14 of 2014), H.E. the President has expressed reservations to sections 15, 16, 17, 18, 19, 20, 21, 22, and Third and Fourth Schedules relating to the establishment, membership, functions and election of the Chairperson, Members and Committees of the Council of the Kenya Counsellors and Psychologists Society.
- (v) Under the provisions relating to the Clinical Officers Act (No. 20 of 2017), H.E. the President has expressed reservations on section 4(1) providing for the composition of the Clinical Officers’ Council and representation of other institutions in the Council.

Honourable Members, H.E. the President having exercised his powers under Article 115(1)(b) of the Constitution now requests the National Assembly to reconsider the Bill, against his reservations and the recommendations proposed against each of the reservations and amend the Bill in light of his reservations.

Honourable Members, Standing Order 154 requires the National Assembly to consider the President’s reservations within 21 days. In this regard, the Memorandum of H.E. the President now stands committed to the Departmental Committee on Health for

consideration. The Committee should table its report by February 28, 2019 to enable the House to conclude with the Bill within the stipulated timelines. May I, at this point, remind the House of the *Speaker's Communication* delivered on July 28, 2015 concerning the consideration of President's reservations to a Bill and amendments thereto. I particularly draw your attention to my guidance, that the voting threshold for the passage of amendments proposed by a Committee or an individual Member that have the effect of fully accommodating the President's reservations is a simple majority as contemplated under Article 122(1) of the Constitution as read together with Article 115(2)(a).

On the other hand, an amendment that does not fully accommodate the President's reservations, or indeed one that has the effect of total override of the President's reservations, including negating his proposed text would require a two-thirds voting threshold to be passed in keeping with the provisions of Article 115(4) of the Constitution. I wish to further reiterate to the House that only the specific sections of the Bill that have reservations will be considered. I now direct the Clerk to circulate the Memorandum from H.E. the President to all Members so that you familiarize yourselves with its contents.

I thank you”.

6. **PETITION – APPOINTMENT OF MEMBERS TO THE HOUSE BUSINESS COMMITTEE**

The Speaker conveyed the following Petition:-

Petition for the Removal of the Chairperson, Vice Chairperson and a Commissioner of the National Land Commission

Honourable Members,

Standing Order 225(2)(b) requires that the Speaker reports to the House any Petition, other than those presented through a Member. Accordingly, I wish to report to the House that my office has received three Petitions from an organization by the name The Land Sector Non-State Actors, acting on behalf of Mr. Samuel Kioi, Ms. Anne Kimani, Mr. George Kiige and Mr. Nagib Shamsan. The Petitioners are praying that the National Assembly considers the Petitions and accordingly do find that the Petitions disclose sufficient grounds for the removal of the following from the National Land Commission; Prof. Muhammad Abdalla Swazuri, Chairperson; Ms. Abigael Mbagaya Mukolwe, Vice Chairperson; and Mr. Clement Isaiah Lenachuru, Commissioner, in accordance with the provisions of Article 251(1) of the Constitution.

Honourable Members, the Petitioners allege that the said persons separately and/or jointly bought the Office of the National Land Commission into dishonor and disrepute contrary to the provisions of Article 73(1)(a), (2)(a), (c), (d) and (e) of the Constitution; caused subjugation of the principles of public finance set out in Article 201 of the Constitution; compromised public or official interest in favour of a personal interest contrary to the provisions of Article 75(2) of the Constitution; and willfully or carelessly incurred expenditure of public revenue contrary to the provisions of section 45(2)(b) of the Anti-Corruption and Economic Crimes Act, 2003.

In respect to the Chairperson, Prof. Muhammad Abdalla Swazuri, the Petitioners laid out the following grounds:

- (i) That, he used his office to unlawfully enrich himself or other persons, contrary to the provisions of Article 75 of the Constitution as read together with section 12 of the Leadership and Integrity Act, 2012 by acting with impropriety in relation to reviewing the grant and disposition of public land relating to 1,129 acres of land then being utilized by Mombasa Cement Company Limited in Kilifi;
- (ii) That, he brought the office of Chairperson of National Land Commission into dishonor and disrepute contrary to the provisions of Article 73(1)(a), (2)(a), (c), (d) and (e) of the Constitution; subjugated the principles of public finance set out in Article 201 of the Constitution; compromised public or official interest in favour of a personal interest contrary to the provisions of Article 75(2) of the Constitution; willfully or carelessly incurred expenditure of public revenue contrary to section 45(2)(b) of the Anti-Corruption and Economic Crimes Act, 2003, by –
 - (a) Occasioning loss of public funds through irregular payment of compensation for acquisition of 3.7701 acres of land for Drive-In Primary School and Ruaraka High School; land illegally allocated to East Africa Gas Company in Kisumu; parcel LR. 46540 and LR. 14277 Eastern Bypass in Nairobi; and plot No. 2/3770; and MN/VI/2464 for the Standard Gauge Railway (SGR) project in Dasahe and Olomotit;
 - (b) Authorizing unwarranted compensation of over Kshs 200 million for SGR strips of land in Embakasi Township and Darfur Dupoto, yet the title deeds in respect of the said parcels of land had been revoked; and,
 - (c) Fraudulently and illegally allocating 2,380 acres of land to Mombasa Cement Company Ltd. without proof relating to ownership of the said land.
- (iii) That, he has acted with incompetence to the extent that he has failed to handle and/or respond to various cases relating to public land.

Honourable Members, with regard to the Vice Chairperson, Ms. Abigael Mbagaya, the Petitioners have cited the following as grounds for her removal –

- (i) That, she fraudulently conspired to influence the renewal of land lease for Land Parcel Numbers LR. 209/923, LR. 209/924 and LR. 209/925 by dispossessing Ms. Sayani Investments and issuing a new lease to one Sadhani Limited and Keibukwo Investments Ltd, which had allegedly bribed her;
- (ii) That, she brought the office of Vice Chairperson to dishonour by failing to deliver justice with respect to Kanyakwar land in Kisumu County and Mwalimu Farm Owners in Kiambu County;
- (iii) That, she was complicit with the Chairperson and other Commissioners in the irregular payment of compensation for SGR land, including parcels whose title deeds had been revoked; and
- (iv) That, as Chairperson of the NLC Committee on Review of Grants and Disposition of Public Land, she allegedly held secret meetings with third parties to the Mwalimu Farm in Kiambu County, hence arriving at a questionable determination that denied the affected persons justice.

Honourable Members, the Petitioners are also seeking removal of Commissioner Isaiah Clement Lenachuru and have cited the following grounds –

- (i) That, he received Kshs 10 million as bribe to fraudulently conspire with another Commissioner to dispose Sayani Investments lease for the land on which Caxton House in Nairobi sits, and granted a lease to Sadhani Limited and Keibukwo Investments Ltd; and,
- (ii) That, in collaboration with other Commissioners, he aided in the irregular payment of compensation for SGR land, including parcels whose title deeds had been revoked, hence occasioning loss of public funds.

Honourable Members, the Petitioners are therefore praying that the National Assembly considers these Petitions and accordingly makes findings that they disclose grounds under Article 251(1) of the Constitution for the removal, from the National Land Commission, of Prof. Muhammad Abdalla Swazuri, Chairperson; Ms. Abigael Mbagaya Mukolwe, Vice Chairperson; and Mr. Isaiah Clement Lenachuru, Commissioner.

Honourable Members, ordinarily, I would refer the Petition to the Departmental Committee on Lands for consideration in accordance with the provisions of Standing Order 230 which provides that –

*“230 (4) Upon receipt of a petition under paragraph (3), the relevant Departmental Committee shall investigate the matter and shall, within **fourteen days**, report to the House whether the petition discloses grounds for removal under Article 251(a) of the Constitution.*

*(5) the House shall, within **ten days** of tabling of the report of the committee under paragraph (4) resolve whether or not the petition discloses grounds for removal under Article 251(a) of the Constitution.”*

Honourable Members, Standing Order 230 thus avails to the House a maximum period of twenty-four days to consider and dispose of a Petition for removal of a holder of a Constitutional Commission Office or Independent Office. Suffice to say that, if this Petition is committed to a Departmental Committee today, the Committee would be expected to report to the House on or before 26th February 2019 for the latter to make a resolution on the matter by 8th March 2019.

Honourable Members, However, the timing of the Petition presents a major challenge for the House in relation to the term of office of the respondents in the Petitions. Article 250 of the Constitution on composition, appointment and terms of office for commissioners of constitutional commissions and holders of independent offices provides that –

“250 (6) A members of a commission, or holder of an independent office – (a) unless ex officio, shall be appointed for a single term of six years and is not eligible for re-appointment.”

