

PARLIAMENT OF KENYA**THE NATIONAL ASSEMBLY****THE HANSARD****Thursday, 13th February 2020**

The House met at 2.30 p.m.

*[The Speaker (Hon. Justin Muturi) in the Chair]***PRAYERS****COMMUNICATION FROM THE CHAIR****RE-SUBMISSION OF LAPSED BUSINESS**

Hon. Speaker: Hon. Members, I wish to welcome you to this First Sitting that marks the formal commencement of the Fourth Session.

(Applause)

May I also, once again, sincerely thank you all Members for the role you played as a House in according a befitting parliamentary send-off for the late retired Second President of the Republic of Kenya, His Excellency Daniel Toroitich arap Moi, CGH, who served for an uninterrupted period of 47 years in this House.

Hon. Members, today marks the beginning of one of the busiest parts of this Session with the start of the Budget Cycle in the Parliamentary Calendar, among other upcoming crucial business. As you may recall, on Thursday, 5th December 2019, I did indicate to the House that all Questions, Statements and Motions, including those relating to Committee Reports, would lapse by the end of the Third Session, as is the practice. Therefore, Members wishing to continue with any such lapsed business are advised to submit the same afresh through the Table Office for processing and consideration in this Session.

Hon. Members, in line with the same Communication where I did suspend the counting of days for all pending Petitions, the House is reminded that the counting of the 60 days period prescribed under Standing Order 227 (2) now resumes today, being the First Day of the Fourth Session.

Hon. Members, in regard to Questions, I wish to direct all Chairpersons of Departmental Committees to provide progress reports to the House, pursuant to the requirements of Standing Order 42F. The respective reports should indicate the list of Questions referred to the

Disclaimer: *The electronic version of the Official Hansard Report is for information purposes only. A certified version of this Report can be obtained from the Hansard Editor.*

Committees, those replied to, those awaiting further information or reply, and those still pending. The Chairpersons will be expected to avail this information in form of a brief Statement to be made in the House and tabled on Wednesday, 19th February 2020 during the Afternoon Sitting and on Thursday 20th February 2020. The reports which will be made in the order in which the respective Committees appear in the Second Schedule of the Standing Orders, will enable me to know the fate of the Questions that were still pending in Committees as at the end of the Third Session.

For Questions for written replies whose responses have been received, the Clerk is directed to avail the responses to the concerned Members. Regarding Questions for written replies whose responses have not been received, the Members concerned are at liberty to file the particular Questions again.

Hon. Members, May I also take this opportunity to inform the House that during the Third Session of the 12th Parliament, His Excellency the President of the Republic of Kenya assented to the following 26 Bills, which were passed at different times within the Session.

A. Bills originating in the National Assembly:

1. The Irrigation Act, 2019
2. The County Governments Retirement Scheme Act, 2019
3. The Statute Law (Miscellaneous Amendments) Act, 2019
4. The Supplementary Appropriation Act, 2019
5. The Appropriation Act, 2019
6. The Energy Act, 2019
7. The Petroleum Act, 2019
8. The Physical and Land Use Planning Act, 2019
9. The Data Protection Act, 2019
10. The Finance Act, 2019
11. The Parliamentary Service Commission Act, 2019
12. The Copyright (Amendment) Act, 2019
13. The Kenya Accreditation Service Act, 2019
14. The Statistics (Amendment) Act, 2019
15. The Health (Amendment) Laws Act, 2019
16. The Division of Revenue Act, 2019
17. The Land Value (Amendment) Act, 2019
18. The National Cohesion and Integration Act, 2019
19. The Sports (Amendment) Act, 2019
20. The Insurance (Amendment) Act, 2019
21. The Supplementary Appropriation (No.2) Act, 2019
22. The Kenya Roads Board (Amendment) Act 2019.

B. Bills originating from the Senate:

23. The Warehouse Receipt System Act, 2017
24. The Urban Areas and Cities (Amendment) Act, 2019
25. The County Allocation of Revenue Act, 2019

26. The Assumption of the Office of the Governor Act, 2019

I, therefore, take this opportunity to commend all Members for this great performance with regard to passing of all these pieces of legislation, among other business transacted during the Third Session.

Hon. Members, let me now turn to lapsed Bills and Committees whose terms have come to an end. Pursuant to the provisions of Standing Order 141 (2) (b), and for the information of the House, the following two Bills lapsed at the end of the Third Session: The Warehouse Receipt System Bill (National Assembly Bill No.2 of 2018) and The County Governments (Revenue Raising Process) Bill (National Assembly Bill No.24 of 2018).

