



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – FOURTH SESSION

THE NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

TUESDAY, JUNE 23, 2020 (AFTERNOON)

1. The House assembled at thirty minutes past Two O'clock
2. The Proceedings were opened with Prayer
3. **Presiding** – the Hon. Speaker
4. **COMMUNICATION FROM THE CHAIR**

The Speaker issued the following Communication-

**COMMUNICATION ON NOTICE OF MOTION FOR THE REMOVAL OF THE
CABINET SECRETARY FOR TRANSPORT, INFRASTRUCTURE, URBAN
DEVELOPMENT AND PUBLIC WORKS**

“Hon. Members,

I wish to notify the House that, pursuant to the provisions of Standing Order 66(1), on the 17th of June, 2020, the Clerk of the National Assembly did receive a Notice of Motion from the Member for Nyali Constituency, the Hon. Mohamed Ali Mohamed, MP, notifying his intention to move a **Special Motion for the removal of the Cabinet Secretary for Transport, Infrastructure, Urban Development and Public Works, Mr. James Macharia, EGH**, in accordance with the provisions Article 152(6) of the Constitution and Standing Orders 64(1A) and 66. The proposed Motion seeks the resolution of the House to require His Excellency the President to dismiss the said Cabinet Secretary from Office on two grounds, that is-

- (i) Gross violation of Articles 10(1)(c) and 2(a) and 73 of the Constitution; and,
- (ii) Gross misconduct contrary to Article 125 of the Constitution.

Hon. Members, from the onset allow me to observe that I have previously guided this House on the processing of special motions for removal of State officers including on the thresholds that must be met and adhered to. Consequently, I will not attempt to restate my guidance.

Further, as you are all aware, every Member has a right under Article 152(6) of the Constitution and Standing Order 66 to move the House to remove a Cabinet Secretary. The Standing Orders require that, before giving Notice of such a Motion under Standing Order 66 in the House, the Member must, however, deliver to the Clerk a copy of the proposed Motion in writing, stating the grounds and particulars in terms of the said Article, upon which the proposed Motion is made. The Notice ought to be signed by the Member and also signed in support by at least, one quarter of all the Members of the Assembly which are eighty-eight (88) Members of this House.

Hon. Members, Standing Order 47(3) and indeed, my previous Communications on this matter require that, upon receipt of the proposed Motion, the Speaker is to make a determination on its admissibility and dispose of the Motion within three days. The criteria for admissibility is provided for under Standing Orders 64(1A) and 66 and the precedence contained in my previous *Communications* on Motions and procedure for removal of persons from constitutional offices. In furtherance to the provisions of Article 259(5) and (6) of the Constitution, regarding the counting of time, today's Sitting presents the earliest opportunity for me to make the decision on the proposed Motion known to the House, since the three days ended yesterday.

Hon. Members, In this regard, I wish to observe as follows –

1. It is evident that the Motion proposed by the Hon. Member for Nyali Constituency has fulfilled the precondition of requisite support under Article 152(6) of the Constitution and Standing Order 66(1), having been supported by ninety (90) Members who have appended their respective signatures alongside the Motion; and,
2. Whereas the Hon. Member has **specified the particulars** under each ground and also **cited** Articles 10,73 and 125 of the Constitution as the provisions that the Cabinet Secretary has allegedly violated, the proposed Motion fails on one important requirement. Standing Order 64(1A) requires that a proposed Motion be *accompanied by necessary evidence including annexures or sworn testimonies in respect of the allegations*. Indeed, the only way that the Speaker is able to make a determination as to whether the particulars provided under each ground may contain a gross violation of the Constitution or gross misconduct is by examining the evidence so provided in support of the allegations before approving the Motion. The Notice of Motion by the Member for Nyali Constituency lacks any annexures or sworn testimonies or any other evidence thereto. In the circumstances, I am unable to confirm whether the allegations contained in the Notice meet the thresholds or indeed whether there is any nexus between the allegations and the role of the Cabinet Secretary as required by the Standing Orders.

Hon. Members, to admit a proposed Motion that is not supported by any evidence of how, for instance, the Cabinet Secretary has grossly violated the Constitution by failing to conduct public participation in implementing policy decisions at the Ministry or allegedly failed to deliver on key infrastructure as alleged by the Hon. Member for Nyali, or even the alleged loss of Kshs. 5.2 Billion at the Ministry of Health, would not only be a violation of the Standing Orders but would amount to enjoining this House on a wild-goose chase.

