



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – (FOURTH SESSION)

THE SENATE

VOTES AND PROCEEDINGS (AFTERNOON SITTING)

TUESDAY, MAY 26, 2020 AT 2.30 P.M.

1. The Senate assembled at half past two O'clock.
2. The proceedings were opened with Prayer said by the Temporary Speaker (Sen. Rose Nyamunga, MP).
3. **COMMUNICATION FROM THE CHAIR ON THE VACANCY IN THE OFFICE OF THE DEPUTY SPEAKER OF THE SENATE**

The Temporary Speaker (Sen. Rose Nyamunga, MP) conveyed the following Communication concerning the vacancy in the Office of the Deputy Speaker of the Senate.

“Honourable Senators,

As you may recall, the Senate held a Special Sitting on Friday, 22nd May, 2020, to consider a Motion filed by the Senate Majority Whip, for the removal of Sen. (Prof.) Kithure Kindiki, MP, from the Office of the Deputy Speaker of the Senate. Accordingly, the Motion was debated and adopted. The resolution was supported by fifty-four (54) Senators, who constituted more than the two thirds (45 Senators) majority required to remove a Deputy Speaker from Office. Consequently, Sen. (Prof.) Kithure Kindiki, MP was removed from the office of the Deputy Speaker of the Senate.

As a formal notification, the practice has been that whenever the Senate resolves to remove a person from office, the Speaker *gazettes* such a resolution. Accordingly, I have, this morning, issued a *gazette notice* on the resolution of the Senate to remove Sen. (Prof.) Kithure Kindiki, EGH, MP from the Office of the Deputy Speaker.

Honourable Senators,

Article 106 (1)(b) of the Constitution states as follows-
106 (1) There shall be

(b) a Deputy Speaker for each House of Parliament, who shall be elected by that House in accordance with the Standing Orders, from among the members of that House.

Standing Order 13 (3) and (4) provides as follows-

*(3) If the office of the Deputy Speaker falls vacant at any time before the end of the term of Parliament, the Senate shall, **as soon as practicable**, elect a Senator to that office.*

(4) The procedure for electing a Deputy Speaker shall, with necessary modifications, be the same as that prescribed for the election of the Speaker.

Honourable Senators,

In order to proceed with the process of election of the Deputy Speaker, Standing Order 5 (nomination of candidates), as read together with Standing Order No. 13 (4), requires-

- (a) the Clerk, by notice in the Gazette, to notify and invite interested persons to submit their nomination papers for election to the office of the Deputy Speaker of the Senate;
- (b) the names of candidates for election to the office of Deputy Speaker to be entered upon nomination papers obtained from the Clerk and handed back to the Clerk, at least forty-eight hours before the time appointed at which the Senate is to meet to elect a Deputy Speaker;
- (c) the nomination papers of a candidate to be accompanied by the names and signatures of two Senators who support the candidate and a declaration by them that the candidate is willing to serve as Deputy Speaker;
- (d) the Clerk to maintain a register showing the date and time when each candidate's nomination papers were received;
- (e) the Clerk, upon the close of the nomination period, to—
 - (i) publicise and make available to all Senators, a list showing all qualified candidates; and
 - (ii) make available to all Senators, copies of the curriculum vitae of the qualified candidates.
- (f) the Clerk, at least two hours before the meeting of the Senate to elect a Deputy Speaker, to prepare ballot papers upon which shall be shown the names of all candidates validly nominated.

Further, Standing Orders 6 and 7 as read together with Standing Order No. 13 (2) and (4), require-

- (a) the Speaker to preside over the election of the Deputy Speaker;
- (b) the election of the Deputy Speaker to be by secret ballot;
- (c) the Clerk to display an empty and unlocked ballot box and thereafter lock it in the presence of the Senate;
- (d) the Clerk to issue a ballot paper to each Senator in the order of precedence; and
- (e) the Clerk, at the end of the voting, to count and report the result of the ballot to the Speaker, who shall declare the results.

Honourable Senators,

Standing Order 7 (1) requires the person elected Deputy Speaker to have been supported in the ballot by the votes of two-thirds of all the Senators. Additionally, Standing Order 7 (2) requires that if no candidate is supported by the votes of two-thirds of all the Senators, a fresh election shall be held and, in that election, the only candidates shall be—

- (a) the candidate or candidates who received the highest number of votes in the ballot referred to in paragraph (1); and
- (b) the candidate or candidates who in that ballot received the next highest number of votes.

