



REPUBLIC OF KENYA

TWELFTH PARLIAMENT – FOURTH SESSION

THE NATIONAL ASSEMBLY

VOTES AND PROCEEDINGS

TUESDAY, NOVEMBER 03, 2020

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

The following Communication was issued:

THE IMPORT OF THE JUDGEMENT OF THE HIGH COURT IN CONSTITUTIONAL PETITION NO. 284 OF 2019 AS CONSOLIDATED WITH CONSTITUTIONAL PETITION NO. 353 OF 2019 ON THE LEGISLATIVE FUNCTION OF THE NATIONAL ASSEMBLY

Honourable Members,

As you may be aware, last week, the High Court in Constitutional Petition No. 284 of 2019 as consolidated with Constitutional Petition No. 353 of 2019, issued amongst other orders, an order for cessation of consideration of all pending Bills in both Houses of Parliament until the requirement of Article 110(3) of the Constitution is first fulfilled. The Judgment also contains other related declaratory orders that shall have a direct implication on the legislative work of this House.

Honourable Members, consequently, on Friday 30th October, 2020, the House Business Committee did meet and deliberate on the matter of the judgment and took a firm view that the judgment is unconstitutional, erroneous and flawed in law.

Honourable Members House Business Committee in particular noted with grave concern that the court erred, misdirected and misapplied the Constitution on the following issues amongst others-

- (i) The High Court failed to consider the architectural design of the bicameral Parliamentary system under the Constitution. The Constitution has clearly set out the mandate of the two Houses of Parliament. Article 109 of the Constitution mandates the National Assembly to enact bills not concerning county governments without the participation of the Senate. The Senate is only mandated to participate in the enactment of laws concerning county governments.

- (ii) The High Court's Judgment has effectively curtailed the National Assembly's mandate under Article 109(3) of the Constitution by requiring that any Bill not concerning county government must be considered by the Senate too.
- (iii) The Judgment has also muted the provisions of Article 114 of the Constitution as read together with Article 109(5) of the Constitution regarding money-bills;
- (iv) The effect of the High Court's judgment is that Members of Parliament and Committees in either House of Parliament **cannot** introduce Bills in their respective Houses, without the concurrence of the two Speakers. This curtails Members' right to initiate legislations and their right to represent the people of the constituencies and special interests.
- (v) The Judgment also attempts to set aside previous judgments of the High Court and the Court of Appeal which had validated some of the 23 laws like The Finance Act, 2018, The National Government Constituency Development Fund Act, The Computer Misuse and Cybercrimes Act, No. 5 of 2018, The Statute Law (Miscellaneous Amendments) Act, 2018 and The Statute Law (Miscellaneous Amendments) Act, 2018 and 2019, amongst others.
- (vi) The Judgment has grave implications on the general presumption of constitutionality of a statute and the legislative sovereignty and will affect government taxation measures, government international commitments, reforms and policy decisions already taken in relation to various Acts of Parliament.

Honourable Members, in view of the foregoing, I therefore wish to inform you that the House Business Committee resolved as follows in regard to the High Court judgment -

1. **THAT,** the National Assembly does appeal the decision of the High Court in Constitutional Petition No, 284 of 2019 as consolidated with Constitutional Petition No. 353 of 2019; and,
2. **THAT,** in the meantime, no legislative business will be undertaken by the House in the coming days, whether from the National Assembly or the Senate pending a way forward on the decision contained in the High Court's Judgment, while seeking stay or setting aside of the Judgment by the Court of Appeal.

I thank you

5. MESSAGES

The following two messages were conveyed:

(i) NOMINATION OF PERSONS FOR APPOINTMENT TO THE POSITIONS OF HIGH COMMISSIONERS AND AMBASSADORS

Honourable Members,

As you are aware, Standing Order 42(2) states, and I quote: "(2) If a message is received from the President, at a time when the House is not in session, the Speaker shall forthwith cause the message to be transmitted to every Member and shall report the message to the House on the day the House next sits"

In this regard, on 16th October 2020 I did notify all Members of the National Assembly that my office had received a Message from His Excellency the President regarding nomination of persons for appointment as High Commissioners and Ambassadors.

