



REPUBLIC OF KENYA

TWELFTH PARLIAMENT (FOURTH SESSION)

THE NATIONAL ASSEMBLY

MESSAGES

MESSAGE FROM THE PRESIDENT

_____ (No. 02 of 2020) _____

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

Honourable 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, the Hon. Francis Waititu, MP. Following its passage, I did present the Bill for Assent to H.E. 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.

Honourable Members, in his Memorandum, H.E. 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 realize the assets of the principal borrower before proceeding to realize the assets of the guarantor.

Amongst the reasons for his reservations, H.E. 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. 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.

Honourable Members, on the onset may 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 Clause 1 which cites the title of the Bill.

Honourable Members, Standing Order 154(2) requires the House to consider the President's Reservations **within twenty one (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.

Honourable Members, may I, at this point, remind the House of the *Speaker's Communication* of July 28, 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.

Honourable 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 H.E. the President to all Members so that they familiarize themselves with its contents.

I thank you!



THE HON. JUSTIN B.N. MUTURI, EGH, MP
SPEAKER OF THE NATIONAL ASSEMBLY

Thursday, February 13, 2020