Hon. Members, in view of the foregoing and pursuant to the provisions of Standing Orders 47(3)(a) and (e), it is therefore my determination that the proposed Motion by the Honourable Member for Nyali Constituency is **inadmissible** having failed to

comply with the provisions of Standing Order 64(1A)(c). Consequently, the Clerk is hereby directed to formally communicate this decision to the Honourable Member.

Hon. Members, it is also important to mention that I have received requests from a number of Members claiming to withdraw their signatures from the Motion. The Honourable Members include the Hon. John Paul Mwirigi, MP, the Hon. (Dr.) Makali Mulu, MP, the Hon. Charles Nguna, MP, the Hon. Mboni Mwalika, MP, the Hon. Nimrod Mbai, MP, the Hon. Edith Nyenze, MP, the Hon. (Dr.) Irene Kasalu, MP, the Hon. (Eng.) Thaddeus Kithua Nzambia, MP, the Hon. Joshua Kimilu, MP, the Hon. Moses Kirima, MP and the Hon. Nasri Ibrahim, MP. May I restate the provisions of Standing Order 66(4) which provide that, any signature appended to a Motion of this kind, **cannot be withdrawn**. It is expected that a Member of Parliament acclimatizes himself or herself with the contents of a Motion or a Notice thereof, before appending a signature. It may be remembered that the foundation of Standing Order 66(4), which is meant to provide a transparent process for actualizing the provisions of Articles 144(1), 145(1) and 152(6) of the Constitution was contained in my Communication of October 23rd 2015 during the Eleventh Parliament. The Members and the House are therefore accordingly guided.

I thank you!"

5. MESSAGE FROM THE PRESIDENT

The Speaker conveyed the following Message-

MESSAGE ON THE NOMINEE FOR APPOINTMENT AS THE AUDITOR-GENERAL

"Honourable Members,

Pursuant to the provisions of Standing Order 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 **Ms. Nancy Janet Kabui Gathungu** for appointment as the Auditor-General, in exercise of powers vested in him by Article 229(1) of the Constitution, section 11(7) of the Public Audit Act, 2015 and section 5 of the Public Appointments (Parliamentary Approval) Act, 2011.

Honourable Members, Pursuant to the provisions of Standing Order 45, I hereby refer this Message, together with the *Curriculum Vitae* of the Nominee to the Departmental Committee on Finance and National Planning for consideration. 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 nominee 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.

Honourable Members, Noting that the House will proceed on a short recess from July 3, 2020 in accordance with its Calendar, the Committee is advised to expeditiously proceed to notify the nominee and the public, commence the approval hearings in good time, and table its Report to enable the House to consider the matter within the statutory timelines.

I thank you!"

6. PAPERS LAID

The following Papers were laid on the Table –

- (i) Legal Notice No. 102 of 2020 relating to the Judicial Service (Code of Conduct & Ethics) Regulations, 2020 and the Explanatory Memorandum from the Judicial Service Commission;
- (ii) National Government Budget Implementation Review Report for the First Nine Months for the First Nine Month for the Financial Year 2019/2020;
- (iii) Supplementary Estimates III (Programme Based Budget) for the FY 2019/20;
- (iv) Supplementary Estimates III (Recurrent Estimates) for the FY 2019/20; and
- (v) Supplementary Estimates III (Development Estimates) for the FY 2019/20.

(Leader of the Majority Party)

- (vi) Reports of the Departmental Committee on Administration and National Security on its consideration of: -
 - a) The Alcoholic Drinks Control (Amendment) Bill (National Assembly Bill No. 70 of 2019);
 - b) The Prevention of Terrorism (Amendment) Bill (Senate Bill No. 20 of 2018);
 - c) Public Petition Regarding Establishment of a Statutory Fund for Compensation of Victims of Disasters; and
 - d) Public Petition regarding State of Insecurity in Samburu North Constituency.