Standing Order 7 (4) provides that the candidate who receives the highest number of votes in the fresh election shall be declared elected as Deputy Speaker.

Immediately following the election of the Deputy Speaker, the Speaker shall administer the Oath or Affirmation of Office of the Deputy Speaker in the presence of the assembled Senate. However, in the event that there is only one candidate who has been duly nominated for election as Deputy Speaker at the expiry of the nomination period, that candidate shall be declared forthwith to have been elected Deputy Speaker without any ballot or vote being required, and the Speaker shall administer the Oath or Affirmation of Office of the Deputy Speaker in the presence of the assembled Senate.

Pursuant to Standing Order No. 8, by written notice to the Clerk, a candidate may also withdraw his or her candidature after the close of the nomination period and before a ballot is started.

Honourable Senators,

In light of the above provisions, I hereby inform you that the Clerk has issued a *gazette* notice today, Tuesday 26th May, 2020, to notify and invite interested Senators to submit their nomination papers for election to the Office of the Deputy Speaker. Consequently, interested candidates may obtain nomination papers from the Office of the Clerk.

After consultation with the Senate Business Committee, I direct that the election of the Deputy Speaker of the Senate will take place on Tuesday, 2nd June, 2020 at 2:30 p.m. I urge all Senators to take note of this and to prepare accordingly.

I thank you.”

4. **STATEMENTS**

a) Pursuant to Standing Order 47(1)

- i) The Senator for Mombasa County (Sen. Mohamed Faki, MP) made a statement concerning transportation of cargo from Mombasa.

The Senator informed the Senate that the Commissioner General of the Kenya Revenue Authority (KRA) and the then Managing Director of the Kenya Ports Authority (KPA) had issued a joint circular advising importers that all cargo imported through the Port of Mombasa, destined for other parts of the country shall be transported through the Standard Gauge Railway. This directive had a devastating effect on the businesses in Mombasa and the rest of the Northern Corridor up to Nairobi.

The Senator recalled that on 7th August 2019, he made a statement concerning the matter, which was referred to the Standing Committee on Roads and Transportation. After consultations, the circular was revoked and KPA and KRA were ordered to allow all transport means to be used to transport cargo from the Port of Mombasa.

The Senator brought to the attention of the Senate that another circular was issued directing that all cargo from the Port of Mombasa destined for neighboring countries shall only be transported through SGR. In the directive, the Cabinet Secretary for Transport and Infrastructure cited COVID - 19 pandemic as the main reason for confining all the cargo to be moved through SGR and that the directive was scheduled to come to effect on 1st June, 2020.

He alleged that the directive by the Cabinet Secretary was illegal and further worsened the situation of an already struggling economy in the coastal counties as a result of the COVID-19 pandemic.

Following concerns raised by Senators, the Temporary Speaker (Sen. Rose Nyamunga) referred the statement to the Standing Committee on Roads and Transportation for consideration pursuant to Standing Order (47)(3).

- ii) The Senator for Machakos County (Sen. Boniface Kabaka, MP) made a statement concerning the ownership controversy of the Kenya Broadcasting Corporation (KBC) Koma Rock land on L.R. No. 8825 and Koma Rock Ranching and Farmers' Co-operative Society Limited and Koma Rock Housing Co-operative Society Limited.

On 3rd August, 1979, the Government issued a *gazette* notice No. 2173 pursuant to the Land Acquisition Act (Cap 295) to acquire 500 acres of Land out of a total of 31,000 acres belonging to the Koma Rock Ranching and Farmers' Co-operative Society Limited and following the transfer, the Government fully compensated Koma Rock Ranching and Farmers' Co-operative Society Limited.

The Senator however alleged that during the survey and demarcation process KBC unlawfully encroached into the aforesaid land and hived-off 754 acres without compensating the vendor, who had by then allocated land titles of its remaining land to all 297 shareholders, with

each shareholder being allocated 102 acres. The shareholders later established the Koma Rock Housing Co-operative Society Limited.

He added that during the Grand Coalition Government, the then Minister for Lands and Settlement issued a title deed in the name of Koma Rock Ranching and Farmers' Company Limited comprising 754 acres and subsequently fenced it. Koma Rock Housing Co-operative Society Limited approached the National Land Commission (NLC) to have the title for the 754 acres issued in the name of Koma Rock Ranching and Farmers' Company Limited nullified and reverted to it.

