



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – SECOND SESSION

THE NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

TUESDAY, MARCH 20, 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. **COMMUNICATIONS FROM THE CHAIR**

The Speaker conveyed the following Communications –

- (i) **On the Alleged Sub-Judice Status and Unconstitutionality of the Nairobi Metropolitan Area Transport Authority Bill (National Assembly Bill No. 41 of 2017**

“Honourable Members,

You may recall that on Thursday, 15th March 2018, the Member for Mathare Constituency, the Hon. Anthony Tom Oluoch, rose on a Point of Order and invited the Speaker to declare the Nairobi Metropolitan Area Transport Authority Bill (National Assembly Bill No. 41 of 2017) inadmissible for consideration by the House on grounds of unconstitutionality and application of Standing Order 89 relating to matters *sub judice*. In his submissions, the Member referred to Articles 187 and 189 of the Constitution, the Inter-Governmental Relations Act 2012, and Standing Orders 83(3), 89(4), 117(c) and 118. The Member also questioned the Memorandum of Understanding signed between the National Government and five County Governments towards the establishment of the Nairobi Metropolitan Area Transport Authority, and then proceeded to lay before the House a Letter addressed to the Speaker of the National Assembly in connection with his claims. He also laid an annexure containing, among other items, a copy of High Court Petition to No. 94 of 2018 (*Wanjiru Gikonyo Vs the Attorney General and others*).

Honourable Members, in the ensuing debate, various Members, amongst them the Hon. Jude Njomo, the Hon. Rahab Mukami, the Hon. Waihenya Ndirangu, the Hon. Rindikiri Murwithania and the Hon. David Pkosing, ventilated on the various aspects of the Bill. In particular, the Hon. David Pkosing, who is also the Chairperson of the Departmental Committee on Transport, Public Works and Housing, stated that the Memorandum of Understanding between the two levels of government had been signed in connection with the operations of Nairobi Metropolitan Area as contemplated under Article 189(2) of the Constitution. He pointed out that the Government, by Gazette Notice No. 1093 of 20th February 2015, had established a Steering Committee that brought together key technical stakeholders of all the five counties involved in the undertaking. Indeed, the Chairperson acknowledged that, during the public participation phase of the proposed legislation, his Committee did receive and deliberate on the same claims of *sub judice* as well as unconstitutionality of the Bill and found them to be misplaced.

Honourable Members, from the submissions of the Member for Mathare Constituency, I have deduced two areas of guidance emanating from the matters raised as follows:

- (i) whether the provision of Standing Order 89 relating to matters *sub judice* would limit the House from considering and passing the Nairobi Metropolitan Area Transport Authority Bill, 2017; and,
- (ii) whether the Nairobi Metropolitan Area Transport Authority Bill, 2017 is unconstitutional.

Honourable Members, at the onset, I wish to inform the House that my reading of the long title of the Bill reveals that the principal object of the Nairobi Metropolitan Area Transport Authority Bill (National Assembly Bill No. 41 of 2017) is to give effect to Article 189(2) of the Constitution, establish the Nairobi Metropolitan Area Transport Authority, and provide for an integrated and sustainable Public Transport System within the Nairobi Metropolitan Area that consists of the Counties of Nairobi, Kiambu, Machakos, Kajiado and Murang'a.

Honourable Members, as a matter of fact, the documents laid by the Member for Mathare Constituency relate to a matter in the High Court by one Ms. Wanjiru Gikonyo vide Petition No. 94 of 2018 **challenging the constitutional validity of Legal Notice No. 18 of 2017**. The Legal Notice created the Nairobi Metropolitan Area Authority by way of an executive order issued by H.E the President in exercise of his powers under section 3(1) of the State Corporations Act (Cap 446), and made several appointments. This petition does

not in any way touch on the Bill before this House. Further, Honourable Members will agree with me that the *subjudice rule* does not in any circumstances apply to the legislative authority of the House as provided for under Articles 94, 95 and 109 of the Constitution. Moreover, Erskine May, a celebrated authority in parliamentary practice, on page 396 of the twenty-fourth edition, speaking to this matter, notes that, and I quote:

“The House has expressly resolved that the sub-judice rule is qualified by the right of the House to legislate on any matter.”

In light of the foregoing, and particularly in consideration of the fact that the aforementioned High Court Petition relates to a different matter separate from the particular Bill, it is my considered conclusion that the Standing Order relating to matters *sub-judice* does not apply to the Bill currently before the House. This therefore settles the first question.

