



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – FOURTH SESSION

THE NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

THURSDAY, SEPTEMBER 10, 2020

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 Hon. Speaker conveyed the following Communication –

WITHDRAWAL OF PROPOSED AMENDMENTS TO THE ENERGY ACT, 2019 AND FILMS AND STAGE PLAYS ACT

“**Hon. Members**, as you may be aware, the Statute Law (Miscellaneous Amendments) Bill (National Assembly Bill No.15 of 2020) was published vide Kenya Gazette Supplement No.89 of 6th June 2020 to effect various amendments to 38 statutes. The Bill which was sponsored by the Leader of the Majority Party was read a First Time on 23rd June 2020. It was thereupon referred to various departmental committees for consideration, in accordance with the respective mandates as indicated in my Communication of 25th June, 2020.

Hon. Members, as you will recall, in my Communication of 15th July 2020, I acceded to the request by the Leader of the Majority Party for the withdrawal of proposed amendments to the following eight statutes as contained in the Bill:

- (i) The Criminal Procedure Code Cap. 75;
- (ii) The Evidence Act Cap. 80;
- (iii) Anti-Corruption and Economic Crimes Act of 2003;
- (iv) The Public Officer Ethics Act of 2003;
- (v) Proceeds of Crime and Anti-Money Laundering Act of 2009;
- (vi) The Counter-Trafficking in Persons Act of 2012;
- (vii) The Leadership and Integrity Act of 2012; and,
- (viii) The Bribery Act, 2016.

Hon. Members, I wish to inform the House that I have since received two other letters from the Leader of the Majority Party, dated 30th July 2020 and 28th August 2020, respectively,

requesting my consent for withdrawal of proposed amendments to Sections 13(1), 46(1) and 61(1) of the Energy Act, 2019 and proposed amendments relating to the Film and Stage Play Act (Cap.222) as contained in the Bill.

Hon. Members, in his requests, the Leader of the Majority Party indicates that the said proposed amendments relating to the Energy Act, 2019 contravene the Mwongozo Code of Governance for State Corporations and other Government policy directives governing the appointment of Chief Executive Officers (CEOs) of State Corporations. With regard to the proposed amendments to the Film and Stage Play Act (Cap. 222), he indicates that the Ministry of Information, Communication and Technology, Innovation and Youth Affairs is currently formulating the National Film Policy.

I have acceded to the two requests, which implies that the Bill will now undergo public participation, Second Reading and other stages without making reference to the withdrawn

Sections and Act. Further, the Bill will now proceed as though the withdrawn Sections and Act were not part of the Bill as published.

Even as I grant this consent Hon. Members, I wish to caution the House as follows:

- (i) This is going to be the first time that more than two requests regarding withdrawal of proposed amendments to part of a particular Bill are permitted. Indeed, this relatively new measure in our legislative processes is intended to be applied sparingly. The process should not be a replacement to the Committee of the whole House Stage, where the Mover of the Bill is at liberty to propose amendments to delete any provisions contained in a Bill;
- (ii) If such partial withdrawals are several and introduced at varied times, they not only present an untidy manner of processing a Bill, but may also project the House as unsystematic in its processing of legislation, particularly when the withdrawals are made at the penultimate stage after the relevant Committee(s) have concluded the process of considering and undertaking public participation on the particular Bill as published. Where there has been change of mind or position in the process of law-making, the tidy options have been either to withdraw the Bill and republish it, or move deletion of the offensive provisions at the Committee of the Whole House stage.

Hon. Members, given this background, going forward with respect to this particular Bill, I will find it extremely difficult to consent to any further request for withdrawal of part of its provisions and any such process be undertaken in the normal course/stages of consideration of the Bill. The House is accordingly informed. **Thanks!**

5. MESSAGES

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

REFERRAL BY H.E. THE PRESIDENT OF THE PARLIAMENTARY PENSIONS (AMENDMENT) BILL, 2019

“Honourable Members, you may recall that on 5th August, 2020, the National Assembly passed the Parliamentary Pensions (Amendment) Bill (National Assembly Bill No. 45 of 2019). The Bill was sponsored by the Leader of the Minority Party, the Hon. John Mbadi, 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 own 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 7th September, 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 8 of the Parliamentary Pensions Act (Cap. 196) to provide for an entitlement for former Members of Parliament who served between 1st July, 1984 and 1st January, 2001 to a monthly pension of one hundred thousand shillings.