(Chairperson, Departmental Committee on Administration and National Security)

7. NOTICE OF MOTION - ADJOURNMENT OF THE HOUSE TO DISCUSS A DEFINITE MATTER OF URGENT NATIONAL IMPORTANCE REGARDING THE KENYA'S ELECTION TO THE NON-PERMANENT SEAT OF THE UNITED NATIONS SECURITY COUNCIL (UNSC) FOR THE PERIOD 2021-2022

Rising in his place pursuant to Standing Order 33, the Chairperson of the Departmental Committee on Defence and Foreign Relations (Hon. Katoo Ole Metito) sought leave to move the adjournment of the House for purposes of discussing a definite matter of urgent national importance regarding the election of the Republic of Kenya to the non-permanent seat of the United Nations Security Council (UNSC) for the period 2021/22.

And there being not less than twenty other Members rising in their places in support of the adjournment Motion;

Thereupon, the Speaker directed that the House adjourns after conclusion of the business under Order No. 12 during the same sitting to discuss the matter.

8. QUESTIONS

The following Questions were asked –

- (i) Question by Private Notice No. 008/2020 by the Nominated Member (Hon. Gideon Keter, MP) regarding the recent surge in cases of police brutality, violence incidences, death and disappearance of people in Kenya due to police actions, and the steps being taken to ensure reparation and compensation to victims of police brutality and violence;

*(To be answered by the Cabinet Secretary for **Interior and Coordination of National Government** before the Departmental Committee on Administration and National Security)*

- (ii) Question No. 074/2020 by the Member for Runyenjes (Hon. Eric Muchangi, MP) regarding the construction of *Kyeni – Karurumo* road in Runyenjes Constituency which has stalled since 2014, abandonment of the site and non-payment of the workers by the contractor;

*(To be answered by the Cabinet Secretary for **Transport, Infrastructure, Housing, Urban Development & Public Works** before the Departmental Committee on Transport, Public Works and Housing)*

- (iii) Question No. 075/2020 by the Member for Mumias East (Hon. Benjamin Washiali, MP) regarding the criteria of identification of elderly persons to benefit from the *Pesa Kwa Wazee* Cash Transfer Programme in the country, and enrollment of all persons aged 70 years and above;

*(To be answered by the Cabinet Secretary for **Labour and Social Protection** before the Departmental Committee on Labour and Social Welfare)*

- (iv) Question No. 076/2020 by the Member for Mwingi West (Hon. Charles Ngusya, MP) regarding the non-payment of terminal benefits and compensation for unlawful termination to one Maj. (Rtd) Manzi Musyona since his retirement from service in 2001 and successful petitions in 2006 and 2012;

*(To be answered by the Cabinet Secretary for **Defence** before the Departmental Committee on Defence and Foreign Relations)*

- (v) Question No. 077/2020 by the Member for Loima (Hon. Jeremiah Ekamais Lomorukai, MP) regarding the demarcation, survey and division of land in Turkana County for settling of county residents and issuance of title deeds to area residents and pastoralist communities;

*(To be answered by the Cabinet Secretary for **Lands and Physical Planning** before the Departmental Committee on Lands)*

- (vi) Question No. 078/2020 by the Member for Marsabit County (Hon. Safia Sheikh Adan, MP) regarding the high cost of DNA tests for paternity tests.

*(To be answered by the Cabinet Secretary for **Health** before the Departmental Committee on Health)*

9. STATEMENTS

- a) Requests for Statements pursuant to the provisions of Standing Order 44(2)(c):-

- (i) The Member for Kaloleni (Hon. Paul Katana, MP) requested for a Statement from the Chairperson of the Departmental Committee on Labour & Social Welfare regarding disbursement of funds from the Cash Transfer Programme in response to the COVID-19 pandemic; and
- (ii) The Member for Lari (Hon. Jonah Mburu, MP) requested for a Statement from the Chairperson of the Departmental Committee on Departmental Committee on Lands regarding the lifting of an embargo and settling issues surrounding titles for Kinale Settlement Scheme in Lari Constituency, Kiambu County.

- b) Responses to Statements –

- (i) The Chairperson of the Departmental Committee on Communication, Information and Innovation issued a response to a Statement sought by the Member for Kisumu West (Hon. Olago Aluoch) regarding the failures by the Media Complaints Commission.
- (ii) The Chairperson of the Departmental Committee on Administration and National Security issued a statement on the status of Questions before the Committee.
- c) The Member for Lamu County (Hon. Ruweida Obo, MP) sought an update on the response to her statement regarding flooding in Lamu County occasioned by Kengen. The Chairperson of the Departmental Committee on Energy invited her to a meeting of the Committee with the Cabinet Secretary for Energy the following day.