Honourable Members, As regards the second question concerning the constitutionality of the Nairobi Metropolitan Area Transport Authority Bill, I wish to remind the House that I have previously ruled that a question on the constitutionality of a Bill can be raised by Members at any stage of the Bill. Members may wish to refer to my ruling on the admissibility of the National Police Service and National Police Service Commission Bills of 25th September 2013 and the constitutionality of the National Police Service Commission (Amendment) Bill of 13th November 2013. In the matter at hand, the Member for Mathare Constituency has neither cited nor indicated which particular clause of the Bill is likely to offend the provisions of the Constitution should the Bill be passed by this House. If the Member was to convince me and indeed this House that any clause of the Bill contravenes any provision of the Constitution, I would without hesitation order the specific clause or clauses to be struck off from the Bill during the Committee of the Whole House stage. However, Honourable Members, it would be actually inconceivable that the entire Bill, from its title all through its 46 clauses and its schedules would offend all the 264 Articles of our Constitution and all its six (6) Schedules!

In the circumstances, therefore, I do not see anything unconstitutional with the Nairobi Metropolitan Area Transport Authority Bill, (National Assembly Bill No. 41 of 2017 as published. I therefore order that the Bill proceeds through its remaining stages in accordance with the Standing Orders of this House.

The Member and indeed the House stands guided.

I thank you!”

(ii) Guide on “Zero Hour” Statements

“Honourable Members

I wish to draw the attention of the House to an item in the Appendix of today’s Order Paper titled “Zero Hour” Statements. Just for the information of Members, Standing Order 43 allows the Speaker to provide an opportunity to Members to make general statements of topical concern every Tuesday at 6.30pm.

Honourable Members, this is not a new practice. In fact, the use of this procedure, known as ‘Zero Hour’, was popular in the 7th and 8th Parliaments, and part of the 9th Parliament, but gradually diminished. In this regard, I want to thank the Honourable Member for Mogotio Constituency for studying and understanding the Standing Orders and being the first Member to utilize this provision in the 12th Parliament. I encourage other Members to borrow a leaf from him.

Honourable Members, you should however note that any Member making a statement during ‘Zero Hour’ will speak for not more than three minutes, and I may allow brief comments by other Members. Further, a debate on a particular statement is without resolution, and therefore any matters raised may not fall under matters for follow-up by the Committee on Implementation.

Thank you”.

5. MESSAGE

The Speaker conveyed the following Message from H.E. the President -

Nominee for appointment as a Member of the Judicial Service Commission (JSC)

Honourable Members,

Pursuant to the provisions of Standing Order No. 42(1) of the National Assembly Standing Orders, I wish to report to the House that I have received a Message from His Excellency the President seeking the National Assembly’s approval of a nominee for appointment as a Member of the Judicial Service Commission (JSC). In the Message, the President conveys that the Court of Appeal elected the **Hon. Justice Mohamed Abdullahi Warsame, JA** as its representative to the Judicial Service Commission as required under Article 171(2)(c) of the Constitution. His Excellency the President now seeks the approval of the National Assembly before appointing the said Judge as required under Article 250(2)(b) of the Constitution.

Honourable Members,

Section 8 of the Public Appointments (Parliamentary Approval) Act provides that the relevant Committee of the House will consider the suitability or otherwise of the nominees

and table its report for consideration by the House within fourteen (14) days from the date the notification of nomination is conveyed to the House. Further, the Act requires that the public be given seven (7) days notification to submit their views regarding the suitability or otherwise of the nominee proposed for appointment to an office requiring Parliamentary approval.

In this regard, and in accordance with the provisions of Article 259(5) (a) of the Constitution as read together with section 5 of the said Act, the seven (7) days' notification to the public shall start running on the day following the day when the notice is published in the dailies.

Honourable Members, given the critical role played by the Judicial Service Commission (JSC), it is advisable that the relevant Committee expeditiously proceeds to notify the nominee and the public, commence the approval hearings after the seven day notification period and table a Report when through with the hearings, to enable the House to consider the matter within the statutory timelines and conclude the process contemplated under Article 250(2)(b) of the Constitution. This Message, together with the Curriculum Vitae of the nominee therefore stands committed to the Departmental Committee on Justice and Legal Affairs for consideration. However, given that the fourteen days for the House to finalize on the matter will lapse during the short recess period between March 30 and April 9, 2018, I advise the Committee to seek necessary extension of the timeline for consideration of this matter, in due course.

I thank you!"

6. **PAPERS LAID**

The following Papers were laid on the Table of the House –

- i) The National Transport and Safety Authority (Operation of Commercial Vehicles) Regulations, 2018 and the Explanatory Memorandum (*pursuant to section 54 of the National Transport and Safety Authority Act, 2012*);
- ii) The Report of the Auditor-General on the Financial Statements of the National Industrial Training Authority for the year ended 30th June, 2017 and the certificate therein; and
- iii) The Reports of the Auditor-General on the Financial Statements of the Kenya Industrial Research and Development Institute for the years ended 30th June, 2014, 30th June, 2015 and 30th June, 2016 and the certificates therein;

(The Leader of the Majority Party)

- iv) The Report of the Departmental Committee on Health on the alleged sexual assault, breakdown of equipment, surgical mix-up and general operation of the Kenyatta National Hospital (KNH).