Honourable Members, HE the President, in exercise of powers conferred to him by the provisions of Article 132(2)(e) of the Constitution and sections 3 and 5 of the Public Appointments (Parliamentary Approval) Act, 2011 nominated and now seeks the approval of the National Assembly, of the following persons for appointment to the respective offices in High Commissions, Missions and Embassies of the Republic of Kenya –

(A) HIGH COMMISSIONERS

	Name	Station
1.	Amb. John Tipsis	Canberra
2.	Ms. Immaculate Wambua	Ottawa
3.	Amb. Catherine Mwangi	Pretoria

(B) AMBASSADORS

1.	Amb. Martin Kimani	United Nations - New York
2.	Amb. Jean Kimani	UN Habitat - Nairobi
3.	Amb. Jean Kamau	Addis Ababa
4.	Mr. Lindsay Kiptiness	Bangkok
5.	Amb. Tom Amollo	Berlin
6.	Amb. Lemarron Kaantoo	Brasilia
7.	Amb. Daniel Wambura	Bujumbura
8.	Ms. Stella Munyi	Harare
9.	Maj. Gen (Retd) Samuel Nandwa	Juba
10.	Maj. Gen (Retd) Ngewa Mukala	Khartoum
11.	Amb. Benson Ogutu	Moscow
12.	Mr. Joshua Gati mu	Tehran
13.	Amb. Tabu Iri na	Tokyo

Honourable Members, you may recall that on **15th October 2020**, the House passed a resolution to the effect that, during the period of the short recess, upon receipt of names of persons nominated for appointment to state or public offices requiring approval of the House from HE the President, the Speaker shall **forthwith** refer the Messages containing the name(s) to the relevant Committee for consideration without having to recall the House for a Special Sitting.

In furtherance to the said resolution of the House, I directed the Office of the Clerk to promptly convey this message to all Members of the National Assembly, and consequently referred the Message and *Curriculum Vitae* of the nominees to the Departmental Committee on Defence and Foreign Relations to commence necessary vetting processes as contemplated under the Public Appointments (Parliamentary Approval) Act and Standing Order 45 (*Committee of public appointments to Committees*).

Honourable Members, section 8 of the Public Appointments (Parliamentary Approval) Act requires that a Committee shall consider a nomination and table a report for debate and decision in the House **within fourteen (14) days** from the date of notification, which is today. In this regard, the Committee should table its report on the above nominees

soonest to enable the House to conclude the matter within the statutory timelines. I thank you

(ii) THE 2020 STATE OF THE NATION ADDRESS TO PARLIAMENT BY H E THE PRESIDENT OF THE REPUBLIC OF KENYA

Honourable Members,

Standing Order 42(2) of the National Assembly Standing Orders requires the Speaker to cause the transmission of any Message received from the President at a time when the House is not sitting to every Member and later report such Message to the House at its next sitting. In this regard therefore, I wish to inform the House that I have received a message from His Excellency the President dated **23rd October, 2020** conveying that he intends to deliver the 2020 State of the Nation Address to Parliament on **Thursday, 12th November, 2020**, pursuant to Article 132(1) of the Constitution.

Honourable Members, the said Article 132(1)(b) and (c) states, and I quote –

“(1) The President shall—

(b) address a special sitting of Parliament once every year and may address Parliament at any other time; and

(c) once every year —

(i) report, in an address to the nation, on all the measures taken and the progress achieved in the realization of the national values, referred to in Article 10;

(ii) publish in the Gazette the details of the measures and progress under subparagraph (i); and

(iii) submit a report for debate to the National Assembly on the progress made in fulfilling the international obligations of the Republic.”

Honourable Members, Pursuant to Standing Order 22(2) of the National Assembly Standing Orders therefore, I wish to notify all Members that a *Special Sitting* of Parliament will take place on **Thursday, 12th November, 2020** at **2:30 p.m.** in the **National Assembly Main Chamber, Parliament Buildings** and that the Speakers of the Houses of Parliament are making necessary arrangements to facilitate the special Sitting of the Houses of Parliament.

Besides, I am aware that the offices of the Clerks of the Houses of Parliament have since commenced preparations for the day, including seating arrangements in line with the Public Health Guidelines, and that official invitations will be sent out in the usual manner. The House is accordingly, notified. I thank you

6. PETITION

The Member for Kilifi South (Hon. Kiti Chonga) presented a petition regarding dispossession of land belonging to *Dindiri-Makata* and *Kaole* Villages in *Chasinba* Ward, Kilifi South Constituency on behalf of the Petitioners.