10. PROCEDURAL MOTION – EXEMPTION OF BUSINESS FROM PROVISIONS OF THE STANDING ORDERS

Motion made and Question proposed-

THAT, noting the recent changes in the composition of several Committees of the House, particularly those occasioned by the changes originating from the Majority Party, appreciating the need for further **consultations** and pursuant to the provisions of Standing Order 256 (*Exemption of Business from The Standing Orders*), this House –

- (a) **resolves to exempt** the filling of the vacancies and the election of Chairpersons and Vice-Chairpersons to the various Committees from the provisions of Standing Order 173(3) (*Filling of a vacancy in a Select Committee within 14 days*) and Standing Order 179(2) (*Filling of a vacancy of a Chairperson or Vice Chairperson of a Select Committee within seven (7) days*); and,

- (b) **orders** that the filling of the said vacancies in Committees and the election of Chairpersons and Vice Chairpersons be concluded within thirty (30) days from the date of this resolution.

(Leader of the Majority Party)

Debate arising;

Mover replied;

Question put and agreed to.

11. PROCEDURAL MOTION- REDUCTION OF PUBLICATION PERIOD FOR A SPECIFIED BILL

Motion made and Question proposed-

THAT, notwithstanding the provisions of Standing Order 120, this House **resolves** to reduce the publication period of the Appropriation Bill (National Assembly Bill No. 19 of 2020) from **7 days to 4 days**.

(Hon. Moses Lessonet - Vice-Chairperson, Budget and Appropriations Committee)

There being no debate arising;

Question put and agreed to.

12. THE APPROPRIATION BILL (NATIONAL ASSEMBLY BILL NO. 19 OF 2020)

(The Vice Chairperson, Budget & Appropriations Committee)

Order for First Reading read;

Bill read a First Time and referred to the relevant Committee pursuant to Standing Order 127(1)

13. MOTION - REPORT OF THE COMMITTEE OF THE WHOLE HOUSE ON THE FINANCE BILL (NATIONAL ASSEMBLY BILL NO. 10 OF 2020)

Motion made and Question proposed: -

THAT, this House do agree with the Report of the Committee of the whole House on its consideration of the Finance Bill (National Assembly Bill No. 10 of 2020), **subject to recommittal of New Clause 28A**.

Notice of Further Amendment proposed-

THAT, the motion for agreement with the Report of the Committee of the whole House be further amended by inserting the words "**subject to recommittal of Clause 12.**"

(The Chairperson, Departmental Committee on Finance & National Planning)

Debate arising;

Question of the Further Amendment put and agreed to;

Debate on Motion as amended resumed;

Question for Motion as Further Amended put and agreed to;

Question put and agreed to.

Clause 12 and New Clause 28A to be **recommitted**.

Thereupon, the House resolved into Committee of the Whole House for recommital of **Clause 12 and New Clause 28A**.

14. COMMITTEE OF THE WHOLE HOUSE

Order for Committee read;

IN THE COMMITTEE

The Second Chairperson in the Chair

Recommittal of the Finance Bill (National Assembly Bill No. 10 of 2020)

Clause 12 - amendment proposed

THAT, the Bill be amended in clause 12 by inserting the following paragraph immediately after paragraph (b) -

(c) inserting the following new paragraph immediately after paragraph 19-

20. The supply of maize (corn) flour, cassava flour, wheat or meslin flour and maize flour containing cassava flour by more than ten percent in weight.

Provided that this paragraph shall be in operation for a period of six months from the date of assent.

(Chairperson, Departmental Committee on Finance and National Planning)

Question of the amendment proposed;

Debate arising;

Question on the amendment put and agreed to;

Clause 12 - as amended agreed to

New Clause 28A proposed -

THAT, the Bill be amended by inserting the following new clause immediately after clause 28-

Amendment of section 156 of Cap. 487.

28A. The Insurance Act is amended by deleting section 156 and substituting therefor the following new section –

Cash and carry payment of premiums.