(Chairperson, Departmental Committee on Health)

- v) The Report of the Departmental Committee on Communication, Information and Innovation on its Consideration of the Computer and Cyber Crimes Bill (National Assembly Bill No 36 of 2017).

(Chairperson, Departmental Committee on Communication, Information & Innovation)

7. **NOTICES OF MOTION**

The following Notices of Motion were given –

- (i) **Establishment of programmes and interventions to encourage uptake of counseling services**

THAT, aware that there are over 200 classified types of mental disorders, the most common ones being clinical depression, Post-traumatic Stress Disorder (PTSD), bipolar disorder, anxiety disorders, schizophrenia and Attention Deficit Hyperactivity Disorder (ADHD); concerned that Kenya's mental health policy estimates that about twenty five(25) percent of out-patients and about forty (40) percent of in-patients suffer from mental health conditions with the most frequent diagnosis of mental illnesses made in general hospital settings being depression, substance abuse, stress and anxiety disorders; deeply concerned that the current worrying trend of increased domestic violence among Kenyan families has resulted in suicides, deaths, injuries, psychological trauma, orphaned and unstable children; noting that the prevalence of mental disorders may also be attributed to the noted cases of suicide, homicides and violence at household level; further noting that despite the strategies and guidelines that the Government has put in place towards achieving the highest standard of mental health, prevalence of mental disorders remains high, this House **urges** the Government to urgently establish programmes and interventions to encourage uptake of counseling services among individuals, families and communities to mitigate effects of mental disorders.

(Hon. Rose Museo, MP)

- (ii) **Adoption of Report on alleged sexual assault, breakdown of equipment, surgical mix-up and general operation of the Kenyatta National Hospital**

THAT, this House adopts the Report of the Committee on Health on the alleged sexual assault, breakdown of equipment, surgical mix-up and general operations of Kenyatta National Hospital, laid on the Table of the House on *Tuesday, March 20, 2018*, pursuant to the provisions of Standing Order 216 (5)(e).

(Chairperson, Departmental Committee on Health)

8. **STATEMENTS**

The Chairperson of the Departmental Committee on Administration and National Security (Hon. Paul Koinange) sought a one-week extension of time for the consideration of the Kenya Coast Guard Service Bill, 2017 pursuant to Standing Order 127. The Honourable Speaker granted the one-week extension sought by the Committee.

9. **THE DIVISION OF REVENUE BILL (NATIONAL ASSEMBLY BILL NO.7 OF 2018)**

Order for Third Reading read;

Motion having been made and Question having been proposed on 15.03.2018 –

THAT, the Division of Revenue Bill (National Assembly Bill No. 7 of 2018) be now read a third time.

(Chairperson, Budget and Appropriations Committee)

Question put and agreed to;

Bill read for a Third Time and **passed** by the House.

10. **THE NAIROBI METROPOLITAN AREA TRANSPORT AUTHORITY BILL (NATIONAL ASSEMBLY BILL NO. 41 OF 2017)**

Motion having been made and Question having been proposed on 15.03.2018 –

THAT, the Nairobi Metropolitan Area Transport Authority Bill (National Assembly Bill No.41of 2017) be now read a Second Time.

(The Leader of the Majority Party)

Debate interrupted on Thursday, March 15, 2018 resumed;

(Change of Chair from the Speaker to the Deputy Speaker [Hon Moses Cheboi])

(Change of Chair from the Deputy Speaker to the Third Chairperson [Hon. Jessica Mbalu])

Mover replied;

Question deferred to another day.

11. **THE IRRIGATION BILL (NATIONAL ASSEMBLY BILL NO.46 2017)**

Order for Second Reading read;

The Chairperson of the Departmental Committee on Agriculture and Livestock sought the indulgence of the Chair that the Second Reading of the Irrigation Bill (National Assembly Bill No. 46 of 2017) be deferred by two weeks so as to accord the Committee sufficient time to consider and report on the Bill;

Prayer sought by the Committee Chairperson granted by the Chair.

12. **“ZERO HOUR” STATEMENTS**

Pursuant to Standing Order 43 on Members’ General Statements, the Member for Mogotio (Hon. Daniel Tuitoek) made Statements regarding –

- (i) alleged harassment of the people of Mogotio Constituency by forest officers; and
- (ii) the invasion of elephants in Sinende Location, Mogotio constituency;

Various Members contributed to the two Statements;

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.

13. **HOUSE ROSE** - at Seven O’clock

M E M O R A N D U M

The Speaker will take the Chair on
Wednesday, March 21, 2018 at 9.30 a.m.

--x--