- *Petition referred to the Departmental Committee on Lands pursuant to Standing Order 227(1)*

7. **PAPERS LAID**

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

- (i) Legal Notice No. 191 of 2020 relating to the Retirement Benefits (Forms and Fees) (Amendment) Regulations, 2020 and the Explanatory Memorandum from the National Treasury and the Explanatory Memorandum.
- (ii) Legal Notice No. 192 of 2020 relating to the Retirement Benefits (Mortgage Loans) (Amendment) Regulations, 2020 and the Explanatory Memorandum from the National Treasury and the Explanatory Memorandum.
- (iii) Legal Notice No. 193 of 2020 relating to the Retirement Benefits (Umbrella Retirement Benefits Schemes) (Amendment) Regulations, 2020 and the Explanatory Memorandum from the National Treasury and the Explanatory Memorandum.
- (iv) Legal Notice No. 197 of 2020 relating to the Public Finance Management (Credit Guarantee Scheme) Regulations, 2020 from the National Treasury and the Explanatory Memorandum.
- (v) 2020 Budget Review and Outlook Paper from the National Treasury and Planning.
- (vi) Sessional Paper 2 of 2020 on the Veterinary Policy from State Department for Livestock.
- (vii) Sessional Paper 3 of 2020 on the Livestock Policy from State Department for Livestock.
- (viii) The Report of the Auditor-General on the Financial Statements in respect of the Kenya Post Office Savings Bank for the year ended 30th June, 2018 and the certificates therein.
- (ix) The Report of the Steering Committee on the Implementation of the Building Bridges to a United Kenya Taskforce Report.

(The Hon (Dr.) Amos Kimunya, MP - Leader of Majority Party)

- (x) The Report of the Departmental Committee on Defence and Foreign Relations on the vetting of nominees for appointment to the position of Ambassadors, High Commissioners and Permanent Representatives.

(The Hon Katoo Ole Metito, MP - Chairperson, Departmental Committee on Defence and Foreign Relations)

- (xi) The Report of the Departmental Committee on Communication, Information and Innovation on the vetting of Ms. Immaculate Kassait as the nominee for appointment as a data commissioner.

(The Hon. William Kising, MP - Chairperson, Departmental Committee on Communication, Information and Innovation)

- (xii) Reports of the Committee on Delegated Legislation on its consideration of:
- (i) The Special Economic Zones (Amendment) Regulations, 2020 (Legal Notice No. 33 of 2020); and
 - (ii) The Crops (sugar) (General) Regulations, 2020 (Legal Notice No. 99 of 2020).

(The Hon. Muriuki Njagagua, MP - Vice-Chairperson, Committee on Delegated Legislation)

8. NOTICES OF MOTION

The following notices of Motion were given

- (i) **Approval of the appointment of persons to the Offices of High Commissioners, Ambassadors and Permanent Representatives**

(The Hon. Katoo Ometito, MP - Chairperson, Departmental Committee on Defence and Foreign Relations)

THAT, taking into consideration the findings of the Departmental Committee on Defence and Foreign Relations in its Report on the Vetting of Nominees for appointment as Ambassadors, High Commissioners and Permanent Representatives, *laid on the Table of the House on Tuesday, November 03, 2020*, and pursuant to the provisions of Article 132(2)(e) of the Constitution and Section 8 of the Public Appointments (Parliamentary Approval), Act, 2011, this House **approves** the appointment of the following persons as High Commissioners, Ambassadors and Permanent Representatives -