Further, the term of the Committee on Members' Services and Facilities and the Parliamentary Powers and Privileges Committee, have lapsed. The two Committees have sessional terms and I, therefore, direct that the Committee on Selection to expeditiously nominate Members for appointment by the House to these two Committees.

Hon. Members, the House is thus accordingly informed and guided.
I thank you.

MESSAGES

REFERRAL BY H.E. THE PRESIDENT OF THE LAW OF CONTRACT (AMENDMENT) BILL, 2019

Hon. Speaker: Hon. Members making their way in, please, do so quickly.

Hon. Members, you may recall that on 18th September 2019, the National Assembly passed the Law of Contract (Amendment) Bill (National Assembly Bill No.1 of 2019). The Bill was sponsored by the Member for Juja Constituency, Hon. Francis Waititu. Following its passage, I did present the Bill for assent to His Excellency the President in accordance with the provisions of the Constitution and our Standing Orders. However, in exercise of the powers conferred under Article 115(1)(b) of the Constitution, H.E. the President, by way of a Memorandum dated 3rd January 2020, has since referred the Bill back to the National Assembly for reconsideration.

Hon. Members, in his Memorandum, the President has expressed reservations on Clause 2 of the Bill which sought to amend Section 3 of the principal Act to provide that in case of a default by the principal borrower, the creditor should first realise the assets of the principal borrower before proceeding to realise the assets of the guarantor.

Amongst the reasons for his reservations, the President notes that amending the law in the manner proposed in the Bill will negate a long-standing principle of contract law, prejudice the financial sector and adversely affect credit advanced to micro, small and medium enterprises (SMEs). The President also objects to the proposal on grounds that it will interfere with the operations of capital markets. Consequently, the President recommends deletion of the said clause of the Bill, which, as a matter of fact, is the primary content of the Bill.

Hon. Members, at the outset let I inform the House and the relevant Committee that the Bill has only two Clauses, 1 and 2. The President has recommended deletion of Clause 2, and if

the House agrees with the President fully, there will be no Clause 1 which cites the title of the Bill.

Hon. Members, Standing Order 154(2) requires the House to consider the President's reservations within 21 days upon receipt of the memorandum. In this regard, the reservations of the President as contained in his memorandum, now stand committed to the Departmental Committee on Justice and Legal Affairs for consideration. The Committee should table its report soonest to allow the House to consider the President's reservations within the said timelines.

Hon. Members, let me at this point also remind the House of the Speaker's Communication of 28th July 2015 concerning the consideration of the 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 a 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.

Hon. Members, I wish to further remind the House and the Committee that only Clause 2 of the Bill will be considered. I, therefore, direct the Clerk to circulate the memorandum from the President to all Members, so that they can familiarise themselves with its contents and, therefore, consider it in light thereof.

I thank you, Hon. Members.

Next Order.

PAPERS LAID

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker, I beg to lay the following Papers on the Table of the House:

The 2020 Budget Policy Statement (BPS) from the National Treasury and Planning.

The 2020 Medium-Term Debt Management Strategy from the National Treasury and Planning.

Hon. Speaker, those are two very important documents that the National Treasury has sent in compliance with the Constitution deadline.

Legal Notice No.203 of 2019 relating to imposition of user fees on the Kenya Electronics Single Window System Service Regulations 2019 and the explanatory memoranda from the Kenya Trade Network Agency.

Report of the Board of the National Government Constituencies Development Fund (NG-CDF) on project proposal approvals, disbursement status and restrictions imposed on constituency accounts for the period between 1st October 2019 - 31st December 2019.

This document is also important to Members, so that they can look at the projects that have been approved, the disbursement status and where restrictions have been imposed.

The 2019 Progress Reports from the Ministry of Education pursuant to Article 153(4)(a) and (b) of the Constitution.

Annual Report of the Financial Statements for the Financial Year 2018/2019 from the Ministry of Interior and Coordination of National Government.

Performance Report for the Financial Year 2018/2019 from the Ministry of Health.

Progress Report for the period 1st July 2019 to 30th November 2019 from the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works.

Performance Report for January to June 2019 from the Independent Policing Oversight Authority (IPOA).

An Evaluation Report on the status of Public Service Compliance with Values and Principles in Article 10 and Article 232 of the Constitution for the Financial Year 2018/2019 from the Public Service Commission (PSC).