156. (1) No insurer shall assume a risk in Kenya in respect of insurance business unless and until the premiums payable thereon is received by the insurer.

(2) An insurer who contravenes subsection (1), shall be liable for a penalty equivalent to fifty percent of the premium payable to the Policyholders Compensation Fund or upon conviction shall be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding two years or both.

(3) An intermediary shall upon receipt of any premiums on behalf of an insurer immediately remit the same to the insurer.

(4) An intermediary who contravenes subsection (3) shall be liable to refund the premium and pay a penalty equivalent to twenty percent of the unremitted premium to the client.

(5) Any officer or director of an intermediary who contravenes subsection (3) shall be guilty of an offence, and upon conviction shall be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term of three months or both.

(6) An insurer shall pay an intermediary insurance commission due within thirty days upon receipt of premium.

(7) An insurer who contravenes subsection (6) shall be liable to a penalty five million shillings on each contravention, payable to the policyholders Compensation Fund.

(Chairperson of the Departmental Committee on Finance and National Planning)

Proposed New Clause 28A withdrawn by the Mover.

Further amendment proposed;

New Clause 28A proposed -

THAT, the Bill be amended by inserting the following new clause immediately after clause 28-

Amendment of section 156 of Cap. 487.

28A. The Insurance Act is amended by deleting section 156 and substituting therefor the following new section -

Cash and carry payment of premiums.

156. (1) No insurer shall assume a risk in Kenya in respect of insurance business unless and until the premiums payable thereon is received by the insurer.

(2) An insurer who contravenes subsection (1), shall be liable for a penalty equivalent to fifty percent of the premium payable to the Policyholders Compensation Fund or upon conviction shall be liable to a fine not exceeding five million shillings or to imprisonment for a term not exceeding two years or both.

(3) An intermediary shall upon receipt of any premiums on behalf of an insurer immediately remit the same to the insurer.

(4) An intermediary who contravenes subsection (3) shall be liable to refund the premium and pay a penalty equivalent to twenty percent of the unremitted premium to the insurer.

(5) Without prejudice to the sub-section(4), any premiums that had been received by an intermediary and had not been remitted to the insurer before the commencement of this section, shall be paid to the insurer within one hundred and eighty days from the date of commencement of this Act.

(6) Any officer or director of an intermediary who contravenes subsection (3) shall be guilty of an offence, and upon conviction shall be liable to a fine not exceeding one million shillings or to imprisonment for a term of one year or both.

(7) An insurer shall pay an intermediary insurance commission due within thirty days upon receipt of premium.

(8) An insurer who contravenes subsection (6) shall be liable to a penalty five million shillings on each contravention, payable to the policyholders Compensation Fund.

(No.38)

TUESDAY, JUNE 23, 2020

(597)

Motion made and Question proposed -

THAT, the New Clause 28A be read a Second Time

Debate arising;

Proposed New Clause 28A withdrawn by the Mover.

Bill to be reported with amendments.

15. HOUSE RESUMED - the Third Chairperson in the Chair

Bill reported with amendments

Motion made and Question proposed -

THAT, this House do agree with the Report of the Committee of the Whole House on its consideration of the Finance Bill (National Assembly Bill No. 10 of 2020).

(Chairperson, Departmental Committee on Finance and National Planning)

No debate arising;

Question put and agreed to.

Motion made and Question proposed -

THAT, the Finance Bill (National Assembly Bill No. 10 of 2020) be now read a Third Time.

(Chairperson, Departmental Committee on Finance and National Planning)

No debate arising;

Question put and agreed to.

Bill read a Third Time and **passed**.

16. MOTION OF ADJOURNMENT TO DISCUSS DEFINITE MATTER OF URGENT NATIONAL IMPORTANCE UNDER STANDING ORDER 33

Motion made -

THAT, pursuant to Standing Order 33, the House do now adjourn for the purpose of discussing the election of the Republic of Kenya to the non-permanent seat of the United Nations Security Council (UNSC) for the period 2021/22.

(Chairperson, Departmental Committee on Defence and Foreign Relations)

Debate arising;

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.

17. HOUSE ROSE - at Seven O'clock.

MEMORANDUM

The Speaker will take the Chair on
Thursday, June 25, 2020 at 2.30 p.m.

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