For avoidance of doubt, may I remind the House and the general public that, the current Commissioners of the National Land Commission were appointed to office on 20th February 2013 through *Kenya Gazette* Notice Numbers 2224 for the Chairperson and Number 225 for Commissioners. In the terms contemplated under Article 250(6) of the

Constitution, the term of the subsisting Commission is therefore set to lapse on or around 19th February 2019.

Honourable Members, if I were to refer this Petition to the relevant Departmental Committee, it would be inevitably be overtaken by events as the six days period between today and the expiration of the term of Office holders the Petitioners wish to have removed from Office would not suffice consideration of their prayers.

In view of the foregoing, **Honourable Members**, and cognizant that this House does not act in vain, I am constrained from committing the Petition to the relevant Departmental Committee as contemplated under Standing Order 230, as the concerned commissioners would have left office by effluxion of time before they even appear before the Committee to make their representations on the allegations leveled against them.

Honourable Members, in order for the Chair's considered decision on this Petition not to be construed as an impediment to the Petitioners' quest for justice and right to Petition Parliament under Article 119 of the Constitution, I advise that Petitioners are at liberty to seek recourse from other relevant agencies with jurisdiction over the allegations contained in their Petitions.

This is because the jurisdiction of those entities transcends the term of office of a state officer(s) whose integrity is called to question. Indeed, where the grounds contain complaints that are of criminal in nature, they are at liberty to forward the Petition to the Directorate of Criminal Investigations. I therefore direct the Clerk to communicate my advisory to the Petitioner.

I thank you!"

7. **PAPERS LAID**

The following Papers were laid on the Table of the House:-

- a) Legal Notice No. 239 of 2018 relating to Adjustment of Excise Duty Rates for Inflation and the Explanatory Memorandum from the Kenya Revenue Authority (*to be referred to the Committee on Delegated Legislation*).
- b) Gazette Notice No. 1036 on Delegation of Powers and the Explanatory Memorandum from Kenya Revenue Authority (*to be referred to the Committee on Delegated Legislation*).
- c) The National Housing Fund Regulations, 2018 and the Explanatory Memorandum from the Ministry of Transport, Infrastructure, Housing Urban Development and Public Works (*to be referred to the Committee on Delegated Legislation*).
- d) Legal Notice No. 239 of 2018 relating to the Adjustment of Rates for Inflation and Legal Notice No. 240 of 2018 relating to the decrease in rates of Excise Duty from the National Treasury (*to be referred to the Committee on Delegated Legislation*).
- e) The Reports of the Auditor-General on the Financial Statements in respect of the following Institutions for the year ended 30th June, 2018 and the certificates therein: -
 - i) National Police Service Commission;
 - ii) Kenya Pipeline Company Limited;
 - iii) University of Embu;

- iv) Insurance Regulatory Authority;
- v) Kenya National Commission on Human Rights;
- vi) National Cohesion and Integration Commission;
- vii) Technical University of Mombasa; and
- viii) Competition Authority of Kenya.

(Leader of the Majority Party)

8. **MOTION – APPOINTMENT OF MEMBERS TO THE HOUSE BUSINESS COMMITTEE**

Motion made and Question proposed –

THAT, pursuant the provisions of Standing Order 171(1), this House approves the appointment of the following Members to the House Business Committee in addition to those specified under paragraphs (a), (b), (c), (d) and (e): -

- (i) The Hon. Amos Kimunya, EGH, MP
- (ii) The Hon. Joyce Akai Emanikor, MP
- (iii) The Hon. Shadrack John Mose, MP
- (iv) The Hon. Kawira Mwangaza, MP
- (v) The Hon. (Dr.) Makali Mulu, MP
- (vi) The Hon. Mishi Juma Khamisi Mboko, MP
- (vii) The Hon. Godfrey Osotsi, MP

(The Leader of the Majority Party)

No Debate arising;

Question put and agreed to.

There being no other business and the time being sixteen minutes past Three O'clock, the Speaker interrupted the proceedings and adjourned the House without Question put pursuant to the Standing Orders.

9. **HOUSE ROSE** - at sixteen minutes past Three O'clock

M E M O R A N D U M

The Speaker will take the Chair on
Wednesday, February 13, 2019 at 9.30 a.m.

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