The Senator informed the Senate that a resettlement programme for squatters evicted from Ruai area was being unlawfully undertaken by the Government in the contested land, despite a court order issued in Machakos Court, No. 180 of 2017 being issued to maintain the status quo pending hearing and final determination of the case.

The Temporary Speaker (Sen. Rose Nyamunga, MP) referred the statement to the Standing Committee on Lands, Environment and Natural Resources for consideration pursuant to Standing Order (47)(3).

b) Pursuant to Standing Order 48(1)

- iii) The Senator for Bungoma County (Sen. Moses Wetang'ula, MP) sought a statement from the Standing Committee on Roads and Transportation regarding traffic congestion along the Bungoma-Kanduyi-Malaba road.
- iv) Nominated Senator (Sen. Mary Seneta, MP) sought a Statement from the Standing Committee on Agriculture, Livestock and Fisheries regarding efficacy, safety and affordability of livestock vaccines, pesticides and herbicides.
- v) The Senator for Nandi County (Sen. Samson Cherarkey, MP) sought a statement from the Standing Committee on Roads and Transportation regarding the redesign and expansion of Kingwal Bridge along the Eldoret – Kapsabet Highway.

c) Pursuant to Standing Order 51(1)(a)

The Chairperson, Sessional Committee on Delegated Legislation issued a statement regarding statutory instruments referred to the Committee on 19th May, 2020.

In the Statement, the Chairperson informed the Senate that four (4) statutory instruments were referred to the Standing Committee on Justice, Legal Affairs and Human Rights on 21st April, 2020 as the Committee on Delegated Legislation had not yet been constituted. Further, on 19th May, 2020, the following statutory instruments were referred to the Committee for consideration-

- (a) the Sacco Societies (Specified Non-Deposit taking Business Regulations, 2020;
- (b) the Traffic (Driving Schools, Driving Instructors and Driving Licenses) Rules, 2020;
- (c) the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Nairobi Metropolitan Area) (Extension) Order, 2020;
- (d) the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Mombasa County) (Extension) Order, 2020;
- (e) the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Kilifi County) (Extension) Order, 2020;
- (f) the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Kwale County) (Extension) Order, 2020;
- (g) the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Mandera County) Order, 2020; and
- (h) the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Daadab Refugee Complex and Kakuma Refugee Camp) Order, 2020.

Due to the urgent nature of the COVID- 19 Orders, the Committee held an online meeting on 20th May, 2020 to scrutinize the Orders and observed that-

- (a) the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Mandera County) Order, 2020 were to be in effect from 22nd April, 2020 to 13th May, 2020;
- (b) the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Nairobi Metropolitan Area) (Extension) Order, 2020 was extending the restriction orders published via Legal Notice No. 51 of 2020 for a further 21 days from 28th April, 2020, which meant that the Orders would be in effect until 19th May, 2020;
- (c) the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Mombasa County) (Extension) Order, 2020, was extending the restriction orders published via Legal Notice No. 52 of 2020 for a further 21 days from 30th April, 2020, which meant that the Orders would be in effect until 21st May, 2020;
- (d) the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Kilifi County) (Extension) Order, 2020, was extending the restriction orders published via Legal Notice No. 53 of 2020 for a further 21 days from 30th April, 2020, which meant that the Orders would be in effect until 21st May, 2020;
- (e) the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Kwale County) (Extension) Order, 2020, was extending the restriction orders published via Legal Notice No. 54 of 2020 for a further 21 days from 30th April, 2020, which meant that the Orders would be in effect until 21st May, 2020; and
- (f) the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Daadab Refugee Complex and Kakuma Refugee Camp) Order, 2020 were to be in effect from 29th April, 2020 to 27th May, 2020.

The Chairperson informed the Senate that the Orders were published on 27th April, 2020 and submitted by the Cabinet Secretary in the Ministry of Health on 12th May, 2020, which was fourteen days after their publication. He referred the Senate to Section 11 (1) of the Statutory Instruments Act which mandated a regulation-making authority to transmit a copy of a published statutory instrument within seven (7) days after publication.

The Chairperson observed that while the Cabinet Secretary in the Ministry of Health transmitted the Orders within the timelines set, the nature of the Orders were such that if the timelines were to be strictly applied, the essence of Parliamentary scrutiny would be lost. He further observed that as at the time of submission of the Orders to the Senate on 12th May, 2020, the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Mandera County) Order, 2020 had only a day to go before it lapsed in terms of implementation and that by the time the Committee held its meeting on 20th May, 2020, the Nairobi Metropolitan Extension Order had lapsed while the Mombasa, Kwale and Kilifi Extension Orders had only a day to go.