- | | | |
|---|---|---|
| 1) Amb. John Tipis | - | High Commissioner to Canberra, Australia; |
| 2) Ms. Immaculate Wambua | - | High Commissioner to Ottawa, Canada; |
| 3) Amb. Catherine Mwangi | - | High Commissioner to Pretoria, South Africa; |
| 4) Amb. Martin Kiani | - | Permanent Representative to United Nations, New York; |
| 5) Amb. Jean Kiani | - | Permanent Representative to UN Habitat, Nairobi; |
| 6) Amb. Tom Amollo | - | Ambassador to Berlin, Germany; |
| 7) Mr. Lindsay Kiptiness | - | Ambassador to Bangkok, Thailand; |
| 8) Amb. Daniel Wambura | - | Ambassador to Bujumbura, Burundi; |
| 9) Ms. Stella Munyi | - | Ambassador to Harare, Zimbabwe; |
| 10) Maj. Gen. (Retd) Samuel Nandwa | - | Ambassador to Juba, South Sudan; |
| 11) Maj. Gen. (Retd) Ngewa Mikala | - | Ambassador to Khartoum, Sudan; |
| 12) Amb. Benson Ogutu | - | Ambassador to Moscow, Russia; |
| 13) Mr. Joshua Gati mu | - | Ambassador to Tehran, Iran; and |
| 14) Amb. Tabu Iri na | - | Ambassador to Tokyo, Japan. |

(ii) Approval of the appointment of a person to the Office of the Data Commissioner

(The Hon. William Kisang, M.P. - Chairperson, Departmental Committee on Communications, Information and Innovation)

THAT, taking into consideration the findings of the Departmental Committee on Communication, Information and Innovation in its Report on the Vetting of a Nominee for appointment as the Data Commissioner, *laid on the Table of the House on Tuesday, November 03, 2020*, and pursuant to the section 6(4) of the Data Protection Act, 2019 and section 8 of the Public Appointments (Parliamentary Approval), Act, 2011, this House **approves** the appointment of **Ms. Immaculate Kassait as the Data Commissioner**.

(iii) The Reports of the Committee on Delegated Legislation on its consideration of the Crops (Sugar) (General) Regulations, 2020 and the Special Economic Zones (Amendment) Regulations, 2020

(The Hon. Mriuki Njagagua - Vice-Chairperson, Committee of Delegated Legislation)

(a) THAT, this House **adopts** the Report of the Committee on Delegated Legislation on its consideration of the Crops (Sugar) (General) Regulations, 2020, laid on the Table of the House on Tuesday, November 03, 2020, and pursuant to sections 18 of the Statutory Instruments Act, 2013 and Standing Order 210 (4)(b) **annuls in entirety** the Crops (Sugar) (General) Regulations, 2020 (Legal Notice No. 99 of 2020).

(b) THAT, this House **adopts** the Report of the Committee on Delegated Legislation on its consideration of the Special Economic Zones (Amendment) Regulations, 2020 laid on the Table of the House on Tuesday, November 03, 2020, and pursuant to sections 18 of the Statutory Instruments Act, 2013 and Standing Order 210 (4)(b), **annuls in entirety** the Special Economic Zones (Amendment) Regulations, 2020 (Legal Notice No. 33 of 2020).

9. QUESTIONS

(a) The following Ordinary Questions were asked -

- (i) Question No. 229/2020 by the Member for Tigania East (Hon. Josephat Kabeaba) regarding the status electricity connectivity in Tigania East Constituency.

(To be replied by the Cabinet Secretary for Energy before the Departmental Committee on Energy)

- (ii) Question No. 131/2020 by the Member for Nakuru Town East (Hon. David Gkaria) and asked on his behalf by the Member for Narok East (Hon. Aramat Le Ranken) regarding the status of NHF coverage of the elderly people.

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

- (iii) Question No. 279/2020 by the Member for Lamu County (Hon. Ruweida Obo) regarding construction status of Mbwajumwali Seawall in Lamu County.

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

- (iv) Question No. 281/2020 by the Member for Sigowet-Soin (Hon. Kipsengeret Koros) regarding status of settlement of Historical pending claims at the Department of Correctional Services.

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

- (v) Question No. 286/2020 by the Member for Lamu West (Hon. Starly Muthama) regarding mitigation of Human-Wildlife conflict.

(To be replied by the Cabinet Secretary for Tourism and Wildlife before the Departmental Committee on Environment & Natural Resources)

- (vi) Question No. 290/2020 by the Member for Malava (Hon. Malu Injendi) regarding operation status of local flights during this period of Covid-19 Pandemic.

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

- (vii) Question No. 294/2020 by the Member for Teso North (Hon. Oku Kaunya) regarding the construction status of parking lanes on Road A104 (Northern Corridor at Malaba Area).