Amongst the reasons for his reservations, H.E. the President notes the following-

- i. Members' pensions under the Act are calculated according to the contributions paid into the Scheme during their parliamentary term. The proposed amendment fails to provide for such calculation, and makes no reference to the Members' contributions;
- ii. The Bill overlooks the mandate of the Salaries and Remuneration Commission under the Constitution, which comprises, among other things, the setting and review of remuneration and benefits for all State officers, who include Members of Parliament; and,
- iii. The proposed pension payment will result in an annual cost implication of about four hundred and forty-four million shillings. Added to this, will be the almost certain demand for similar upward review of pension benefits by other retired State and public officers, which is within their rights to demand. The resultant ripple effect is unaffordable and fiscally unsustainable.

Consequently, H.E. 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, 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 Finance and National Planning for consideration, which 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 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!**"

6. PAPERS LAID

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

The Report of the Auditor-General and the financial statements in respect of the following institutions for the year ended 30th June 2019, and the certificates therein:

- (i) The Ethics and Anti-Corruption Commission (EACC);
- (ii) Ethics and Anti-Corruption Commission Staff House Mortgage and Car-loan Scheme;
- (iii) The Nursing Council of Kenya (NCK);
- (iv) The Retirement Benefits Authority (RBA);
- (v) The 2019 Kenya Population and Housing Census Volume (2) from the Kenya National Bureau of Statistics (KEBS);
- (vi) The Kenya Economic Report 2020, main Report and Popular Version from the Kenya Institute of Public Policy Research and Analysis (KIPPRA).

(The Leader of the Majority Party)

- (vii) The Report of the Departmental Committee on Transport, Public Works and Housing on its consideration of the National Aviation Management Bill, 2020, (National Assembly Bill No.18 of 2020).

(Chairperson, Departmental Committee on Transport, Public Works and Housing)

7. POINT OF ORDER

The Hon. T.J. Kajwang' rose on a point to order to seek the Speaker's guidance on the matter of inadequate public participation during consideration of the Bill. Having listened to several Members, the Speaker acceded to the request and directed the Committee to undertake further public participation and report to the House by way of an Addendum to the said Report.

8. NOTICE OF MOTION

The following Notice of Motion was given: -

THAT, pursuant to the provisions of Section 43 (4) of the National Government Constituencies Development Fund (NG-CDF) Act 2015 and paragraph 5(2) and 10 of the NG-CDF Regulations, 2016, this House approves the list of nominees for appointment to the following 11 Constituency Committees of the NG-CDF, laid on the Table of the House on Wednesday, 12th August 2020 and Thursday, 10th September 2020 respectively:

- (i) Lurambi Constituency;
- (ii) Tigania West Constituency;
- (iii) Baringo South Constituency;
- (iv) Cherangany Constituency;
- (v) Kacheliba Constituency;
- (vi) Mumias West Constituency;
- (vii) Mvita Constituency;
- (viii) Ol Kalou Constituency;
- (ix) Wajir North Constituency;

- (x) Ndaragwa Constituency; and
- (xi) Sabatia Constituency.

(Chairperson, Committee on the National Government Constituencies Development Fund)

9. QUESTIONS

The following Questions were **asked** –

- (i) **Question No.140/2020** by the Member for Baringo Central (Hon. Joshua Kandie, MP) regarding the stalled construction of Kabarnet Medical Training College (KMTC) in Baringo Central.

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

- (ii) **Question No.187/2020** by the Member for Moiben (Hon. Silas Tiren, MP) regarding stalling of Kitale – Endebeess - Suam Road (C45) in Endebeess Constituency

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

- (iii) **Question No. 188/2020** by the Member for Laisamis (Hon. Arbelle Marselino Malimo) regarding the criteria used by the Teachers Service Commission during delocalization of teachers in the country?