The Chairperson informed the Senate that the Committee considered and resolved to approve the Public Health (COVID-19 Restriction of Movement of Persons and Related Measures) (Daadab Refugee Complex and Kakuma Refugee Camp) Order, 2020 as scrutinizing the other Orders would be an exercise in futility.

He called upon the Cabinet Secretary, Ministry of Health and all other regulation-making authorities to ensure timeous transmission of statutory instruments, especially those with stipulated enforcement timelines notwithstanding the provisions of the Statutory Instruments Act, in order for Parliament to fulfill its legislative authority.

5. **THE PANDEMIC RESPONSE AND MANAGEMENT BILL (SENATE BILLS NO. 6 OF 2020)**

(Chairperson, Ad-hoc Committee on COVID-19 Situation in Kenya)

(Second Reading)

(Resumption of debate interrupted on Tuesday, 12th May, 2020)

(Division)

Order deferred.

6. **THE SACCO SOCIETIES (AMENDMENT) BILL (NATIONAL ASSEMBLY BILLS NO. 1 OF 2018)**

(The Senate Majority Leader)

(Second Reading)

(Resumption of debate interrupted on Tuesday, 18th February, 2020)

(Division)

Order deferred.

7. **THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) (NO. 2) BILL (NATIONAL ASSEMBLY BILLS NO. 13 OF 2018)**

(The Senate Majority Leader)

(Second Reading)

***(Resumption of debate interrupted on Wednesday, 4th December, 2019)
(Division)***

Order deferred.

8. **COMMITTEE OF THE WHOLE**

CONSIDERATION OF THE NATIONAL ASSEMBLY AMENDMENTS TO THE OFFICE OF THE COUNTY ATTORNEY BILL (SENATE BILLS NO. 3 OF 2018)

(The Senate Majority Leader)

***(Resumption of debate interrupted on Tuesday, 25th February, 2020)
(Division)***

Order deferred.

9. **COMMITTEE OF THE WHOLE**

CONSIDERATION OF THE NATIONAL ASSEMBLY AMENDMENTS TO THE PETITION TO COUNTY ASSEMBLIES (PROCEDURE) BILL (SENATE BILLS NO. 22 OF 2018)

(The Senate Majority Leader)

***(Resumption of debate interrupted on Tuesday, 25th February, 2020)
(Division)***

Order deferred.

10. **COMMITTEE OF THE WHOLE**

CONSIDERATION OF THE NATIONAL ASSEMBLY AMENDMENTS TO THE COUNTY EARLY CHILDHOOD EDUCATION BILL (SENATE BILLS NO. 26 OF 2018)

(Chairperson, Standing Committee on Education)

***(Resumption of debate interrupted on Tuesday, 25th February, 2020)
(Division)***

Order deferred.

11. **MOTION – SIXTH PROGRESS REPORT OF THE AD-HOC COMMITTEE ON COVID – 19 SITUATION IN KENYA**

(Chairperson, Ad-hoc Committee on COVID-19 Situation in Kenya)

Motion made and question proposed;

THAT, the Senate adopts the Sixth Progress Report of the Ad-hoc Committee on COVID –19 Situation in Kenya, laid on the Table of the Senate on Tuesday, 19th May, 2020.

*(Chairperson, Ad-hoc Committee on COVID-19 Situation in Kenya –
19.05.2020)*

Debate arising;

There being no other Senator wishing to contribute;

Sen. Farhiya Haji, MP, replied on behalf of the Mover;

Before the Question was put and pursuant to Standing Order 79 (1), the Temporary Speaker (Sen. (Prof.) Margaret Kamar, MP) informed the Senate that the Motion did not affect counties.

Question put and agreed to.

RESOLVED ACCORDINGLY

THAT, the Senate adopts the Sixth Progress Report of the Ad-hoc Committee on COVID –19 Situation in Kenya, laid on the Table of the Senate on Tuesday, 19th May, 2020.

And the time being twenty nine minutes past Six O'clock, the Temporary Speaker (Sen. (Prof.) Margaret Kamar, MP) adjourned the Senate pursuant to Standing Order 31(2), without Question put.

12. **SENATE ROSE** – at twenty nine Minutes past six O'clock.

M E M O R A N D U M

*The Speaker will take the Chair on
Tuesday, June 2, 2020 at 10.00 a.m.*