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

- (viii) Question No. 300/2020 by the Member for Baringo Central (Hon. Joshua Kandie) regarding construction status of Kapkai Athletics Camp in Baringo Central Constituency.

(To be replied by the Cabinet Secretary for Sports, Culture and before the Departmental Committee on Sports, Culture and Tourism)

- (ix) Question No. 301/2020 by the Member for Soy (Hon. Caleb Kositany) regarding gazette ment of Police Road Hocks across the country.

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

- (x) Question No. 302/2020 by the Member for Mumias (Hon. Benjamin Washali) regarding receivership status of Mumias Sugar Company.

(To be replied by the Cabinet Secretary for Agriculture and Livestock before the Departmental Committee on Agriculture and Livestock)

10. PROCEDURAL MOTION- LIMITATION OF DEBATE

Motion made and Question proposed-

THAT, pursuant to the provisions of Standing Order 97(1) and notwithstanding the resolution of the House of February 18, 2020, the House further Orders that, during the Sittings of the House of November 3, 2020 up to and including December 3, 2020, each

speech in debate on Bills, Motions (*including Special Motions*), Sessional Papers and Committee Reports, shall be limited as follows:- a maximum of two and half hours with not more than ten (10) minutes for the Mover in moving and five (5) minutes in replying and a maximum of five (5) minutes for any other Member speaking, except for the Leader of the Majority Party, the Leader of the Minority Party and the Chairperson of the relevant Committee who shall be limited to a maximum of ten (10) minutes, and that priority in speaking be accorded to the Leader of the Majority Party, the Leader of the Minority Party and Chairperson of the relevant Committee, in that order.

(The Hon. (Dr.) Amos Kimunya - Leader of the Majority Party)

There being no debate arising;

Question put and agreed to.

11. MOTION – ALTERATION OF THE CALENDER

Motion made and Question proposed –

THAT, pursuant to the provisions of Standing Order 28(4), and taking cognizance of the rise in the spread of COVID-19 Pandemic in the Country, this House **resolves to further alter** its Calendar for the Fourth Session (*Regular Sessions*), as amended on September 8, 2020 and therefore **orders** as follows **with respect to the Sittings of the House during the period November 3 to December 3, 2020** -

- (a) that, the House will hold -
 - (i) *afternoon* Sittings on **Tuesdays** commencing at 2.30 p.m.; and
 - (ii) *Morning* and *Afternoon* Sittings on **Thursdays** commencing at 10.00 a.m. and at 2.30 p.m., respectively;
- (b) that, with effect from November 4, 2020, the sittings of the House of Wednesdays (*Morning* and *Afternoon*) stand **suspended**; and,
- (c) that, notwithstanding the provisions of Standing Order 40(3), on Thursday *Mornings*, business **not** sponsored by the Majority, the Minority Party or a Committee shall have **precedence** over all other business, in such order as the House Business Committee shall determine.

(The Hon. (Dr.) Amos Kimunya - Leader of the Majority Party)

There being no debate arising;

Question put and agreed to.

12. MOTION – SESSIONAL PAPER NO. 2 OF 2019 ON THE NATIONAL POLICY ON GENDER AND DEVELOPMENT

Motion made and question proposed –

THAT, this House adopts the Report of the Departmental Committee on Labour and Social Welfare on its consideration of the Sessional Paper No. 2 of 2019 on the National Policy on Gender and Development laid on the Table of the House on Thursday, October 8, 2020, and further approves Sessional Paper No. 2 of 2019 on the National Policy on Gender and Development.

(Chairperson, Departmental Committee on Labour & Social Welfare)

Debate interrupted on Thursday, October 15, 2020 (Afternoon) resumed;

(Change of Chair from the Speaker to the 2nd Chairperson of Committees)

There being no other Member desiring to contribute;

Mover Replied;

Question of the Motion deferred to another day.

And the time being fifty five minutes past six O'clock, the Second Chairperson interrupted the proceedings and adjourned the House without Question put pursuant to the Standing Orders.

13. HOUSE ROSE - at fifty five minutes past six O'clock

MEMORANDUM

The Speaker will take the Chair on
Thursday, November 05, 2020 at 10.00 a.m

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