(To be replied by the Teachers Service Commission before the Departmental Committee on Education and Research)

The following Questions were **deferred** –

- (i) **Question No. 178/2020** by the Member for Laikipia County (Hon. Catherine Waruguru, MP) regarding tarmacking of the road from Kichinjio area through Matanya to Thome areas in Nanyuki.
- (ii) **Question No. 185/2020** by the Member for Soy (Hon. Caleb Kositany, MP) regarding the implementation status of the *Huduma* Number.
- (iii) **Question No. 186/2020** by the Member for Malindi (Hon. Aisha Juma, MP) regarding status of the Galana Kulalu Irrigation Project.

10. STATEMENTS

- (i) The Member for Garissa Township (Hon. Aden Duale, MP) requested for a statement pursuant to Standing Order 44(2) regarding abduction of citizens in Garissa County. Hon. Aden Duale (Garissa Township, JP):

(Statement referred to the Departmental Committee on Administration & National Security)

- (ii) Pursuant to the provisions of Standing Order 44(2)(a), the Leader of the Majority Party issued a Statement regarding the Business of the House for the week commencing Tuesday, September 15, 2020.
- (iii) The Member for Kaiti (Hon. Joshua Kivinda) requested for a minute of silence in memory of the former Member for Kilome, Hon. Gervaise Maingi who served the country from 1988 to 2000.

(Members stood and observed a minute of silence)

(Change of Chair from the Hon Speaker to the Fourth Chairperson)

11. MOTION – AUDITED FINANCIAL STATEMENTS FOR STATE CORPORATIONS

Motion made and Question proposed;

THAT, this House adopts the Twenty Third Report of the Public Investments Committee on its consideration of the Auditor General's Reports on Financial Statements of State Corporations, laid on the Table of the House on Thursday, July 02, 2020.

(Chairperson, Public Investments Committee)

Debate interrupted on Tuesday, September 8, 2020 resumed and concluded;

Mover replied;

Question deferred to another day.

(Change of Chair from the Fourth Chairperson to the First Chairperson)

12. MOTION- INQUIRY INTO THE STATUS OF DAMS IN KENYA

Motion made and Question proposed;

THAT, this House adopts the Report of the Departmental Committee on Environment and Natural Resources on an Inquiry into the Status of Dams in Kenya, laid on the Table of the House on Thursday, October 17, 2019.

(Chairperson, Departmental Committee on Environment and Natural Resources)

Debate interrupted on Thursday, July 30, 2020 (Morning Sitting) resumed;

Motion on amendment made and Question proposed;

THAT, the Report be amended by deleting the word 'stop' appearing after the words 'must forthwith' in Paragraph 180 of Page 44 and substitute therefor with the word 'reassess'.

(Hon. (Dr.) James Nyikal)

Question on amendment put and agreed to;

Debate on Motion as amended arising;

Mover replied;

Question deferred to another day.

13. **MOTION- INQUIRY INTO THE DEATH OF ELEVEN BLACK RHINOS AFTER TRANSLOCATION TO THE TSAVO EAST NATIONAL PARK SANCTUARY**

Motion made and Question proposed;

THAT, this House adopts the Report of the Departmental Committee on Environment and Natural Resources on its Inquiry into the Death of Eleven Black Rhinos after Translocation to the Tsavo East National Park Sanctuary, laid on the Table of the House on Thursday, September 19, 2019.

(The Chairperson, Departmental Committee on Environment and Natural Resources)

Debate interrupted on Thursday, July 30, 2020 (Afternoon Sitting) resumed.

And the time being Seven O'clock, the First Chairperson of Committees interrupted the proceedings and adjourned the House without Question put pursuant to the Standing Orders.

14. **HOUSE ROSE** - at Seven O'clock.

M E M O R A N D U M

The Speaker will take the Chair on
Tuesday, 15th September 2020 at 2.30 p.m..

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