I thank you, Hon. Speaker

Hon. Speaker: Very well. Hon. Members, let me recognise, in this first sitting day, the presence in the Public Gallery of students and pupils from the following institutions: St. Peter and Paul Secondary School, Samburu North Constituency, Samburu County; Abothuguchi ABC Secondary school from Central Imenti Constituency, Meru County, and finally Ruai Hills View Secondary School, Kasarani Constituency, Nairobi County.

They are all welcome to observe the proceedings in the House this afternoon.

Next Order.

Hon. Aden Duale (Garissa Township, JP): Sorry, Hon. Speaker, there is a document from the National Treasury which I forgot.

PAPER LAID

Information on Programmes Outputs, Key Performance Indicators and Set Targets for the Financial Year 2020/2021 and the Medium-Term from the National Treasury and Planning.

MOTION

APPOINTMENT OF MEMBERS TO THE HOUSE BUSINESS COMMITTEE

Hon. Speaker: Leader of the Majority Party.

Hon. Aden Duale (Garissa Township, JP): Hon. Speaker I beg to move the following Motion:

THAT, pursuant to 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. (Dr.) 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 House Business Committee (HBC) is established under the provisions of Standing Order No.171 and consists of the following Members who are mandatory: The Speaker, who is the Chairperson, the Leader of the Majority Party, Leader of the Minority Party, the Majority Party Whip, the Minority Party Whip and seven other Members nominated by the parliamentary parties and approved by the House at the commencement of every Session. This should reflect the majority seats held by each parliamentary party.

Hon. Speaker, you are our Chair and I want to state that these Members do not enjoy other privileges including travel out of the country. They diligently come to the meeting every Tuesday at 7.00 p.m. at the rise of the House. Sometimes they stay until 10.00 p.m. or 10.30 p.m. I want to confirm to the House that based on performance, both the majority and the minority parties felt that we did not have a valid reason to change them.

As I move this as per the rule of the House, the HBC should be appointed within seven days on assembly of a new Session. This is the only business we have this afternoon, so that if the House agrees with this Motion under your leadership, we will sit and prepare the calendar of the House for this year. We will ensure that we look at the Bills, both Private Members and Government Bills as well as Motions. Of course, Chairs of Committees have to give Notice of Motion to the various reports they had.

So, this is a very small matter. This Committee implements the Standing Order in respect to the scheduling of programmes of business of the House. It also decides the order in which reports of committees shall be debated in the House. This Committee, under your chairmanship, takes decisions and issues directives and guidelines to prioritise or postpone any business of the House, acting within the concurrence of the Leader of the Majority Party or the Leader of the Minority Party as the case may be.

Finally, this Committee, under your leadership, considers such matters as may, from time to time, arise in connection with the business of the House. It shall have and perform such powers, duties and functions as conferred on it and subscribed to it by the Standing Orders and from time to time by the House.

I beg to move and ask the Leader of the Minority Party, Hon, John Mbadi, to second.

Hon. Speaker: Hon. Mbadi.

Hon. John Mbadi (Suba South, ODM): Thank you, Hon. Speaker. As I second this Motion, Hon. Members will realise that this is a Committee that is chaired by the Speaker. It arranges the programmes and business of the House. That is why immediately after this Motion, we will adjourn to the next sitting day because we do not have business to transact.

I want to share the sentiments of the Leader of the Majority Party that the membership of this Committee in the last Session, which we are seeking approval to continue, has been diligent in its work. We did not realise less than 70 per cent attendance in any sitting of the HBC in the last Session. I want to congratulate the Members and ask the House to agree with

us to retain the same membership given that this is the most critical session in any life of Parliament. This is going to be the session with most business in the 12th Parliament. I hope and pray that these Members will deliver and also the entire membership of this Parliament will deliver. After this year, I am sure many of us will be hitting the road either to defend our seats or go for something else.

Thank you, Hon. Speaker. I Second.

(Question proposed)

Hon. Members: Put the Question.

Hon. Speaker: Is it the desire of the House that I put the Question?

Hon. Members: Yes.

Hon. Speaker: Very well, Hon. Members. I do not have to repeat the sentiments of Speaker Lenthall of those years.

(Question put and agreed to)

Order Members! I can see some Members are making their way in. You can come for one minute. Hon. Nyamita, you can take a seat somewhere near there. You will not sit for long. Hon. Kolosh, you can take a seat for just one minute.

ADJOURNMENT

Hon. Speaker: Hon. Members, the time being 2.58 p.m. and there being no other business to transact as none has been prioritised by the HBC, I wish to adjourn the House until Tuesday, 18th February 2020 at 2.30 p.m. I request the newly appointed Members to the HBC to proceed and transact the business available at the usual place.

The House rose at 2.58 p.m.